

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROXANNA WALKER (f/k/a FIRLICK),

FILED

Claimant,

APR 15 2019

vs.

WORKERS COMPENSATION

File No. 5044625

QUAKER OATS COMPANY,

PARTIAL COMMUTATION

Employer,

DECISION

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

Head Note No: 3303.20

On January 10, 2017, a deputy workers' compensation commissioner issued a Review-Reopening Decision awarding the claimant, Roxanna Walker (formerly known as Firlick), permanent total disability benefits from the defendants, Quaker Oats Co. ("Quaker") and Indemnity Insurance Company of North America ("Indemnity"). Quaker and Indemnity appealed the decision.

Walker filed a petition for partial commutation on March 6, 2017. Quaker and Indemnity resisted the petition for partial commutation. Walker later amended the petition for partial commutation, which was granted.

A hearing was held on the petition for partial commutation on March 18, 2019, at Iowa Workforce Development in Cedar Rapids, Iowa. Attorney Bob Rush represented Walker. Walker appeared and testified. Attorney Jordan Kaplan represented Quaker and Indemnity. Joint Exhibits ("JE") 1, 3 through 5, and 7 through 10, and Exhibit 1 were admitted into the record. The record was held open through April 5, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Quaker and Indemnity waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Walker and Quaker at the time of the alleged injury.
2. Walker sustained an injury on October 23, 2011, which arose out of and in the course of her employment with Quaker.
3. The alleged injury caused a temporary and permanent disability.
4. Temporary benefits are no longer in dispute.
5. It was previously determined Walker sustained a permanent total disability and permanent disability benefits are no longer in dispute.
6. At the time of the alleged injury Walker's gross earnings were \$1,376.00 per week, she was married and entitled to two exemptions, and her weekly rate is \$864.30.
7. Medical benefits are no longer in dispute.

ISSUES

1. Should Walker's request for a partial commutation be granted?
2. Should costs be assessed against either party?
3. What is the applicability of Iowa Code sections 535.3 and 668.13 to this case?

FINDINGS OF FACT

Walker lives in Shellsburg with her boyfriend, Gary Hansen. (Walker Testimony; JE 7, p. 2) Walker has been in a relationship with Hansen since 2014. (JE 7, p. 2) Walker has two adult children, a son and a daughter.

Walker left school after the tenth grade. (JE 7, page 1) In 1983 Walker earned a GED and she has attended some college at Kirkwood Community College in Cedar Rapids. (Walker Testimony; JE 7, p. 1) Walker started working for Quaker in 1985, and while she has not worked since February 2015, she is still considered an employee of Quaker. (Walker Testimony) Walker also has experience working as a janitor, waitress, and school bus driver. (Walker Testimony) Walker does not have investment experience. (Walker Testimony) Walker had never worked with a financial planner before she filed her petition for partial commutation. (Walker Testimony)

Walker sustained injuries to her back, neck, and hand while working for Quaker. (Walker Testimony) Walker underwent neck surgery, hand surgery, and four back surgeries following her work injuries. (Walker Testimony) On January 10, 2017, Walker was awarded permanent total disability benefits, at the weekly rate of \$864.30. (Review-Reopening Decision) The award was affirmed on appeal and became final agency action. Walker continues to receive medical care for her work injury. (JE 1, p. 13; JE 7, p. 4) At the time of the hearing on the petition for partial commutation Walker was fifty-seven. (Walker Testimony)

Walker is seeking to commute all but the final week of her workers' compensation weekly benefits. Walker is seeking a commutation to invest the funds to help herself and her family. (Walker Testimony) Walker reported that if she died tomorrow her workers' compensation payments would end and she would not have anything left for her children. (Walker Testimony) Walker has never declared bankruptcy. (JE 1, p. 10) Walker has never been diagnosed or treated for a gambling addiction or substance abuse problem. (JE 1, p. 16; Walker Testimony) Walker has not filed an income tax return since 2015. (JE 3)

The parties each retained a financial expert who prepared a report. Walker retained Brian Murphy, a certified investment management analyst. (JE 9) Quaker and Indemnity retained Michael Alexander, an independent financial planner. (JE 10)

