

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **ADEL SALEM,**

5 *Applicant,*

6 vs.

7  
8 **COUNTY OF RIVERSIDE, Permissibly Self-  
Insured,**

9 *Defendants.*

Case No. ADJ5012731 (SBR 0067834)  
(Riverside District Office)

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

10  
11 On February 20, 2014, we granted reconsideration in this matter to provide an opportunity to  
12 further study the legal and factual issues raised by the petition for reconsideration. Having completed our  
13 review, we now issue our Decision After Reconsideration.

14 Applicant, Adel Salem, filed a petition for reconsideration from the Findings of Fact, issued  
15 December 16, 2013, in which a workers' compensation administrative law judge (WCJ) denied  
16 applicant's petition for a penalty pursuant to Labor Code section 5814, finding applicant did not establish  
17 that defendant unreasonably delayed or denied his medical treatment by withdrawing authorization for  
18 applicant's narcotic medication, as defendant established a good faith medical dispute based upon its  
19 reliance on its Utilization Review (UR) process.

20 Applicant contests the WCJ's determination that defendant had a good faith doubt as to its  
21 obligation to re-authorize applicant's prescription medications for his chronic back pain, where the UR  
22 physician did not consider the potential dangerous effect that the abrupt termination of applicant's long-  
23 term narcotic prescription could cause. Defendant did not file an answer to applicant's petition.

24 Following our review of the record, and for the reasons set forth below, we shall, as our Decision  
25 After Reconsideration, rescind the Findings of Fact and find defendant unreasonably denied applicant  
26 medical treatment by abruptly discontinuing his prescription medications, and is therefore subject to a  
27 penalty pursuant to Labor Code section 5814. We shall defer the amount of the penalty to be imposed

1 and return this matter to the trial level for that determination and the additional attorney's fees to which  
2 applicant's attorney is entitled pursuant to Labor Code section 5814.5.

3 I.

4 Applicant sustained an industrial injury to his back and neck on January 22, 1978, while  
5 employed as a Deputy Sheriff by the County of Riverside. On December 1, 1981, he received an award  
6 of 45% permanent disability pursuant to Stipulations with Request for Award, together with an award of  
7 further medical treatment.

8 Applicant filed a petition for penalties on February 15, 2013, alleging that defendant  
9 unreasonably denied medical treatment awarded under the 1981 stipulated award, by terminating his long  
10 standing prescription for pain medication to treat his ongoing pain symptoms.

11 At the August 1, 2013 trial, the parties stipulated that, if called to testify, applicant would state  
12 that he had been on prescription narcotics for several decades and that his prescriptions were denied  
13 based on UR. The stipulations further state that applicant had no ability to fill his prescriptions and had  
14 physical and emotional withdrawal. Because he was unable to obtain the care afforded to him under his  
15 award of further medical treatment, he contacted his attorney, who assisted him in obtaining medical  
16 treatment.

17 The medical facts are set forth in the December 7, 2010 report of Dr. Watkin, the Agreed Medical  
18 Examiner (AME) in orthopedics.

19 Applicant has had four back surgeries between 1981 and 2002: (1) a February 13, 1981 bilateral  
20 lumbosacral laminectomy and discectomy; (2) a January 9, 1992 cryoneurolysis of the L3, L4, and L5  
21 facet joints; (3) a February 24, 1992 revision lumbar laminectomy and discectomy at L5 to S1; and (4) a  
22 November 4, 2002 revision lumbar laminectomy from L4 to S1, together with an L4-S1 fusion.

23 He has been under the continued care of Dr. Roach, for follow up treatment of his continuous  
24 neck and low back pain. Dr. Watkin's medical record review shows that applicant has had ongoing  
25 complaints of worsening back pain, for which he received repeated trigger point injections, and  
26 ultimately a spinal fusion in 2002. Follow-up reports show that applicant's back was stable post-fusion,  
27 with intermittent symptoms not severe enough to warrant hardware removal. Dr. Roach refilled

1 applicant's pain medications throughout this period.

2 In 2009, applicant reported an increase in his neck complaints, more than his lower back, for  
3 which Dr. Roach recommended he receive a series of three cervical epidural steroid injections.  
4 Eventually, defendant approved a single injection, which provided applicant with significant relief for  
5 several weeks, but the recommended additional injections were not approved.

