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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA VILLANUEVA, ***Applicant,*** **vs.** **EL ROSAL RESTAURANT; STAR INSURANCE COMPANY; and ILLINOIS MIDWEST INSURANCE AGENCY, LLC (Claims Administrator),** ***Defendants.***	**Case No. ADJ8497855** **(Stockton District Office)** **OPINION AND DECISION AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration to further study the factual and legal issues. This is our Decision After Reconsideration.

Defendant, Star Insurance Company, filed a timely petition seeking reconsideration of the Findings of Fact, Award, and Order issued by the workers' compensation administrative law judge (WCJ) on April 14, 2016. In that decision, the WCJ ordered defendant to reissue a $20,000.50 settlement check to applicant. In her Opinion on Decision, the WCJ concluded that "applicant's credible testimony in conjunction with the opinions of the applicant's handwriting expert ..., who reviewed multiple documents signed by the applicant, are found to support the applicant's representation that she did not cash the settlement check because it was stolen along with her Mexican Identification card."

In its petition for reconsideration, defendant contends in substance that: (1) the WCJ's finding that applicant's check was cashed by means of a forged signature is not supported by substantial evidence; and (2) it should not be liable for the reissuance of a stolen check that was mailed to the address of applicant that was listed on the January 27, 2014 compromise and release agreement (C&R).

The WCJ filed a Report and Recommendation on Petition for Reconsideration recommending that defendant's petition be denied. No answer has been received from applicant.

For the following reasons, we will overturn the WCJ and find instead that applicant did negotiate the $20,000.50 settlement check. Accordingly, we will order that applicant take nothing further by reason of her claim.

I. BACKGROUND

On January 27, 2014, the WCJ issued an order approving a C&R between the parties. The C&R was for the gross amount of $23,530.00, less an attorney's fee of $3,529.50, leaving a net of $20,000.50 payable to the applicant. The C&R listed applicant's address as 601 Butte Avenue, Modesto, CA 95358.

On January 28, 2014, applicant's counsel filed a January 27, 2014 letter with the WCAB advising it that applicant's new address was 624 Rose Lawn Avenue, Apartment 15, Modesto, CA 95351. Per a January 27, 2014 proof of service, this change of address letter was also mailed to defendant's counsel in Sacramento and to defendant's claims administrator (Illinois Midwest Insurance Agency) in Springfield, Illinois.

On January 30, 2014 (i.e., three business days after the January 27, 2014 mailing of notice to defendant that her address had changed to Rose Lawn Avenue), Illinois Midwest mailed a $20,000.50 check to applicant *at her Butte Avenue address*.

Also, on January 30, 2014, applicant's counsel faxed a letter to defendant's attorney and to Illinois Midwest stating: "I note when I got back to my office that the applicant has changed addresses. Her address is 624 Roselawn Ave., Apt. 15, Modesto, CA 95351. Please make sure that the adjuster sends the settlement check to that address. Do NOT use the old address."

The undisputed evidence establishes that the $20,000.50 check mailed to applicant *at her Butte Avenue address* on January 30, 2014 was cashed under a signature that was purportedly applicant's and that this check was made payable to Swaids Market. Applicant claims, however, that she never received the $20,000.50 check and that the signature on the check is not hers.

A trial was held on June 17, 2015 and March 9, 2016.

At trial, defendant called the first witness, Abdul Kassim.

Mr. Kassim testified that he is the general manager for Swaids Market, which cashes checks as an every day part of its business. The shop charges a 10-percent fee for cashing checks. Although he

owned the shop until 2011, he transferred its ownership to his son. It is his son who must authorize the cashing of checks. Mr. Kassim does not have a check-cashing permit and he acknowledged that he has a criminal history, including felony fraud in getting a loan to help make payments when he owned the shop and misdemeanor fraud for recording false documents to avoid foreclosure on his property.

