BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
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WORKERS' COMPENSATION

ERNESTO CERDA, Claimant, vs. THE R&A'S CONSTRUCTION LLC, RAFAEL ALVAREZ, Employer, and RIVERPORT INSURANCE CO., Insurance Carrier, Defendants.	File No. 5051992 APPEAL DECISION Head Note Nos: 1402.10; 3303.20

Claimant Ernesto Cerda appeals from an arbitration decision filed on October 26, 2017, and claimant also appeals from a dismissal of his petition for partial commutation filed on October 27, 2017. Defendants The R&A's Construction LLC and Rafael Alvarez employer, and its insurer, Riverport Insurance Co., respond to the appeal. The case was heard on October 17, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 2, 2016.

Regarding the arbitration decision, the deputy commissioner found neither of the two named defendants, The R&A's Construction LLC,(hereinafter "R&A") and Rafael Alvarez, individually, was claimant's employer on August 27, 2013, when claimant was injured. Because claimant failed to carry his burden of proof to establish the existence of an employer-employee relationship at the time of the injury, the remainder of the disputed issues were rendered moot. Claimant, therefore, took nothing from the arbitration decision.

On appeal, claimant argues the deputy commissioner erred in determining there was no employer-employee relationship between claimant and the two named defendants at the time of claimant's injury.

Regarding the deputy commissioner's dismissal of claimant's petition for partial commutation, claimant filed his original notice and petition for partial commutation on June 19, 2017, four months before the arbitration decision was filed. Claimant then filed an amended original notice and petition for partial commutation on June 28, 2017. Defendant R&A responded with a motion to dismiss on July 10, 2017. In its motion, R&A argued partial commutation was inappropriate because the period during which

compensation was payable could not be definitely determined without an underlying arbitration decision or agreement for settlement.

R&A's motion to dismiss was not ruled on until October 27, 2017, one day after the filing of the arbitration decision, when the deputy commissioner dismissed claimant's petition for partial commutation. Pursuant to the October 26, 2017, arbitration decision, the deputy commissioner concluded there were no benefits owed and, therefore, no benefits to commute.

On appeal, claimant argues the deputy commissioner erred by dismissing his petition for partial commutation.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties.

With respect to the October 26, 2017, arbitration decision, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner. Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on October 26, 2017, that relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that defendant R&A was not claimant's employer at the time of the injury. I affirm the deputy commissioner's finding that Rafael Alvarez, individually, was not claimant's employer at the time of the injury. As such, I affirm the deputy commissioner's determination that claimant failed to carry his burden to prove he was an employee of either of the two named defendants. I affirm the deputy commissioner's order that claimant shall take nothing. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I now turn to the October 27, 2017, dismissal of claimant's petition for partial commutation. Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm the deputy commissioner's dismissal, but the deputy commissioner's rationale for the dismissal is replaced with the following rationale:

The deputy commissioner dismissed claimant's petition for partial commutation on the basis that there were no benefits to commute pursuant to the October 26, 2017, arbitration decision. When claimant's petition for partial commutation was filed in June 2017, however, there was no underlying settlement or arbitration award on file. In other words, there was no finding or agreement of a definitely determined period for which benefits were owed at the time the petition for partial commutation was filed.

In Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., this agency dismissed claimant's petition for partial commutation without prejudice on June 12, 2017, and remanded the underlying arbitration proceeding to be heard and decided by a deputy workers' compensation commissioner. In the ruling on motion to dismiss petition for partial commutation filed in Sloan, I stated the following, in pertinent part:

