

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

BRANDON MEEK,

File No. 5029817

JUL 11 2017

Claimant,

RULING ON PETITION WORKERS' COMPENSATION

vs.

FOR

JOHN DEERE DAVENPORT WORKS,

PARTIAL COMMUTATION

Self-Insured Employer,

Defendant.

Brandon Meek requests partial commutation of a prior permanent total disability award. The hearing was held on September 23, 2016. The parties submitted post-hearing briefs on November 18, 2016, and the matter was considered fully-submitted on that date.

The evidentiary record includes: Claimant's Exhibits 1 through 13 and Defendant's Exhibits A through V, all of which were admitted without objection. At the hearing, claimant, Brandon Meek, testified.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUE

The parties submitted the following issue for determination:

1. Whether claimant's request for partial commutation of his prior permanent total disability award should be granted.

FINDINGS OF FACT

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

At the time of hearing, claimant, Mr. Meek was 45 years old. (Transcript, page 8) He was injured on June 8, 2009, while working at John Deere in Davenport, Iowa. (Hearing Report, p. 1) At that time, he was earning about \$18.00 per hour. (Tr. p. 95) Claimant was found to be permanently and totally disabled in the arbitration decision filed January 31, 2013. The decision was affirmed on appeal to the commissioner on September 4, 2013. The ruling on the petition for judicial review affirmed the commissioner's decision and was issued February 10, 2014. (Ex. 10)

Claimant now seeks to partially commute his permanent total disability award. Specifically, he desires to commute all but the last week of benefits using his life expectancy under the agency's life expectancy table. Claimant stated that he wants a partial commutation to provide for his family in the long-term, in the event that he passed away and to create an "asset pool," so that the "money can be turned into some sort of resource, rather than just a weekly allowance." (Tr. p. 21)

Claimant dropped out of high school and obtained his G.E.D. in 1991. He then returned to high school and received his regular high school diploma. (Ex. P, p. 89) He attended two community colleges and a technical school for less than two months on each occasion. He did not obtain any diploma or certificates from his post-high school education. (Id.)

Claimant is not a financially sophisticated person. He does not have a checking account and cannot recall the last time that he wrote a check. (Tr. p. 49) He receives a weekly workers' compensation benefit, which he takes to a check cashing business and pays a fee to have the check converted to a prepaid debit card. (Tr. pp. 51-52)

Claimant has been married to his current wife for 10 years. (Tr. p. 10) Claimant's spouse works at Burlington Coat Factory. (Tr. p. 16) She earns about \$9.00 or \$9.50 per hour and started working full-time during the week prior to the hearing. (Tr. pp. 16-17, 61-62) She works 30 hours per week. (Tr. p. 61) She has had trouble holding on to a job in the past due to health concerns. (Tr. p. 104)

Claimant has a total of four children. He has two sons and two daughters.

Claimant's oldest son, Christopher, is autistic, with ADHD, hyperactivity disorder and a seizure disorder. Although he is 27 years old, he resides with claimant. (Tr. pp. 8-9) Christopher receives Social Security benefits. (Tr. p. 9) Claimant is the payee for his son and administers those benefits for his son. (Id.)

Claimant's remaining children include a son, Emmitt, who is an adult and does not live with claimant and claimant's daughter, I.M., a minor who lives with claimant and his wife. Claimant's second daughter, F.C., also a minor, does not live with claimant. Claimant pays child support for F.C. in the amount of \$246.00 per month. (Tr. pp. 9-10; Ex. B; Ex. P, p. 84) Claimant was previously obligated to pay child support for his son

Emmit in the monthly amount of \$300.00. (Ex. A, p. 3) That obligation was to continue through Emmit's eighteenth birthday in January, 2012. (Ex. A, p. 3; Ex. P, p. 84) Claimant underpaid the child support obligation from 1999 through 2005, and was in arrears. (Ex. A, p. 7) The arrearage developed and grew prior to claimant's work injury. Claimant made final payment on the child support arrearage in 2014 through a withholding from his workers' compensation benefits. (Ex. F, p. 54; Ex. H, pp. 62-63)

