WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AVERELL SPICER, ***Applicant***

vs.

CHICAGO BEARS; GREAT DIVIDE INSURANCE COMPANY, administered by BERKLEY ENTERTAINMENT, ***Defendants***

Adjudication Number: ADJ20181505
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant has petitioned for reconsideration of the Findings of Fact & Order ("F&O") issued by the workers' compensation administrative law judge ("WCJ") on January 30, 2026, wherein the WCJ dismissed the Chicago Bears ("Bears") as a party defendant after finding no personal jurisdiction in California. Applicant contends that the WCJ erred because applicant signed his contract with the Bears in California and/or because the WCJ improperly focused on the connection between applicant's injuries and the State of California, rather than the Bears' activities in this state.

We received an Answer. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant the Petition. Our order granting the Petition is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

[1] All further references are to the Labor Code unless otherwise noted.

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on March 6, 2026, and 60 days from the date of transmission is May 5, 2026. This decision is issued by or on May 5, 2026, so that we have timely acted on the petitions as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 6, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code

section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 6, 2026.

II.

Preliminarily, we note the following in our review:

This case involves a cumulative trauma injury claim to multiple body parts, sustained while applicant was employed as a professional athlete by the Bears from May 2, 2010 through August 10, 2010.

The matter went to trial on the sole issue of personal jurisdiction over the Bears on October 30, 2025. (Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 10/30/2025, at p. 1.) Exhibits were admitted without objection, and applicant provided testimony. (*Id*. at pp. 2–7.) The WCJ also solicited trial briefs, which were both filed on November 10, 2025.

The WCJ issued her F&O on January 30, 2026, finding no personal jurisdiction over the Bears in California. (F&O, at p.1, ¶ 2.) The appended Opinion on Decision is somewhat unclear as to whether the WCJ credited applicant's testimony that he was hired in California, but does make clear that in the WCJ found that even if applicant had been hired in California, there would not be personal jurisdiction over the Bears in this state. (Opinion on Decision, at pp. 3–5.) Instead, the WCJ found that because applicant's injuries occurred while at a training camp in Illinois, applicant's claim did not arise out of or relate to the Bears' contacts with this state. (*Ibid.*)

The instant Petition for Reconsideration followed.

A California court may exercise jurisdiction over a nonresident defendant only within the perimeters of the due process clause as delineated by the decisions of the United States Supreme Court. (*Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472, 475, citing *International Shoe Co. v. State of Washington* (1945) 326 U.S. 310 and *Michigan Nat. Bank v. Superior Court* (1972) 23 Cal.App.3d 1, 6; Code Civ. Proc., § 410.10.) Due process requires that a defendant have certain minimum contacts with a state so that the maintenance of an action in the state does not offend traditional notions of fair play and substantial justice. *(McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23, 26; *Buckner v. Industrial Acci. Com.* (1964) 226 Cal.App.2d 619, 623).)

"[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." (*Bristol-Myers Squibb Co. v. Superior*

Court (2017) 582 U.S. 255, 262.) However, a "strict causal relationship between the defendant's in-state activity and the litigation" is not necessary. (*Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (2021) 592 U.S. 351, 362.) "As just noted, our most common formulation of the rule demands that the suit 'arise out of *or relate* to the defendant's contacts with the forum." (*Ibid.*; italics in the original.) "In other words, there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" (*Bristol-Myers, supra,* 582 U.S. at 262, citing *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919 [internal quotation marks and brackets omitted].)

Here, we are concerned that the WCJ did not clearly make a finding as to whether applicant was hired in California – or, perhaps more precisely, where applicant was located at the time the Bears reached out to him to offer him employment. As a result, further study of the record and the caselaw surrounding personal jurisdiction is necessary to determine whether the WCJ's decision can be effectively evaluated in the absence of such a finding, or whether we must return the matter to the WCJ for further proceedings to determine that factual question prior to rendering a judgement on whether there is personal jurisdiction over the Bears in California for purposes of this claim.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see

generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petitions for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

IV.

Accordingly, we will grant the Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact & Order issued on January 30, 2026 by the workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petitions and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 4, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

AVERELL SPICER
THE LAW OFFICE OF LYSETTE RIOS, APC
BOBER, PETERSON & KOBY

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I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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