

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLETUS HEIM,

Claimant,

vs.

A.Y. McDONALD MFG., CO.,

Employer,
Self-Insured,
Defendant.

FILED

OCT - 5 2018

File No. 5052066

WORKERS COMPENSATION PARTIAL COMMUTATION

DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Claimant, Cletus Heim, filed a petition for partial commutation of benefits owed by A.Y. McDonald Manufacturing Company, self-insured employer, as defendant. Claimant sustained a work-related injury on August 1, 2013 and a deputy workers' compensation commissioner found claimant permanently and totally disabled as a result of this injury by an arbitration decision filed February 8, 2016. Defendant appealed. The commissioner affirmed the award of permanent total disability benefits by a decision dated November 29, 2017. No further review was taken.

This matter came on for hearing before Deputy Workers' Compensation Commissioner, Erica J. Fitch, on April 19, 2018, in Des Moines, Iowa. The parties were unable to complete oral testimony within the allotted timeframe for hearing; a second hearing occurred on April 27, 2018 to allow for completion of testimony. The record in this case consists of joint exhibit 1, claimant's exhibits 1 through 4, defendant's exhibits A through D, M, and O through Q, and the testimony of the claimant, Sheila Heim, Brian Murphy, and Dennis Markway. The parties submitted post-hearing briefs, the matter being fully submitted on July 2, 2018.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant has established that a proposed partial commutation of all but the final week of the previous award of permanent total disability benefits is in his best interest; and
2. Specific taxation of costs.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was consistent as compared to the evidentiary record and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant's testimony was clear and he demonstrated knowledge of his plan for use of the proposed commutation proceeds. Claimant is found credible.

Claimant filed an original notice and petition in arbitration on December 18, 2014, seeking benefits related to a traumatic work-related injury to claimant's low back on August 1, 2013. The matter proceeded to arbitration hearing before Deputy James Elliott on June 25, 2015. On February 8, 2016, Deputy Elliott issued an arbitration decision which awarded claimant, in relevant part, permanent total disability benefits as a result of the August 1, 2013 work injury. Such benefits were set as commencing on June 6, 2014, at a weekly rate of \$610.38. On March 22, 2016, defendant filed a notice of appeal of the arbitration decision. On April 27, 2016, claimant filed the instant petition for partial commutation, seeking commutation of all but the final week of the award of permanent total disability benefits. Commissioner Joseph Cortese issued an appeal decision on November 29, 2017, affirming the proposed arbitration decision and specifically affirming the award of permanent total disability benefits commencing on June 6, 2014 at the rate of \$610.38. No further review was taken.

Following the original arbitration hearing, claimant received additional medical treatment due to continued symptoms. On February 13, 2017, claimant underwent a surgical T11-S1 stabilization with Jonathan Citow, M.D. (DEQ, p. 150) Claimant recovered well, with mild back pain and no radicular symptoms. Dr. Citow opined claimant was not stable to return to his prior type of work. (DEO, pp. 145-146)

The partial commutation matter proceeded to hearing on April 19, 2018 and April 27, 2018. The parties submitted post hearing briefs, with the matter being fully submitted on July 2, 2018.

At the time of evidentiary hearing, claimant and his wife, Sheila Heim, received monthly income from a number of sources. Claimant retired from defendant on November 7, 2014. (DEC, p. 44; DEM, p. 131) Claimant receives a defined benefit pension from his work at defendant in the amount of \$2,364.00 gross and \$2,135.00 net after taxes. (CE3, pp. 7-8) Claimant began taking Social Security Retirement benefits in August 2014. As of January 2018, the gross monthly amount of such benefits totaled \$1,416.20. Following deductions for Medicare and taxes, the net monthly benefit is \$1,072.40. (CE3, pp. 4-5, 7) Claimant withdraws \$1,000.00 per month from his 401k;

the value of claimant's 401k is \$71,744.00. Mrs. Heim has two 401k plans, with balances of \$235,957.00 and \$58,528.00. (CE3, p. 7, 17-18, 22-23) Claimant receives weekly workers' compensation benefits, totaling \$1,627.68 monthly, following reduction of attorney fees. (CE3, p. 7) In addition, Mrs. Heim remains employed and earns approximately \$6,193.63 monthly. (CE3, pp. 7, 10)

