

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK L. JENSEN,

Claimant,

vs.

CEDAR RAPIDS COMMUNITY
SCHOOL DISTRICT,

Employer,

and

EMPLOYERS MUTUAL CASUALTY CO.,

Insurance Carrier,
Defendants.

FILED

FEB 12 2019

WORKERS' COMPENSATION

File No. 5051383

APPEAL DECISION

Head Note No: 2903

STATEMENT OF THE CASE

Claimant, Mark Jensen, filed a notice of appeal concerning the dismissal of his petition for partial commutation in an August 31, 2017, ruling. Defendants filed a response.

The ruling dismissed claimant's petition without prejudice, as claimant did not provide a written consent to the partial commutation. Claimant filed a motion for rehearing, which was denied by rule.

Claimant contends his petition for partial commutation should be deemed filed prior to July 1, 2017, even though the petition is file stamped July 3, 2017.

ISSUES

1. Does equity require claimant's petition for partial commutation be deemed filed prior to July 1, 2017?
2. Did the deputy commissioner apply the proper legal standard in dismissing claimant's petition for a partial commutation?
3. Is claimant's petition for a partial commutation an original notice and petition, or is it an amendment to an arbitration petition filed on November 12, 2014?

FINDINGS OF FACT

Claimant filed a petition in arbitration on November 12, 2014, for an injury date of October 1, 2014, to the body as a whole while employed at the Cedar Rapids Community School District.

An arbitration hearing was held on November 3, 2015. An arbitration decision was issued on December 21, 2015. That decision found, in part, claimant was permanently and totally disabled. An application for rehearing was filed, which was denied.

On July 3, 2017, claimant filed a petition for a partial commutation.

During the 2017 legislative session, Iowa Code section 85.45(1) was amended. The amendment states that, “[f]uture payments of compensation may be commuted to a present worth lump sum payment only upon application of a party to the commissioner *upon written consent of all parties to the proposed commutation or partial commutation* . . .” Iowa Code section 85.45(1)(emphasis added). Amended Iowa Code section 85.45(1) became effective on July 1, 2017.

Defendants did not provide their written consent to the petition for partial commutation.

On August 8, 2017, Deputy Workers’ Compensation Commissioner Toby Gordon issued an order to show cause why the petition for partial commutation should not be dismissed for failure to contain the written consent of all parties, as required in the July 1, 2017, amendment to Iowa Code section 85.45(1) in light of the petition’s filing date of July 3, 2017.

On August 22, 2017, claimant responded to the order to show cause and argued that the petition for partial commutation had been sent by certified mail to the employer and the insurance carrier on June 27, 2017, by depositing the same in a United States Postal Service drop box at the main post office in downtown Cedar Rapids, Iowa. (Claimant’s Response to Order to Show Cause, Ex. 2, p. 1; Ex. 5, p. 1) The petition was received by the insurance carrier in Des Moines, Iowa on June 28, 2017. (Claimant’s Response to Order to Show Cause, Ex. 2, p. 4) Claimant’s petition was also mailed to the Iowa Workers’ Compensation Commissioner in Des Moines, Iowa on June 27, 2017. (Claimant’s Response to Order to Show Cause, Ex. 1, p. 1; Ex. 5, p. 1) Claimant’s petition was not file stamped until July 3, 2017.

In his response to the order to show cause, claimant alleged the July 3, 2017 file stamped date on his petition for partial commutation was due to a clerical error. Claimant requested this agency deem the petition to have been filed prior to July 1, 2017.

Claimant's counsel argued that when his office mailed claimant's petition to this agency on June 27, 2017, three other petitions, for other cases, were also mailed to this agency. Claimant's counsel contends of the four petitions sent from his office on June 27, 2017, three were file stamped by this agency on June 29, 2017. Claimant's counsel contends only Jensen's petition for partial commutation was file stamped on July 3, 2017. (See Claimant's Response to the Order to Show Cause, Exhibits 2, 4-5).

In brief, claimant's counsel argues that because three unrelated petitions were file stamped by this agency on June 29, 2017, this is evidence the agency had claimant's petition for partial commutation in possession, on or before June 30, 2017, but failed to file stamp the partial commutation petition until July 3, 2017.

CONCLUSIONS OF LAW

APPEAL ISSUE No. 1: Does equity require claimant's petition be deemed filed prior to July 1, 2017?

Claimant contends equity requires this agency deem claimant's petition was filed prior to July 1, 2017.

