

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

<p>CITY OF SIOUX CITY, IOWA,  Petitioner,  vs.  RANDY A. SANDS,  Respondent.</p>	<p>CVCV190717  RULING ON PETITION FOR JUDICIAL REVIEW</p>
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This matter comes before the Court on Petition for Judicial Review filed by Petitioner, City of Sioux City, Iowa, on February 5, 2020. Respondent, Randy Sands, timely filed an Answer to the Petition on February 21, 2020. Each party has filed a brief in support of their position (“City’s Brief” and “Respondent’s Brief”) and Petitioner has filed a brief in reply (“City’s Reply Brief”). Oral arguments were heard telephonically in this matter on April 20, 2020, at which time Petitioner appeared telephonically through counsel of record, Connie Anstey, and Respondent appeared telephonically through counsel of record, Dennis Mahr. The proceeding was formally reported by Kara Holland.

The Court, having heard arguments of the parties, reviewed the briefs and filings herein, reviewed the administrative record, and considered applicable law, now enters the following ruling.

**PROCEDURAL HISTORY**

On December 20, 2016, Randy Sands (Respondent herein) received an arbitration award which found him to be totally and permanently disabled and awarded him benefits from and after October 5, 2013. Respondent’s employer, City of Sioux City (Petitioner herein), applied for and was granted a rehearing, from which a ruling was issued on

January 31, 2017, which ruling clarified an issue regarding medical bills but did not disturb the underlying award of benefits for total and permanent disability. No appeal was taken of the arbitration award.

On February 13, 2017, Respondent filed a petition for partial commutation of his disability benefits seeking a lump-sum payout for all but the final month of his benefit period.

On May 29, 2018, a contested hearing was held on Respondent's petition for partial commutation. The hearing was held before Deputy Workers' Compensation Commissioner Jennifer S. Gerrish-Lampe, who issued a "Partial Commutation Decision" on August 7, 2018, which granted Respondent's petition for partial commutation (Partial Commutation Decision, p. 8).

On August 22, 2018, Petitioner filed Notice of Appeal to the Workers' Compensation Commissioner. On appeal, Petitioner raised four issues, as follows:

1. Whether Claimant's Petition for Partial Commutation should have been granted.
2. Whether the order for commutation violates the provisions of the Iowa Constitution.
3. Whether the commuted portion of the award should be limited to work life vs. calculated life expectancy.
4. Whether the mortality table adopted by rule is the appropriate table for use in determining present value.

On January 17, 2020, Workers' Compensation Commissioner Joseph S. Cortese II issued an "Appeal Decision," in which he affirmed the Partial Commutation Decision in its entirety (Appeal Decision, p. 3).

Petitioner now seeks judicial review of the agency decision pursuant to Iowa Code

§§ 86.26 and 17A.19. Petitioner herein identifies six issues for judicial review, as follows:

1. Whether Claimant's Petition for Partial Commutation should have been granted.
2. Whether the initial decision of the deputy should have been affirmed by the Commissioner.
3. Whether the order for partial commutation violates the provisions of the Iowa Constitution.
4. Whether the commuted portion of the award should be limited to work life vs. calculated life expectancy.
5. Whether the mortality table adopted by rule is the appropriate table for use in determining present value.
6. Whether the agency decisions are fatally flawed for failure to include citation to the correct partial commutation versus full commutation section and for failure to comply with the express provisions of Iowa Code Section 85.48.

### **LEGAL STANDARDS**

Review of decisions of the workers' compensation commissioner was outlined in the case of *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512 (Iowa 2012). Judicial review of such decisions is governed by Iowa Code Chapter 17A and is generally limited to correction of errors at law. Iowa Code Section 17A.19; *Neal*, 814 N.W.2d at 518. See also, *Hager v. Iowa Department of Transportation*, 687 N.W.2d 106, 108 (Iowa App. 2004); *Lee v. Employment Appeals Board*, 616 N.W.2d 661, 664 (Iowa 2000). The District Court may affirm the decision of the workers' compensation commissioner or remand the case to the commissioner for further proceedings; and shall reverse, modify, or grant other appropriate relief from the commissioner's decision if the Court determines that

substantial rights of the person seeking judicial relief have been prejudiced because the commissioner's decision is any one of the characterizations enumerated in Iowa Code Section 17A.19(10)(a)-(n).

The District Court acts in an appellate capacity when exercising its authority to review such an agency decision. *Neal*, 814 N.W.2d at 518; *Hager*, 687 N.W.2d at 108.

Review of a decision of the workers' compensation commissioner varies depending on the type of error alleged. If the error alleged is one of fact, this Court is bound by the findings of fact made by the commissioner if they are supported by substantial evidence in the record as a whole. Iowa Code Section 17A.19(10)(f); *Neal*, 814 N.W.2d at 518. *See also*, *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554, 556 – 557 (Iowa App. 2007); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). In determining whether substantial evidence supports the commissioner's factual findings, the District Court engages in a fairly intensive review of the record to make sure the factual findings are reasonable; however, the District Court does not engage in a scrutinizing analysis. *Neal*, 814 N.W.2d at 525. The question also is not whether the evidence in the record as a whole supports a different finding or whether the District Court would make a different finding; but, rather, whether the evidence in the record as a whole supports the findings actually made. *Neal*, 814 N.W.2d at 527. *See also*, *Grant v. Iowa Department of Human Services*, 722 N.W.2d 169 (Iowa 2006); *Hy-Vee, Inc. v. Employment Appeal Board*, 710 N.W.2d 1, 3 – 4 (Iowa 2005) (noting that the court must not reassess the weight to be accorded various items of evidence which remains within the agency's exclusive domain).

If the alleged error challenges the commissioner's application of law to facts when

such application has clearly been vested by a provision of law in the discretion of the commissioner, such application will not be disturbed unless it is “irrational, illogical, or wholly unjustifiable.” Iowa Code Section 17A.19(10)(m); *Neal*, 814 N.W.2d at 518, 526. See also, *Meyer*, 710 N.W.2d at 219.

