

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

JAMES BAKER, *Applicant*

vs.

**ST. LOUIS CARDINALS (in part); MINNESOTA VIKINGS, TRAVELERS
INSURANCE; BALTIMORE RAVENS FKA CLEVELAND BROWNS, BERKLEY
SPECIALTY INSURANCE; ST. LOUIS CARDINALS, CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION for HOME INSURANCE, in liquidation; DETROIT
LIONS, CNA; FIREMAN'S FUND (ALLIANZ), *Defendants***

**Adjudication Numbers: ADJ8015380
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant sought reconsideration of the July 2, 2019 Findings & Order ("F&O"), wherein the workers' compensation administrative law judge ("WCJ") concluded that applicant could not recover for his cumulative injury because recovery against the terminal employer, the Cleveland Browns ("Browns"),¹ was barred by Labor Code section 3600.5, subdivision (b),² and because there was no basis under section 5500.5, subdivision (a) to roll back liability to the Minnesota Vikings ("Vikings"), applicant's prior employer. Applicant contended that the WCJ erred because either (1) section 3600.5, subdivision (b) does not apply to this claim based on applicant's hire in California, and/or (2) liability under section 5500.5, subdivision (a) should roll back if the terminal employer is exempt according to the former section.

¹ The Browns referred to in this decision are now known as the Baltimore Ravens and are legally a separate entity from the team that currently bears that name. This decision refers to the team as the Browns because that was their name at the time they employed applicant.

² Further references are to the Labor Code unless otherwise stated.

We received two Answers, one from the Browns, and another from the Vikings and the St. Louis/Arizona Cardinals (“Cardinals”). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (“Report”), recommending that the Petition be denied.

Subsequent to the grant of reconsideration, the Court of Appeal issued *Atlanta Falcons v. Workers’ Comp. Appeals Bd. (Gandy)* (2025) 114 Cal.App.5th 1268 [90 Cal.Comp.Cases 997] (“*Gandy*”), a decision interpreting section 3600.5, subdivisions (c) and (d), along with what constitutes “hire” in California for purposes of California workers’ compensation proceedings more generally. (See *id.* at p. 1280.) Although subdivisions (c) and (d) are not directly implicated in this case because it was filed prior to the effective date of those subdivisions, subdivision (c)’s text and structure largely mirrors the text and structure of subdivision (b), making the *Gandy* decision’s interpretation of that subdivision relevant to any interpretation of subdivision (b). We therefore allowed the parties to provide supplemental briefing, both on the impact of *Gandy* on the present matter and on any other caselaw issued subsequent to the grant of reconsideration in this matter which the parties wished to raise. (See Order Allowing Further Briefing, 3/30/26.)

We received supplemental briefing from applicant, from the Vikings and Cardinals as insured by Travelers (“Travelers”), from the Cardinals as insured by Fireman’s Fund Insurance Company (“Fireman’s Fund”), and from the Browns.

We have considered the Petition for Reconsideration, the Answers, the Report, and the supplemental pleadings, and we have reviewed the record in this matter. For the reasons discussed below, we will amend the F&O to defer the issue of application of the section 3600.5, subdivision (b) exemption, because we conclude that although the subdivision potentially applies to applicant’s claim, the allegations raised by applicant regarding the effective date of Ohio’s reciprocity statute require further consideration and proceedings at the trial level to establish whether the subdivision applies to the facts of this claim.

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, alleging a cumulative injury to multiple body parts sustained while employed by as a professional football player from June 15, 1978 to December 31, 1990. According to the stipulation of the parties at trial, applicant’s professional playing history is as follows:

Detroit Lions	June 15, 1978 to July 19, 1983
St. Louis Cardinals	July 19, 1983 to September 4, 1987
Cleveland Browns	September 4, 1987 to August 29, 1988
Minnesota Vikings	September 11, 1988 to February 2, 1988
Cleveland Browns	March 30, 1989 to December 31, 1990

(Minutes of Hearing / Summary of Evidence (“MOH/SOE”), 11/5/2018, at p. 2.)

The matter proceeded to trial over three trial dates, with the issues for trial listed as: (1) injury arising out of and in the course of employment (“AOE/COE”); (2) permanent and stationary date; (3) permanent disability; (4) apportionment; (5) need for further medical treatment; (6) attorney fees (deferred); and (7) other issues, broken down specifically as:

1. All defendants raise statute of limitations pursuant to Labor Code Section 5405.
2. All defendants raise Labor Code Section 5500.5(a) for date with last injurious exposure for the employer.
3. All defendants raise subject matter jurisdiction.
4. The Cleveland Browns raise out-of-state reciprocity with the state of Ohio under Labor Code Section 3600.5(b).
5. The Cardinals and Vikings raise choice of law provisions for the state of Michigan, Missouri, Minnesota, and/or Ohio.
6. The Cardinals and Vikings raise laches and prejudicial lack of notice.
7. CIGA raises Insurance Code Sections 1063.1 and 1063.2.