6 Dr. Watkin reported applicant's low back and neck complaints in 2010 as "constant aching to  
7 sharp stabbing pain," which was improved with the use of medication. Applicant characterized his pain  
8 level on a scale of 1 to 10, as 7 to 10. Dr. Watkin noted that applicant's neck complaints had  
9 progressively gotten worse over the preceding year and a half, and recommended that applicant have the  
10 additional cervical epidural injections requested by Dr. Roach, as an alternative to neck surgery.

11 Dr. Watkin's January 6, 2012 report reflects that applicant had these three cervical epidural  
12 injections, which helped him significantly. However, Dr. Watkin further reported that defendant had  
13 "suddenly stopped approving all prescribed medications for Mr. Salem in August 2011." He noted that  
14 applicant was able to obtain the medications through a pain management program at Kaiser Permanente.

15 Dr. Watkin, in addressing whether the prescribed pain medications were reasonable, stated:

16 After speaking to Mr. Salem, he tells me that he takes approximately four  
17 Norco per day; he states that this is the only medication that works for him,  
18 after trying multiple medications in the past. He had a series of three  
19 epidural injections to his neck, which helped him significantly.  
20 Unfortunately, in approximately August 2011, his medications began to be  
21 denied. It is inappropriate to just take a person off Norco abruptly, which is  
22 why Mr. Salem went to his private doctor and was given a prescription for  
23 Norco. Mr. Salem tells me that he is able to get by on the Norco, without  
24 further excessive treatment; again, I feel that it was inappropriate to deny  
25 the Norco.

26 He has since been referred to a pain management clinic through Kaiser, and  
27 has been placed on the same medication regimen from before, with the  
addition of Nortriptyline for his leg pain. Currently this medication  
regimen has been working for him, so it would seem unreasonable to deny  
him these medications.

He went to court approximately one month ago and they ruled that  
everything he has paid out of pocket should be paid retroactively, because  
it was not reasonable to deny him his medications. He tells me that he has  
been under Dr. Roach's care for many years, and he would like to continue  
under his care, which is also reasonable. It appears that Mr. Salem's  
condition was being controlled appropriately by Dr. Roach, and then the  
appropriate medical treatment was denied, which caused this whole

1 problem. Mr. Salem does have medical problems, he has had a back fusion  
2 and has been retired for 20 years; it seems counterproductive to upset the  
apple cart at this point.

3 (App. Bd. Exh. X, AME Report of Dr. Watkin, 1/6/12, p.10-11.)

4 Defendant's denial of applicant's longstanding prescription medications were based upon UR  
5 denials that were issued on August 19, 2011 and October 5, 2011, respectively. (Defendant's Exhibits C  
6 & B.) The non-certification of continued pain medication refills was explained by the UR physician as  
7 follows:

8 Ongoing and chronic use of a narcotic analgesic is not medically supported  
9 for this patient. The patient is essentially at maximum medical  
10 improvement **and has received benefit from recent cervical epidurals.**  
11 **Given that the patient has had 65-70% improvement following cervical**  
12 **epidurals, there is no ongoing significant pain for which a narcotic**  
13 **analgesic would be necessary.** Chronic and long-term use of narcotic  
analgesics should be avoided in the chronic phase of treatment given the  
potential for abuse/addiction. The medical records do not establish  
moderate to severe pain for which ongoing use of hydrocodone/APAP  
would be indicated. Therefore, my recommendation is to retrospectively  
non-certify the request for hydrocodone/acetaminophen.

14 Based on the medical literature and the medical records provided for my  
15 review, I recommend to retrospectively non-certify the request for  
diazepam.

16 According to CA MTUS guidelines, benzodiazepines are not recommended  
17 for long-term use because long term efficacy is unproven and there is a risk  
18 of dependence. The patient is chronically prescribed diazepam and long  
19 term use is not supported by current treatment guidelines. The medical  
records do not provide a clinical justification for this request. Therefore,  
my recommendation is to retrospectively non-certify the request for  
diazepam.

