

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No. ADJ11449857

[REDACTED],
Applicant,

vs.

[REDACTED]

Defendants.

FINDINGS AND ORDER

PRO ATHLETE LAW GROUP
By: **ROY LaFRANCIS** (via videoconference)
Attorneys for Applicant

COLANTONI, COLLINS, MARREN, PHILLIPS & TULK
By: **ARIELLA ONYEAMA** (via videoconference)
Attorneys for Defendants [REDACTED]

DIMACULANGAN & ASSOCIATES
By: **STUART OKIN** (via videoconference)
Attorneys for Defendants **TUCSON TOROS** and
Travelers Insurance, specially appearing
to challenge personal injury jurisdiction on behalf of its policy

The above-entitled matter having been heard and regularly submitted, the Honorable Jeremy Clift, Workers' Compensation Judge, now decides as follows:

FINDINGS OF FACT

1. [REDACTED] born on 11-24-1970 while employed during the period 06-12-1991 through 8-31-2009 as a professional athlete, Occupational Group Number 590, at

various locations inside and outside of California, by [REDACTED], whose workers' compensation insurance carrier was [REDACTED] administered by [REDACTED], claims to have sustained injury arising out of and occurring in the course of employment to his head, neck, shoulders, hands, back, elbows, wrists, fingers, hips, knees, ankles, feet, internal, pain, and suffers a sleep disorder.

2. Applicant's claim is barred by Labor Code Statute 3500.5(d) as the requirements of the Statute are not satisfied.

ORDER

The matter is ordered off calendar.



Jeremy Clift
WORKERS' COMPENSATION JUDGE

DATE: July 16, 2021

Served on the parties listed below at their addresses shown on the current official address record:

COLANTONI COLLINS LOS ANGELES, Email

[REDACTED]

On: 7/16/21 By: BT

[REDACTED] -vs- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

WORKERS' COMPENSATION JUDGE: JEREMY CLIFFT

DATE: JUNE 16, 2021

JOINT OPINION ON DECISION

Applicant was employed as a professional athlete during the period June 12, 1991 through August 31, 2009 where he claims to have sustained industrial injury to his head, neck, shoulders, hands, back, elbows, wrists, fingers, hips, knees, ankles, feet, internal systems, and suffers from pain and a sleep disorder. (ADJ114149857)

During this period Applicant played for multiple different teams:

1. June 12, 1991 - July 21, 1995 with the New York Mets
2. July 21, 1995 - May 8, 1997 with the Kansas City Royals
3. May 8, 1997 - November 3, 1998 with the Cleveland Indians
4. 1999 - 2000 with the Yakult Swallows, Japanese league
5. December 7, 2000 - October 10, 2001 Arizona Diamondbacks
6. January 15, 2002 - March 26, 2002 with the Houston Astros
7. May 4, 2002 - October 15, 2002 St. Louis Cardinals
8. February 27, 2003 - March 24, 2003 Arizona Diamondbacks
9. 2003 Atlantic City Surf
10. April 2, 2004 - October 15, 2004 San Francisco Giants
11. 2005 - Mexican league
12. April 1, 2009 - August 3, 2009 Tucson Toros

A second cumulative trauma is also alleged for the period May 22, 2009 - September 12, 2009 while Applicant was employed by the Tucson Toros and claims injury to his head, neck, sleep, vision, back, spine, shoulders, elbows, wrists, hands, legs, right knee, ankles, feet, internal system, ENT/TMK, neuro issues, psyche, hearing problems, and suffers chronic pain. Travelers Indemnity Company was the insurance carrier for the Toros during this period.

The sole issue before the Court is jurisdiction over Applicant's claim. Defendant Travelers raises Labor Code Sections 3600.5(c) and 3600.5(d) and Ace American Insurance raises Labor Code section 3600.5(d).

Applicant testified that during his first three seasons with the Mets he was assigned to their minor league affiliates the Kingsport Mets, the Columbia Mets, and the Birmingham Mets, none of which traveled to California for any games. (MOH/SOE dated March 25, 2021, page 3 line 19) During his fourth season with the Mets, he began playing for the Norfolk Tides before being called up to the Mets' major league team. He recalls being on the roster for 12 games occurring in California, 2 of which he played in. (MOH/SOE dated March 25, 2021, page 4 line 15)

Applicant remained with the Mets for his fifth season in 1995 during which he was assigned to their Norfolk affiliate and did not travel to California with the team. Later during this season he was traded to the Kansas City Royals with whom he traveled to California for two games. (MOH/SOE dated March 25, 2021, page 5 line 3)

He remained with the Royals the following season and traveled to California again with the team for four games. (MOH/SOE dated March 25, 2021, 5 line 11)

In 1997, Applicant began the season with the Royals and participated in two games in California before being traded to the Cleveland Indians; he does not recall traveling to California after his trade. (Exhibit C, page 5)

The following season Applicant remained with the Indians, with both their affiliate the Buffalo Bisons and later in the season called up to the Indians again. He did not travel to California with either team. (MOH/SOE dated March 25, 2021, page 6 line 1)

Applicant's 1999 and 2000 seasons were spent in the Japanese league with the Yakult Swallows. Aside from spring training which did not occur in California, all games were in Japan. (MOH/SOE dated March 25, 2021, page 6 line 6)