Claimant and his wife rent their home in Davenport, Iowa. (Tr. p. 10) The amount of the monthly rent is \$1,000.00. (Id.) One third of that amount, \$333.00, is paid by their son Christopher, from his monthly Social Security benefit of \$723.00. (Tr. pp. 10, 70) Claimant has never owned a home. (Tr. p. 45)

Claimant testified that in addition to paying one third of the rent, his son Christopher also helps to pay other bills, and does so, about "half the time." (Tr. p. 72) After Christopher pays \$333.00 for rent, he has about \$390.00 left over, however, the payee account to which the benefits are sent monthly, did not have any money in it at the time of the hearing. (Tr. pp. 70-72)

Claimant and his wife pool their income and pay bills from their combined incomes. (Tr. p. 62)

Claimant's expenses in addition to rent include his current child support obligation for F.C. of \$246.00 per month, utilities, insurance and food. These expenses are detailed in his answers to interrogatories. (Ex. P, p. 85) In said answers, the rent is identified as \$1,000.00 per month and food is "as can be afforded." (Id.) From claimant's testimony, the rent is understood to be \$666.00 after Christopher's contribution and food obviously must be purchased to sustain the family. With these adjustments I find claimant's monthly expenses to be about \$1,500.00 per month. However, the child support obligation is paid as an automatic deduction from the current workers' compensation benefit payments and will continue until the child reaches 18 years old, or through the time the child may be 19 years old and graduates from high school, which appears to expire around the year 2023. (Ex. B. p. 19; Ex. P, p. 84) Therefore, it appears that the monthly bills that claimant must pay from the income he actually receives is about \$1,254.00 per month ($\$1,500 - \$246.00 = \$1,254.00$). However, claimant has testified that Christopher also helps with paying bills about half the time. The specific amount is unclear from the evidence presented, however, it is understood that the monthly bills paid by claimant and his spouse are somewhat less than the above amount, due to Christopher's payment of some of the bills, about fifty percent of the time.

Claimant's income at the time of the hearing was derived only from his workers' compensation weekly benefits of \$542.66 per week, before payment of attorney fees and child support. (Tr. p. 14) After those items are removed, claimant's net weekly benefit is \$323.93. Multiplying this number by 4.333 to arrive at a monthly figure

produces a result of \$1,403.69. As stated above, claimant's spouse earns about \$9.00 to \$9.50 per hour and works 30 hours per week. It would appear that claimant's spouse earns a gross weekly amount of about \$277.50 per week, or \$1,202.41 per month ($\$9.25 \times 30 \text{ hours} = \$277.50 \times 4.333 \text{ weeks} = \$1,202.41 \text{ per month}$).

Claimant's current indebtedness includes only two accounts, owed to two banks in the total amount of \$680.00. (Ex. P, p. 86) These two debts were incurred from overdrawn checking accounts. (Tr. p. 52) Claimant now uses a debit card and is no longer using a checking account. (Tr. pp. 49-51) Claimant does not own or use credit cards and has avoided accruing high interest credit card debt. (Tr. p. 54)

Claimant had a 401(k) from his employment at John Deere. He cashed in the 401(k) with the knowledge that he would have to pay a penalty and taxes because he stated that he had no other resources to fix a door to the home he was living in that was damaged during a storm. (Tr. pp. 48, 100-101) Claimant did not explain why he was obligated to pay for the storm damage repair to a home that he was renting, and why it was not paid for by the landlord.