Finally, if the alleged error challenges the commissioner’s interpretation of law, the District Court will give deference to the commissioner’s interpretation if the commissioner has clearly been vested with the discretionary authority to interpret the specific provision in question. If the commissioner has not clearly been vested with such discretion, the District Court will substitute its judgment and interpretation of the statutory provision in question for that of the commissioner’s if the Court concludes the commissioner made an error of law. Iowa Code Section 17A.19(10)(c), (l); *Neal*, 814 N.W.2d at 518. See also, *Gaborit*, 743 N.W.2d at 556-557; *Meyer*, 710 N.W.2d at 219.

Determination of whether an agency such as the workers’ compensation commissioner has been delegated the authority to interpret a provision of law was clarified in the case of *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, (Iowa 2010). In making such determination, the Court looks carefully at the specific language or statutory provision that the commissioner has interpreted as well as the specific duties and authority given to the commissioner with respect to enforcing the particular statute. *Renda*, 784 N.W.2d at 13. See also, *Neal*, 814 N.W.2d at 518 (citing *Renda*). Factors or indications considered by the Court in determining whether the legislature has clearly vested interpretive authority to the commissioner include rule-making authority, decision-making or enforcement authority that requires the commissioner to interpret the statutory language, and the commissioner’s expertise on the subject or on the term to be

interpreted. *Neal*, 814 N.W.2d at 518-519 (citations omitted). If the Court determines such interpretive authority has clearly been vested in the commissioner, deference to that interpretation is given, and the commissioner's interpretation will be affirmed by the Court unless it is "based upon an irrational, illogical, or wholly unjustifiable interpretation." Iowa Code Section 17A.19(10)(I).

Interconnected findings of fact, interpretations of law, and applications of law to fact pose a uniquely difficult problem on judicial review:

[t]hese different approaches to our review of mixed questions of law and fact make it essential for counsel to search for and pinpoint the precise claim of error on appeal. If the claim of error lies with the agency's findings of *fact*, the proper question on review is whether substantial evidence supports those findings of fact. If the findings of fact are not challenged, but the claim of error lies with the agency's interpretation of the *law*, the question on review is whether the agency's interpretation was erroneous, and we may substitute our interpretation for the agency's. Still, if there is no challenge to the agency's findings of fact or interpretation of the law, but the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence. In sum, when an agency decision on appeal involves mixed questions of law and fact, care must be taken to articulate the proper inquiry for review instead of lumping the fact, law, and application questions together within the umbrella of a substantial-evidence issue.

*Burton v. Hilltop Care Center*, 813 N.W.2d 250, 259 (Iowa 2012), citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006)

The commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal... the commissioner's duty to furnish a reasoned opinion is satisfied if "it is possible to work backward... and to deduce what must have been [the agency's] legal conclusions and [its] findings of fact." *Id.*, at 260, citing

*Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997).

When a constitutional issue is raised in a petition for judicial review, the district court performs a *de novo* review. *Office of Consumer Advocate v. Iowa State Commerce Commission*, 465 N.W.2d 280, 281 (Iowa 1991); *Silva v. Employment Appeal Bd.*, 547 N.W.2d 232, 234 (Iowa Ct. App. 1996). No deference is given to the view of the agency with respect to the constitutionality of a statute or administrative rule because it is exclusively up to the judiciary to determine the constitutionality of legislation and rules enacted by the other branches of the government. *ABC Disposal Systems, Inc. v. Department of Natural Resources*, 681 N.W.2d 596, 605 (Iowa 2004). Statutes are cloaked with a presumption of constitutionality. The challenger bears a heavy burden because it must prove the unconstitutionality beyond a reasonable doubt. Moreover, the challenger must refute every reasonable basis upon which the statute could be found to be constitutional. *City of Eagle Grove v. Cahalan Investments, LLC*, 904 N.W.2d 552, 559 (Iowa 2017) citing *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002); See also *State v. Thompson*, 836 N.W.2d 470, 483 (Iowa 2013).

“The district court shall reverse, modify, or grant other appropriate relief from agency action... if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the action is... unconstitutional on its face or as applied...” Iowa Code §17A.19(10)(a).

### **FINDINGS AND CONCLUSIONS**

#### **1. Whether Claimant’s Petition for Partial Commutation should have been granted.**

Iowa Code §85.45 sets forth the conditions under which commutation of benefits

may be granted by the agency. The provisions of that section applicable to this review are: 1) When the period during which compensation is payable can be definitely determined; and 2) 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. Iowa Code §85.45.

Preliminarily, the Court notes that Petitioner urges consideration of a recent amendment to this statute which now requires consent of all parties to a proposed commutation before it may be granted. Petitioner argues that although the amendment was not effective until after the agency decision, the amendment had been passed by the legislature at the time and that, therefore, the Court should consider the "legislative intent" regarding commutations as expressed by the amendment (City's Brief, pp. 13-14). The Court rejects this argument and finds that the matter should be decided upon the law in effect at the time of the agency decision, which is the law of this case.

Petitioner's primary contention on judicial review is that the agency's decision was not supported by substantial evidence in the record, particularly with regard to whether it was in Respondent's best interest. In Petitioner's claims of error, the Court finds some interplay as between findings of fact and application of law to fact, as discussed in *Burton v. Hilltop Care Center*, above. This interplay is illustrated by Petitioner's assertion that "[s]ubstantial evidence does not exist to support the initial decision or the finding by the commissioner that substantial evidence support [sic] the decision regarding partial commutation." (City's Brief, p. 11). The "ultimate conclusion" of the agency in granting the partial commutation is a matter of the application of law to fact, which, as set forth in *Burton*, does not implicate a "substantial evidence" analysis as Petitioner suggests, but



rather an analysis of whether the decision was irrational, illogical, or wholly unjustifiable. The Court will evaluate this claim of error under that standard. On the other hand, the agency's finding that the commutation was in Respondent's "best interest" is a finding of fact, which is properly analyzed under a "substantial evidence" inquiry.

