2020 Cal. Wrk. Comp. P.D. LEXIS 292

Workers' Compensation Appeals Board (Board Panel Decision)

September 14, 2020, Opinion Filed

W.C.A.B. No. ADJ10510769—WCAB Panel: Deputy Commissioner Garcia, Commissioners Sweeney, Lowe

Reporter

2020 Cal. Wrk. Comp. P.D. LEXIS 292 *

Brandon Farley, Applicant v. San Francisco Giants, ACE American Insurance, administered by Sedgwick Claims Management Services, Defendants

Status:

Publication Status: CAUTION: This decision has not been designated as a "significant panel decision" by the Workers' Compensation Appeals Board. Practitioners should proceed with caution when citing to this panel decision and should also verify the subsequent history of the decision, as these decisions are subject to appeal. WCAB panel decisions are citeable authority, particularly on issues of contemporaneous administrative construction of statutory language [see *Griffith v. WCAB (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, 54 Cal. Comp. Cases 145]*. However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see *Gee v. Workers' Comp. Appeals Bd. (2002) 96 Cal. App. 4th 1418, 1425 fn. 6, 67 Cal. Comp. Cases 236]*. While WCAB panel decisions are not binding, the WCAB will consider these decisions to the extent that it finds their reasoning persuasive [see *Guitron v. Santa Fe Extruders (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc Opinion)]*. LexisNexis editorial consultants have deemed this panel decision noteworthy because it does one or more of the following: (1) Establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in other decisions, or modifies, or criticizes with reasons given, an existing rule; (2) Resolves or creates an apparent conflict in the law; (3) Involves a legal issue of continuing public interest; (4) Makes a significant contribution to legal literature by reviewing either the development of workers' compensation law or the legislative, regulatory, or judicial history of a constitution, statute, regulation, or other written law; and/or (5) Makes a contribution to the body of law available to attorneys, claims personnel, judges, the Board, and others seeking to understand the workers' compensation law of California.

Disposition: The Petition for Reconsideration of the Opinion and Decision after Reconsideration [see *Farley v. San Francisco Giants, 2020 Cal. Wrk. Comp. P.D. LEXIS 173* (Appeals Board noteworthy panel decision)] is *denied*.

Core Terms

athletes, subject-matter, team, notice, exempt, hired, Reconsideration, eligibility, out-of-state, career

Headnotes

WCAB Jurisdiction—Professional Athletes—Contracts of Hire—Subject Matter Jurisdiction—WCAB, denying reconsideration, affirmed its prior decision [see *Farley v. San Francisco Giants, 2020 Cal. Wrk. Comp. P.D. LEXIS 173* (Appeals Board noteworthy panel decision)], holding that WCAB did not have jurisdiction over applicant's claim for industrial injury while playing professional baseball for California-based San Francisco Giants (Giants), because applicant was neither hired by Giants in California, nor did applicant perform any work for Giants in this state, and no statute authorizes jurisdiction over claim simply based on fact that defendant supervised employee from its principal place of business in California, and WCAB further noted that applicant's employment by California-based employer, in itself, was not sufficient to establish subject matter jurisdiction over applicant's claim, that, despite applicant's contrary suggestion, Legislature did not intend to grant statutory subject matter jurisdiction all claims by individuals who receive notice pursuant to *Labor Code § 5401(a)* of *potential* eligibility for California workers' compensation benefits, that fact that professional athlete's claim is not barred by *Labor Code § 3600.5(c)* or *(d)* does not establish statutory subject matter jurisdiction over claim, but merely means that claim is not subject to exemptions in those subdivisions, and that most reasonable reading of *Labor Code § 3600.5(d)* is that it serves to limit general jurisdictional statutes governing subject matter jurisdiction, not to expend them as asserted by applicant. [See generally *Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 3.22[2]*, *[3]*, *21.02*, *21.06*, *21.07[5]*; Rassp & Herlick, California Workers' Compensation Law, Ch. 13, § 13.01[2].]