Walker owns two homes, one in Shellsburg where she lives in with Hansen, and one in Cedar Rapids where her son and his family live. (Walker Testimony) In 1989 Walker purchased the Cedar Rapids home with her ex-husband. (Walker Testimony) Walker lived in the Cedar Rapids home until she purchased the Shellsburg property. (Walker Testimony) Walker's Cedar Rapids home was assessed at \$108,100.00 in 2018. (JE 1, p. 6; JE 7, p. 4)

Walker has a monthly mortgage of \$560.00 on the Cedar Rapids property with an interest rate of 5.78 percent. (Walker Testimony) Walker's son pays for utilities and she testified her son, his wife, and their two children are "barely making it." (Walker Testimony) Walker's son works full-time as a manager for Papa Murphy's Pizza. (Walker Testimony)

Walker does not have a mortgage on the Shellsburg property. (Walker Testimony) Walker received a \$192,000.00 lump sum settlement from Quaker in 2014. (Walker Testimony) Walker used \$144,000.00 of the settlement to purchase the Shellsburg property without a mortgage. (Walker Testimony; JE 7, p. 3) Walker owns one acre of land with four lots. (Walker Testimony) Walker's home sits on one lot and she has a workshop/garage on another lot. (Walker Testimony) The two remaining lots do not have any buildings. (Walker Testimony) At the time of the hearing on the petition for partial commutation the Shellsburg property was not encumbered with any debt. (Walker Testimony)

Walker has two checking accounts with CRBT and fiserve. (JE 1, p. 9; Walker Testimony) The fiserve account is a joint account belonging to Walker and Hansen. (Walker Testimony) Walker uses the account to pay for household expenses. (Walker Testimony) Walker reported Hansen pays half of the living expenses. (Walker Testimony) During cross-examination Walker admitted during her deposition in January 2019 she reported Hansen was not contributing half of the living expenses. (Walker Testimony) Walker relayed that since January 2019 Hansen has been paying half of the expenses. (Walker Testimony) Hansen recently retired from trucking. (Walker Testimony) Walker's second account with CRBT is a personal vault checking account that earns 2.2 percent interest. (Walker Testimony; JE 4, p. 1) Walker opened the vault account because the interest on her older account was only one percent. (Walker Testimony) As of January 11, 2019, the fiserve account balance was \$1,529.17. (JE 4, p. 7) As of December 25, 2018, the CRBT account had a balance of \$30,567.00. (JE 4, p. 8) As of January 24, 2019, the CRBT account had a balance of \$11,610.00. (JE 4, p. 9; Walker Testimony)

Walker receives \$2,090.00 in Social Security Disability Insurance benefits per month, or \$25,080.00 per year. (JE 1, p. 2; JE 10, p. 5) At hearing Walker testified she receives \$576.49 in weekly workers' compensation benefits after her attorney fees are paid. (Walker Testimony) This differs from what she had previously represented to Quaker and Indemnity in her answers to interrogatories. In her answers to interrogatories, Walker reported she was receiving \$567.20 per week, which is the figure Alexander used in his report. (JE 1, p. 2; JE 10, p. 5) \$576.49 per week in workers' compensation benefits equals \$29,977.48 per year, or \$2,498.12 per month. Walker's total income is \$55,057.48 per year, or \$4,588.12 per month. Walker receives Medicare and Medicaid for Employed Persons with Disabilities benefits. (JE 1, p. 3)

Alexander noted Walker is eligible for a pension through Quaker, but she has not applied to receive it. (JE 1, p. 9; JE 8; JE 10) Alexander reported the pension provides a lump sum or monthly benefit option, and Walker could elect for benefits to continue to a beneficiary. (JE 10, p. 5) One example he provided is a ten year certain and life annuity, which would pay \$1,610.87 monthly, and Walker would have a monthly income stream of \$6,158.74. (JE 10, p. 5)

Walker reported that she discussed her pension with Murphy. (Walker Testimony) Walker testified that if she were to draw her pension before age 59.5, she would be assessed a penalty for the early withdrawal of funds. (Walker Testimony) Walker reported she will be eligible for the pension without a penalty in 2020. (Walker Testimony) Quaker and Indemnity presented no evidence to the contrary at hearing. Walker testified she does not plan to take her pension until she reaches full retirement age. (Walker Testimony)

