

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLARD A. MEADOWS,

FILED

Claimant,

JUN 13 2018

File No. 1144586

vs.

WORKERS COMPENSATION

PARTIAL COMMUTATION

COMMUNITY MEMORIAL HOSPITAL,

DECISION

Employer,
Self-Insured,
Defendant.

HEAD NOTE NO: 3303.20

Claimant Willard Meadows was awarded permanent total disability benefits, pursuant to a stipulation with his employer, the defendant, Community Memorial Hospital ("CMH"), following an arbitration hearing, on March 23, 1999. On June 26, 2017, Meadows filed a petition for partial commutation. On July 20, 2017, CMH filed a resistance to the petition for partial commutation.

A hearing was held on May 22, 2018, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Richard Maher represented Meadows. Meadows appeared and testified. Meadows's wife, Linda Meadows, also testified on his behalf. Attorney Kent Smith represented CMH. Exhibits 1 through 10, and A through D were admitted into the record. The record was held open through June 1, 2018, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. CMH waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between CMH and Meadows at the time of the alleged injury.
2. Meadows sustained an injury on May 2, 1996, which arose out of and in the course of his employment with CMH.
3. The alleged injury caused a temporary and permanent disability.
4. Meadows sustained a permanent and total disability as a result of the work injury.

5. The commencement date for permanency was March 13, 1998.
6. At the time of Meadows's alleged injury his gross earnings were \$317.41 per week, he was married and entitled to three exemptions, and his weekly rate was determined to be \$220.40.
7. Prior to the hearing Meadows was paid 1,098 weeks of permanent total disability benefits at the rate of \$220.40 per week.
8. CMH is entitled to a credit for all benefits paid to Meadows.

ISSUES

1. Should Meadows's request for partial commutation be granted?
2. Should costs be assessed against either party?

FINDINGS OF FACT

Meadows and his wife of fifty years, Linda Meadows, live in Fremont, Nebraska. (Transcript, page 6; Exhibit C, p. 34) Meadows did not graduate from high school, but completed a GED. (Tr., p. 38) Meadows later attended community college and obtained a certificate in auto mechanics. (Tr., p. 38) Meadows and his wife have no experience in accounting, economics, or finance. (Tr., pp. 38-39) Their daughter assists them with completing their taxes to save money. (Tr., pp. 39, 48) At the time of the hearing Meadows was seventy-one. (Tr., pp. 6, 34) Mrs. Meadows, who is a retired nurse, was sixty-nine at the time of the hearing. (Ex. C, p. 34)

In 1997 the Social Security Administration found Meadows was disabled. (Tr., p. 7) He continued to receive Social Security Disability Insurance payments until he turned sixty-five, when his monthly benefits were converted from disability to retirement benefits. (Tr., pp. 7, 10)

Meadows sustained an injury to his lower back while working for CMH on May 2, 1996. (Tr., p. 8) Meadows had undergone three lower back surgeries prior to the May 2, 1996 work injury. (Tr., p. 8)

On March 23, 1999, following an arbitration hearing, Meadows was awarded permanent total disability benefits, at the rate of \$220.40 per week, pursuant to the parties' stipulation at hearing that he was permanently and totally disabled. (Tr., pp. 7, 34) Since the arbitration hearing Meadows has continued to receive treatment for his back condition with his family physician, Alan Jensen, M.D. (Tr., p. 8; Ex. 9) Meadows is not seeking employment. (Tr., pp. 34-35)

Meadows receives \$1,183.30 in Social Security benefits per month, and \$220.40 per week in workers' compensation benefits less one-third for attorney fees, or \$146.93

per week. (Tr., pp. 9-10; Ex. D, p. 37) Mrs. Meadows was employed as a nurse. (Tr., p. 11) Mrs. Meadows retired from nursing in October 2017, and she receives \$1,203.30 per month in Social Security benefits.

