

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLETUS HEIM,

Claimant,

vs.

A.Y. McDONALD MFG., CO.,

Employer,  
Self-Insured,  
Defendant.

File No. 5052066

A P P E A L

D E C I S I O N

Head Note No: 3303.20

Defendant A.Y. McDonald Manufacturing Company, self-insured employer, appeals from a partial commutation decision filed on October 5, 2018. Claimant Cletus Heim responds to the appeal. The case was heard before the deputy commissioner on April 19, 2018. The parties were not able to complete oral testimony in the allotted timeframe for hearing. As such, the hearing was completed on April 27, 2018. The matter was considered fully submitted on July 2, 2018.

In the partial commutation decision, the deputy commissioner determined claimant's request for partial commutation of all but the final week of the previous award of permanent total disability benefits is reasonable, is in the best interest of claimant, and should be granted.

On appeal, defendant argues claimant failed to establish a specific need for, and projected use of, the partial commutation funds. Defendant additionally asserts claimant's primary motivation and purpose in seeking a partial commutation is to create an estate for his heirs, which is inconsistent with the purpose for which permanent total disability benefits are awarded under Iowa law, and reflects an intended use of the funds in the best interest of persons other than the claimant. Lastly, defendant contends the hearing deputy erred in excluding certain medical records from evidence.

Claimant asserts on appeal that the partial commutation decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed partial commutation decision filed on October 5, 2018, which

relate to the issues properly raised on intra-agency appeal, are affirmed with the following additional findings and analysis:

With respect to defendant's argument that claimant failed to establish a specific need for, and projected use of, the partial commutation funds, the deputy commissioner correctly noted that the only relevant inquiry in this matter is whether the proposed commutation is in claimant's best interest. (See Partial Commutation Decision, p. 10) The deputy commissioner noted defendant's argument that claimant "lacks a specific plan for investment of the proceeds of the commutation," and as such, his request "cannot be found reasonable or in claimant's best interest." Id. However, as the deputy commissioner correctly determined, investment is not the sole basis for granting a commutation. Id.

Ultimately, the determination of whether the commutation is in claimant's best interest is a factual determination based upon the factors being balanced in each case. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 163 (Iowa 1983) ("Where, as here, the industrial commissioner in a contested case proceeding has determined that commutation was in the best interests of the claimant, the trial court and this court are now bound by that determination unless it is 'unsupported by substantial evidence in the record.'") The deputy commissioner set forth the four factors outlined in Dameron that the commissioner is to consider in determining whether to allow commutation. (Partial Comm. Dec., p. 9)

As the party moving for partial commutation, claimant bears the burden to prove that the commutation is in his best interest. Iowa R. App. P. 6.14(6). In determining whether the commutation is in claimant's best interest, 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 v. Parsons Co., 256 Iowa 915, 929, 129 N.W.2d 608, 617 (1964). 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.

On appeal, defendant renews its argument that because claimant did not provide a specific plan for investment of the potential lump sum proceeds, there can be no determination that the plan is reasonable. (Defendant's Appeal Brief, p. 5-11) However, as this division has previously recognized, there is no requirement that a claimant demonstrate a "specific plan" for investment in order to obtain a partial commutation. See Alexander v. O'Reilly Auto Parts, File No. 5026818 (App. November 18, 2013) (citing Freeman v. Swift & Co., File No. 5021273 (App. November 23, 2011), stating that a petitioner for partial commutation cannot be expected to make final or definite plans on a home repair/purchase or financial investment until receiving the proceeds following final agency action granting a partial commutation). Rather, it is claimant's overall plan for using the lump sum that is to be examined for reasonableness. See Dameron, 339 N.W.2d at 164 (citing Diamond, 256 Iowa at 928-29, 129 N.W.2d at 616-17) See also Robison v. Tri City Energy, File No. 5033149 (App. June 15, 2018) (holding that claimant's plan to use commutation funds to first pay off debt, and then pursue an in-

home, web-based business, as well as take educational courses, was reasonable, despite the lack of a financial or business plan in evidence).

