

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEISA ROBISON,

Claimant,

vs.

TRI CITY ENERGY,

Employer,

and

ACE AMERICAN
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No.: 5033149

A P P E A L
D E C I S I O N

Head Note No.: 3303.20

FILED

JUN 15 2018

WORKERS' COMPENSATION

Defendants appeal from a partial commutation decision filed on August 1, 2016, that granted claimant's request for partial commutation.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner, with the following additional analysis:

Defendants argue on appeal that a partial commutation is not in claimant's best interest because claimant did not produce a financial or business plan that guarantees an income to replace her weekly benefit checks. While defendants are correct that claimant provided no guarantees, the Iowa Supreme Court has already determined that such assurances are unnecessary; instead, claimant's plans need only be reasonable. See Diamond v. Parsons Co., 129 N.W.2d 608, 616-17 (Iowa 1964).

In Diamond v. Parsons Company, the court affirmed the agency's determination that a commutation was in the claimant's best interest, explaining as follows:

Claimant's plans may not develop as profitably as he hopes but they are not unreasonable. He may invest or spend unwisely but that possibility is present in every petition for commutation.

The court should not act as an unyielding conservator of claimant's property and disregard his desires and reasonable plans just because success in the future is not assured.

Id.

The claimant in Diamond sought a commutation "to pay his bills . . . and buy an equity in a three-apartment house" with an intent to "live in one apartment [and] rent the other two." Id. at 616. The court noted the claimant "was without skill or experience in the management of property or investments" but had sons who intended to help him with the property. Id. The court affirmed the commutation, relying in part on "claimant's estimates and desires, the benefits and convenience from improved living quarters, [and] the availability of family help." Id.

In this case, like in Diamond, claimant intends to first use the commutation funds to pay off her outstanding debt. (Hearing Transcript pp. 37-41) With the leftover money, claimant intends to pursue an in-home, web-based business, along with additional educational courses to become a truck dispatcher. (Hrg. Tr. pp. 47-48) Claimant in the instant case, like the claimant in Diamond, has friends and family to assist her in these ventures. (Hrg. Tr. pp. 27, 49, 76). Finally, while the claimant in Diamond was without skill or experience, claimant in this case has prior experience maintaining business records and has earned a business administration degree after her work injury. (Hrg. Tr. pp. 18-21, 25-26). Thus, like the court in Diamond, I acknowledge the possibility that claimant's plans may not be as profitable as she hopes, but I conclude that they are not unreasonable. See Diamond, 129 N.W.2d at 616-17.

Ultimately, there is always the risk that a claimant may invest unwisely, spend foolishly, or otherwise waste the funds resulting from a commutation. See Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 165 (Iowa 1983). However, in this case, the preference and benefits of receiving a lump-sum payment outweigh that risk. See id. The funds will allow claimant to eliminate her ongoing debt and to pursue new opportunities, including educational courses, that may enhance her ability to re-enter the workforce. Other than her work injury, there is nothing in the record to suggest claimant is in poor health. Claimant is: educated and willing to further her education; her children are grown and her relationship with her husband appears to be stable; while she has some debt, it is not excessive and there is no evidence suggesting her expenditures are erratic or irrational; and, as explained above, her plans for the lump-sum payment, while not foolproof, are reasonable. See id. at 164 (setting forth the "factors which can be distilled from the Diamond analysis"). Based on this benefit-detriment balancing of factors, I conclude claimant has carried her burden of proof that a partial commutation is in her best interest. Claimant's request for partial commutation is therefore granted.

Pursuant to Iowa Code sections 17A.5 and 86.24, with the above-stated additional analysis, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on August 1, 2016, which relate to the issues properly raised on intra-agency appeal.

ORDER

IT IS THEREFORE ORDERED that the partial commutation decision filed on August 1, 2016 is affirmed in its entirety.


Defendants shall pay claimant a lump sum payment of future weekly benefits, except for the final week of permanent partial disability benefits awarded in the March 31, 2014 arbitration decision, as set forth in claimant's 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. Weekly benefits will resume if claimant is still living at the end of her life expectancy per the tables.

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

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

Defendants shall pay the costs of this appeal including preparation of the hearing transcript.

Signed and filed this 15th day of June, 2018.



TOBY J. GORDON
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Paul J. McAndrew, Jr.
Attorney at Law
2771 Oakdale Blvd., Suite 6
Coralville, IA 52241
paulm@paulmcandrew.com

Peter J. Thill
Attorney at Law
1900 E. 54th Street
Davenport, IA 52807
pjt@bettylawfirm.com