



Law Review Article

Prepared by Stockton Office

By: Julia D. Brynelson, Esq.

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**A Request for Commutation of Permanent Disability Periodic Payments  
to Purchase a House Can be Defeated**

The housing market in California is hot, and everyone wants to own their own home. In a recent case at the Stockton WCAB, applicant sought to have \$300,000.00 of his 100% permanent disability award commuted in order to purchase a house and furnishings. Surprisingly, it took 2 separate trials to defeat this request.

In the above-mentioned case, applicant contended he was entitled to a commutation of his award as he wanted to avoid increasing rent prices, and he wanted to have a larger home for the comfort of his family. Finally, applicant testified he wanted to invest the money in an asset which could be left to his children. Applicant's commutation request was denied by the trial judge. The *in pro per* applicant filed a Petition for Reconsideration. The WCAB granted the Petition for Reconsideration and remanded the matter for a second trial. The WCAB further ordered the record be developed as it did not appear applicant was given a meaningful opportunity to present evidence that would enable the trier of fact to evaluate the total financial picture.

At the second trial, applicant was not prepared to provide the information as ordered to the trial judge. Accordingly, the trial judge and defendant secured the necessary information. Consequently, the trier of fact was able to evaluate applicant's total financial picture.

The record from the second trial clearly established that applicant would jeopardize other financial resources and benefits if he were to receive such a large lump sum payment. Therefore, the trial judge again denied the request for commutation. Applicant filed a Petition for Reconsideration which was denied. In the opinion, the WCAB informed applicant to obtain the services of a financial planner to assist in how he could buy a house and meet his monthly expenses.

In light of the significant appreciation enjoyed by homeowners in California over recent years, it can be anticipated that many more injured workers who do not want to settle their cases by compromise and release, will attempt to avail themselves of a commutation for the same purpose. *This situation also highlights the level of assistance and judicial resources that could be offered to an applicant in pursuit of his request.*

### ***Labor Code Section 5100***

The Board has long regarded its power to order commutation as one "to be exercised with great care and discretion and only in cases of very great urgency." *Wilson v. Gallegher (1914) 1 Industrial Accident Commission, PTII 306, 308.*

“Labor Code §5100 [Deerings], as amended effective January 1, 1977, provides:

At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum in order to be paid forthwith or at some future time if any of the following conditions appear:

(a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining the what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant’s ability to live without the periodic indemnity payments and to discharge debts incurred prior to the date of injury.

(b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.

(c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.

(d) That the employer is not a resident of this state.”

Prior to the 1976 legislative amendment to this section, the code section read "either party" in subsections §5100(a) and in (b) to "the applicant." Thus, under prior cases, the "best interests" of the employer and the applicant and the "hardship" upon them had to be considered in passing upon the commutation. Under the current status, only the "best interests" of and "hardship" upon the applicant are considered. *Safeway Stores, Inc. v. Workers Compensation Appeals Board (1978) 43 CCC 1366 (writ denied).*

### ***Commutations are to be granted for an immediate and necessary need***

Commutations are granted on a showing of an immediate and necessary need for more

funds than the periodic payments can provide, such as to pay pressing or emergency debts. *Jenkins v. Workers' Compensation Appeals Board (1975) 48 Cal.App.3rd 570 [40 CCC 329]*.

In certain cases, the necessary and immediate need established was the purchase of a house. In the case of the *County of Los Angeles v. Workers' Compensation Appeals Board (Weston) (2000) 65 Cal. Comp. Cases 1060, (writ denied)*, applicant petitioned for commutation of \$150,000 of her 100% permanent disability award, to purchase a home in Florida, so members of her family could live with her and help take care of her. The Judge awarded \$94,750.00, because she was to receive additional funds from an agreement resolving penalty issues. On appeal, the commutation was upheld as it was found that the purchase of a home would eliminate her concern of rising rents and provide for some stability in her finances, in addition to being able to live with her family. Applicant's periodic payments were reduced, but she had additional pension benefits, which when balanced against the monthly cost of her home and having the ability to live with the assistance of her family. *Id. at page 1060-1061*.