The Court first addresses Petitioner's assertion that the agency's finding, that commutation was in the best interest of Respondent, was not supported by substantial evidence in the record as a whole. Petitioner quite properly frames this issue in light of the factors for determining "best interest" as set forth by the Iowa Supreme Court in *Dameron v Neumann Bros., Inc.*, 339 N.W.2d 160, 165 (Iowa 1983), which are:

1. The worker's age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).
2. The worker's family circumstances, living arrangements, and responsibilities to dependents.
3. The worker's financial condition, including all sources of income, debts and living expenses.
4. The reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).

As set forth above, this Court is bound by the findings of fact made by the commissioner if they are supported by substantial evidence in the record as a whole, and the question is not whether the evidence in the record as a whole supports a different finding or whether the District Court would make a different finding; but, rather, whether the evidence in the record as a whole supports the findings actually made.

With regard to the first *Dameron* factor, Petitioner points to Respondent's advanced age, limited educational background, difficulty with concentration, difficulty performing simple arithmetic, deteriorating overall health, and decreased life expectancy,

particularly as contrasted with that provided by actuarial tables. However, Petitioner offers no explanation as to why these facts mitigate against Respondent's best interest under this prong of the analysis, arguing only that these facts make Respondent less likely to be able to effectively manage the funds of a commuted lump-sum payment, which is more appropriately applied under the fourth *Dameron* factor. Respondent, on the other hand, argues that these factors mitigate in favor of commutation and offers some authority in support of this argument in the form of a citation to a treatise (Respondent's Brief, p. 27, *citing* J. Lawyer, *Worker's Compensation*, §27.9 (2017-2018): "If the claimant has a shortened life expectancy, an argument can be made that it is better for him to collect a reduced lump sum before he dies than never to realize the full value of his claim"). The Court tends to agree, and can see a reasonable argument that all of the factors raised by Plaintiff may be viewed as evidence that a commutation would, in fact, be in Respondent's best interest under this prong of the *Dameron* analysis. In any event, the facts raised by Petitioner were clearly considered by the agency, being referenced throughout the Partial Commutation Decision (Partial Commutation Decision, pp. 3, 4, 7), and the Court, having examined the record itself, finds substantial evidence for the agency to have determined that this *Dameron* factor weighs in favor of Respondent's best interest.

As to the second *Dameron* factor, "the worker's family circumstances, living arrangements, and responsibilities to dependents," Petitioner lumps this factor together with factor number three ("the worker's financial condition, including all sources of income, debts and living expenses"), and argues primarily that Petitioner's financial condition does not indicate that commutation in his best interest. Petitioner does emphasize that Respondent has very limited retirement planning and insurance options for the future,

including a lack of long-term care insurance or life insurance. Again, however, unless viewed through the lens of the fourth *Dameron* factor, as implicating Respondent's ability to manage funds, these facts may reasonably be viewed as mitigating in favor of a commutation so that the funds may be invested, as proposed by Respondent, to supply the long-term security for him and his spouse which he currently lacks. The agency addressed Respondent's family circumstances, living arrangements, and responsibilities to dependents at some length, including the fact that he is married; that his wife is 65 years old; that he and his wife live in a condominium which they purchased with funds from the sale of their home and rental property and which they own outright; that they plan to move to Florida upon her retirement; that he is not responsible for money-management in the household; that he is currently covered by his wife's health insurance policy; and that he likely will be unable to obtain private health insurance coverage after she retires. (See Partial Commutation Decision, pp. 2, 3, 5, 7). The Court, considering the facts addressed by the agency and also having examined the record itself, finds substantial evidence for the agency to have determined that this *Dameron* factor weighs in favor of Respondent's best interest.

As to the third factor under *Dameron*, "the worker's financial condition, including all sources of income, debts and living expenses," the agency found Respondent and his wife to be in sound financial condition, stating, for example, "[t]hey live in the condominium that they have purchased with the proceeds from the sale of a rental property and their personal home. They are debt free and can cover all living expenses with the current stream of income including her salary, and benefits from Social Security" (Partial Commutation Decision, p. 7). The agency, in determining whether commutation was in

Respondent's best interest, clearly looked with favor upon the facts demonstrating his sound financial condition.

Petitioner herein cites these same facts and others indicating Respondent's sound financial condition (such as his purchase of a time-share and a classic car) to argue against the commutation award, stating, "[u]nlike the individuals in many of the cases where commutations have been found to be in the best interest of the Claimant, Mr. Sands did not have any high interest or other debt that it would be beneficial for him to retire to increase his financial security" (City's Brief, p. 8). Petitioner similarly argues, without providing authority, that "[t]he intent of the legislature in this area is to provide for medical treatment and to provide for replacement of lost wages in order to provide the essentials of food, clothing and shelter; not to provide an individual windfall or legacy to offset the lack of retirement and estate planning by an individual" (City's Brief, p. 13).

Petitioner's argument in this regard is that, because Respondent's financial condition is sound, Respondent does not *need* a commutation of benefits. The Court certainly understands why an employer, and particularly a self-insured one, would take this position. But necessity is not the standard for commutation. "Best interest" is the standard, which may be shown or not shown irrespective of any necessity or lack thereof. The Court, considering the facts noted by the agency and those noted by Plaintiff, and having examined the record itself, finds that the record contains substantial evidence for the agency to have determined that this *Dameron* factor weighs in favor of Respondent's best interest.

As to the fourth and final factor under *Dameron*, "the reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage

invested funds or arrange for management by others (for example, by a trustee or conservator),” this is perhaps the hardest fought issue on judicial review.

First, Petitioner takes issue with the investment plans that were proposed by Respondent at hearing before the agency, arguing that they are not in Respondent’s best interest because they do not allow sufficient liquidity without penalty or loss of earnings; because monies ultimately realized from the proposed investments would be fully taxable, as opposed to monthly payments which are not; because the lump-sum payment would render Respondent more susceptible to garnishment; and because the financial experts who advocated for these particular investment plans were not privy to all pertinent information, including Respondent’s impulsivity, lack of money-management ability, and other issues, when they determined these investment plans were appropriate for Respondent (City’s Brief, pp. 9-11).

