

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

<p><b>BRETT VANGETSON,</b></p> <p><b>Petitioner,</b></p> <p>v.</p> <p><b>AERO CONCRETE, LTD., WESCO INSURANCE COMPANY,</b></p> <p><b>Respondents.</b></p> <hr/> <p><b>SHERILYN FASIG-SNITKER,</b></p> <p><b>Petitioner,</b></p> <p>v.</p> <p><b>BIRDNOW ENTERPRISES, INC. d/b/a BIRDNOW MOTORS; SEABRIGHT INSURANCE CO.,</b></p> <p><b>Respondents.</b></p> <hr/> <p><b>WILLIAM FREDERICK BASLER,</b></p> <p><b>Petitioner,</b></p> <p>v.</p> <p><b>GEONETRIC, INC.; TRAVELERS PROPERTY CASUALTY CO. OF AMERICA,</b></p> <p><b>Respondents.</b></p>	<p><b>05771 CVCV057113</b></p> <p><b>JUDICIAL REVIEW DECISION</b></p>
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This matter comes before the Court on a petition for judicial review from a final agency action of the Iowa Workers' Compensation Commission. Oral argument was held before this Court on March 1, 2019. This case involves a number of consolidated cases. Due to resolution of other petitioners, at this time three cases remain: Petitioners Brett Vangetson, Sherilyn Fasig-Snitker, and William Frederick Basler, each of whom are represented by Laura Schultes and Emily Anderson. Respondents in the Vangetson matter are represented by Andrew Tice and

Nicholas Pellegrin. Respondents in the Fasig-Snitker matter are represented by Tyler Laflin. Respondents in the Basler matter are represented by James Ballard.

**I. Findings of Fact and Procedural Background.**

Petitioners are all workers' compensation claimants who allege work-related injuries that occurred prior to July 1, 2017. Each Petitioner filed an arbitration petition with the Iowa Workers' Compensation Commission prior to June 2017. In late June 2017, each Petitioner filed a petition for partial commutation pursuant to Iowa Code § 85.45 (2016). The reason for these filings was the Petitioners' anticipation of the July 1, 2017 effective date of legislative changes to the Iowa workers' compensation statutes that would impact the standards for obtaining commutation.

The Deputy Commissioners in each case dismissed the petitions for partial commutation as premature because there was not yet any settlement or arbitration award in each case. Petitioners sought review with the Commissioner, who upheld the dismissals as the final agency action<sup>1</sup>. Petitioners then filed this judicial review action.

**II. Standard of Review.**

The standards set forth in Iowa Code chapter 17A govern judicial review of final decisions by the workers' compensation commissioner. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 768 (Iowa 2016), reh'g denied (May 27, 2016). The standard of review varies based upon the type of error allegedly committed by the Commissioner. Jacobson Transp. Co. v. Harris, 778 N.W.2d 192, 196 (Iowa 2010). If the error is one of fact, the Court reviews the record to determine if the findings are supported by substantial evidence. Id. Iowa Code section

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<sup>1</sup> The Commissioner first dismissed the appeals as interlocutory, the District Court remanded for final agency action, and the Commissioner then heard the agency appeals and issued final agency actions.

17A.19(10)(b-c) provides for review of whether the agency acted beyond its authority for provisions of law delegated to the agency or acted based on an erroneous interpretation of a provision of law whose interpretation has not clearly been vested with the agency. Iowa Code section 17A.19(10)(m) provides for reversal of applications of law to fact that is irrational, illogical, or wholly unjustifiable. Iowa Code section 17A.19(10)(a) provides the Court may reverse agency action that is “unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.”

### **III. Conclusions of Law.**

#### **A. Changes to the Iowa Workers’ Compensation System with Regard to Commutation.**

Prior to the 2017 legislation, Iowa Code § 85.45 (2016) provided:

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, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship or inconvenience upon the employer liable therefor.

...

