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1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

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CHRISTIAN FAURIA, *Applicant,* vs. CAROLINA PANTHERS; GREAT DIVIDE INSURANCE COMPANY, *Defendants.*	**Case No. ADJ6671169 (Anaheim District Office)** **OPINION AND DECISION AFTER RECONSIDERATION**

4–10

11 Defendant's petition for reconsideration of the July 12, 2016 Findings And Award of the workers'
12 compensation administrative law judge (WCJ) was previously granted in order to further study the record
13 and issues in the case. The WCJ found that "Applicant was hired in the State of California where
14 Applicant's agent accepted the offer of employment on behalf of Applicant and therefore California has
15 jurisdiction in this case," and that applicant sustained cumulative industrial injury to multiple body parts
16 while employed as a football player by defendant Carolina Panthers (Carolina) and others during the
17 period from July 17, 1995 through February 28, 2008, causing 93% permanent disability and need for
18 future medical treatment.

19 Defendant contends that the WCAB has no personal jurisdiction over Carolina because it did not
20 hire applicant in this state and applicant never played a game in California while in that employ.

21 An answer was received from applicant.

22 The WCJ provided a Report And Recommendation Of Workers' Compensation Judge On
23 Petition For Reconsideration (Report) recommending that reconsideration be denied.

24 The WCJ's July 12, 2016 decision is reversed as the Decision After Reconsideration. The record
25 does not support a finding that applicant was hired in this state and there is insufficient connection
26 between applicant's employment by defendant and California to hold defendant liable for applicant's
27 injury under the workers' compensation laws of this state as a matter of due process.

BACKGROUND

This case was previously before the Appeals Board on two occasions following a trial of all issues before the WCJ. The earlier October 16, 2013 Opinion And Decision After Reconsideration of the Appeals Board panel (October 16, 2013 Decision After Reconsideration), and the January 14, 2016 Opinion And Order Granting Applicant's Petition For Reconsideration And Decision After Reconsideration (January 14, 2016 Decision After Reconsideration) are both incorporated by this reference.[1] The background facts are set forth in those earlier decisions, and they are not repeated in detail.

In the October 16, 2013 Decision After Reconsideration, the panel reversed the WCJ's October 23, 2012 finding of WCAB jurisdiction over applicant's claim pursuant to Labor Code section 3600.5(a) based upon the panel's conclusion that applicant was not "regularly working" in this state as described in that section.[2] The case was returned to the trial level for further proceedings, with the following direction:

> [T]he WCJ must evaluate both jurisdiction and period of liability. In the absence of an election against one employer, the WCJ should first consider whether the WCAB has jurisdiction over the team that employed applicant during the final one-year period established by Section 5500.5(a). If the WCAB has no jurisdiction over applicant's claim against that team, the WCJ should then work backwards, considering applicant's claim against his employer(s) in each preceding year. If the WCJ finds jurisdiction over applicant's claim against a team or teams for a given year, she may issue an award without evaluating jurisdiction over any earlier employers.

The only additional evidence received at the second trial on August 4, 2015 were excerpts from applicant's December 15, 2009 deposition and subsequent medical reporting by the parties' Agreed Medical Evaluators. On October 27, 2015, the WCJ again found no WCAB jurisdiction over applicant's claim. Applicant again petitioned for reconsideration, and reconsideration was granted by the Appeals

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[1] Following the issuance of the October 16, 2013 Decision After Reconsideration, panel members Commissioner Moresi and Deputy Commissioner Dietrich both retired and Commissioner Zalewski and Deputy Commissioner Newman were appointed to their places on the current panel.

[2] Further statutory references are to the Labor Code. Section 3600.5 has been amended, but those amendments do not change the analysis that was applied in the October 16, 2013 decision.

Board. In her Report And Recommendation On Petition For Reconsideration regarding her decision the WCJ explained that she found no WCAB jurisdiction because, "there is no evidence that [applicant's employment] contract was negotiated and accepted either by the Applicant or by his certified agent in the State of California."

