

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

ANGELICA BELTRAN, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT,
permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11295290
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Amended Report and Recommendation on Defendant's Petition for Reconsideration (Amended Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Amended Report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

Preliminarily, we note that the WCJ issued an Amended Report for the sole purpose of removing the clerical error in the original Report that referred to a June 28, 2024 Amended Findings of Fact that did not in fact issue.. Accordingly, defendant's request to be served with the Amended Findings of Fact is moot. We further note that transcripts of the trials on April 15, 2024 and May 9, 2024 were requested by defendant and were uploaded in EAMS¹ on July 30, 2024. However, there has been no indication that defendant has sought to file a supplemental pleading

¹ EAMS is an acronym for Electronic Adjudication Management System, which is the computerized system used by the Division of Workers' Compensation (DWC) to store and maintain Appeals Board electronic case files. (See Cal. Code Regs., tit. 8, §§ 10269(p), 10215 et seq. 10301(p).)

addressing any discrepancy in the WCJ's Minutes of Hearing and Summaries of Evidence. (See Cal. Code Regs, tit. 8, § 10964.)

The issues framed for trial were (1) “[w]hether Applicant received Check No. 1012171 allegedly issued October 20, 2011, in the amount of \$4,401.17” and (2) laches.

Without proper citation to the record as required by WCAB Rules 10945 and 10972, defendant asserts in its Petition for Reconsideration that “Here, Defendant mailed to Applicant’s proper address, the check in the amount of \$4,401.17 on November 20, 2011.” (Petition for Reconsideration, at p. 5:26-27.) In fact, there is no evidence in the record that Check No. 1012171 was addressed, mailed, or delivered to applicant’s proper address.

The evidence produced by defendant is a claims transaction totals printout, for claim number 30101280904-001, showing a pay date of October 20, 2011, to Payee Angelica Beltran, check number 1018171, for the period May 18, 2011 through October 11, 2011. (Defendant’s Exhibit A.) Exhibit A does not contain any proof of addressing, mailing, or delivery. Separately, defendant produced a Notice Regarding Start and End of Permanent Disability Benefits (Notice), dated October 25, 2011. (Defendant’s Exhibit C.) The Notice states, “A first and final payment of permanent disability in the amount of \$4,401.17 *is sent separately* ... The payment covers the period from [May 18, 2011] through [October 11, 2011.]” (Defendant’s Exhibit C, emphasis added.)

At trial, defendant’s witness, a future medical care examiner, testified that he began working on applicant’s claim in March 2023 (MOH/SOE, 5/9/24, at p. 4:1-2); that “he provided a benefits paid printout to applicant showing payment in the amount of \$4,401.17 was issued to the applicant;” (*id.*, at p. 3:2-3); that “on the current claim Sedgwick issued check #1012171 on October 20, 2011 in the amount of \$4,401.17;” (*id.*, at p. 5:9-11); that “the check was issued by Bank of America on behalf of LAUSD” (*id.*, at pp.; 4:8-9); and that “he was not familiar with Sedgwick’s policies and procedures in effect in 2010 and 2011.” (*Id.*, at p.3:19-20.) No testimony was given regarding the addressing or mailing of the check. However, defendant’s witness did testify that “there are no claim notes from claim examiner Erin Lebel confirming Ms. Beltran received the \$4,401.17 check.” (*Id.* at p. 4:24 - 5:2.) On this record, we agree with the WCJ that “where the issuer [] does not deliver the check to the payee [], the issuer remains liable to the payee on the underlying obligation. (*Barrett Business Services, Inc. v. Workers' Comp. Appeals Bd.*, (2012) 204 Cal.App.4th 597, 603 [77 Cal.Comp.Cases 213] (footnote omitted.)

Likewise, the mailing presumption does not lead to a different result. Evidence Code section 641 states as follows: “A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.” (Evid. Code, § 641.) This rule is well established. (See *Hagner v. United States* (1932) 285 U.S. 427, 430, 52 S.Ct. 417 [“[t]he rule is well settled that proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed”].) However,

[T]he presumption that a letter mailed was received is rebuttable. (*People v. Smith* (2004) 32 Cal.4th 792, 799.) The trier of fact is obligated to “assume the existence of the presumed fact unless and until evidence is introduced to support a finding of its nonexistence.” (*Craig v. Brown & Root* (2000) 84 Cal.App.4th 416, 421, 100 Cal. Rptr. 2d 818.) A mere allegation that the recipient did not receive the mailed document has been found to be insufficient to rebut the presumption. (See *Alvarado v. Workmen’s Comp. Appeals Bd.* (1970) 35 Cal.Comp.Cases 370 (writ den.) and *Castro v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.).) If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce “believable contrary evidence” that it was not received. (*Craig, supra*, at pp. 421-422, citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12, 113 Cal. Rptr. 790.) Once the recipient produces sufficient evidence showing non-receipt of the mailed item, “the presumption disappears” and the “trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received.”