Iowa Code §85.45 (2016). In the 2017 legislative changes, Iowa Code §85.45 was modified to provide:

Future payments of compensation may be commuted to a present worth lump sum payment **only upon application of a party to the commissioner and upon written consent of all parties to the proposed commutation or partial commutation, and** 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, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.

...

Iowa Code § 85.45 (2017) (emphasis added).

The additional bolded language requires that all parties consent to any proposed complete or partial commutation. Prior to this modification, the Commissioner could order commutation or partial commutation even if another party objected if the Commissioner determined the conditions in section 85.45 were met.

The effective date for this legislative change provided it would apply to all petitions for commutation filed on or after July 1, 2017. It was not limited to workers who alleged an injury after July 1, 2017, as other legislative changes were. Therefore, even though each of the Petitioners in this case alleged a work injury prior to July 1, 2017, if they filed a petition for commutation after July 1, 2017, they would be required to obtain the consent of all parties.

**B. Requirements to File a Petition for Commutation.**

The Commission dismissed each of Petitioners' petitions for partial commutation as premature. Each of the Petitioners here filed a petition for partial commutation prior to a settlement agreement or arbitration award had been entered. Therefore, the Commissioner entered a final agency action holding each of the petitions were premature and dismissing each one without prejudice. See Vangetson v. Aero Concrete et al, 2018 WL 4865804 (Iowa Workers' Comp. Com'n Sept. 19m 2018).; Fasig Snitker v. Birdnow Enterprises, Inc. et al, 2018 WL 4865799 (Iowa Workers' Comp. Com'n Sept. 19, 2018); Basler v. Geonetric, Inc. et al, 2018 WL 2865772 (Iowa Workers' Comp. Com'n Sept. 19, 2018).

The Commissioner correctly held that the Petitioners' petitions for partial commutation were not ripe and were appropriately dismissed without prejudice as premature. "A case is ripe

for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative.” State v. Wade 757 N.W.2d 618, 627 (Iowa 2008). The Iowa legislature has set forth the requirements to assert a claim for commutation and the Iowa Supreme Court has referred to those statutory requirements as jurisdictional.

Iowa Code section 85.45(1)(a), as it existed at the time Petitioners filed these petitions for partial commutation, provided for commutation only: “When the period during which compensation is payable can be definitely determined.” The statute describes this as a “condition.” The Iowa Supreme Court has described the conditions in section 85.45(1)(a) as “prerequisite(s)” to the filing of a petition for commutation and stated: “We hold that to confer jurisdiction upon the district court to order a commutation there must first have been an agreement by the parties or a finding and award by the commissioner fixing definitely the period of disability and the amount due in weekly payments.” Diamond v. Parsons Co., 129 N.W.2d 608, 615 (Iowa 1964). Of course, the statute has been amended since the 1964 Diamond case. At that time the District Court was vested with authority to consider commutation petitions and in 1970 the statute was amended to provide that the Commissioner, instead of the District Court, would decide whether to allow commutation. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160 (Iowa 1983). This change in the statute, however, does not change the statutory conditions for commutation. It changes the decision maker on the issue. The Supreme Court’s prior interpretation of this language to first require an agreement between the parties or an award fixing the period of disability is still applicable as it stems from the same statutory language: that “the period during which compensation is payable can be definitely determined.” Therefore, Diamond is still controlling.

Petitioners cite to Iowa's notice pleading standards. However, this does not change the outcome. Petitioners, to file a petition for commutation, must be able to allege the statutory conditions required for commutation: that "the period during which compensation is payable can be definitely determined." At the time each Petitioner filed suit, they could not make this allegation even under notice pleading standards as it is undisputed that none of the Petitioners had reached an agreement for settlement or received an Arbitration Decision at the time they filed.