20 Based on the medical literature and the medical records provided for my  
21 review, I recommend to retrospectively non-certify the request for  
butalbital.

22 According to CA MTUS guidelines, barbiturate-containing analgesic  
23 agents are not recommended for chronic pain. There is a risk of medication  
24 overuse with rebound headache and no evidence exists to show any  
25 clinically important enhancement of analgesic efficacy at BCAs due to the  
barbiturate constituents. The patient has been chronically maintained on  
this medication. Ongoing use is not medically supported by CA MTUS  
guidelines. Therefore, my recommendation is to retrospectively non-certify  
the request for butalbital.

26 (Def. Exh. C, UR Non-Certification Letter, 8/9/11, p. 3. Emphasis added.)

27 The UR physician also added the following precautionary note from the Medical Treatment

1 Utilization Schedule, with regard to the use of diazepam:

2 In patients already addicted, **abrupt discontinuation can lead to**  
3 **symptoms of withdrawal** (Insomnia, headaches, nausea vomiting,  
4 lightheadedness, sweating, anxiety, and fatigue). Seizures can occur in  
5 more severe cases of withdrawal. **Therefore, slow tapering under a**  
6 **doctor's supervision is recommended."**

(Def. Exh. C, UR Non-Certification Letter, 8/9/11, p. 4. Emphasis added.)

7 A second UR denial issued following Dr. Roach's appeal of the initial denial. (Def. Exh. B.) The  
8 UR physician spoke with Dr. Roach by telephone, who indicated that "these medications were requested  
9 on 6/23/11 because they have helped the patient in the past for his chronic cervical and lower back pain."  
10 The UR physician repeated his prior rationale, focusing upon the ameliorative effect of the cervical  
11 epidural injections, and noting "there is no ongoing significant pain for which a narcotic analgesic would  
12 be necessary." He also repeated the MTUS guidelines recommendation against abrupt discontinuation of  
13 diazepam and the need for slow tapering.

14 The August 19, 2011 report from defendant's UR physician reflects that the UR was triggered by  
15 Dr. Roach's July 5, 2011 report, together with billing invoices for pain medications from Dr. Roach's  
16 office dated June 23, 2011 and July 25, 2011. The August 19, 2011 UR report indicates that, in his July  
17 5, 2011 report, Dr. Roach said that applicant's neck condition "is a lot better" and that the epidural  
18 injections gave applicant "significant relief in the shoulder and arm pain." Nevertheless, the July 5, 2011  
19 report recited that "[t]he lower back still continues to give him problems" and that "[m]edications were  
20 renewed, including Norco ...". Thus, it appears that Dr. Roach's renewal of applicant's narcotic  
21 medications was not predicated on any material change in applicant's long-standing back problems.

22 The reasonable inference to draw from the medical records, therefore, is that the pain medications  
23 were being prescribed because of applicant's long term back pain, and not due to his much more recent  
24 flare-up of neck pain. Also, based on additional stipulations regarding what applicant would testify to at  
25 trial and based on the reports of Dr. Watkin (which, together, establish that applicant had difficulty  
26 getting the pain medication after defendant's UR denial, but ultimately got them from Kaiser), the  
27 reasonable inference to draw is that applicant's pain medications were authorized and being paid for by  
defendant until the UR denial.

1  
2 II.

3 If a defendant unreasonably breaches its duty to provide medical care, penalties may be imposed  
4 under section 5814. The burden is on the applicant to show a delay in the provision of benefits.  
5 However, once a delay is shown, the burden shifts to the defendant to show that the delay was  
6 reasonable. (*Kerley v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 223, 227 [36 Cal.Comp.Cases  
7 152]; *County of San Luis Obispo v Workers' Comp. Appeals Bd. (Barnes)* (2001) 92 Cal.App.4th 869,  
8 874 [66 Cal.Comp.Cases 1261].) "[T]he only satisfactory excuse for delay ... is genuine doubt from a  
9 medical or legal standpoint as to liability for benefits." (*Kerley, supra*, 4 Cal.3d at p. 230; accord: *State*  
10 *Comp. Ins. Fund. v. Workers' Comp. Appeals Bd. (Stuart)* (1998) 18 Cal.4th 1209, 1220 [63  
11 Cal.Comp.Cases 916].) "[T]he burden is on the employer or [its] carrier to present substantial evidence  
12 upon which a finding of such doubt may be based." (*Kerley, supra*, at p. 230.)