The Appeals Board granted applicant's petition for reconsideration of the WCJ's October 27, 2015 decision. In its January 14, 2016 Decision After Reconsideration, the Appeals Board panel rescinded the WCJ's October 27, 2015 finding of no jurisdiction because she improperly relied upon defendant's assertions in the answer to applicant's earlier petition for reconsideration that applicant's employment contract was signed by his agent Toby Branion in North Carolina as shown by unidentified "published reports," and because there appears to be a North Carolina fax number on the page of the contract that contains Mr. Branion's signature. The panel further wrote in the January 14, 2016 Decision After Reconsideration as follows:

> In that there appears to be jurisdiction over the injury and claim [based upon applicant's hire in California by other employer's during the cumulative trauma period], the issue that needs to be addressed is whether Carolina can properly be held liable for the claimed cumulative injury under section 5500.5(a) in light of the fact that applicant did not participate in any games or otherwise incur injurious exposure in California while employed by that employer...
>
> The significant issue to be addressed by the WCJ upon return is whether Carolina may be held liable under California law for the claimed cumulative injury. (7:8-12; 9:20-21.)

Further proceedings were conducted before the WCJ, but no additional evidence was received. On July 12, 2016 the WCJ issued her decision as described above, finding that applicant was hired by defendant in California.

The WCJ explains the reason for her July 12, 2016 decision in pertinent part in her Report as follows:

> The only Defendant left in this case is the Carolina Panthers. The Seattle Seahawks, New England Patriots and the Washington Redskins were dismissed per the request of the parties without any objection by Applicant...
>
> Applicant testified that his contract with the Seattle Seahawks was negotiated by Leigh Steinburg; his second contract with the Seattle Seahawks was negotiated by David Dunn, who is Mr. Steinburg's

associate, and that his contracts with the New England Patriots were negotiated by David Dunn. He testified that Mr. Dunn was located in California. Applicant states that Mr. Dunn was his agent thereafter with all teams. Mr. Branion who negotiated Applicant's last contract with the Carolina Panthers was an associate of Mr. Dunn. At an early hearing in this case Applicant testified that he wanted a sports agent in the state of California and that all of his contracts were negotiated through his agents. At the time of the hearing on 02/20/2012 Applicant testified that his contract with the Carolina Panthers was signed by Mr. Branion who was a partner of Mr. Dunn. He indicates that this contract was signed on his behalf. Applicant states that he always spoke to Mr. Dunn about his contracts.

Applicant also testified that he would give his agent a target contract that was desired. He indicates he never rejected any contract negotiated by his agent. Further Applicant testified that although he could say yes or no to offers, it was a joint decision. Applicant testified at that same hearing that he gave his sports agent complete authority to accept and negotiate contracts with each team with whom he played. Applicant testified that his agent would advise him that he had reached a deal and the contracts would be prepared and ready for his signature.

Applicant testified that when he was contacted about the contract with the Carolina Panthers, he was in California in Hermosa Beach. Applicant stated that he was contacted by David Dunn who indicated that he thought the Panthers wanted to sign him. Applicant then traveled to Carolina for a physical and a tryout. Applicant then flew back to Massachusetts and was subsequently contacted by his agent by phone in Massachusetts and told that an agreement had been reached. Applicant believes that he signed the contract with the Carolina Panthers in Carolina. Mr. Branion signed the contract as the agent on Applicant's behalf. Applicant did not know where Mr. Branion was when he signed the contract.

David Dunn testified at the time of his deposition 11/11/2010 that he negotiated all of Applicant's contracts except the last contract in 2007 which was negotiated by Mr. Branion. In that deposition Mr. Dunn testified at page 9, contained in Exhibit V, that when he entered into a contract with his client, as his agent he stepped into the shoes of his client. He further testified that he had the authority to bind his client to a contract. Essentially Mr. Dunn testified that when he accepted an offer on behalf of his client the deal was done. He indicates that this was done in a verbal agreement. He stated that each side accepts the deal verbally and then the team will fax the contract to Mr. Dunn's offices. Mr. Dunn stated that his client never communicated directly with the team regarding contract negotiations. On page 13 of Mr. Dunn's deposition he stated that as an agent he advises his clients of the market and

> 'We recommend strongly the parameters of any deal that they should consider or not consider, and then at the end of the day, the client will tell me, you know, let's do this, you know, it fits our parameters and I'll make the deal on their behalf.'

