GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

Compensation Review Board

CRB No. 11-047

KEVIN V. REYNOLDS,
Claimant–Petitioner,

v.

CANON BUSINESS SOLUTIONS AND BROADSPIRE INSURANCE CO.,
Employer/Carrier-Respondent

Appeal from a Compensation Order by
The Honorable Gerald D. Roberson
AHD No. 09-308A, OWC No. 643143

Benjamin T. Boscolo, Esquire, for the Claimant/Petitioner
Barry D. Bernstein,[1] Esquire, for Employer/Respondent

Before: HENRY W. MCCOY, HEATHER C. LESLIE,[2] AND JEFFREY P. RUSSELL,[3] *Administrative Appeals Judges*.

HENRY W. MCCOY, *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).

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[1] Employer/Carrier was represented at the formal hearing by Joseph C. Tarpine, Esq., of the same law firm.

[2] Judge Leslie has been appointed by the Director of DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-03 (June 13, 2011).

[3] Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

PROCEDURAL HISTORY AND FACTS OF RECORD

This appeal follows the issuance on April 14, 2011 of a Compensation Order (CO) from the Hearings and Adjudication Section, Office of Hearings and Adjudication in the District of Columbia Department of Employment Services (DOES). In that CO, Claimant's requested authorization for medical treatment, payment of medical bills, reimbursement of out of pocket expenses, and causally related medicals was granted in part and denied in part.

Claimant sustained a work-related back injury on March 4, 2002 and was awarded temporary total disability benefits from March 20, 2002 to the present and continuing after an informal conference before the Office of Workers' Compensation (OWC). The final OWC order also awarded causally related medical bills and authorization for medical treatment. On February 24, 2010, the Administrative Hearings Division issued a Compensation Order denying Employer's request for a modification of the OWC's Final Order.[4]

During the course of Claimant's ongoing treatment, questions arose regarding whether his depression was medically causally related to his work injury and his continued use of narcotic medications was reasonable and necessary. After a formal hearing, the ALJ concluded that Claimant's depression was medically causally related to his work injury but continued use of narcotic pain medication was not reasonable and necessary and ordered that its use be discontinued as of July 1, 2009.[5] Claimant timely appealed the discontinuation of his pain medication and Employer has filed in opposition.[6]

Claimant argues on appeal that it was error for the ALJ to rely on a Utilization Review (UR) report that was based on a previously discredited independent medical evaluation (IME), and that the ALJ substituted his medical judgment for that of the medical professionals when he ordered the discontinuation of pain medication after a date certain. In response, Employer asserts the CO is supported by substantial evidence and should be affirmed.

ANALYSIS

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

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[4] *Reynolds v. Canon Business Solutions*, AHD No. 09-308, OWC No. 586076 (February 24, 2010). On March 26, 2010, Employer filed for review of this Compensation Order. After subsequently requesting that the Application for Review be withdrawn, the CRB issued an order to that effect. *Reynolds v. Canon Business Solutions*, CRB No. 10-087 (March 10, 2011).

[5] *Reynolds v. Canon Business Solutions*, AHD No. 09-308A, OWC No. 643143 (April 14, 2011)(*Reynolds II*).

[6] At the time Claimant filed his Application for Review on May 13, 2011, he also filed "Claimant's Motion for Extension of Time in Which to File Memorandum of Points and Authorities in Support of the Application for Review" requesting an additional 30 days to file the memorandum. On May 25, 2011, Employer filed its notice of intent to file an opposition to the AFR, but did not oppose Claimant's motion. On June 17, 2011, Claimant filed "Claimant's Motion for Leave to File Brief Out of Time" with the accompanying Memorandum of Points and Authorities. There being no expressed opposition to either motion, they are hereby granted.

conclusions drawn from those facts are in accordance with applicable law.[7] *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.