13 Applicant has established that defendant delayed the provision of his medical treatment, thus the  
14 burden shifts to defendant to establish it had genuine doubt from a medical or legal standpoint to justify  
15 its abrupt termination of applicant's prescribed medication. Defendant has not met this burden.

16 Applicant had been prescribed pain medication for many years, when defendant decided to seek  
17 utilization review of Dr. Roach's prescription refill for the first time.<sup>1</sup> The UR physician's non-  
18 certification of applicant's medications did not justify defendant's abrupt termination, and thus the UR  
19 physician's medical opinion does not constitute substantial evidence upon which defendant could rely to  
20 establish a genuine doubt.

21 First, it is evident that the emphasis of the UR denial was Dr. Roach's reports concerning  
22 applicant's recent increase in his neck pain, for which Dr. Roach had recommended repeated cervical  
23 epidural injections.

24 The principal focus of the August 19, 2011 report from defendant's UR physician report is:  
25 "Ongoing and chronic use of a narcotic analgesic is not medically supported for this patient. The patient

26 <sup>1</sup> As we find defendant did not have a genuine doubt as to its liability to continue to authorize applicant's  
27 prescription medications, we do not address the question of whether, when a prescription medication has been  
previously approved, defendant may submit a prescription renewal to UR in the absence of a documented material  
change in the injured worker's condition.

1 is essentially at maximum medical improvement and has received benefit from *recent cervical epidurals*.  
2 Given that the patient has had 65-70% improvement *following cervical epidurals*, there is no ongoing  
3 significant pain for which a narcotic analgesic would be necessary.” (Italics added.) The UR report fails  
4 to recognize that the pain medication had been prescribed not just for applicant’s neck, but for his  
5 chronic back pain. Applicant had been successfully using the pain medications to treat his long term back  
6 pain for decades. It was not until 2009, that his increased neck symptoms required the cervical epidurals.  
7 The UR report erroneously fails to recognize Dr. Roach’s and Dr. Watkin’s opinions that the pain  
8 medication had been effectively controlling his back pain symptoms for years.

9       Second, the UR physician’s recommendation for non-certification *expressly recommended*  
10 *against the abrupt discontinuation of the diazepam prescription*, noting that its abrupt discontinuation of  
11 could lead to significant withdrawal symptoms, including seizures. In addition to recommending tapering  
12 and not the abrupt discontinuation of diazepam, the MTUS expressly recommends “a slow taper” of  
13 opioid medications, which would encompass applicant’s prescription for Norco, which was found to be  
14 effective by Dr. Roach and Dr. Watkin.

15       As cited in applicant’s answer to the petition for reconsideration, the MTUS for Chronic Pain  
16 Medical Treatment Guidelines includes a section entitled “Weaning of Medications,” (Admin. Director’s  
17 Rule 9792.24.2) which provides in part:

18           Opioids: For opioids a slow taper is recommended. The longer the patient  
19 has taken opioids, the more difficult they are to taper. The process is more  
20 complicated with medical comorbidity, older age, female gender, and the  
21 use of multiple agents. Gradual weaning is recommended for long-term  
22 opioid users because opioids cannot be abruptly discontinued without  
23 probable risk of withdrawal symptoms. (Benzon, 2005) Patients with  
24 complex conditions with multiple comorbidities (including psych  
25 disorders) should be referred to an addiction medicine/psychiatry specialist.  
26 Opioid weaning should include the following: (a) Start with a complete  
27 evaluation of treatment, comorbidity, psychological condition; (b) Clear  
written instructions should be given to the patient and family; (c) If the  
patient can not tolerate the taper, refer to an expert (pain specialist,  
substance abuse specialist); (d) Taper by 20 to 50% per week of original  
dose for patients who are not addicted (the patient needs 20% of the  
previous day’s dose to prevent withdrawal); (e) A slower suggested taper is  
10% every 2 to 4 weeks, slowing to a reductions of 5% once a dose of 1/3  
of the initial dose is reached; (f) Greater success may occur when the  
patient is switched to longer-acting opioids and then tapered; (g) Office  
visits should occur on a weekly basis; (h) Assess for withdrawal using a  
scale such as the Subjective Opioid Withdrawal Scale (SOWS) and

