

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRYAN NOLAN,

Claimant,

vs.

CITY OF DAVENPORT,

Employer,
Self-Insured,
Defendant.

File No. 5014177

A P P E A L

D E C I S I O N

Head Notes: 3303.20; 5-9999

Defendant City of Davenport, self-insured employer, appeals from a ruling on petition for partial commutation filed on May 9, 2019. Claimant Bryan Nolan responds to the appeal. The case was heard on April 4, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 3, 2019.

In the arbitration decision filed in this case on February 28, 2005, a deputy workers' compensation commissioner found claimant sustained permanent total disability as a result of a work-related injury which occurred on January 7, 2003. The arbitration decision awarded claimant permanent total disability benefits commencing on January 7, 2003. The February 28, 2005, arbitration decision was affirmed by the workers' compensation commissioner on December 30, 2005. Defendant subsequently filed a review-reopening petition. A deputy workers' compensation commissioner issued a review-reopening decision on January 2, 2014, finding defendant failed to carry its burden of proof that claimant sustained a change in condition that would justify a change in the arbitration award of February 28, 2005.

Claimant filed a petition for partial commutation in this matter on June 23, 2017. In the partial commutation decision filed on May 9, 2019, the deputy commissioner found claimant carried his burden of proof to establish that a partial commutation of his February 28, 2005, permanent total disability award for the work injuries of January 7, 2003, is in claimant's best interest.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that the partial commutation is in claimant's best interest.

Claimant asserts on appeal that the partial commutation decision should be affirmed in its entirety.

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 and 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 partial commutation decision filed on May 9, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all issues raised in the partial commutation 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 claimant carried his burden of proof that the partial commutation is in claimant's best interest.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above issues.

ORDER

IT IS THEREFORE ORDERED that the partial commutation decision filed on May 9, 2019, is affirmed in its entirety.

Claimant's petition for partial commutation is granted.

Defendant shall pay claimant a lump sum payment of future weekly benefits, except for the final two weeks, 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.

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

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the partial commutation proceeding in the amount of one thousand eight hundred and no/100 dollars (\$1,800.00), and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 25th day of March, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nick Avgerinos Via WCES

Peter J. Thill Via WCES