

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1016 / 12-0901  
Filed January 24, 2013

**PILGRIM'S PRIDE CORPORATION**  
**and ZURICH NORTH AMERICAN,**  
Petitioners-Appellants,

**vs.**

**JOHNIE M. EAKINS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Randy V. Hefner,  
Judge.

An employer and insurance carrier appeal the district court's judicial  
review decision affirming the workers' compensation commissioner's  
commutation decision. **AFFIRMED IN PART, REVERSED IN PART, AND  
REMANDED.**

D. Brian Scieszinski of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des  
Moines, for appellants.

Randall P. Schueller, West Des Moines, and Richard R. Schlegel II,  
Colorado Springs, Colorado, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**MULLINS, J.**

Pilgrim's Pride Corporation and Zurich North American (the employer) appeal the district court's ruling, which affirmed the commutation decision of the workers' compensation commissioner. The deputy commissioner granted Johnie Eakins's request for a partial commutation of his workers' compensation benefits, awarding him a lump sum amount rather than weekly benefit payments.<sup>1</sup> The deputy's decision was affirmed by the commissioner.

The employer sought judicial review asserting (1) substantial evidence does not support the agency's decision in light of Eakins's lack of investment experience or success and (2) the agency erred in holding the proposed commutation should be revised to the values as of the filing of the commutation decision. The district court denied the relief sought in the judicial review petition, affirming the agency's decision. It found substantial evidence supported partial commutation, which it believed was based largely on an assessment of Eakins's credibility. It also found the correct date to calculate the discount rate for the commutation was the date when the partial commutation was ordered, not the date the decision becomes final on appeal. The employer raises the same issues on appeal from the district court's judicial review decision.

**I. SCOPE AND STANDARD OF REVIEW.**

Iowa Code section 17A.19 (2009) governs judicial review of agency decisions. The district court acts in an appellate capacity when it exercises its judicial review power. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa

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<sup>1</sup> The agency granted the commutation of all but ten weeks of Eakins's weekly benefit payments.

2012). We apply the same standards of section 17A.19(10) when we review the district court's decision to determine whether we reach the same conclusions as the district court. *Id.* If our conclusions are the same we affirm; otherwise, we reverse. *Id.*

Our standard of review depends on the issues raised on appeal. *Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010). "Because of the widely varying standards of review, it is 'essential for counsel to search for and pinpoint the precise claim of error on appeal.'" *Id.* With respect to its claim that the partial commutation was in error, the employer claims the agency "failed to properly apply controlling legal principles" and "the facts . . . are inadequate to satisfy the governing legal standards." The first claim alleges the agency erred in its application of law to the facts, which under section 17A.19(10)(m) will be reviewed to determine if it is "irrational, illogical, or wholly unjustifiable." We allocate some deference to the agency, but less than we give the agency's factual findings. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). The second part of the employer's claim alleges substantial evidence does not support the agency's decision, which is reviewed under section 17A.19(10)(f). As factual findings are clearly vested in the discretion of the agency, we will defer to the agency's findings if they are based on "substantial evidence." *Id.* "The question before us is not whether the evidence supports different findings than those made by the commissioner, but whether the evidence 'supports the findings actually made.'" *Id.* (citation omitted).

Finally, the employer asserts the agency erred in ordering the commutation to be revised to the commuted values at the time of the signing and filing of the decision. The employer contends the date that the value should be set is the date the case becomes final after appeal. As this claim involves an interpretation of law that has not been clearly vested by a provision of law in the discretion of the agency, we are free to substitute our own judgment de novo for the agency's interpretation. See Iowa Code § 17A.19(10)(c); *Jacobson*, 778 N.W.2d at 196.