Walker does not have any credit card debt. (JE 1, p. 7; Walker Testimony) Walker does not have a car payment. (JE 1, p. 8) And she does not have any personal loans other than the mortgage on the Cedar Rapids property. (Walker Testimony)

Walker's monthly expenses total \$1,779.00 or \$21,348.00 per year, including \$560.00 for the Cedar Rapids home mortgage, \$100.00 for LP gas, \$157.00 for electricity, \$205.00 for cable and internet, \$80.00 for water, \$55.00 for a cellular telephone, \$66.00 for the Medicaid for Employed Persons with Disabilities premium, \$78.00 for life insurance, \$76.00 for home insurance, \$52.00 for car insurance, \$50.00 paid to Sedgwick for a long-term disability overpayment, and \$300.00 for food. (JE 1, p. 5; JE 9, p. 5; JE 10, p. 5) Walker's remaining net income, less expenses is \$33,709.48 per year, or \$2,809.12 per month. (JE 10, p. 5) The mortgage payment for the Cedar Rapids property includes the property taxes and insurance. (Walker Testimony)

Walker has received prior lump sum payments from Quaker and Indemnity and from the Social Security Administration. Walker used the lump sum she received from the Social Security Administration to pay debts and she placed the remainder in a savings account. (JE 1, p. 20)

Walker received a \$192,000.00 lump sum payment from Quaker and Indemnity in 2014, and in October 2018 she received a second lump sum of \$88,000.00. (JE 7, pp. 3, 5; JE 10, p. 6) Walker used the proceeds from the 2014 lump sum payment to purchase her home in Shellsburg without a mortgage. (JE 1, p. 20; Walker Testimony) Alexander noted the purchase price was \$144,000.00, and Walker used \$35,000.00 to pay off existing debt. (JE 7, pp. 3, 5; JE 10, p. 6) Walker testified at that time she had a car payment, some credit card debt, and she owed medical bills for treatment she had received. (Walker Testimony) Walker reported she had a little money left after purchasing the Shellsburg property and paying her debts. (Walker Testimony)

In 2015 Walker took out a \$35,000.00 home equity loan after she purchased the Shellsburg property. (Walker Testimony) At that time she had not been approved for Social Security Disability Insurance benefits. (Walker Testimony) Walker was awarded Social Security Disability Insurance benefits in March 2016. (Walker Testimony)

After receiving the \$88,000.00 lump sum in 2018, Walker paid off the home equity loan of approximately \$35,000.00. (JE 1, p. 20) Walker helped her grandson purchase a home by giving him a gift of \$10,000.00 for the down payment. (JE 1, p. 20; JE 7, p. 6; JE 10, p. 6) Walker also gave her son a gift of \$5,000.00 for a newer vehicle. (JE 1, p. 20; JE 7, p. 6; Walker Testimony) Walker also used the 2018 lump sum to improve her home in Shellsburg, including \$3,500.00 for a new water softener, \$1,500.00 for a new garage door, and \$3,500.00 for a golf cart to help her move around her property. (JE 1, p. 20; Walker Testimony) Walker also helped pay for her mother's funeral and paid her sister for taking care of their mother before their mother's death. (JE 1, p. 20; JE 10, p. 6) Walker placed the remaining money, approximately \$12,250.00, in an interest-bearing savings account and plans on putting the funds into an annuity. (JE 1, p. 20)

Walker plans to use \$35,200.00 of the partial commutation for various expenses, including: (1) \$10,000.00 to replace the Shellsburg home heating and cooling system;

(2) \$3,000 to update the Shellsburg home bathroom to better accommodate her disabilities; (3) \$200.00 to install outdoor handrails for the Shellsburg home; (4) \$10,000.00 to replace the roof for the Cedar Rapids property; and (5) \$12,000.00 to repay Quaker for the disability overpayment she received. (JE 9, p. 6; Walker Testimony) She also plans to pay off the \$48,000.00 mortgage on the Cedar Rapids property. (Walker Testimony) Walker testified she also plans to build a home on one of her two lots for her son and his family who currently live in the Cedar Rapids property. (Walker Testimony) Walker is planning to budget \$100,000.00 for the project. (Walker Testimony)