Each month Mr. and Mrs. Meadows pay \$772.00 for principal, interest, insurance, and taxes on their mortgage, \$199.00 for utilities, \$100.00 for gasoline, \$381.66 for Medicare supplemental policies, \$400.00 for food, \$60.00 for clothing, \$150.00 for Mr. Meadows' diabetes medications, \$60.00 for Mrs. Meadows' out-of-pocket medical expenses, \$82.81 for Mr. Meadows' life insurance, \$50.81 for Mrs. Meadows' life insurance, \$107.22 for automobile insurance, and \$75.00 toward a \$953.91 credit card balance. (Tr., pp. 12-20; Exs. C, p. 20; D, p. 40; 1, pp. 1-2) Meadows used his credit card to pay for repairs to his classic car. (Tr., pp. 18-19) Mr. and Mrs. Meadows' total expenses are \$2,438.50 per month. (Ex. C, p. 20)

Meadows' life insurance policy offers a payout of \$10,000.00, intended to pay for his funeral. (Tr., p. 42; Ex. 6) Mrs. Meadows' policy offers a payout of \$25,000.00. The mortgage balance on the Meadows' home is \$76,770.33, as of April 18, 2018, and Meadows believes the home is worth \$145,000.00, even though the assessor has valued the home at \$105,075.00. (Tr., pp. 18-20; Exs. 1, p. 2; 5) The last appraisal of the home when the Meadows' purchased the home was \$115,000.00. (Exs. C, p. 21; D, p. 41) The interest rate on the mortgage is 5.5 percent. (Ex. C, p. 26)

Mr. and Mrs. Meadows have a checking account with a balance of \$1,484.00 as of May 11, 2018, a second checking account with a balance of \$1,152.00 as of April 13, 2018, and a savings account with a balance of \$8,500.00. (Tr., p. 17; Ex. 1, p. 2) Mrs. Meadows has a 401K account with a balance of \$27,199.00, as of March 31, 2018. (Tr., pp. 17-18; Ex. 1, p. 2) Mr. Meadows and his wife own a classic car, a 2010 Chevy Impala, and a 1997 pickup truck. (Tr., pp. 51-52) Mr. and Mrs. Meadows have never declared bankruptcy and Mr. Meadows is not an inmate. (Ex. C, p. 25; Tr., p. 33)

Meadows is seeking a partial commutation of all but one week of his workers' compensation benefits to pay off his mortgage and credit card, and keep his medical expenses open. (Tr., pp. 20-21) After paying off the mortgage and credit card, Meadows would have \$1,911.74 remaining, which he plans to invest. (Tr., pp. 22-23) If the partial commutation is granted, the Meadows would have total income of \$2,386.60 per month. (Tr., p. 23) After expenses, they would have net monthly income of \$532.12. (Tr., p. 23) Meadows testified he and his wife have lived off a similar amount in the past. (Tr., p. 23) Meadows testified he believes his wife would have a difficult time making the mortgage payment if he predeceased her. (Tr., p. 31) Most of the household expenses are fixed, and would continue after Meadows' death with the exception of his gasoline, clothing, out-of-pocket medical expenses, and some food. (Tr., pp. 42-43, 47) Mrs. Meadows also believes her husband would have a difficult time paying his expenses if she died without the partial commutation. (Tr., p. 49)

Meadows retained Jerome Sherman, Ph.D., to provide an opinion on the partial commutation, and he opined a partial commutation would be in Meadows' best interest. (Ex. 4) CMH retained Peter Mattila, an economist to prepare an analysis of the proposed commutation, and he opined a partial commutation would not be in Meadows' best interest. (Ex. A) Meadows has not met with Dr. Sherman or with Mattila. (Tr., pp. 39, 41) He does not currently have a financial advisor. (Tr., p. 39) Mrs. Meadows has contacted a financial advisor with Edward Jones, but she and her husband have not seen him. (Tr., p. 46)

CONCLUSIONS OF LAW

I. Partial Commutation

This case involves a petition for partial commutation filed before July 1, 2017. At the time of the filing of the petition for partial commutation, Iowa Code section 85.45(1) (2017) provided,

[f]uture payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

- a. When the period during which compensation is payable can be definitely determined.
- b. When it shall be shown to the satisfaction of the workers' compensation commissioner that such commutation will be for the best interest of the person or persons entitled to compensation.

Meadows has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted by the Division of Workers' Compensation in rule 876 Iowa Administrative Code 6.3. Iowa Code section 85.48 provides,

[w]hen 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.