> At page 28 of that deposition Applicant's attorney asked Mr. Dunn,
>
> > 'All right. To recap then, you bind your client to -- there's a verbal agreement on the phone, correct?'
>
> To which Mr. Dunn responded
>
> > 'Correct.'
>
> Mr. Dunn was then asked,
>
> > 'And then subsequent to that there's a written agreement commemorating the verbal agreement?'
>
> To which Mr. Dunn responded
>
> > 'Correct.'
>
> At the time of the trial in February of 2012 Defendant presented the testimony of Mr. Hurney, the team's general manager, who indicated that he did not negotiate the contract for the services of Mr. Fauria but that that contract was negotiated by Mr. Rob Rogers on behalf of the employer. Mr. Hurney was not sure where Mr. Branion was located when he signed the contract.
>
> The employment contract with the Carolina Panthers contained in Exhibit 4 offered on behalf of Applicant indicates Mr. Branion's address in Newport Beach, California. The contract was faxed by Defendant to California. Defendant argues that there is a fax stamp indicating the contract was also faxed to a number in South Carolina. However, Applicant testified that he always spoke to his agents located in California. Mr. Hurney had no knowledge of Mr. Branion's location at the time he signed the contract on behalf of Applicant and there is no other evidence that Mr. Branion was in a state other than California when the contract was negotiated and agreed to by the parties. Clearly an agent has the ability to negotiate and enter into a contract on behalf of his client. Even considering Defendant's argument that a sports agent does not have this ability, Applicant testified at the time of trial that he gave his sports agent complete authority to accept and negotiate contracts with each team with whom he played.
>
> Based on the above it was found that Applicant was hired in the state of California where Applicant's agent accepted the offer of employment on behalf of Applicant and therefore, California has jurisdiction to proceed in this case.

DISCUSSION

As expressed in the earlier January 14, 2016 Decision After Reconsideration, it appears the WCAB may have jurisdiction over applicant's injury and claim under sections 3600.5(a) and 5305 based upon evidence that he was hired in California by his prior employers.[3]

[3] Applicant's former employers Seattle Seahawks, New England Patriots and Washington Redskins have all been dismissed as defendants in this case without objection by applicant and no findings are made concerning those defendants on any issues, including due process, WCAB jurisdiction, or allocation of liability under section 5500.5.

1 There is no question that when an employee is hired in this state a workers' compensation claim
2 may be brought in California against the hiring employer regardless of where the injury occurred.
3 (*Alaska Packers Assn. v. Industrial Acc. Com.* (*Palma*) (1934) 1 Cal.2d 250, 252 [20 Cal. I.A.C. 319],
4 affd. (1935) 294 U.S. 532 [55 S.Ct. 518, 79 L.Ed. 1044, 20 I.A.C. 326] [only connection to California
5 was non-resident employee's agreement to out-of-state employment while aboard a ship in San Francisco
6 harbor] (*Palma*); *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 21-22 [64
7 Cal.Comp.Cases 745] (*Bowen*); 73 Cal.App.4th at pp. 17-18, 26-27 and fn. 14 [WCAB jurisdiction found
8 over claim of player hired in California notwithstanding that no games were played in this state and
9 injury occurred outside of California]; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*)
10 (2013) 221 Cal.App.4th 1116, 1120 [78 Cal.Comp.Cases 1257] (*Johnson*) ["[T]he creation of the
11 employment relationship in California, which came about when [Mr. Palma] signed the contract in San
12 Francisco, was a sufficient contact with California to warrant the application of California workers'
13 compensation law"]; cf. *New York Knickerbockers v. Workers' Compensation Appeals Board* (*Macklin*)
14 (2015) 240 Cal.App.4th 1229 [80 Cal.Comp.Cases 1441] (*Macklin*) [WCAB jurisdiction based upon
15 injured worker's California employment supports section 5500.5 allocation of liability to another
16 employer during period of injurious exposure] (*Macklin*).)
17 However, the question of Carolina's liability in this case is not solely based upon whether the
18 WCAB has subject matter jurisdiction over applicant's injury and claim under sections 3600.5(a) and
19 5305. The issue concerning Carolina, as explained in the earlier January 14, 2016 Decision After
20 Reconsideration, is whether it can be held liable under section 5500.5(a) notwithstanding that applicant
21 did not participate in any games or otherwise incur injurious exposure in California while employed by
22 that team.
23 The reason the location of applicant's hiring by Carolina is of significance is because evidence of
24 applicant's hiring in California by his prior employers does not establish a connection between Carolina
25 and this state that is sufficient to hold Carolina liable for applicant's injury under California's workers'
26 compensation law as a matter of due process. (*Johnson, supra.*) If applicant was hired in this state by
27 Carolina, there would be sufficient connection between that employer and this state to hold Carolina