The agency expressly weighed these facts in determining whether commutation was in Respondent’s best interest. The agency described in some detail the investment plans proposed by Respondent (Partial Commutation Decision, pp. 4-5) and determined that “[t]he plan set forth wherein the claimant would purchase an annuity and allow his funds to remain untouched and grow exponentially is reasonable” (Partial Commutation Decision, p. 7). The agency then considered the “potential detriments,” which include many of the issues raised by Petitioner here, and found that despite these shortcomings, Respondent and his wife had consolidated real estate holdings to buy an unencumbered home, that Respondent had conserved the majority of his prior lump sum payout in annuities, and that Respondent and his wife had approximately \$40,000.00 in liquid assets available. (Partial Commutation Decision, p. 7). And as for such liquidity and the

potential loss of funds under the proposed annuity plan in the event of a future need, the agency specifically considered this issue and noted that under the “present system” (of monthly payments), Respondent would be “unable to access any large lump sums from his workers’ compensation benefits” (Partial Commutation Decision, p. 7), thus rendering the commutation in Respondent’s best interest even in regard to liquidity.

Next, Petitioner strenuously argues that the facts in this case demonstrate that Respondent is not sufficiently capable of properly managing the funds that would be paid under a commutation award, citing his purchase of a classic car; his purchase of a time-share in Branson, Missouri; his previous investments of funds in a manner that does not provide liquidity in the event of emergency or declining health; the results of his psychological examination that showed poor impulse control and incapability of managing his own money; his failure to obtain life and health insurance; and others.

Again, the agency expressly weighed these factors in finding “best interest,” stating:

“Based on the Dameron test, it is found that the greater weight of the evidence supports an order granting partial commutation. While claimant has made a few unwise and impulsive decisions with his money, and he has been found to be incapable of managing his own money by the Social Security administration, his overall financial picture is healthy. He has no debt. He owns his condominium outright. He has sufficient monthly income to meet all of his monthly bills. He is covered by his wife’s health insurance. Between the two of them they have nearly \$100,000.00 in savings. In addition, his wife has a pension plan of \$145,000.00.

Claimant has made some frivolous decisions in the past with his money – purchasing the time share, buying a classic car when he already owns two other functional vehicles. However, none of these actions imperiled his financial standing. It is in claimant’s best interests to grant a partial commutation of his award.”  
(Partial Commutation Decision, p. 8).

The Court, having considered the facts referenced in the agency decision and

those raised by Plaintiff, and having examined the record itself, finds in the record substantial evidence for the agency to have determined that this *Dameron* factor weighs in favor of Respondent's best interest. Having found substantial evidence in support of the agency's decision on all four of the *Dameron* factors, the Court accordingly finds that the agency's finding of fact, that a partial commutation was in the "best interest" of Respondent, is supported by substantial evidence in the record when viewed as a whole.

Next, Petitioner argues that there is "no guarantee, given Mr. Sands' history of classic car and time-share purchases, that he would retain ownership of the annuity and not cash it out as soon as possible even if it was established in the first place" (City's Brief, p. 10). The agency expressly considered this possibility, stating, "[t]here is no guarantee that the claimant will purchase the annuity once the commutation is granted, but the aforementioned plan is a careful and considered one." The Court, having examined the record and the evidence therein, finds this conclusion to be reasonable, or at least not irrational, illogical, or wholly unjustified. The Court also looks with favor upon the point advanced by Defendant in this regard from an administrative decision in Bajramovic v. Deerfield Retirement Community, File No. 5026550 (App. Dec. April 15, 2013), to wit: "... it is a reasonable expectation that claimant will follow the advice of the financial planner hired to work on [his] behalf" (Defendant's Brief, p. 26, *quoting* Bajramovic at p. 6).

Next, Petitioner contends that the partial commutation should not have been awarded because it was sought by Respondent for the purpose of providing a "nest egg" for his wife after his demise by leaving her either a considerable sum of money or a stream of additional income (City's Brief, p. 12). Petitioner argues that this purpose is an

improper basis for commutation of benefits, citing the former administrative decision in Mahaffey v. Cardinal Cleaners (Iowa Industrial Commissioner, April 8, 1974) for the proposition that “the purpose of leaving an estate... does not fall within the purposes of commutation or the Iowa Workman’s Compensation Law” (City’s Brief, p. 12, *quoting Mahaffey*). The Court finds this argument is without merit. Even if enhancing Respondent’s estate after his death were the only basis asserted in this case as to why partial commutation was in Respondent’s best interest, which this Court finds it was not, Defendant correctly counters that the precedent set in Mahaffey on this issue was reconsidered and expressly rejected by the Commissioner in the later decision of Sporleder v. Crouse Cartage Company, File Number 1254033 (Workers’ Compensation Commissioner 2011). In Sporleder, the Commissioner found that “[t]he agency’s analysis in Mahaffey is not legally sound under the Iowa Supreme Court’s prior guidance in *Diamond v. Parsons* or the later *Dameron* case.” Sporleder, at p. 2 (citation omitted). The Court agrees with this statement regarding *Diamond* and *Dameron*, finding that adoption of the rule espoused by Mahaffey opens a Pandora’s box with regard to analysis of best interest and that rejection of such a rule was proper by the Commissioner under the law as interpreted by the Iowa Supreme Court. Petitioner asserts that such precedent is “a creature of expansive court action” (City’s Reply Brief, p. 10). Whether such is the case or not is not the purview of this Court to determine, whose duty it is to apply the law as it exists.

