

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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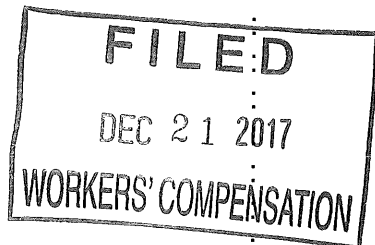
GUS THEROS,

Claimant,

vs.

CITY OF SIOUX CITY,

Employer,  
Self-Insured,  
Defendant.



File No. 5018948

COMMUTATION

DECISION

Head Note No. 3303.10

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STATEMENT OF THE CASE

Claimant, Gus Theros, filed a petition for full commutation of a prior permanent total disability award. The hearing was held on October 5, 2017, in Des Moines, Iowa.

The evidentiary record includes: Claimant's Exhibits 1 through 5 and Defendant's Exhibits A through D, F, G and H. At the hearing the following provided testimony: Gus Theros, claimant, and Dorothy Theros, claimant's wife. Administrative notice was taken of the prior arbitration and commissioner's decision in this claim

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this commutation decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issue for determination:

1. Whether claimant's request for full commutation of his permanent total disability award should be granted.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, and after taking administrative notice of the underlying administrative file, now finds:

At the time of hearing, claimant, Gus Theros (Theros) was 67 years old. He was injured on November 3, 2005, while working for the City of Sioux City, Iowa. Claimant was found to be permanently and totally disabled in an arbitration decision filed August 28, 2007. The decision was affirmed on appeal on June 25, 2008. Claimant now seeks to fully commute his permanent total disability award.

At the time the commutation petition was filed, 910 weeks of benefits was considered the remainder. Claimant's weekly compensation rate is \$157.17. The number of weeks in the remainder is now less due to the defendant continuing to make payments.

Claimant desires to fully commute his benefits for a number of reasons, which include: complete needed repairs to his home, pay down high interest consumer debt and to pay for significant dental work.

Claimant's worker's compensation benefit is \$157.17 per week. His attorney's fee is one third, leaving a net payment of \$104.78 per week. He also receives Social Security Retirement benefits of approximately \$700.00 per month.

Claimant and his wife, Dorothy Theros have been married since 1976. They currently live in Oklahoma. Mrs. Theros is receiving Social Security retirement of approximately \$500.00 dollars per month. Mrs. Theros also works in a hospital earning \$14.00 per hour and generally works 36 hours per week with occasional weeks of 48 hours. She is paid about \$700.00 every two weeks.

Claimant's adult son started to reside with them in January 2016. He contributes to pay for some expenses.

Mrs. Theros provided most of the testimony in this case. She keeps the books for the household and manages the finances for the household. After paying the house payment, utilities, food, loans for cars and consumer credit loans, medical insurance for claimant and herself they have little money left over for saving or emergency funds. They do not have sufficient funds to repair the roof or flooring of their home. They recently had plumbing repairs to their home and have a consumer loan they are paying off.

Claimant presented no evidence of any savings or retirement accounts that he can use to supplement the social security, worker's compensation and his wife's earnings. The claimant and his wife have minimal credit card debt. They do have consumer credit debt. Claimant has two loans totaling about \$1,200.00 and his wife has two loans for a totaling \$1,600.00.

Defendant has argued that a commutation will not be in the best interest of the claimant. If the claimant did not have his wife to manage the household finances there would be significant concerns about his ability to manage a commutation. However, the claimant does have his wife to manage any commutation.

Based on claimant's and Mrs. Theros testimony, I find that he is of sufficient mental capacity to appreciate the significance of her request for full commutation and that he, with the assistance of his wife, has the capacity, to understand his financial condition. The claimant has a plan to repair the home he is living in and reduce some of the consumer debt he and his wife are paying. The consumer debt has a high rate of interest.

Claimant, with his wife's assistance, has been able to manage his expenses and has been making timely payment of his mortgage utilities and consumer debt. The claimant has other income each month, social security and his wife has social security and wages.

### CONCLUSIONS OF LAW

The primary legal issue for determination is whether claimant should be granted a full commutation request.

As the party moving for the commutation, claimant bears the burden to prove that the commutation is in her best interest. Iowa R. App. P. 6.14(6).

Iowa Code section 85.45 (2001) provides that a commutation may be ordered when the commutation is shown to be in the best interest of the person who is entitled to the compensation, Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608, 616 (1964). The factors relied on in determining if a commutation is in the best interest of the claimant include:

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).

Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164 (Iowa 1983).

Ultimately, the analysis that is employed in a 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 the claimant's preference and the benefits to the claimant of receiving a lump sum payment are balanced against the potential detriments that would result if the claimant invested

unwisely, spent foolishly, or otherwise wasted the fund to the point where the fund no longer provided the wage substitute intended by the workers' compensation law. Diamond, 129 N.W.2d at 617; Dameron, 339 N.W.2d at 163-164. This division has consistently followed the rationale in the aforementioned cases and has used a reasonableness test to approve or disapprove commutations. Paulsen v. Central States Power, Ltd., II Iowa Industrial Comm'r Report 304 (App. 1982).

We are reminded in the Diamond case that "[t]he court should not act as an unyielding conservator of claimant's property and disregard his desires and reasonable plans just because success in the future is not assured." Diamond, 129 N.W.2d at 617.

However, if the weekly benefits are desperately needed to meet normal day-to-day living expenses, a commutation will usually be denied despite outstanding bills. Stufflebean v. Hudson Trucking, Inc., II Iowa Industrial Comm'r Report 384 (1981). In Stufflebean, a full commutation was not allowed because without weekly benefits, weekly bills could not be met.

A commutation should not be granted if the evidence shows that the claimant is a poor money manager or is incapable of making wise investment decisions. Solomon v. Ruan Transp. Company, II Iowa Industrial Comm'r Report 378 (1982).

I am not persuaded that claimant is a poor money manager. Neither do I conclude that he is incapable of managing the full commutation.

Claimant has a plan to repair his home, pay down consumer debt and obtain medical care not covered by Medicare. I conclude that it is reasonable to grant his request for full commutation and that the commutation has been shown to be in the best interests of the claimant.

The claimant's request for full commutation is granted.

#### ORDER

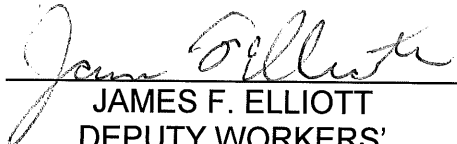
#### THEREFORE, IT IS ORDERED:

Claimant's petition for full commutation is granted. Defendant shall pay claimant a lump sum payment of future weekly benefits based on the previously awarded permanent total disability, 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.

Defendant shall pay the costs of this proceeding pursuant to rule 876 IAC 4.33.

Defendant shall file all subsequent reports as required by rule 876 IAC 3.1(2).

Signed and filed this 21<sup>st</sup> day of December, 2017.

  
JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFE/kjw

**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.