Around September 13, 2013, claimant obtained a \$3,220.00 loan from a high interest lender, Oasis Legal Finance, which would not be paid back if the litigation was not successful. After the claim succeeded, he paid \$6,660.00 on March 3, 2014, to pay off that loan. (Ex. D, p. 38; Ex. J; Tr. pp. 55) It also appears that claimant obtained an additional loan from Oasis Legal Finance, which was paid back in the sum of \$9,030.00 around late October, 2013. (Ex. E, p. 53)

After the work injury on June 8, 2009, claimant began receiving \$371.00 per week of Weekly Indemnity (WI) benefits, which the undersigned understands to be short-term disability benefits, not workers' compensation benefits. (Tr. p. 93; Ex. C, pp. 21-27) Those benefits continued until June 2010, when they were switched to long-term disability benefits in the amount of \$1,425 per month. (Tr. p. 94; Ex. C, p. 28) The long-term disability benefits continued until March, 2014. (Tr. p. 94; Ex. C, pp. 28-35) The long-term disability benefits appear to have overlapped the payment of workers' compensation benefits, which included a lump-sum payment in October, 2013, and a second lump sum payment in March, 2014. (Ex. E, pp. 52, Ex. I, p. 65)

The net amount of the lump sum payment claimant received in October 2013, after payment of attorney fees, costs, and payment to Oasis Legal Financing, was \$26,400.80. (Ex. E, p. 53) The net amount of the lump sum payment claimant received in February 2014, after payment of attorney fees, costs, and payment to Oasis Legal Financing, was \$35,000.62. (Ex. I, p. 66) The total net amount to claimant over an approximate sixth month period from October 2013 to March 2014, was \$61,401.42.

Concerning claimant's financial assets, he was asked to list his assets in an answer to an interrogatory and did so in August, 2015. (Ex. P, pp. 82, 92) The

interrogatory specifically asked for information regarding investment accounts, bank accounts, and retirement accounts. The only asset listed by claimant was a 2005 Buick LeSabre, worth about \$5,000.00. (Ex. P, p. 92) He appeared to have no assets left other than a \$5,000 car from the over \$61,000.00 he had received. The undersigned notes that the last lump sum payments were about 17 months prior to his answer to interrogatory. (Tr. p. 81) The fact that claimant had divested himself of all of the money (aside from the car) is corroborated by the fact that in August 2015, claimant received a final disconnect notice from the water company that serviced the home that he rented at 2503 Warren Street, Davenport, Iowa. (Ex. O, p. 81, Tr. p. 60) In addition, he was delinquent on his bill to Mediacom at that time. (Ex. N, p. 79) Also, claimant initially testified that he and his wife stopped selling plasma in 2013 for income, but he later stated that he was still selling plasma for income after he received the lump-sum payments. (Tr. pp. 69, 104-105)

Claimant explained that the \$61,401.42 was spent on ordinary things, such as household items. Claimant stated that “[t]hrough the five years before we got that money, for those five years, all of the things that a lot of people take for granted like buying a pillow for their bed, buying new plates for their kitchen . . . for five years all of those things had to be ignored because we had to pay bills . . .” (Tr. p. 103) He stated that his family needed to buy things like good blankets, and good pots and pans. (Tr. p. 104) He also stated that he bought a car, which was presumably the 2005 Buick LeSabre, which he reported as his only asset of value in August, 2015. (Tr. p. 81; Ex. P, pp. 82-92) I find this explanation lacking. It is difficult to conceive how claimant could spend over \$60,000.00 in a period of 17 to 23 months on blankets, pillows and pots and pans and the like. I find this lack of an adequate explanation and accounting for the vanishing of these funds to be very concerning.