Murphy opined because Walker "has plenty of monthly income, she has the ability to consider a wide range of investment choices," noting insurance companies can offer a better value with a higher monthly income than her current weekly workers' compensation benefits can provide. (JE 9, p. 6) After her initial \$35,200.00 in expenses, Murphy recommended two investment options. (JE 9, p. 6)

The first option is to purchase of a single premium immediate annuity that would generate total monthly income for Walker of \$4,367.00. (JE 9, p. 6) His report indicated the monthly benefit would be \$2,271.00 or \$27,252.00 per year. (JE 9, p. 6) Alexander noted this option would yield a net monthly payment from the commutation proceeds of \$2,457.87. (JE 10, p. 7) Murphy noted under the first option the annuity would be subject to state and federal income tax, but also noted Walker's overall taxable income falls below the taxable threshold. (JE 9, p. 6)

The second option is to invest the funds in a diversified portfolio of exchange traded funds and traditional fixed annuity. (JE 9, p. 7) Murphy noted the second option would produce annual income of \$17,898.00 or \$1,491.50 per month, but it would also offer the potential for capital growth, and if the expected return is realized, the investment portfolio should double in value in approximately twelve years. (JE 9, p. 7) Murphy noted under the second option the funds received would be subject to state and federal income tax, but also noted Walker's overall taxable income would still fall below the taxable threshold. (JE 9, p. 7) Murphy noted Walker's weekly workers' compensation benefits would cease upon her death and under both options, the economic value would add to her estate in the event of her death. (JE 9, p. 8)

Walker testified if the partial commutation is granted she will follow Murphy's advice and work with a financial planner. (Walker Testimony) Walker testified at hearing she has never met with Alexander. (Walker Testimony)

Alexander noted in her answer to Interrogatory No. 17, Walker reported after expenses she had \$1,500.00 in discretionary income. (JE 1, p. 15) When looking at her banking account records, Alexander observed Walker has made large withdrawals on a regular basis, including withdrawals totaling \$6,800.00 noted on the statement from November 25, 2018 through December 25, 2018, and \$18,957.00 in the statement from December 25, 2018 through January 24, 2019, leaving her a balance of \$11,610.00.

(JE 10, p. 5) I found Walker's testimony about how she used the funds from the 2018 settlement credible.

Alexander noted Walker's cash flow would improve if she took her monthly pension instead of a lump sum. (JE 10, p. 6) As discussed above, Walker reported she would be penalized by taking her monthly pension before she is 59.5. He also noted she could consider taking a smaller commutation amount or a partial amount from her pension and consider refinancing her home mortgage due to the high mortgage interest rate and consolidating the \$35,200.00 in improvements into the new mortgage. (JE 10, p. 6)

Alexander reported Walker's mortgage interest rate of 5.78 percent is very high compared with current rates and opined the mortgage "should have been refinanced with rates at all-time lows to help increase monthly cash flow." (JE 10, p. 6) Walker testified she has investigated other interest rate options for the Cedar Rapids property and banks told her she could not obtain a lower interest rate because she is not currently occupying the property. (Walker Testimony) Alexander opined Walker has demonstrated a lack of financial discipline to protect herself in the future by paying her son's mortgage and by giving gifts to her family members. (JE 10, pp. 6-7)

Walker's attorney currently receives 33.3 percent of her weekly workers' compensation benefit, and he has agreed to reduce his fee to twenty percent if the partial commutation is granted. (JE 9, p. 8; Walker Testimony) Murphy noted the economic benefit of the reduced attorney fee percentage would result in an additional \$84,890.00. (JE 9, p. 8)

CONCLUSIONS OF LAW

I. Partial Commutation

This case involves a petition for partial commutation filed before July 1, 2017. At the time of the filing of the petition for partial commutation, Iowa Code section 85.45(1) (2016) provided,

[f]uture 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, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.

Walker has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted by the Division of Workers' Compensation in rule 876 Iowa Administrative Code 6.3. Iowa Code section 85.48 provides,

[w]hen 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.

Rule 876 IAC 6.3 contains a life expectancy table to be used in determining the amount to be paid to claimants in commutation proceedings. The rule provides, "[t]he life expectancy is determined by taking the age of the person, set forth in the 'age' column and comparing it to the 'weeks' column, which indicates the weeks an individual at the age indicated will be expected to continue to live." 876 IAC 6.3. The rule provides a presumption of life expectancy and makes the number of weeks owed to a claimant under a permanent total disability award definitely determinable.