1 Objective Opioid Withdrawal Scale (OOWS); & (i) Recognize that this  
2 may take months.

3 Thus both the MTUS and the UR review provide that the applicant's pain medications must be  
4 slowly tapered to avoid the deleterious effects applicant actually suffered. Thus, the record does not  
5 contain any evidence to support defendant's denial of authorization of applicant's prescriptions for pain  
6 medications, and in fact the applicable MTUS standards actually recommended against defendant's  
7 immediate termination of refills. Defendant could not reasonably rely upon the UR physician's report as  
8 a basis to immediately terminate applicant's prescriptions. Thus, there is no evidence to support a finding  
9 that defendant had a genuine doubt from a medical or legal standpoint as to its liability for the continued  
10 provision of the narcotic medication prescribed by applicant's primary treating physician.

### 11 III.

12 The WCJ found issues related to Labor Code sections 5814(c) and (g) to be moot in light of his  
13 determination that defendant was not liable for a penalty. Since we are reversing the WCJ's finding in  
14 this regard, we shall address these issues.

15 Labor Code section 5814(c) provides that after a case has been settled by Compromise and  
16 Release Agreement or stipulated award, "it shall be conclusively presumed that any accrued claims for  
17 penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim  
18 for penalty is expressly excluded by the terms of the order or award." Since the penalty issue had not  
19 "accrued" prior to the settlement of applicant's case-in-chief by the stipulated award in 1981, and in the  
20 absence of anything in the record to suggest that any Compromise and Release Agreement, Findings and  
21 Award, stipulations, or orders had issued before applicant's petition for penalties was filed on February  
22 15, 2013, the conclusive presumption is not applicable.

23 Additionally, Labor Code section 5814(g) is not applicable. That section provides a two year  
24 limitation period on seeking to recover penalties. Here, the February 15, 2013 penalty petition was filed  
25 within two years of the August 9, 2011 and October 5, 2011 UR denials, which led to defendant's  
26 termination of its authorization of applicant's prescription medications.

27 Moreover, as these proceedings were brought to enforce the prior award of medical treatment,



1 applicant's attorney is entitled to payment of a reasonable attorney's fee pursuant to Labor Code section  
2 5814.5.

3 Accordingly, as our decision after reconsideration, we shall amend the WCJ's Findings of Fact to  
4 find defendant unreasonably denied applicant's medical treatment and will return this matter to the trial  
5 level for determination of the amount of the penalty to be imposed and determine the reasonable  
6 attorney's fee to which applicant's attorney is entitled.

7 For the foregoing reasons,

8 **IT IS ORDERED** that as our Decision After Reconsideration, the December 16, 2013 Findings  
9 of Fact is **AMENDED** as follows:

10 **FINDINGS OF FACT**

- 11 1. Applicant Adel Salem, born while employed on 1-22-78 as a Law Enforcement Officer,  
12 occupational group number 490, at Riverside California, by the County of Riverside sustained  
13 injury arising out of and in the course employment to his neck and back.
- 14 2. The stipulations and admissions of the parties received at the hearing of 8-1-13 as set forth in the  
15 minutes of hearing of said date are accepted incorporated herein and made a part hereof as  
16 findings of fact.
- 17 3. Defendant did unreasonably deny medical treatment to applicant by abruptly terminating his  
18 prescription medications without a genuine doubt as to its liability for said prescription  
19 medications from a medical or legal standpoint, for which it is liable for a penalty pursuant to  
20 Labor Code section 5814, in an amount to be determined.
- 21 4. Applicant's attorney fees are entitled a reasonable attorney's fee pursuant to Labor Code section  
22 5814.5, in an amount to be determined.
- 23 5. There are no issues regarding the application of Labor Code section 5814(c) and Labor Code  
24 section 5814(g).