Claimant met with Michael Foland, of U.S. Bank. (Tr. p. 19) He initially met with Mr. Foland at the office of claimant’s counsel and discussed “different options available should I get the commutation, what he thought would be the best path of investment.” (*Id.*) They discussed ways to create an income, pay off debts and “possibly creating some sort of asset pool.” (*Id.*) Claimant then had another telephone conference with Mr. Foland a few weeks prior to the hearing on the partial commutation. They had discussions about properties, vehicles, investments, and trust accounts for child support. (Tr. p. 20) Claimant then met with Mr. Foland face-to-face at his office at U.S. Bank in Davenport on the same date as the telephone conference. (Tr. p. 20)

Mr. Foland testified at his deposition that his first meeting with claimant was of a general nature and they discussed claimant’s financial situation, the possibility of a lump sum amount being received by claimant, and the services provided by Mr. Foland. (Ex. T, p. 162) Mr. Foland was asked to put together a general proposal. (Ex. T. p. 162) This first meeting occurred in July or August of 2015, over a year before the hearing on this matter. (Ex. T, p. 162)

Mr. Foland was provided with one or more answers to interrogatories referencing claimant's financial condition. (Ex. T, pp. 163) He does not recall being provided any other documents from claimant or claimant's counsel. (Ex. T, p. 163) Mr. Foland believed that claimant had never had a lot of money previously and also believed that he was frugal, he had been able to get by financially. He also stated that claimant appeared to care deeply about his family, he had "a good upbringing and that he was responsible with what he had." (Ex. T, p. 164) Mr. Foland drew this conclusion based on his understanding that "his bills were paid" and "that he was paying his child support." (Ex. T, p. 164) The undersigned notes that around the time of this initial meeting, claimant received a final disconnect notice from the water company and was delinquent on his Mediacom bill, indicating that his bills were not necessarily getting paid and that his payment of child support was being withheld from his weekly workers' compensation benefits. (Ex. N; Ex. O, p. 81, Tr. p. 60) Mr. Foland did not recall claimant indicating that he was delinquent on any utility bills, or whether he had been delinquent on child support payments in the past. (Ex. T, p. 164) Mr. Foland was not aware of claimant's use of high interest loans with Oasis Legal Finance. (Ex. T, p. 172) However, he was aware that claimant had bounced some checks and that he had been in arrears with his checking account at U.S. Bank. (Id.) It is not clear to the undersigned whether or not Mr. Foland was aware that claimant had received lump sum payments of over \$61,000.00 and seemed to have very little to show for it.

Mr. Foland stated that he believed it was "advantageous for Mr. Meek to have a lump sum based on my 25 years as a financial advisor." (Ex. T, p. 165) He stated that "it is a quality-of-life issue for Mr. Meek. I believe it gives him an opportunity to possibly have some home ownership [and] to have funds set-aside for emergencies." (Ex. T, pp. 165, 175) However, Mr. Foland also stated that "[b]ased on the calculation that I did, the income that he would receive, based on what I know right now, would be approximately about what he's receiving right now, although it would be a bit of a stretch just based on the number that I was working with." (Id.) However, Mr. Foland then clarified that claimant's income after the lump-sum payment, "would actually be less" compared to his current income. (Ex. T, p. 166) Mr. Foland testified that this was based on an assumption of a lump sum payment of about \$300,000 and a withdrawal rate of between 5 ½ or 6 percent, although Mr. Foland stated "I do not like to see that high of a withdrawal on a lump sum." (Id.) However, it appears that Mr. Foland actually used a lump sum amount of \$400,000.00 according to his investment proposal. (Ex. R, p. 98; Ex. 4, p. 51)

Certainly homeownership has significant advantages over long-term rental, and having an emergency fund is also a good thing. However, Mr. Foland's testimony that claimant's income would be reduced is concerning.

