

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANNIE BLAWOU, surviving spouse of
WASHINGTON BLAWOU,

Claimant,

vs.

MID-SEVEN TRANSPORTATION, INC.,

Employer,

and

TRANSGUARD INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JUN 20 2016

WORKERS COMPENSATION

File No. 5044451

FULL COMMUTATION DECISION

Head Note No: 3303.20

STATEMENT OF THE CASE

Annie Blawou, surviving spouse of Washington Blawou, claimant, filed a petition in arbitration seeking full commutation of workers' (death) compensation benefits from Mid-Seven Transportation, employer, and Transguard Insurance Company, insurance carrier, as a result of the death of her spouse, Washington Blawou, from an accident arising out of and in the course of his employment. The case was heard by Deputy Workers' Compensation Commissioner Stan McElderry in Des Moines, Iowa.

ISSUE

Whether a full commutation of death disability benefits is in the best interest of claimant and the other dependent(s).

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Claimant, Annie Blawou, was 60 years old at the time of the hearing. She is a Liberian citizen and came to the United States with her husband Washington Blawou in 2004. Between her and her deceased husband there are eight children. Not all of the children are joint. Some are Washington's with another woman, some are Annie's with another man, and some are joint. Six who live in West Africa; the majority of those in

Liberia. She attended some school as a child, but not cannot read or write in any language, including her native Krahn. She does not speak English. After coming to the U.S., Washington would send money to his children in Africa. Since Washington's work-related death in a traffic accident in 2010, Ms. Blawou has continued to send money to family in Africa. She has been sending approximately \$700.00 per month to her children and to Washington's children. Of that money, \$200.00 is for food and \$500.00 is for school. She also sends approximately \$500.00 every 2 months to her 4 brothers and sisters. She does not know how much money she has sent to Africa, but the amount is substantial. The record is not clear on this as the claimant's memory of dates was poor and there were translation difficulties, but it appears some of the children in Africa are minors and in school. An example "And in the future they will be grown and the girls, the women, then girls will marry and have their husbands to take care of them." (Exhibit B, page 7) Also "When the kids, when they are grown, when somebody will be grown, they will be mature to work and take care of themselves." (Ex. B, p. 7) When asked the purposes she wanted the commutation for, some reasons included "a nice shelter for those back home, and bring the younger ones back here to the United States." (Ex. B, p. 8) The plan is to have the younger ones brought to the United States to live with Annie. (Transcript p. 77)

Her current per week workers' compensation benefit is \$541.22. She also receives a Social Security Survivors benefit of \$250.00 per month. She does not work and has no other income. Her son Leo lives with her and was 14 years of age at the time of hearing. Leo also receives a survivor's benefit of \$250.00 per month. His \$250.00 per month is placed in a savings account for his future. The testimony at hearing was that Leo is doing well in school and it is planned that he will continue his education post-high school. Paye Blawou is a son of Annie and Washington. At the time of Washington's death, Paye lived with his parents and was dependent. He dropped out of school after Washington's death because money had not been put aside for his education. Although the claimant testified that she takes care of her own bills, Paye clearly testified that he takes care of most of his mother's finances due to her inability to speak English. (Trans. 54-55) It is unclear however, whether he has a clear understanding of his mother's financial status since he also testified that he thought her income was about \$1,000.00 per month. Since the claimant cashes her benefit checks and pays for everything in cash it is possible that he is only aware of what money she still has by the time she goes to him to pay bills. The claimant has no savings or checking account. She only has a bank account which she cannot access (but Paye can) for Leo.

William "Bill" Pearce was the claimant's expert. However prior to generating his report he did not interview, talk to, or communicate in any way with Annie. (Trans. 99-100) He did not review any of the claimant's financial documents prior to writing his report. He did not even meet the claimant until the day before hearing. His report lists claimant's monthly income as \$3,195.00, when it is \$2,314.88 (\$2,164.88 workers compensation and \$250.00 social security). He does point out that the claimant has no substantial assets, minimal savings, and no known debt. (Ex. A)

The claimant still owns her deceased husband's car. It is not used however, as it has a bad transmission and she cannot drive. She desires to purchase a car with the commutation proceeds for her son Leo, who is 14 and too young to drive. She has no idea how much a car would cost. She also wants to purchase a home. She has no idea of the cost of home ownership:

THE COURT: What I think you're telling me is that you have no idea how much a new house would cost.

A: Yes, I have no..

THE COURT: Okay.

A: I haven't done it before.

THE COURT: Do you know if you buy a house, you have to buy house insurance?

A: Yes.

THE COURT: And pay property taxes?

A: Yes.

THE COURT: And keep the house maintained which means you need to fix things as they break?

A: Yes.