(MOH/SOE, 11/5/2018, at pp. 3–4.) Exhibits were introduced and admitted, with objections adjudicated. (*Id.* at pp. 4–9.)

Applicant was the only witness to testify. As relevant to the Petition, applicant testified that when he was drafted by the NFL in 1978, his agent was Harold Daniels, based in Los Angeles, California; Daniels’ assistant was Michael Merkow. (Transcript of Proceedings, 11/5/2018, at pp. 22–23.)³ Daniels and Merkow were given authority to accept a contract on applicant’s behalf, and all negotiations with the Detroit Lions (“Lions”) were undertaken by Daniels and Merkow. (*Id.* at pp. 23–24.) Applicant signed his first contract in Daniels’ office in Los Angeles. (*Id.* at p. 24.)

Applicant played for the Lions through 1982, signing a further contract in 1980, again in Los Angeles. (*Id.* at pp. 27–30.) In 1983, applicant was traded to the Cardinals, operating under the same contract as he had with the Lions. (*Id.* at pp. 32–33.)

³ The parties and the WCJ refer to this individual as Michael McGraw; we follow the transcript.

In 1987, he was traded to the Browns; he was unsure whether he was still under the previous contract or signed a new one. (*Id.* at p. 39.) In 1988, applicant signed a contract with the Vikings after being released by the Browns; he couldn't remember the name of his agent at the time. (*Id.* at p. 42.) In 1989, he returned to the Browns, signing a new contract negotiated by his then-agent Joel Sperling, who was located in Detroit, while applicant was based in Colorado. (*Id.* at p. 44.) Applicant ended his career with the Browns after the 1990 season. (*Id.* at p. 47.)

On cross-examination, applicant was presented with evidence that of the 244 games he played in his career, 15 of them were in California; applicant testified that he had no reason to disagree with that if that is what the game logs showed. (Transcript of Proceedings, 1/31/2019, at pp. 52–53.) He also confirmed that he signed two of his contracts in California, the first two contracts of his career, with the Lions. (*Id.* at p. 53.) Presented with evidence that the first contract was signed on June 15, 1978, and the suggestion that applicant would have been in camp in Detroit at that time, applicant reiterated that the contract was signed in Los Angeles. (*Id.* at pp. 53–54.) Applicant remembered signing the contract in Daniels' office, but not exactly when. (*Id.* at p. 55.) Applicant repeatedly denied that the contract was signed in Detroit, even when presented with equivocal testimony from a prior deposition where he suggested it might have been. (*Id.* at pp. 55–58.)

Applicant was presented with newspaper articles from around the time he signed his second contract, in September 1980. (*Id.* at p. 61.) Applicant reiterated that this contract was signed in California as well. (*Id.* at p. 62.) Applicant explained that the meeting in Detroit that the article mentioned would be happening on September 2, 1980 did not occur. (*Id.* at pp. 64–65.) Applicant didn't remember an agent named Fitzgerald referenced in another article, noting that it was 40 years ago. (*Id.* at p. 67.)

Applicant testified further that he had signed the 1980 contract on the Saturday before a Sunday game in Los Angeles; he didn't know the precise date. (Transcript of Proceedings, 3/27/19, at p.12.) Presented with D. Ex. O, applicant's September 1980 contract showing a typed date of September 11, 1980, a Thursday, applicant did not remember whether that date was filled in at the time he signed the contract. (*Id.* at pp. 13–14.) Further newspaper articles were referenced with the inference that they showed that applicant was present in Detroit on September 11, 1980, without applicant changing his testimony that the contract was signed in Los Angeles. (*Id.* at pp. 14–22.)

Returning to the 1978 contract, applicant confirmed that he was initially drafted in May, 1978. (*Id.* at p. 21.) There was a two to three day “minicamp” in Detroit, after which there was a further rookie camp in the middle of July for about four weeks. (*Id.* at pp. 22–23.) Applicant denied that the rookie camp was in May or June, explaining that it would have been “sometime right after the 4th of July.” (*Id.* at p. 23.) During the month of June, applicant was working to stay in shape, but it wasn’t an organized camp. (*Id.* at p. 24.) Applicant would not have been in Detroit in June because off-season was not as organized back then as it is now. (*Id.* at p. 24–25.) Applicant didn’t recall any camps in June of 1978. (*Id.* at pp. 25–28.) Applicant reiterated that the 1978 contract was signed in Los Angeles, not Detroit. (*Id.* at pp. 34–35.) Applicant had a specific recollection of signing the 1978 contract in Los Angeles, despite the passage of time. (*Id.* at p. 36.)

