

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TABITHA REASLAND, (surviving spouse  
of Eric L. Reasland),

Claimant,

vs.

SCHULTES CATTLE & GRAIN,

Employer,

and

FARM BUREAU PROPERTY &  
CASUALTY INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

JAN 16 2019

WORKERS' COMPENSATION

File No. 5058908

FULL COMMUTATION  
DECISION

Head Note No.: 3303.10

STATEMENT OF THE CASE

Tabitha Reasland, (surviving spouse of Eric L. Reasland), claimant, filed a petition for a full commutation of workers' compensation benefits from Schultes Cattle & Grain, employer and Farm Bureau Property & Casualty Insurance Company, insurance carrier as defendants. Hearing was held on October 24, 2018 in Des Moines, Iowa.

Sadly, Eric L. Reasland, died on December 16, 2015, as a result of an accident that arose out of and in the course of his employment with Schultes Cattle & Grain. On June 13, 2017, Tabitha Reasland, the widow of Eric L. Reasland, filed a petition for full commutation of workers' compensation death benefits. Defendants filed an answer to the petition which resisted the full commutation and requested a hearing. The matter was set for hearing on October 24, 2018 in Des Moines, Iowa. On August 29, 2018, defendants filed a motion for summary judgment seeking to have the petition dismissed. Claimant resisted the motion. On September 13, 2018, another deputy from this agency denied the motion on procedural grounds. The full commutation hearing was then assigned to the undersigned.

A review of the agency file prior to the start of the full commutation hearing raised jurisdictional concerns. At the outset of the hearing, the undersigned asked claimant's counsel if there was an underlying arbitration decision or an agreement for settlement in this matter. The undersigned was advised that there was not because defendants had

voluntarily accepted the death claim as compensable and defendants were paying benefits. Counsel for both parties were given the opportunity to argue whether this case could proceed in light of the fact that there was no underlying decision or settlement to commute. See Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., File No. 5065386 (Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017).

Attorneys presented arguments and were given opportunity to file written briefs. The briefs were received on November 15, 2018. The arguments and briefs are now considered.

### ISSUE

The parties submitted the following issue for resolution:

1. Whether claimant's petition for a full commutation should be dismissed?

### FINDINGS OF FACT

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

On June 13, 2017, Tabitha Reasland, the widow of Eric L. Reasland, filed a petition for full commutation of workers' compensation death benefits. The defendants voluntarily accepted the death claim as compensable. Defendants have been, and as of the time of the scheduled full commutation hearing, were continuing to pay weekly benefits. There is no underlying arbitration decision, nor is there any type of settlement agreement between the parties. Claimant is seeking to receive a full commutation of all remaining benefits on her behalf and on behalf of their minor son.

Defendants do not dispute that Tabitha Reasland and her son are the surviving spouse and dependent child and that they are entitled to death benefits. Defendants resist the commutation on the basis that the amount of benefits owed is not definitely determinable. Defendants further dispute the commutation because without an underlying agreement or decision, defendants do not know how to apportion the benefits.

Claimant argues that the period of benefits is definitely determinable. While it is true that defendants have accepted the death claim as compensable and have been voluntarily paying weekly benefits, I find that the period during which compensation is payable is not definitely determined. In the present case, there is a surviving spouse who is entitled to weekly benefits for the remainder of her life or until she remarries. While there is a life expectancy and remarriage table that this agency utilizes, I find the period during which compensation is payable cannot be definitely determined. In this case, there is also a dependent child. A dependent child is entitled to receive benefits until the age of 18 or 25, depending on the circumstances. I find that the life expectancy

and remarriage table does not contemplate the problems associated with the contingent entitlement of a dependent child.

Claimant also contends that the information contained in defendants' responses to requests for admission and the hearing report make the period during which compensation is payable definitely determined. Even if that information did make the period during which compensation is payable definitely determined, the claimant still did not have that information at the time she filed the petition for a full commutation. While I appreciate that claimant filed her petition for a full commutation in an attempt to avoid the consequences of changes to the workers' compensation law which affect her ability to file for a commutation on or after July 1, 2017, it does not change the fact that at the time the petition was filed there was nothing to commute. Therefore, the petition fails.

### CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

When interpreting workers' compensation provisions, the law is construed liberally in favor of the claimant. Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990); Teel v. McCord, 394 N.W.2d 405, 406-407 (Iowa 1986); Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). The beneficial purposes of the law will not be frustrated by reading something into it which is not there or by adopting a strained or narrow construction. Thomas, 349 N.W.2d at 126.

On the other hand, the plain meaning of the statute must also be enforced. Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996). Unambiguous language in a statute should be given its plain and rational meaning and applied as written. Id.

This agency has previously held that a petition for a commutation cannot be filed until after there is a definitely determined period for which benefits are owed, either through an agreement for settlement or by the filing of an arbitration decision. See Thornton v. Clayton County Recycling, File No. 5039943 (Ruling January 2013); Johnson v. West Ridge Care Center, File No. 5019237 (Ruling on Motion to Dismiss March 2009).

Iowa Code section 85.45 requires that "the period during which compensation is payable can be definitely determined" before future payments of compensation may be commuted to a present worth lump sum payment. In this instance, the petition seeks a full commutation of death benefits. Iowa Code section 85.45(1)(a).

Death benefits are to be paid to the surviving spouse for life or until remarriage. A dependent child of a deceased employee is entitled to receive benefits until the child reaches the age of 18 or through the age of 25 if the child can show he is actually dependent. A child under the age of 25 and enrolled as a full-time student is considered

to have made a prima-facie showing of actual dependency. See Iowa Code sections 85.31 and 85.34. In the present case, there is both a surviving spouse and a dependent child.

Claimant seemingly contends that the entire period for which benefits would be paid is definitely determinable based on the life expectancy and remarriage table contained in 876 IAC 6.3(3). Additionally, claimant argues that Sloan is not applicable in this case because she is seeking a full, not a partial, commutation. This argument is not persuasive. This agency has previously held that the use of a life remarriage expectancy table for a widow would not give a determinable period. Additionally, this agency has held that when there is a dependent child involved, the period of entitlement could vary. The life expectancy and remarriage probability table does not contemplate the problems raised by the contingent entitlement of a dependent child. Because the entitlement of a dependent child raises too many alternatives and possibilities the period for a complete commutation is not definitely determinable. See Paulsen v. Central States Power, Ltd., 2 Iowa Indus. Comm'r Rep. 304, 305 (Appeal Dec. 1982); Thompson v. Thompson Pipeline & Util. Constr. Co., Inc., 34 Biennial Rep., Iowa Indus. Comm'r 329, 330 (Appeal Dec. 1980). I concur with this analysis and conclude that at the time the petition for full commutation was filed, the period during which compensation is payable was not definitely determined.

I conclude that at the time the petition for full commutation was filed the period during which compensation is payable could not be definitely determined. Because the initial determination or an agreement among the parties regarding the dependents' entitlement to benefits had not yet occurred when claimant made her claim for commutation, the reasoning and analysis in Sloan is applicable. The Commissioner noted that because there was neither a settlement nor an arbitration award, there was nothing to be commuted at the time the petition for commutation was filed. See Sloan, File No. 5065386 (Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017); See also, Bruss v. Grout Scouts, Inc., File No. 5065045 (App. Jan. 8, 2019). Because there is nothing to be commuted, I conclude that the petition for full commutation must be dismissed.


ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for a full commutation is dismissed.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 16<sup>th</sup> day of January, 2019.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EQP/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.