

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HOLLI DAVIS,
Claimant,

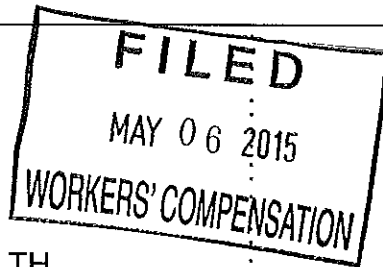
vs.

BURGESS HOME HEALTH,
Employer,

and

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5040383

PARTIAL COMMUTATION
DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

This is a proceeding brought by Holli Davis, claimant, against Burgess Home Health, her former employer, and its, insurer, Farm Bureau Property & Casualty Insurance Company, defendants, for a partial commutation of all but the last week of future weekly workers' compensation benefits awarded by this agency as a result of the work injury of March 8, 2012. On April 17, 2015, a hearing was held on claimant's petition, and the matter was fully submitted at the close of that hearing.

Claimant's single exhibit was received into evidence is marked numerically. Defendants' offered no exhibits. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex 1-2:4".

The only issue presented by the parties for determination in this proceeding is whether claimant is entitled to a partial commutation.

An arbitration decision awarding claimant permanent total disability benefits as a result of a back injury on March 8, 2012 was filed on February 7, 2014. A final agency appeal decision adopting and affirming the arbitration decision was filed on August 18, 2014. Defendants did not seek judicial review of the appeal decision.

FINDINGS OF FACT

In these findings, I will refer to claimant as Holli.

Holli appeared sincere at hearing and defendants did not challenge the accuracy of her testimony as to her family's financial condition.

Holli is 41 years of age. As found in the arbitration decision she is a high school graduate. She also attended one year of nursing training. Holli's past jobs include home health aide, animal health technician, and warranty clerk. She was a home health aide at the time of her March 8, 2012 work injury.

There has been no evidence in this case that Holli is mentally or intellectually unable to handle her and her family's financial affairs. Neither Holli nor her husband have filed bankruptcy, Holli testified the family's ability to make mortgage and other debt payments was difficult at times when her husband, an electrician, is laid off for extended periods of time and/or her receipt of weekly compensation payments is delayed. Holli states that by paying off the families' indebtedness with the proceeds of this commutation would greatly reduce the family's reliance upon a steady income to pay bills.

After paying family debts, Holli plans to invest the money in a low risk manner as recommended by wealth management experts at Security National Bank. A detailed low risk investment plan prepared by Dan DeMarest, a vice-present of this Bank was submitted into evidence as Exhibit 1. Holli states that this plan would likely provide sufficient funds when she attains a normal retirement age.

A partial commutation would allow her to keep her medical benefits.

I find that the proposed use of the commutation proceeds is reasonable and in the best interest of Holli and her family.

CONCLUSIONS OF LAW

Claimant is entitled to a lump sum payment in partial commutation of weekly workers' compensation benefits only after a showing by a preponderance of the evidence that the period during which compensation is payable can be definitely determinable and that the commutation is in the best interest of claimant. Iowa Code section 85.45. When the person seeking a commutation is entitled to benefits for life, the future payments may be commuted but shall not exceed the number of weeks indicated by probability tables designated by the industrial commissioner for death and remarriage. Iowa Code section 85.45(4). When the commutation is ordered, the industrial commissioner shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payment capitalized at their present value and upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Iowa Code section 85.47. This is now a variable rate.

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

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

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

4. 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).

The Dameron Court went on to state that a request for commutation should be approved unless the potential detriments to the worker outweigh the workers' expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W. 2d at 165.

In this case, the findings of fact are sufficient to warrant entitlement to commutation. Claimant's plan was found reasonable and in claimant's best interest.

ORDER

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Defendants shall pay to claimant a lump sum in partial commutation of all but the last week of claimant's workers' compensation benefits awarded as a result of the work injury on March 8, 2012. A specific award as of the date of the decision will not be prepared at this time. If the parties desire a specific lump sum order, they shall request same within twenty (20) days on a motion for rehearing providing all necessary calculations for me to do so.

2. Defendants shall pay the costs of this action pursuant to rule 876 IAC 4.33.

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

Signed and filed this 6th day of May, 2015.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

DAVIS V. BURGESS HOME HEALTH

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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.