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

Case No. ADJ10607572

WILLIAM OHMAN,

Applicant,

vs.

WASHINGTON NATIONALS; CINCINNATI REDS; CHICAGO WHITE SOX; FLORIDA MARLINS; BALTIMORE ORIOLES; LOS ANGELES DODGERS; ATLANTA BRAVES; CHICAGO CUBS; ACE AMERICAN INSURANCE COMPANY,

Defendants.

FINDINGS AND ORDER

HEARING REPRESENTATIVE FOR APPLICANT
GLENN, STUCKEY & PARTNERS
BY: SHAWN D. STUCKEY

ATTORNEY FOR DEFENDANTS
BOBER, PETERSON & KOBY
BY: TIMOTHY A. PETERSON

The above entitled matter having been heard and regularly submitted, the Honorable Jennifer Kaloper-Bersin, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1) William Ohman, born August 13, 1977, claims to have sustained injury arising out of and during the course of employment to his to head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, bilateral toes, neuro, psych, internal, and sleep while employed between the period June 21, 1998 through March 5, 2013, as a professional athlete, group number 590, by the following organizations: Chicago Cubs, Atlanta Braves, Los Angeles Dodgers,

Baltimore Orioles, Florida Marlins, Chicago White Sox, Cincinnati Reds, and the Washington Nationals.

2) While employed as a professional athlete, the Applicant's agent did not have any powers to bind Applicant to an agreement with a team.
3) Applicant failed to carry his burden to show he satisfies the requirement that he had 20% of his duty days in California, pursuant to Labor Code §3600.5(c).
4) There is no California jurisdiction in this matter pursuant to Labor Code §3600.5.
5) All remaining issues are moot.

ORDER

IT IS HEREBY ORDERED THAT:

1. WCJ sustains Defendants' objections: Exhibits 9 & 10 are excluded.
2. WCJ denies Defendants' motion to strike medical reports of Dr. Greenzang, Dr. Nudleman, Dr. Dimmick, and Dr. Fonseca.

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Date: March 1, 2019

Jennifer Kaloper-Bersin
Workers' Compensation Administrative Law Judge
SANTA ANA DISTRICT OFFICE

Service made on the parties listed below at their addresses shown on the current Official Address Record:

BOBER PETERSON TUSTIN Email
TED GREENZANG SANTA ANA Fax
UNITED MED RADIOLOGY NETWORK LOS ANGELES US Mail
ALL SPORTS LAW SANTA ANA Email
GLENN STUCKEY SANTA ANA Email
CHUBB GROUP LOS ANGELES US Mail
WILLIAM OHMAN US Mail

On: March 1, 2019
By: Michael Yulo

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

Case Number: ADJ10607572

WILLIAM OHMAN	**-vs.-**	**WASHINGTON NATIONALS; CINCINNATI REDS; CHICAGO WHITE SOX; FLORIDA MARLINS; BALTIMORE ORIOLES; LOS ANGELES DODGERS; ATLANTA BRAVES, CHICAGO CUBS; ACE AMERICAN INSURANCE COMPANY**

WORKERS' COMPENSATION JUDGE: **JENNIFER KALOPER-BERSIN**

DATE: **MARCH 1, 2019**

OPINION ON DECISION

Evidentiary Issues

Defendant objected to Applicant's Exhibit 9 based on relevance. Defendant also objected to Exhibit 10 based on relevance and hearsay and Exhibits13 and 14 based on the best evidence rule and a violation of due process. Regarding applicant's Exhibits 9 and 10, the WCJ does not find photographs of the applicant or various journalistic articles written about him to be relevant or permissible as to the hearsay rule. The WCJ sustains those objections and Exhibits 9 and 10 are excluded.

Defendant also filed motions to strike the treating physician's reports of Dr. Greenzang, Dr. Nudleman, Dr. Dimmick, and Dr. Fonseca. Dr. Greenzang's reports are admitted into evidence as Applicant's Exhibits 5, 6 and 15, Dr. Nudleman's report is admitted into evidence as Applicant's Exhibit 4, Dr. Dimmick's report is admitted into evidence as Applicant's Exhibit 3, and Dr. Fonseca's report is admitted into evidence as Applicant's Exhibit 2. There is no dispute as to admissibility of the reports, particularly in light of defendants indicating as

much within each of their motions, “Though Defendant does not object to the report being listed and admitting to evidence…” Defendant objects to those reports as “being improperly obtained medical-legal reporting, not reimbursable nor allowable for use by the WCJ to rely upon.” In considering statutes which allow admissibility into evidence of medical reports, the WCJ notes the following:

> 1. Labor Code § 4062.2(f): “…Parties may agree to an agreed medical evaluator at any time…” 2. Labor Code § 4064(d): “No party is prohibited from obtaining any medical evaluation or consultation at the party’s own expense.” 3. Labor Code § 5703. “The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing: a. Reports of attending or examining physicians.”