(*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Board en banc).)

As noted above, there is no evidence that the check was addressed or mailed to applicant’s proper address. Therefore, the mailing presumption does not apply. However, even if it had applied, applicant would have rebutted it. Applicant testified credibly that she did not receive the \$4,401.17 check (MOH/SOE, 5/9/24, at pp. 5:5-10) and that she knows she did not receive the check because in 2011 she was living paycheck to paycheck and counting her pennies. (*Id.* at p. 5:19-21.) The WCJ found applicant’s testimony credible and we have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determinations. (*Id.*) Therefore,

based on this record, we are persuaded that the WCJ's factual findings are supported by substantial evidence.

Lastly, we address the affirmative defense of laches. Laches is a question of fact to be determined by the trier of fact. (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 402 [81 Cal.Comp.Cases 685].) "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359, 360, see also *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77.) For the reasons stated by the WCJ in the Amended Report, we agree that defendant did not establish an unreasonable delay on applicant's part where she credibly testified that she was not aware defendant issued Check No. 1012171 in the amount of \$4,401.17 prior to signing the settlement documents in 2022. (MOH/SOE, 4/15/24, at pp. 4:22 - 5:21.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 26, 2024

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

**ANGELICA BELTRAN
LEYVA & NIGHT
LAW OFFICES OF WETZMAN & ESTES**

PAG/abs

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *abs*

AMENDED

**REPORT AND RECOMMENDATION ON DEFENDANT'S
PETITION FOR RECONSIDERATION
(Report is amended solely to remove the clerical error that an Amended
Findings of Fact was issued on June 28, 2024)**

I

INTRODUCTION

1. Applicant's Occupation: Special Education Assistant
Date of Injury: December 2, 2010
Parts of Body Injured: lumbar spine and cervical spine
2. Identity of Petitioner: **Defendant** filed the Petition.
Verification: The Petition is verified.
3. Date of Findings of Fact: June 06, 2024
4. **Petitioner's contentions:**
Defendant contends:
 - (a) the Court acted without or in excess of its powers;
 - (b) the evidence does not justify the findings of fact;
 - (c) the findings of fact do not support the Order, Decision or Award.

II

FACTS

Pursuant to the parties' stipulation, Angelica Beltran, born March 8, 1957, while employed on December 2, 2010, as a Special Education Assistant Occupation Group No. 214, at Los Angeles, California by Los Angeles Unified School District, sustained injury arising out of and in the course of employment to her lumbar spine and cervical spine (ADJ11295290). Pursuant to the parties' stipulation, at the time of injury, the employer was permissibly self-insured and adjusted by Sedgwick.

The case in chief settled via Stipulation with Request for Award that was approved by Judge Andrew Malagon on September 27, 2022 awarding applicant future medical care to the lumbar spine and cervical spine, and awarding a total of 7% permanent disability, the equivalent of \$4,830.00 less \$724.00 awarded as applicant's attorney fee.

Following approval of the Stipulation with Request for Award, Defendant served applicant with a Notice Regarding Permanent Disability Benefits Payment Termination dated October 28, 2022 stating "payments are ending because we have paid your award in full." (Exhibit B). Following receipt of the Notice of Permanent Disability, Applicant thru her attorney, promptly disputed having received any Permanent Disability advances related to the current claim. Defendant provided a benefit paid printout dated June 6, 2023 to show defendant issued permanent disability benefit Check Number 1012171 in the amount of \$4,401.17 on October 20, 2011 to the payee Angelica Beltran (Exhibit A). However, defendant failed to provide a copy of the actual check or any information as to who cashed or endorsed Check Number 1012171.

The issue of whether applicant received Check Number 1012171 allegedly issued October 20, 2011, in the amount of \$4,401.17 and the affirmative defense of laches proceeded to Trial.

At Trial defendant failed to provide a copy of the cashed check or any information as to who cashed or endorsed Check Number 1012171. Applicant credibly testified that at the time the alleged check was issued in 2011 she was working full time for the same employer, she was not represented by counsel, and did not expect to receive a permanent disability advance. Having failed to provide a copy of the cashed check, defendant provided an email from claim examiner Jo Anna San Miguel dated December 1, 2022 that states in relevant parts, "our system is showing Check # 1012171 was cleared on 12/13/2011." (Exhibit D).