Counsel

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For defendants—Colantoni, Collins, Marren, Phillips & Turk

Panel: Deputy Commissioner Patricia A. Garcia; Commissioner Marguerite Sweeney; Commissioner Deidra E. Lowe

Opinion By: Deputy Commissioner Patricia A. Garcia

Opinion

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION[1]

Applicant seeks reconsideration of our Opinion and Decision after Reconsideration, wherein we found that the Workers' Compensation Appeals Board (WCAB) does not have jurisdiction over this claim, because applicant was neither hired in California nor performed any work in this state for the San Francisco Giants ("Giants"), and no statute authorizes the exercise of jurisdiction over a claim simply based on the fact that the defendant supervised the employee from its principal place of business in California. Applicant contends we erred because (1) hire by a California employer is sufficient to establish California jurisdiction, (2) applicant was hired in California because the Giants ratified his contract here, (3) our decision would require that California-based teams notify workers of their rights to file claims in California despite such claims not

[1] Venue was changed from the Santa Ana district office. Because the order changing venue was issued more than 15 days after the filing of the Petition for Reconsideration, it violates ***WCAB Rule 10961*** and will have to be re-issued. (See ***Cal. Code Regs., tit. 8, § 10961***.) It has also come to our attention that defendant has filed a subsequent Petition with the San Diego District Office. The Petition should have been filed with us; we have not considered it as no permission was sought to file additional briefing under ***WCAB Rule 10964***.

being subject to California jurisdiction; and (4) **[*2]** *Labor Code section 3600.5(d)*[2] establishes jurisdiction based upon applicant's employment with a California-based team.[3]

Section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (*Lab. Code, § 5909*.) *Section 5315* provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (*Lab. Code, § 5315*.)

On June 5, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order N-68-20, wherein he ordered that the deadlines in *sections 5909* and *5315* shall be extended for a period of 60 days.[4] Pursuant to Executive Order N-68-20, the time within which the Appeals Board must act was extended by 60 days. Therefore, this decision is timely.

We received an Answer from defendant. For the reasons discussed in our Opinion and Decision after Reconsideration, which we incorporate, and for the additional reasons discussed below, we will deny the petition.

DISCUSSION

Before addressing the specific contentions raised by the petition, it is evident that that the petition as a whole is conflating three distinct but related legal issues, namely, the questions of (1) whether there is general statutory **[*3]** subject-matter jurisdiction over a claim, (2) whether, despite the presence of statutory subject-matter jurisdiction, a claim may not be heard in California for reasons of due process, and (3) the specific statutory provisions that provide further limitations on the WCAB's subject-matter jurisdiction with regard to claims made by professional athletes.

As noted in our Opinion and Decision after Reconsideration, the WCAB is solely a creation of the Legislature, and thus our 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*.)

However, even in the presence of statutory subject-matter jurisdiction, it may nevertheless be unreasonable as a matter of due process to adjudicate a case in the California workers' compensation system, if there is an insufficient connection between the State of California **[*4]** and the applicant's injuries. (*Federal Insurance Co. v. Workers' Comp. Appeals Bd. (Johnson) (2013) 221 Cal.App.4th 1116, 1128*; see also *New York Knickerbockers v. Workers' Comp. Appeals Bd.* (2015) (*Macklin) 240 Cal.App.4th 1229*.)

Finally, even where there is general statutory subject-matter over a claim, and where there are sufficient connections between the injury and the State of California to support the exercise of jurisdiction, the claims of professional athletes are subject to specific statutory exemptions, codified in *section 3600.5, subdivisions (c)* and *(d)*. (*§ 3600.5(c)* & *(d)*.) These subdivisions are not grants of statutory subject-matter jurisdiction themselves; rather, they serve to limit the general grants of statutory subject-matter jurisdiction for certain claims by professional athletes.

Here, our determination that the WCAB lacks jurisdiction over applicant's claim is based on a lack of statutory subject-matter jurisdiction, not upon a determination that there are insufficient connections between the State of California and applicant's injuries. Therefore, as explained in more detail below, to the extent that the petition relies upon cases that consider the *Johnson*

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[2] All further references are to the Labor Code, unless otherwise specified.

[3] The petition repeatedly refers to our panel decision as the decision of the "Deputy Commissioner," assigning different gender pronouns to this putative individual at different places in the petition. To dispel any confusion, our decision in this case is the decision of the WCAB, not of any individual. Furthermore, none of the panel members assigned to this case use male pronouns.

[4] Governor Newsom's Executive Order N-68-20 may be accessed here: https://www.gov.ca.gov/wp-content/uploads/2020/06/6.5.20-EO-N-68-20.pdf. (See *Evid. Code, § 452(c)*.)

due process requirement, it misses the point. We do not disagree with applicant that there are sufficient connections between the State of California and applicant's injuries **[*5]** to satisfy due process. However, without statutory subject-matter jurisdiction, such connections cannot themselves create California jurisdiction over the claim. Similarly, the fact that a professional athlete's claim is not barred by section 3600.5, subdivisions (c) or (d) does not establish statutory subject-matter jurisdiction over the claim; it merely means the claim is not subject to the exemptions of those particular subdivisions.

