

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLARENCE PEEL,

Claimant,

vs.

EXTENDED STAY AMERICA HOTEL,

Employer,

and

ZURICH AMERICAN
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

FEB 27 2015

WORKERS COMPENSATION

File No. 5035787

PARTIAL COMMUTATION

DECISION

Head Note No.: 2905

STATEMENT OF THE CASE

Clarence Peel, claimant, filed a petition in arbitration seeking partial commutation workers' compensation benefits from Extended Stay America Hotel, employer, and Zurich American Insurance Company, insurance carrier, as a result of an injury sustained on August 24, 2007, that arose out of and in the course of his employment. The case was heard in Des Moines, Iowa, on February 18, 2015 and fully submitted on February 20, 2015.

Claimants' exhibits 1 through 13 were admitted into evidence; defendants' exhibits A through E were also admitted. Claimant, his wife, Jacquelyn Peel, and Peter Mattila, Ph.D., testified at the hearing.

Claimant filed a motion to amend his pleading to reflect more accurately his plan for spending the partial commutation, if awarded. Defendants did not object. The motion was granted at the hearing.

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:

The claimant, Clarence Peel, a/k/a Wayne Peel, was 56 on the date of hearing. Claimant lives with his wife, Jacqueline Peel. Ms. Peel is 52 years old. Mr. Peel has

2 adult children and 5 grandchildren that do not live with him. Mr. Peel has the grandchildren over each weekend to stay with him and his wife. The Peels have been married for 32 years.

Mr. Peel was awarded permanent total disability commencing on February 27, 2008 by a decision of this agency on August 22, 2012. Mr. Peel's weekly rate is \$336.01 per week. One quarter of this amount is paid to his attorney.

In addition to his workers' compensation benefit, Mr. Peel was found disabled and entitled to Social Security Disability benefits. (Exhibit 4, page 30) At present, Mr. Peel's Social Security payments are being withheld to offset an overpayment. Benefits will resume in October 2016 in the amount of \$408.90 per month. (Ex. 4, p. 35) Claimant has workers' compensation offset against his award of Social Security Disability which is why he only will receive \$408.90 per month. Claimant testified that his benefits would increase to over \$1,000.00 a month when he reached 62 years old and was eligible for early retirement.

Claimant's attorney did not offer any proof as to this assertion and no information as to how the Social Security Administration would treat the workers' compensation off-set and Social Security early retirement benefits. Such information would have been helpful in this claim. See: SSA POMS DI 52150.030.
<https://secure.ssa.gov/poms.nsf/lnx/0452150030>

Mr. Peel and his wife live in a home in Perry, Iowa. There is no mortgage on the house and they own the house without any other obligations on the property. Mr. Peel filed bankruptcy approximately ten years ago. He said that he filed bankruptcy due to medical and credit card bills. Mr. Peel said that he does not have a credit card at this time.

The record shows that the largest monthly debts that Mr. Peel pays are for 2 vehicles. The monthly payment for these 2 car loans is approximately \$1,232.00. Mr. Peel has a loan balance of about \$13,150.00 on 1 of the car loans and \$41,179.00 on the other car loan. (Ex. 13, pp. 70, 71)

Social Security records show that if Ms. Peel retires at her full retirement age, 67, she will be entitled to \$1,887.00 a month. (Ex. 7, p. 57)

The report by Dr. Mattila provides useful insight into the potential outcome that the claimant would face based upon whether the partial commutation is granted or not.

Based upon his assumptions, Dr. Mattila concluded Mr. Peel would be \$716,161.00 financially worse off if the partial commutation was granted. (Ex. E, p. 32) Dr. Mattila found Mr. Peel would have net assets of \$416,624.00 after 25 years with no partial commutation. He found Mr. Peel would have a negative -\$300,537.00 assets with the partial commutation after 25 years. (Ex. E, pp. 42, 43)

Dr. Mattila did not provide any consideration as to whether Mr. Peel or Mr. Peel's estate would be financially better off if the partial commutation was granted and he did

not live the 25 years in his projections. Workers' compensation and Social Security Disability benefits would cease upon Mr. Peel's death.

Ms. Peel is a manager of a Casey's store. She manages about 12 employees and performs any and all tasks that need to be done at the convenience store. Her income in 2014 was \$67,126.88. (Ex. 6, p. 53) She earned \$59,376.00 in 2013. She testified her employment with Casey's is stable and her store is doing well.

Dr. Mattila assumed Ms. Peel would retire at age 62. He testified he assumed Ms. Peel would retire at this date, as that is the most prevalent age for retirement, although he said the general retirement date is trending slightly upward. Claimant testified that she planned to continue to work as long as she is able to at Casey's. I find his assumption of Ms. Peel to retire at 62 to be speculative and not in keeping with Ms. Peel's testimony. It is likely she would continue to work to at least age 65, when she is Medicare eligible or her full retirement age of 67. Dr. Mattila also assumed claimant's Social Security income would remain at the \$408.00 amount and not be eligible for a higher amount when he received Social Security Retirement at his full age of retirement. See SSA POMS DI 52101.001.
<https://secure.ssa.gov/poms.nsf/lnx/0452101001>

Under the financial scenario where no partial commutation is granted, Dr. Mattila also assumes that Mr. Peel will invest his money in various assets providing him with an average return of 6.3 percent. There is no evidence that claimant will be able to follow through on this investment strategy. The investment strategy Dr. Mattila has suggested is reasonable overall, but not well suited to Mr. Peel's financial acumen.