Next, Petitioner contends that because Respondent’s original award of disability benefits was based in large part upon health conditions that were unrelated to his work injury, and because those non-injury-related health conditions decrease his life



expectancy, the commutation should not have been awarded. Respondent argues that Respondent's reduction in life expectancy "is not the fault of the employer," and that "[r]equiring the employer, whether a public or private employer, to compensate the Claimant for lost income/earning capacity beyond that which he would have is not the purpose or intent of the workers' compensation laws..." (City's Brief, p. 13). In this regard, Petitioner also claims the partial commutation will result in unjust enrichment of respondent for the same reason (Petition, para. 11). Petitioner attempts to cast this issue as determinative of Respondent's "best interest" (City's Brief, p. 13), but the Court does not agree. This argument clearly goes to the best interest of the employer. Fairness to the employer, or best interest of the employer, is not the relevant standard in a commutation decision. Best interest of the Claimant is. See *French & Hecht v. Arlingdale*, 432 N.W.2d 705, 707 (Iowa 1988), citing *Dameron*, 339 N.W.2d 160 at 165 ("It has already been established that commutation turns on what is in the best interest of the worker, not on what is in the best interest of the employer or insurance carrier). The Court also notes that this argument is in large part analogous to that addressed in section (4), below, regarding "work-life expectancy." Petitioner's argument is essentially the same, which is that under a partial commutation, the City would pay benefits that it otherwise would not have paid, or would pay benefits to replace income that Respondent otherwise would not have earned. The Court finds that the analysis of this argument under the law is also essentially the same as that set forth in section (4) below, including that Petitioner's contention in this regard would more properly be directed toward the original decision fixing the extent and duration of benefits, rather than the commutation decision, as the original award is determinative of the commutation award (see section (4), *infra*).

Finally, the Court must address Petitioner's assignment of error as to the "ultimate conclusion" that the partial commutation should not have been awarded in this case because of the above arguments. The Court finds that the agency's finding that commutation was in the best interest of Respondent is supported by substantial evidence in the record when viewed as a whole. The Court finds that the agency's interpretation of its own rules, particularly that the use of life expectancy tables as adopted in 876 IAC 6.3 renders the period during which compensation is payable "definitely determinable," is not irrational, illogical, or wholly unjustifiable. The Court further considers Petitioner's arguments regarding improper purpose under Mahaffey, decrease in life expectancy due to non-work-related injuries, unfairness to the employer, and unjust enrichment, and finds that the agency's decision to award partial commutation in this case was not irrational, illogical, or wholly unjustifiable.

The Court finds that the decision of the Iowa Workers' Compensation Commissioner should be affirmed on this issue.

**2. Whether the initial decision of the deputy should have been affirmed by the Commissioner.**

The Court finds this "issue" raised by Petitioner on appeal to be surplusage because: 1) It is merely a restatement of issue number (1), above, as to whether the partial commutation should have been granted by the agency, as the Commissioner's affirmance of the Deputy Commissioner's decision is the final agency decision scrutinized here on judicial review; and 2) It is merely a restatement of the ultimate question embodied in the other issues asserted, to wit: If the Court affirms the agency's decision on all of the other issues raised, the answer to this question is "yes." If the Court does

not affirm the agency's decision on any of the other issues raised, the answer to this question is "no." Thus, the Court finds that any separate analysis of this "issue" for review is neither necessary nor appropriate.

**3. Whether the order for partial commutation violates the provisions of the Iowa Constitution.**

Petitioner alleges that because it is a self-insured municipality, rather than a private employer, a commutation in this case represents a potential violation of Article III, Section 31, of the Iowa Constitution, which provides, in pertinent part, that "... no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation or claim, be allowed by two thirds of the members elected to each branch of the general assembly." IA Const. art. III, §31.

In this case, Petitioner concedes that pursuant to the December 20, 2016, award of benefits to Respondent, the City is "obligated as a matter of law and public policy to make payments from public funds during the life of the [Respondent]" (City's Brief, p. 14), and that Petitioner is "not exempt from compliance with workers' compensation statutes" (City's Reply Brief, p. 15). The Court agrees. Under the Iowa Worker's Compensation Act, an "employer" is defined as "a person, firm, association, or corporation, state, county, *municipal corporation*, school corporation..." (Iowa Code §85.61(2)(a) (emphasis supplied). Municipal corporations are not exempt from workers' compensation statutes. They are expressly subject to them.

Petitioner argues, however, that "it is medically clear that [Respondent] will not meet or exceed the projected life expectancy... provisions found in IAC 8746-6.3(1)" (City's Brief, pp. 15-16), and therefore a commutation award would "almost certainly"

result in the expenditure of public funds for a private purpose (*Id.*, p. 14). The logic is that if Respondent should die before his projected life expectancy, upon which the award is based, then Petitioner will have pre-paid benefits under the commutation order that would be in excess of those required by periodic payments without commutation. These excess amounts, Petitioner alleges, would presumably be used to provide security for Respondent's spouse, which would constitute the appropriation of public funds for a "private purpose."

This issue was raised by Petitioner on appeal to the Commissioner, who declined to make any constitutional determinations, citing lack of authority to do so. (Appeal Decision, p. 3).

A party challenging the use of public funds on the ground that they are being used to support private purposes, in violation of the Iowa Constitution, has the burden to show that "there is an absence of all public interest in the purposes for which the appropriation is made." *McMurry v. City council of City of West Des Moines*, 642 N.W.2d 273, 283 (Iowa 2002), *citing Richards v. City of Muscatine*, 237 N.W.2d 48, 61 (Iowa 1975). See also *Dickinson v. Porter*, 35 N.W.2d 88, 81 (Iowa 148).

The purpose of workers' compensation statutes in Iowa has been stated as follows:

The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford a speedy tribunal to determine and award compensation under the terms of this act."

*Zomer v. West River Farms, Inc.*, 666 N.W.2d 130, 133 (Iowa 2003) (distinguished on other grounds), *citing Flint v. City of Eldon*, 183 N.W. 344, 345 (Iowa 1921).

Also, "[t]he primary purpose of the workers' compensation statute is to benefit the worker and the worker's dependents insofar as the statute permits," and "the statute is

intended to cast upon the industry in which the worker is employed a share of the burden resulting from industrial accidents.” *Caterpillar Tractor Co. v. Shook*, 313 N.W.2d 503 (Iowa 1981) (internal citations omitted).

Specifically with regard to commutation of benefits, the “fundamental touchstone” set forth by Iowa Legislature is the “best interest of the claimant.” *Dameron v. Neumann Brothers, Inc.*, 339 N.W.160, 165 (Iowa 1983) (discussing and reaffirming the principles of *Diamond v. Parsons Co.*, 129 N.W.2d 608 (Iowa 1964)). The Court further finds that the statutes governing commutation further the public policy objectives of the Workers’ Compensation Act in general, and that the statutes and administrative rules governing commutation at the time of Respondent’s award were enacted in the public interest, including the statutes and rules related to calculation of the period of commuted benefits.

