

Buffalo Bills; Travelers Insurance Company Reginald Germany WORKERS COMPENSATION APPEALS BOARDSTATE OF CALIFORNIA REGINALD GERMANY, Applicant, vs. BUFFALO BILLS; TRAVELERS INSURANCE COMPANY, Defendants. Case No. ADJ7828286 (Van Nuys District Office) OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION Applicant seeks reconsideration of the July 26, 2013 Findings Of Fact of the workers compensation administrative law judge (WCJ) who found that California does not have jurisdiction over the applicants cumulative trauma injury during the period June 9, 2001 through November 20, 2002. 1 Applicant claims he incurred cumulative industrial injury to numerous body parts while employed as a professional football player by defendant Buffalo Bills (Bills) during the period from January 1, 2001 to December 31, 2005. Applicant contends that the WCJ improperly relied upon the holding of the Appeals Board in the en banc decision of McKinley v. Arizona Cardinals (2013) 78 Cal. Comp. Cases 23, 29 (Appeals Board en banc) (McKinley) to find that California does not have jurisdiction over his claim. An answer was received from defendant, and the WCJ provided a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied. Applicant also presented a supplemental petition for reconsideration, to which defendant filed an objection. Leave to file a supplemental petition was neither requested by applicant nor approved by the Appeals Board as required by the Appeals Board Rules of Practice and Procedure, Rule 10848, and 1 Attached to applicants petition are copies of documents that have already been received into evidence, or that have already been made part of the legal file. Such documents are not to be attached as exhibits to answers to petitions for reconsideration, and any such violation in the future may lead to the imposition of sanctions. (Cal. Code Regs., tit. 8, § 10842.) , applicants supplemental petition has not been considered. (Cal. Code Regs., tit. 8, § 10848.) 2 Reconsideration is granted, and the WCJs July 26, 2013 Findings Of Fact is rescinded as our Decision After Reconsideration. The case is returned to the trial level for development of the record, further proceedings on the issue of jurisdiction, and for a new decision by the WCJ. BACKGROUND It is admitted that applicant incurred cumulative injury to multiple body parts while employed by the Bills as a professional football player during the period June 9, 2001 through November 20, 2002, and it is admitted that he played in two games in California during that time. However, defendant disputes WCAB jurisdiction over applicants workers compensation claim. According to the May 30, 2013 Minutes of Hearing, the issues of the statute of limitations, whether or not the applicant had sufficient contacts with the State of California to confer jurisdiction, and whether New York is the more appropriate venue for the claim were tried by the WCJ

on that date. Applicants employment contract and various medical reports and other documents concerning dates that the Bills played games in California were received into evidence. Applicant also testified that he was in California for four days to play in two games while employed by the Bills from June 9, 2001 to November 20, 2002.³In her Report, the WCJ first notes a concern about the verification of applicants petition,⁴ and then explains the reasons she found that California does not have jurisdiction over applicants claim, as follows: 2 Appeals Board Rules of Practice and Procedure, Rule 10848 provides as follows: When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party. (Cal. Code Regs., tit. 8, § 10848.)³ Applicant also acknowledged in his testimony that he filed a workers compensation claim in New York for a May 16, 2002 injury to the left knee that he incurred while employed by the Bills and that he received a \$28,800 award in New York for that injury claim.⁴ The verified declaration of applicants attorney Christopher Perry that is attached to applicants petition appears to substantially comply with the verification requirement. (Lab. Code, § 5902.) Regardless, lack of verification is not a jurisdictional requirement that mandates dismissal. (Wings West Airlines v. Workers Comp. Appeals Bd. (Nebelon) (1986) 187 Cal.App.3d 1047 [51 Cal.Comp.Cases 609].) , [justify]As to the argument that my decision was based on application of [justify][justify][McKinley], the employment contract while offered into evidence was not [justify][justify]the basis for the decision. The opinion does not refer to any discussion of a [justify][justify]choice of forum clause within that contract although the contract does [justify][justify]contain one - New York. As indicated within the opinion the contacts with [justify][justify]the State of California were found to be insufficient to confer jurisdiction. [justify][justify]Here Applicant did not enter into his employment contract in California [justify][justify]and other than the four (4) days in California noted above and the fact that [justify][justify]California taxes were taken out of his paychecks, Applicant had no other [justify][justify]contacts with the state. The decision was based on the fact that Applicants [justify][justify]contacts with the state were minimal and therefore California jurisdiction [justify][justify]should not extend to this injury. (Bracketed material added or substituted, [justify][justify]emphasis added.) [justify]DISCUSSIONWe rescind the WCJs decision because it appears she