Applicant had no recollection of the 1987 contract he signed with the Cardinals. (*Id.* at pp. 44–46.) He did remember that it was the contract he was traded to the Browns under. (*Id.* at p. 46.) Applicant didn’t remember whether he had an agent for that contract. (*Ibid.*) He only used Daniels’ agency for his first contract. (*Ibid.*) Joel Sperling, based in Detroit, was applicant’s agent for his second contract with the Browns, signed in 1989. (*Id.* at pp. 47–49.) That contract would not have been signed in California. (*Id.* at p. 49.)

Applicant remembered the circumstances surrounding his 1978 contract clearly because his agent, Daniels, made clear to him at the time what a life-changing experience signing that contract was going to be. (*Id.* at p. 59.) It allowed him to put a down payment on a house for his mother, the first she ever owned, moving her from the tough inner-city neighborhood where applicant grew up to a suburb. (*Ibid.*) He specifically remembered signing the contract because there was a big party afterward. (*Ibid.*)

Applicant remembered the 1980 contract because of the circumstances surrounding it. (*Id.* at p. 60.) He had walked out of his prior contract; it wasn’t in his nature to be a rebellious person, and he and several other teammates walked out, causing acrimony with the owner. (*Ibid.*) Applicant was adamant he had not signed the 1980 contract in Detroit; he would not have got on a jet and gone to Detroit without a contract signed given the circumstances. (*Ibid.*)

Fitzgerald, the individual referenced in the newspaper articles as applicant’s agent, represented a kicker on the team. (*Id.* at p. 61.) To subsidize their income in the off-season and stay in shape, the players had a basketball team, which Fitzgerald represented and handled the scheduling for. (*Id.* at pp. 61–62.) That relationship is the only reason applicant could think of that

Fitzgerald would have claimed to have been his agent. (*Id.* at p. 62.) He was never his NFL agent. (*Ibid.*)

Applicant didn't remember who Fitzgerald was at the prior hearing date; he made some calls between the two hearing dates to other players and remembered. (*Id.* at p. 67.) The players called him Fritz, so it took a while for applicant to make the connection. (*Ibid.*)

The WCJ issued the F&O on July 19, 2019, finding as relevant here: (1) defendants failed to prove the statute of limitations defense; (2) defendants did not establish the laches defense; (3) there was subject-matter jurisdiction over applicant's claim; (4) there was personal jurisdiction over the Lions, Cardinals, Browns and Vikings; (5) no choice of law clauses applied to the claim; (6) applicant sustained injury AOE/COE; (6) the Browns were exempted under section 3600.5, subdivision (b); and (7) there was no valid "rollback" of liability to a prior employer under section 5500.5, subdivision (a). (F&O, at pp. 2–3.) The appended Opinion on Decision makes clear that the WCJ's findings were predicated upon a factual finding that applicant was hired by the Lions in California in 1978. (Opinion on Decision, at p. 10.)

This Petition for Reconsideration followed.

DISCUSSION

I.

Initially, we address the concern "raise[d], but not concede[d]" by Travelers in its supplemental briefing that the Appeals Board may have lost jurisdiction over the instant Petition for Reconsideration based upon a possible defect in the original grant for reconsideration in this matter. (Cardinals and Vikings' Supplemental Briefing, at p. 3.) Travelers points to the decisions of *Earley v. Workers' Comp. Appeals Bd.* (2023) 94 Cal.App.5th 1 and *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (2026) (*Chan*) 118 Cal.App.5th 510) as the basis for this concern.

Although it is not entirely clear what Travelers means by its statement that it is raising but not conceding the issue, we will take at face value and in good faith the request "that the WCAB address whether its jurisdiction to issue a substantive decision after reconsideration remains intact." (Cardinals and Vikings' Supplemental Briefing, at p. 4.)

Former section 5909 deems a petition for reconsideration denied by operation of law only when the Appeals Board fails to act within 60 days of filing. The Appeals Board acts within the meaning of section 5909 when it issues an order granting reconsideration within that statutory

period, even when it grants reconsideration to permit further study of the record. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754–755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075-1076 [65 Cal.Comp.Cases 508].) Once we grant reconsideration, the 60-day limitation is satisfied, and the matter remains within the jurisdiction of the Appeals Board for issuance of a final decision on the merits. (*Evans, supra*, 68 Cal.2d at pp. 754–755; §§ 5901, 5906.)