Turning to applicant's first argument, the conflation of these three concepts explains applicant's misapprehension that our decision is "wholly inconsistent with" our "recent rulings and decisions of superior courts." (Pet, at p. 4.) The two cases cited by applicant in this section — *Stinnett v. Los Angeles Dodgers* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 644 (writ den.) and Ace American Ins. V. WCAB (Totten) (2018) 83 Cal. Comp. Cases 1902 (writ den.) — are not statutory subject-matter jurisdiction cases. In *Stinnett*, statutory subject-matter jurisdiction was not in question, because the applicant had sustained injurious exposure in California. (*Stinnett, supra*, 2015 Cal. Wrk. Comp. P.D. Lexis at *8.) In *Totten*, the question was whether the claim was specifically exempted by Labor Code section 3600.5(d). (Totten, supra, 83 Cal. Comp. Cases at p. 3.) Although the decision in *Totten* does not specifically reference facts that would establish general subject-matter jurisdiction, such as injurious exposure in this state, without **[*6]** such general subject-matter jurisdiction there would have been no reason to consider the question of an exemption under section 3600.5, subdivision (d).[5] Applicant's citation to the WCJ's Report in *Totten* that the defendant in that case "contends that applicant never played a game in California" was with reference to Totten's last year of employment, the relative consideration under section 3600.5, subdivision (d), not with regard to the entirety of his career. (See Totten, supra, 83 Cal. Comp. Cases at p. 1903 ["The Dodgers asserted that Applicant's claim was exempt from California jurisdiction under Labor Code § 3600.5(d) because Applicant did not play for any California-based teams and played no games in California *during his last year of employment as a professional baseball player*." (emphasis added).].)

Accordingly, neither case supports applicant's assertion that employment by a California-based employer, standing alone, is sufficient to establish statutory subject-matter jurisdiction over a claim. We therefore reject applicant's assertion that our decision in this matter is inconsistent with any of the cases cited.

Second, applicant asserts that he was in fact hired in California — thereby establishing general subject-matter jurisdiction - because the contract was signed by the Giants in California. **[*7]** (Pet., at pp. 5-6.) As described in our Opinion and Decision on reconsideration, this is simply incorrect as a matter of law: under binding appellate precedent, the location of hire for the purposes of sections 3600.5(a) and 5305 is the location the offeree accepts the offer of employment. (See *Bowen v. Workers' Comp. Appeals Bd. (1999) 73 Cal.App.4th 15, 21-22*; *Tripplett v. Workers' Comp. Appeals Bd. (2018) 25 Cal.App.5th 556, 565-66*.)

Applicant contends that our reliance on *Triplett* is "supremely misplaced" because *Triplett* dealt with hiring through an agent and did not involve a California team. (Pet., at pp. 5-6.) These objections are legally irrelevant; the location of a contract does not depend on whether the parties executing it are agents or principals, nor does it depend on their principal places of business. Applicant further asserts that the WCJ in *Stinnett* found that the applicant in that case was hired in California. This is factually incorrect: nowhere in the *Stinnett* decision did any Court find that the applicant was hired in California. If the applicant had been hired in California in that case, the operative question in the case — whether hire by a California team was sufficient to meet the due process requirement of *Johnson* — would have been irrelevant, as hire in California is sufficient not only to establish statutory subject-matter **[*8]** jurisdiction, but also to meet the *Johnson* due process requirement. (*Johnson, supra, 221 Cal.App.4th at p. 1126*.)

Applicant also cites *Commercial Casualty Insurance Company v. IAC (Porter) 17 Cal. Comp. Cases 84* as an example of a case where a contract was found to have been formed in California because the employer executed the contract in this state. It is not clear to us why applicant believes this case supports his argument. As stated above, the location of contract formation is where the *offeree* accepts the offer of employment. In *Porter*, the contract of hire specifically stated that the employee was offering services, and that a contract would be formed upon the employer's acceptance of the offer "at San Francisco, California." (*Id. at*

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[5] The Answer asserts that the applicant in *Totten* sustained injurious exposure in California while dispatched to the Las Vegas 51s, citing to baseball statistics websites. (Answer, at p. 8.) Although we have no reason to question this representation, and such exposure would establish general subject-matter jurisdiction, the representations made on the websites in question are not properly subject to judicial notice, and we therefore decline to rely upon them.

pp. 85-86.) The contract further specified that, upon acceptance by the employer, the contract would "become a binding State of California, United States of America Agreement and that the Workmen's Compensation Insurance provisions of the California Labor Code shall constitute the exclusive remedy for any injury or illness ...." (Id. at p. 86.) This case therefore aptly illustrates our point: the location of contract formation is the location the *offeree* accepts the contract. Here, applicant has not contested that he was offered a contract by defendant, which he then accepted; as such, the **[*9]** location of contract formation was the place that applicant accepted the contract, which was not in California.