Mr. Kassim said that applicant presented the $20,000.50 check to him for cashing. He personally knew applicant because she had been a customer at the shop for approximately five years. In addition, she presented a Mexican consular identification with her photo on it.[1] Applicant signed the check in front of him. Mr. Kassim did not compare the signatures on the check and the identification card because he and applicant were neighbors and he did not think there would be trouble.

Mr. Kassim testified that, at the time applicant presented the check, she was at the shop together with Jorge Gonzalez and his wife, Patricia Ramos, who both lived next door to the shop. Mr. Kassim knew applicant lived with Mr. Gonzalez and Ms. Ramos because he had seen applicant at that house for approximately two to three months. Mr. Kassim said the shop usually has no problem cashing checks for neighbors.

Mr. Kassim testified he did not give any cash to applicant right away because his son, the owner, had to verify the check and authorize payment. Therefore, Mr. Kassim merely photocopied the check. He testified, however, that applicant gave Mr. Gonzalez the authority to later receive the cash from the check, although Mr. Kassim acknowledged that "this was strange."

According to Mr. Kassim, Mr. Gonzalez came back at some point, at which time Mr. Kassim's son authorized the cashing of the check. The son completed the back of the check so that it could be deposited into the shop's account.

Mr. Kassim said that, after his son authorized the cashing of the check, Mr. Gonzalez came back the following day. Although the check would not clear for about two weeks, Mr. Gonzalez was given

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[1] At trial, Mr. Kassim was shown two different Mexican consular cards for applicant, one dated October 22, 2005 (i.e., Defendant's Exhibit D-2) and the other dated December 7, 2011 (i.e., Defendant's Exhibit D-1). He testified he was given only one of these cards at the time the check was presented. Although Mr. Kassim said that the December 7, 2011 card was the one he was shown, he also said that he copied the card and later gave the copy to an investigator. The evidence reflects it was the October 22, 2005 card that was copied at Swaids Market.

$8,000 and an IOU for the $10,000 that remained due after the shop kept its $2,000 ten-percent fee. About a week later, Mr. Gonzalez came back for the remaining $10,000 in cash. Mr. Kassim did not call applicant about the cashing of the check because she gave authority in front of him for Mr. Gonzalez to cash the check. Mr. Kassim never saw applicant again after she had given that authority.

About two to three months after cashing the check, Mr. Kassim had Mr. Gonzalez arrested for fighting with Mr. Kassim's son-in-law. One of them had a gun and the other had a knife. After his arrest, Mr. Gonzalez was deported.

After Mr. Kassim's trial testimony, applicant testified.

Applicant said she signed the January 27, 2014 C&R at her attorney's office in Modesto. She confirmed that the signature on the C&R is hers. However, the Butte Avenue address listed on the C&R was not her correct address at the time she signed it. She was then living at the Rose Lawn address. She told her attorney about the change of address before she signed the C&R. Applicant testified that she never received the $20,000.50 settlement check and that the signature on the check is not hers.

Applicant stated that she lived at the Butte Avenue address for approximately four months, but left there in August 2013. She rented the space from Ms. Ramos, who is the wife of Mr. Gonzalez. In October 2013, applicant went to the Butte Avenue address to pick up her belongings, but Ms. Ramos said that everything had been stolen. Applicant believes, however, that it was Ms. Ramos who stole everything, including applicant's purse with her Mexican consular identification card.

Applicant testified that, about three days after the January 27, 2014 C&R, she went to the Butte Avenue address to see if a letter had arrived containing her settlement check. She talked with Ms. Ramos about the letter. Ms. Ramos told her that the letter had not arrived but said "I'll call you when I receive it." Applicant replied, "for what, you already cashed the check."

Applicant testified she never went to Swaids Market requesting to cash her settlement check and that she had no discussions with Mr. Gonzalez about cashing the check. She had never cashed any checks at the store. She had only visited it approximately three times to buy popsicles or gum. When she was working, she cashed her checks at a place next to her work.