liable for applicant's injury under California's workers' compensation law pursuant to section 5500.5 without offending due process. (See, *Macklin, supra*, 240 Cal.App.4th at p. 1232 ["California has a legitimate interest in an industrial injury when the applicant was employed by a California corporation and participated in other games and practices in California for non-California NBA teams, during the period of exposure causing cumulative injury. Subjecting petitioner to California workers' compensation law is reasonable and not a denial of due process"].)

As set forth in the January 14, 2016 Decision After Reconsideration, the evidence concerning applicant's hiring by Carolina was in dispute at that time and the record did not support a finding of hire in California. The North Carolina fax number on applicant's employment contract indicates that applicant's agent was in North Carolina when he agreed to the terms of employment on applicant's behalf and signed the contract. No additional evidence was received following the January 14, 2016 Decision After Reconsideration. Thus, the evidence concerning applicant's hiring by Carolina is still in dispute and is still insufficient to support a finding of hire in this state.

Applicant is correct that there is no requirement in either section 3600.5(a) or section 5305 that the parties sign or otherwise conclude all the terms of a binding written employment contract within California in order for the WCAB to obtain jurisdiction over an injury claim arising out of that employment. (*Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 771 at p. 777, fn. omitted [37 Cal.Comp.Cases 185] ["an 'employment' relationship sufficient to bring the [state's workers' compensation statutes] into play cannot be determined simply from technical contractual or common law conceptions of employment but must instead be resolved by reference to the history and fundamental purposes underlying the [workers' compensation statutes]..."]; *Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1061 [60 Cal.Comp.Cases 316].)

However, while is not necessary that all the terms of an employment agreement be finalized in this state in order for the WCAB to obtain jurisdiction pursuant to sections 3600.5(a) and 5305, there must nevertheless be evidence sufficient to support a finding that a hiring occurred in California by the acceptance of employment within this state in order for that jurisdictional basis to apply. (*Palma, supra*; *Ledbetter Erection Corp. v. Workers' Comp. Appeals Bd.* (*Salvaggio*) (1984) 156 Cal.App.3d 1097 [49

Cal.Comp.Cases 447] [no WCAB jurisdiction when employment contract accepted over the telephone by California resident while in Nevada]; *Barrow v. Workers' Comp. Appeals Bd.* (2012) 77 Cal.Comp.Cases 988 [2012 Cal. Wrk. Comp. LEXIS 140] (writ den.) [no WCAB jurisdiction when agent in this state merely communicated acceptance of the employee who was outside of California]; *Jenkins v. Arizona Cardinals* (ADJ4519826, October 19, 2011) [2011 Cal. Wrk. Comp. P.D. LEXIS 485] (panel dec.), (April 17, 2012) [2012 Cal. Wrk. Comp. P.D. LEXIS 189] (panel dec.) [agent's negotiation and signing of contract insufficient when acceptance by employee occurred outside California]; *Ioane v. Oakland Raiders* (ADJ171639, September 14, 2010) [2010 Cal. Wrk. Comp. P.D. LEXIS 416] (panel dec.) [basis for WCAB jurisdiction not shown in absence of evidence that agent was authorized to accept employment on behalf of employee]; *Johnson v. San Diego Chargers* (ADJ6784479, July 31, 2012) [2012 Cal. Wrk. Comp. P.D. LEXIS 354] (panel dec.) [contract not accepted by agent in California but by applicant outside the state]; *Walker v. Petrochem Insulation* (ADJ9674694, February 2, 2016) [2016 Cal. Wrk. Comp. P.D. LEXIS 60] [applicant's acceptance in Georgia of California employer's offer of employment is not hire in California]; *Tripplet v. Indianapolis Colts* (March 1, 2017, ADJ6943108) (panel dec.) [acceptance occurred outside California].)

