

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEISA ROBISON,

Claimant,

vs.

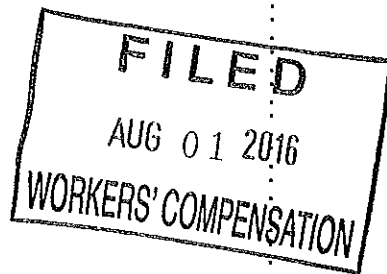
TRI-CITY ENERGY,

Employer,

and

ACE AMERICAN INSURANCE,
COMPANY,

Insurance Carrier,
Defendants.



File No. 5033149

PARTIAL COMMUTATION
DECISION

Head Note No.: 3303.20

STATEMENT OF THE CASE

Leisa Robison, claimant, requests partial commutation of all but one week of a prior award of sixty-five (65) percent industrial disability. Ms. Robison's case was initially heard on November 19, 2013. On March 31, 2014, an arbitration decision was issued, which found claimant was entitled to 325 weeks of permanent partial disability benefits.

The hearing on claimant's request for partial commutation was held on April 8, 2016. Ms. Robison was the only witness who testified live at hearing. The evidentiary record also includes joint exhibits 1-7. 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 May 26, 2016.

ISSUES

The parties submitted the following issues for resolution:

1. Whether a partial commutation of all but one week of claimant's award of 325 weeks of permanent partial disability benefits would be in her best interest.

FINDINGS OF FACT

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

As a result of the May 26, 2007, work injury Ms. Robison sustained an injury to her shoulders and neck. The circumstances of her injury, treatment, and resulting permanent partial disability are set forth in the arbitration decision and will not be reiterated.

Claimant now seeks to partially commute her permanent partial disability award. She specifically requests to commute all but the last one week of benefits using her life expectancy under the agency's life expectancy table. Claimant seeks the partial commutation so that she may have access to a lump sum of money to improve her lot in life. She intends to use the money for schooling to be trained to dispatch trucks and to start an internet gift business. Defendants contest claimant's request for a partial commutation on the basis that it would not be in claimant's best interest because her plans for use of the funds is speculative at best. I find that a partial commutation of all but one week of benefits is in the claimant's best interest.

Ms. Robison was born on January 23, 1962. She was 54 years of age at the time of the partial commutation hearing. She lives with her husband, Jeff in Warsaw, Illinois, in their home which they own. They have three grown children; none of whom live with them or are dependent upon them.

Jeff Robison works full-time for Headco Machinery. His net pay is approximately \$1,234 every two weeks. He also has a business, J & L Machine Shop, which he works at part-time. According to Ms. Robison, he nets a few thousand a year from this business. The only other income the two of them have is Ms. Robison's workers' compensation checks. After attorney fees, she receives \$302.12 per week in workers' compensation benefits. (Testimony)

Claimant seeks to use part of her commuted lump sum to pay down debts. Ms. Robison has two educational loans from Southern Community College. She attended classes there to obtain Associates of Business and Associate in General Arts, for the purpose of advancing herself professionally and ideally increasing her earning potential. (Ex. 2, p.1) She also has \$1,639.55 in credit card debt. She has been making monthly payments but she would like to pay these down faster due to the 21.9 percent interest rate. (Ex. 2, p.1) She also has unpaid medical bills in the amount of \$3,101.03. (Ex. 2, pp. 1, 12)

Ms. Robison attributes part of her financial debt to the 2000 recession. Her husband's employer at the time of the recession shut-down; this left them with no insurance. Then Ms. Robison sustained her work injury. Following these events their finances "went downhill" from there. (Testimony)

Claimant's work history includes some financial experience. Ms. Robison worked for a truck company and kept the books for the business. She handled the accounts payable and receivables. She issued invoices to customers and checks to the drivers. She also worked as a business office manager at Tri-City Energy. While there she inputted payroll, worked with the invoices, called customers, dealt with employees, ordered supplies, and answered the phones.

Ms. Robison also has financial experience from maintaining the books and handling routine accounting for both her family and her husband's repair shop. She has additional financial knowledge through her coursework at Southern Community College where Ms. Robison took classes in accounting, finances, and management. She achieved a 3.397 grade point average.

Somewhat recently, Ms. Robison inherited \$14,900.00. Ms. Robison and her husband met with an accountant at Edward Jones to seek advice on what to do with the money. However, the couple determined that his fees were too high and ultimately decided not to use the accountant. Instead they used the money to pay off their mortgage and her husband's truck. (Ex. 3, pp. 8-9)

Ms. Robison would like to use the lump sum money to pay down some of their debts. She would also like to take some classes, such as QuickBooks, to help prepare her to start her own business. She would also like to use some of the money to start her gift basket business. She has a name for her business that she would like to have trademarked. She would also like to get the website for her business up and running. Additionally, she intends to use some of the money to acquire some initial goods for her business. Due to her motivation and drive she is certain that she can make her business a success. Ms. Robison admitted that she has never started a home-based business before. She has been working on a business plan for the past 6 months, but it is not yet complete.