The Court finds that the Iowa Workers’ Compensation Act, specifically including the provisions for commutation which were in effect at the time of the Commissioner’s decision in this case, was and is based upon sound principles of public policy and that Petitioner herein does not meet its burden of demonstrating an “absence of all public interest in the purposes for which the appropriation is made.”

Additionally, the Court acknowledges but disagrees with Petitioner’s attempt to distinguish this case from other commutations involving public employers simply because in this case Respondent’s life expectancy is more questionable than usual. Put simply, in every commutation case there is the possibility that the claimant will not live to his or her life expectancy. A perfectly healthy claimant could be awarded a commutation and then be killed in an automobile accident the next day. If Petitioner’s logic is accepted that payment of commuted benefits for a claimant’s life expectancy represents a violation of

the Iowa Constitution if the claimant does not live to his or her life expectancy, then every commutation involving a public employer is subject to the same peril.

This leads to another, more fatal flaw in Petitioner's argument as to constitutionality, which is reasonable doubt. Even if Petitioner's argument were to be accepted regarding the constitutionality of commuted benefits given a reduced life expectancy, all that would exist at present would be a *potential* for future violation of the Iowa Constitution under the facts of this case. The Court need look no further than Petitioner's own assertion that this commutation would "almost certainly" result in the expenditure of public funds for a private purpose. Despite Petitioner's assertion that "it is medically clear" that Respondent will not live to the life expectancy adopted for him by the Commissioner, the fact is that nobody knows exactly how long Petitioner will live, such fact being unknowable. And despite Petitioner's conviction that Respondent in this case would use any excess funds for the support of his wife, such use is also an uncertainty. There is admittedly evidence in the record to support both assertions, but both remain uncertainties, which leaves reasonable doubt as to any violation under the facts of this case. To find a violation of the Iowa Constitution, beyond a reasonable doubt, based solely upon the hypothetical possibility that such may occur in the future, would be untenable.

The Court finds no violation of the Iowa Constitution by the agency decision granting partial commutation in this case.

**4. Whether the commuted portion of the award should be limited to work life vs. calculated life expectancy.**

This issue calls into question the commissioner's interpretation of law, specifically

of Iowa Code §85.34(3)(a), §85.48, and relevant case law, in deciding whether the commuted portion of the award should be based upon Respondent's total life expectancy or upon his "work life" expectancy.

Historically speaking, the interpretation of statutes and case law is not found to be vested in the discretion of the agency. *See, e.g., Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005) and *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004). However, the analytical framework provided by *Renda v. Iowa Civil Rights Commission*, as discussed above, requires a more thorough examination of the particular provision(s) to be interpreted. Applying the *Renda* framework, the Court considers the specific language or statutory provision(s) that the commissioner has interpreted as well as the specific duties and authority given to the commissioner with respect to enforcing the particular statute. In making such a determination, the Court considers the factors from *Neal v. Annett Holdings, Inc.*, which are rule-making authority, decision-making or enforcement authority that requires the commissioner to interpret the statutory language, and the commissioner's expertise on the subject or on the term to be interpreted.

Applying this analysis to the instant case, particularly considering the commissioner's expertise on the subject and the authority that requires the commissioner to interpret the statutory language, the Court acknowledges a colorable argument that interpretive authority regarding this particular issue may be vested in the discretion of the workers' compensation commissioner. However, the Court is not sufficiently persuaded to give deference to the Commissioner's decision in this particular matter, especially in light of the case law surrounding such interpretation, in which the Iowa Supreme Court

has interpreted the law on this issue without providing deference to the agency (see discussion, *infra*). Thus, the Court finds that this particular matter has not been clearly vested by a provision of law in the discretion of the agency. Therefore, the Court does not give deference to the commissioner's interpretation, but rather reviews the commissioner's interpretation for correction of errors at law and accordingly will substitute its judgment and interpretation of the statutory provision in question for that of the commissioner's if the Court concludes the commissioner made an error of law. Iowa Code Section 17A.19(10)(c), (l); *Neal*, 814 N.W.2d at 518. See also, *Gaborit*, 743 N.W.2d at 556-557; *Meyer*, 710 N.W.2d at 219.

Iowa Code §85.34(3)(a) provides that under the circumstance of permanent total disability, compensation is "payable until the employee is no longer permanently and totally disabled." In *Sidles Distributing Co. v. Heath*, 366 N.W.2d 1 (Iowa 1985), a case directly on point with the present case with regard to this issue, the Iowa Supreme Court clearly and unambiguously determined that an award of permanent total disability is payable for the injured employee's life expectancy and that a commutation of such an award is likewise based upon the employee's life expectancy. *Id.*, at 2-4. The Court, in *Sidles*, also unequivocally rejected the argument that a commutation of permanent disability benefits should be limited to the employees "work life," as was proposed by the appellant therein and likewise by Petitioner herein. *Id.*

The *Sidles* court also expressly rejected the argument that Iowa Code §85.45(1)(d), which was then codified in slightly different form at §85.45(4), limits a partial commutation of permanent disability benefits to "work life" expectancy, explaining:

Prior to [the statute's] enactment, we had suggested in [*Diamond v.*



*Parsons Co.*, 129 N.W.2d 608, 613 (Iowa 1964)] that, where weekly disability payments have been ordered for a fixed period of time, that period shall be used to compute the lump sum award in commutation cases even in those instances where life expectancy tables indicate that the claimant will not live to the end of the benefit period. We believe that subsection 4 of section 85.45, enacted in 1973, is aimed at reversing the import of the *Diamond* decision in situations where it is probable that death or remarriage will shorten the length of the time benefits are payable. This statute does not purport to establish the criteria under which the length of the benefit period is to be fixed in the first instance nor do we believe that it suggests, even by implication, a legislative recognition of appellants' "work-life" theory. *Sidles*, 366 N.W.2d at 3-4 (emphasis added).

