

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SUZANNE GRUBBE,

Claimant,

vs.

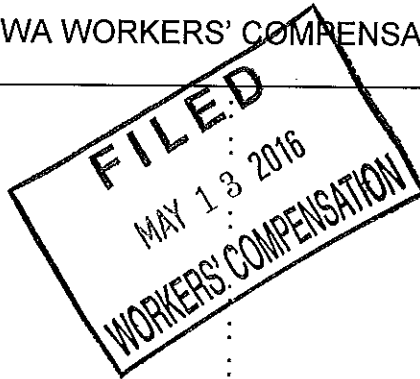
THE FINLEY HOSPITAL,

Employer,

and

CNA INSURANCE,

Insurance Carrier,
Defendants.



File No. 1199837

PARTIAL COMMUTATION
DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Suzanne Grubbe, claimant, filed a petition seeking partial commutation of workers' compensation benefits from The Finley Hospital, employer, and CNA Insurance, insurance carrier, as a result of an injury she sustained on October 6, 1998, that arose out of and in the course of her employment. The case was heard by Deputy Workers' Compensation Commissioner Stan McElderry in Des Moines, Iowa.

ISSUE

Whether a partial commutation of all but the last week of permanent total disability benefits is in the best interest of claimant.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Claimant, Suzanne Grubbe, was 77 years old at the time of the hearing. She was born on March 31, 1938, and is now 78.

Claimant's educational background includes a high school diploma in 1956, and her post-high school education consists of a 1980 certification as a licensed practical nurse (LPN). Claimant began working as a staff nurse for the defendant employer on December 1, 1980. The claimant was found as permanently and totally disabled from

an October 6, 1998 work injury at Finley Hospital. She has been widowed since 2008. She now seeks to have all but the last week of that award commuted to a lump sum. Her current per week worker's compensation benefit is \$255.95. She also receives Social Security Disability (SSD) of \$1,681.99 per month.

Defendants have paid the claimant weekly benefits through the date of hearing and continue to pay those weekly benefits. Per claimant's original notice and petition the calculated commuted value was about \$130,000.00. Claimant proposes to use the commuted benefits to pay the attorney fees, and accumulated debts. This would leave less than \$80,000.00 for which claimant proposed purchasing an annuity to provide a monthly stream of payments. Claimant's counsel argues in his brief that the annuity would pay at least a 4 percent return. A 4 percent return is less than \$266.67 per month. Current yearly tax-free workers' compensation benefits are \$13,310.44. A \$267.67 per month annuity would result in \$3,200.00 per year. A return of over 16 percent on the annuity would be necessary to avoid a reduction in monthly income. Workers' compensation benefits are tax-free, and part of the annuity would be taxable.

After payment of debts, and purchase of an annuity, the claimant's gross monthly income would decrease. There is no guarantee that even the annuity could not be sold and that the claimant would eventually have no monthly income other than Social Security if the commutation were approved. And we know from claimant's testimony that she has debt from funding a drug addicted son who ran up over \$40,000.00 in debt over ten years in claimant's name, debt that she had to cash in an annuity previously to pay off part of; debt she still has not paid off, but proposes to do so with the commutation proceeds. Other items have been stolen from the claimant's home that until a very short time before hearing she shared with her son. Claimant conceded that she had enabled at least part of the debt. She also testified that she had just cut her son off very shortly before hearing, and yet conceded that she had done so in the past only to relent. Claimant also swore that her monthly expenses were about \$1877.00 per month or just under her income from SSD, and the annuity if the commutation were approved. Michael Sandberg was claimant's expert. (Exhibits 2 and 4) He puts her expenses at \$1,730.00 per month. (Ex. 2, p. 2) He never met with the claimant.

Mr. Sandberg clearly did not have access to claimant's bank records. In 2014 the closest she came to expenses as low as \$1,730.00-\$1,877.00 was February when her expenses were \$1,967.07. She incurred numerous overdrafts and finished the year with a negative balance even with a monthly income of almost \$2,800.00, about \$800.00 more than she proposes to live on after commutation. Since then her rent of \$750.00 per month, which had been split with another person (a supposed ex-methamphetamine addict who used while they lived together) who claimant got into a physical altercation with and ended up in jail as a result, is now her full responsibility.

Mr. Sandberg never met with the claimant and was retained for this case only. He will not be helping with any investments. A lady at the bank is the plan for that per claimant's testimony. Mr. Sandberg's report is in conflict with the claimant's own banking records. As such, the report is entitled to very little, if any, weight.

CONCLUSIONS OF LAW

The issue to be resolved is whether a partial commutation of all but the last week of permanent total disability benefit is in the best interest of the claimant.

In determining whether the commutation is in the best interest of claimant, this agency cannot act as a conservator and disregard claimant's desires and reasonable plans just because success of the plans is not assured. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The Iowa Supreme Court in Dameron v. Neumann Bros. Inc., 339 N.W.2d 160, 165 (Iowa 1983) has held that this agency should examine the following in determining whether to allow a commutation:

The workers' age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).

The workers' family circumstances, living arrangements, and responsibilities to dependents.

The workers' financial condition, including all sources of income, debts, and living expenses.

The reasonableness of the workers' plan for investing the lump sum proceeds and the workers' ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).

The Dameron court went on to state that a request for commutation should be approved unless the potential detriments to the worker outweigh the workers' expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W.2d at 165.

Iowa Code section 85.48 provides:

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments 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.

When the period of future compensation to which a claimant is entitled is definitely determinable and a claimant's work-related medical condition is stable, claimant may receive a lump sum discounted payment of future benefits, provided claimant establishes that the commutation of benefits is in claimant's best interest. A claimant's preference for receiving a lump sum payment is balanced against the

potential detriments that could result if the employee invests unwisely, spends foolishly or otherwise wastes the funds to the point where they no longer provide the wage substitute intended by the workers' compensation law. Dameron, 339 N.W.2d at 160.

As discussed above, the partial commutation is for all but the last week of permanent total disability benefits. Claimant proposes to use the commuted benefits to pay the attorney fees, pay off debts, and to invest the remainder in an annuity. The potential detriments to the worker of a partial commutation were shown to outweigh the expressed preference and the proposed benefits of commutation. Given the claimant's financial history, monthly expenses, long-term enabling of a troubled son, greatly reduced income from a partial commutation, and the other factors found above it is concluded that claimant's request for partial commutation has not been established to be in the best interest of claimant and should be denied for the reasons stated above.


ORDER

THEREFORE, it is ordered:

Claimant's petition for partial commutation is denied.

The parties shall bear their own costs.

Signed and filed this 13th day of May, 2016.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.