

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALLEN CONELL,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5036585
NESTLE USA,	:	
	:	
Employer,	:	A P P E A L
	:	
and	:	D E C I S I O N
	:	
INDEMNITY INS. CO. OF N. AMERICA,	:	
	:	
Insurance Carrier,	:	Head Notes: 3303.20; 5-9999
Defendants.	:	

Defendants Nestle USA, employer, and its insurer, Indemnity Ins. Co. of North America, appeal from a partial commutation decision filed on February 12, 2019. Claimant Allen Conell responds to the appeal. The case was heard on December 18, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 22, 2019.

In the partial commutation decision, the deputy commissioner found claimant met his burden of proof to establish the requested partial commutation is in his best interest. As a result, the deputy commissioner granted claimant's petition for partial commutation and ordered defendants to pay claimant a lump sum for the period from December 13, 2030, through June 18, 2037. The deputy commissioner also ordered defendants to pay the reasonable costs of the partial commutation proceeding.

On appeal, defendants assert the deputy commissioner erred in finding the requested commutation is in claimant's best interest. Defendants also assert the deputy commissioner erred in finding claimant is entitled to reimbursement for the cost of the financial report authored by Telford Lodden.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed partial commutation decision filed on February 12, 2019, that

relate to the issues properly raised on intra-agency appeal are affirmed in part and are reversed in part.

I affirm the deputy commissioner's finding that claimant's requested partial commutation is in his best interest. I affirm the deputy commissioner's decision to grant claimant's requested commutation for the period beginning on December 13, 2030, and ending on June 18, 2037.

However, I reverse the deputy commissioner's order that defendants pay the cost of Mr. Lodden's report. Mr. Lodden is not a practitioner whose charge can be recovered as a cost pursuant to rule 876 IAC 4.33.

ORDER

IT IS THEREFORE ORDERED that the partial commutation decision filed on February 12, 2019, is affirmed in part and is reversed in part.

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


Defendants shall pay claimant a lump-sum partial commutation for the period beginning on December 13, 2030, and ending on June 18, 2037, of the workers' compensation benefits awarded as a result of the work injury on November 2, 2010.

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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the partial commutation proceeding, excluding the cost of Mr. Lodden's report, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 13th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Neal	Via WCES
Timothy W. Wegman	Via WCES