

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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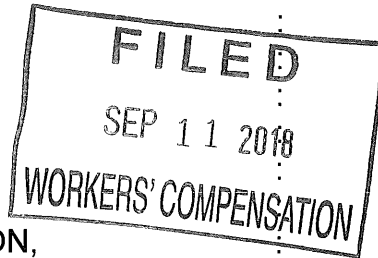
TRACY DRAAYER,

Claimant,

vs.

PELLA CORPORATION,

Employer,  
Self-Insured,  
Defendants.



File No. 5018137

PARTIAL COMMUTATION

DECISION

Head Note No.: 3303.20

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STATEMENT OF THE CASE

Tracy Draayer, claimant, requests partial commutation of a prior permanent total disability award. Pursuant to an appeal decision filed on October 14, 2008, Ms. Draayer was found to be permanently and totally disabled as the result of an August 10, 2005 injury to her cervical spine. On June 1, 2017, Ms. Draayer filed an Original Notice and Petition for Partial Commutation, seeking a lump sum payment based on the present value of the stream of permanent total disability benefits, except for the last week. Pella requested a hearing on the petition.

The hearing on claimant's request for partial commutation was held on June 20, 2018, in Sioux City, Iowa. Tracy Draayer, Christopher Saras, and Dennis Markway all testified live at hearing. The evidentiary record also includes claimant's exhibits 1-6 and defendants' exhibits A-D. 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 request the opportunity for post-hearing briefs which were submitted on July 20, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether a partial commutation of claimant's permanent total disability award would be in her best interest?
2. Assessment of costs.

## FINDINGS OF FACT

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

Tracy Draayer was 56 years of age at the time of the partial commutation hearing. Her education consists of a GED. She is single and lives in Hawarden, Iowa. Ms. Draayer has not worked since approximately 2001 when she worked at Pella. She has not worked anywhere else since her injury. (Testimony; Ex. 1, p. 3) She has expressed her desire to have her petition for partial commutation granted.

Ms. Draayer's current level of income is similar to her current level of expenses. She receives \$991.00 per month from Social Security Disability income. (Ex. 4, p. 177) She nets \$1,297.61 per month in workers' compensation benefits after attorney fees. (Ex. 1, p. 13) Thus, her monthly income totals \$2,288.61 per month.

Ms. Draayer had monthly expenses that must also be considered. Ms. Draayer purchased a home in Hawarden, Iowa. At the time the petition for partial commutation was filed she owed \$85,674.60. (Ex. 1, pp. 27-29; Ex. 2, pp. 31-32) At the time of the partial commutation hearing she had lowered the balance to \$83,986.72. (Ex. 4, p. 172) The home was assessed at \$84,160.00 in March of 2017. (Ex. 1, p. 30) At the time of the hearing, Ms. Draayer had listed the home for sale with an asking price of \$117,500.00. Her monthly house payment, including taxes and insurance, is \$604.20. (Ex. 1, p. 17; Ex. 4, p. 172) Ms. Draayer has consolidated credit card debt at an interest rate of 2 percent, the balance amounts to approximately \$6,000.00. Ms. Draayer also has a small loan with People's Bank which will be paid off in October of 2018. The original amount of the loan was \$1,000.00. Ms. Draayer took out the loan so she could go to California to see her mother who has cancer. Ms. Draayer has taken out and paid off similar loans in the past. (Testimony) Ms. Draayer has a \$50,000 life insurance policy to help cover the costs of her funeral. She pays \$44.00 per month for the policy. She provided a list of her monthly expenses. (Ex. 1, pp. 14-15; Ex. 4, p. 172) Ms. Draayer testified about her efforts to reduce her expenses such as cable, Wi-Fi, and her cell phone bills. At the time of the partial commutation hearing, after all of her expenses were paid, she nets approximately \$37.00 per month. Ms. Draayer does not have any savings or investments. She has never filed for bankruptcy. (Testimony)

If Ms. Draayer's petition for partial commutation were to be granted she would use the money to pay off her house and credit card debt. She also understands that she will need to pay attorney fees. Ms. Draayer will invest the remaining money in an annuity product that her financial advisor, Christopher M. Saras, has recommended. Ms. Draayer convincingly testified that she understands this is the only time she will ever receive this amount of money and she simply cannot afford to be careless with the money. (Testimony)

Mr. Saras has recommended utilizing a lifetime income annuity or a guaranteed lifetime income annuity product to provide Ms. Draayer with a low-risk investment with a predictable income. He is proposing that these products be purchased with insurance carriers that have top ratings and are backed by a guarantee fund. Mr. Saras' proposals include a 20-year guarantee so if Ms. Draayer were to pass away her heirs could receive any balance. In light of this provision, Ms. Draayer would be able to cancel her life insurance policy and reduce her monthly expenses by \$44.00. Mr. Saras testified that his plan would create a larger net spendable income for Ms. Draayer. He feels that if Ms. Draayer does not receive the partial commutation she will go in the hole soon. Ms. Saras expressed concern about inflation and the fact that workers' compensation benefits do not increase with inflation. However, his proposed investment plans do not appear to have a proposal for increased income either. (Testimony)

Defendants argue against granting the partial commutation. Defendants argue that Mr. Saras' proposals have expired, the commuted value has decreased, and that the evidence in the record is insufficient for the agency to determine that Ms. Draayer has a reasonable plan for investing the lump sum proceeds of a partial commutation.

Defendants also hired a financial expert, Dennis L. Markway. He admits that he has never met with Ms. Draayer and does not know her exact financial goals or risk tolerance. In his report Mr. Markway states that he feels a partial commutation is not in Ms. Draayer's best interest and would leave her in a disadvantaged position. (Def. Ex. A)

Ms. Draayer admits she does not currently have any investments, other than her home. Although she is not experienced with financial investments, she is prepared to utilize the services of a financial planner. She has demonstrated that she understands her need to reduce debt and has taken actions to reduce her expenses. I find that Ms. Draayer is making an informed and conscious choice in seeking a partial commutation of her benefits.