The Heims total monthly income is \$12,601.51; absent workers' compensation benefits, the total income would be \$10,971.83. (CE3, p. 7) The Heims tax records revealed income of \$117,237.00 in 2017. (CE4, p. 1) The couple paid Federal taxes, as well as state taxes in Iowa and Wisconsin. (CE4, pp. 2, 7, 13) As of the time of hearing, the couple held just shy of \$7,500.00 in checking and savings accounts. (CE3, p. 31)

The Heims monthly expenses at the time of hearing were rather standard and include energy, utilities, television, insurance, newspaper, gas, groceries, phone, satellite radio, prescriptions, property taxes, and vehicle licenses. The largest monthly expenses are \$1,600.00 and \$569.18 payments on loans for a motor home and Jeep, respectively. They do not have a mortgage on their home or balances on credit cards. The Heims also pay \$2,280.00 annually or \$190.00 monthly on a campground membership. Their total monthly expenses, including pro rata portions of annual expenses, total \$4,421.78. (CE3, p. 14)

The Heims personally maintain two term life insurance policies: \$200,000.00 on Mr. Heim and \$175,000.00 on Mrs. Heim. (Mrs. Heim's testimony)

Sheila Heim, claimant's wife of 45 years, was 63 years of age on the date of evidentiary hearing. She is employed as director of outreach for the Sinsinawa Dominicans, tasked with supervising all revenue-generating departments. She began and Sinsinawa Dominicans in 1999. Mrs. Heim testified she loves her work and intends to continue working until, at minimum, May 2021. At this time, she will be eligible for full Social Security retirement benefits, which are estimated at \$2,194.00 monthly. If she desires, Mrs. Heim may remain at Sinsinawa Dominicans past this date. (Mrs. Heim's testimony) In 2017, Mrs. Heim grossed over \$73,000.00 annually for her work; at the time of hearing, she earned \$2,858.60 biweekly. (Mrs. Heim's testimony) From her salary, Mrs. Heim voluntarily contributes 15 percent of her pretax earnings to a 401k plan; her employer matches 3 percent of her contributions. Additionally, she receives employer-provided benefits, including life, health, and dental insurance. (Mrs. Heim's testimony)

From 1992 to 1998, Mrs. Heim worked as director of marketing and assistant vice president of a bank. In the course of her duties, she became acquainted with financial advisor, Dave Kessler. Mrs. Heim became confident in his professional skills, leading the Heims to utilize Mr. Kessler as their personal financial advisor. Mr. Kessler continues in this role for the Heims. He has provided the Heims with advice regarding investment of their 401k plans. (Mrs. Heim's testimony)

The Heims primary source of recreation is camping. Mrs. Heim testified the couple began camping together before they married in 1973. (Mrs. Heim's testimony) In the early 2000s, the couple set a long term goal of purchasing a motor home. To accomplish this goal, Mr. Heim began funding a 401k through defendant for the precise purpose of purchasing a motor home. (Claimant's testimony) Over the years, the couple has camped in tents, rented pop-up trailers and motor homes, and purchased travel trailers and motor homes. Mrs. Heim testified Mr. Heim experienced difficulty operating travel trailers following his work injury of August 1, 2013. As a result, they began to use less physically-demanding motor homes. In April 2015, the Heims purchased a used motor home. The couple used this motor home until Spring 2016, when they purchased a new motor home. The list price for the new motor home was \$147,000.00; the Heims paid \$109,000.00. The couple borrowed \$86,000.00 on a 5-year loan, with 5 percent interest. The motor home will be paid off in April 2021, if payments are not accelerated. As of the date of hearing, the motor home was valued at \$104,000.00; the loan balance was \$52,000.00. (Claimant's testimony; Mrs. Heim's testimony)

The couple discussed the motor home purchase with Mr. Kessler, who suggested taking a monthly draw from Mr. Heim's 401k to apply toward the loan, as opposed to cashing out the plan entirely. As a result, the Heims began to take a \$1,000.00 draw monthly from the 401k. Mr. Heim's 401k remains valued at over \$70,000.00. Both Mr. and Mrs. Heim testified Mr. Kessler was aware that purchase of such a motor home has been a long term goal for the couple. He is further aware of the couple's desire to be debt free at the time they both retire. (Claimant's testimony; Mrs. Heim's testimony)