The burden of proof rests on the party holding the affirmative of an issue, and in this case applicant has the burden of proving he was hired in this state. (Lab. Code, § 5705.) Applicant had ample opportunity at the first and second trials to present evidence showing that he was hired in California by Carolina. However, the preponderance of the evidence does not support such a finding and the record on that issue remains in conflict. (Lab. Code, § 3202.5 ["preponderance of the evidence" means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth].) The mere possibility that applicant was hired in California by Carolina does not provide sufficient connection with this state to hold Carolina liable under California's workers' compensation law consistent with due process. (*Johnson, supra.*)

Johnson addresses concerns about the due process rights of a defendant with de minimis connection to a claimed injury and this state by analogy to what "might be referred to as a lack of subject matter jurisdiction." (*Johnson, supra,* 221 Cal.App.4th at p. 1128.) However, as the Court has made

clear the issue of concern is not "subject matter jurisdiction" in its most fundamental sense. Instead, as noted by the Court in *Macklin, supra*:

> The parties use the term 'jurisdiction' or 'subject matter jurisdiction' in connection with the issue of whether the application of the California workers' compensation law would be unreasonable so as to be a denial of due process. 'Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' (*Abelleira v. Dist. Court of Appeal* (1941) 17 Cal.2d 280, 288 [109 P.2d 942].) The term 'jurisdiction' over the action is also used in a variety of less fundamental circumstances, requiring care in reliance on cases using the term. (*Macklin, supra*, 240 Cal.App.4th at p. 1232 ftnt. 1.)

The due process concern involving Carolina in this case might similarly be referred to by analogy as lack of "personal jurisdiction." However, it does not involve "personal jurisdiction" in its most fundamental or strict sense as an entire absence of power to hear or determine a case against a party. There is no question that Carolina has sufficient contact with California for the WCAB to have "personal jurisdiction" over it in its most fundamental sense. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310 [66 S. Ct. 154, 90 L. Ed. 95]; *Martin v. Detroit Lions, Inc.* (1973) 32 Cal.App.3d 472 [professional football team contacts with California sufficient for court to have personal jurisdiction over it in suit by former player for breach of contract]; *Ballard v. Savage* (9th Cir. 1995) 65 F.3d 1495.) The issue in this case is whether the connection between the defendant, this state and applicant's injury and claim is sufficient to make application of California workers' compensation law reasonable and not a denial of due process.

When there has been a hiring in California, the application of California workers' compensation law and section 5500.5 to allocate liability to the last employer notwithstanding its limited contacts with this state may be reasonable. (*Macklin, supra* 240 Cal.App.4th at p. 1239 ["[e]mployment by a California team during the period of the cumulative injury, so long as the requirements of Labor Code section 5500.5 are met, is sufficient in this case to make reasonable the application of the California workers' compensation law"].) However, when there is no connection whatsoever between the employer and this state during the time the applicant was employed it is not reasonable or consistent with due process to apply California's workers' compensation law against that employer. (*Johnson, supra*.)

The July 12, 2016 decision of the WCJ is rescinded and a new finding is entered that there is insufficient connection between Carolina and this state during the time of applicant's employment to hold that defendant liable under California law as a matter of due process.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 12, 2016 Findings And Award of the workers' compensation administrative law judge is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. **CHRISTIAN FAURIA,** born on September 22, 1971, while employed during the period 07/17/95 through 02/28/08, as a professional athlete, Occupational Group Number 590J, by defendant **CAROLINA PANTHERS** insured for workers' compensation purposes by **GREAT DIVIDE INSURANCE,** sustained injury arising out of and occurring in the course of employment to multiple body parts.

2. The evidence does not support a finding that applicant was "hired" in California by defendant Carolina Panthers as described in Labor Code section 3600.5(a), and the evidence does not support a finding that applicant's "contract of hire [with defendant Carolina Panthers] was made in this state" as provided in Labor Code section 5305.