## **II. PARTIAL COMMUTATION.**

Under Iowa Code section 85.45, future workers' compensation benefits may be commuted to a present worth lump sum payment under certain conditions including a finding by the commissioner that the commutation is in the worker's best interest. See Iowa Code § 85.45(1)(b). Our courts have distilled a number of factors to determine whether a commutation is in the best interest of the worker, which include:

1. The worker's age, education, mental and physical condition, and actual life expectancy (as contrasted with information provided by actuarial tables).
2. The worker's family circumstances, living arrangements, and responsibilities to dependents.
3. The worker's financial condition, including all sources of income, debts and living expenses.
4. The reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage invested funds or arrange for management by others (for example, by a trustee or conservator).

*Dameron v. Newmann Bros., Inc.*, 339 N.W.2d 160, 164 (Iowa 1983).

Here, the employer contends the agency erred in failing to consider (1) Eakins's lack of financial sophistication, (2) the tax consequences of the commutation and potential loss of benefits to a garnishment proceeding, and (3) Eakins's lifelong best interests instead of only his current financial situation. The agency's decision clearly indicates it considered these issues in its decision. The agency noted Eakins lacked financial sophistication, but it also noted Eakins acknowledged this deficit and sought the assistance an experienced independent financial adviser to help him invest the lump sum payment. The agency found the income received from the invested funds would be subject to income tax whereas weekly workers' compensation benefits are not. It also noted the lump sum payment would be subject to division should Eakins's marriage be dissolved.<sup>2</sup>

The agency was particularly concerned with Eakins's inability, absent a commutation, to obtain adequate housing, finding, "Residing within a home that is not substantially dilapidated is in [Eakins]'s best interest." The agency noted Eakins's plan was to draw down the interest and principal of the lump sum payment only until his wife was able to complete her nursing degree and obtain employment, which was anticipated in approximately twelve months from the decision. It was Eakins's long-term plan to conserve the principal to provide an estate for his wife should she survive him. This plan gave the agency reassurance that the commutation was in Eakins's best interest long term.

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<sup>2</sup> The agency specifically noted that an order of spousal support in favor of Eakins's wife in the event of a dissolution would be unlikely due to Eakins's wife's greater earning potential.

We find no error in the agency's application of the law to the facts of this case. We disagree with the employer that the agency failed to consider several important factors.

The employer also contends that the agency erred in concluding the commutation was supported by (1) Eakins's current lack of income to pay for day-to-day expenses, and (2) Eakins's desire to spend his benefits on the needs of other family members. The employer states that Eakins's history of investing demonstrates he will likely spend the proceeds, leaving him destitute. The employer also points out Eakins's expressed desire to pay his wife's credit card and student loan debt, and his wife's child's education expenses. The employer thus concludes substantial evidence does not support the agency's conclusion that the commutation is in Eakins's long-term best interests.

While there certainly is evidence to support the conclusion that commutation was not in Eakins's best interests, our role on judicial review "is not to determine whether the evidence supports a different finding; rather our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made." *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). Here, substantial evidence supports the agency's decision. It was Eakins's plan to use part of the money to make a down payment on a reasonably priced house that would permit him and his family to move out of the substandard housing in which they were currently residing. He planned to get his teeth fixed, and employ the services of a trusted financial advisor to invest the remaining funds in a conservative investment. While he

testified a willingness to pay his wife's debt, Eakins's wife testified she planned to pay off her student loan debt with the income she planned on earning after graduation, not from Eakins's funds. In addition, Eakins testified his financial advisor told him not to pay off the student loan debt because the interest rate on the debt was low. Substantial evidence supports the agency's decision and we affirm the district court.

### **III. DATE OF CALCULATION.**

Finally, the employer asserts the agency erred in ordering that the commutation be revised to reflect the remainders and commuted values at the time of the signing and filing of deputy's decision. The employer asserts weekly benefits have continued to be paid while this case has been pending on appeal, such that the commutation will need to be recalculated once the appeal becomes final. It also asks that the discount rate in effect at the time the appeal becomes final to be used, rather than the discount rate that was in effect at the time the deputy issued its decision. In support of its position, the employer cites the applicable statutory provision that provides in part: "Interest shall be calculated as of the date of judgment." See Iowa Code § 668.13(3). Because this matter is still on appeal, the employer claims that a "judgment" has not yet been entered.