After the first meeting, Mr. Foland prepared the investment proposal which was to place 100 percent of the lump sum amount into a Vanguard S&P fund, with a 60 percent Equity and 40 percent fixed income mix. (Ex. R, p. 101)

Mr. Foland met with claimant again about four to six weeks prior to Mr. Foland's deposition. (Ex. T, p. 168) During that meeting, for the first time, they discussed the possibility of claimant buying a duplex. Mr. Foland stated that claimant intended to spend no more than \$125,000.00 on a duplex. (Ex. T, p. 170) Mr. Foland stated that home ownership was a good thing because "even if he happens to burn through some cash" the home would still exist as an asset that he could borrow against. (Ex. T, pp. 170) In addition, Mr. Foland believed that rental property that was "owned outright" and well managed could provide a good return on investment. (Ex. T, p. 169) However, at hearing claimant stated that the advantage of buying a duplex was that the rental side could "cover the cost of whatever the mortgage would be," and that he spoke to Mr. Foland "about different levels of down payment in order to reduce the cost." (Tr. p. 22) Therefore, it appears to the undersigned that the financial advisor was primarily recommending duplex ownership without a mortgage, but that claimant indicated that he intended to have a mortgage expense associated with the purchase.

Mr. Foland did not recommend an annuity for a source of income, because he stated that "I don't see it being a lot different than what he has right now." (Ex. T, p. 171) The undersigned notes that with the plan not recommending an annuity or other sort of contractual obligation, Mr. Foland agreed that the account could simply be liquidated within a week after it was opened. (Ex. T, p. 177) Although Mr. Foland stated that based on his feeling after talking with claimant, he did not expect that to happen.

Mr. Foland's investment proposal was not something that he "would consider a full proposal." (Ex. T, p. 173; Ex. R; Ex. 4) Mr. Foland stated that if claimant received the partial commutation, that he would put together a more detailed "robust and holistic" financial plan. (Ex. T, p. 174) However, he would not prepare such a plan until the amount for the lump sum payment was known, because in his opinion, preparing such a detailed plan at this stage without knowing the exact amount of the lump sum would produce a plan that was based on an assumption, and would be, by its nature, somewhat arbitrary. (Ex. T, p. 174) If claimant were to proceed with the investment guidance of Mr. Foland, there would be a "1½ percent advisory fee," which is not contained in the present investment proposal, along with a small management fee of 8 to 10 basis points charged by the investment fund, Vanguard. (Ex. T. p. 178)

Mr. Foland stated that gains on the sale of stocks and bonds would be taxable. (Ex. T, p. 181) He was unaware whether Claimant's present workers' compensation benefits were taxable. (Id.)

Mr. Foland advised that claimant is not bound in any way to invest funds with U.S. Bank or to follow any portion of his recommendation. (Ex. T, p. 176)

I find that claimant's limited education, and lack of experience with any sophisticated financial dealings are detriments that weigh against granting his request for a partial commutation. I also find that claimant's inability to financially overcome losses, should he mismanage the commuted funds, is also a significant detriment to granting the commutation. Improper investment, foolish expenditures, and/or unanticipated losses would be catastrophic financial losses for claimant. If such contingencies occurred, claimant would have to significantly change his standard of living or he would become unable to meet his financial obligations.

Of significant concern to the undersigned is claimant's lack of a reasonable explanation concerning the exhaustion of the \$61,401.42 in lump sum payments that he received over a six-month period. It was clear from the evidence presented that about 17 months after the last lump sum was paid, claimant had little to no assets, aside from a car that he valued at \$5,000. It does not appear that the lump sum payment of an accrued child support balance of \$4,516.99 accounts for any of the reduction in cash from the workers' compensation payments. (Ex. H, p. 62) After the lump sum payments he was selling plasma for income and was delinquent on utility bills. The explanation that he used the money to buy a car and household items is not a reasonable explanation. Whether the explanation is accurate or not, it demonstrates very poor financial management.

Factors that weigh in favor of claimant's request for partial commutation include: (1) his desire to commute the funds, particularly his desire to protect his family in the event of his early demise; (2) the current interest rates will permit a smaller reduction of the permanent total value than would be historically true; (3) the modest amount of debt that claimant had at the time of the hearing; (4) his consultation with a person more sophisticated than himself in the world of finances; and, (5) the potential for claimant to secure a home without a mortgage and have an emergency fund.

