

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARRIE TAYLOR,

Claimant,

vs.

WALGREENS,

Employer,
Self-Insured,
Defendant.

FILED

DEC 13 2017

WORKERS COMPENSATION

File No. 5024858

PARTIAL COMMUTATION

DECISION

HEAD NOTE NO: 3303.20

STATEMENT OF THE CASE

Carrie Taylor requests partial commutation of a prior permanent total disability award. Ms. Taylor's case was initially resolved via a partial commutation approved on January 27, 2011. However, claimant's condition worsened and she filed for a review-reopening. On March 28, 2017, a review-reopening decision was filed, awarding claimant permanent total disability benefits as a result of her November 12, 2007 work injury. That award is now final agency action.

Claimant filed a petition for partial commutation, seeking to commute all but the last week of the permanent total disability award on May 31, 2017. The hearing on claimant's request for partial commutation was held on November 2, 2017.

Ms. Taylor was the only witness to testify at the partial commutation hearing. The evidentiary record also contains claimant's Exhibits 1-10, which were received without objection. Defendants did not offer a separate set of exhibits or call any witnesses to testify. This case was fully submitted to the undersigned at the conclusion of the November 2, 2017 hearing.

ISSUE

The parties submitted the following issue for determination:

1. Whether a partial commutation of claimant's permanent total disability award would be in claimant's best interest.

FINDINGS OF FACT

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

Carrie Taylor is 43 years old. She dropped out of high school, obtained a job and lived independently at the age of 16. She obtained her GED in 1992 and subsequently attended a criminal justice program at Des Moines Area Community College. However, she did not complete her college course of studies.

Ms. Taylor worked for Walgreen's since at least 2007. She received promotions in that employment before her back injury. After her back injury, she received a demotion and eventually was terminated because she was not able to perform the duties of a cashier at Walgreen's. Obviously, she was found to be permanently and totally disabled by another deputy commissioner in early 2017.

Ms. Taylor has been responsible for her own finances since the age of 16. She is a single mother of two children. She candidly concedes she has had some difficulties with finances in the past, including filing for bankruptcy after her second child was born and required extensive medical treatment. She lost her former job due to absences during her child's treatment, which also caused her to lose her health insurance. Her child's medical expenses ultimately caused her to file for bankruptcy.

Since her bankruptcy, Ms. Taylor acknowledges some additional financial difficulties, including three small claims judgments as well as a small credit card debt that remain outstanding. Ms. Taylor acknowledges that she currently has some outstanding medical expenses that need to be paid. She also admits that she has been late on her rent or payment of other bills from time to time depending on when she received a paycheck. She also acknowledges that she has had to take time off work to tend to a sick child, which has caused periodic reductions in her income that have affected her finances.

On the other hand, her last financial debt that resulted in a small claims action occurred in 2015. She moved out of a rental residence because the landlord would not provide necessary repairs. As a result, she broke her lease and ultimately gave up a judgment to the landlord.

In the past two and a half years, Ms. Taylor has resided with a boyfriend. She shares the monthly household expenses by paying her boyfriend approximately \$500 per month from her workers' compensation checks. However, she acknowledges that she does not provide half of the financial support for the household and candidly acknowledged that it causes strife in her relationship with her boyfriend.

Ms. Taylor testified that she desires the requested commutation. She testified that she believes the commutation is in her best interest because it provides her a means of being financially independent and self-sustaining without having to rely upon a boyfriend or someone else for financial support. She testified that she does not feel financially stable at the present time because she is reliant upon her boyfriend to pay the majority of the monthly household expenses.

Ms. Taylor testified that the commutation would provide the freedom and independence to leave her current romantic relationship, if needed. She also testified

that her relationship has been "rocky" for a period of time. I find this desire, as expressed by Ms. Taylor, is reasonable and certainly in her best interest.

Claimant testified as to her current monthly expenses and was aware of anticipated future monthly expenses if she was to be granted the commutation and elected to purchase her own residence. Ms. Taylor is aware that she would receive a lump-sum and would have to rely upon investment income to support herself after the commutation.

Ms. Taylor has consulted a financial advisor. The financial advisor has prepared an investment plan and provided estimates of claimant's future income utilizing certain assumptions and scenarios. Ms. Taylor is aware of these recommendations, she is aware of the potential risks of investing her funds, and she is willing to accept those risks on the belief that her recommended portfolio is relatively conservative and is not likely to lose funds over time.

Ms. Taylor also testified she has concerns about inflation and the fact that her workers' compensation benefits will not increase with inflation. However, reviewing the proposed investment plan, there is also no proposal for increased income from her investments and an assumption that there will be no inflation over time.

Defense counsel questioned claimant about future expenses if she were to elect her independence from her current relationship and purchase her own home. Ms. Taylor has investigated her likely future expenses. She has a grasp of her likely future utility charges, phone expenses, insurance charges. She testified that she has "done the math" to compare her future income versus her anticipated expenses to ensure that she can financially survive if the commutation is granted.

