

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HASKA HODZIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5028889

A P P E A L

D E C I S I O N

Head Note No.: 3303.20

**FILED**

OCT - 5 2016

**WORKERS' COMPENSATION**

STATEMENT OF THE CASE

Defendant Tyson Fresh Meats, Inc. appeals from a partial commutation decision filed March 30, 2015. The case was heard on February 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 9, 2015.

In the partial commutation decision, the deputy commissioner granted claimant's petition for partial commutation. Defendant asserts on appeal that the deputy commissioner erred in determining that the partial commutation was proper and in claimant's best interest. Claimant asserts the decision of the deputy commissioner should be affirmed.

The record, including the transcript of the hearing before the deputy workers' compensation commissioner and all exhibits admitted into the record, has been reviewed de novo on appeal.

ISSUE ON APPEAL

Whether claimant has carried her burden of proof she is entitled to a partial commutation.

FINDINGS OF FACT

Claimant sustained an injury on April 8, 2008, while working at defendant. Claimant eventually underwent several surgeries, including shoulder surgeries and a lower back surgery. Claimant had a nerve stimulator implanted. In a review-reopening decision, claimant was found to have a 38 percent permanent impairment to the body

as a whole and limited to lifting 10 pounds occasionally. She was found, under the review-reopening decision, to be permanently and totally disabled. (Review-Reopening Decision, April 9, 2013)

Claimant filed her first petition for a partial commutation on April 30, 2013. In a partial commutation decision, dated November 18, 2013, claimant's petition for partial commutation was denied. That partial commutation decision was affirmed on appeal. The appeal decision noted "Claimant's expert report appears to be inaccurate when compared to the testimony provided at hearing." (Appeal Decision, April 14, 2014)

Claimant filed a second petition requesting a partial commutation on April 21, 2014.

Records concerning claimant's budget show her current monthly income is \$3,575.00 per month. Her current monthly expenses are \$2,422.72 per month. (Exhibit 4; Ex. 8) Claimant's budget shows a monthly surplus of \$1,152.28 per month. The partial commutation decision in this matter does note claimant was not able to account for the approximate \$1,150.00 per month in surplus income. There is no record claimant has substantial amounts in checking, savings or retirement accounts. (Partial Commutation Decision, March 30, 2015, page 4)

Claimant submitted two expert reports supporting her request for a partial commutation. Exhibit 2 is a report from Jack Selk of Selk Dawson Financial Services, LLC. This is the same report entered into evidence in the prior commutation hearing. That report was rejected by the deputy commissioner in the prior commutation proceeding. As noted above, it was also found, in the appeal decision to be "... inaccurate when compared to the testimony provided at hearing." (Appeal Decision, April 14, 2014)

Exhibit 1 is a report from Telford Lodden. Mr. Lodden is a financial consultant. Mr. Lodden recommended claimant use a partial commutation to pay off credit card debt of approximately \$7,300.00. (Ex. 1, pp. 2, 6) He recommended claimant put her home on the market and purchase a more suitable home for her disability. (Ex. 1, p. 6) He estimated claimant's current home could sell for approximately \$79,000.00. (Ex. 1, p. 5) Mr. Lodden recommended claimant purchase a newer home without a mortgage. He recommended claimant use any existing funds available to purchase a guaranteed annuity from United Life Company. Mr. Lodden believed the annuity would pay between \$503.00 and \$621.00 per month. (Ex. 1, p. 7) Mr. Lodden opined it was in claimant's best interest to have a partial commutation. (Ex. 1)

Claimant also submitted a report from a realtor, Adam Rizvic. Mr. Rizvic found several homes for claimant in the Waterloo area. He opined claimant's home could sell in the low-to-mid \$70,000.00 range. (Ex. 6)

Defendant submitted a report from a financial planner, Steven Walsh. Mr. Walsh also testified at hearing.

Mr. Walsh reviewed the reports from Mr. Lodden and Mr. Selk. Mr. Walsh also reviewed claimant's financial records. Mr. Walsh noted several discrepancies in Mr. Lodden's recommendations. First, he noted Mr. Lodden's calculations reflected claimant selling her current home for \$79,000.00. This differed from the real estate agent's estimate of a sale in the low-to-mid \$70,000.00 range. (Ex. A, p. 3)

Mr. Walsh estimated after sale and purchase of a new home, and payment of debts, claimant would have approximately \$120,500.00 to invest. (Ex. A, p. 3)

Mr. Walsh indicated claimant has a monthly surplus of \$1,152.28 per month. He noted if Mr. Lodden's recommendations were followed, claimant's surplus, per month, would change to \$833.00 per month. He noted Mr. Lodden failed to calculate taxes to the annuity, which would further reduce claimant's surplus amount. (Ex. 1, p. 7; Ex. A, p. 3; Transcript pp. 50-52) Mr. Walsh estimated claimant's surplus income would be approximately \$718.00 per month. (Tr. pp. 50-52)

Mr. Walsh also noted Mr. Lodden's recommendations failed to account for expenses involving a new home, including furnishing, upkeep and other expenses. (Tr. p. 53) He opined Mr. Lodden's recommendations for a partial commutation would be detrimental to claimant. (Tr. pp. 58-60)

Claimant testified at hearing she wanted a partial commutation to be able to move to a home without steps and because she has difficulty with her walker in the bathroom. (Tr. pp. 17-19) Claimant also testified she only uses her walker from time to time. (Tr. p. 34)

Claimant wanted to use a partial commutation to pay off her mortgage and buy a home. (Tr. p. 16) She testified she wanted to use a partial commutation to pay off outstanding credit card debt. (Tr. p. 16, 20) Finally, claimant testified she wanted an annuity so if she were to die, her family would have some sort of income. (Tr. pp. 21-22)

### CONCLUSIONS OF LAW

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 R. App. P. 6.14(6)(e).