At trial, applicant was shown two Mexican consular identification cards. One issued on October 22, 2005 and expired on October 22, 2010 (i.e., Defendant's Exhibit D-2). The other issued on December 7, 2011 and will expire on December 7, 2018 (i.e., Defendant's Exhibit D-1). She said the October 22, 2005 card was the stolen one. The December 7, 2011 card is a replacement one she received after she learned that her prior card had expired. She learned that the October 2005 card had expired when she went to a bank in 2012 to cash a $344.23 check for being off work for two weeks.[2]

In addition to the testimony of Mr. Kassim and applicant, various documents were received in evidence at the June 17, 2015 trial.

Applicant's Exhibit 1 is the previously discussed January 27, 2014 letter from applicant's attorney notifying the WCAB of applicant's new Rose Lawn Avenue address, together with proof showing contemporaneous service on defendant's attorney and Illinois Midwest.

Applicant's Exhibit 2 is the previously discussed January 31, 2014 fax that applicant's attorney sent to defendant's counsel and Illinois Midwest about applicant's new Rose Lawn Avenue address and asking defendant to "NOT use the old address" when mailing the settlement check.

Applicant's Exhibit 3 is the transcript of the May 28, 2015 deposition of Mr. Kassim. However, although the entire deposition transcript was "marked for identification" at the June 17, 2015 trial, the only page actually admitted in evidence was page 9 (see Minutes of Hearing/Summary of Evidence [MOH/SOE], 6/17/15 trial, at 3:3-3:8) and it is the only page we will consider.[3] At page 9 the following exchange took place:

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[2] The C&R reflects that the $344.23 check was for two weeks of temporary disability from May 28, 2012 through June 11, 2012.

[3] Under WCAB Rule 10750, the WCAB's "record of proceedings" consists of, among other things, "evidence received in the course of a hearing" and "exhibits marked but not received in evidence." (Cal. Code Regs., tit. 8, § 10750.) Nevertheless, under WCAB Rule 10600, the fact that a document was marked for evidence does not mean that it is in evidence. (Cal. Code Regs., tit. 8, § 10600.) It is, of course, well-established that a WCAB decision must be based only "on admitted evidence in the record." (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Page 29 was also offered in evidence by applicant, but defendant objected to its admission. The MOH/SOE indicates that the WCJ planned to rule on its admissibility in her Opinion on Decision (see MOH/SOE, 6/17/15 trial, at 3:3-3:8). It appears, however, that the WCJ never actually made any such ruling.

> [Mr. Kassim]: ... Here's what happened. Do you want me to explain to you?
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> [Defendant's attorney]: If you would.
>
> [Mr. Kassim]: Okay. Maria [applicant] came with a check with Jorge [Gonzalez] the first time, and we didn't have that money. And then I told them to come back in a couple of days when the owner is here, I can show it to him also. They came back in a couple of days. The owner saw them. He said, "Look, this is what's going to happen if you want me to cash the check for you guys. You have to leave the check hold for at least a week until we have the funds to cash the check. And then if you guys want it, then I can take whatever for fees for check cashing and give you the rest of the money."
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> She said, "Okay," and "We'll be back." Jorge also was with her. That was the one who lived in the house together. Okay. And then he come back later on with the check — Jorge — he said, "Okay. Here's the check."
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> I said, "I need Maria again. She can sign it, and I take her ID." He comes back with Maria. She was there, his wife, kids, all of them. So he handed me the — her ID. I took a picture of it.
>
> I told him, "Okay. You need to come back ... [end of page 9].

Defendant's Exhibit A consists of various documents, including: (1) an undated and unnotarized declaration under penalty of perjury signed by applicant stating she "never received" her settlement check; and (2) a notarized declaration under penalty of perjury signed by applicant on April 9, 2014 again stating she "never received" her settlement check.

Defendant's Exhibit B also consists of various documents, including: (1) a February 13, 2014 letter from Illinois Midwest to applicant acknowledging her request to have the $20,000.50 settlement check reissued; (2) a copy of the January 30, 2014 check in the amount of $20,000.50; and (3) a March 25, 2014 email from Illinois Midwest to defendant's counsel stating: "Attached is the stop pay which was sent to the new address given to us by A/A [applicant's attorney], however it was returned as unable to be forwarded ... which leads me to believe that she doesn't live here either."

