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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ISAIAH KACYVENSKI,
Applicant,

vs.

OAKLAND RAIDERS; ACE USA
Administered by ESIS; ST. LOUIS RAMS and
GREAT DIVIDE INSURANCE COMPANY
Administered by BERKLEY SPECIALTY
UNDERWRITING MANAGER, LLC,
Defendants.

Case Nos. **ADJ3190591 (SFO 0510866)**
ADJ9088362
ADJ9524437
(Anaheim District Office)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND DECISION
AFTER RECONSIDERATION

13 Defendant, the St. Louis Rams, by and through its insurance carrier, Great Divide Insurance
14 Company (collectively Rams), timely petitions for reconsideration of the Joint Award issued by the
15 workers' compensation administrative law judge (WCJ) on August 20, 2014. The WCJ's Joint Award
16 awarded benefits to applicant jointly and severally against the Rams and against defendant, the Oakland
17 Raiders, which is insured by Ace USA (collectively Raiders). This Joint Award issued after applicant,
18 Isaiah Kacyvenski, and the Raiders submitted a Stipulations with Request for Award (Stipulations)
19 providing that applicant sustained cumulative injury to various body parts from October 3, 2006 through
20 August 13, 2007 while employed as a professional athlete, resulting in 44% permanent disability and a
21 need for medical treatment.

22 In their petition, the Rams' contend that: (1) the Joint Award is based solely on the Stipulations
23 between the Raiders and applicant; (2) the Rams are not a party to the Stipulations and Joint Award since
24 Kacyvenski previously elected to proceed against the Raiders under Labor Code section 5500.5(c);¹ (3)
25 applicant's election precluded the Rams' participation at trial when the Raiders and applicant entered into
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¹ Further reference to statute is to the Labor Code unless stated otherwise.

1 the stipulated award; and (4) therefore the Joint Award against the Rams violates due process. The Rams
2 contend that the Joint Award is in excess of the WCJ's powers under section 5903(a), and request the
3 WCAB to grant reconsideration and order an amended Joint Award solely against the Raiders.

4 We have reviewed the Petition for Reconsideration, the WCJ's Report and Recommendation on
5 Petition for Reconsideration (Report), the WCJ's Amended Report, and the record. The WCJ's Report
6 recommends denial of the petition because section 5500.5(c) requires the Joint Award to be joint and
7 several against any two or more employers which may be liable. For the following reasons, we shall
8 grant reconsideration, amend the Joint Award deleting the Rams, and issue an award solely against the
9 Raiders.

10 DISCUSSION

11 The relevant facts are briefly summarized. On May 8, 2008, applicant Kacyvenski filed an
12 Application for Adjudication of Claim alleging that he sustained cumulative injury through 2007 to
13 various body parts while a professional football player for the Raiders. The Raiders admitted left knee
14 injury, and the Rams were joined as defendants. At the Mandatory Settlement Conference of July 8,
15 2014, Kacyvenski elected to proceed solely against the Raiders under section 5500.5(c). The Rams did
16 not appear at the scheduled trial of August 20, 2014, during which time the Raiders and Kacyvenski
17 entered into the Stipulations with Request for Award. The WCJ issued the Joint Award against the
18 Raiders and Rams the same day based on stipulations between the Raiders and Kacyvenski. The Rams
19 timely petitioned for reconsideration challenging inclusion under the Joint Award.

20 The Rams contention that due process was violated by imposing liability under the Joint Award
21 while participation is precluded has merit. It is fundamental that due process requires opportunity to
22 participate in the proceeding determining liability before liability is imposed. (*Katzin v. Workers' Comp.*
23 *Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230, 236]; *Fidelity & Cas. Co. of*
24 *New York v. Workers' Comp. Appeals Bd. (Harris)* (1980) 103 Cal.App.3d 1001, 1015 [45
25 Cal.Comp.Cases 381].) Here Kacyvenski elected to proceed solely against the Raiders, and further
26 participation by the Rams at trial resulting in the Joint Award was precluded under section 5500.5(c).
27 We find nothing in the record indicating the Rams admitted or have liability as an employer.

1 The WCJ reasons in his Report that section 5500.5(c) requires a joint and several award against
2 defendants who may be liable after applicant joins defendants with exposure and elects to proceed against
3 a defendant. However, section 5500.5(c) actually requires “a joint and several award as against any two
4 or more employers who may be held liable for compensation benefits.” We find no indication in the
5 record that the Rams admit employment or are an employer. The Rams also argue in the petition for
6 reconsideration that the WCAB may lack subject matter jurisdiction based upon minimum contacts in
7 California. (See *Federal Ins. Co. v. Workers’ Comp. Appeals Bd. (Johnson)* (2013) 227 Cal.App.4th
8 1116 [78 Cal.Comp.Cases 1257].) Since the threshold requirement of employment for a joint and several
9 award has not been met, the Joint Award against the Rams and its insurance carrier, Great Divide
10 Insurance Company, is not authorized under section 5500.5(c). Therefore, the Joint Award is excess of
11 the WCJ’s powers under section 5903(a), and must be amended to exclude the Rams and its insurer.²

12 This result is consistent with statutory scheme under section 5500.5. Kacyvenski is entitled to
13 receive stipulated benefits awarded from Ace USA, as the insurer for the Raiders. Ace USA can timely
14 pursue any right to contribution from Great Divide Insurance Company under the statute.

15 For the foregoing reasons,

16 **IT IS ORDERED** that the Petition for Reconsideration is **GRANTED**.

17 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers
18 Compensation Appeals Board that the Joint Award issued by the workers’ compensation administrative
19 law judge on August 20, 2014 is **AMENDED** to read as follows:

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26 ² We will also amend the Award to delete any references to temporary disability indemnity payable
27 under section 2 of the Stipulations. The Stipulations contain no provision for payment of temporary
disability indemnity.

1 **AWARD**

2 **AWARD IS MADE** in favor of **ISAIAH KACYVENSKI** against **ACE USA** (adjusted by
3 **ESIS**), of:

- 4 (A) Permanent disability indemnity in accordance with section 3 of the Stipulations with
5 Request for Award, less the sum of \$9,041.00, payable to applicant's attorney as the
6 reasonable value of services rendered.
- 7 (C) Liens in accordance with section 7 of the Stipulations;
- 8 (D) Further medical treatment in accordance with section 4 of the Stipulations;
- 9 (E) Reimbursement for medical-legal expenses in accordance with section 5;
- 10 (F) Stipulations in sections 8 and 9 are approved;

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(G) The matter is ordered taken off calendar.
(H) ADJ9524437 is hereby dismissed without prejudice.

WORKERS' COMPENSATION APPEALS BOARD

Neil P. Sullivan
DEPUTY

NEIL P. SULLIVAN

I CONCUR,

Marguerite Sweeney

MARGUERITE SWEENEY

Katherine Zalewski

KATHERINE ZALEWSKI



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOV 21 2014

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

**FLOYD, SKEREN & KELLY, LLP
ISAIAH KACYVENSKI
LEVITON, DIAZ & GINOCCHIO
WAI & CONNOR, LLP**

PR/ara