

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BLAINE HANSON,

Claimant,

vs.

WEST UNION CHEVROLET-BUICK-
PONTIAC,

Employer,

and

FARM BUREAU PROPERTY AND
CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

MAY 25 2016

WORKERS COMPENSATION

File No. 5022594

PARTIAL COMMUTATION DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Blaine Hansen, claimant filed a petition for partial commutation seeking payment of a lump sum of all but one week of the 80 percent industrial disability award granted on August 25, 2015.

On November 20, 2015, the defendants answered the claimant's petition, resisting the petition but waiving a hearing. The case was assigned to the undersigned for decision.

The record consists of claimant exhibits one and two.

ISSUE

Whether a partial commutation of all but the last week of permanent total disability benefits is in the best interest of the claimant.

STIPULATIONS

Claimant sustained an injury on March 29, 2005 to both legs. The arbitration decision of August 25, 2015 determined the claimant was entitled to review-reopening and increased the industrial disability finding to 80 percent. The parties agree the weekly benefit rate is \$576.86.

FINDINGS OF FACT

At the time of the partial commutation petition, claimant was a 55-year-old person. He is married and has 7 children and 7 grandchildren.

The claimant has been receiving fixed weekly benefits in the amount of \$576.86 based upon his injury of March 2005.

Jon R. Werner, managing principal of Stonefield Investment Advisory, testified via a report that inflation will continue to erode the real dollar value of the weekly benefit. Mr. Warner predicts that inflation will be a major issue in the upcoming years and that the cost of living will also increase.

Mr. Warner recommends a partial commutation based on the cost of living increases, the desire to provide a death benefit to family members, and the current interest rate. He recommends that any lump sum received be invested in a product that generates a three to five percent rate of return in order to receive interest on the larger lump-sum.

At the time of the petition, the claimant had approximately \$4,200.00 in credit card bills, most related to medical expenses. He has no car payment but there is a second mortgage on the house.

Per the report of Mr. Werner, the claimant intends to use the lump sum to pay off the credit card, pay a second mortgage, purchase a vehicle, and possibly pay for improvements on their home. There is no specific itemization of the proposed expenses.

CONCLUSIONS OF LAW

The sole issue for resolution in this case is whether a partial commutation is in the best interest of the claimant. The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence.

When the period of future compensation to which the claimant is entitled is definitely determinable, and claimant's work-related medical condition is stable, claimant may receive a lump sum, discounted payment of future benefits, provided claimant establishes that commutation of benefits is in claimant's best interest. Iowa Code section 85.45. The commissioner may order either full or partial commutation of benefits. If the commissioner orders a partial commutation of benefits, the remaining benefits are to be paid over the same period as though the commutation had not been made by either eliminating weekly benefits 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. Iowa Code section 85.48.

Iowa Code section 85.48 provides that commutation may be ordered when the commutation is shown to be in the best interest of the person entitled to compensation. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The factors for determining if a commutation is in the best interest of the claimant include, but are not limited to: The claimant's age, education, mental and physical condition and actual life expectancy; the claimant's family circumstances, living arrangements, and responsibility to dependents; the claimant's financial condition, including sources of income, debts and living expenses; and the claimant's ability to manage the funds or arrange for

someone else to manage them. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160 (Iowa 1983). The above recited factors, with claimant's preference and the benefit of claimant receiving a lump sum payment, are balanced against the potential detriment that could result if claimant invests unwisely, spends foolishly.

The claimant seeks a partial commutation of all but the last week of benefits to pay the \$4,200.00 credit card debt, retire the second mortgage, purchase a vehicle, and possibly pay for improvements on their home. There is no resistance from the defendants. The claimant has some debt in the form of the credit card bill and two mortgages, but Mr. Werner vouched for the claimant.

They're good hard working people that have been dealt a bad hand and are playing it out the best they can. I think a special note needs to be made regarding Mr. Hanson's ability to responsibly handle his personal finances. He has always in the past been able to meet and exceed his financial concerns by living very much within his means, even when he or Kris couldn't work for the last years. He didn't rack up huge amounts of debt.

(Exhibit 1, page 2)

There is no evidence that the claimant invests unwisely or spends foolishly. Based on the foregoing evidence, claimant is entitled to the partial commutation.

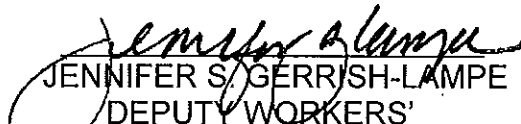
ORDER

THEREFORE IT IS ORDERED

That defendants shall pay claimant a lump sum payment of future weekly benefits, except for the last week, discounted to the present value based on a number of weeks to be commuted and the interest rate for determining the discount as of the date of this decision.

That the defendants shall pay the cost of this matter is required under rule 876 Iowa Administrative Code 4.33 including the filing fee and service fee.

Signed and filed this 25th day of May, 2016.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Peter J. Leehey
Anthony Olsen
Attorneys at Law
PO Box 547
Cedar Rapids, IA 52406-0547
pleehey@leeheylaw.com
aolson@leeheylaw.com

Benjamin T. Cook
Attorney at Law
5400 University Ave.
West Des Moines, IA 50266
ben.cook@fbfinancial.com

JGL/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.