Defendant's Exhibit C again includes multiple documents, including: (1) a February 4, 2014 letter from defendant's counsel to applicant's counsel acknowledging receipt of applicant's counsel's January 27, 2014 notice of applicant's change of address to Rose Lawn Avenue, stating defendant's counsel's concern "about a lost check scenario," and stating "[a]lthough I have reached out to my client in order to

try to hold off payment [of the check], I cannot be certain that we will do so in time"; (2) a February 14, 2014 letter from defendant's counsel to applicant's counsel requesting that the latter have applicant sign a stop-payment affidavit, which defendant's counsel would shortly fax to applicant's counsel; (3) a March 3, 2014 letter from defendant's counsel to applicant's counsel stating "[a] stopped pay alone along with a new check will not protect my client [because] [a]n unscrupulous injured worker might attempt to cash both checks"; and (4) a March 13, 2014 letter from defendant's counsel to applicant's counsel asking the latter to "[p]lease ask your client directly whether she received payment" and noting that Illinois Midwest had sent applicant's counsel a fax on February 25, 2014 advising that the check had been cashed on February 10, 2014.

Defendant's Exhibit D has already been discussed. It consists of the two Mexican consular identification cards issued on October 22, 2005 and December 7, 2011.

Defendant's Exhibit E is the transcript of the March 4, 2015 deposition of applicant. Once again, though, while the entire deposition transcript was "marked for identification" at the June 17, 2015 trial, the only pages actually admitted in evidence were pages 12, 26, 41, and 43 through 44 (see MOH/SOE, 6/17/15 trial, at 4:5-4:9) and it is only these pages we will consider.[4]

At page 12 of her March 4, 2015 deposition, applicant essentially testified that she moved into the Butte Avenue address in October 2012 and moved out in April 2013, that she moved into the Rose Lawn Avenue address in July 2013, and that between April 2013 and July 2013 she lived elsewhere taking care of some children.

At page 26, applicant testified that she lived at the Butte Avenue address in "February, March, April, May, June, July, August, September, and October." She paid her rent money to Patricia [Ramos]. Jorge Gonzalez, Patricia's husband, also lived at Butte Avenue.

At page 41, applicant verified that she signed the C&R on January 27, 2014. At the time, she was not still living at Butte Avenue but had been living at Rose Lawn Avenue for four or five months, i.e.,

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[4] See fn. 3, *supra*. Page 45 was also offered in evidence by defendant, but there was an objection to its admission and the MOH/SOE indicates that a ruling on its admissibility would be made in the WCJ's Opinion on Decision (see MOH/SOE, 6/17/15 trial, at 4:5-4:9). Once again, though, it appears the WCJ never actually made any such ruling.

since July. She did not sign the C&R at the Stockton district office of the WCAB because she had no transportation to get there.

At pages 43 through 44, applicant testified that the signature on line 8 of the DWC-1 claim form dated August 8, 2012 is not her signature, but the two signatures on an August 7, 2012 Substitution of Attorneys form is hers. She also said that she believed Patricia Ramos cashed her settlement check. This is because after applicant's attorney's office notified her that the check had been cashed, she went to Ms. Ramos to ask whether she had received a letter. Ms. Ramos responded, "You've never gotten any mail" and "[n]othing has arrived." Applicant was also shown a copy of a Mexican consular card and said, "[n]o, that's not mine."

On June 29, 2015, the WCJ issued a non-final decision. Among other things, Finding of Fact No. 5 of the decision stated:

> A determination of credibility is unable to be determined without the signature on the Compromise and Release of 27 January 2014 and the signature on the settlement check number 390344 being compared; development of the record is required.

