

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker filed a claim for occupational noise-induced hearing loss in December 2005. The Board recognized the Worker's hearing loss as compensable and awarded him a ten percent permanent medical impairment ["PMI"] rating and bilateral hearing aids.

As a result of his ten percent PMI rating, the Worker was awarded a monthly permanent impairment benefit ["PIB"] in the amount of \$66.81 per month.

The Worker requested that his PIB be commuted into a lump sum. It was the Worker's intention to use these funds to reduce his debt that had accumulated since his wife's passing approximately three years earlier.

In a decision dated May 24, 2006, a Board Occupational Disease Benefits Administrator denied the Worker's request for a commutation of his PIB. The Worker appealed that decision. Based on issues raised in the Worker's Notice of Appeal, the Occupational Disease Benefits Administrator issued a subsequent decision on July 5, 2006, confirming her earlier determination. The Worker appealed to a Hearing Officer who, in a decision dated January 25, 2007, also confirmed the earlier decision.

The Worker appealed to this Tribunal. This appeal proceeded by way of oral hearing on May 9, 2007. The Worker testified at the hearing, and his representative presented submissions on his behalf. The Employer participated at the hearing. The Board neither attended the hearing nor filed submissions in relation to this matter.

Subsequent to the hearing, the Board filed correspondence dated June 21, 2007, confirming that the lump sum of the commuted pension would be \$6,013.80.

ISSUE AND OUTCOME:

Is the Worker entitled to a commutation of his PIB?

Yes, the Worker is entitled to a commutation of his PIB.

ANALYSIS:

The legislation applicable to this appeal is the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [the "*Act*"]. In weighing the evidence, I have considered s. 187 of the *Act* which provides that where there is doubt on an issue and the possibilities are evenly balanced, the issue shall be resolved in favour of the worker.

Authority for the commutation of benefits comes from s. 74 of the *Act*. Subsection 74(2)(a) allows the Board to commute a worker's periodic payment to a lump sum in cases where the Board is of the opinion that the lump sum payment would be advantageous for the worker.

To help exercise this discretion, the Board has enacted Policy 3.9.5, which applies to the commutation of PIBs and extended earnings-replacement benefits ["EERB"] for injuries occurring after March 23, 1990. Section 4 of the Policy contains criteria to be considered when assessing a commutation request. Section 4 of Policy 3.9.5 reads as follows:

In addition, the Board may, under the following circumstances, commute any periodic benefits (PIB and/or EERB) if:

- a) the commuted benefit is to be used for a purpose approved by the Board (approved purpose is a purpose that is determined by the Board to enhance the worker's vocational rehabilitation beyond that which would normally have been provided by the Board);
- b) there are no other sources of funds that are accessible and appropriate for the approved purpose;
- c) the worker is not dependent on the periodic benefit for the necessities of life nor is expected to be in the future;
- d) the commutation is in the best long-term interests of the worker;
- e) the worker's injury-related condition has stabilized; and
- f) the final scheduled review for an EERB (if applicable) has been completed.

I am in agreement with previous decisions of this Tribunal which support a view that, although the most commonly approved purpose of a commutation is one that strongly enhances a worker's vocational rehabilitation, there are instances where vocational rehabilitation is neither a viable option nor necessary in the circumstances. In such cases, a request for commutation should not be refused solely on that basis (see for example, Tribunal *Decisions* 2002-460-AD, 2002-107-AD, 2002-143-AD and 2002-161-AD).

The Worker is 69 years old. He retired from the workforce in 1991. He received PIBs in relation to three previous injuries, all of which were paid to him as commuted sums. He seeks a commutation of his hearing loss PIB to enable him to reduce the debt that he has accumulated since his wife passed away approximately three years ago. The Worker testified that his wife had been sick for eight years and received palliative care for approximately 1 ½ years. The cost associated with this service factored heavily in the

Worker's decision to declare personal bankruptcy several years ago. The Worker testified that he recently took out a small mortgage on his house to assist with his debt. His monthly mortgage payment is \$300.00.

The Worker's monthly income totals approximately \$1,672.00. This includes the \$66.81 PIB he receives from the Board for his hearing loss claim. The balance of his monthly income is comprised of Canada Pension Plan (\$614.00), Old Age Security (\$490.00), Cape Breton Development Corporation Pension (\$190.00) and a pension on behalf of his late wife (\$312.00).

The Worker has the following outstanding bills:

Credit Union (mortgage):	\$11,000.00
Oil:	350.00
Camerons (building supply store):	300.00
Income Tax:	900.00
Total:	\$12,550.00

The Worker's monthly expenses (including payments he makes on the above outstanding bills) total approximately \$1,773.00. There is a shortfall of \$ 101.00 between his income and expenses. According to the budget supplied by the Worker, he pays \$100.00 monthly toward his outstanding income tax and \$50.00 monthly toward his bill at Camerons. He also pays \$180.00 monthly for oil; however, he was uncertain as to how much of this was applied to arrears. His remaining expenses are for utilities, groceries, gas and cigarettes.

If the Worker's PIB were commuted, the lump sum payable would be \$6,013.80.

The Worker testified that he would likely have to sell his house if his request for a commutation were denied. He believes that he would have no other option but to sell his home to pay down his debt. He stated that there are no other funds he can access to achieve this purpose, given his age and income. He testified that it would be his intention to use his commuted funds to pay his outstanding oil, income tax and Camerons' bills. Any remaining amount would be applied to his mortgage.

In his January 25, 2007 decision, the Hearing Officer denied the Worker's request for a commutation on the basis that the benefit would not be used for the purposes of enhancing the Worker's vocational rehabilitation.

I find that it is not fatal to the Worker's request that the commuted benefit is not intended to be used for a purpose to enhance the Worker's vocational rehabilitation. The Worker has retired at age 69, and has no intention of returning to the workforce. The Worker seeks a commutation to pay down debts to enable him to stay in his family home. It is a purpose that goes towards the Worker's well-being, and I find that it constitutes an

“approved purpose” in these circumstances.

I also find that the Worker has satisfied the other criteria contained in Policy 3.9.5.

There appear to be no other sources of funds that are accessible and appropriate. The Worker testified that he has nowhere else to turn for funds.

The medical evidence on file suggests that the Worker’s injury-related condition has stabilized, and there is no EERB issue in this matter.

Looking at the Worker’s monthly income, I cannot conclude that he is dependant on the periodic benefit for the necessities of life. The Worker’s PIB amounts to approximately \$66.00 per month. If his pension were commuted, he would be able to pay off his oil debt, income tax arrears and the outstanding bill at Camerons. By eliminating these debts, the Worker’s monthly expenses would be reduced by at least \$150.00. The net result would be that the Worker’s monthly income would exceed his monthly expenses.

Given the fact that the Worker, at age 69, would be able to remain in his house and eliminate debt, it appears to me that a commutation would be in his best long-term interests.

I therefore conclude that Worker has met the criteria contained in s.4 of Policy 3.9.5. I find that it would be in his best long-term interest to grant a commutation of his PIB at this time.

CONCLUSION:

The appeal is allowed. The Worker is entitled to a commutation of his PIB.