applied a personal jurisdiction analysis to conclude that the WCAB has no jurisdiction over applicants claim. However, there is no question that the WCAB has personal jurisdiction over applicant and defendants with regard to the claim of industrial injury. The WCAB has personal jurisdiction over applicant because he acceded to WCAB jurisdiction over his person when he filed his claim with the WCAB. The WCAB also has personal jurisdiction over the defendants because the Bills generally appeared to contest applicants claim. The Bills have sufficient contact with California to be subject to WCAB personal jurisdiction because the team purposefully availed itself of the privilege of conducting business in California by taking deliberate action to play games in the state and by creating a continuing obligation to the residents of the state by scheduling future games in California. Finding personal jurisdiction over the parties in this case is supported by the decision of the Appeals Board in McKinley, where the issue of personal jurisdiction in that case was addressed as follows: [justify] Due process requires that a defendant have certain minimum contacts with [justify] a state so that the maintenance of an action in the state does not offend [justify] traditional notions of fair play and substantial justice. (International Shoe [justify] Co. v. Washington (1945) 326 U.S. 310 [66 S. Ct. 154, 90 L. Ed. 95].) In [justify] this case, defendant purposefully availed itself of the privilege of [justify] conducting business in California by taking deliberate action to play games [justify] in California and has created continuing obligations to residents of the state [justify], [justify] by scheduling future games in the state. California has personal [justify] jurisdiction over the Cardinals. (Martin v. Detroit Lions, Inc. (1973) 32 [justify] Cal.App.3d 472 [Michigan professional football team conducted sufficient [justify] economic activity within California for the trial court to have personal [justify] jurisdiction over it in football players suit for contractual salary]; Ballard [justify] v. Savage, 65 F.3d 1495 (9th Cir. 1995).) [justify] The jurisdictional issue in this case is not whether the WCAB has personal jurisdiction over the parties because it does. Moreover, applicant has a cognizable claim that is subject to WCAB jurisdiction under the current statutes and law. The WCAB has repeatedly exercised subject matter jurisdiction over claims of cumulative industrial injury when a portion of the injurious exposure causing the injury occurs within this state, as applicant alleges in this case. (Injured Workers Ins. Fund of Maryland v. Workers Comp. Appeals Bd. (Crosby) (2001) 66 Cal.Comp.Cases 923 (writ den.); Rocor Transportation v. Workers Comp. Appeals Bd. (Ransom) (2001) 66 Cal.Comp.Cases 1136 (writ den.); John Christner Trucking v. Workers Comp. Appeals Bd. (Car