Furthermore, the WCJ's accompanying Opinion on Decision stated:

> The issues to be resolved in the present matter tum on the credibility of the applicant. The Court has done a cursory inspection of the signature on the Compromise and release, dated 27 January 2014, for which judicial notice has been taken, and the settlement check, number 390344, Defense exhibit B2, page 2, and finds they are dissimilar enough that the expertise of a handwriting expert is necessary. Therefore, the parties are being ordered to obtain the opinion of a handwriting expert to evaluate the two signatures and provide an opinion as to whether the signatures were both from the applicant, or if just one of the signatures was written by the applicant.

The case returned to the trial calendar on March 9, 2016 after each party obtained a handwriting expert. The WCJ admitted into evidence the December 20, 2015 report of applicant's handwriting expert, David S. Moore, together with various appended documents. She also admitted the August 3, 2015 report of defendant's handwriting expert, Marcel B. Matley, together with various appended documents.[5] Neither expert's qualifications were disputed.

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[5] The WCJ marked Mr. Matley's August 3, 2015 report as Defendant's Exhibit E. At the June 17, 2015 trial, however, the WCJ had already marked applicant's March 4, 2015 deposition as Defendant's Exhibit E. Fortunately, this inconsistency should not cause any evidentiary confusion because the WCJ had sub-identifications for Mr. Matley's report and its appended documentation, e.g., Exhibit E-1, Exhibit E-2, etc.

On the cover page of his December 20, 2015 report, Mr. Moore declared:

> My formal finding in this case was that Ms. Villanueva "very probably did not write" her purported hand printed endorsement signature depicted on the back of the questioned check. This finding is an extremely strong statement of probability and the Standard (attached as Exhibit "E" to my report) defines that term as the examiner being "virtually certain." Logically, someone else signed Ms. Villanueva's name to the back of the check with no intent to write like her.

The body of Mr. Moore's December 20, 2015 report included a list of the "material examined," which consisted of the disputed hand printed endorsement on the $20,000.50 settlement check as well as "[c]opies of [seven] documents depicting the known hand printed signatures of Maria Villanueva." The body of the report also included a "Results of Examination," which stated:

> An examination of all the evidence submitted in this case resulted in the following conclusion and observations:
>
> Maria Villanueva, K1 (1c-7c) [i.e., a reference to the "known" hand printed signatures of applicant], **very probably did not write** the questioned "Maria Villanueva" hand printed endorsement signature depicted on the back of Q1c [i.e., a reference to the disputed signature on the settlement check].
>
> The questioned Villanueva endorsement signature depicted on the back of Qlc does not pictorially resemble the known Villanueva hand printed signatures.
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> The known Villanueva hand printed signatures are internally consistent with one another and they display a relatively unskilled, yet individualistic, hand printed signature. To some degree, the questioned endorsement signature appears to be written with a skill level that exceeds Maria Villanueva's handwriting ability. Therefore, it is very probable that this questioned signature was written by some unidentified individual who was not attempting to write like Villanueva when the questioned endorsement signature was written.
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> (Emphasis in original.)

On the other hand, Mr. Matley's August 3, 2015 report reached a different conclusion. Early on in his report, Mr. Matley stated:

> You asked if the purported endorsement shown [on the] settlement check ..., and which [applicant] denies having signed, is, nevertheless, her authentic signature. I have concluded that:
>
> 1. based on all the available and reliable handwriting evidence, [applicant] did write the endorsement signature on [the settlement check]; and
> 2. the endorsement signature was altered from [applicant's] usual and customary way

> of signing and writing her name as shown in the [known] exemplars of [hand-printed signature]
>
> I shall set forth the bases for these opinions, specifically the theory, method and facts that I relied on. Further, I shall state the limitations in the materials available to me and explain how they have been overcome or taken into consideration.

