

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELMER MARTIN STODDARD,

Claimant,

vs.

ADM/GROWMARK,

Employer,
Self-Insured,
Defendant.

File No. 1140792

PARTIAL COMMUTATION DECISION

Head Note No. 3303.20

STATEMENT OF THE CASE

Elmer Stoddard, claimant, filed a petition requesting partial commutation of a prior permanent total disability award from ADM/Growmark, self-insured employer as defendant. Hearing was held on October 27, 2015.

Claimant, Elmer Stoddard, Christopher Saras, and Janice Stoddard, all testified live at trial. The evidentiary record also includes claimant's exhibits 1-16(a-b) and defendant's exhibit A. It is noted that in order to avoid entering duplicate exhibits the defendant joins in offering claimant's exhibits. The undersigned appreciates defendant's efforts to avoid duplication. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on December 7, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether a partial commutation of all but one week of claimant's prior award of permanent total disability benefits is in claimant's best interests.
2. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

A partial commutation of all but one week of claimant's permanent total disability benefits is not in claimant's best interests.

Claimant, Elmer Stoddard, was previously found to be permanently and totally disabled in an arbitration decision from this agency dated October 26, 2000. The arbitration decision was subsequently affirmed in an appeal decision from this agency and in a Ruling for Petition for Judicial Review on July 10, 2001. On October 13, 2014, Mr. Stoddard filed a petition for partial commutation of all but one week of permanent total disability benefits.

At the time of the partial commutation hearing Mr. Stoddard was 67 years of age (DOB: 03/05/48). He was married to his wife, Janice Stoddard in 1965; they have been married for 50 years. At the time of hearing Mrs. Stoddard was also 67 years of age. Together they have three adult children who all live in the same geographical area as Mr. and Mrs. Stoddard. Both Mr. and Mrs. Stoddard are extremely nice people.

Mr. Stoddard has a limited education. According to Mr. Stoddard he repeated kindergarten and first grade and was in special education classes in school. The last grade Mr. Stoddard completed was seventh. He never obtained his GED. Mr. Stoddard left school and began working at the age of 13 so that he could earn money to help support his family. Mr. Stoddard has seven brothers and two sisters who are all mentally challenged. Although he believes he is the most intelligent of the children he admits he did not do well in school. Mr. Stoddard is almost completely illiterate. During the hearing his attorney provided him several exhibits. (Testimony) When defense counsel questioned claimant about his ability to read those documents claimant replied,

No, that's – I can't hardly read at all. I can't even read a comic book, let alone be able to understand any of this. You can put something in front of me and I wouldn't know what it's for. And Dennis Mahr knew that I was illiterate and basically, you know, without the help I don't know what's even going on other than we're here today to try to get a settlement.

(Transcript page 53)

Claimant also testified that as part of his Social Security Disability case which was finalized in 2000 he was sent to a psychologist who administered an examination to test Mr. Stoddard's intelligence. Mr. Stoddard testified he did not do well at all. Portions of the SSD file are in evidence. On September 7, 2000, Herbert L. Notch, Ph.D. also issued a report as part of the SSD evaluation. He noted mild mental retardation and that Mr. Stoddard was functionally illiterate. His intellectual impairment was noted to be severe. The report states, "He does apparently have the capacity to interact socially

fairly well. Nevertheless, his intellectual deficits and his functional illiteracy would render him at risk for making sound, adaptive, and functional adjustments to his limitations." (Ex. 4, p. 25) The report goes on to state, "The claimant, because of his functional illiteracy and his verbal limitations, would likely need assistance with any funds he might be given." (Ex. 4, p. 25) Mr. Stoddard's SSD file also contains a report from David A. Christiansen, Ph.D. which notes that Mr. Stoddard's testing from elementary indicates that his I.Q. scores were in the borderline to mentally retarded range. Dr. Christiansen also noted that Mr. Stoddard was functionally illiterate. He stated, "Despite lowered intellectual ability, particularly verbal ability, the claimant seems to have the capacity to remember and understand simple, one or two step instructions." (Ex. 4, p. 5)

As previously noted, Mr. Stoddard began working at the age of 13. His first job involved washing and detailing cars. Next, he worked for a furniture store delivering furniture and then for a grocery store stocking shelves. Claimant's work history also includes working in a farrowing barn for feeder pigs. In 1977 he began working at Terminal Grain, which later became ADM. Mr. Stoddard continued working there until he sustained the work injury in 1999 and subsequently the employment relationship ended. Despite applying for approximately 200 jobs, he has not had any other employment offers since that time. He was placed on Social Security Disability in approximately 2000. (Testimony)

Mr. Stoddard does have his driver's license, but was only able to pass the test because a state trooper read the exam to him.