Earley, by contrast, considered section 5908.5's requirement that decisions of the Appeals Board "shall state the evidence relied upon and specify in detail the reasons for the decision." (*Earley, supra*, 94 Cal.App.5th at pp. 10–11; § 5908.5.) *Earley* concluded that the Appeals Board's prior practice of granting petitions for reconsideration for study without specifying its reasons violated this statutory provision, and therefore ordered the Board to "end its practice of granting petitions for reconsideration solely for purposes of further study, and to comply with section 5908.5 when granting petitions for reconsideration, including the requirement that the Board 'state the evidence relied upon and specify in detail the reasons for its decision.'" (*Earley, supra*, 94 Cal.App.5th at p. 18.) Since *Earley's* issuance, the Appeals Board has complied with its interpretation of section 5908.5 in all new grants of reconsideration.

Notably, *Earley* declined to invalidate grant-for-study orders issued prior to its opinion, and specifically found the issue of compliance with section 5908.5 moot as to the petitioners in that case because by the time of the *Earley* decision, the Appeals Board had issued final orders after reconsideration in each case. (*Id.* at p. 10.) Moreover, *Earley* considered and specifically rejected the contention that the Appeals Board must issue final decisions after reconsideration within the 60-day period provided for in section 5909. As stated therein:

Contrary to the Petitioners' further argument, the Board is not required to issue a final ruling on the merits within 60 days.

The Petitioners maintain that reading sections 5909 and 5315 together means the Board must finally resolve a petition for reconsideration within 60 days. Statutory text invalidates this proposed interpretation.

...

Section 5909 simply requires that the Board "act[] upon" a petition for

reconsideration within 60 days by granting or denying the petition, not by finally deciding the merits.

(*Earley, supra*, 94 Cal.App.5th at pp. 12, 16.) *Earley* went on to comprehensively reject the contention that there is any deadline for the issuance of a final decision after reconsideration, assuming that reconsideration was granted within the 60-day window provided for in section 5909:

Our Supreme Court has also explained that “[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 limitation none will be implied.” (*Gonzales v. Industrial Acc. Com.* (1958) 50 Cal.2d 360, 364 [325 P.2d 993].) Petitioners argue that this statement in *Gonzales* is dicta; we disagree and read the statement as necessary to the ruling but would count it as compellingly persuasive authority even were it a dictum. CA(23)(23) (*Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1169 [78 Cal. Rptr. 2d 819] [intermediate appellate court justices should follow Supreme Court dicta].)

(*Earley, supra*, 94 Cal.App.5th at p. 15.)

Chan, by contrast, dealt with the question of what happens when the Appeals Board *fails to act* upon a petition for reconsideration within the 60 days required by section 5909. (*Chan, supra*, 118 Cal.App.5th 510.) Here, the Appeals Board timely acted upon applicant’s Petition for Reconsideration within the 60 days required by section 5909, which Travelers does not appear to contest. Because we acted timely within the 60-day window, *Chan* is entirely inapposite and irrelevant to this matter, and we do not consider it further.

With regard to *Earley*, Travelers appears to conflate failure to comply with section 5908.5 in the initial grant in this matter – issued before *Earley*– with failure to act within the 60 days required by section 5909. This is precisely the issue *Earley* itself clearly addressed, reaffirming the Appeals Board’s right to grant reconsideration first within the 60-day window, and then issue a final decision at a later date. (See *Earley, supra*, 94 Cal.App.5th at pp. 12, 16.)

To the extent that Travelers is contesting whether the initial grant of reconsideration in this matter complies with section 5908.5, that is a separate question from compliance with section 5909, with a separate judicial remedy. Binding Supreme Court precedent has established for more than half a century that a failure to comply with section 5908.5 in the initial grant of reconsideration does not deprive the Appeals Board of continuing jurisdiction over the case: “The board retains

jurisdiction, having granted reconsideration within the 30-day period set forth in section 5909 of the Labor Code.” (*Evans, supra*, 68 Cal.2d at p. 755.)⁴