I find that Ms. Draayer's lack of education, and lack of experience with any management of sophisticated financial resources or dealings are detriments that weigh against an award of a partial commutation. Additionally, I find that claimant's inability to overcome any losses due to mismanagement of the commuted funds is also a detriment that weighs against an award of partial commutation.

Factors that weigh in favor of granting Ms. Draayer's request for a partial commutation include her expressed desire to commute the funds, her ability to pay off past debts, her ability to have greater financial flexibility, and the conservative nature of the investment plans indicate that she would have financial protection for the commuted period if she follows the plans. Ms. Draayer has set forth reasonable goals of paying off her debt and investing the remaining money in an annuity. Although she does not have final plans for her investment she has convincingly testified that she cannot waste this

money and will follow the advice of her financial adviser. Additionally, she will have guaranteed income from Social Security. I find that the benefits of claimant's proposed partial commutation outweigh the detriments. Therefore, I find that it is in Ms. Draayer's best interest at this time to grant the petition for the partial commutation.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case. The claimant has prevailed in this request for a partial commutation. Exercising the agency's discretion, I find an assessment of costs is appropriate. Claimant is seeking costs in the amount of \$13.39 for service of the partial commutation petition. I find that this is an appropriate cost under 876 IAC 4.33(3). Thus, defendants are assessed costs in the amount of \$13.39.

### CONCLUSIONS OF LAW

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

Iowa Code section 85.45(1) provides in relevant part:

Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

- a. When the period during which compensation is payable can be definitely determined.
- b. 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 . . . .

Ms. Draayer has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted in agency rule 876 IAC 6.3. Iowa Code section 85.48 provides:

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments 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.

Agency rule 876 IAC 6.3 provides a life expectancy table that is to be used in determining the amount to be paid a claimant in commutation proceedings. Rule 6.3 provides, "The life expectancy is determined by taking the age of the person, set forth in the 'age' column and comparing it to the 'weeks' column, which indicates the weeks an individual at the age indicated will be expected to continue to live." The Commissioner's adoption of agency rule 876 IAC 6.3 provides a presumption of life expectancy and makes the number of weeks owed claimant under her permanent total disability award definitely determinable.

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:

The workers' age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).

The workers' family circumstances, living arrangements, and responsibilities to dependents.

The workers' financial condition, including all sources of income, debts, and living expenses.

The reasonableness of the workers' plan for investing the lump sum proceeds and the workers' ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).

In determining whether the requested commutation is in the best interests of the claimant, a benefit-detriment analysis is employed. The above recited factors, along with the claimant's preference and the benefits of the claimant receiving a lump-sum payment, are balanced against the potential detriments that could result if the claimant 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. Diamond, 256 Iowa at 929, 129 N.W.2d at 617; Dameron, 339 N.W.2d at 163-164.

In determining whether the commutation is in the best interests 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, 256 Iowa 915, 129 N.W.2d 608 (1964). 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 164.

Ultimately, the determination of whether the commutation is within the best interests of the claimant is a factual determination based upon the factors being balanced in each case. Dameron, 339 N.W.2d at 163 ("Where, as here, the industrial commissioner in a contested case proceeding has determined that commutation was in the best interests of the claimant, the trial court and this court are now bound by that determination unless it is 'unsupported by substantial evidence in the record.'") As the party moving for the partial commutation, claimant bears the burden to prove that the commutation is in her best interest. Iowa Rule of Appellate Procedure 6.14(6).

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 interests. Having found that the requested partial commutation was in Ms. Draayer's best interests, I conclude that she has carried her burden of proof and further conclude that the partial commutation request should be granted. Defendants shall pay a lump sum of the commuted benefits for all of claimant's remaining lifetime benefits, except for the final week of her life expectancy, utilizing 876 IAC 6.3. Weekly benefits will resume if claimant is still living at the end of her life expectancy per the tables. Iowa Code sections 85.45; 85.48.

Claimant is also seeking an assessment of costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. The claimant has prevailed in this request for a partial commutation. Exercising the agency's discretion, I find an assessment of costs is appropriate. Claimant is seeking costs in the amount of \$13.39 for service of the partial commutation petition. I conclude that this is an appropriate cost under 876 IAC 4.33(3). Thus, defendants are assessed costs in the amount of \$13.39.

#### ORDER

#### THEREFORE, IT IS ORDERED:

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

Defendants shall pay a lump sum of the commuted benefits for all of claimant's remaining lifetime benefits, except for the final week of her life expectancy, utilizing 876 IAC 6.3. Weekly benefits will resume if claimant is still living at the end of her life expectancy per the tables.

Benefits shall be commuted using the weekly rate of four hundred forty-seven and 82/100 dollars (\$447.82).

Defendants shall be entitled to a discount rate on the commuted benefits pursuant to Iowa Code section 85.47 and Iowa Code section 535.3.


The parties shall cooperate to calculate the applicable value of the commuted benefits.

If the parties cannot reach an agreement on the commuted value, they should file a request for appointment of a financial expert to calculate the value of the partial commutation with the expense of that financial expert to be assessed as a cost against whichever party(ies) presented inaccurate calculations of the commuted value.

Claimant shall remain entitled to causally related medical expenses pursuant to Iowa Code section 85.27.

Defendants shall pay the costs of this matter in the amount of thirteen and 39/100 dollars (\$13.39).

Signed and filed this 11<sup>th</sup> day of September, 2018.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EQP/kjw

**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.