Although Mr. Stoddard has not been employed since ADM he has performed rather extensive volunteer work. He has received various volunteer awards. One such award was associated with the flooding that occurred in Dakota Dunes in 2011. He testified that at that time they fed over 300 and some service members, plus they provided food for the people at the Dunes. He has helped to run a canteen during different times of disasters. Mr. Stoddard also volunteers his time on Mondays for an after-school program for kids. He is there to make sure the kids do not destroy any property.

Mr. Stoddard has a family history of heart problems. His father passed away around the age of 55 of a massive heart attack. Since 2000 Mr. Stoddard has had a couple of stents put in for his heart. His last cardiac testing showed that everything was good. Since 2000 he has also had a shoulder surgery and a low back surgery. He currently takes Flexeril, Naproxen, and the antidepressant, Zoloft.

Since Mr. Stoddard last worked in 1999 he has had no earnings. In the 2000 workers' compensation arbitration decision, the defendants were ordered to pay Mr. Stoddard weekly compensation for permanent total disability at the rate of \$300.74, medical expenses, interest on any unpaid weekly benefits, and costs. The weekly compensation rate was later revised to \$297.91. The Stoddard's current income is as follows:

- Elmer Stoddard Social Security benefits: \$1,499.00/month
- Elmer Stoddard workers' compensation benefits: \$794.44/month
- Janice Stoddard Social Security benefits: \$545.00/month

(Ex. 10, p. 32)

In 2012, Mr. Stoddard cashed out his pension from ADM thus he no longer has any source of income from his retirement investment. The testimony and evidence demonstrates that the couple has no savings. After paying their bills the Stoddards have only approximately \$75.00 left at the end of each month. The testimony revealed that the Stoddards live quite conservatively. For example, they do not go on social outings and have not taken a vacation in 25 years. They are financially unable to give gifts to their children or grandchildren. (Testimony; Ex. 10, p. 32)

During the couple's 50 years of marriage, Mrs. Stoddard has been responsible for managing their finances and paying their bills. According to Mr. Stoddard, he only personally manages approximately \$65.00-\$70.00 per week; this is the spending money his wife gives him. Mr. Stoddard testified that he has never managed his own finances. Mrs. Stoddard handles all of their financial matters, including the budget that was prepared for this case. (Ex. 10, p. 32)

In the past several years Mr. and Mrs. Stoddard have taken out several high-interest loans, including two mortgages. (Ex. 11-3; Ex. 10-44 & 50) As of July 1, 2015 the payoff amounts equal:

Citi Financial:	\$12,884.95 (14.28% interest)
Spring Leaf Financial	\$14,023.27 (22.98% interest)
RBS Citizens Bank	\$22,084.95 (3.99% interest)
HSBC:	\$29,442.98 (9.58% or 12.08% interest depending on which evidence is relied upon)

The Stoddards testified that these loans were taken out to roof the house, replace their driveway, put in a retaining wall, new windows, siding for their home, and other home improvement-type items. Testimony revealed that Mr. Stoddard was not certain which loan was used for what purpose. Approximately 40 years ago, the Stoddards purchased their home for \$17,500.00 and believe it is currently assessed at \$49,500.00. However, according to the claimant's financial advisor it is valued at \$30,000.00 + range. (Ex. 10, p. 30) The loan with 3.99% interest is for a vehicle which they use to take their disabled grandchild to and from the Twin Cities area for medical care. The Stoddards have been paying down their loans through automatic withdrawal for years.