> The parties present an issue of first impression at the Commissioner level. Given recent statutory changes, this issue may become more prevalent and direction is needed to permit deputy commissioners to understand the agency interpretation of this issue as well as to provide these and various other parties guidance as to the agency's interpretation. Given that numerous parties may be affected in several cases that may be filed in the very near future, I deem it appropriate, as the Workers' Compensation Commissioner, to retain jurisdiction over the pending motion to dismiss claimant's petition for partial commutation. I specifically retain jurisdiction over this issue, I enter a ruling as final agency action on this matter, and I remand the remainder of the issues in the underlying arbitration proceeding for hearing and determination at the deputy commissioner level.
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> Rule 876 IAC 4.35 makes Iowa Rule of Civil Procedure 1.421, regarding motions to dismiss, applicable to this agency. Iowa Rule of Civil Procedure 1.421 permits an attack upon a petition when the facts alleged within that petition fail to state a claim upon which any relief may be granted.
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> A motion to dismiss should only be granted if there are no stated facts conceivable under which a claimant might show a right of recovery. Nixon v. State, 704 N.W.2d 643, 644, (Iowa 2005). A motion to dismiss is sustainable only when it appears to a certainty that claimant is not entitled to any relief under any stated facts that could be proved to support a claim. Bindel v. Iowa Manufacturing Co. of Cedar Rapids, 197 N.W.2d 552, 553 (Iowa 1972). To prevail on a motion to dismiss, a movant must show that there are no stated facts conceivable that claimant might show a right of recovery. State ex Rel. Miller v. Philip Morris, Inc., 577 N.W.2d 401, 403 (Iowa 1998).
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> When a motion to dismiss tests the legal sufficiency of the petition, the allegations pled by the claimant are admitted as true and all inferences which may be drawn from those facts are construed in a light most favorable to the claimant. The motion to dismiss also waives any ambiguity or uncertainty in the petition. Leuchtenmacher v. Farm Bureau Mut. Ins., 460 N.W.2d 858, 861 (Iowa 1990); Curtis v. Bd. of Sup'rs of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978).

When interpreting workers' compensation provisions, the law is construed liberally in favor of the claimant. Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990); Teel v. McCord, 394 N.W.2d 405, 406-407 (Iowa 1986); Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). The beneficial purposes of the law will not be frustrated by reading something into it which is not there or by adopting a strained or narrow construction. Thomas, 349 N.W.2d at 126.

On the other hand, the plain meaning of the statute must also be enforced. Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996). Unambiguous language in a statute should be given its plain and rational meaning and applied as written. Id. Therefore, a motion to dismiss is only sustained when it appears to a legal certainty that claimant would not be entitled to any relief under any state of facts which could be resolved in support of the claims asserted. Halvorson v. City of Decorah, 258 Iowa 314; 138 N.W.2d 856, 860 (1965).

Iowa Code section 85.45 requires that "the period during which compensation is payable can be definitely determined" before future payments of compensation may be commuted to a present worth lump sum payment. In this instance, claimant's petition for partial commutation asserts that any benefit entitlement is yet "to be determined." Taking claimant's petition for partial commutation on its face, along with the fact that claimant filed a simultaneous petition for arbitration, it is apparent that the period during which compensation is payable cannot be definitely determined. Iowa Code section 85.45(1)(a).

This agency has previously held that a petition for partial commutation cannot be filed until after there is a definitely determined period for which benefits are owed, either through an agreement for settlement or by the filing of an arbitration decision. See Thornton v. Clayton County Recycling, File No. 5039943 (Ruling January 2013); Johnson v. West Ridge Care Center, File No. 5019237 (Ruling on Motion to Dismiss March 2009). I concur with the analysis of the prior deputy rulings on this issue.

Given that there has been neither a settlement nor an arbitration award in this matter, there is nothing to be commuted at this point in time. On its face, claimant's petition for partial commutation concedes any entitlement to benefits remains "to be determined." As such, claimant's petition for partial commutation fails on its face to establish "the period during which compensation is payable" and whatever that period is certainly cannot be "definitely determined" at this juncture. Claimant's petition for partial commutation is premature and is not permissible pursuant to Iowa Code section 85.45(1)(a).

(Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., File No. 5065386 - Commissioner's Ruling on Motion to Dismiss Petition for Partial Commutation, June 12, 2017)

The ruling in Sloan was appealed in a petition for judicial review in the Iowa District Court for Polk County. That decision was affirmed by the District Court. Sloan v. Mark D. Sloan, D.D.S. d/b/a Sloan Family Dentistry, P.C., Case No. CVCV054329 (Ruling and Order on Petition for Judicial Review, November 20, 2017).

Based on the rationale as set forth in the Sloan case, claimant's Original Notice and Petition for Partial Commutation is dismissed without prejudice.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 26, 2017, is affirmed in its entirety.

IT IS FURTHER ORDERED that the dismissal of claimant's petition for partial commutation filed on October 27, 2017, is affirmed with my substituted rationale.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall bear their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed on this 4th day of March, 2019.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Emily Anderson
Laura Seelau
Attorneys at Law
425 – 2nd St. SE, Ste. 1140
Cedar Rapids, IA 52401-1848
eanderson@fightingforfairness.com
lseelau@fightingforfairness.com

Jean Z. Dickson
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
jzd@bettylawfirm.com