In the instant appeal, Claimant first argues that, insofar as the UR report based part of its analysis on an independent medical evaluation (IME) previously discredited in deciding the degree of his disability, the ALJ committed error in relying on the UR report to conclude that the continuation of narcotic pain medication was not reasonable or necessary. Claimant contends that the UR report's conclusion is based on one source, the June 13, 2007 IME report of Dr. Esponnette, and since that report was found to be unreliable when Claimant's degree of disability was under consideration, it cannot now be considered "rational medical evidence" and makes the UR report "inherently unreliable."[8]

The ALJ noted that Dr. William Abraham, who authored the UR report, took note of the observations made by Dr. Esponnette after reviewing an investigative report showing Claimant being active in contrast to Claimant's purported claims of back pain leaving him immobilized most of the day. The ALJ then reasoned:

> Dr. Abraham stated Claimant only required medical treatment on an as needed basis, and recommended discontinuation of narcotics in a medically appropriate fashion. EE 1, p. 4. The findings of Dr. Abrahams (sic) are not inconsistent with the prior compensation award. Notwithstanding Claimant's award of total disability, the reasonable (sic) and necessity of his medical treatment remains a separate issue, and whether Claimant requires narcotic medication while he remains totally disabled has not been previously resolved.[9]

We find no fault in the ALJ's reliance on Dr. Abraham's assessment of the reports he reviewed. As the ALJ noted, while Dr. Esponnette's IME may not have proved persuasive on the nature and extent of Claimant's disability, this did not prevent its use along with other records to make the case on the separate issue of the reasonableness and necessity of prescription medication.

The ALJ further noted:

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[7] "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).

[8] Claimant's Memorandum of Points and Authorities in Support of the Application for Review, p. 7; referencing 7 DCMR § 232.4, which states in pertinent part: "The report of the review shall specify the medical records considered and shall set forth rational medical evidence to support each finding."

[9] *Reynolds II*, *supra*, p. 8.

> The record reveals Claimant continued to treat with Dr. Keniston-Dubocq following the utilization review report, but it does not appear she reviewed the report or specifically commented on its findings.
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> Dr. Keniston-Dubocq generally continued to manage Claimant's use of narcotic medication following the utilization review, and she discontinued various medications during the course of her treatment. Her treatment records do not reveal whether she had an opinion regarding the reasonable (sic) and necessity of the narcotic medications, and her records reveals she attempted to wean Claimant off the narcotics. Her treatment recommendations regarding the cessation of narcotics appear to be consistent with the findings of the utilization review report. The record does not contain evidence which would discredit the findings of the utilization review report. As such, the medical evidence supports the opinion of Dr. Abraham which establishes the use of narcotics are (sic) no longer reasonable or necessary to treat Claimant's condition. EE 1, p. 4.[10]

The ALJ has taken into consideration the competing medical evidence and determined that the UR report is more persuasive. A review of the ALJ's discussion demonstrates that he has reviewed and weighed the competing medical opinions and explained why he chose the UR report without giving any opinion an initial preference in keeping with the current state of the law in this jurisdiction.[11] Thus, no error is found.

Finally, Claimant asserts it was error for the ALJ to substitute his medical judgment for that of the medical professionals by giving a date certain for the termination of Claimant's pain medication. Specifically, Claimant notes that Dr. Abraham in the UR report recommended discontinuation of narcotic medication "in a medically appropriate fashion" and the treating physician, Dr. Keniston-Dubocq, was implementing a medically appropriate discontinuation program. We disagree.

The ALJ concluded that "Claimant's use of narcotic medication after July 1, 2009 is not reasonable and necessary as required by the Act." This does not mean Claimant cannot be prescribed narcotic pain medication after that date, rather, it means that as of that date, Employer is no longer obligated under the Act to reimburse Claimant for the cost of any narcotic pain medication as it is no longer considered reasonable and necessary.

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[10] *Reynolds II, supra*, pp. 8-9.

[11] *See Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008).

CONCLUSION AND ORDER

The Compensation Order of April 14, 2011 is supported by substantial evidence and is in accordance with the law. Accordingly, the Compensation Order of April 14, 2011 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY
Administrative Appeals Judge

April 18, 2012
DATE