

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

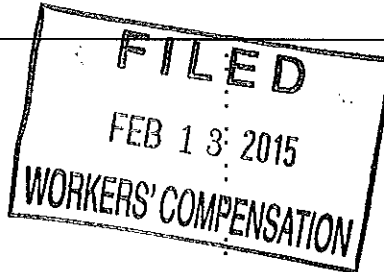
FRANCIS POTHOFF,

Claimant,

vs.

FLEXSTEEL INDUSTRIES, INC.,

Employer,
Self-Insured,
Defendant.



File No. 5011844

PARTIAL COMMUTATION

DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

The claimant, Francis M. Pothoff requests partial commutation of a prior permanent total disability award. The hearing on claimant's request for partial commutation was held on January 16, 2015 in Des Moines, Iowa. Mr. Pothoff testified at hearing. Claimant introduced exhibits 1 through 3. Defendant introduced exhibits A and B. Administrative notice was taken of the entire file, including the underlying injury claim. The evidentiary record closed at the conclusion of the hearing and the matter was fully submitted on January 30, 2015, following briefing.

ISSUE

The parties submitted the following issue for determination:

1. Whether claimant's request for partial commutation of his prior permanent total disability award should be granted.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

At the time of hearing and as of the date of issuance of this decision, the claimant is 64 years old, having been born in 1950. He will turn 65 later this year. He has been married to his wife, Jayne, for 42 years. Claimant worked the majority of his working life as a laborer building and repairing furniture at Flexsteel Industries in Dubuque, Iowa.

Claimant became permanently and totally disabled as a result of a September 3, 2003, work injury to his low back. He has a 25-pound limitation on lifting, pushing and

pulling and was unable to perform the physical work of a laborer for Flexsteel. He was permanently laid off from Flexsteel in June 2006.

Claimant is conversant with his budget, has been able to handle his finances independently. In fact, he is a talented and savvy real estate investor. The claimant has demonstrated he is frugal and responsible in managing his finances. The claimant has several sources of income at this time. (Claimant's Exhibit 1) He receives Social Security Disability benefits (SSD) in the amount of \$25,030.80 per year. (Cl. Ex. 1, p. 3) Jayne also receives SSD in the amount of \$11,359.00 per year. (Cl. Ex. 1, p. 3) He also receives a pension in the amount of \$24,580.44 per year. (Cl. Ex. 1, p. 3) He has interest income in the amount of \$4,700.00 per year. (Cl. Ex. 1, p. 3) In addition to all this, he has substantial rental income from his real property. (Cl. Ex. 3, p. 1) His workers' compensation income is \$31,295.00 per year. (Cl. Ex. 1, p. 3) The claimant lives a frugal lifestyle and has minimal expenses. (See Cl. Ex. 1, pp. 5-6) The claimant could survive financially, even if he had no workers' compensation benefits at all.

The claimant and his brothers have invested in real estate since 1977. It began with a small investment in a duplex with one brother. Over time, the brothers have invested in numerous distressed properties. They spend their free time improving the properties and renting them for profit. The properties, including some farm properties, have substantial value. The claimant has invested wisely. His net worth is \$1.3 million. (Cl. Ex. 1, p. 2)

Claimant's physical and mental conditions are not detriments, in any manner, to commuting his award. Claimant's physical condition appears stable at this time. Mentally, the claimant was likely the sharpest person present for his hearing. His expressed plan for investment of the commuted funds is to invest in real estate. Claimant has sought the expertise of a financial consultant who provided him with information about potential investments. (Cl. Ex. 2)

I find that the risk of claimant spending the commuted funds foolishly is minimal. The claimant has demonstrated the desire to invest in a conservative manner which provides maximum protection. At hearing, he testified that he will likely invest the award in real estate. I find that the claimant has proven that he has a tremendous business acumen and good financial judgment. There is no basis for this agency or the insurance carrier to resist his desire to partially commute his benefits in order to receive a lump-sum payment.