Accordingly, even if the grant of reconsideration in this matter does not comply with section 5908.5, that defect does not deprive the Appeals Board of its jurisdiction over the petition and case. Instead, non-compliance with section 5908.5 in the initial grant of reconsideration will, at most, result in remanding the matter to the Appeals Board to issue a new order compliant with that section if raised via writ of review after issuance of a final decision after reconsideration. (See, e.g., *Zozaya v. Workmen's Compensation Appeals Bd.* (1972) 27 Cal.App.3d 464, 472 [“The matter is remanded to the Board with directions to reconsider the “Petition for Reconsideration” filed by the employer on May 18, 1971, and to base a new order thereon in compliance with section 5908.5.”].) Moreover, where the failure to comply with section 5908.5 in the initial grant of reconsideration did not impede the parties from addressing the relevant legal issues, at least one Court of Appeal has declined to order even that remedy:

While the order did not meet the test so prescribed, it did, in the light of the petition for reconsideration, point up the issue to be resolved--namely the conflict in the earlier medical evidence and the extreme weakness of that evidence. Substantial proceedings followed, with no suggestion, either at the board level or here, that the employer and its carriers were in any doubt as to the issue to be litigated or that they were under any handicap in presenting and arguing their side of that issue. For us, on the record before us, to send the case back to the board would result in nothing but a wasteful spinning of the wheels. Alerted by the petition before us, the board easily can draw and promulgate in elaborate detail a new order granting reconsideration and then, on the record it now has, refile its present order and decision granting the identical award. To impose that useless procedure on a busy administrative agency serves no public purpose.

(*Albert Van Luit Wallpaper Co. v. Workmen's Comp. Appeals Bd.* (1973) 36 Cal.App.3d 88, 91-92.)⁵

In conclusion, therefore, nothing in either *Earley* or *Chan* suggests that any alleged non-compliance with section 5908.5 in the initial grant of reconsideration in this matter deprives us of jurisdiction to issue this decision after reconsideration. That said, we are cognizant of the

⁴ At the time, section 5909 required action within 30 days, rather than 60.

⁵ Here, no party has requested that we reissue the initial grant of reconsideration in this matter to be compliant with *Earley*. At this point, the best interests of all the parties seem aligned in seeking a speedy resolution to the case, and further delaying proceedings for the sake of correcting the initial grant of reconsideration on our own motion would not appear to serve any useful public purpose.

substantial period of time which has elapsed between our initial grant of reconsideration and this decision after reconsideration. The Appeals Board is acutely aware that delayed decisions can have significant impacts upon litigants, and is committed to avoiding lengthy gaps between initial and final decisions after reconsideration in the future to the utmost degree possible while still guaranteeing the due process rights of the parties to a well-reasoned decision on the merits of every timely and properly filed petition for reconsideration. It is our fervent hope that this opinion will provide the framework for a speedy resolution of the case in light of *Gandy* and the clarifications and refinements of the parties' arguments provided in the supplemental briefing.

II.

Under California's workers' compensation law, benefits are to be provided for industrial injuries when the statutory conditions of compensation are met. (Cal. Const., art. XIV, § 4; §§ 3600 et seq., 5300 and 5301.) The statutes establishing the scope of the WCAB's jurisdiction reflect a legislative determination regarding California's legitimate interest in protecting industrially-injured employees. (*King v. Pan American World Airways* (1959) 270 F.2d 355, 360 ["The [California Workmen's Compensation] Act applies to all injuries whether occurring within the State of California, or occurring outside the territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California."].)

In general, the Workers' Compensation Appeals Board ("WCAB") may assert its subject matter jurisdiction in a given workers' compensation injury claim when the evidence establishes that an employment related injury, which is the subject matter, has a significant connection or nexus to the state of California. (See §§ 5300, 5301; *King, supra*, 270 F.2d at 360; *Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson)* (2013) 221 Cal.App.4th 1116, 1128.) Whether there is a significant connection or nexus to the State of California is best described as an issue of due process, though it has also been referred to as a question of subject matter jurisdiction. (*New York Knickerbockers v. Workers' Comp. Appeals Bd. (Macklin)* (2015) 240 Cal.App.4th 1229, 1238; *Johnson, supra*, 221 Cal.App.4th at 1128.)

The WCAB is solely a creation of the Legislature, and thus its fundamental subject matter jurisdiction is limited by statute. Article XVI, section 4, of the California Constitution provides that the Legislature "is ... expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate

legislation.” (Cal. Const., art. XIV, § 4.) Thus, in the absence of a statute affirmatively conferring subject matter jurisdiction over a claim to the WCAB, we cannot exercise jurisdiction over the claim. (*Tripplett v. Workers’ Comp. Appeals Bd.* (2018) 25 Cal.App.5th 556, 562.) The requirement to demonstrate statutory subject matter jurisdiction is in addition to the significant connection or nexus to the state required by due process to support the exercise of jurisdiction under the *Johnson* line of cases referenced above. (See *Johnson, supra*, 221 Cal.App.4th at 1128.)