In *Sonoran Roofing Inc., v. Workers' Compensation Appeals Board (Vasquez) (2002) 67 CCC 1517, (writ denied)*. Applicant sought commutation to purchase a home so that he could modify it to accommodate his disability. The commutation was granted, and upheld on appeal. *Id.* In this case the WCJ also mentioned that the expense of modifying applicant's residence would be allowable as a medical expense. *Id at 1520*.

Despite these cases, commutations are properly disallowed if the applicant fails to present sufficient evidence to enable the Board to evaluate the injured worker's total financial picture. *Wallen v. Workers' Compensation Appeals Board (1975) 40 CCC 660, (writ denied)*. In this case, the WCJ awarded commutation to the applicant without applicant personally appearing at trial and where no testimony was taken. Defendants appealed and won. The court held that the applicant had failed to present sufficient evidence concerning his total financial position to require such a finding, or evidence that the requests would benefit him. *Id. at p. 661*.

In an unpublished opinion, *Safeway Stores, Inc., v. Workers' Compensation Appeals Board, (1978), supra, at pgs. 1366-1372*, the WCAB examined a request for commutation in order to apply that amount to partially reduce the mortgage balance on an installment contract mortgage for the applicant's residence, thus saving her substantial interest. In this case, even if the commutation took place, there would remain a \$15,000.00 balance on the loan. The applicant testified she was current on her loan and able to make the loan payment and other financial obligations without difficulty. Based on these facts, the WCAB judge denied the Petition for Commutation indicating that there was no necessity nor was it in the applicant's best interests to commute the award. He concluded that there is no urgency or immediate needs for funds. Applicant and her

husband purchased the house following the injury and did not have difficulty keeping up with the payments. Applicant's income was sufficient to maintain herself and her family in relative comfort, even with the monthly mortgage payment. The WCJ held that he did not believe a commutation was warranted simply on the basis of avoiding interest payments, or paying off a home mortgage. The applicant sought reconsideration.

The Board granted reconsideration and ordered a commutation of the entire balance of the award stating that they felt it was in applicant's best interest to save \$58,000.00 in interest on the mortgage. Defendant appealed the order of commutation and won!

The Court of Appeal found that the only basis for the requested commutation was to afford applicant a savings on mortgage interest; no other reason for the commutation was presented. The Court commented that in today's society, most persons have debts upon which interest could be saved if an award was paid in lump sum (*Id. at p. 1371*), and that "the Legislature's scheme of periodic permanent disability payments (see Labor Code §§4650[Deering's], 4651[Deering's], and 4658[Deering's]), would be mere verbiage and replaced with lump sum awards. We must assume the legislative scheme has some meaning. If lump sum payments are to replace the present system, then it is for the legislature, not the Board, to determine. We will not permit undermining the Legislature's decision in this area by making the 'best interests' requirement for a commutation merely any cause as it may be urged by the injured". *Id.*

The disappointment for this applicant continued when the insurance carrier obtained an order of restitution against the applicant which required her to pay Safeway Stores, Inc. back for the \$9,000.00 in commutation funds she used to pay-off a portion of her mortgage. *Shaw v. WCAB (Safeway Stores, Inc) 46 CCC 128 (writ den.)*.

### ***Conclusion***

When encountering a situation where the injured worker has requested a commutation of the periodic payments of the permanent disability award to purchase a house, remember that the landscape of the total financial picture must be considered and an additional analysis must be given to the statutory language of "to prevent hardship" or "is a matter of necessity." Nevertheless, because of the current housing market, it is anticipated that more injured workers' will look to commute their periodic payments in an effort to enjoy the extraordinary return of home ownership. Obviously, this may also be an opportunity for more defendants to push for settlements by way of compromise and release.