In Ford v. Barcus, 155 N.W.2d 507 (Iowa 1968), the Iowa Supreme Court held the workers' compensation commissioner lacked jurisdiction to set aside an agreement for settlement allegedly induced by fraud. The Iowa Supreme Court noted the agency did not have jurisdiction to determine issues in equity. Ford, 155 N.W.2d 510-511. ("The legislature has not seen fit to enlarge the commissioner's jurisdiction in this area").

In Reihe v. Midwest Viking, No. 17-214, filed November 8, 2017, (Iowa Ct. App.), Unpublished, 909 N.W.2d 443 (Table), the Iowa Court of Appeals found this agency lacked jurisdiction to grant equitable relief for the reaffirmation of an agreement. See also Cincinnati Ins. Co. v. Kirk, 801 N.W.2d 856-863 (Iowa 2011).

This agency lacks equitable jurisdiction, in this case, to essentially reform or reset the date when claimant actually filed his petition for partial commutation.

Assuming for argument's sake, this agency has the power to "back date" the petition at issue, to do so would result in a chaotic system. A system of "back dating" documents filed with this agency, as suggested by claimant, would result in an unmanageable system and bad policy. Using claimant's argument, any time a statute of limitations, or any other issue, arose, regarding the filing of documents with the Division of Workers' Compensation, a party would always be allowed to introduce extrinsic evidence to prove when the actual filing date should occur. A dated filing system offers predictability of deadlines for all litigants. The commission's system of dating documents should not be made to allow documents to be "back dated" when litigants have missed deadlines.

APPEAL ISSUE No. 2: Did the deputy apply the proper legal standard in dismissing claimant's petition?

In his response to the show cause order, in this matter, claimant submitted approximately 20 pages of documents. These exhibits included, but were not limited to, an affidavit from claimant's counsel's paralegal regarding the mailing of the petition for partial commutation, certified mail receipts, filed date stamped petitions for other matters allegedly sent from claimant's counsel's office on June 27, 2017, and a cover letter for the petition for the partial commutation.

The deputy commissioner who issued the order of dismissal in this matter, reviewed the exhibits prior to the issuing of the August 31, 2017, order of dismissal.

The evidence submitted by claimant, in the order to show cause indicates claimant's counsel's paralegal sent four petitions by U.S. Mail on June 27, 2017. All four petitions were put in the drop box in the main post office in Cedar Rapids. (Claimant's Response to the Order to Show Cause, Ex. 5)

Three separate other petitions were file stamped on June 29, 2017. A fourth petition was not file stamped until July 3, 2017. The date stamping of these petitions indicates the petition for partial commutation was not received by this agency until July 3, 2017.

As noted, the underlying arbitration decision in this case found claimant was permanently and totally disabled. That decision was filed on December 21, 2015. Claimant could have filed his petition for partial commutation on December 22, 2015. The application for rehearing this case was denied on January 14, 2016. Claimant could have filed his petition for partial commutation on January 15, 2016.

The law regarding the change for partial commutation petitions was signed by the governor in April of 2017. Claimant could have filed his petition for partial commutation in April of 2017.

Instead, claimant's counsel chose to put his client's petition for partial commutation in the mail on June 27, 2017, a few short days before the change in the law. The petition was not filed with this agency until July 3, 2017.

The petition filed by the claimant does not contain the written consent of all the parties.

Claimant has already submitted 20 pages of documents regarding why his petition for a partial commutation should be back-dated. The best evidence concerning filing of the petition is the file-stamped petition itself.

The deputy commissioner allowed claimant to submit additional evidence regarding his claim the petition should be back-dated. Under the amendment to Iowa Code section 85.45(1), claimant's petition for a partial commutation was properly dismissed, as it did not contain consent by all parties. Claimant's argument fails as to this issue.

APPEAL ISSUE No. 3: Is claimant's petition for a partial commutation an original notice and petition, or is it an amendment to the petition filed on November 12, 2014?

Claimant contends his petition for a partial commutation is an amendment to his original arbitration petition filed on November 12, 2014.

Rule 876 IAC 4.6 indicates that when a commutation is sought, petition Form 9 or Form 9A must be filed. Language on Form 9 and Form 9A both indicate the forms are an "original notice and petition."

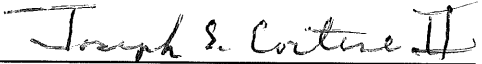
Rule 876 IAC 4.1(11) notes a contested case proceeding before this agency includes a commutation of benefits.

Rules for this agency indicate a commutation is a separate and distinct proceeding from an arbitration hearing, and is not an amendment to the arbitration proceeding. Claimant's argument fails as to this issue.

ORDER

It is therefore ordered that the August 30, 2017, order dismissing claimant's petition for partial commutation is affirmed.

Signed and filed this 12th day of February, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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