The Stoddards have filed for bankruptcy two times. The first time was approximately 1977 or 1979 when his wife's medical bills forced them into bankruptcy.

They filed for bankruptcy again shortly after Mr. Stoddard bought a new van after being assured by the superintendent at ADM that his job there was secure.

Mr. Stoddard testified that if he were to pass away unexpectedly his wife would be left without any money because he only has enough life insurance to cover the balance of their four larger loans.

Mr. and Mrs. Stoddard testified that their son, Wayne Stoddard, would take over the finances if anything were to happen where Mrs. Stoddard could not continue to maintain the household finances. Mrs. Stoddard does have a medical condition that occasionally causes her to fall down or collapse. (Ex. 1, p. 3) Additionally, she has skin disease, diabetes, high cholesterol, high blood pressure, osteoporosis, arthritis, and sleep apnea. (Ex. 16B, p. 24)

Defendant points out that Mr. and Mrs. Stoddard own several vehicles that could be considered unnecessary. These vehicles are as follows:

1. A 1981 Chevy RV camper that they estimate is worth \$5,500.00. Mr. Stoddard indicated that they had not used it for 10 years. Mrs. Stoddard indicated that they purchased it approximately five years ago. (Ex. 16A, p. 12; Tr. 43-44)
2. A 2009 or 2010 Dodge pickup which they only drive occasionally. This is worth approximately \$10,000.00. (Ex. 16A, p. 11; Ex. 10, p. 30)
3. A 1968 Chevy pickup which Mr. Stoddard estimates he has owned for four years and invested \$6,500.00 into to fix up. He believes that this would be worth \$10,000.00-\$14,000.00 when it is completely finished and painted. It is worth noting that claimant's attorney reported the value of the 1968 Chevy as \$58,000.00 in the communication to the financial expert. (Ex. 10, pp. 29-30).
4. A 2013 or 2014 Suzuki motorcycle which Mr. Stoddard estimates he has ridden twice since he purchased it and not at all in 2015. The bike only has 110 miles on it. He plans to keep this asset which he estimates is worth \$9,785.00. (Ex. 16A, p. 21-24; Tr. 43-44)
5. A 1981 ATV which he has not driven for at least 16 years. Claimant indicated it is like new and worth about \$3,500.00. (Tr. 46)

Mr. Stoddard has no plans to sell any of these vehicles because he feels his wife is "handling our debt okay right now." (Tr. p. 64) Defendant points out that these are all items that could have been sold to help pay some of their outstanding debts had the Stoddards chosen to do so.

Christopher Saras testified as part of claimant's case-in-chief. Mr. Saras is a financial advisor. He is a registered representative, which means he is able to sell securities such as mutual funds and variable annuities. He has security licenses of 6, 7, 63, and 66. His office is with New York Life Insurance Company and is located in Orange City, Iowa.

Prior to the hearing claimant's counsel provided Mr. Saras with the Stoddard's financial information including their income, debts, and monthly expenses. However, prior to the hearing, Mr. Saras had never met or even spoken with Mr. or Mrs. Stoddard. Mr. Saras put together two financial proposals for the Stoddards should they receive the requested partial commutation. Mr. Saras concluded that if Mr. Stoddard received the partial commutation he would be able to pay off their three highest interest loans and still have enough money remaining to invest and be financially better off than if he simply continued receiving weekly workers' compensation benefits. (Ex. 13; testimony)

During his testimony Mr. Saras admitted that if he were to move forward with working with the Stoddards he would like more information about the Stoddards so he could personalize the plans. When Mr. Saras put the plans together he had not had the opportunity to meet or speak with Mr. or Mrs. Stoddard and did not have an understanding of Mr. Stoddard's educational background. Mr. Saras did not know whether Mr. Stoddard would be able to read the plan or whether Mr. Stoddard could even balance a checkbook. During his testimony Mr. Saras acknowledged that the Stoddards have not always made wise financial choices. Mr. Saras also advised that in order for the recommended plans to work the couple would need to stick to a plan where they would not take on any additional debt for large purchases. Mr. Saras acknowledged that in a situation where an individual does not have the ability to manage their own financial affairs it is advisable to have a financial power of attorney or conservator to handle the financial decisions for that person. Unfortunately, in this case there are no plans for a financial power of attorney or conservatorship. (Testimony)

