

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

Compensation Review Board

CRB No. 12-182

**RENARDA HOUSE,
Claimant–Petitioner,**

v.

**ONE PRICE DEPARTMENT STORE AND LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Insurer-Respondent.**

Appeal from a Compensation Order of
The Honorable Anand K. Verma
AHD No. 04-258C, OWC Nos. 590570 and 564623

Matthew Pepper, Esquire, for the Claimant/Petitioner
Melissa A. Bright, Esquire, for the Employer-Insurer/Respondent

Before: JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR, and MELISSA LIN JONES, and *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, *et seq.*, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

OVERVIEW

Renarda House injured her low back on May 14, 2002 when she was lifting a forty-pound box while working as a shelf stocker at One Price Department Store.² She underwent a course of treatment

¹ Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

² This claim was originally the subject of a dispute between One Price and another employer, Barnes & Noble Bookstore, with each employer contending that Ms. House’s low back injury was causally related to an injury sustained

under Dr. Eric Dawson, which included a discectomy at L5-S1. Dr. Dawson recommended that Ms. House be provided a recumbent exercise bike to help manage her ongoing low back pain. One Price demurred, and undertook the utilization review (UR) process, engaging Dr. Ira Posner for that purpose. Dr. Posner authored a UR report in which, *inter alia*, he opined that the use of a recumbent exercise bike was not medically reasonable and necessary to treat Ms. House’s low back problems.

Ms. House presented the dispute to an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES). In a Compensation Order issued October 17, 2012, the ALJ denied the request that One Price be ordered to provide Ms. House such a bike. Ms. House appealed the denial to the Compensation Review Board (CRB). One Price has filed nothing in opposition.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law.³ *See* D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

ANALYSIS

In this appeal, Ms. House sets forth numerous reasons why, in her view, provision of the exercise bike would be beneficial, and argues that “there is substantial evidence indicating that Dr. Dawson’s prescription of a recumbent bike is both reasonable and necessary for Ms. House’s ongoing treatment and recovery”. Memorandum in Support of Application for Review, Argument I.

However, the fact that there is substantial evidence in support of the losing side in a disputed compensation claim is not enough to overturn a decision, where that decision is also supported by substantial evidence. Such is the case before us.

The ALJ described the competing recommendations and opinions, and properly identified the legal framework within which UR and treating physician opinion is to be assessed: neither is accorded any preference over the other, and valid reasons for accepting one opinion over the other must be given. *See, Children’s National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010); *Green v.*

while working for the other. In a Compensation Order issued October 21, 2004, a different ALJ determined that the current back condition was causally related to the injury sustained while employed at One Price. We point this out because in the utilization review report, the history given relates to the Barnes & Noble incident.

³ “Substantial evidence,” as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. D.C. Dept. of Employment Services*, 834 A.2d 882 (D.C. 2003).

Washington Hospital Center, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009).

The ALJ thereupon noted the lack of sufficient explanatory rationale from Dr. Dawson as to why an exercise bike was needed and would be helpful to this patient, and deemed the UR non-certification based upon a lack of “evidence based upon medicine” to support the prescribed device more persuasive. The UR report upon which the ALJ relied is “such evidence as a reasonable person might accept” to support the conclusion that a recumbent exercise bike is not a device that is reasonable and necessary to treat Ms. House’s low back condition.

While we may have reached a contrary conclusion on this evidence, it is not our role and we have no authority to substitute our judgment for that of the ALJ where the ALJ’s decision is premised upon a reasonable interpretation and analysis of the record evidence.

CONCLUSION AND ORDER

The determination that the requested device is not medically reasonable and necessary is supported by substantial evidence, and the denial of authorization that it be provided is in accordance with the law.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

January 25, 2013
DATE