penter) (1997) 62 Cal.Comp.Cases 979 (writ den.); Portland Trailblazers v. Workers Comp. Appeals Bd (Whatley) (2007) 72 Cal.Comp.Cases 154 (writ den.); Washington Wizards v. Workers Comp. Appeals Bd (Roundfield) (2006) 71 Cal.Comp.Cases 897 (writ den.); San Francisco 49ers v. Workers Comp. Appeals Bd. (Green) (1996) 61 Cal.Comp.Cases 301 (writ den.); but see Booker v. Cincinnati Bengals (WCAB Case No. ADJ4661829, May 1, 2012, Opinion and Order Denying Petition for Reconsideration).)The jurisdictional issues in this case are whether defendants are exempt from WCAB jurisdiction pursuant to Labor Code section 3600.5(b) and/or whether the WCAB should decline to exercise jurisdiction over applicants claim because the parties reasonably selected another forum to hear workers compensation claims. The Appeals Board may find that a defendant is exempt from jurisdiction and/or may decline to exercise jurisdiction under the circumstances described in either of two en banc cases; Carroll v. Cincinnati Browns (2013) 78 Cal.Comp.Cases 655 (Appeals Board en banc) (Carroll) or McKinley. 5 5 En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10341; City of Long Beach v. Workers Comp. Appeals Bd (Garcia) (2005) 126 Cal.App.4th 298, 313, fn. 5 (70 27 Cal.Comp.Cases 109); Gee v. Workers Comp. Appeals Bd (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236].) , In Carroll, the Appeals Board held as follows:[justify][A]n employee and his or her employer are exempted by Labor Code[/justify][justify]section 3600.5(b) from the provisions of the California workers[/justify][justify]compensation law when the employee was hired outside of California and[/justify][justify]all of the following apply:[/justify][justify](1) The employee is temporarily within California doing work for the[/justify][justify]employer,[/justify][justify](2) The employer furnished coverage under the workers compensation or[/justify][justify]similar laws of another state that covers the employees employment while[/justify][justify]in California,[/justify][justify](3) The other state recognizes Californias extraterritorial provisions, and[/justify][justify](4) The other state likewise exempts California employers and employees[/justify][justify]covered by Californias workers compensation laws from the application[/justify][justify]of its workers compensation or similar laws. (Footnote omitted.)[/justify]In McKinley, the Appeals Board held as follows:[justify][T]he Appeals Board will decline to exercise jurisdiction over a claim of[/justify][justify]cumulative industrial injury when there is a reasonable mandatory forum[/justify][justify]selection clause in the employment contract specifying that claims for[/justify][justify]workers compensation shall be filed in a forum other than California, and[/justify][justify]there is limited connection to California with regard to the employment and[/justify][justify]the claimed cumulative inju

ry.[/justify]Applicants limited connection with California evidences that he was only temporarily within the state as described in Labor Code section 3600.5(b), such that defendants may be exempted from WCAB jurisdiction if there is a reciprocal statute, as in Carroll. The limited connection between applicant and his injury with California may also support a declination of jurisdiction if applicant and defendant agreed to a reasonable mandatory forum selection clause as part of the employment contract, as in McKinley. In order to assure that these jurisdictional issues are properly addressed in the first instance at the trial level, the July 26, 2013 Findings Of Fact is rescinded and the case is returned to the WCJ for development of the record, further proceedings and a new decision. Upon return, the WCJ should determine if defendants are exempt from jurisdiction pursuant to Labor Code section 3600.5(b) as in Carroll, and/or if jurisdiction should be declined because there is a reasonable mandatory forum selection clause specifying that claims for workers compensation shall be filed in a forum other than California and there is limited connection to California with regard to the, employment and the claimed cumulative injury as in McKinley, and/or if there is some other reason that the WCAB should not adjudicate or should decline to adjudicate applicants claim. The WCJ should then issue findings on the relevant facts based upon substantial evidence in light of the entire record and should provide an opinion that fully explains the reasons for the decision. For the foregoing reasons, IT IS ORDERED, that applicants petition for reconsideration of the July 26, 2013 Findings Of Fact of the workers compensation administrative law judge is GRANTED. ////////////////////////////////////// //////////////////////////////////////, IT IS FURTHER ORDERED as the Decision After Reconsideration that the July 26, 2013 Findings Of Fact of the workers compensation administrative law judge is RESCINDED, and the case is RETURNED to the trial level for further proceedings and a new decision by the workers compensation administrative law judge in accordance with this decision. WORKERS COMPENSATION APPEALS BOARD DEIDRA E. LOWE I CONCUR, RONNIE G. CAMPANE ALFONSO J. MORES DATED AND FILED AT SAN FRANCISCO, CALIFORNIA OCT 09 2013 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD. REGINALD GERMANY CHRISTOPHER PERRY ROBERT RUSSO LISTER, MARTIN & THOMAS JFS/abs ADJ7828286