Next, applicant asserts that our decision "has created an absurd result where California based teams are required to provide notice of a worker's right to file a claim in California knowing they will later deny the claims [*sic*] specifically because they were filed in California." (Pet., at p. 7.) Applicant appears to argue this is because California-based employers are not exempt from providing injured workers with notice under section 5401, subdivision (a) simply because the worker in question is dispatched to an out-of-state affiliate, citing *Neu v. Los Angeles Dodgers* (2015) Cal. Wrk. Comp. P.D. Lexis 603.

This objection misapprehends both the impact of the *Neu* decision and the nature of the notice requirement under section 5401, subdivision (a). Section 5401, subdivision (a) requires an employer, upon learning an employee is alleging a work-related injury, to provide that employee with (1) a claim form and (2) "a notice of *potential* eligibility for benefits under this division[.]" (§ 5401(a), emphasis added.) Section 3600.5, subdivision (e) exempts out-of-state employers of professional athletes — and only of professional athletes — from the notice requirement of section 5401, subdivision (a). (§ 3600.5(e) ["An employer of professional **[*10]** athletes, other than a California-based team, shall be exempt from Article 4 (commencing with Section 3550) of Chapter 2, and subdivisions (a) to (c), inclusive, of Section 5401."].)

In *Neu*, the Dodgers, a California-based team, argued that they were not required to provide notice under section 5401, subdivision (a) to an athlete injured while employed by the Dodgers, but playing for an out-of-state affiliate. (*Neu, supra*, Cal. Wrk. Comp. P.D. Lexis at *9.) We rejected this argument, noting that the Dodgers did not dispute they were the employer. (*Id.* at pp. 9-10.) Therefore, the *Neu* decision did not require California-based employers to give notice under section 5401, subdivision (a) to athletes injured while playing for out-of-state teams — it merely confirmed that the exemption in section 3600.5(e) applies only to out-of-state teams. Far from modifying the law, *Neu* simply confirms that the statutory provisions in question say what they seem to say: that employers must give notice of *potential* eligibility for benefits when they learn an employee has sustained an allegedly work-related injury, unless specifically exempted by statute.

Therefore, the "absurd result" applicant presents — namely, that some workers will get notices of *potential* eligibility for benefits, despite **[*11]** not actually being eligible for such benefits because there is no California jurisdiction over their claim — is neither of our creation, nor of recent provenance. The potential for such a result has existed as long as the notice requirement of section 5401, subdivision (a) itself.

We do not agree with applicant that the requirement is "cruel." As we have repeatedly emphasized, the notice required under section 5401, subdivision (a) is of *potential* eligibility for benefits. There are myriad reasons why an applicant may not ultimately be entitled to such benefits. A lack of statutory subject-matter jurisdiction over the claim is undoubtedly one of the more unusual reasons why recovery may not be available, and we appreciate applicant's frustration at receiving a notice of potential eligibility for California workers' compensation benefits, only to ultimately discover his claim must be brought elsewhere. We also appreciate the possibility that such a notice of potential eligibility may lead some injured workers to forgo filing claims in other jurisdictions.[6]

However, the notice under section 5401, subdivision (a) is necessary precisely because *without* such notice, an injured worker may never learn about the possibility of filing a claim in the first place, and therefore never **[*12]** get to the point of determining whether there is statutory subject-matter jurisdiction over his claim. Although applicant here is understandably focused on his case, we think it would be far crueler to injured workers as a whole to exempt defendants from providing notice of potential California workers' compensation rights to any workers injured out of state, simply because some such workers may not ultimately be eligible.

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[6] Of course, if such jurisdictions had similar notice requirements themselves, receiving a notice of potential eligibility from one jurisdiction would presumably not lead an injured worker to forgo filing a claim in another jurisdiction which had also provided such notice.

Because the existence of statutory subject-matter jurisdiction depends on facts not necessarily within the employer's knowledge — for example, prior injurious exposure for other employers in this state — it would not be possible to delegate to the employer the job of determining whether it should provide notice of potential California workers' compensation benefits, even were it wise to do so. The notice requirement exists to facilitate getting an injured workers' claim to the point where the WCAB *can* determine whether the conditions for recovery have been met, including, in the rare cases where it is applicable, whether there is statutory subject-matter jurisdiction over the claim. We therefore disagree that the Legislature intended to grant statutory subject-matter **[*13]** jurisdiction to any claim by an individual who receives a notice of potential eligibility under *section 5401, subdivision (a)*.