When assessing whether a commutation should be granted, the reviewing body determines whether granting a commutation is in the claimant's best interests. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164-65 (1983); Diamond v. Parsons Co., 256 Iowa 915, 928, 129 N.W.2d 608, 616 (1964). The Iowa Supreme Court has identified factors to consider in determining whether a commutation is in the claimant's best interest, as follows:

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, 339 N.W.2d at 164. A request for a commutation should be approved using the best-interest balancing test “unless the potential detriments to the worker outweigh the worker’s expressed preference and the demonstrated benefits of commutation.” Id.

Walker is fifty-seven. She sustained a number of work-related injuries while working for Quaker and she continues to receive medical care. There is no evidence that Walker is suffering from a psychological or physical condition that would adversely affect her life expectancy.

Walker completed a GED and attended coursework at a local community college. Walker is divorced and she has been in a relationship with Hansen since 2014. Walker lives with Hansen. In the past, Walker has contributed to more than half of the living expenses while living with Hansen.

Walker allows her son and his family to live in the Cedar Rapids home without paying rent, and she has given gifts to her family members, including \$10,000.00 to use for a down payment on a home, and \$5,000.00 to purchase a newer vehicle. Walker used most of the 2014 lump sum payment to purchase her Shellsburg home and to pay debts, including medical expenses. In 2018, she also used most of the lump sum payment to pay off a home equity loan and other debts. While Walker has no training or experience in finance or investing, there was no evidence presented at hearing Walker has had past financial difficulties. Walker has never declared bankruptcy and she does not have any credit card debt or a car payment. At hearing there was no evidence presented Walker generally spends money unwisely.

Walker is seeking a partial commutation to pay off the mortgage on the Cedar Rapids home and to make improvements to her properties. I considered the reports prepared by both experts in the case. Alexander challenged Walker’s decision not to refinance the Cedar Rapids property and her use of lump sum payment funds she received in 2014 and 2018. Walker testified at hearing because she is not occupying the property, the interest rate is higher than it would be if she were occupying the property. She also testified she used most of the funds to pay off existing debt, including medical bills, and to make improvements to her properties. Alexander’s report also fails to consider the penalty Walker would incur if she were to take her pension before 2020.

Murphy presented two options for using the lump sum income. At hearing Walker testified she plans to use a financial advisor to help her invest the funds. I found her testimony credible at hearing. Walker’s attorney has also agreed to reduce his fee from one-third to twenty percent, which will result in additional income for Walker. While I do find Walker’s plan to build a home for her son on her property, costing \$100,000.00 somewhat troubling, she could also sell or rent the Cedar Rapids property. Under the circumstances of this case, I find the benefits of the proposed partial commutation outweigh the detriments Walker may face in the future. Interest on the partial

commutation is determined under Iowa Code section 535.3(1)(a), which incorporates the provisions of Iowa Code section 668.13 that were not changed in 2017.

II. Costs

Walker seeks to recover the \$100.00 filing fee, \$6.56 in service costs, and the \$1,400.00 cost of Murphy's report. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the costs requested by Walker. Using my discretion, I find the \$100.00 filing fee, \$6.56 in service costs, and the \$1,400.00 cost of Murphy's report should be assessed to Quaker and Indemnity.

ORDER

IT IS HEREBY ORDERED THAT:

Claimant's petition for partial commutation is granted.

Defendants shall pay the claimant a lump sum payment of future weekly benefits, except for the final week of permanent total disability benefits awarded in the January 10, 2017 review-reopening decision, as set forth in the claimant's amended petition for 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.

Defendants shall receive a credit for all benefits paid from the date of the filing of the petition until the date the partial commutation is paid.

Claimant's right to medical benefits under Iowa Code section 85.27 shall remain unaffected by this decision.

Defendants are assessed one hundred and 00/100 dollars (\$100.00) for the filing fee, six and 56/100 dollars (\$6.56) for service costs, and one thousand four hundred and 00/100 dollars (\$1,400.00) for the cost of Murphy's report.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 15th day of April, 2019.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Robert R. Rush
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
bob@rushnicholson.com

Jordan A. Kaplan
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
jak@bettylawfirm.com

HLP/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.