In support of this opinion, Mr. Matley listed the documents he used for his comparative examination of signatures, including the disputed check bearing the purported signature of applicant, ten documents that were submitted to him "as bearing genuine samples of how [applicant] signs and writes her name," and enlarged copies of all of the foregoing signatures "for ease of observation." Mr. Matley also included approximately six pages of discussion regarding the bases for his opinions. In his discussion, Mr. Matley stated among other things:

> [I]n order to identify an individual as the writer of a questioned signature it must be shown that there are sufficient significant similarities between the individual's exemplar signatures and the questioned signature so as to eliminate the reasonable probability of another writer, and there should be no significant difference between the individual's exemplar signatures and the questioned signature that cannot be reasonably explained.
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> In order to prove a disputed or denied signature to be false, it must be shown that there are one or more significant differences between the questioned signature and the genuine signatures of the purported writer for which there is no reasonable explanation.
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> ***
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> ... [N]o examiner of documents and handwriting can definitely authenticate the signature, much less the entire document. What one can do is conclude that the available and reliable evidence supports, either as a reasonable suspicion or to a probable or highly probable degree, the authenticity of the questioned signature. However, the examiner may be able to make a positive proof of falsity either in the signature or in the entire document, even to a definite opinion.
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> A definite finding of falsity can be made if there are sufficient significant differences between the questioned and exemplar signatures, which differences cannot be credited to the copying process. In the present case there are no cogent significant differences that are not reasonably explained by the alteration of [applicant's] customary and usual way of writing and signing her name, as will be explained infra.

Although it is not feasible here to discuss the balance of Mr. Matley's report in full, Mr. Matley went on to discuss in some detail such things as: the "pen scope" of applicant's hand-printed signatures (e.g., how many letters are written "as a single group in one graphic act" and "changes in size-ratio, slant, base line and/or letter spacing"); the "word spacing" of her hand-printed signatures; the differences between the style or size/ratio of the hand-printed "M" of applicant's first name; and the "changes in base line caused by [a] change in slant to an unaccustomed left slant."

Mr. Matley concluded his report by stating:

> [Applicant] wrote the endorsement on the back of the settlement check ... .
>
> All seemingly significant differences between the endorsement signature [on the settlement check] and the exemplars [of her known signatures] are reasonably explained by evidence of an alteration to an unaccustomed left slant in the endorsement signature.
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> There is no available and technically reliable handwriting evidence that the endorsement signature is false.

Thereafter, the WCJ issued her April 14, 2016 decision at issue here. There, the WCJ found that "[g]ood cause exists to order defendant ... to re-issue the settlement check in the amount of $20,000.50 to the applicant ... ." In her Opinion on Decision, the WCJ said:

> The issues to be resolved in the present matter turn on the credibility of the applicant. The Court has done a cursory inspection of the signature on the Compromise and release, dated 27 January 2014, for which judicial notice has been taken, and the settlement check, number 390344, Defense exhibit B2, page 2, and found they are dissimilar enough that the expertise of a handwriting expert was necessary. After reviewing the competing expert opinions, the evidence submitted, and the testimony of the witnesses, the applicant's and the applicant's expert's testimony is found to be more credible than the witnesses offered by the defendant. Therefore, applicant's credible testimony in conjunction with the opinions of the applicant's handwriting expert *(App. Ex. 4),* who reviewed multiple documents signed by the applicant, are found to support the applicant's representation that she did not cash the settlement check because it was stolen along with her Mexican Identification card. Since the applicant did not cash the settlement check, the carrier is responsible for re-issuing the settlement check to the applicant.

Defendant's timely petition for reconsideration followed.

II. DISCUSSION

A WCJ has the opportunity to observe the demeanor of the witnesses and to weigh their statements in connection with their manner on the stand; therefore, the credibility determinations of a WCJ are entitled to great weight and should be disturbed only where there is contrary evidence of considerable substantiality. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 256 [54 Cal.Comp.Cases 349].)