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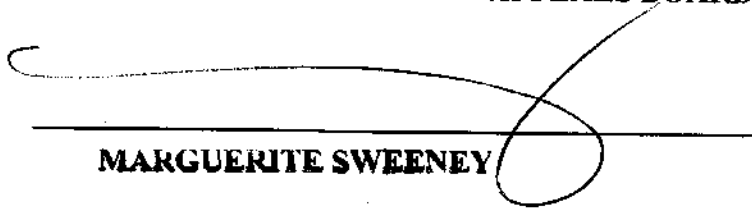
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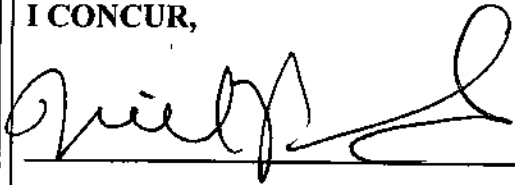
**ORDER**

**IT IS ORDERED** that this matter be returned to the trial level for the determination of the penalty to be imposed, pursuant to Labor Code section 5814, increased by a reasonable attorney's fee pursuant to Labor Code section 5814.5, in an amount to be determined.

**WORKERS' COMPENSATION APPEALS BOARD**

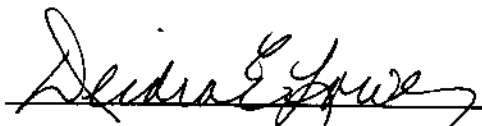
  
\_\_\_\_\_  
**MARGUERITE SWEENEY**

**I CONCUR,**

  
\_\_\_\_\_  
**NEIL P. SULLIVAN** **DEPUTY**



**I DISSENT (See Dissenting Opinion),**

  
\_\_\_\_\_  
**DEIDRA E. LOWE**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAY 08 2014**

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

**ADEL SALEM  
DON FEATHERSTONE  
LOUIS D. SEAMAN**

**SV/jp**



1 **DISSENTING OPINION**

2 I dissent. I would affirm the finding of the workers' compensation administrative law judge  
3 (WCJ) that a penalty pursuant to Labor Code section 5814 is not warranted under the facts presented.

4 I have considered the allegations and arguments of the Petition for Reconsideration and have  
5 reviewed the record in this matter and the WCJ's Report and Recommendation on Petition for  
6 Reconsideration of January 6, 2014, which considers, and responds to, each of the applicant's  
7 contentions. Based upon my review of the record, and for the reasons stated in the WCJ's Report, which  
8 I adopt and incorporate into this opinion, I would affirm the WCJ's Findings of Fact.

9 The sole issue presented is whether defendant, County of Riverside, is liable for a penalty for  
10 relying upon a lawfully obtained Utilization Review (UR) to deny re-authorization of applicant's narcotic  
11 medications. I am persuaded that the WCJ correctly determined that defendant had a genuine doubt from  
12 a medical or legal standpoint as to its liability to continue to authorize the narcotic medications after its  
13 UR physician found their continued use was not justified under the Medical Treatment Utilization  
14 Schedule.

15 Additionally, the medical record in this case was not adequately presented, as there are no  
16 medical records from applicant's treating physician, Dr. Roach, whose treatment and prescriptions are  
17 central to this issue. There is no evidence to establish the basis for his continued prescription of  
18 applicant's narcotic medications, whether it was intended to treat applicant's back or his neck complaints  
19 or both. There is also no indication that Dr. Roach was familiar with the limitation in the MTUS on the  
20 long term use of narcotic medication to treat chronic conditions, which was the basis for the UR  
21 physician's decision to deny certification of their continued use.


22 Moreover, while the MTUS provides for slow-tapering of some narcotic medications, as noted by  
23 the majority, the UR denial cited that this issue applied to a single medication, diazepam, and then only  
24 for individuals who are already addicted. As the medical record was not well developed, there is no  
25 evidence that applicant qualifies as being "addicted" to this medication, such that defendant's denial of  
26 further medication was inappropriate.

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1           Accordingly, I would affirm the WCJ's determination that the UR de-certification of Dr. Roach's  
2 narcotic prescriptions provided defendant with a genuine doubt as to its liability to continue to authorize  
3 the medications.



