

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEVERE CLINTON,

Claimant,

vs.

ALL AMERICAN HOMES,

Self-Insured Employer,

Defendant.

File No. 5032603

PARTIAL COMMUTATION

DECISION

Head Note No.: 1803

FILED

NOV 2 2015

WORKERS' COMPENSATION

STATEMENT OF THE CASE

DeVere Clinton, claimant, has filed a petition for partial commutation and seeks workers' compensation from All American Homes, self-insured employer, defendant.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on May 21, 2015, in Waterloo, Iowa. The record in the case consists of claimant's exhibits 1 through 3; as well as the testimony of Ellen Clinton.

ISSUES

The parties presented the following issue for determination:

1. Whether claimant should be awarded a partial commutation.

FINDINGS OF FACT

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

Previously, claimant was awarded permanent total disability. He now seeks a partial commutation of that award.

Claimant's wife, Ellen Clinton, testified she has been married to claimant for almost 43 years. Their family finances are managed by her. They have lived within their means. They have never filed for bankruptcy. Their debt consists of two small loans totaling \$5,000.00. They own their home and have no mortgage against it. Their

credit rating is 821. The only negative items on their rating were from workers' compensation medical bills that were not timely paid.

She monitors the bank statement, and recently had to call the bank to point out an error they made. She worked for a facility that helped persons with mental disabilities, and she did bookkeeping there. She also did bookkeeping for their church Sunday school. She feels her husband could also do the family finances but she enjoys doing it.

Exhibit 1, page 33, is her breakdown of their family finances. It shows claimant's social security retirement benefit, as well as her own. There is an annuity from which they take out \$200 per month. Claimant also has an annuity, with a current value of \$62,000.00. He is not presently taking any money from that annuity.

She testified John Locher works for Edward R. Jones financial advisers. He has proposed investing a sum of money for claimant. Exhibit 1, page 30, shows claimant would get \$833.00 per month, or \$10,000.00 annually, from this investment. They can pay their bills without claimant's annuity.

On cross examination, she agreed this would produce an excess of \$1,026.06. When claimant turns 70 and one half, he will receive \$600.00 per month from his annuity, which she thinks is the minimum. He will save the remainder. He is 68 now.

The weeks used for the commutation petition was 967 weeks. He has received 46 weeks of compensation since filing the petition in July 2014. The date of injury was 426 weeks ago, over eight years ago. Claimant has been receiving \$523.03 since then, with attorney's fees out. She is now 71 years old.

Claimant injured his back in December 2008. He underwent surgery by Chad Abernathy, M.D., and later received a rating of seven percent impairment of the body as a whole. He was awarded permanent total disability benefits in an arbitration action.

Claimant does not take any prescription medication for his back. He lifts salt bags weighing 40 pounds occasionally.

He had a 401(k) plan that lost value in 2008. It began as \$103,000.00 but half of it was lost. He cashed it in at that point and put it into the annuity.

They own three vehicles outright. They do not have a savings account.

They would use a commutation to pay off their \$5,000.00 in debt. They understand out of the commutation their attorney's fees would be paid, as well as 2.5 percent for John Locher. Mr. Locher would also receive .65 percent each year thereafter.

The discount rate would be 2.23 percent. They understand to make it worthwhile, the funds would have to be invested at a rate in excess of 2.23 percent per annum, plus the annual maintenance fee of .65 percent, and a one-time fee to John Locher of 2.5 percent prorated. She trusts John Locher to invest the funds in a way that would accomplish that.

They are comfortable now, with an excess of \$1,000.00 per month over their expenses. Yet she feels a commutation is in their best interests. They would be investing with Mr. Locher around \$250,000.00. She understands the workers' compensation payments they now receive are tax free, but the money from the investments will be taxable.

She understands the return is not guaranteed and there is some risk involved. They would withdraw about \$10,000.00 per year from the investment.

Deposition exhibit 1 in exhibit 1 shows the consumer price index inflation rate for the last eight years was 1.65 percent inflation per year on average. They have not used John Locher for financial advice before.

CONCLUSIONS OF LAW

The workers compensation system contemplates weekly payments of an award to an injured worker, to offset the disability suffered as a result of the work injury, and to replace the loss of weekly earnings the worker enjoyed before being injured.

The workers' compensation law also allows for a commutation of an award when it is shown a claimant is capable of managing a lump sum distribution of the award and will not suffer hardship from a mismanagement of the funds. In this case, the greater weight of the evidence shows claimant and his wife are capable financial managers. They have prudently managed their funds for many years, and do not rely on the weekly workers' compensation benefit to meet their needs. They fully understand income from an investment of the funds would be taxable, whereas the workers' compensation benefit is not. They understand they have to make a minimum return on their funds to offset the costs. But, they have consulted a reliable and experienced financial investment adviser, and the plan for the funds is sound.

It is concluded a partial commutation is in claimant's best interests and is hereby approved.

ORDER

THEREFORE IT IS ORDERED:

Claimant's award of permanent total disability workers' compensation benefits is partially commuted to provide payment to claimant in a lump sum all of the remaining award with the exception of the last week of benefits, which is left open.

Costs are taxed to defendants.

Signed and filed this 2nd day of November, 2015.



JON E. HEITLAND
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.