Eakins disagrees with this interpretation and claims that to allow an employer to control the discount rate by appealing the decision would allow post-hearing factors to determine the decision. He contends the employer should not be allowed to gamble on a more preferable rate by appealing the decision. Eakins acknowledges that the employer should be entitled to a credit for the

weekly benefit payments it has made during the appeal, but also contends that Eakins likewise should be entitled to ten percent interest on the outstanding balance as of the date of the deputy's decision.

Iowa Code section 85.48 provides in part:

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.

Thus, we must look to section 535.3 for the rate to be used. This section provides, "Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13." Iowa Code § 535.3(1). Iowa Code section 668.13(3) states how the interest rate is to be calculated: "Interest shall be calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent." The employer asserts that there is no "judgment" until such time as the appeal becomes final. Thus, it claims the rate to be applied is the rate on the day the appeal is final, not on the day the deputy issued its commutation decision.

While the employer did raise the issue on intra-agency appeal, the commissioner did not specifically address it as he summarily affirmed the deputy's decision. The district court found the language of section 85.48 controlling as this section provided the rate is to be determined "when partial commutation is ordered." It therefore concluded the rate to be applied was the rate as of the date of the deputy's decision.



We agree that section 85.48 controls, but find the date to be used to calculate the interest rate is the date the agency action became final. The word “judgment” is defined in Black’s Law Dictionary as “[a] court’s final determination of the rights and obligations of the parties in a case.” Black’s Law Dictionary 858 (8th ed. 2004). The legislature has delegated to the workers’ compensation commissioner the power to hear and decide workers’ compensation cases, including commutation petitions. See Iowa Code § 85.20 (“The rights and remedies provided in this chapter, chapter 85A or chapter 85B for an employee, . . . on account of injury, . . . for which benefits under this chapter, chapter 85A or chapter 85B are recoverable, shall be the exclusive and only rights and remedies of the employee . . . on account of such injury, . . . against any of the following: 1. Against the employee’s employer.”). Since workers’ compensation cases are not decided by the court, but by the agency, the question becomes when does the agency decision become a “final determination of the rights and obligations of the parties in the case.” See Black’s Law Dictionary 858 (8th ed. 2004).

Under the administrative procedure act, when a presiding officer makes a proposed decision, that decision becomes the final decision of the agency without further proceedings unless there is an appeal to the agency. See Iowa Code § 17A.15(3). So, if the deputy’s decision had not been appealed to the commissioner in this case, it would have been the final decision of the agency, and the date of that decision would have been the proper date to use for the calculation of the interest rate under section 668.13. However, in this case there was an intra-agency appeal to the commissioner. Because of the intra-agency

appeal, it was the commissioner's decision that was the final agency action—the final determination of the parties' rights and obligations. See Iowa Code § 86.24(5) (“The decision of the workers' compensation commissioner is final agency action.”). Therefore, the proper date to use to determine the applicable interest rate for the commutation calculation is the date of the commissioner's decision—November 29, 2011. The commutation should be revised to reflect the value of the commuted weeks at that point in time. Weekly payments made after that date while this case has been pending on judicial review should be credited to that amount.

#### **IV. CONCLUSION.**

We affirm the district court's judicial review decision with respect to affirming the agency's decision approving the partial commutation as we find no error in the agency's application of the law to the facts and also find substantial evidence supports the agency's decision. However, we reverse the district court's decision with respect to the date to be used to calculate the discount rate. We conclude the proper date to be used is the date of the commissioner's intra-agency appeal decision, which was the final agency action. We remand this case to the agency for the purpose of entering an order calculating the commutation as of the date of the commissioner's decision.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**