I find that the potential detriments of commuting claimant's benefits are minimal and unlikely to transpire. I find that there are numerous benefits to be obtained by commuting claimant's award. I find there is no good reason at all, to deny the claimant's petition for partial commutation. Therefore, I find that claimant has proven by a preponderance of the evidence that his expressed preference and probable benefits of the requested commutation significantly outweigh the potential detriments of commuting all but the final week of claimant's permanent total disability award.

CONCLUSIONS OF LAW

The primary legal issue for determination is whether claimant should be granted his partial commutation request. Iowa Code section 85.45(1) provides in relevant part:

Future 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 the compensation

Mr. Pothoff has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted in agency rule 876 IAC 6.3. Iowa Code section 85.48 provides:

When 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 benefits amount over the entire payment period.

Agency rule 876 IAC 6.3 provides a life expectancy table that is to be used in determining the amount to be paid a claimant in commutation proceedings.

Iowa Code section 85.45 provides that a commutation may be ordered when the commutation is shown to be in the best interests of the person who is entitled to the compensation. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The factors relied on in determining if a commutation is in the best interests of the claimant include: the claimant's age, education, mental and physical condition, and actual life expectancy; the claimant's family circumstances, living arrangements and responsibilities to dependents; the claimant's financial condition, including sources of income, debts, and living expenses; the claimant's ability to manage the funds or arrange for someone else to manage them; and the reasonableness of the claimant's plan for investing the lump sum sought. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164 (Iowa 1983).

In determining whether the requested commutation is in the best interests of the claimant, a benefit-detriment analysis is employed. The above recited factors, along with the claimant's preference and the benefits of the claimant receiving a lump-sum payment, are balanced against the potential detriments that could result if the claimant 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. Diamond, 256 Iowa at 929, 129 N.W.2d at 617; Dameron, 339 N.W.2d at 163-164.

In determining whether the commutation is in the best interest of claimant, 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, 256 Iowa 915, 129 N.W.2 608 (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.

Ultimately, the determination of whether the commutation is within the best interests of the claimant is a factual determination based upon the factors being balanced in each case. Dameron, 339 N.W.2d at 163 ("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. . . .") As the party moving for the partial commutation, claimant bears the burden to prove that the commutation is in his best interest. Iowa Rule of Appellate Procedure 6.14(6).

In my factual findings, I recited and weighed the relevant facts to be considered in determining whether the requested partial commutation is in claimant's best interests. I found that the claimant's preference, coupled with the benefits that can be derived from the commutation outweigh the foreseeable detriments that may be caused by the requested commutation. No compelling reason to deny the partial commutation has been presented. Therefore, I conclude that claimant has proven by a preponderance of the evidence that the requested partial commutation is in his best interest and that he is entitled to the requested partial commutation.

The defendants argue that the claimant has presented no compelling "need" within its "statement of need" on the Petition for Partial Commutation. The defendants argue that since the claimant has no compelling need, partial commutation should be denied. On the Petition, claimant stated the need was as follows: "Investing net commutation funds at a higher safe rate of return rather than the discount rate." (Petition, March 13, 2014) There is no requirement that the claimant have a financial "need" for the partial commutation. The injured worker's preference, combined with an analysis of the foregoing relevant factors, is enough for claimant to meet his burden.

As of the date of filing this decision, claimant's legal life expectancy is 983 weeks. Rule 876 IAC 6.3(1). All but the final week shall be discounted. It shall be discounted at the applicable rate as of today's date. Claimant's weekly rate of compensation is stipulated at \$601.84.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's original notice and petition for partial commutation is granted.


Defendants shall pay to claimant partial commutation of all but the last week of claimant's workers' compensation benefits awarded as a result of the work injury on September 3, 2003.

If claimant lives beyond the expiration of the period being commuted, defendants shall resume weekly benefits and continue paying claimant permanent total disability benefits on a weekly basis so long as claimant's total disability persists.

Defendants shall pay the reasonable costs of this action.

Defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 13th day of February, 2015.


JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/kjw

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.