BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRET VANGETSON,

Claimant,

vs.

AERO CONCRETE, LTD.,

Employer,

and

WESCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED
SEP 19 2018
WORKERS' COMPENSATION

File No. 5058412

REMAND

DECISION

This matter is before the Iowa Division of Workers' Compensation on remand from the Iowa District Court for Polk County.

On June 19, 2017, claimant filed a petition for a partial commutation.

By a ruling dated June 20, 2017, the petition for partial commutation was dismissed as it was premature. As there was nothing to commute, claimant's petition for a partial commutation was dismissed. Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., File No. 5065386 (Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017).

On July 26, 2017, claimant filed a notice of appeal under Rule 876 IAC 4.27 from the ruling dismissing the petition for partial commutation. In an August 24, 2017 ruling, the notice of appeal was found to be interlocutory and the appeal on the interlocutory ruling was dismissed.

The ruling was appealed in a Petition for Judicial Review to the Iowa District Court for Polk County. On May 9, 2018, the District Court remanded this matter back to this agency for an explanation or ruling consistent with the ruling in Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., File No. 5065386 (Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017).

In Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., this agency dismissed claimant's petition for partial commutation without prejudice on June 12, 2017, and remanded the underlying arbitration proceeding to be heard and decided by a deputy workers' compensation commissioner. In the ruling on motion to dismiss petition for partial commutation filed in Sloan, the undersigned stated the following, in pertinent part:

The parties present an issue of first impression at the Commissioner level. Given recent statutory changes, this issue may become more prevalent and direction is needed to permit deputy commissioners to understand the agency interpretation of this issue as well as to provide these and various other parties guidance as to the agency's interpretation. Given that numerous parties may be affected in several cases that may be filed in the very near future, I deem it appropriate, as the Workers' Compensation Commissioner, to retain jurisdiction over the pending motion to dismiss claimant's petition for partial commutation. I specifically retain jurisdiction over this issue, I enter a ruling as final agency action on this matter, and I remand the remainder of the issues in the underlying arbitration proceeding for hearing and determination at the deputy commissioner level.

Rule 876 IAC 4.35 makes Iowa Rule of Civil Procedure 1.421, regarding motions to dismiss, applicable to this agency. Iowa Rule of Civil Procedure 1.421 permits an attack upon a petition when the facts alleged within that petition fail to state a claim upon which any relief may be granted.

A motion to dismiss should only be granted if there are no stated facts conceivable under which a claimant might show a right of recovery. Nixon v. State, 704 N.W.2d 643, 644, (Iowa 2005). A motion to dismiss is sustainable only when it appears to a certainty that claimant is not entitled to any relief under any stated facts that could be proved to support a claim. Bindel v. Iowa Manufacturing Co. of Cedar Rapids, 197 N.W.2d 552, 553 (Iowa 1972). To prevail on a motion to dismiss, a movant must show that there are no stated facts conceivable that claimant might show a right of recovery. State ex rel. Miller v. Philip Morris, Inc., 577 N.W.2d 401, 403 (Iowa 1998).

When a motion to dismiss tests the legal sufficiency of the petition, the allegations pled by the claimant are admitted as true and all inferences which may be drawn from those facts are construed in a light most favorable to the claimant. The motion to dismiss also waives any ambiguity or uncertainty in the petition. Leuchtenmacher v. Farm Bureau Mut. Ins., 460 N.W.2d 858, 861 (Iowa 1990); Curtis v. Bd. of Sup'rs of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978).

When interpreting workers' compensation provisions, the law is construed liberally in favor of the claimant. Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990); Teel v. McCord, 394 N.W.2d 405, 406-407 (Iowa 1986); Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). The beneficial purposes of the law will not be frustrated by reading something into it which is not there or by adopting a strained or narrow construction. Thomas, 349 N.W.2d at 126.

> On the other hand, the plain meaning of the statute must also be enforced. Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996). Unambiguous language in a statute should be given its plain and rational meaning and applied as written. Id. Therefore, a motion to dismiss is only sustained when it appears to a legal certainty that claimant would not be entitled to any relief under any state of facts which could be resolved in support of the claims asserted. Halvorson v. City of Decorah, 258 Iowa 314; 138 N.W.2d 856, 860 (1965).
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> Iowa Code section 85.45 requires that "the period during which compensation is payable can be definitely determined" before future payments of compensation may be commuted to a present worth lump sum payment. In this instance, claimant's petition for partial commutation asserts that any benefit entitlement is yet "to be determined." Taking claimant's petition for partial commutation on its face, along with the fact that claimant filed a simultaneous petition for arbitration, it is apparent that the period during which compensation is payable cannot be definitely determined. Iowa Code section 85.45(1)(a).
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> This agency has previously held that a petition for partial commutation cannot be filed until after there is a definitely determined period for which benefits are owed, either through an agreement for settlement or by the filing of an arbitration decision. See Thornton v. Clayton County Recycling, File No. 5039943 (Ruling January 2013); Johnson v. West Ridge Care Center, File No. 5019237 (Ruling on Motion to Dismiss March 2009). I concur with the analysis of the prior deputy rulings on this issue.
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> Given that there has been neither a settlement nor an arbitration award in this matter, there is nothing to be commuted at this point in time. On its face, claimant's petition for partial commutation concedes that any entitlement to benefits remains "to be determined." As such, claimant's petition for partial commutation fails on its face to establish "the period during which compensation is payable" and whatever that period is certainly cannot be "definitely determined" at this juncture. Claimant's petition for partial commutation is premature and is not permissible pursuant to Iowa Code section 85.45(1)(a).

(Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., File No. 5065386 - Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017)

The ruling in Sloan was appealed in a petition for judicial review in the Iowa District Court for Polk County. That decision was affirmed by the District Court. Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., Case No. CVCV054329 (Ruling and Order on Petition for Judicial Review, November 20, 2017).

Claimant filed a petition for a partial commutation before a settlement or an arbitration award had been entered. Based on the Sloan ruling, claimant's Original Notice and Petition for Partial Commutation in this matter is dismissed without prejudice.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's Original Notice and Petition for Partial Commutation is dismissed without prejudice.

The parties shall bear their own costs related to the partial commutation contested case proceeding.

The underlying arbitration proceeding is to be heard and decided at the deputy commissioner level.

Signed and filed this 19th day of September, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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