BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUN 12 2017
WORKERS' COMPENSATION

MARK D. SLOAN, Claimant, vs. MARK D. SLOAN, D.D.S., P.C., d/b/a SLOAN FAMILY DENTISTRY, P.C., Employer, and MARKEL INSURANCE CO., Insurance Carrier, Defendants.	File No. 5065386 RULING ON MOTION TO DISMISS PETITION FOR PARTIAL COMMUTATION

On May 8, 2017, claimant filed an original notice and petition for arbitration and asserted a request for a partial commutation in that petition as well. On that same date, claimant filed a Form 9A, which is the prescribed form for a partial commutation. In paragraph one of the petition for partial commutation, claimant alleged that any permanent disability he sustained is "to be determined." Similarly, in paragraph two of the petition for partial commutation, claimant alleges his total entitlement is "to be determined."

Defendants filed a motion to dismiss claimant's petition for partial commutation on May 23, 2017. Defendants contend claimant's petition for partial commutation is legally deficient because it is impossible to definitively determine claimant's future benefit entitlement, if any. Defendants contend the petition for partial commutation must be dismissed at this juncture because claimant is not able under any stated facts in either petition to definitively determine or establish his entitlement to benefits.

Claimant filed a resistance to the motion to dismiss on May 25, 2017. Claimant asserts that the provisions of Iowa Code section 85.45(1)(a) prohibit the award of a partial commutation unless the amount of benefits claimant is owed is definitely determined. However, claimant contends that section 85.45(1)(a) does not preclude the filing of a petition for partial commutation.

Claimant concedes it may be appropriate to stay or bifurcate the partial commutation proceeding until the underlying arbitration proceeding is completed. However, claimant references a recent statutory change in Iowa that will preclude the

filing of a request for commutation after June 30, 2017, without the consent of defendants. Claimant contends that it would be prejudicial to his rights to dismiss his petition for partial commutation with the impending law change taking effect July 1, 2017.

The parties present an issue of first impression at the Commissioner level. Given recent statutory changes, this issue may become more prevalent and direction is needed to permit deputy commissioners to understand the agency interpretation of this issue as well as to provide these and various other parties guidance as to the agency's interpretation. Given that numerous parties may be affected in several cases that may be filed in the very near future, I deem it appropriate, as the Workers' Compensation Commissioner, to retain jurisdiction over the pending motion to dismiss claimant's petition for partial commutation. I specifically retain jurisdiction over this issue, I enter a ruling as final agency action on this matter, and I remand the remainder of the issues in the underlying arbitration proceeding for hearing and determination at the deputy commissioner level.

Rule 876 IAC 4.35 makes Iowa Rule of Civil Procedure 1.421, regarding motions to dismiss, applicable to this agency. Iowa Rule of Civil Procedure 1.421 permits an attack upon a petition when the facts alleged within that petition fail to state a claim upon which any relief may be granted.

A motion to dismiss should only be granted if there are no stated facts conceivable under which a claimant might show a right of recovery. Nixon v. State, 704 N.W.2d 643, 644, (Iowa 2005). A motion to dismiss is sustainable only when it appears to a certainty that claimant is not entitled to any relief under any stated facts that could be proved to support a claim. Bindel v. Iowa Manufacturing Co. of Cedar Rapids, 197 N.W.2d 552, 553 (Iowa 1972). To prevail on a motion to dismiss, a movant must show that there are no stated facts conceivable that claimant might show a right of recovery. State ex rel. Miller v. Philip Morris, Inc., 577 N.W.2d 401, 403 (Iowa 1998).

When a motion to dismiss tests the legal sufficiency of the petition, the allegations pled by the claimant are admitted as true and all inferences which may be drawn from those facts are construed in a light most favorable to the claimant. The motion to dismiss also waives any ambiguity or uncertainty in the petition. Leuchtenmacher v. Farm Bureau Mut. Ins., 460 N.W.2d 858, 861 (Iowa 1990); Curtis v. Bd. of Sup'rs of Clinton County, 270 N.W.2d 447, 448 (Iowa 1978).