For a number of years, the Heims have regularly camped at a campground in Mt. Carroll, Illinois, called Timberlake. Timberlake is located approximately 45 miles from their residence. In 2010, the Heims purchased a permanent camping spot. The Heims routinely utilize this spot annually from April to November. The majority of weekends during this timeframe, the Heims camp at Timberlake. They also camp during the duration of the Iowa State Fair and take occasional trips to other locations. (Mrs. Heim's testimony)

In June 2017, the Heims paid off the mortgage on their residence and the adjacent lot. The assessed value of the home and adjacent lot is \$191,200.00. (Mrs. Heim's testimony; CE3, pp. 24-27)

Mrs. Heim acknowledged the couple carried approximately \$10,000.00 in credit card debt following claimant's work injury. Mrs. Heim testified the couple never missed a payment, but were unable to afford the full balances on the cards. After extinguishing their mortgage, the couple redirected the mortgage funds to credit card balances. In fall 2017, the couple paid off the full balances on these cards. They now carry no debt on credit cards; any credit card balance is paid at the conclusion of each month. (Mrs. Heim's testimony)

The Heims generally drive personal vehicles for extended periods of time. Mrs. Heim drives a 2015 Buick which was bought new and is paid in full. The Buick is valued at \$21,800.00 by the NADA guides. This vehicle was purchased to replace a 2001 vehicle, driven by Mrs. Heim from 2003 to 2015. (Mrs. Heim's testimony) In January 2018, the couple purchased a used Jeep for claimant's use. The purchase price was \$24,000.00; the loan balance at the time of hearing was approximately \$22,000.00. (CE3, pp. 15-16)

Claimant testified the couple is comfortable handling the proceeds of a partial commutation. (Claimant's testimony) The couple's credit score the week prior to hearing was 813. (Mrs. Heim's testimony) If the commutation is granted, the Heims testified they will consult with Mr. Kessler prior to spending any proceeds. Both expressed a desire to extinguish any remaining debts on the motor home and Jeep. Both also expressed a potential need to complete some improvements to their residence, including installing a zero-entry shower and moving the laundry upstairs. Each move is contemplated due to Mr. Heim's work-related physical condition. (Claimant's testimony; Mrs. Heim's testimony) Claimant testified he would like to receive the commutation in part because he would like to invest the proceeds and leave an estate behind for his wife. Claimant noted that he was forced to stop working prematurely due to the work injury, resulting in decreased contributions to his 401k and savings. (Claimant's testimony)

Claimant retained financial advisor, Brian Murphy, to offer an opinion with respect to claimant's request for partial commutation. Mr. Murphy met with the Heims on May 24, 2017, at which time he interviewed the couple and reviewed various financial documents. He issued a report containing his opinions and proposals that same date. Following the meeting, Mr. Murphy expressed belief claimant was very capable of making decisions regarding his finances and further, that claimant possessed reasonable experience doing so. (CE1, p. 1)

Mr. Murphy summarized the Heims income, expenses, savings, and 401k accounts, as well as ownership of their residence, adjacent lot, multiple automobiles, and small vehicles without debt. (CE1, p. 2) In addition, Mr. Murphy noted the presence of equity in the purchased motor home. (CE1, p. 2) He noted the couple possessed sufficient income and savings to meet their budgetary needs. (CE1, p. 2) He indicated the couple also possessed significant retirement savings. (CE1, p. 1) Mr. Murphy noted stable income sources of claimant's pension and Social Security Retirement benefits. (CE1, p. 3)

Mr. Murphy acknowledged the Heims owed on the motor home and carried balances of approximately \$10,000.00 on credit cards. Mr. Murphy noted the Heims recently paid off their home and lot mortgages and had redirected the funds toward payment of credit card debts. (CE1, p. 2) He opined the couple's current debt was very manageable and continually decreasing. (CE1, p. 1) Mr. Murphy and the Heims also discussed potential upcoming financial needs and identified possible home remodeling projects and vehicle purchase. (CE1, p. 3)

Mr. Murphy opined the Heims presented in a “very solid” financial position and he could see no financial reason to deny the requested partial commutation. He expressed belief the couple had demonstrated a lifetime of financial discipline and pattern of living within their means. (CE1, p. 2) He opined the couple had not overextended themselves with excessive borrowing. (CE1, p. 1) Mr. Murphy opined the most significant advantage to receipt of a lump sum would be the impact upon claimant’s estate; he also noted claimant would have the opportunity to invest the proceeds at a higher rate of return. (CE1, p. 5) Mr. Murphy identified two potential investment strategies available to claimant. (CE1, pp. 3-4) However, he noted the Heims agreed to work with a financial advisor if and when the partial commutation was granted. Mr. Murphy ultimately recommended the requested partial commutation be awarded. (CE1, p. 5)