Section 5300 provides a general grant of jurisdiction over claims for compensation for work-related injuries occurring in the state of California. In addition, the WCAB can also assert subject matter jurisdiction over injuries occurring outside this state in certain circumstances. Section 3600.5, subdivision (a) states: “If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.” (§ 3600.5(a).) Similarly, section 5305 states: “The Division of Workers’ Compensation, including the administrative director, and the appeals board have jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state.” (§ 5305.)⁶

For nearly a century, it has been established law that a hiring in California within the meaning of Labor Code sections 3600.5(a) and 5305 provides this state with sufficient connection to the employment to support adjudication of a claim of industrial injury before the WCAB. (*Alaska Packers Assn. v. Industrial Acc. Com. (Palma)* (1934) 1 Cal.2d 250, *affd.* (1935) 294 U.S. 532; *Bowen v. Workers’ Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] [“an employee who is a professional athlete residing in California, such as Bowen, who signs a player’s contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract”]; *Johnson, supra*, 221 Cal.App.4th at p. 1126.)

However, additional subdivisions of section 3600.5 limit this general principle in specific circumstances. Because applicant’s claim was filed prior to September 15, 2013, the relevant subdivision here is former section 3600.5(b), which stated:

⁶ The residency requirement of section 5305 has long been recognized as unconstitutional. (See *Bowen v. Workers’ Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 20, fn. 6 [64 Cal.Comp.Cases 745].)

(b) Any employee who has been hired outside of this state and his employer shall be exempted from the provisions of this division while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation insurance or similar laws of a state other than California, so as to cover such employee's employment while in this state; provided, the extraterritorial provisions of this division are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation insurance or similar laws of such other state. The benefits under the Workmen's Compensation Insurance Act or similar laws of such other state, or other remedies under such act or such laws, shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

A certificate from the duly authorized officer of the appeals board or similar department of another state certifying that the employer of such other state is insured therein and has provided extraterritorial coverage insuring his employees while working within this state shall be prima facie evidence that such employer carries such workmen's compensation insurance.

(Former § 3600.5(b).)⁷

For cases filed after September 15, 2013, under certain circumstances additional requirements apply specifically to professional athletes filing workers' compensation claims involving occupational disease or cumulative injuries. Section 3600.5(c), for example, provides as follows:

(1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:

(A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.

⁷ The amendments to section 3600.5 in 2013 made organizational, non-substantive changes to subdivision (b). We cite to the former subdivision as that is the one which technically applies to this claim, but because the changes made to the subdivision are non-substantive, analysis pertaining to either version of the statute will naturally apply to the other version as well.

(B) The employer’s workers’ compensation insurance or its equivalent covers the professional athlete’s work while in this state.

(2) In any case in which paragraph (1) is satisfied, the benefits under the workers’ compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any occupational disease or cumulative injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete’s last day of work for the employer within the state, the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(§ 3600.5(c).)

The Legislature also included a note of intent, stating that the 2013 amendments to section 3600.5 should “have no impact or alter in any way the decision of the court in [*Bowen*].” (Stats. 2013 ch. 653 (AB 1309) § 3.). Because *Bowen* affirmed the exercise of jurisdiction based upon a hire in California, we previously held that subdivisions (c) and (d) of section 3600.5 did not apply to claims filed by professional athletes who could establish hire in California by at least one of their employers during the cumulative injury period. (See, e.g., *Hansell v. Arizona Diamondbacks* (2022) 87 Cal. Comp. Cases 602, 611–618; *Kouzmanoff v. Texas Rangers* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 189.)

However, in *Gandy* the Court of Appeal disagreed with our interpretation of section 3600.5, subdivisions (c) and (d), instead holding that both subdivisions apply to all claims filed by professional athletes after the effective date, even those where the professional athlete was hired in California during the cumulative injury period by a prior employer. (*Gandy, supra*, 114 Cal.App.5th at p. 1278.)

Here, the basic dispute between the parties as articulated in the Petition for Reconsideration and Answers is whether subdivision (b) applies to a case like this one, where applicant was hired in California during the cumulative injury period, but not by the employer who seeks to benefit from the exemption provided by the subdivision. In other words, the dispute centers on whether the phrase “[a]ny employee who has been hired outside of this state and his employer” should be interpreted as referring to the entirety of cumulative injury claim, or as only referring to the specific employer who seeks to benefit from the exemption.