THE COURT: Do you have any idea how much any of that stuff costs?

A: I said I have no bought house before.

(Trans. 41)

Defendants have paid the claimant weekly benefits through the date of hearing and continue to pay those weekly benefits. Per claimant's original notice and petition, the calculated commuted value was about \$495,000.00. Claimant proposes to use the commuted benefits to pay the attorney fees, purchase a car, purchase a house, bring family from Africa, and perhaps purchase an annuity. Two annuity options were presented. (Ex. 1) One would provide \$1,691.98 for life. The other would provide \$1,962.09 but only for 20 years, meaning the claimant would stop receiving payments if she lives to 80 and beyond. The expert also believed an annuity would protect Leo better as workers' compensation benefits would cease on Annie's death. That is only true if Leo was no longer dependent or in school at the time of her death. Even if an annuity is purchased, there is no guarantee that she would not cash it in for pennies on the dollar. An annuity provides no guaranteed protection for dependent son Leo. This

does not even factor in that there may well be other dependents in Africa who are not considered in the proposal to commute other than perhaps to bring some or all of them to the United States.

After the purchase of an annuity, the claimant's gross monthly income would decrease. As found above, there is no guarantee that even the annuity could not be sold and that the claimant would eventually have no monthly income other than social security of \$250.00 if the commutation were approved.

CONCLUSIONS OF LAW

The issue to be resolved is whether a full commutation of death benefits is in the surviving spouse and other dependent(s) best interest.

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:

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

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

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

The reasonableness of the worker's plan for investing the lump sum proceeds and the worker's 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 worker's expressed preference and the demonstrated benefits of commutation. Dameron, 339 N.W.2d at 165.

85.31 Death cases — dependents.

1.a. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of death as follows:

(1) To the surviving spouse for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum, if there are no children entitled to benefits.

(2) To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years of age shall receive benefits to the age of twenty-five if actually dependent, and the fact that a child is under twenty-five years of age and is enrolled as a full-time student in any accredited educational institution shall be a prima facie showing of actual dependency.

(3) To any child who was physically or mentally incapacitated from earning at the time of the injury causing death for the duration of the incapacity from earning.

(4) To all other dependents as defined in section 85.44 for the duration of the incapacity from earning.

b. The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of the injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings. For the purposes of this section a stepparent shall be regarded as a parent only when the stepparent has actually received the stepparent's principal support from the stepchild who died as a result of compensable injuries.

3. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from

the injury for which the employee was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

5. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state.

85.42 Conclusively presumed dependent.

The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

2. A child or children under eighteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of the parent's death. An adopted child or children shall be regarded the same as issue of the body. A child or children, as used herein, shall also include any child or children conceived but not born at the time of the employee's injury, and any compensation payable on account of any such child or children shall be paid from the date of their birth. A stepchild or stepchildren shall be regarded the same as issue of the body only when the stepparent has actually provided the principal support for such child or children.

Iowa Code section 85.43 provides apportionment of benefits as follows:

If the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to the surviving spouse, as provided in section 85.31; provided that where a

deceased employee leave a surviving spouse and a dependent child or children the workers' compensation commissioner may make an order of record for an equitable apportionment of the compensation payments.

The evidence shows that a full commutation would threaten the claimant's lifetime guarantee of income. She could be left with nearly no income (\$250.00 per month in survivor's benefits). She has no bank accounts, minimal savings, no financial awareness of the costs of what she desires to use the commutation for, and relies on others already for financial assistance. The commutation would also lessen her income. The claimant's request for full commutation has not been established to be in the best interest of claimant and should be denied for the reasons noted above and previously found. Leo Blawou is also entitled to death benefits. The commutation would not fully protect his interests. If his mother loses the commutation proceeds somehow and she is still alive he would not receive any benefits. He could be reduced to extreme poverty. There are other possible dependents in Africa as well. No request to protect interests of anyone other than Annie Blawou was made pursuant to Iowa Code section 85.43. The issue of a commutation for some dependents and the surviving spouse, and not others has been rejected previously by this agency. Meeves v. Godbersen-Smith Construction Company, File No. 5013989 (Commutation Dec. September 27, 2007; Comm. Dec. February 15, 2011). Nor was a full commutation allowed where the dependent child's actual period of dependency cannot be fixed (as is the case here for Leo). (Meeves, previously cited). The request for commutation by claimant must be denied.

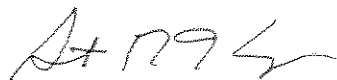
ORDER

THEREFORE, IT IS ORDERED:

Claimant's petition for full commutation is denied.

The parties shall bear their own costs.

Signed and filed this 20th day of June, 2016.



STAN MCELDERRY
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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.