Mr. Murphy testified at evidentiary hearing regarding updated information received following his May 2017 report. Mr. Murphy testified he found the Heims reasonable and believed all their desires were in line with what he would expect of individuals with similar age and circumstances. Following review of updated financial information, Mr. Murphy opined the Heims had strengthened their financial position. He opined they demonstrated consistent goals, paid off debts, and increased their net worth. Mr. Murphy opined the couple is financially stable, with assets far exceeding most Americans approaching retirement, as well as monthly income which dwarfs their monthly expenses. He also highlighted sources of guaranteed income from a pension and Social Security. (Mr. Murphy’s testimony)

Mr. Murphy testified he was surprised the couple had purchased a new motor home. However, he acknowledged camping plays a large role in the couple’s life. As a result, he indicated the relevant inquiry was whether the motor home was affordable. He answered that question affirmatively, noting the short loan term and efforts to pay greater than the minimum loan balance. Mr. Murphy rejected the premise the Heims were overspenders; he testified their savings-to-debt ratio would not have been obtained if they were overspenders. (Mr. Murphy’s testimony)

In the event the partial commutation was granted, Mr. Murphy recommended the Heims recommence the process for identifying investment options. Mr. Murphy testified this would allow for identification of investment goals, but noted he would likely recommend extinguishing debts prior to investing. Mr. Murphy testified he anticipated the Heims would pursue this process with long-term financial advisor, Mr. Kessler. Mr. Murphy testified he did not believe the Heims would squander the proceeds or invest poorly, noting a history of responsible financial behavior. He ultimately opined a commutation would be in claimant’s best interest, as the Heims maintained sufficient income to cover expenses, even without receipt of weekly workers’ compensation benefits. (Mr. Murphy’s testimony)

Mr. Murphy’s testimony was clear and professional. His demeanor at the time of evidentiary hearing was excellent and did not provide the undersigned with any reason to doubt his veracity. Mr. Murphy is found credible.

Defendant retained financial advisor Dennis Markway to evaluate claimant's request for partial commutation. Mr. Markway reviewed supplied documents and authored an opinion on February 14, 2018. (CEA, p. 1) Mr. Markway critiqued Mr. Murphy's curriculum vitae. (DEA, pp. 1-2)

Following review of Mr. Murphy's report and provided discovery responses, Mr. Markway disagreed with Mr. Murphy's conclusion that the Heims had responsibly managed their finances. Mr. Markway focused upon the motor home purchase. He inquired why such a purchase would be made if \$75,000.00 in home renovations were necessary to accommodate claimant's disability. He also highlighted claimant's monthly draw from his 401k in order to offset the monthly payment. While he acknowledged the purchase of a motor home may have been a family goal, he opined it was not a financially prudent choice shortly before retirement. Mr. Markway also questioned the Heims history of large credit card debt and non-essential spending such as on the Timberlake lot, satellite radio, and satellite television service. (DEA, p. 3)

Mr. Markway opined the Heims demonstrated a history of poor spending and money management tendencies and thus, he opined it would be best not to allow them access to large sums of discretionary funds. (DEA, p. 3) Instead of freeing up discretionary funds, he recommended focusing upon options including budgeting, eliminating excessive and unnecessary spending, and preserving existing resources. He also commented that, statistically speaking, most individuals did not handle windfalls well. (DEA, p. 4)

Mr. Markway reviewed and critiqued the investment options proposed by Mr. Murphy. (DEA, p. 4) Thereafter, Mr. Markway opined Mr. Murphy's assessment was incomplete and contained deficiencies. (DEA, p. 7) He indicated it was difficult to see how the suggested diversified portfolio would be superior to claimant's workers' compensation benefits, as the annual payment was less and would be subject to market volatility. (DEA, p. 5) He opined that options providing benefits to claimant's wife or estate were not specifically in claimant's best interest. Mr. Markway further opined the future value of his estate was not a specific need. (DEA, pp. 4, 6) Mr. Markway ultimately opined a partial commutation would not be in claimant's best interest and would leave claimant in a disadvantaged position. (DEA, pp. 1, 7)