3. Applicant participated in no games in California while employed by defendant Carolina Panthers and there otherwise is not sufficient relationship between this state and defendant Carolina Panthers in this case to allow the application of California's workers' compensation law against it as a matter of constitutional due process, consistent with the holding of the Court of Appeal in *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) (2013) 221 Cal.App.4th 1116 [78 Cal.Comp.Cases 1257].

4. California has no obligation herein to apply the workers' compensation law of any other state.

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IT IS FURTHER ORDERED as the Decision After Reconsideration of the Appeals Board that defendant employer Carolina Panthers has no liability for applicant's claim herein.

WORKERS' COMPENSATION APPEALS BOARD

DEIDRA E. LOWE

I CONCUR,

KATHERINE ZALEWSKI

I DISSENT (See Separate Dissenting Opinion)

DEPUTY

RICHARD L. NEWMAN

WORKERS' COMPENSATION APPEALS BOARD SEAL

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APR 10 2017

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

CHRISTIAN FAURIA
LEVITON, DIAZ & GINOCCHIO
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

JFS/abs

SEPARATE DISSENTING OPINION OF DEPUTY COMMISSIONER NEWMAN

I dissent. I would affirm the decision of the WCJ for the reasons expressed in her Report and in her July 12, 2016 Opinion On Decision, which are incorporated by this reference, and for the reasons below. In my view, the evidence supports a finding that applicant was hired in California by Carolina within the meaning of section 3600.5 and section 5305.

The preponderance of the evidence supports the WCJ's determination and finding that applicant was hired in this state within the meaning of our workers' compensation law. As detailed in the January 14, 2016 Decision After Reconsideration, applicant credibly testified that he utilized a sports agent in this state "because he grew up and lived in California and he wanted to be able to drive to his agent's office if necessary," and all his employment contracts were negotiated through his California agents. (February 21, 2012 Minutes of Hearing, 7:19-8:16.) Applicant's initial employment contracts were negotiated by Leigh Steinberg in California. (*Id.*) Applicant was in Hermosa Beach, California when he was contacted about the contract with Carolina. (*Id,* 8:24-9:4.) After going to Carolina for one day for a physical and a tryout, he was subsequently contacted by his agent by phone and told that an agreement had been reached. (*Id.*) applicant did not know where Mr. Branion was when he signed the contract, and he always spoke to Mr. Dunn about the contracts. (*Id.*)

Applicant's testimony was essentially confirmed by Mr. Dunn, who testified during his November 11, 2010 deposition that he negotiated all of applicant's contracts except "in 2007 Joby Branion negotiated one of them and he's a partner of mine." (Board Exhibit V, 10:12-16.) Mr. Dunn explained that he discussed a target contract with his clients before negotiations and he had authority to bind his clients to a contract. (*Id,* 10:5-11.) In Mr. Dunn's view the contract was formed when he accepted an offer on behalf of a client. (*Id,* 10:24-25 ["When I accept the deal, the deal is done"].) Mr. Dunn could not recall any instance where a client rejected a contract after it had been accepted by the agent over the telephone. (*Id,* 12:13-17.) Carolina's General Manager Marty Hurney testified that Rob Rogers negotiated the employment contract on behalf of the employer with applicant's agent, Mr. Branion, but he did not know where Mr. Branion was located when he signed the contract. (*Id.*)

