

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(June 27, 1996 Session)

PATTY UTLEY, Widow of JOE)
HENRY UTLEY, Deceased,)
)
Plaintiff-Appellee,) Hon. Joe C. Morris,
) Chancellor.
v.)
) No. 02S01-9602-CH-00020
CHESTER COUNTY HIGHWAY)
DEPARTMENT,)
)
Defendant-Appellant.)

FILED

September 27, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

Bradford D. Box
Rainey, Kizer, Butler, Reviere & Bell
Jackson, Tennessee

For Appellee:

Thomas K. McAlexander
Hill Boren, P.C.
Jackson, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Billy Joe White, Special Judge

AFFIRMED

Loser, Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The only issue on appeal is whether the chancellor abused his discretion by commuting a portion of the permanent partial disability award to a lump sum. The panel finds the judgment should be affirmed.

Joe Henry Utley died as a result of an injury by accident arising out of and in the course of his employment by the Chester County Highway Department. He left a widow, Patty Utley, and four dependent children. The widow and children were awarded dependents' benefits totaling \$109,200.00, payable at the rate of \$137.17 per week.

The claimant and four children - and another child of hers - were living in a 600 square foot home. She applied to the trial court for a commutation of the award for the purpose of purchasing a larger home. The proof shows and the chancellor found that she is able to wisely manage her money.

The trial court ordered \$45,200.00 paid in a lump sum and the balance periodically, as provided by statute. The chancellor found further that moving into a larger home would be in the best interest of both the claimant and the dependent children and directed that the deed be drafted in such a way as would protect the interest of all the beneficiaries. The evidence does not preponderate against that finding.

Upon application by a party and approval by a proper court, benefits which are payable periodically may be commuted to one or more lump sum payment(s), if the court finds such commutation to be in the best interest of the dependents of the deceased employee and that the party seeking a lump sum payment has the ability to wisely manage and control the commuted award. Ponder v. Manchester Housing Authority, 870 S.W.2d 282 (Tenn. 1994). Such applications are not granted as a matter of course. Forkum v. Aetna Life & Casualty Insurance Company, 852 S.W.2d 230 (Tenn. 1993). The claimant has the burden of establishing, first, that a lump sum is in his or her best interest and, second, that he or she is capable of wisely managing and controlling a lump sum, but the decision whether to commute to a lump sum is within the discretion of the trial court. Bailey v. Colonial Freight Systems, Inc., 836 S.W.2d 554 (Tenn. 1992).

We have independently examined the record and find that the chancellor did not abuse his discretion in allowing the partial commutation in this case. The judgment is accordingly affirmed. Costs on appeal are taxed to the defendant-appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Lyle Reid, Associate Justice

Billy Joe White, Judge