As previously noted, Mrs. Janice Stoddard, claimant's wife, also testified at the hearing. She has handled the couple's financial affairs for the entire 50 years of their marriage. Mrs. Stoddard testified that the situations that led them to file for two bankruptcies were unusual, and since those bankruptcies they have remained current on all their debts. She does not believe they need a formal court-appointed conservatorship but she did not provide any explanation for her belief. She also testified that taking out the high interest loans were sound financial decisions. At no point did Mrs. Stoddard demonstrate any understanding that perhaps some of their past financial decisions were not wise financial choices.

During Mrs. Stoddard's direct testimony claimant's counsel asked leading questions regarding her and her husband's financial goals. Without those leading questions, Mrs. Stoddard was not able to articulate in her own words what their goals were or how they would achieve those goals. The testimony claimant's counsel did obtain from Mrs. Stoddard did not demonstrate that she has a sound understanding of the financial situation or proposed financial plans in this matter. Her lack of financial

understanding was reinforced during cross-examination. To her credit, Mrs. Stoddard was very forthright during her testimony. Mrs. Stoddard admitted that she has never even reviewed the financial proposals from Mr. Saras. Likewise, she has never had a conversation with Mr. Saras. Therefore, Mr. Saras has never had an opportunity to explain the proposed plans to her. It is not known if Mrs. Stoddard understands whether there is any risk involved in the proposed investment plans. She understands that Mr. Saras will take a fee for the services or products he provides to the Stoddards, but she does not know what those fees will be.

I note that each party has submitted an exhibit with their calculation of the value of the partial commutation if it were to be granted. Although the calculations differ, both calculations are in excess of \$200,000.00. (Ex. 12, p. 1; Ex. A)

In the present matter, the undersigned must determine whether granting a partial commutation of all but one week of Mr. Stoddard's permanent partial disability benefits is in his best interest. In other words, is it in his best interest to award Mr. Stoddard a lump-sum in excess of \$200,000.00 or is it better for him to continue receiving his workers' compensation benefits on a weekly basis?

The case law states that this agency cannot act as a conservator and disregard the claimant's desires just because the success of the plan is not assured. In the present case, the undersigned's concerns are not so much with the financial plans set forth by Mr. Saras, but rather with the claimant's intellectual ability to handle receiving a large sum of money at one time. The evidence shows that Mr. Stoddard has an IQ of 67. Mr. Stoddard very candidly admitted during his testimony at the partial commutation hearing that he really was not certain of what was occurring during the process. Furthermore, Mr. Stoddard has previously been found to be intellectually disabled and that he would likely require assistance with any funds he might be given. (Ex. 4, p. 25)

Mr. Stoddard indicated that he does not handle the financial matters in his household; this is all done by his wife. The couple's financial history, including two bankruptcies, and several high-interest loans, gives the undersigned concerns regarding their ability to handle a large lump-sum of money. These concerns are heightened by the fact that Mrs. Stoddard has not even reviewed the investment options that Mr. Saras has prepared for the couple that he had not even met at the time he prepared the proposals. Given the claimant's intellectual disability, the couple's financial condition and history, and their lack of understanding regarding the proposed plans I find it is not in Mr. Stoddard's best interests to receive a lump-sum payment.

The plans set forth by Mr. Saras do not appear to be unreasonable. However, I find that Mr. and Mrs. Stoddard have little to no understanding of the proposed investment plans, the recommendations being made, and/or any potential risks involved. I find it is highly unlikely that Mr. Stoddard is capable of reading the proposed plans and understanding any intricacies of the proposed plans. The undersigned would feel more comfortable with the request if claimant and/or claimant's financial manager (his wife) had actually at least read the proposals prior to hearing. The undersigned

would feel even more comfortable if the claimant or his wife were able to articulate, in their own words, even a basic comprehension of the plan. I find it is not realistic to anticipate that Mr. Stoddard or Mrs. Stoddard will be able to manage the invested funds on their own. Instead, if they chose to invest the funds with Mr. Saras, they will be essentially entirely reliant upon someone they met at the partial commutation hearing and have never had an in-depth conversation with. Additionally, the undersigned would likely grant the request for a partial commutation if there were a mechanism, such as a conservator, in place to ensure the money was spent in a manner that was in the claimant's best interest. In the present case, I find that providing a lump sum award in excess of \$200,000.00 is not in Mr. Stoddard's best interest.