Nevertheless, it is the Appeals Board that is the ultimate finder of fact. (Lab. Code, §§ 5907, 5953.) On reconsideration, "the board is empowered to resolve conflicts in the evidence [citations], to make its own credibility determinations [citations], and ... to reject the findings of the [WCJ] and enter its own findings on the basis of its review of the record." (*Garza, supra*, 3 Cal.3d at p. 317; accord: *Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280–281 [39 Cal.Comp.Cases 310].) On reconsideration, the Appeals Board has "considerable discretion" and "enjoys broad authority" (*Redner v. Workmen's Comp. Appeals Bd.* (1971) 5 Cal.3d 83, 92 [36 Cal.Comp.Cases 371]) and it can "redetermine the case upon the existing record" and take a "different view of the same evidence" than the WCJ. (*Argonaut Ins. Exchange v. Industrial Acc. Com.* (*Bellinger*) (1958) 49 Cal.2d 706, 709–712 [23 Cal.Comp.Cases 34].)

Here, evidence of considerable substantiality leads us to conclude that applicant *did* sign and cash the $20,000.50 settlement check. Therefore, we will reverse the WCJ's contrary determination.

The WCJ's conclusion that applicant did not sign and cash the settlement check was *not* primarily based on the WCJ's assessment of applicant's credibility and her demeanor on the witness stand. To the contrary, the WCJ's June 29, 2015 decision expressly stated that "[a] determination of credibility is unable to be determined" without "obtain[ing] the opinion of a handwriting expert to evaluate the two signatures" on the C&R and the settlement check." It was only "[a]fter reviewing the competing expert opinions" that the WCJ's April 14, 2016 decision concluded that "the applicant's and the applicant's expert's testimony is found to be more credible than the witnesses offered by the defendant." Accordingly, it is patent that the WCJ's decision was largely predicated on the conclusions of applicant's

handwriting expert and less so on the credibility of applicant herself.

Yet, it is well established that any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb, supra,* 11 Cal.3d at p. 281); *Garza, supra,* 3 Cal.3d at p. 317.) Further, an expert's opinion does not constitute substantial evidence unless it is reasoned and not conclusory. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal. 2d 399, 407 [33 Cal.Comp.Cases 647] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 799, 800-801 [33 Cal.Comp.Cases 358] (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based); *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117 ("when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an 'expert opinion is worth no more than the reasons upon which it rests' ").)

Here, the December 20, 2015 opinion of applicant's handwriting expert, Mr. Moore, is essentially purely conclusory because it is unaccompanied by a sufficiently reasoned explanation that relates the facts to the ultimate conclusion. In substance, Mr. Moore opines that applicant "very probably did not write" the hand-printed endorsement signature on the back of the settlement check (1) because the endorsement signature "does not pictorially resemble the known Villanueva hand printed signatures" and (2) because "the questioned endorsement signature appears to be written with a skill level that exceeds Maria Villanueva's handwriting ability." Yet, this amounts to a mere conclusion that "the signature does not look like hers." It lacks any objective and detailed signature analysis such as the size, slant, letter spacing, word spacing and other factors that were considered by defendant's expert, Mr. Matley.

However, Mr. Matley's opinion that applicant "did write the endorsement signature" on the settlement check does constitute substantial evidence. His opinion was not merely conclusory but instead

included a detailed and reasoned factual analysis and explanation of the basis for his opinion.

These points, by themselves, provide evidence of considerable substantiality to overturn the WCJ's credibility determination.

Yet, beyond the fact that the only expert handwriting opinion constituting substantial evidence establishes that applicant *did* sign the settlement check, there are additional reasons to conclude that she is not credible.

It is well-settled that "the interest of a witness may be a factor warranting rejection of even uncontradicted evidence." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 167 [48 Cal.Comp.Cases 566].)

Here, not only does applicant have a direct interest in asserting that she did not sign the settlement check, but there are inconsistencies in her testimony that raise significant questions regarding her credibility.

For one, applicant testified that, approximately three days after the January 27, 2014 C&R, she went to the Butte Avenue address to ask Ms. Ramos whether a letter containing her settlement check had arrived. Applicant further testified that when Ms. Ramos told her no letter had arrived, applicant immediately concluded that Ms. Ramos had stolen and "already cashed the check." Yet, there is no evidence that applicant contemporaneously reported the check as stolen to the police or any other authorities. Indeed, defendant's February 13, 2014 letter to applicant reflects that she did not report the check as stolen, but rather as "never received." In an April 9, 2014 notarized declaration under penalty of perjury regarding the check, applicant again hand-wrote that the check was "never received."