If granted the partial commutation Ms. Robison testified that she would seek advice from her family members regarding the finances and also to get help with the computer aspect of her potential business. All three of her children have graduated from college. One son works in computer programming and the other repairs computers. Additionally, her son-in-law is a partner at an insurance firm. Her daughter operates a business from her home. Ms. Robison intends to seek their assistance as needed in her business and investment endeavors. (Testimony)

Ms. Robison would also like to use some of the lump sum money to become a truck dispatcher. She has an uncle who used to dispatch and made over \$100,000.00 per year. She would like to tap into his contacts and knowledge about the business. In order to become a dispatcher she would like to take a logistics class and perhaps some other classes at Western Illinois College. To date, she has been unable to find a job due to her physical limitations; however, she believes that the additional education will allow her to re-enter the workforce. (Testimony)

Ms. Robison testified that if she had any of the lump sum money leftover she would invest the money in a Vanguard IRA. Her and her husband would work together to make the financial decisions.

Defendants offered the report of Michael J. Alexander, an independent financial planner. Mr. Alexander reviewed some information provided to him by defense counsel and subsequently issued a letter to defense counsel. He has never met or spoken with either Ms. Robison or her husband. In his March 5, 2016, letter he concluded that Ms. Robison should continue with her weekly payments rather than receive the partial commutation. He states, "[m]y main concern is that after the lump sum is paid and the weekly payouts stop, the Robison's [sic] will spend the entire lump sum without a solid plan and will miss the supplemental income provided by worker's [sic] compensation." (Ex. 5, p. 2) He believes their inability to create a plan has prevented them from paying off some of their outstanding debt from some of their current resources.

Ms. Robison does not agree with the report of Mr. Alexander. She testified that she and her husband do have a financial plan. They plan to set a certain amount of money aside biweekly. However, often times they simply cannot afford to put that money aside. By the time they pay their bills they do not have much left over, plus they still have to pay their debts and their property taxes will be going up soon. Additionally, they plan to utilize the lump sum money to reduce debt and improve her earning potential. The report indicates that she is confused about their financial situation. Ms. Robison testified that she is not confused; rather, bills keep coming in and expenses continue to increase so their budget is continually changing. During her testimony she explained their rationale for purchasing the IRA account that Mr. Alexander was so critical of; it is unfortunate that Mr. Alexander has never met or spoken with the Robisons.

I find that Ms. Robison's lack of specific detail in her plan for the lump sum funds is a detriment that weighs against an award of a partial commutation. Although the one financial expert in this case believes a partial commutation is not in Ms. Robison's best interest he has never met or talked with Ms. Robison. He did not have the advantage of hearing her rationale for the financial decisions that he is so critical of.

I further find that if the commuted funds are mismanaged Ms. Robison does have the financial means to overcome such a loss. Her husband is employed full-time and owns his own part-time business. Even the defendants' expert classifies Ms. Robison's workers' compensation benefits as "supplemental" income. Improper investment, unwise expenditures, and/or any unanticipated losses with the proposed partial commutation funds would be a hardship, but it would not be catastrophic to Ms. Robison.

Factors that weigh in favor of granting Ms. Robison's request for a partial commutation include allowing her greater financial flexibility and her desire to use the commuted funds to pay down debt and improve her chances of re-entering the workforce through education and business opportunities. Additionally, her age and

education including financial and business classes are factors that weigh in favor of granting the partial commutation. Also, Ms. Robison did receive an inheritance which the couple did not use imprudently. Instead they chose to pay off their mortgage and her husband's truck. The greater weight of the evidence does not show that Ms. Robison will spend foolishly or otherwise waste the funds to the point where they no longer provide the wage substitute intended by the workers' compensation law. In Ms. Robison's case, I find that the potential detriments do not outweigh her expressed preference and the benefits of commutation. Therefore, I find that it is in Ms. Robison's best interest at this time to grant the petition for the partial commutation.

CONCLUSIONS OF LAW

The sole issue to be resolved on appeal is whether a partial commutation of all but the final two weeks 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.

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).

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.

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.

When the period of future compensation to which a claimant is entitled is definitely determinable and a claimant's work-related medical condition is stable, claimant may receive a lump sum discounted payment of future benefits, provided claimant establishes that the commutation of benefits is in claimant's best interest. 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 interests. Having found that the requested partial commutation was in Ms. Robison's best interests, I conclude that she has carried her burden of proof and further conclude that the partial commutation request should be granted.

Claimant is not seeking an assessment of costs. (Hearing Report)

ORDER

THEREFORE, IT IS ORDERED:


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

Defendants shall pay claimant a lump sum payment of future weekly benefits, except for the final week of permanent partial disability benefits awarded in the March 31, 2014 arbitration decision, as set forth in claimant's petition for commutation, discounted to the present value based on the number of weeks to be commuted and the interest rate for determining the discount as of the date of this decision. Weekly benefits will resume if claimant is still living at the end of her life expectancy per the tables.

Claimant's right to medical benefits pursuant to Iowa Code section 85.27 shall remain unaffected by this decision.

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

Signed and filed this 15th day of August, 2016.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.