

1980

the State Insurance Fund v. Kenneth E. Renak and the Industrial Commission of Utah : Brief of Plaintiff

Utah Supreme Court

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M. David Eckerlsey; Attorney for Plaintiff Robert R. Brown, Frank V. Nelson ; Attorneys for Defendants

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IN THE SUPREME COURT
OF THE STATE OF UTAH

THE STATE INSURANCE FUND,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 16889
	:	
KENNETH E. RENAK and THE	:	
INDUSTRIAL COMMISSION OF UTAH,	:	
	:	
Defendants.	:	

WRIT OF REVIEW FROM AN ORDER OF
THE INDUSTRIAL COMMISSION OF UTAH

BRIEF OF PLAINTIFF

M. David Eckerlsey
BLACK & MOORE
500 Ten West Broadway Bldg.
Salt Lake City, Utah 84101
Attorney for Plaintiff

Robert R. Brown
431 South 300 East
Salt Lake City, Utah 84111
Attorney for Defendant
Renak

Frank V. Nelson
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Defendant
Commission

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Clerk, Supreme Court, Utah

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BLACK & MOORE
500 Ten West Broadway Bldg.
Salt Lake City, Utah 84101
Attorney for Plaintiff

Robert R. Brown
431 South 300 East
Salt Lake City, Utah 84111
Attorney for Defendant
Renak

Frank V. Nelson
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Defendant
Commission

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	:	
Defendants.	:	

BRIEF OF PLAINTIFF

STATEMENT OF THE NATURE OF THE CASE

Plaintiff State Insurance Fund is seeking review of an Order of the Industrial Commission of Utah granting Kenneth Renak compensation benefits payable as a lump sum without discounting such sum to equal the present value of the payments commuted.

DISPOSITION BY THE INDUSTRIAL COMMISSION

On October 4, 1978, the State Insurance Fund and Kenneth Renak entered into an agreement whereby the Fund became obligated to pay Mr. Renak \$32,743.00 in permanent partial disability compensation at the rate of \$137.00 per week until that total was reached. Mr. Renak then petitioned the Industrial

Commission for an Order approving a lump sum payment of \$12,000.00 from the weekly balance due, pursuant to the provisions of Utah Code Ann. §35-1-79 (1953). On December 20, 1979 the Commission ordered payment of the lump sum benefits. The State Insurance Fund filed a timely Motion for Review of that Order on January 4, 1980, which motion was denied by the Commission on January 9, 1980.

FACTS

Mr. Kenneth Renak was injured while working in the course and scope of his employment with the Nu Art Lighting & Manufacturing Company on September 24, 1977. He sustained serious injuries to both hands and the State Insurance Fund, as the workmen's compensation carrier for Nu Art, assumed liability and began paying temporary total disability compensation. Upon receipt of reports from Mr. Renak's treating physician concerning the extent of his permanent disability, the Fund recognized that it would be liable for the maximum benefits payable under the schedule provided for in the Compensation Act and agreed with Mr. Renak to provide those weekly benefits.

(R. 6)

Mr. Renak petitioned the Commission for an advance lump sum payment of \$12,000.00 of such benefits and that petition was approved by the Commission and subsequently affirmed after the Commission rejected the Fund's contention that the lump sum payment must be reduced to present value.

RELIEF SOUGHT ON REVIEW

Plaintiff requests that the Order of the Commission be reviewed and the matter remanded to the Commission with instructions to modify the Order to reflect an appropriate discount of the lump sum award to present value.

ARGUMENT

POINT I

WHEN AUTHORIZING PAYMENT OF LUMP SUM BENEFITS FOR COMPENSATION NOT YET ACCRUED, THE INDUSTRIAL COMMISSION MUST DISCOUNT SUCH LUMP SUM PAYMENTS IN A MANNER WHICH CAUSES THE SINGLE AWARD TO BE EQUAL IN VALUE TO THE PAYMENTS COMMUTED.

Utah Code Ann. §35-1-79 (1953) authorizes the Industrial Commission to commute periodical benefits to one or more lump sum payment when they deem such action to be advisable. Unlike the statutes of many states providing for such action, Utah's scheme doesn't specify the grounds upon which the Commission should take such action or what rate of discount, if any, should be applied when a lump sum payment is authorized as a substitute for several periodic payments to be made in the future. However, even in those jurisdictions where no specific discount rate is identified, Courts have repeatedly held that inherent in the concept of "commutation" of benefits is the principle that the single payment must be harmonized in value with the periodic payments commuted on an actuarially sound annuity basis. As the Court of Appeals of New Mexico stated in Codling v. Aztec Well Servicing Co., 89 N.M. 213,

549 P.2d 628 (1976), "[t]he lump sum award should be calculated on a sound annuity basis and should not be permitted for the purpose of beating the actuarial tables." 549 P.2d at 631.

The Court of Appeals of Maryland was presented with this identical issue in Bethlehem Steel Co. v. Jackson, 87 A.2d 841 (Md. App. 1952), and noted that commutation has repeatedly been judicially defined as "a mathematical computation of the present value of a series of future payments." 87 A.2d at 842. The Court cited authorities previously adopting that position and quoted favorably this statement of the law:

The trial judge erred, however, in commuting the periodical payments to a lump-sum. He simply multiplied the weekly minimum by the number of weeks, and made the necessary credits. This is not a commutation, but an allowance of compensation in excess of the act. A present payment of the whole amount exceeds in value a weekly payment to be paid in future installments. A deduction should have been made sufficient to make the lump-sum equal to the present value of the periodical payments.

87 A.2d at 843.

In Hicks v. General Refractories Co., 405 S.W.2d 734 (Ky. App. 1966), the Court emphasized that any payments of a lump sum compensation award "without the allowance of a discount would have the effect of increasing the amount of the award, without the benefit of legislative saction, to the extent that the payment exceeded the present value of the

of the future payments." 405 S.W.2d 734. The Court specifically defined the term commute, as used in compensation legislation, to mean "an exchange of a series of greater, future payments for a lesser, immediate payment." Id.

While this Court has previously indicated that the Commission's decision to commute benefits is unreviewable, Utah State Road Comm'n v. Industrial Comm'n, 168 P.2d 319 (Utah 1946), plaintiff would suggest that the failure of the Commission to actually commute benefits, that is reduce the periodic payments to a lump sum of equal value to the present value of the periodic payments, is an abuse of discretion and reviewable.

In the instant matter the plaintiff suggested a discount rate of 5.44% simply because that is the figure at which the invested capital of the Fund earns return. It is not suggested that this rate is binding on the Commission, merely that the Commission must resolve the factual question of present value on some actuarially sound basis.

CONCLUSION

Any lump sum payment made in lieu of periodic payments, to truly qualify as a commutation, must be discounted to equal the actual present value of the periodic payments. The Commission's failure to make such a reduction in the instant case requires that its Order be vacated and the matter remanded with instructions to make such a computation of present value.

DATED this _____ day of April, 1980.

BLACK & MOORE

M. DAVID ECKERSLEY
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of
the foregoing BRIEF were mailed, postage prepaid this
_____ day of April, 1980 to the following:

Robert R. Brown
431 South 300 East
Salt Lake City, Utah 84111

Frank V. Nelson
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114