When the period of future compensation to which the claimant is entitled is definitely determinable, and claimant's work-related medical condition is stable, claimant may receive a lump sum, discounted payment of future benefits, provided claimant establishes that commutation of benefits is in claimant's best interest. Iowa Code section 85.45. The commissioner may order either full or partial commutation of

benefits. If the commissioner orders a partial commutation of benefits, the remaining benefits are to be paid over the same period as though the commutation had not been made by either eliminating weekly benefits from the first or last part of the payment period, or by pro rata reduction in the weekly benefit amount over the entire payment period. Iowa Code section 85.48.

Iowa Code section 85.48 provides that commutation may be ordered when the commutation is shown to be in the best interest of the person entitled to compensation. Diamond v. Parsons Co., 256, Iowa 915, 129 N.W.2d 608 (1964). The factors for determining if a commutation is in the best interest of the claimant include, but are not limited to: The claimant's age, education, mental and physical condition and actual life expectancy; the claimant's family circumstances, living arrangements, and responsibility to dependents; the claimant's financial condition, including sources of income, debts and living expenses; and the claimant's ability to manage the funds or arrange for someone else to manage them. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160 (Iowa 1983). The analysis used in the decision is whether the commutation is in the best interest of the claimant. Within the context, a benefit/detriment analysis is employed. The above recited factors, with the claimant's preference and the benefit of claimant receiving a lump sum payment, are balanced against the potential detriment that could result if claimant invests unwisely, spends foolishly, or otherwise wastes the funds to the point where they no longer provide the wage substituted intended by the workers' compensation law. Diamond, 129 N.W.2d 617.

A commutation should not be granted if the evidence shows that claimant is a poor money manager or is incapable of making wise investments. Solomon v. Ruan Transport Corp., II Iowa Industrial Comm'r Report, 378 (App. 1982).

There are several problems with claimant's petition for partial commutation.

First, some of the evidence relied on by claimant for a partial commutation, Exhibit 2, the report and recommendations of Mr. Selk, has previously been found by this agency to be "inaccurate." (Appeal Decision, April 14, 2014)

Second, there are several discrepancies in Mr. Lodden's report. First as noted above, Mr. Lodden does not factor into his recommendation that claimant's annuity payments of \$503.00 per month, will be taxed at approximately 33 percent. (Ex. A, p. 3) Mr. Lodden's report does not contain a product quote or prospectus from United Life Insurance Company. It is assumed, but unclear, there will be fees or commissions assessed with the annuity. These potential costs are not addressed by Mr. Lodden's recommendations. Mr. Lodden's recommendations indicate claimant could sell her home for \$79,000.00. (Ex. 1, p. 5) Mr. Rizvic, the real estate expert, opined claimant's home sale would be more in the mid-to-low \$70,000.00 range. (Ex. 6, p. 1) As Mr. Rizvic notes, this figure may, in fact, be lower based on whatever price the market and the buyers set. (Ex. 6, p. 1)

Claimant has also shown herself to be a poor money manager. Records indicate claimant has a surplus of \$1,152.28 per month every month. (Ex. 4, p. 1) At the time of this commutation hearing in February 2015, claimant had credit card debt of approximately \$7,300.00. (Ex. 7; Ex. 1, p. 6) At the time of her first partial commutation hearing in 2013, claimant had credit card debt of approximately \$4,800.00. (Ex. 2, p. 2; Ex. C, p. 5; Deposition p. 16) Despite the fact claimant has had a surplus of \$1,152.28 per month, claimant's credit card debt has actually increased by approximately one-third between 2013 and 2015.

Finally, defendant's expert, Mr. Walsh, opined a partial commutation would be detrimental to claimant. (Ex. A, p. 5; Tr. pp. 58-60)

I appreciate claimant's need for a new home given her disability. However, claimant's petition for partial commutation is based, in part, on an expert's report found to be inaccurate in the prior partial commutation decision. Mr. Lodden's report has several discrepancies, which call into question his recommendations. Mr. Walsh opines a partial commutation would be detrimental to claimant. Claimant also has a record of being a poor money manager. Given this record, I find claimant has failed to carry her burden of proof she is entitled to receive a partial commutation.

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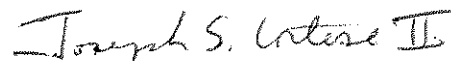
ORDER

IT IS THEREFORE ORDERED that the partial commutation decision of March 30, 2015, is reversed.

Claimant has failed to carry her burden of proof that she is entitled to a partial commutation.

Pursuant to rule 876 IAC 4.33, each party shall bear their own costs of the partial commutation proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 5<sup>th</sup> day of October, 2016.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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