I affirm the deputy commissioner's findings that claimant's reasonable plans include elimination of all remaining debt, home renovations, and investment. (Partial Comm. Dec., p. 10-11) Claimant and his wife credibly testified they would take no action with respect to spending or investing any of the proceeds without first consulting their long-term financial advisor, Dave Kessler. Id. The deputy commissioner found claimant and his wife have maintained a professional relationship with Mr. Kessler for a number of years. Id. The deputy commissioner found 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. Id. The deputy commissioner found that from this professional relationship and the couple's financial discipline, they have achieved a credit score of over 800 and possess a net worth of greater than \$600,000.00. Id. Finally, the deputy commissioner found their monthly income greatly exceeds their monthly expenses, even if claimant's workers' compensation benefit was eliminated. Id. All of these facts support the conclusion that claimant has the ability to "successfully and prudently use assets wisely." See Alexander v. O'Reilly Auto Parts, File No. 5026818 (App. November 18, 2013).

Additionally, evidence that a lump sum can be invested at a higher rate of return than the discount for periodic benefits is sufficient to show the commutation is in claimant's best interest. Betz v. Western Provisions, Inc., File No. 5022859 (App. October 21, 2015) (citing Thompson v. Thompson Pipeline & Util. Constr. Co., Thirty-fourth Biennial Rep., Iowa Indus. Comm'r 329 (App. 1980); Van Weelden v. Van Weelden Constr. Co., 2 Iowa Indus. Comm'r Rep. 409, 410 (1982)). Here, claimant provided such evidence with Brian Murphy's report and testimony, found credible by the deputy commissioner. (Partial Comm. Dec., p. 6; Claimant's Exhibit 1, p. 5)

Defendant further argues that claimant did not demonstrate any specific financial need for the partial commutation. (Def. Brief, p. 5-6; 11) However, there is no requirement that a claimant must need the lump sum in order for commutation to be deemed appropriate. Hessenius v. Great Plains Orthotics & Prosthetics, Inc., File No. 5044228 (App. February 13, 2019) (citing Paulsen v. Central State Power, Ltd., 2 Iowa Indus. Comm'r Rep. 304, 305 (App. 1982)).<sup>1</sup> Rather, 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. Dameron, 339 N.W.2d at 164.

The deputy commissioner carefully considered the benefits to claimant and his preferences in reaching her decision, as noted above. The deputy commissioner found

---

<sup>1</sup> The Hessenius decision was affirmed on judicial review on October 21, 2019, by the Honorable Sarah Crane, District Court Judge for the Fifth Judicial District of Iowa. It is currently on appeal to the Iowa Supreme Court.

claimant demonstrated the ability to live within his expected income, even without immediately drawing income from his investments. (Partial Comm. Dec., p. 11) Further, claimant's monthly income will continue to exceed his monthly expenses, even if his weekly workers' compensation benefit is eliminated. Id. The deputy commissioner noted there is no indication claimant would be irresponsible with the commuted funds, and very little evidence led her to question his ability to adequately manage and avoid wasting the partial commutation proceeds. Id. Therefore, I adopt the deputy's conclusion that on balance, claimant's request for partial commutation is reasonable, in claimant's best interest, and should be granted.

Defendant next argues that claimant's primary motivation and purpose in seeking a partial commutation is to create an estate for his heirs, which is inconsistent with the purpose for which permanent total disability benefits are awarded under Iowa law, and reflects an intended use of the funds in the best interest of persons other than the claimant. (Def. Brief, p. 11-25) The deputy commissioner found that while creation of an estate was one of claimant's expressed goals, it was not his primary motivation. (Partial Comm. Dec., p. 11) I adopt the deputy commissioner's findings in this regard. In addition, as this agency has concluded in the past, a commutation can be appropriate even if the sole purpose for commuting the benefits is to ensure the security of a spouse. Hessenius, File No. 5044228 (citing Sporleder v. Crouse Cartage Company, File No. 1254033 (App. May 5, 2011)). I conclude claimant's stated purpose of seeking to leave assets for his wife, should he die prior to his calculated life expectancy, is a legitimate purpose for commutation and supports claimant's request for commutation, regardless of whether it is his primary motivation.