Claimant is aware that she will have costs associated with the upkeep of a home. She is aware that she may need to utilize some equity over time to perform necessary repairs and maintenance on her home and that she may not have income to otherwise make those repairs.

Ms. Taylor also testified that she received her weekly worker's compensation checks late periodically and estimated that she received approximately 75 percent of those checks late, even if by a few days. Receiving checks late causes her to be late in paying bills or contributing funds to her boyfriend to pay household expenses. Certainly, receiving late checks is causing stress and distressing her relationship with her boyfriend as well as making a financial hardship on claimant at the present time. A commutation would provide her a steady, reliable stream of income on a predictable basis.

Review of the financial plan for claimant if the commutation is granted reveals that the financial planner has recommended the purchase of a home, a vehicle, payment of past debts, and investment of the remainder of the commuted funds. The amount allocated to the purchase of a residence may be less than the amount claimant

is contemplating for the purchase of a home and could affect the ultimate investment and monthly income available.

However, review of the financial plan demonstrates that claimant could expect a monthly income ranging from \$800 to \$916 per month. Her monthly expenses, including real estate taxes, home insurance, car insurance, and typical additional monthly expenses would approximate the monthly income being predicted. It is possible that claimant's investments could experience losses, making the predictions in the financial plan more tenuous.

Ms. Taylor is not experienced with financial investments. On the other hand, she is prepared to utilize the services of a financial planner. She is an intelligent woman, and has done research in an effort to determine whether she can become financially independent and experience more personal freedom and independence through this requested commutation. I find that Ms. Taylor is making an informed and conscious choice in seeking this commutation.

No evidence was introduced as to claimant's criminal background. However, she presented in person for the hearing. It is found that she is not an inmate as defined by Iowa Code section 85.59.

I find that claimant's age, education level, past financial difficulties, and lack of experience with any sophisticated financial dealings are all significant detriments that weigh against granting her request for a partial commutation. I also find that claimant's inability to financially overcome any losses should she mismanage the commuted funds is a significant or weighted factor against granting the commutation.

On the other hand, the factors that are benefits weighing in favor of claimant's request for partial commutation include: (1) her desire to commute the funds; (2) the fact that inflation will eventually erode the spending power of her permanent total disability benefits without cost of living adjustments; (3) the ability for claimant to pay off past debts and have a fresh financial start; (4) the conservative nature of the investment plan suggests that claimant would have financial protection for the commuted period of time if she follows the recommended plan; and (5) commutation of the funds would provide claimant personal freedom and financial independence so she is not reliant upon other individuals for her financial security.

Under the circumstances of this case, I find that the benefits of claimant's proposed partial commutation outweigh the detriments that might be faced. Ultimately, claimant's desire and need to be financially independent and able to support herself and her children outweighs the potential detriments or risk under this set of facts. Therefore, I find that it is in Ms. Taylor'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 her 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

Ms. Taylor 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. Rule 6.3 provides, "The life expectancy is determined by taking the age of the person, set forth in the 'age' column and comparing it to the 'weeks' column, which indicates the weeks an individual at the age indicated will be expected to continue to live." The Commissioner's adoption of agency rule 876 IAC 6.3 provides a presumption of life expectancy and makes the number of weeks owed claimant under her permanent total disability award definitely determinable.

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 interests 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.2d 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 her best interest. Iowa Rule of Appellate Procedure 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 interest. Having found that the requested commutation is in claimant's best interest, I conclude that claimant carried her burden of proof and further conclude that the partial commutation requested should be granted. Iowa Code sections 85.45; 85.48.

ORDER

THEREFORE, IT IS ORDERED:

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

Defendants shall pay a lump sum of the commuted benefits for all of claimant's remaining lifetime benefits, except for the final week of her life expectancy, utilizing 876 IAC 6.3.

Benefits shall be commuted using the weekly rate of two hundred eighty and 31/100 dollars (\$280.31).

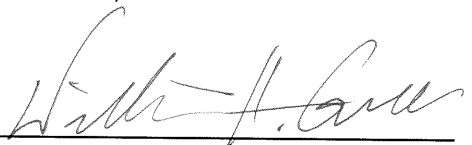
Defendants shall be entitled to a discount rate on the commuted benefits pursuant to Iowa Code section 85.47 and Iowa Code section 535.3.

The parties shall cooperate to calculate the applicable value of the commuted benefits.

If the parties cannot reach an agreement on the commuted value, they should file a request for appointment of a financial expert to calculate the value of the partial commutation with the expense of that financial expert to be assessed as a cost against whichever party(ies) presented inaccurate calculations of the commuted value.

Claimant shall remain entitled to causally related medical expenses pursuant to Iowa Code section 85.27.

Signed and filed this 13th day of December, 2017.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/srs

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.