

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT SAPPINGTON,

Claimant,

vs.

RENAISSANCE REALTY GROUP, INC.,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

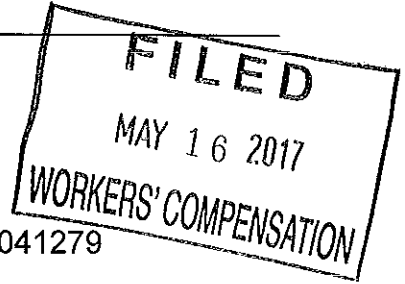
Insurance Carrier,
Defendants.

File No. 5041279

PARTIAL COMMUTATION

DECISION

Head Note Nos.: 3303.20



STATEMENT OF THE CASE

Scott Sappington requests partial commutation of a prior permanent total disability award. The hearing on claimant's request for partial commutation was held on March 20, 2017. Mr. Sappington testified under oath at hearing. Claimant introduced exhibits 1 through 7 and defendants introduced exhibits A through H.

The parties requested the opportunity to brief the disputed issues. This case was fully submitted upon the filing of post-hearing briefs on April 7, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant's request for partial commutation of his prior permanent total disability award should be granted.
2. Whether claimant is entitled to medical expenses as set forth in Claimant's Exhibit 4 (other than the massage therapy bills as stipulated below).

STIPULATION

1. The defendants agreed to pay massage therapy bills as outlined in Claimant's Exhibit 4, and medical mileage as outlined in Claimant's Exhibit 5.

FINDINGS OF FACT

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

At the time of hearing and as of the date of issuance of this decision, the claimant is 45 years of age. He lives with his wife Adriana and his child in a home they purchased last year. His primary concern in life is taking care of his wife. The claimant suffered a serious work injury to his left shoulder on May 1, 2012, while lifting a washing machine. After undergoing and recuperating from three shoulder surgeries, he was provided permanent restrictions. He was found to be permanently and totally disabled under the odd-lot theory in an arbitration decision dated December 5, 2014. The decision also awarded treatment for claimant's anxiety and depression, as well as "aggravations of claimant's gastrointestinal problems caused by medications related to the work injury" (Arbitration Decision, page 10) This decision was affirmed on appeal. (Appeal Decision) The decision is final.

The claimant has his GED and testified and presented well at hearing. He testified in detail regarding his finances. He is conversant on all aspects of his budget. He purchased his house for \$127,000.00. His house payment is approximately \$1,000.00 per month. He also has payments on two of his three vehicles in the approximate amounts of \$600.00 and \$320.00 per month, and a home improvement loan payment \$328.00 per month. One of the automobiles is an antique not primarily used for transportation.

After paying attorney fees, his weekly workers' compensation payment is \$228.50. His wife works at a credit union, earning \$11.00 per hour. She had a better job, but was recently downsized. He and his wife apparently budget together. They have savings of approximately \$16,000.00, at the time of hearing, as a "safety net."

The claimant does not have much experience investing money, however, based upon the record before me, he has at least average budgeting and investment skills. There was no evidence presented that claimant has any issues with gambling, drugs, alcohol, or addiction issues of any kind.

Claimant has consulted with a financial advisor who has provided estimates for an annuity. (Claimant's Exhibit 3) Mr. Sappington was noncommittal to this type of investment. He testified he may choose to invest in rental property, instead of an annuity. He testified that no decision had been made as there were a number of variables to consider. Claimant has some experience in rental property management and maintenance and feels he could invest money wisely in this area.

The claimant testified that he was concerned that if he passed away prematurely, his wife would be left with nothing from his work injury. This seemed to be claimant's paramount concern as it related to his workers' compensation payments.

The claimant also has outstanding medical bills as set forth in Claimant's Exhibit 4. Defendants stipulated to pay the massage therapy bills as outlined in Claimant's Exhibit 4, and medical mileage as outlined in Claimant's Exhibit 5. Consequently, I order the defendants to pay those bills by consent. After reviewing the entire record, I simply do not find enough evidence to award the remaining bills in Claimant's Exhibit 4.

I find that the risk of claimant spending the commuted funds foolishly is minimal. I believe the claimant is truly motivated to act in his own self-interest and manage the funds responsibly. I find that there is minimal risk that claimant's funds will be significantly depleted through his stated investment plan. He has demonstrated a conservative investment approach and is not likely to lose a significant portion of the commuted funds in the conservative approach he testified he intends to pursue.

I find that the potential detriments of commuting claimant's benefits are minimal and unlikely to transpire. I find that there are numerous benefits to be obtained by commuting claimant's award. Therefore, I find that claimant has proven by a preponderance of the evidence that his expressed preference and probable benefits of the requested commutation significantly outweigh the potential detriments of commuting all but the final week of claimant's permanent total disability award.

CONCLUSIONS OF LAW

The primary legal issue for determination is whether claimant should be granted his partial commutation request. Iowa Code section 85.45(1) provides in relevant part:

Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

- a. When the period during which compensation is payable can be definitely determined.
- b. 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.

Mr. Sappington has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted in agency rule 876 IAC 6.3. 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 benefits amount over the entire payment period.

Agency rule 876 IAC 6.3 provides a life expectancy table that is to be used in determining the amount to be paid a claimant in commutation proceedings. According to that life expectancy table, Mr. Thornton has a remaining life expectancy of 2236 weeks as of the issuance of this decision.

Iowa Code section 85.45 provides that a commutation may be ordered when the commutation is shown to be in the best interests of the person who is entitled to the compensation. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The factors relied on in determining if a commutation is in the best interests of the claimant include: the claimant's age, education, mental and physical condition, and actual life expectancy; the claimant's family circumstances, living arrangements and responsibilities to dependents; the claimant's financial condition, including sources of income, debts, and living expenses; the claimant's ability to manage the funds or arrange for someone else to manage them; and the reasonableness of the claimant's plan for investing the lump sum sought. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164 (Iowa 1983).

In determining whether the requested commutation is in the best interests of the claimant, a benefit-detriment analysis is employed. The above recited factors, along with the claimant's preference and the benefits of the claimant receiving a lump-sum payment, are balanced against the potential detriments that could result if the claimant 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. Diamond, 256 Iowa at 929, 129 N.W.2d at 617; Dameron, 339 N.W.2d at 163-164.

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, 256 Iowa 915, 129 N.W.2d 608 (1964). 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 164.

Ultimately, the determination of whether the commutation is within the best interests of the claimant is a factual determination based upon the factors being balanced in each case. Dameron, 339 N.W.2d at 163 ("Where, as here, the industrial commissioner in a contested case proceeding has determined that commutation was in the best interests of the claimant, the trial court and this court are now bound by that determination unless it is 'unsupported by substantial evidence in the record.'") As the party moving for the partial commutation, claimant bears the burden to prove that the commutation is in his best interest. Iowa R. App. P. 6.14(6).

Consistent with the factual findings set forth above, I find that the claimant has met his burden of proof such that he is entitled to a partial commutation as set forth in his petition.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's original notice and petition for partial commutation is granted.


Defendants shall pay to claimant partial commutation of all but the last week of claimant's workers' compensation benefits awarded as a result of the work injury on June 25, 2009.

If claimant lives beyond the expiration of the period being commuted, defendants shall resume weekly benefits and continue paying claimant permanent total disability benefits on a weekly basis so long as claimant's total disability persists.

Defendants shall pay the disputed costs with the exception of the Medical Report of Dr. Michael Rogge in the amount of two hundred ninety-one and 67/100 dollars (\$291.67).

Defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 16th day of May, 2017.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/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.