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5 **WORKERS' COMPENSATION APPEALS BOARD**

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8 **DEIDRA E. LOWE, COMMISSIONER**

9  
10 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

11 **MAY 08 2014**

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

14 **ADEL SALEM**  
15 **DON FEATHERSTONE**  
16 **LOUIS D. SEAMAN**

17 *SV/jp*



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

3  
4 **ADEL SALEM,**

5 *Applicant,*

6 **vs.**

7 **COUNTY OF RIVERSIDE, Permissibly**  
8 **Self-Insured,**

9 *Defendant.*

Case No. **ADJ5012731 (SBR 0067834)**  
(Riverside District Office)

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

10  
11 Reconsideration has been sought by applicant, with regard to a decision filed on December 16,  
12 2013.

13 Taking into account the statutory time constraints for acting on the petition, and based upon our  
14 initial review of the record, we believe reconsideration must be granted in order to allow sufficient  
15 opportunity to further study the factual and legal issues in this case. We believe that this action is  
16 necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned  
17 decision. Reconsideration will be granted for this purpose and for such further proceedings as we may  
18 hereinafter determine to be appropriate.

19 For the foregoing reasons,

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

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1 **IT IS FURTHER ORDERED** that pending the issuance of a Decision After Reconsideration in  
2 the above case, all further correspondence, objections, motions, requests and communications shall be  
3 filed in writing only with the Office of the Commissioners of the Workers' Compensation Appeals Board  
4 at either its street address (455 Golden Gate Avenue, 9<sup>th</sup> floor, San Francisco, CA 94102) or its Post  
5 Office Box address (PO Box 429459, San Francisco, CA 94142-9459), and shall not be submitted to the  
6 Riverside District Office or any other district office of the WCAB and shall not be e-filed in the  
7 Electronic Adjudication Management System.

8 **WORKERS' COMPENSATION APPEALS BOARD**

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11 \_\_\_\_\_  
12 DEIDRA E. LOWE

13 I CONCUR,

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15 \_\_\_\_\_  
16 MARGUERITE SWEENEY

17   
18 \_\_\_\_\_ DEPUTY  
19 NEIL P. SULLIVAN



20 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

21 **FEB 20 2014**

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

24 ADEL SALEM  
25 LAW OFFICES OF DON FEATHERSTONE, PLC  
26 LAW OFFICES OF LOUIS D. SEAMAN

27 abs

SALEM, Adel

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ5012731

ADEL SALEM

-vs.-

COUNTY OF RIVERSIDE;  
CNTY OF RIVERSIDE  
WORK COMP DIV;

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Victor Jimenez

DATE: 1-6-14

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

By timely, verified Petition for Reconsideration, petitioner applicant seeks reconsideration of the Findings of Fact and Opinion on Decision issued on 12-16-13.

**ISSUES PRESENTED**

Whether it was error to find that there was not an LC5814 violation.

**FACTS**

Applicant Adel Salem born . . . while employed on 1-22-78 as a Law Enforcement Officer, at Riverside California, by the County of Riverside sustained injury arising out of and in the course employment to his neck and back. By Stipulation with Request for Award dated 12-3-81 (Ex. A) applicant was awarded future medical treatment to cure or relieve from the effects of the 1-22-78 injury to his neck and back. Applicant alleges that defendant violated said award by unreasonably denying treatment to which applicant was entitled. The parties stipulated that if called to testify, applicant would testify that he had been on prescription narcotics for several decades; that his prescriptions were denied based on Utilization Review; that he had no ability to fill his prescriptions and had physical and emotional withdrawal; and because he could not get the

care afforded to him under his award, he contacted an attorney who then assisted him in obtaining medical care provided by the Award (MOH/SOE 3:8-15).

The parties selected AME Dr. George Watkin to resolve issues regarding the denied treatment. Dr. Watkin opined that the treatment was appropriate and that it was unreasonable to abruptly discontinue applicant's prescription for Norco. The case proceeded to trial on the issue of LC 5814 penalty, LC 5814.5 attorney fees and regarding application of LC 5814(g) and LC 5814(c). It was found that there was not an LC 5814 violation. It is from said finding that petitioner appeals.