The fundamental purpose of statutory interpretation is to ascertain the Legislature’s intent in order to effectuate the law’s purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins “with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature’s enactment generally is the most reliable indicator of legislative intent.” (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however, the language is susceptible to more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

We are directed to interpret statutory language “consistently with its intended purpose, and harmonized within the statutory framework as a whole.” (*Alvarez v. Workers’ Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [75 Cal.Comp.Cases 817].) “Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts.” (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.)

We requested further briefing on the impact of *Gandy* because the language of subdivision (c), although not directly applicable to this claim because it was filed prior to the 2013 effective date, bears striking similarity to the language of former subdivision (b). Specifically, both subdivisions begin with same language that an applicant “who has been hired outside of this state and [their] employer shall be exempted from the provisions of this division” while working temporarily within this state, subject to certain other conditions. As such, *Gandy*’s interpretation of that phrase in subdivision (c) appears highly relevant to how we should interpret the essentially identical language found in former subdivision (b).

On that point, *Gandy* is quite clear: in the *Gandy* court’s view, subdivision (c)’s reference to hire outside California applies only with regard to the specific employer seeking to benefit from the exemption. (*Gandy, supra*, 114 Cal.App.5th at p. 1277.) Although *Gandy*’s conclusion is not the conclusion we would have reached ourselves, it is binding appellate precedent which we are bound to follow. Because the phrasing of subdivisions (b) and (c) are essentially identical, we see no basis for a contrary holding with regard to the application of subdivision (b). If subdivision (c)

is applicable even when the athlete was hired in California by a prior employer during the cumulative injury period, subdivision (b) is most reasonably interpreted in the same manner.

At trial, the parties vigorously disputed whether applicant was hired in California by the Lions. The WCJ's Opinion on Decision makes clear that the WCJ found applicant was hired in California by the Lions, and no defendant filed a petition for reconsideration challenging that finding. However, because it is the Browns who are alleged to be exempt according to subdivision (b), whether applicant was hired in California by the Lions loses its relevance when applying *Gandy's* interpretation of the language in question. Instead, the only question is whether applicant was hired by the *Browns* in California; because it is uncontested that he was not, subdivision (b) potentially applies to the claim.

Of course, in order to benefit from the exemption provided by subdivision (b), the Browns must still actually show that they meet the other eligibility requirements of that subdivision. Specifically, the Browns must demonstrate that “while such employee is temporarily within this state doing work for his employer . . . the extraterritorial provisions of this division are recognized in such other state” and “employers and employees who are covered in this state are likewise exempted from the application of the workmen’s compensation insurance or similar laws of such other state.” (Former § 3600.5(b).) In this case, the relevant other state is Ohio, where the Browns were based at the time of applicant’s employment.

On this question, applicant’s supplemental briefing raises an intriguing and potentially decisive claim: that although Ohio law *currently* provides for reciprocity under circumstances such as these, the provision cited by the WCJ in the Opinion on Decision did not exist *at the time applicant was employed by the Browns*. Instead, according to applicant’s supplemental briefing, that provision was only enacted in 1993, several years after applicant ended his employment with the Browns – and his professional career – in 1990. (See Applicant’s Supplemental Briefing, at p. 6.)

We have confronted this issue in the past with regard to the reciprocity statutes of other states. For example, in *Levrault v. Milwaukee Brewers* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 116, we stated:

Here, the plain language of former section 3600.5(b) requires that the conditions for application of the exemption including the reciprocity provisions of subdivision (b)(1)(A) & (B)—apply “*while such employee is temporarily within this state doing work for his or her employer[.]*” (former § 3600.5(b)(1),

emphasis added.) It is undisputed that Florida's reciprocity statute did not exist at the time applicant was temporarily within this state while working for a Florida employer. Accordingly, the exemption is not applicable to applicant's claim.

(*Levrault, supra*, 2022 Cal. Wrk. Comp. P.D. Lexis 116 at pp. *17–18.) We went on to observe that this holding was in accord with a number of other panel decisions, including *Roberts v. Tampa Bay Lightning* (2016) 2016 Cal. Wrk. Comp. P.D. LEXIS 404, *Love v. Tampa Bay Buccaneers* (2015) 2015 Cal. Wrk. Comp. P.D. Lexis 668, and *Favell v. Colorado Rockies* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 352.

We recognize that this particular contention appears to have been articulated for the first time in applicant's supplemental pleading.⁸ However, 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.) 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 initial filings of the parties. Moreover, we specifically requested further briefing from the parties not only on the impact of *Gandy* but also on any other caselaw issued since the grant of reconsideration they believed relevant in order to ensure that the due process rights of the parties were respected. Because *Levrault* was issued after the grant of reconsideration, we cannot fault applicant for raising it in response to this invitation, just as some of the defendants in this case have themselves made novel contentions in their supplemental briefing.

