

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY GIESE,
Claimant,

vs.

CNH AMERICA, L.L.C.,
Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,
Insurance Carrier,
Defendants.

File No. 1282970

FILED

JUL 29 2015

REMAND WORKERS' COMPENSATION

DECISION

Head Note No. 3303.20

This case returns to the agency on remand from the Iowa District Court for Polk County. This case has a lengthy procedural history. The current issue before the agency involves the proper date for calculation of a partial commutation granted by this agency.

This case was initially tried to this agency in September 2002. A deputy workers' compensation commissioner issued an arbitration decision on October 17, 2002. An intra-agency appeal ensued and former workers' compensation commissioner Michael G. Trier issued an appeal decision on July 9, 2003. Defendants sought judicial review, which resulted in a judicial review decision entered on June 29, 2004.

On April 22, 2010, claimant filed an original notice and petition seeking partial commutation of the underlying award. On May 17, 2010, defendants filed an original notice and petition seeking review-rehearing of the underlying award. After a contested case hearing, a deputy commissioner entered a review-reopening and partial commutation decision on May 25, 2011. The deputy commissioner made the effective date for calculation of the commutation the date of entry of that decision, May 25, 2011.

Defendants appealed this decision. On intra-agency appeal, former workers' compensation commissioner Christopher J. Godfrey affirmed the May 25, 2011, review-reopening and partial commutation decision. In so doing, former commissioner Godfrey did not specifically modify the date for calculation of the commutation award.

Given the potential ambiguity in the appeal decision, the parties sought further clarification of this agency. In a September 16, 2013 decision, a deputy commissioner determined that the commissioner had not modified the date for calculation of the partial commutation and concluded the commutation should be calculated from May 25, 2011.

Defendants again appealed. On appeal, former commissioner Godfrey concluded that he had not modified the date for calculation of the partial commutation in his August 15, 2012, appeal decision. Therefore, he concluded that the commutation should be calculated using the May 25, 2011, date.

Defendants sought judicial review of this decision after their application for rehearing was denied by the former commissioner. The Iowa District Court for Polk County entered a Ruling on Petition for Judicial Review on November 19, 2014. In its judicial review decision, the court concluded:

[T]he agency decision should be reversed and this matter remanded to the agency for the purpose of entering an order calculating the commutation as of the date of that [August 15, 2012] decision. In making this calculation, the agency shall credit the [defendants] for any weekly benefits paid after August 15, 2012 while this matter has been pending on judicial review.

(November 19, 2014 Ruling on Petition for Judicial Review, p. 11)

This agency's discretion is curtailed and limited to the purpose of the remand order from the Iowa District Court. The sole purpose for the remand is to enter an order directing that the partial commutation ordered by this agency should be calculated using August 15, 2012, as the calculation date of the commutation and to order defendants entitled to credit against that commutation for any weekly benefits paid after that date.

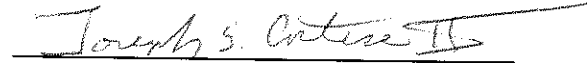
ORDER

IT IS THEREFORE ORDERED:

1. The partial commutation previously ordered by this agency shall be calculated as of August 15, 2012.

2. Defendants shall be entitled to credit against the partial commutation award for all weekly benefits paid after August 15, 2012.

Signed and filed this 29th day of July, 2015.



JOSEPH S. CORTESE II
IOWA WORKERS'
COMPENSATION COMMISSIONER

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