Applicant returned to the United States for the 2001 season after signing with the Arizona Diamondbacks where he was assigned to their affiliate the Tucson Sidewinders. He traveled to California with this team participating in games in Fresno and Sacramento. (MOH/SOE dated March 25, 2021, page 6 line 12) The season game log for the team indicates seven games in California for the season. (Exhibit "E")

In 2002 Applicant began the season with the Houston Astros but was released after spring training and joined the St. Louis Cardinals and assigned to their affiliate the Memphis Redbirds. He has no recollection of traveling to California with the team. (MOH/SOE dated March 25, 2021, page 6 line 21)

Applicant again joined the Arizona Diamondbacks the following season in 2003 but was released prior to the end of spring training. He then joined the Atlantic City Surf for several months. Applicant did not travel to California with either team. After leaving the Surf, he played winter ball in Puerto Rico for their entire season. (MOH/SOE dated March 25, 2021, page 7 line 1)

In 2004, Applicant joined the San Francisco Giants and was assigned to their affiliate the Fresno Grizzlies. He attended spring training and remained with the team the entire season, but was inactive during the last 6 games due to injury. (MOH/SOE dated March 25, 2021, page 6 line 13)

The following year Applicant played in the Mexican league, for the Acereros de Monclova in 2005 and the Pericos de Puebla; all games were in Mexico. (MOH/SOE dated March 25, 2021, page 6 line 17)

From 2006 to 2009 Applicant did not participate in professional baseball and instead worked as a pitching coach and helped his wife with a business that she owned.

Applicant's final year of professional baseball was in 2009 when he again returned to the Tucson Toros. He participated in spring training and played the entire season. Of the 13 games that were played in California Applicant participated in three

of the games; the other ten games applicant traveled with the team. He attended spring training in 2010 for the Toros but did not participate in the season.

(MOH/SOE dated March 25, 2021, page 9 line 1)

ADJ11637566 (Travelers)

Travelers alleges Applicant cannot maintain his claim due to exemption under Labor Codes section 3600.5(c) and 3600.5(d).

Labor Code Section 3600.5(c)

The language of Labor Code section 3600.5(c) reads:

(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.

(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.

Labor Code Section 3600.5(c) applies to professional athletes hired outside of the State of California and their employer to exempt them from the provision of the division the Statute is contained in where the employee athlete is temporarily working in California and where both (1) the employer has workers' compensation insurance coverage or the equivalent under the laws of another state and (3) that insurance covers the employee athlete while in California.

The Statute defines temporary work in the State for the employer in Subsection (B)(3) where during the year preceding Applicant's last day of work for the employer, less than 20% of duties days were spent in California, with duty days defined in Labor Code section 3600.5(g) as any day that the employee is under the "direction or control of his or her employer pursuant to a player contract."

In the present matter Applicant was hired outside of California by the terminal employer for this CT, the Tucson Toros. Submitted as their Exhibit "A" is a copy of the workers' compensation policy for defendant covering the Applicant's year of play with the team and extending insurance for Applicant while temporarily working in California. (Travelers Exhibit A, page 9, 12)

As to the number of duty days in California, Applicant's duty days as calculated by defendant are correct; the 17 duty days in California of 116 fall below the threshold of 20% required by the statute.

Having been hired outside of California and satisfying the conditions of Labor Code section 3600.5(c), the defendant has shown that the requirements for exemption under the Statute are met.

Labor Code Section 3600.5(d)

Defendant also alleges that Labor Code Section 3600.5(d) also bars exempts Applicant's claim. That Statute reads:

(1) 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 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.

The effect of this Statute works to exempt an Applicant's claim where during the last year of the Applicant's employment, all of the employers are exempt from 3600.5(c)(1) unless satisfying the Statute's two prong test. First, that the employee must have worked for two or more California-based teams over his career, or more than 20% of the duty days are in California or for a California-based team. The second requirement asks whether the athlete employee worked for fewer than seven seasons for non-California based teams over their career. If both requirements to the Statute are met, liability for applicant's claim is determined according to Labor Code section 5500.5. Failing to meet either subsection (A) or (B) will exempt an applicant's claim.

Applicant's only season playing for a California based team was his 2004 season with the Fresno Grizzlies, and therefore does not meet the requirement that two teams are based in the State. As to overall duty days in his career, the season he played for the Fresno Grizzlies and including other duty days in California where other teams traveled to play, Applicant does nearly approach the 20% threshold of the statute.

Furthermore, Applicant played for more than 7 seasons for teams based outside of California and therefore does not satisfy the second requirement of the statute.

As neither requirement for the Statute is satisfied, Applicant's claim is exempt and cannot be maintained.

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Defendant the San Francisco Giants also raised exemption under Labor Code section 3600.5(d). Application of the Statute here is the same; Applicant only played for one California team and did not have 20% or greater of his duties days over his

career. He also did not play less than 7 seasons for teams based outside of California. As the factual basis is identical to Applicant's companion case, this claim of injury is also exempted under the same analysis.

DATE: July 16, 2021

A handwritten signature in black ink, appearing to read "Jeremy Clift". The signature is fluid and cursive, with the first name "Jeremy" written in a larger, more prominent script than the last name "Clift".

Jeremy Clift
WORKERS' COMPENSATION JUDGE

Served on: 7/16/2021
By: BT