The evidence of applicant's acceptance of the Carolina hiring in California through his agent is sufficient to support the WCJ's finding of hire within California under sections 3600.5 and 5305. (See, *Janzen vs. Workers' Comp. Appeals Bd.* (1997) 61 Cal.App.4th 109,115 [63 Cal.Comp.Cases 9] ["under California law a contract entered into over the telephone is deemed made where the offeree expressed acceptance or, if the offeree cannot be determined, where the employee was located"]; *Commercial Casualty Ins. Co. v. Industrial Acci. Com.* (*Porter*) (1952) 110 Cal.App.2d 83 [17 Cal.Comp.Cases 84] [employer's acceptance in California of employee's offer of employment was hiring in this state as described in section 5305]; *Bundsen v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 106 [48 Cal.Comp.Cases 673] [telephone calls between California resident and Colorado employer sufficient evidence of hire in California even though moment of formation could not be determined from the record, citing section 3202 (workers' compensation laws "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment"]; *Tampa Bay Devil Rays v. Workers' Comp. Appeals Bd.* (*Luke*) (2008) 73 Cal.Comp.Cases 550 (writ den.) [2008 Cal. Wrk. Comp. LEXIS 85], panel dec. [2007 Cal. Wrk. Comp. P.D. LEXIS 125] [terms of contract were agreed to by telephone through California agent while applicant in this state]; *Paula Insurance Co. v. Workers' Comp. Appeals Bd.* (*Montes*) (2000) 65 Cal.Comp.Cases 426 [2000 Cal. Wrk. Comp. LEXIS 6264](writ den.) [acceptance of employment and hire in California through phone call from applicant's father to employer]; *Trans World Airlines v. Workers' Comp. Appeals Bd.* (*Robson*) (1993) 58 Cal.Comp.Cases 637 [1993 Cal. Wrk. Comp. LEXIS 3042](writ den.) [flight attendant's acceptance of employment offer in letter sent to her California residence by out of state employer is hire in this state]; *New York Yankees v. Workers' Comp. Appeals Bd.* (*Montefusco*) (2001) 66 Cal.Comp.Cases 291 [2001 Cal. Wrk. Comp. LEXIS 4872](writ den.) [California resident signing contract in San Francisco constituted hiring in this state and provided WCAB jurisdiction over injury claim notwithstanding that no games were played in California]; *Stephens v. Nashville Kats* (ADJ4213301, April 1, 2015) [2015 Cal. Wrk. Comp. P.D. LEXIS 207] (panel dec.) [hire in California is in itself sufficient contact with this state for WCAB to legitimately exercise jurisdiction over workers' compensation claim, and it also makes it unreasonable to enforce choice of law/forum selection clause in

employment contract]; *Davis v. Atlanta Hawks* (ADJ7286848, August 3, 2015) [2015 Cal. Wrk. Comp. P.D. LEXIS 430] (panel dec.) [hire in California sufficient in and of itself for WCAB jurisdiction notwithstanding limited connection between injury and state]; *Palepoi v. Seattle Seahawks* (ADJ7087477, February 5, 2015) (panel dec.) [hiring in California by one team through agents' acceptance of employment in this state provided WCAB with jurisdiction over cumulative injury claim and supported joinder of another team that did not hire the applicant in California]; *Jackson vs. Cleveland Browns* (ADJ6696775, December 26, 2014) [2014 Cal. Wrk. Comp. P.D. LEXIS 682] (panel dec.) and (ADJ6696775, March 13, 2015) [2015 Cal. Wrk. Comp. P.D. LEXIS 132, *4] (panel dec.) ["It is reasonable to infer, in the absence of any contrary evidence whatsoever, that applicant's agent was at his office in California when he negotiated and accepted the terms of applicant's employment agreement on behalf of applicant"].)

Applicant's hiring in California is sufficient connection with California to support WCAB jurisdiction pursuant to sections 3600.5 and 5305 notwithstanding the number of games applicant may have played in this state with Carolina. This was recognized by the Court in *Johnson*, where the facts in that case were distinguished from those in *Palma*, *supra*, by noting that Ms. Johnson was hired in New Jersey and not in California like the employee in *Palma* and the applicant in this case. (*Johnson, supra*, 221 Cal.App.4th at p. 1120.) The Court in *Johnson* wrote as follows: "[T]he creation of the employment relationship in California, which came about when [Mr. Palma] signed the contract in San Francisco, was a sufficient contact with California to warrant the application of California workers' compensation law." (*Id*, 221 Cal.App.4th at p. 1126.)

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I would affirm the decision of the WCJ. Defendants are not denied due process by being held liable for applicant's cumulative injury under California law.

WORKERS' COMPENSATION APPEALS BOARD

RICHARD NEWMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APR 10 2017

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

CHRISTIAN FAURIA
LEVITON, DIAZ & GINOCCHIO
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

JFS/abs