Factors that are benefits and weigh in favor of claimant's request for a partial commutation include his desire to commute the funds, the ability for claimant to pay off high interest debt, the relatively conservative nature of the proposed investment plans. However, I find that the detriments of claimant's proposal outweigh any benefit he may obtain from a partial commutation. If claimant or his wife were able to articulate a better understanding of the proposed plans or if there were a proposed mechanism such as the use of a conservator I would find that the benefits of this commutation outweigh the detriments. However, the claimant's lack of education, lack of financial sophistication, his intellectual disability, and poor financial history suggest that there is little likelihood of success if the partial commutation was granted at this time. Therefore, I find that the partial commutation is simply not in Mr. Stoddard's best interest at this time.

Furthermore, without being fed leading questions by his attorney, Mr. Stoddard did not express a clear understanding of the partial commutation procedure or a clear preference to receive the commutation. (Tr. p. 53) The couple is making regular payments on their debts but at the end of each month only has \$75.00 left. The couple does not have any savings. Mr. Stoddard previously cashed out his pension. If Mr. Stoddard were to receive this partial commutation, spend the funds unwisely, and then be without his weekly workers' compensation checks the potential detriment would be catastrophic. Therefore, I find the potential detriments to the worker outweigh any implied or expressed preference Mr. Stoddard has for the partial commutation.

CONCLUSIONS OF LAW

The sole issue to be resolved on appeal is whether a partial commutation of all but one week of permanent total disability benefits, with benefits to resume if claimant is still living at the end of his life expectancy per the life expectancy tables, is in the best interest of claimant.

Iowa Code section 85.45 provides that future payments of compensation may be commuted if the period during which compensation is payable can be determined and "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 . . ." In the instant case, the central issue is whether the partial commutation is in Mr. Stoddard's best interest. The Iowa Supreme Court has stated

that in determining whether the partial commutation is in the best interest of claimant, this agency cannot act as a conservator and disregard claimant's desires and reasonable plans just because success of the plans is not assured. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The Iowa Supreme Court in Dameron v. Neumann Bros. Inc., 339 N.W.2d 160, 165 (Iowa 1983) has held that this agency should examine the following in determining whether to allow a commutation:

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).

The Dameron court went on to state that a request for commutation should be approved unless the potential detriments to the worker outweigh the worker's expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W.2d at 165. In the present case, I found that the potential detriment to Mr. Stoddard outweighs any desire he may have for the partial commutation. The fact that Mr. Stoddard has been found to be intellectually disabled weighs heavily against a partial commutation. Likewise, the fact that neither the claimant nor his wife have even read the proposed financial plans for investing, combined with the claimant's poor financial choices also weigh against a partial commutation.

A claimant's preference for receiving a lump sum payment is balanced against the potential detriments that could result if the employee invests unwisely, spends foolishly or otherwise wastes the funds to the point where they no longer provide the wage substitute intended by the workers' compensation law. Dameron, 339 N.W.2d at 160.

As noted above, I recited and weighed the pertinent legal factors to be considered to determine whether the requested partial commutation is in claimant's best interest. Having found that the requested partial commutation was not in claimant's best interest, I conclude that he has failed to carry his burden of proof and further conclude that the partial commutation request should not be granted.

Claimant is also seeking an assessment of costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Because claimant failed

to show the commutation is in his best interest, I exercise my discretion and do not award any costs. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's original notice and petition for partial commutation is denied.

Defendant shall continue to pay the benefits as ordered in the June 21, 2001 appeal decision and the August 2, 2002, ruling on petition for judicial review, and the April 7, 2003 remand decision.

Each party shall pay their own costs.

Signed and filed this 26th day of February, 2016.



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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.