Mr. Markway also testified at evidentiary hearing. Following review of the Heims updated financial information, Mr. Markway opined the Heims appeared to have a surplus in income following repayment of their mortgage and credit cards. He acknowledged the Heims possessed net income beyond their monthly expenses, even if the weekly workers' compensation checks were eliminated. Mr. Markway opined this updated information revealed better overall money habits by the Heims, but did not change his written opinions. (Mr. Markway's testimony)

Mr. Markway opined the Heims displayed poor spending and money management tendencies. He noted the Heims savings and checking accounts remained flat, which suggested the excess income was being spent. Mr. Markway

expressed concern regarding the Heims decision to take on liability for a motor home and Jeep. Mr. Markway acknowledged he was unaware that ownership of a motor home had been a long-term goal for which the Heims had consulted their financial advisor. Nevertheless, Mr. Markway described the motor home purchase as frivolous, especially in light of purported need to make home remodeling changes. (Mr. Markway's testimony)

Mr. Markway ultimately opined the requested commutation was not in claimant's best interest, in part due to the Heims history of large purchases and credit card debt, as well as general statistics regarding management of lump sums by individuals. Mr. Markway indicated he was unaware that the Heims accumulated credit card debt after claimant's work injury and resultant decrease in income. He expressed surprise the Heims joint credit score was 813. Mr. Markway ultimately opined it would not be in claimant's best interest to commute his weekly benefit to leave an estate for his family. He opined claimant personally would be better off retaining his weekly indemnity benefit. (Mr. Markway's testimony)

Mr. Markway's testimony was direct and professional. His demeanor at evidentiary hearing gave the undersigned no reason to doubt his veracity. Mr. Markway is found credible.

CONCLUSIONS OF LAW

The first issue presented is whether claimant has established that a proposed partial commutation of all but the final week of the previously awarded permanent total disability benefits is in his best interest.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Iowa Code section 85.45 governs commutations. The section states that "[f]uture payments of compensation may be commuted to a present worth lump sum payment" provided that: (1) the period during which compensation is payable can be definitely determined; and (2) the workers' compensation commissioner is satisfied that commutation will be in the best interests of the person or persons entitled to the compensation. Iowa Code section 85.45.

The individual or individuals seeking commutation have the burden of proving that commutation is in their best interests. The commissioner must determine the best interests question on a case-by-case basis, although the commissioner may not disregard a claimant's reasonable plans and desires merely because the plan's success cannot be assured. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964); Dameron v. Neumann Bros., Inc., 339 N.W.2d 160 (Iowa 1983). On the other hand, the commissioner cannot grant a commutation request when the potential detriments to the

worker or dependents from potential ill use of any lump sum payment outweigh the asserted benefits of those funds being commuted to their present worth.

The Dameron court charged the commissioner, in determining whether to allow commutation, to examine the following factors:

1. The worker's age, education, mental and physical condition, and actual life expectancy, as contrasted from information that actuarial tables have provided.
2. The worker's family circumstances, living arrangements, and responsibilities to dependents.
3. The worker's financial condition, including all sources of income, debts, and living expenses.
4. The reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage invested funds or arrange for others such as a trustee or conservator to manage the funds.

Dameron, 339 N.W.2d at 164.

When the period of future compensation to which a claimant is entitled is definitely determinable and a claimant's work-related medical condition is stable, claimant may receive a lump sum discounted payment of future benefits, provided claimant establishes that the commutation of benefits is in claimant's best interest. A claimant's preference for receiving a lump sum payment is balanced against the potential detriments that could result if the employee invests unwisely, spends foolishly or otherwise wastes the funds to the point where they no longer provide the wage substitute intended by the workers' compensation law. Id.

In determining whether the commutation is in the best interest of claimant, this agency cannot act as a conservator and disregard claimant's desires and reasonable plans just because success of the plans is not assured. Diamond, 256 Iowa 915, 129 N.W.2 608 (1964).

The Dameron court went on to state that a request for commutation should be approved unless the potential detriments to the worker outweigh the worker's expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W.2d at 164.

Iowa Code section 85.48 provides:

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their

present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments from the first or last part of the payment period or by a pro rata reduction in the weekly benefit amount over the entire payment period.

Claimant was awarded permanent total disability benefits by final agency action related to the August 1, 2013 work injury. Claimant's work-related medical condition is stable, yet permanent in nature. There is no evidence he is in otherwise poor health. The period of claimant's entitlement to permanent total disability benefits is definitely determinable. As a result, the relevant inquiry in this partial commutation matter is whether the proposed commutation is in claimant's best interest.