Although not as consequential as applicant's early assertions that the check was "never received" and her early failures to report or claim the check as stolen, there are other inconsistencies in her testimony. For example, she testified that, sometime before October 2013, Ms. Ramos stole her October 22, 2005 Mexican consular identification card and other belongings. Yet, applicant presented no evidence that she ever reported the card or belongings as stolen. Furthermore, applicant's trial and

deposition testimony were inconsistent regarding when she lived at the Butte Avenue address.[6]

Furthermore, as highlighted in the discussion of the evidence (Background, *supra*), applicant's claim that she did not sign the check was rebutted by Mr. Kassim. He testified that applicant signed the check in front of him and presented a Mexican consular identification card with her photo on it. We recognize, of course, that Mr. Kassim admitted to having committed both felony fraud and misdemeanor fraud. Yet, while Mr. Kassim's fraud convictions are probative with regard to his credibility (*Boeken v. Philip Morris, Inc.* (2004) 122 Cal.App.4th 684, 727; see also Evid. Code, § 788 [evidence of witness's prior felony conviction admissible for the purpose of attacking witness's credibility]), these convictions do not mandate that we find him non-credible, particularly given there is no evidence that the crimes were "near in time" to when applicant's check was endorsed and cashed. (See *People v. Brooks* (2017) 3 Cal.5th 1, 52; see also *People v. Fries* (1979) 24 Cal.3d 222, 226-227 [remoteness in time of prior conviction detracts significantly from the value of this evidence in impeaching credibility].) Moreover, we conclude that Mr. Kassim had significantly less self-interest in his testimony than applicant did in hers. Among other things, he would not have been liable to her had the check been fraudulently cashed. (*Barrett Business Services, Inc. v. Workers' Comp. Appeals Bd. (Rivas)* (2012) 204 Cal.App.4th 597 [77 Cal.Comp.Cases 213] (employer remained liable to applicant for stolen settlement check that was negotiated with a forged endorsement at a check-cashing service and paid by the employer's bank; mere issuance of the check did not discharge employer's underlying obligation to applicant).)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact, Award, and Order issued by the workers' compensation administrative law judge on April 14, 2016 is **RESCINDED** in the following is **SUBSTITUTED** therefor:

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[6] At trial, applicant testified that she lived at the Butte Avenue address for about four months, leaving there in August 2013. Yet, at page 12 of her March 4, 2015 deposition, applicant testified she moved into Butte Avenue in October 2012 and moved out in April 2013. Then, at page 26 of that deposition she said she lived at Butte Avenue in "February, March, April, May, June, July, August, September, and October."

FINDINGS OF FACT

1. Maria Villanueva, while employed on 27 May 2012, as a waitress by El Rosal Restaurant, sustained and/or claims to have sustained an injury arising out of and in the course of her employment to her head, neck, back, shoulders, and psyche.

2. At the time of the injury the workers' compensation carrier was Star Insurance Company.

3. The applicant's claims were resolved by way of Compromise and Release on 27 January 2014 for a total settlement amount of $25,530.00; a fee of $3,529.50, was paid out of the proceeds and received by the applicant's attorney, Central Valley Injured Workers' Legal Clinic; the remainder, $20,000.50 was to be paid to the applicant.

4. Defendant did pay the $20,000.50 balance to applicant and applicant negotiated the settlement check.

5. There is no good cause to order defendant is to re-issue a settlement check in the amount of $20,000.50.

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ORDER

IT IS ORDERED that applicant shall take nothing further by reason of her claim herein.

WORKERS' COMPENSATION APPEALS BOARD

KATHERINE ZALEWSKI

I CONCUR,

DEIDRA E. LOWE

JOSÉ H. RAZO

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUG 18 2017

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

MARIA VILLANUEVA
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC
BRADFORD & BARTHEL

NPS/bea