Of consequence to the instant case, the Iowa Supreme Court, in *Sidles*, also found that in a commutation action, the issue of the duration of disability payments was "governed by the earlier decision fixing the extent and duration of the employee's benefits," and that the payments ordered by the earlier decision in that case were ordered payable "during the period of the employee's disability," and that the length of the period of disability as previously ordered is a "determinative factor in computing the proper amount of the lump sum commutation award." *Id.*, at 2-3 (internal citations omitted).

This exact chain of reasoning, which this Court finds cogent and entirely applicable to the case at hand, was echoed by the Commissioner in this case in support of his affirmation of the Partial Commutation Decision (Appeal Decision, p. 2).

Finally, the *Sidles* Court expressly acknowledged the legislature's approval of the use of mortality tables in making determinations of a person's life expectancy. *Sidles*, 366 N.W.2d 1, at 4.

In short, this Court finds no error at law on this issue and is in full agreement with the analysis set forth in the Appeal Decision by the commissioner, to wit: 1) the underlying arbitration decision ordered payments "during the period of employee's disability"; 2) that

language is properly construed under the law to mean that the duration of benefits is for the employee's life expectancy and specifically does not mean "work life" expectancy; 3) the length of the period of disability, as determined in that underlying arbitration decision, is a determinative factor in computing the proper amount of the lump sum commutation award; and 4) Petitioners did not appeal the original arbitration decision and cannot now seek to overturn it under the guise of a commutation argument.

The Court finds that the decision of the Iowa Workers' Compensation Commissioner should be affirmed on this issue.

**5. Whether the mortality table adopted by rule is the appropriate table for use in determining present value.**

This alleged error requires examination from two different viewpoints. First, on the face of this particular agency action, the decision by the agency in this case to apply the life expectancy table cannot be said to have erroneously interpreted existing law or to have erroneously applied existing law to the facts of this case, as the life expectancy table that was used by the Deputy Commissioner, and expressly affirmed by the Commissioner, is found in 876 IAC 6.3, along with the direction that, "[t]he following tables are to be used in determining the sum to be paid in appropriate commutation proceedings." The agency followed existing law when utilizing the life expectancy table, and the table was correctly applied to the facts of this case.

The other viewpoint, however, is that Petitioner's assignment of error intends to question the agency's adoption of this particular life expectancy table in the first place, which viewpoint is borne out by the Petitioner's language used in framing of the issue ("Whether the mortality table *adopted by rule* is the appropriate table...").

Iowa Code Section 86.8 vests the commissioner with the broad authority to “adopt and enforce rules necessary to implement [Chapter 86] and Chapters 85, 85A, 85B, and 87.” Additionally, Iowa Code §85.45(1)(d) provides that “when a person seeking a commutation is... an employee with a permanent and total disability... the future payments which may be commuted shall not exceed the number of weeks which shall be indicated by *probability tables designated by the workers’ compensation commissioner* for death and remarriage, subject to the provisions of Chapter 17A” (emphasis supplied).

The Court finds that this particular matter (*i.e.*, the designation of life expectancy tables to be used in computing commutations) has been clearly vested by a provision of law in the discretion of the agency, and therefore the action of the commissioner should not be disturbed unless it is irrational, illogical, or wholly unjustified, or it is otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code §17A.19(10)(l, n).

Petitioner argues that the current life expectancy table adopted by rule does not identify the date or source of the table, does not distinguish between males and females in projecting life expectancies, and leads to disparities and inequities under the law, particularly citing the difference in life expectancies computed for workers’ compensation claimants (using the commissioner’s table) versus the life expectancies computed for Petitioners in tort actions for damages (which utilize the 2001 CS.O Mortality Tables).

The Court cannot disagree that Petitioner’s contentions may be persuasive arguments for the use of a different table in computing workers’ compensation benefits, but they fall far short, in the view of the Court, of demonstrating that the commissioner’s adoption of the table contained in 876 IAC 6.3 was irrational, illogical, wholly unjustified,

or otherwise arbitrary, capricious, or an abuse of discretion.

In so finding, the Court also acknowledges Defendant's argument that 876 IAC 6.3 was duly adopted under the Administrative Procedures Act and "is currently the law of the land," and that Petitioner's arguments as to its suitability for use in the calculation of workers' compensation benefits would have been more properly raised during the rule-making process.

Petitioner, in response, concedes that "... the ability of the City to object to the adoption of the rule appears to have passed..." (City's Reply Brief, p. 17), but asserts that "the Petitioner is not estopped from raising the issue of the inequity of the application of the rule to this case." (*Id.*)

With regard to the application of the agency rule to this case, the Court finds that this application of law to fact has been clearly vested by a provision of law in the discretion of the agency, and therefore reviews the decision under the "irrational, illogical, or wholly unjustified" standard.

The Court cannot find that the agency's application of the rule to this case was irrational, illogical, or wholly unjustified, nor does the Court find that such application was even "inequitable," as it is the rule applied to every case in which the commuted value of workers' compensation benefits is calculated.

Although not specifically identified as such, Petitioner's allegation of "inequity in the application of the rule to this case," and the arguments offered in support of such argument, are akin to a claim of denial of Equal Protection under the law. Petitioner makes no specific Equal Protection claim under either the United States Constitution or the Iowa Constitution, nor was any such issue raised before the agency below, so this

Court does not engage in an analysis of Equal Protection on this issue. However, the analogy of Petitioner's argument to an Equal Protection claim is illuminating to a portion of the Court's reasoning herein. Broadly speaking, a violation of Equal Protection occurs when similarly situated persons receive disparate treatment under the law. Petitioner's arguments regarding the inequity of using the life expectancy table in IAC 876-6.3 for workers' compensation cases, while using the C.S.O Mortality Table for Petitioners in tort cases, misses the mark in large part because Petitioners in tort cases are not similarly situated to workers' compensation claimants. There may be many reasons why different calculations might be made under those very different circumstances, and the Commissioner's act of adopting the life expectancy table he has adopted, under the discretion vested in him by law, cannot be said to be irrational, illogical, or wholly unjustified simply because it leads to a different result than that reached in tort cases.

The Court finds that the decision of the Iowa Workers' Compensation Commissioner should be affirmed on this issue.