The medical reports of the above-referenced physicians are admitted into evidence and the request to strike them is denied.

The WCJ reviewed the issues raised on the pre-trial conference statement A WCJ may correct clerical errors at any time (*Toccalino* v. *Worker's Comp. Appeals Bd. (Sierra Vista Hospital*) (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145,154-155].) Regarding the issue identified as “liability for self –procured treatment expenses for the PQME in the amount of $991.83, retainer fee for Dr. Greenzang in the amount of a $2700 and retainer fee for Dr. Nudleman in the amount of $1090.99,” the WCJ finds there are no Panel Qualified Medical Evaluators pursuant to Labor Code §§4061, 4062.

Factual Background

Applicant, William Ohman, was a professional baseball player who played from 1998 through 2013 for the following organizations: Chicago Cubs, Atlanta Braves, Los Angeles Dodgers, Baltimore Orioles, Florida Marlins, Chicago White Sox, Cincinnati Reds, and the Washington Nationals. In his career, his one California-based team is the Los Angeles Dodgers, where he played for the 2009 season, while the remaining teams were not based in California.

Applicant claims to have sustained injury, arising out of and in the course of employment to head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, bilateral toes, neuro, psych, internal and sleep. Having observed applicant's demeanor at trial, the WCJ found his testimony credible as to his recollection of many events over the course of his career with multiple teams.

Jurisdiction – Labor Code §§3600.5, 5305

Labor Code §§3600.5(a), 5305 provides that California has jurisdiction over a claimed injury if the contract of hire was made in California. California jurisdiction over claims by professional athletes has also been found when the employment contract was made within the state regardless of whether any games were played in the state. (*Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15 [64 Cal.Comp.Cases 745]; *New York Yankees v. Workers' Comp. Appeals Bd.* (*Montefusco*) (2001) 66 Cal.Comp.Cases 291 (writ den.).)

Here, the WCJ addresses the contracts of hire and whether any were made in California. In 2009 the applicant was located in Arizona when he signed a Minor League agreement (MOH/SOE, September 18, 2018, p. 7). Other contracts were signed by applicant to play for the Orioles for the 2010 season, the Chicago White Sox for 2011 and 2012 season, the Cincinnati Reds for the 2012 season, and the Washington Nationals for the 2013 season. Applicant was located in Arizona when he signed those contracts (MOH/SOE, January 8, 2019, p 4). While applicant maintains his belief that his California-based agents bound him to the negotiated terms of his various contracts, it is important to recall that applicant had the ultimate approval of those terms, once they were made known to him.

It has been discussed in *Jenkins v. Arizona Cardinals, 2012 Cal. Wrk. Comp. P.D. LEXIS 189* that no contract is formed by an agent unless the agent had full authority to bind the client. It has also been reiterated in *Triplett v. WCAB, (2018) 25 Cal. App. 5th 556* that negotiating on behalf of a player is not sufficient for jurisdictional purposes when the applicant's final approval is required for contractual purposes and the contract is not signed in

California. The facts here are not persuasive that applicant's agent had any powers to bind applicant to an agreement with a team.

For example, when a season concluded, Applicant and his agent discussed potential places to play, and compared contracts of other baseball players; the agent then contacted the teams and negotiated terms with the teams directly, and then, *applicant's agent would present the deal to him*. (MOH/SOE, September 18, 2018, p 7, emphasis added). It is apparent, then, that for the contracts negotiated, the terms must then be relayed to applicant and ultimately placed into the standard uniform player contract that is ultimately signed by applicant.

Applicant testified "the agent was in charge of the contracts, and his job was to play baseball." (MOH/SOE, September 18, 2018, p 8). The terms negotiated, however, must still ultimately be approved by the applicant through his signature indicating he intended to move forward with that agreement. While applicant believed signing the contract was just a formality (MOH/SOE, September 18, 2018, p 8), applicant also agreed that if he wanted to he could reject the agreement by not signing the contract (MOH/SOE, January 8, 2019, p 4). Instead, it is apparent that whenever the agent presented various deals for him, the agent acted as a negotiator arguing for the best contract terms. Applicant testified that he believed "the agent has already bound him to the terms agreed to with the team because he signed an agreement with the agent to act on his behalf in negotiating the terms with each team" (MOH/SOE, January 8, 2019, page 7). This fails to fully appreciate the terms of the agency agreement itself and the effect such terms have on the contracting parties.

