

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBBIE ELVERT, Widow of
JERRY ELVERT,

Claimant,

vs.

CITY OF DAVENPORT,

Employer,
Self-Insured,
Defendant.

File No. 5032804

PARTIAL COMMUTATION
DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Debbie Elvert, widow of Jerry Elvert, (claimant), filed a petition for commutation of benefits owed by the City of Davenport. On January 15, 2015 claimant filed a motion to amend the petition to change the petition to a partial commutation with all but one week being commuted. The amendment was not resisted. The amendment was granted at hearing.

The deceased, Jerry Elvert, died on October 16, 2010 due to severe respiratory issues. The arbitration decision found claimant's injury did not arise out of and in the course of employment. The appeal decision reversed that finding, and held the claimant's death arose out of and in the course of his employment with the City of Davenport. That decision was affirmed at the District Court level.

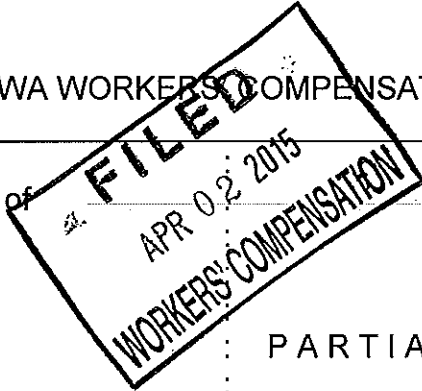
This case was heard in Davenport, Iowa on February 19, 2015 with a final submission date of March 16, 2015. The record in this case consists of claimant's exhibits 1-4, defendant's exhibits A-D, and the testimony of claimant.

ISSUE

The only issue in dispute in this case is whether claimant is entitled to a partial commutation of the death benefits.

FINDINGS OF FACT

As noted above, Jerry Elvert died on October 16, 2010 due to respiratory issues. The arbitration decision found Mr. Elvert's death did not arise out of the course of employment. The appeal decision reversed the arbitration decision and found that



Mr. Elvert's death did arise out of and in the course of employment. That decision was affirmed by the District Court on judicial review.

On May 23, 2014 claimant filed a petition for a commutation of benefits. In that petition claimant indicated she lived in a single family residence. Claimant indicated the work and cost associated with the maintenance of the home was proving to be too difficult. Claimant wanted to purchase a condominium. The petition indicates the condominium claimant wanted costs approximately \$80,000.00 more than the expected revenue from the sale of her home.

Claimant was 67 years old at the time of hearing. Claimant was employed at Radiology Group, until she retired in 2010. Claimant said that since her retirement, she volunteers with the Davenport Police Department 40-60 hours per month.

Claimant indicates she receives approximately \$1,452.60 a month in Social Security benefits, \$850.00 a month from a pension from her late husband, and \$137.27 per week in workers' compensation benefits. The total monthly income for claimant is approximately \$2,900.00. (Exhibit 1, page 4)

Claimant's exhibits indicate her expenses are approximately \$1,795.00 per month. Claimant testified at hearing her monthly expenses run between \$1,600.00 to \$1,700.00 per month. Claimant testified on direct exam she usually had approximately \$500.00 left at the end of every month. On cross exam she testified that on some months she had a net loss in income, and in some months she had a net gain in income, depending upon expenses. Claimant testified she has no debt.

Claimant wants to sell the house she lives in and move into a condominium. Claimant said the house she lives in has been too costly to maintain and too much work for her to keep up with.

Claimant testified she has no debt on her home. She testified if she were able to sell her home, she anticipates, after commissions and property taxes, she would net approximately \$153,000.00 from the sale. In June of 2014 claimant listed her home for \$189,900.00. (Ex. 1, p. 6) She said she anticipates listing it again this spring for between \$175,000.00 to \$180,000.00.

Claimant testified she anticipates a condo will cost approximately \$240,000.00. She says this means she would require an additional \$87,000.00 to cover the purchase cost of the condominium. Claimant said if the partial commutation is granted, she will use most of the partial commutation monies towards the purchase of the condominium.

Claimant testified she does have money in a 401K and a brokerage account. Records indicate claimant has approximately \$200,000.00 in both investments. Approximately \$125,000.00 is from an inheritance claimant received from her father in 2001. (Ex. 1, pp. 9, 16) Claimant testified she preferred not to use this money towards the purchase of a condominium for two reasons. First, these funds have never been

taxed, and claimant would suffer a tax consequence if she withdrew these monies. Second, claimant testified she would like to retain these investments to help her with her future.