### DISCUSSION

Petitioner asserts that there is not substantial medical evidence to find that defendant had good faith doubt about its obligation to provide treatment. Such argument is based on petitioner's contention that the Utilization Review (UR) in question abruptly terminated narcotics without addressing whether such cessation would cause dangerous withdrawal. However, petitioner overlooked the fact that the UR Non-Certification Letters dated 10-05-11 (Ex. B) and 8-19-11 (Ex. C) informed applicant of the UR appeal process. There was no evidence presented that applicant or his prior counsel ever initiated such an appeal. By the time present counsel assumed representation of applicant such time period had long since elapsed. Now by Petition for Reconsideration, petitioner seeks to raise the issue of the validity of such UR Review.

To resolve the issue of appropriate treatment applicant's present counsel and defendant submitted the issue to AME George Watkin. The 1-6-12 report of Dr. Watkin (Ex. X), presents a history that in August 2011 defendant suddenly stopped approving all prescribed medications and applicant therefore procured treatment at Kaiser Permanente where he was placed on a pain management program. It is also stated the applicant was prescribed Fiorinal as needed; Nortriptyline, and Baclofen. It is indicated that he continues to take Norco and Valium prescribed by Dr. Roach. Additionally, it notes that applicant was reinstated by his insurance company to continue seeing Dr. Roach on 10-1-12.

The diagnosis rendered by Dr. Watkin is chronic cervical spine strain/sprain superimposed on multiple level degenerative changes at c3-4, c4-5 and c5-6; status post laminectomy and discectomy, lumbar spine (2-13-81); status post revision lumbar laminectomy and discectomy L5-S1 (2-24-92);



status post revision laminectomy L4-S1, posterolateral fusion with pedicle screws L4-S1 and tranfoaminal interbody fusion with cages at L4, L5 and S1 (11-4-02).

Dr. Watkin relates that he was specifically asked to address future medical treatment regarding the neck and low back, whether or not the requested medications are reasonable and if applicant should be assigned a pain management specialist to monitor the usage of future medication. It is noted that applicant states that he takes approximately four Norco per day as that is the only medication that works for him, after trying multiple medication in the past. It is related that in approximately August 2011 medications began to be denied. Dr. Watkin states that it is inappropriate to just take a person off Norco abruptly which is why applicant went to his private doctor and was given a prescription for Norco. Applicant informed Dr. Watkin that he is able to get by on the Norco, without further excessive treatment. Dr. Watkin reiterates his feeling that it was inappropriate to deny the Norco.

Dr. Watkin states that applicant has since been referred to a pain management clinic through Kaiser, and been placed on the same medication regimen from before with the addition of Nortriptyline for leg pain. It is noted that such medication regimen has been working so it would seem unreasonable to deny applicant those medications.

Dr. Watkin states that it appears that applicant was being controlled appropriately by Dr. Roach, and then the appropriate medical treatment was denied, which caused this whole problem. Dr. Watkin relates that applicant "...does have medical problems, he has had a back fusion and has been retired for 20 years; it seems counterproductive to upset the apple cart at this point". He states it would be appropriate to return applicant to his pre-epidural medication regimen with Dr. Roach, with the addition of Nortriptyline for leg pain, and also adding in the pain management which has been necessitated by the abrupt denial of medications.

While Dr. Watkin may have been utilized to resolve the medical question of what the appropriate regimen of treatment should his opinion does not automatically equate to a definitive conclusion that defendant acted unreasonably in relying upon an the UR Non-Certification especially when there was no timely challenge to the medical determination rendered in such review. Although the decision to deny applicant's use of Norco was shown by the AME to be the wrong decision it

appears upon the record presented that defendant's action was based on a good faith medical dispute and reliance on the Utilization Review. While it is appreciated that applicant's present counsel provided a valuable service to his client it remains the court's opinion that applicant has not met his burden to establish that there was an unreasonable delay or denial of medical treatment.

**RECOMMENDATION**

For the foregoing reasons, it is recommended, that the Petition for Reconsideration be denied on the merits.

DATE: 1-6-14



**Victor Jimenez**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the  
Official Address record on the above date.  
BY: R. BRYANT ON: 1/6/2014

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