In the interest of thoroughness, the Court notes that Petitioner also uses language in its brief that appears to be an attempt to raise a Due Process claim (See, e.g., Petitioner's Brief in Support of Petition for Judicial Review, pp. 17-18, stating, "[t]he use of the unsourced table as the method for determining the amount to be awarded... denies the City due process to challenge the table without knowing its origin or accuracy"). Like the Equal Protection issue, no express claim is made of any violation of Due Process under either the United States Constitution or the Iowa Constitution, but this language even more directly implicates due process than did the language analogous to Equal Protection.

A party is precluded from raising issues in the district court that were not raised and litigated before the agency. *Interstate Power Co. v. Iowa State Commerce Comm'n*, 463 N.W.2d 69, 701 (Iowa 1990). Even constitutional issues must be raised at the agency level to be preserved for judicial review. *Garwick v. Iowa Dep't of Transp.*, 611 N.W.2d 286, 288-89 (Iowa 2000).

No claim of denial of Due Process, by use of the life expectancy table contained in IAC 876-6.3, was raised either at hearing before the deputy commissioner or in Petitioner's appeal to the Commissioner, thus Petitioner is precluded from asserting such arguments upon judicial review. The same analysis applies to any assertion of an Equal Protection claim that might be construed from Petitioner's briefs, as discussed *supra*.

**6. Whether the agency decisions are fatally flawed for failure to include citation to the correct partial commutation versus full commutation section and for failure to comply with the express provisions of Iowa Code Section 85.48.**

This issue for judicial review, as stated by Petitioner, is really two issues: 1) incorrect citation by the agency to Iowa Code §85.47, rather than §85.48; and 2) alleged failure to comply with §85.48 by failing to fix the lump sum to be paid.

A party is precluded from raising issues in the district court that were not litigated before the agency. Neither of these issues was raised at the agency level, including on appeal to the commissioner (the same alleged errors having been present in the deputy commissioner's Partial Commutation Decision), thus Petitioner is precluded from raising them on judicial review.

For this reason, the Court finds that the decision of the Iowa Workers' Compensation Commissioner should be affirmed on this issue.

Having so found on the basis of failure to preserve error, the Court includes the

following remarks in the interest of clarity only:

1. With regard to the agency's incorrect citation to §85.47 rather than §85.48:
  - a. Having examined the Appeal Order and the statutes in question, the Court agrees with Petitioner that as between §85.47 and §85.48, the latter is the applicable statute for a partial commutation and the agency incorrectly cited the former in the "Order" sections of its decisions.
  - b. The agency only cited §85.47 for one purpose: as authority for its order that "Defendant shall be entitled to a discount rate on the commuted benefits pursuant to Iowa Code section 85.47 and Iowa Code Section 535.3." In this regard, Sections 85.47 and 58.48 contain identical language regarding the application of interest pursuant to §535.3, which is that future payments shall be "capitalized at their present value and upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees." Iowa Code §§ 85.47 and 85.48.
  - c. The agency correctly cited to §85.48 in the body of its Partial Commutation Decision, as affirmed by the Commissioner on appeal (Partial Commutation Decision, p. 5).
  - d. There is evidence that the incorrect citation to §85.47 was merely a typographical error and not an error at law, which is that the remainder of the Appeal Decision complies with §85.48 and the agency correctly cited §85.48 in the body of its Partial Commutation Decision. However, even if the incorrect citation was not a typographical error, but was in fact an error at law by the agency, it cannot be found to be anything other than a

harmless error, as both statutes require, in identical language, the application of an interest rate as provided in §535.3, which is precisely what the agency ordered.

- e. For these reasons, even if this issue could be raised by Petitioner in this judicial review action, the Court affirms the agency decision, finding that pursuant to Iowa Code §17A.19(10), the substantial rights of Petitioner have not been prejudiced by the agency action in citing the incorrect statute. Indeed, there has been no prejudice at all.
2. With regard to alleged non-compliance with §85.48 by failing to fix the lump sum to be paid:
    - a. This Court has previously expressed misgivings as to the language used by the agency to “fix the lump sum to be paid” as required by §85.48 (See “Ruling on Respondent’s Request for Judgment Entry and Petitioner’s Motion For Stay,” filed in this matter on March 17, 2020).
    - b. This concern by the Court, however, was expressed in the context of determining whether a sum certain existed upon which to enter judgment pursuant to the court’s “ministerial function” under Iowa Code §86.42. The Court found on that question that the manner in which the agency “fixed” the sum had not, at that time, adequately determined a sum certain because under the terms set forth in the agency decisions, the process established for calculating such sum had not been completed.
    - c. That is a different question from the one which would be before the Court now, if this matter were properly raised on judicial review. In this context,



the Court finds that the agency has complied with §86.42 by adequately “fixing” the lump sum to be paid, but in so doing, established a process by which to compute the final dollar amount. “Fixing” the lump sum to be paid is distinguishable from calculating the dollar amount that has been fixed, and it is only the latter which remained uncompleted at the time of the Court’s ruling on entry of judgment. To the Court’s knowledge, such computation has not been completed to date.

- d. For this reason, the Court finds that this matter, although affirmed in all respects, should be remanded to the agency for computation of the final dollar amount of the commutation award, either pursuant to the procedure set forth in the Appeal Decision (appointment of a financial expert), or by the agency itself.

**ORDER**

WHEREFORE IT IS ORDERED AS FOLLOWS:

1. For the reasons set forth herein, the Appeal Decision of the Iowa Workers’ Compensation Commissioner is AFFIRMED in all respects.
2. This matter is REMANDED to the Iowa Workers’ Compensation Commissioner for computation of the precise dollar amount of the commuted lump-sum payment, either through the process established by the agency (appointment of a financial expert), or by the agency itself.
3. Costs of this Judicial Review action are assessed to Petitioner.

SO ORDERED.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV190717  
**Case Title** CITY OF SIOUX CITY VS. SANDS, RANDY A

So Ordered

A handwritten signature in blue ink that reads 'R. L. Sailer'.

Roger L Sailer, District Court Judge  
Third Judicial District of Iowa