At Trial the Court found defendant failed to meet its burden to show applicant received, cashed, and or endorsed the permanent disability benefit advance allegedly issued via check No. 1012171 on October 20, 2011 in the amount of \$4,401.17. The Court Ordered Defendant LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. to pay applicant, Angelica Beltran, permanent disability in the amount \$4,830.00 less the \$724.00 previously awarded as applicant's attorney fee leaving a balance owed to applicant of \$4,106.00. In response to the Court's finding Defendant filed the pending Petition for Reconsideration arguing the Court acted without or in excess of its powers; the evidence does not justify the findings of fact; and the findings of fact do not support the Order, Decision or Award. Applicant filed a response to Defendant's Petition for Reconsideration dated July 3, 2024.

III

DISCUSSION

A Petition for Reconsideration is the appropriate mechanism to challenge a final order, decision, or award (Labor Code Section 5900). An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. See *Maranian v. Workers' Compensation Appeals Board* (2000) 81 Cal. App. 4th 1068 [65 Cal. Comp. Cases 650; *Safeway Stores, Inc. v. Workers' Compensation Appeals Board (Pointer)* (1980) 104 Cal. App. 3d 528 {45 Cal. Comp Cases 410}].

It is settled law that when the issuer of a check or other negotiable instrument does not deliver the check to the payee, the issuer remains liable to the payee on the underlying obligation.

(Barrett Business Services, Inc. v. Workers' Comp. Appeal Board (2012) 204 Cal.App.4th 597, 603, 139 Cal. Rptr. 3d 109. Additionally, it is well- established that the mere issuance of a check does not discharge a defendant's liability (Barrett Business Services v. Workers' Comp. Appeals Bd.(Rivas) (2012) 204 Cal.App.4th 597 [139 Cal. Rptr. 3d 109, 77 Cal.Comp.Cases 213]; California Uniform Commercial Code section 3420.

In the present matter applicant Angelica Beltran credibly testified she did not receive the permanent disability benefit check# 1012171 in the amount of\$4,401.17. At Trial defendant provided a benefits paid printout dated June 6, 2023 to show defendant issued permanent disability benefit check # 1012171 in the amount of \$4,401.17 on October 20, 2011 to the payee Angelica Beltran (Exhibit A). However, defendant failed to provide copy of the actual check or any information as to who cashed the check or whether the check was cashed or endorsed by Angelica Beltran. Unable to provide a copy of the cashed check defendant provided an email from claim examiner Jo Anna San Miguel dated December 1, 2022 that states, "Our system is showing Check # 1012171 was cleared on 12/13/2011." (Exhibit D). The email fails to indicate whether it was applicant or someone else that allegedly cashed the check, and fails to provide any information as to what account, bank, or financial institution cashed the alleged check.

At Trial the Court found the testimony of claim examiner Michael Martinez to be credible and noteworthy. Mr. Martinez testified that within the claim file there is a note dated in 2011 from prior claim examiner Erin Lebel reaching out to applicant about signing settlement documents, but there are no claim notes confirming applicant ever received the permanent disability advance check in the amount of \$4,401.17. The fact applicant did not miss any time from work following her injury coupled with the testimony that applicant refused to sign settlement documents prior to becoming represented by counsel, supports applicant's credible testimony that she did not receive any disability checks in 2011 and did not expect to receive any disability checks in 2011.

Defendant argues laches should bar applicant from recovery because applicant unreasonably delayed in raising the issue she failed to receive the October 20, 2011 permanent disability advance, and financial institutions typically maintain records for no longer than seven years. However, applicant credibly testified she became aware of the alleged October 20, 2011 permanent disability advance after she settled her case, and after receiving the Notice Regarding Permanent Disability Benefits Payment Termination dated October 28, 2022. (Exhibit B). The Court finds laches does not apply in the current matter because applicant credibly testified she first became aware defendant allegedly issued a permanent disability advance check when she settled her case in 2022, and she promptly notified her attorney she never received the alleged permanent disability advance, and applicant's attorney promptly requested defendant investigate whether any evidence exist to show applicant actually received the permanent disability advance. The fact defendant's financial institution maintains records for no longer than seven years does not discharge defendant's liability to applicant, and does not prevent defendant from submitting available evidence such as claim notes or claim examiner testimony to support their position.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be denied.

Date: 08/02/2024

EDGAR MEDINA
Workers' Compensation Judge