When interpreting workers' compensation provisions, the law is construed liberally in favor of the claimant. Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990); Teel v. McCord, 394 N.W.2d 405, 406-407 (Iowa 1986); Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 126 (Iowa App. 1984). The beneficial purposes of the law will not be frustrated by reading something into it which is not there or by adopting a strained or narrow construction. Thomas, 349 N.W.2d at 126.

On the other hand, the plain meaning of the statute must also be enforced. Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996). Unambiguous language in a statute should be given its plain and rational meaning and applied as written. Id. Therefore, a motion to dismiss is only sustained when it appears to a legal certainty that claimant would not be entitled to any relief under any state of facts which could be resolved in support of the claims asserted. Halvorson v. City of Decorah, 258 Iowa 314; 138 N.W.2d 856, 860 (1965).

Iowa Code section 85.45 requires that "the period during which compensation is payable can be definitely determined" before future payments of compensation may be commuted to a present worth lump sum payment. In this instance, claimant's petition for partial commutation asserts that any benefit entitlement is yet "to be determined." Taking claimant's petition for partial commutation on its face, along with the fact that claimant filed a simultaneous petition for arbitration, it is apparent that the period during which compensation is payable cannot be definitely determined. Iowa Code section 85.45(1)(a).

This agency has previously held that a petition for partial commutation cannot be filed until after there is a definitely determined period for which benefits are owed, either through an agreement for settlement or by the filing of an arbitration decision. See Thornton v. Clayton County Recycling, File No. 5039943 (Ruling January 2013); Johnson v. West Ridge Care Center, File No. 5019237 (Ruling on Motion to Dismiss March 2009). I concur with the analysis of the prior deputy rulings on this issue.

Given that there has been neither a settlement nor an arbitration award in this matter, there is nothing to be commuted at this point in time. On its face, claimant's petition for partial commutation concedes that any entitlement to benefits remains "to be determined." As such, claimant's petition for partial commutation fails on its face to establish "the period during which compensation is payable" and whatever that period is certainly cannot be "definitely determined" at this juncture. Claimant's petition for partial commutation is premature and is not permissible pursuant to Iowa Code section 85.45(1)(a).

Defendants also ask for assessment of costs and sanctions as a result of claimant's filing of a petition for partial commutation in this matter. I find claimant's actions were a legitimate response and reaction to recent legislation and I find claimant's filing of a partial commutation was an attempt to preserve any rights he may have to a partial commutation before the recent statutory amendments take effect. In this sense, I find claimant had a legitimate basis and reason for his filing of the petition for partial commutation.

Moreover, I identified only two prior rulings from a deputy commissioner. This appears to be an issue of first impression at the agency level. Claimant's attempt to obtain clarification of this legal issue from the agency is reasonable and appropriate under the circumstances. Assessment of costs is a discretionary function of the agency. See Iowa Code section 86.40. Under the facts and circumstances presented, I

conclude it would be most appropriate for each party to bear their own costs associated with the petition for partial commutation. I deny any request for sanctions.

ORDER

THEREFORE, IT IS ORDERED:

The Iowa Workers' Compensation Commissioner retains jurisdiction over this motion to dismiss claimant's petition for partial commutation and enters this ruling as final agency action pursuant to Iowa Code sections 17A.15(1), 86.17(1) and 86.24(5).

Defendants' Motion to Dismiss is sustained.

Claimant's Original Notice and Petition for Partial Commutation is dismissed without prejudice.

Defendants' request for costs or sanctions is denied.

The parties shall bear their own costs related to the partial commutation contested case proceeding.

The underlying arbitration proceeding is remanded to be heard and decided at the deputy commissioner level.

Signed and filed this 12th day of June, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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