Claimant proposes a partial commutation of all but the final week of his award of permanent total disability benefits. If granted, claimant expressed desire to pay off loan balances on a motor home and Jeep vehicle. Once these debts are extinguished, claimant desires to invest the remainder of the commutation proceeds with the assistance of a financial advisor. Claimant and his wife credibly testified they would take no action with respect to spending of the proceeds without consulting their long-term financial advisor.

Defendant argues claimant lacks a specific plan for investment of the proceeds of the commutation and as such, claimant's request cannot be found reasonable or in claimant's best interest. However, investment is not the sole basis for granting a commutation. Ridding claimant of the liabilities of a motor home and Jeep loan is in claimant's best interests. Reducing claimant's debt burden is a strategy favored by both retained financial advisors; the advisors differ on the recommended manner in which that should be accomplished. Furthermore, the lack of a specific investment plan is entirely reasonable given the delays presented by the litigation process. Any specific plan developed during the discovery process would be outdated by the time of hearing and ultimate decision.

Although claimant does not possess experience managing large sums of money, the Heims have demonstrated an ability to live within their means and enlist the services of a financial advisor for assistance with investments. The Heims have maintained a professional relationship with their financial advisor, Mr. Kessler, for a number of years. Mr. Kessler already manages the couple's 401k assets, thus establishing a successful working relationship and Mr. Kessler's knowledge of claimant's investment goals and objectives. From this professional relationship and the couple's financial discipline, the Heims have achieved a credit score of over 800 and possess a net worth of greater than \$600,000.00. Their monthly income greatly exceeds their monthly expenses, even if claimant's workers' compensation benefit was eliminated.

Defendant also argues claimant's primary motivation in securing a commutation is creation of an estate. Defendant argues this motivation is inconsistent with the stated purpose of workers' compensation benefits, income replacement. Relatedly, defendant argues that payment of a large sum via a commutation for a reason outside the purpose of workers' compensation benefits amounts to a denial of defendant's due process rights and constitutes an unconstitutional taking of defendant's property under the United States and Iowa Constitutions.

I am unable to find that claimant's primary motivation is estate creation; while that is one expressed goal, claimant presented other desires including elimination of debt, home renovations, and investment, as the bases for his request for commutation. Ridding claimant of the liabilities of a motor home and vehicle loan is in claimant's best interest. Reducing claimant's debt burden is a prudent financial strategy. Completing home renovations necessitated by the work injury is in claimant's best interest. Investment of proceeds with the assistance of a financial advisor is in claimant's best interest, especially given claimant's working career was cut short by the work injury.

Assuming claimant's workers' compensation benefits are commuted and his current liabilities are extinguished, the undersigned believes claimant has demonstrated the ability to live within his expected income, even without immediately drawing income from his investments. Claimant's testimony and the financial data in evidence indicate if the workers' compensation benefits and outstanding debts are eliminated, claimant's existing monthly income will continue to exceed his monthly expenses. Claimant therefore, would be in a position to reinvest the gains on his investments, rather than removing the gains as income. Commutation of claimant's weekly benefits would allow claimant to invest the remaining lump sum proceeds in an investment strategy that would allow for growth to counteract inflation.

Claimant has demonstrated an ability to prudently manage his money and live within his means. There is no indication claimant would be irresponsible with the commuted funds. Very little evidence presented leads the undersigned to question claimant's ability to adequately manage and avoid wasting the partial commutation proceeds.

It is concluded that on balance, claimant's request for partial commutation is reasonable, in the best interest of claimant, and should be granted.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the cost of Mr. Murphy's financial report. Mr. Murphy does not qualify as a practitioner whose report may be subject to taxation under rule 4.33. Accordingly, I do not tax the cost of Mr. Murphy's report to defendant.

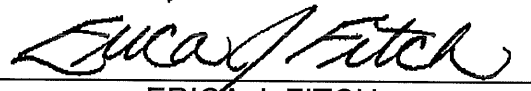
ORDER

THEREFORE, IT IS ORDERED:

That claimant's request for partial commutation of all but the final week of the previous award of permanent total disability benefits is granted, provided that the original notice and petition for partial commutation shall be revised as appropriate to reflect remainders and commuted values at the time of the signing and filing of this decision.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 5th day of October, 2018.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.