Petitioners also cite to Iowa Supreme Court caselaw in the arena of bad-faith insurance claims and underinsured motorist claims. In Handley v. Farm Bureau Mut. Ins. Co., 467 N.W.2d 247, 249 (Iowa 1991), the Court held judgment against a defendant driver was not a "condition precedent" to an action against an insurer for underinsured motorist coverage and a first-party bad faith claim. Handley relied on Leuchtenmacher v. Farm Bureau Mutual Ins. Co., 461 N.W.2d 291 (Iowa 1990), which had held the language "legally entitled to recover damages" from an underinsured motorist did not first require judgment against that underinsured motorist. Similarly, in Brown v. Liberty Mut. Ins. Co., 513 N.W.2d 762 (Iowa 1994), the Iowa Supreme Court held a bad faith suit may be commenced prior to a determination of benefit eligibility, finding the issue to be one more of "case management" rather than "adjudicative ripeness."

Here, however, the Iowa state specifically refers to a "condition" that "the period during which compensation is payable can be definitely determined." Iowa Code § 85.45. Further, the Iowa Supreme Court has interpreted the statute to require "an agreement by the parties or a finding and award by the commissioner fixing definitely the period of disability and the amount due in weekly payments." Diamond, 129 N.W.2d at 615-16.

The reason Petitioners are not willing to wait for arbitration decisions is the change in the commutation statute requiring consent of all parties and a desire to apply the old statute as opposed to the 2017 legislation. However, other than the constitutional argument addressed below, this desire does not impact the application of the ripeness doctrine under the statutory language and existing Iowa Supreme Court precedent.

**C. Constitutional Claims.**

The Petitioners argue dismissal of their petitions for commutation is unconstitutional because if they are forced to file for partial commutation after July 1, 2017, they will have essentially lost a right to adjudication of their commutation requests because the new law requires the Respondents' consent.

Petitioners argue the prior version of section 85.45 created a substantive right to seek commutation when certain elements were met and that the retroactive application of the 2017 legislation violates Petitioners' due process rights because it retroactively extinguishes their ability to seek partial commutation as it existed at the time of their injury. Petitioners cite to Thorp v. Casey's General Stores, Inc., 446 N.W.2d 457 (Iowa 1989), which held the retroactive addition to an element of a dram shop claim amounted to an illegal taking. Petitioners also assert an equal protection claim based on the 2017 legislation's effect of treating workers injured prior to July 1, 2017 differently based on whether they had settled or received an arbitration decision prior to July 1, 2017.

This is not the appropriate forum or time for consideration of these constitutional claims. The requirement that Petitioners reach an agreement or obtain an arbitration award definitely defining their future benefits is not the action that is allegedly having a constitutional impact on the Petitioners. Instead, the action that has an allegedly constitutional impact on Petitioners is

the 2017 legislation and the fact that the change to the commutation statute applied to all who filed for a partial commutation after July 1, 2017 regardless of when their injury occurred. Without the 2017 change in legislation, the requirement to wait for an agreement or arbitration award does not limit Petitioner's ability to seek commutation.

Petitioners have a mechanism to raise this constitutional argument. If Petitioners receive an arbitration award or settlement that they desire to have commuted, they may at that point file a petition for commutation. Should Respondents refuse to consent as is now required, Petitioners may at that point argue application of the requirement for consent to them is unconstitutional. This timing makes practical sense. At such point in the time, the Petitioners' claims to future payments will be definitely determined and the Parties will not be arguing in the abstract regarding the commutation sought by Petitioners. It may be that some Respondents may agree to commutation, thereby rendering this issue moot. Only where a Petitioner is awarded future payments, seeks commutation, and Respondents refuse to consent, will Petitioner have an argument that something has been lost. The appropriate time to address that situation is when it arises.

**IT IS HEREBY ORDERED** that the Petitioners' Remand Decisions in the Iowa Workers' Compensation Commission are **AFFIRMED**. Costs are assessed to the Petitioners.





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
CVCV057113      BRENT VANGETSON ET AL VS AERO CONCRETE ET AL

So Ordered

A handwritten signature in cursive script, appearing to read "Sarah Crane". The signature is written in black ink and is positioned above a horizontal line.

Sarah Crane, District Court Judge  
Fifth Judicial District of Iowa