Claimant testified she plans to put any remainder of the commuted amounts of the benefits, after purchase of the condominium, in conservative investments. She testified she has spoken with a financial adviser, Mark Judy, with Wells Fargo, and plans to put the money in a conservative investment. Claimant believes the commuted amount of her benefits would leave approximately \$99,400.00 after paying the percentage of her attorney's fees. (Ex. 4) After the purchase of the condominium, this would leave claimant with approximately \$12,400.00 to invest (\$99,400.00 - \$87,000.00).

Claimant testified she does gamble for recreation. She said she used to gamble more when her husband was still alive. There is no evidence claimant has incurred significant debt as a result of her gambling. (Ex. B)

When the final agency action was under judicial review in the District Court, claimant filed an affidavit. In that affidavit claimant indicated that since her husband died, she has had to hire all the work done on the home, yard, and auto repair. Claimant indicated it was necessary for her to sell a truck, a boat, and investments to pay bills. Claimant also indicated she was looking for a smaller home to cut costs regarding upkeep. (Ex. D)

Claimant testified at hearing that a partial commutation is in her best interest, as she would use the bulk of the money to get out of her house and into a condominium. She said the monthly costs would be significantly lower in a condo when compared with the current costs of her house. Claimant said she also has a difficult time doing work around her home, which would not be required if she were living in a condominium.

CONCLUSIONS OF LAW

The sole issue for resolution in this case is whether a partial commutation is in the best interest of claimant. 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).

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 a 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 that context, a benefit/detriment analysis is employed. The above recited factors, with 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.

Claimant seeks a partial commutation to allow her to buy a condominium. Claimant wants to sell her house, as it is too expensive to maintain and because she is getting older and has difficulty maintaining her home. Claimant testified that since the death of her husband, she has more difficulty and spends more money maintaining her home.

Claimant testified a condominium would be easier and cheaper for her to maintain. She testified she believes that after commission and taxes, she could sell her house for approximately \$150,000.00. She testified she would need an approximate additional \$87,000.00 to purchase the condominium. Claimant said she would use the bulk of the partial commutation to help her buy a condominium. She said she would use the remainder of monies from a partial commutation after the condominium purchase, to put into a conservative investment.

The record indicates that since her husband's death, claimant has seen an increase in expenses to maintain her home, yard, and auto. Claimant would not have most of these expenses if she were living in a condominium. Claimant credibly testified that at the age of 67, she has difficulty physically maintaining her home. The record indicates a condominium would save claimant money in maintenance and upkeep. The record indicates claimant has difficulty maintaining her home. Given this record, it is found a partial commutation, if used to help towards the purchase of a condominium, is in the best interest of claimant.

Defendant infers that because claimant gambles, a partial commutation is not in her best interest, as this suggests claimant will not use her money wisely. The record does not indicate claimant has a gambling problem, or that gambling would cause claimant to squander any commuted monies. For this reason, claimant's gambling is irrelevant in considering whether a partial commutation is in her best interest.

Defendant also suggests that claimant's affidavit, found at Exhibit D, contradicts her testimony at hearing, and is evidence that a partial commutation is not in claimant's best interest. It is true that the affidavit found at Exhibit D indicates claimant needs workers' compensation benefits to help with significant financial difficulty. However, the financial difficulty claimant faces, due to the death of her late husband, includes maintenance of her home, garage, and yard. The affidavit also indicates that because of Mr. Elvert's death claimant has incurred expenses to pay for tasks Mr. Elvert used to perform. (Ex. D) I appreciate defendant's position regarding the affidavit. However, the affidavit also supports claimant's position that a partial commutation used towards the purchase of a condominium is in claimant's best interest.

Claimant wants to use most of the money from a partial commutation to purchase a condominium. The record indicates this will help eliminate costs associated with the maintenance and repair of claimant's home, garage, and yard. Claimant would not have these costs if she resides in a condominium. Claimant credibly testified that she has continued difficulty with doing work to maintain her current home. Given this record, claimant has met her burden of proof that a partial commutation is in her best interest. For this reason, and the others detailed above, claimant's request for a partial commutation is granted.

ORDER

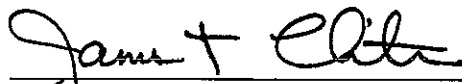
THEREFORE IT IS ORDERED:

That defendant shall pay claimant a lump sum payment of future weekly benefits, except for the last week, 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.

That defendant shall file subsequent reports of injury, as required by this agency under rule 876 IAC 3.1(2).

That defendant shall pay the costs of this matter as required under rule 876 IAC 4.33.

Signed and filed this 2nd day of April, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Corey J. L. Walker
Attorney at Law
208 N. 2nd Ave. West
Newton, IA 50208
corey@walklaw.com

Jordan A. Kaplan
Attorney at Law
111 E. 3rd St., Ste. 600
Davenport, IA 52801-1596
jak@bettylawfirm.com

JFC/sam

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.