However, claimant's testimony indicated that he intended to seek home ownership, but with the use of a mortgage, thereby lessening the stability of that investment. Also, regardless of Mr. Foland's recommendations, claimant's history demonstrates that he may not be likely to follow his guidance.

I find that the detriments of claimant's proposed partial commutation outweigh the benefits that might be obtained. If claimant's history of financial management was not so concerning to the undersigned, or if he had been able to present a detailed written budget along with his consistent compliance with that budget to counter balance his failure to handle the prior lump sum payments in a reasonable fashion, I would have been significantly more likely to find that the benefits of this commutation outweigh the detriments. However, claimant's lack of financial sophistication, his history of failing to

reasonably handle or even satisfactorily account for the prior lump sum payments, suggest that there is little likelihood of success if the partial commutation was granted at this time. Therefore, I find that it is not in claimant's best interest at this time to grant the petition for partial commutation.

CONCLUSIONS OF LAW

The primary legal issue for determination is whether claimant should be granted his partial commutation request. Iowa Code section 85.45(1) provides in relevant part:

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.

Claimant has requested a partial commutation of all but the last week of benefits owed pursuant to the life expectancy table adopted in agency Rule 876 IAC 6.3. 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 benefits amount over the entire payment period.

Agency Rule 876 IAC 6.3 provides a life expectancy table that is to be used in determining the amount to be paid a claimant in commutation proceedings. According to that life expectancy table, claimant has a remaining life expectancy of 1810 weeks as of the issuance of this decision.

Iowa Code section 85.45 provides that a commutation may be ordered when the commutation is shown to be in the best interests of the person who is entitled to the compensation. Diamond v. Parsons Co., 256 Iowa 915, 129 N.W.2d 608 (1964). The factors relied on in determining if a commutation is in the best interests of the claimant

include: the claimant's age, education, mental and physical condition, and actual life expectancy; the claimant's family circumstances, living arrangements and responsibilities to dependents; the claimant's financial condition, including sources of income, debts, and living expenses; the claimant's ability to manage the funds or arrange for someone else to manage them; and the reasonableness of the claimant's plan for investing the lump sum sought. Dameron v. Neumann Bros., Inc., 339 N.W.2d 160, 164 (Iowa 1983).

In determining whether the requested commutation is in the best interests of the claimant, a benefit-detriment analysis is employed. The above recited factors, along with the claimant's preference and the benefits of the claimant receiving a lump-sum payment, are balanced against the potential detriments that could result if the claimant 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. Diamond, 256 Iowa at 929, 129 N.W.2d at 617; Dameron, 339 N.W.2d at 163-164.

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, 256 Iowa 915, 129 N.W.2 608 (1964). 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 164.

Ultimately, the determination of whether the commutation is within the best interests of the claimant is a factual determination based upon the factors being balanced in each case. Dameron, 339 N.W.2d at 163 ("Where, as here, the industrial commissioner in a contested case proceeding has determined that commutation was in the best interests of the claimant, the trial court and this court are now bound by that determination unless it is 'unsupported by substantial evidence in the record.'")

As the party moving for the partial commutation, claimant bears the burden to prove that the commutation is in his best interest. Iowa R. App. P. 6.14(6).

In my factual findings, I recited and weighed the relevant legal factors to be considered in determining whether the requested partial commutation is in claimant's best interests. Having found that the requested commutation is not in claimant's best interests, I conclude that claimant failed to carry his burden of proof and further conclude that the partial commutation requested should not be granted.

ORDER


THEREFORE, IT IS ORDERED:

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

Defendants shall continue to pay the benefits as ordered in the January 31, 2013 arbitration decision and affirmed in the September 4, 2013 appeal decision and the February 10, 2014, ruling on judicial review.

Each party shall pay their own costs.

Signed and filed this 11th day of July, 2017.


TOBY J. GORDON
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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