Rule 876 IAC 6.3 contains a life expectancy table to be used in determining the amount to be paid to claimants in commutation proceedings. The rule provides, "[t]he life expectancy is determined by taking the age of the person, set forth in the 'age' column and comparing it to the 'weeks' column, which indicates the weeks an individual at the age indicated will be expected to continue to live." 876 IAC 6.3. The rule

provides a presumption of life expectancy and makes the number of weeks owed to a claimant under a permanent total disability award definitely determinable.

When assessing whether a commutation should be granted, the reviewing body determines whether granting a commutation is in the claimant's best interests.

Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164-65 (1983); Diamond v. Parsons Co., 256 Iowa 915, 928, 129 N.W.2d 608, 616 (1964). The Iowa Supreme Court has identified factors to consider in determining whether a commutation is in the claimant's best interest, as follows:

1. The worker's age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).
2. The worker's family circumstances, living arrangements, and responsibilities to dependents.
3. The worker's financial condition, including 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 management by others (for example, by a trustee or conservator).

Dameron, 339 N.W.2d at 164. A request for a commutation should be approved using the best-interest balancing test "unless the potential detriments to the worker outweigh the worker's expressed preference and the demonstrated benefits of commutation." Id.

Meadows is seventy-one. He has diabetes and he receives regular medical treatment for his work injury and diabetes. There is no evidence that Meadows is suffering from a psychological or physical condition that would adversely affect his life expectancy.

Meadows completed a GED and an automobile mechanic course at a community college. Meadows and his wife have been married for fifty years. His wife is sixty-nine. While Meadows and his wife have no training or experience in finance or investing, there was no evidence presented at hearing the Meadows have had past financial difficulties. Meadows has incurred a small credit card debt under \$1,000.00 to purchase parts for his classic car. There was no evidence Meadows spends money unwisely. To the contrary, even with meager past earnings, Meadows and his wife have saved over \$8,000.00.

Meadows is seeking a partial commutation to pay off the mortgage on his home and his minor credit card debt. Granting the commutation will leave Meadows with less than \$2,000.00, whereas continuation of his benefits results in income of \$7,640.36 per year. The evidence presented at hearing supports that both spouses would have a

difficult time paying the mortgage expense each month in the event of the death of the other spouse. While the granting of the partial commutation will leave Meadows with under \$2,000.00 in cash to invest, the evidence supports Meadows and his wife can meet their monthly expenses with their current sources of income, less the mortgage and credit card payments. Under the circumstances of this case, I find the benefits of the proposed partial commutation outweigh the detriments Meadows may face in the future. Meadows and his wife will be more financially secure if their mortgage is paid in full.

II. Costs

Meadows seeks to recover the \$100.00 filing fee, \$15.42 in service costs, and the \$1,100.00 cost of Dr. Sherman's report. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the costs requested by Meadows. Using my discretion, I find the \$100.00 filing fee, \$15.42 in service costs, and the \$1,100.00 cost of Dr. Sherman's report should be assessed to CMH.

ORDER

IT IS HEREBY ORDERED THAT:

Claimant's petition for partial commutation is granted.

Defendant shall pay claimant a lump sum payment of future weekly benefits, except for the final week of permanent total disability benefits awarded in the March 23, 1999 arbitration decision, as set forth in the claimant's petition for commutation, discounted to the present value based on the number of weeks to be commuted and the interest rate for determining the discount as of the date of this decision.

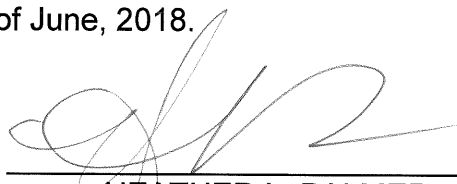
Defendant shall receive a credit for all benefits paid from the date of the filing of the petition until the date the partial commutation is paid.

Claimant's right to medical benefits under Iowa Code section 85.27 shall remain unaffected by this decision.

Defendant is assessed one hundred and 00/100 dollars (\$100.00) for the filing fee, fifteen and 42/100 dollars (\$15.42) for service costs, and one thousand one hundred and 00/100 dollars (\$1,100.00) for the cost of Dr. Sherman's report.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 13th day of June, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
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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.