

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TOMAS SALAZAR,

Claimant,

vs.

KINDER MORGAN, INC.,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5049390

A P P E A L

D E C I S I O N

Head Notes: 2907; 3303.20

Defendants Kinder Morgan, Inc., employer, and its insurer, Ace American Insurance Company, appeal from a partial commutation decision filed on January 24, 2019. Claimant Tomas Salazar responds to the appeal. This case was heard on October 30, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 21, 2018.

In an arbitration decision filed in this case on March 28, 2016, a deputy workers' compensation commissioner found claimant sustained permanent total disability as a result of a work-related injury which occurred on February 28, 2011. The arbitration decision awarded claimant permanent total disability benefits commencing on October 31, 2012. The March 28, 2016, arbitration decision was affirmed by the workers' compensation commissioner on February 13, 2018.

Claimant filed a petition for partial commutation in this matter on March 6, 2017. In the partial commutation decision filed on January 24, 2019, the deputy commissioner found it was in claimant's best interest to order a partial commutation of claimant's future weekly benefits, except for the final week of permanent total disability benefits, awarded in the March 28, 2016, arbitration decision, as set forth in claimant's petition for partial commutation. In the partial commutation decision, the deputy commissioner ordered defendants to pay claimant's costs of the partial commutation proceeding in the amount of \$207.70.

Defendants assert on appeal that the deputy commissioner erred in finding it is in claimant's best interest to approve claimant's petition for partial commutation.

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 have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed partial commutation decision filed on January 24, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the partial commutation proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that it is in claimant's best interest to order a partial commutation of claimant's future weekly permanent total disability benefits. I affirm the deputy commissioner's order that defendants pay claimant's costs of the partial commutation proceeding in the amount of \$207.70.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the partial commutation decision filed on January 24, 2019, is affirmed in its entirety.

Claimant's petition for partial commutation is granted.

Defendants 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 28, 2016, 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.

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

The parties shall cooperate to calculate the applicable value of the commuted benefits. If the parties cannot reach an agreement on the commuted value, they should file a request for appointment of a financial expert to calculate the value of the partial commutation with the expense of that financial expert to be assessed as a cost against whichever party(ies) presented inaccurate calculations of the commuted value.

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

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the partial commutation proceeding in the amount two hundred seven and 70/100 dollars (\$207.70) and defendants 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 20th day of February, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Emily Anderson Via WCES

Theresa C. Davis Via WCES