The question of whether the agent had full authority as applicant believed is answered by reviewing the "Athlete-Agency Agreement." Applicant's agreement with his agency contains the recitals indicating a desire by the applicant to have the agency "negotiate or solicit professional baseball contracts…" on his behalf (Defense Exhibit C, p 1). Like most contracts, it further provides the terms and conditions for this representation which are identified with particularity. In return for compensation, the contracting parties agree to the following

> "Scope of Services: Salary Negotiations. The agency will represent the player to solicit and/or negotiate, on player's behalf, employment with one or more professional sports

> teams for a professional baseball contract… Player shall not be bound by the results of any such negotiations unless and until Player approves and accepts the terms thereof by executing the applicable professional sports contract.” (Defense Exhibit C, p 2).

Whatever applicant’s belief may have been regarding his agent’s activities as a negotiator, the agency’s contract with the applicant does not support that the agent binds the client to terms with a team prior to execution of the standard player contract. Therefore, his agent does not have the full authority as required, the agent is simply haggling for his client, who ultimately must sign the agreement.

It could be argued that if applicant’s agent had the final say on applicant’s behalf, binding him to any agreement reached in negotiations, there would be no need to present the deal to the applicant for review or for applicant to execute the standard player contract. Additionally, if it had been the intent of the applicant and the agency to allow the agent to enter into a binding agreement on behalf of the applicant, the “Athlete-Agency Agreement” would have specifically indicated that the agent may simply execute the standard player contract on applicant’s behalf, similar to a power-of-attorney.

Reinforcing the understanding of the agency agreement’s terms, which limits the power of the agent, is the fact that there is no place for the agent to sign the standard uniform player agreement on behalf of the player. Both applicant’s testimony and employer’s witness Mark Scialabba, indicated that the agents cannot sign the standard uniform agreement on behalf of the player and there is no signature space for the agent on that form (MOH/SOE January 8, 2019, p 8).

Further, applicant’s testimony believing that a binding agreement had been formed via his agent prior to execution of the standard contract is not sufficient to create such a binding agreement on all parties. There was no evidence presented that either the other party, which would be the team itself, believed there was a binding agreement formed between the player and the team prior to execution of the standard uniform player agreement. Per the testimony of Mr. Scialabba, the Washington Nationals consider a player to be hired when the contract is signed by the player (MOH/SOE, January 8, 2019, p 9). The date the contract is in effect is the date that the player signs the contract (MOH/SOE, January 8, 2019, p 9) Applicant also

understood that for purposes of hiring and receiving benefits, the team considers the player to be an employee as of the date the player signs the contract (MOH/SOE, January 8, 2019, p 9).

Regarding where applicant's agents were when either of them entered into negotiations with various teams, applicant's testimony that he believed they were in California because of a Beverly Hills phone number is not sufficient as to personal knowledge of his agent's physical locations and is not persuasive.

Labor Code Section 3600.5(d) sets forth exceptions to Labor Code Section 3600.5(c). Labor Code Section 3600.5(d)(1) states:

> With respect to an occupational disease or cumulative injury a professional athlete and his employer shall be exempt from this division when all of the professional athlete's employer in his 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 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 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 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 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.

In this case, the applicant's last year of injurious exposure as a baseball player was the period of March 5, 2012 through March 5, 2013, which would place applicant's career at that time with the Chicago White Sox and Cincinnati Reds for the 2012 season and the Washington Nationals for the 2013 season. As discussed, applicant's contracts were signed by applicant in Arizona and as a player with those teams, and there is no evidence to support that applicant

satisfies the requirement that he had 20% of his duty days in California pursuant to Labor Code §3600.5(c).

Further, applicant's almost 15-year career with the aforementioned teams does not satisfy the requirements for having played the required number of seasons with a California-based team and that, over the course of his professional career, he worked for fewer than seven seasons for any team or teams other than a California-based team as described above.

Based on a review of the evidence, relevant case law and the Labor Code, there is no support that California has jurisdiction over applicant's injury and all remaining issues are moot.

Date: March 1, 2019

Jennifer Kaloper-Bersin
Workers' Compensation Administrative Law Judge
SANTA ANA DISTRICT OFFICE

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