Finally, applicant contends that there is statutory subject-matter jurisdiction over his claim based upon *section 3600.5, subdivision (d)(1)*. That subdivision states:

> With respect to an occupational disease or cumulative injury, a professional athlete and his or her employer shall be exempt from this division when all of the professional athlete's employers in his or her last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law, unless both of the following conditions are satisfied: (A) The professional athlete has, over the course of his or her professional athletic career, worked for two or more seasons for a California-based team or teams, or the professional athlete has, over the course of his or her professional athletic career, worked 20 percent or more of his or her duty days either in California or for a California-based team. The percentage of a professional athletic career worked either within California or for a California-based team shall be determined solely by taking the number of duty days the professional athlete worked for a California-based team **[*14]** or teams, plus the number of duty days the professional athlete worked as a professional athlete in California for any team other than a California-based team, and dividing that number by the total number of duty days the professional athlete was employed anywhere as a professional athlete.
>
> (B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.
>
> (2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.

Curiously, applicant reads this language as *expanding* the subject-matter jurisdiction of the WCAB with regard to professional athletes, rather than limiting it. Applicant's argument appears to be that because he meets the requirements of subdivision (A) and (B), his claim may be heard in California, even in the absence of any other statutory subject-matter jurisdiction. In other words, applicant's argument is that subdivision (d) actually provides *greater* statutory subject-matter **[*15]** authorization for the claims of professional athletes than for other injured workers, in the specific circumstance where the requirements of (A) and (B) are met.

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 **[*16]** 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*.)

With the above in mind, we do not agree with applicant's reading of the statute. The language of the subdivision is clearly intended to limit the general grants of subject-matter jurisdiction found in sections 3600, 3600.5, subdivision (a), 5300, and

5305, not to expand them. We do not think it reasonable that in acting to limit the ability of certain professional athletes to file claims in California, the Legislature intended at the same time to give other professional athletes *greater* ability to file claims in California than other injured workers, by providing them another way to establish statutory subject-matter jurisdiction not available to anyone else.

This reading of the statute comports with the stated purpose of the amendments, as summarized in the second Assembly Floor Analysis of Assembly Bill 1390:

> According to the author, out of state professional athletes are taking advantage of loopholes in California's workers' compensation system to the detriment of substantial California interests, and to **[*17]** the detriment of California sports teams. Specifically, as a result of the 'last employer over which California has jurisdiction' rule, and the absence of an enforceable one-year limitations period, California teams are facing cumulative injury claims from players with extremely minimal California contacts, but substantial playing histories for teams in other states. In addition, out of state sports teams are having claims filed against them in California that are resulting in a number of serious consequences to California, including: 1) clogging the workers' compensation courts with cases that should be filed in another state, thereby delaying cases of California employees, 2) causing all insured California employers to absorb rapidly escalating costs being incurred by CIGA, and 3) placing increasing pressure on insurers to raise workers' compensation rates generally in California to cover these rapidly rising unanticipated expenses. In many of these cases the players have already received workers' compensation benefits from other states, as well as employment benefits covering the same losses they are seeking compensation for in California."

(Assem. Com. on Ins., Second Assembly Floor **[*18]** Analysis of Assem. Bill No. 1390 (2013-2014 Reg. Sess.).) In other words, the purpose of the amendment was to limit the ability of "out of state professional athletes" with "extremely minimal California contacts" to file workers' compensation claims in California. (*Ibid.*) The fact that applicant's claim does not fall into the category of claims that the Legislature wanted to specifically prevent from being heard in California does not mean that they conversely intended to authorize his claim even if it could not otherwise be heard based on existing statutory provisions.

Accordingly, we conclude the most reasonable reading of *section 3600.5, subdivision (d)* is that it serves to limit the general jurisdictional statutes governing subject-matter jurisdiction, not to expand them. When an athlete meets the requirements of (A) and (B) of the subdivision and therefore avoids its application, it merely means that the athlete's claim is not *exempted* by the subdivision. It does not mean that the subdivision *authorizes* a claim when it would otherwise lack subject-matter jurisdiction.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of our Opinion and Decision after Reconsideration is **DENIED**.

WORKERS' **[*19]** COMPENSATION APPEALS BOARD

Deputy Commissioner Patricia A. Garcia

I concur,

Commissioner Marguerite Sweeney

Commissioner Deidra E. Lowe

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