The information from the Dallas County Assessor's office shows that the Peel's current home is assessed at \$38,000.00 and the annual taxes are \$856.00¹ per year. The notes from the assessor's office state,

11/02/1992 – PANEL HOUSE. NEW SIDING 1991. BASEMENT HAS 5.5'CEILS. STEEP NARROW STAIRWAY TO BASEMENT. BATH OFF BEDROOM. FLOORS SLANT. FLOOR COVERINGS WORN THRU. HOUSE HAS ACOUSTIC TILE CEILING.

(Ex. 11, p. 64) While dated, this report confirms that the home may not be well suited to Mr. Peel with his disabilities.

Ms. Peel does not contribute money to a 401k plan, although one would assume that such an option is available in a corporation like Casey's. Ms. Peel said that Mr. Peel handles the finances for the household. The Peels have a \$20,000.00 life insurance policy on Ms. Peel and testified they are looking at buying additional life insurance for Ms. Peel. (Ex. 10, p. 61) Ms. Peel earned \$67,126.00 in 2014 and

¹ The Peel's apparently are not claiming the homestead tax credit, which could slightly reduce their property taxes. (Ex. 11, p. 64, Ex. 12, p. 69)

provides a very steady income for the household. The marriage has been of long duration and there is no indication that Ms. Peel will not continue to contribute to the household income.

Mr. Peel filed an application for partial commutation on December 12, 2013 requesting all but his last 2 weeks of benefits be commuted. He was requesting \$349,764.98 in benefits².

Mr. Peel testified that he wanted the partial commutation primarily to purchase a new home, pay off debt, have some savings or investments and for a number of reasons.

As to the purchase of a new home, Mr. Peel testified his current home is inadequate and unsafe. Mr. Peel and his wife testified that due to the design of the bathroom and bathtub, he has to wait until Ms. Peel is home to take a shower due to fear of falls. The bathroom also is small and has a step-up to get into it. (Ex. 1, p. 9) The doorways in the house are generally 27 inches wide and will not accommodate a wheelchair. Mr. Peel does not currently use a wheelchair, but expects later in life he will need to use one. He does use a cane now and the narrow doorway presents problems in navigating through the house.

Mr. Peel has consulted Stan Zeutenhorst concerning whether he could modify his current home or have a new home built that would reflect ADA standards for accessible housing. Mr. Zeutenhorst inspected claimant's current home. He did not recommend remodeling the current home, as the amount of money it would take to remodel would be costly and the resulting value of the home would be too high for the neighborhood and therefore a poor investment. Mr. Zeutenhorst proposed a home that would use universal design elements and meet ADA recommendations for barrier-free and accessible housing for about \$200,000.00. (Ex. 1, p. 5) While Mr. Zeutenhorst's credentials are not set forth in the record, his report as to the difficulties of remodeling the current home and plan for a barrier-free home appear reasonable.

The pictures found in Exhibit 1 confirm Mr. Peel's testimony about the step-up to the bathroom as well as the small size of the bathroom, as well as other portions of the house.

I find Mr. Peel's desire to live in an accessible home to be prudent, reasonable and in his best interest, especially considering Mr. Peel's physical condition.

Mr. Peel wants to retire the debt he has on his 2 car loans. No information was provided as to the interest rates he is paying for these loans. For 1 loan, he paid \$1,685.98 in interest in 2014. (Ex. 13, p. 71) Reducing the debt and interest payment on his car loans is reasonable and prudent.

² The amount of commuted benefits is based upon the date of the decision, as defendants have continued to pay weekly benefits during the pendency of this claim.

Mr. Peel owes his attorney a portion of his award, 25 percent. The partial commutation does not aid one way or the other for paying off this debt. It is a neutral factor as he has to pay it if the commutation is granted or not.

The Peels are not sophisticated concerning managing money. Mr. Peel said that he did not want to invest in stocks, but would invest in "stocks and bonds," like CDs and money market funds. The Peels have not invested in any 401k plan. It does not look like they have looked at whether they can purchase additional life insurance through Ms. Peel's employer. Mr. Peel testified that he would rent his current home and expected he could keep the house occupied if he rented it at \$450.00 per month. There was no indication as to how economically feasible this plan would be. Whether the rent would cover increased insurance, maintenance snow removal, lawn mowing, taxes and other expenses was not discussed. On the other hand, Mr. Peel does not have credit card debt and is able to meet his monthly bills and provide help to all of his grandchildren.

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 worker's 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.

It is important to point out in this case that Mr. Peel is married and his wife has a steady income working at Casey's. There was no indication that her job was not secure or that the parties were contemplating separation or divorce. The claimant is receiving Social Security Disability payments and will be eligible for Social Security Retirement benefits eventually, which will not be subject to a workers' compensation off-set.

The plan to provide a home to the claimant that is safe and will be usable for him if he needs to use a wheelchair or walker is in his best interest.

Considering all of the factors, I determine the claimant's plan for a partial commutation should be approved. While the plan is not assured of success, it is reasonable. It provides the claimant the opportunity to live in a house that will accommodate his disability. The plan provides an opportunity to get out of debt, pay off attorney's fees and provide for a home that is safe and handicap accessible.

Dr. Mattila has proposed a plan that assumes that claimant would be able to invest his money. The claimant has not shown the ability to do so. The criteria for granting a partial commutation is not whether there is a better financial plan, but whether the plan proposed by a claimant is in his best interest. Mr. Peel has shown his plan to be in his best interest.

Claimant has met his burden of proof to show that his request for a partial commutation is in his best interest.

ORDER


THEREFORE, IT IS ORDERED:

Claimant's petition for partial commutation is granted.

Defendants shall pay claimant a lump sum payment of future weekly benefits, except for the two (2) final weeks, as set forth in claimant's petition for partial commutation, 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. Weekly benefits will resume if claimant is still living at the end of his life expectancy per the tables.

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

Signed and filed this 27th day of February, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/srs

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.