Defendant also asserts that because claimant's request for partial commutation was for an improper purpose under Iowa's workers' compensation laws, the agency should consider the best interest of the employer over the claimant. This issue is moot based on my findings above, but it is worth noting again that it is long-standing Iowa law that commutation turns on what is in the best interest of the worker, not what is in the best interest of the employer or insurance carrier. Dameron, 339 N.W.2d at 165 (citing Diamond, 256 Iowa at 928, 129 N.W.2d at 616) As such, defendant's request that the employer's best interest be considered over claimant's is specifically rejected.

Finally, defendant contends the deputy commissioner erred in excluding certain medical records from evidence, which defendant argues are relevant to why it should not be required to make a lump-sum payment of benefits. (Def. Brief, p. 25-31) At hearing, claimant's attorney objected to several of defendant's exhibits based on relevance. (Hearing Transcript, Volume I, pp. 7-8) The deputy commissioner excluded from evidence defendant's exhibits F through L and N, which are medical records pre-dating the underlying arbitration hearing that ultimately resulted in claimant being awarded permanent total disability. (Tr., Vol. I, p.33-34) There was a lengthy discussion on the record regarding the exhibits, including defendant's offer of proof. (Tr., Vol. I, p. 6-34) On appeal, defendant argues that the exhibits are relevant to the "disability of the claimant and to the issue of 'best interest' of the claimant." (Def. Brief, p. 26) However, at the hearing, defense counsel conceded that the records were "not there in a way that

would require you [the deputy] to analyze it for purposes of the – in a direct analysis for purposes of the issues you have to resolve. I'm not asking you to resolve any medical issue or asking you to re-litigate the case. It's just so I can tell our story with the circumstances of the situation and cite to the record." (Tr., Vol. I, p. 13-14). Likewise, defendant spends several pages in its brief providing an outline of claimant's medical history, only to concede that "the award of permanent total disability benefits cannot be altered in this proceeding." (Def. Brief, p. 31). The only thing medical records predating the arbitration hearing could possibly be relevant to is the nature and extent of claimant's disability, which has already been determined by final agency action. There is no basis for the argument that those records are relevant to claimant's current mental and physical condition and actual life expectancy. Further, the deputy commissioner did allow medical records related to treatment claimant received after the arbitration decision, which would potentially be relevant to claimant's current condition. (Tr., Vol. I, p. 23-29; Ex. O – Q).

This agency has discretion to apply its administrative rules and to oversee the admissibility of evidence offered before it. Marovec v. PMX Industries, 693 N.W.2d 779 (Iowa 2005); Lull-Gumbusky v. Great Plains Communication, File Nos. 5011034 and 5031667 (App. December 26, 2012) (affirmed by Iowa Court of Appeals February 11, 2015). However, the Iowa Workers' Compensation Commissioner may reverse deputy decisions regarding the admissibility of evidence when such decisions constitute abuse of discretion or clear errors of law. Id. As the excluded records offer nothing relevant to claimant's current mental or physical condition, or the overall issue of whether a partial commutation is in claimant's best interest, the deputy commissioner was correct to exclude them.

#### ORDER

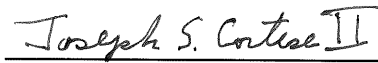
IT IS THEREFORE ORDERED that the partial commutation decision filed on October 5, 2018, is affirmed in its entirety with the above-stated additional findings and analysis.

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. Weekly benefits will resume if claimant is still living at the end of his life expectancy per the tables.

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 11<sup>th</sup> day of February, 2020.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mark J. Sullivan      Via WCES

David L. Jenkins      Via WCES