Here, we are not certain that applicant's assertion is actually correct – even if the specific subdivision referenced by the WCJ in the Opinion on Decision and by the Browns in their supplemental pleading did not exist in 1990, some other form of reciprocity statute may have existed at the time that would meet the requirements of the subdivision.⁹ However, if it is true that

⁸ Applicant changed his representation after our grant of reconsideration and prior to our request for supplemental briefing. (See Substitution of Attorney, June 2, 2024.)

⁹ For example, we note that Ex. D purports to be a 1991 copy of the Ohio Revised Code as it existed in December 1990, and seems to contain roughly analogous language to the provision considered by the WCJ, with what appears to be an effective date of November 3, 1989. Assuming the exhibit is accurate, this might demonstrate reciprocity was in effect as of that date, although it would not, without evidence of what the prior version of the statute was, demonstrate reciprocity for the entirety of applicant's employment.

Ohio had no reciprocity statute in effect at the time of applicant's employment with the Browns, we see no basis for departure from our prior holdings that reciprocity must have been in effect at the time of the employment in order for subdivision (b) to exempt a portion of a claim.

We are mindful, however, that defendants have not had the opportunity to respond to this assertion. As such, it is only fair that they be provided the opportunity to be heard, including any development of the record necessary to show, for example, that either (1) applicant's claim regarding the effective date of the subdivision in question is incorrect, or (2) that some other reciprocity statute existed at the time of applicant's employment that would also meet the requirements of former subdivision (b).¹⁰

Accordingly, we believe the best course of action at this time is to amend the F&O to defer application of subdivision (b), in order to allow the parties the opportunity to confer among themselves as to whether further development of the record is necessary on this point, and then to return to the trial WCJ when they are ready for a finding on both the question of reciprocity and on the application of subdivision (b) more broadly. This approach preserves the due process rights of all the parties to be heard on both the factual and legal aspects of this critical question, and should not substantially delay resolution of the case, because the question of what law existed in Ohio during applicant's employment should be readily ascertainable with the application of due diligence.

Because we have concluded that the matter must be returned to the trial level for further proceedings in order to determine whether there was a valid reciprocity statute in effect at the time applicant was employed by the Browns, it would be premature to conclusively resolve the other issues raised by the parties, namely whether there would be rollback to a prior employer under section 5500.5 in the event that subdivision (b) does exempt the Browns, as well as the issues related to the medical evidence raised in Travelers' supplemental briefing. If the WCJ determines that subdivision (b) does apply to the claim, the issue of rollback under section 5500.5 should then be considered by the WCJ. The contentions related to the medical evidence, by contrast, become

¹⁰ The Browns' supplemental briefing provides extensive citation to other panel decisions finding that the Ohio statute in question meets the reciprocity requirements of section 3600.5, subdivision (b). (See Browns' Supplemental Briefing, at pp. 5–6.) However, the specific question here is not whether *some* version of the statute meets the requirements in the abstract, but whether *a* statute meeting the reciprocity requirements was in effect *at the time applicant played for the Browns from 1987 to 1990*. These citations do not speak to that question because they deal with cases brought by other applicants with different periods of employment in Ohio and/or because they did not specifically consider that question.

relevant only if the WCJ determines that recovery against at least one defendant is proper, and should properly be considered at that time. After the WCJ issues a final order, any aggrieved party may then timely seek reconsideration. If such a petition is filed, we will endeavor to issue our decision after reconsideration on that petition on as expedited a schedule as is practicable.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 2, 2019 Findings and Order is **AMENDED** as follows:

FINDINGS OF FACT

- 10. The issue of the application of Section 3600.5, subdivision (b) is deferred pending resolution of the question of whether a valid reciprocity statute existed at the time of applicant's employment with the Cleveland Browns, as well as any other requirements of that subdivision. To the extent necessary to determine the issue, further development of the record is appropriate.**
- 11. The issue of rollback under Section 5500.5 is deferred.**
- 12. All other issues are deferred.**

ORDER

All other issues are deferred. The parties are ordered to confer among themselves and return to the WCJ when ready to proceed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER



I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 17, 2026

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

**JAMES BAKER
PRO ATHLETE LAW GROUP, P.C.
LEVITON, DIAZ & GINOCCHIO
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LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
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DIMACULANGAN & ASSOCIATES
FLOYD, SKEREN, MANUKIAN, LANGEVIN
BOBER, PETERSON & KOBY**

AW/kl

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