

Industrial Accident Board — Power to Make a Partial Lump Settlement.

Held, that the Industrial Accident Board has authority to settle a claim by allowing a partial lump settlement as set out in the opinion.

Jerome G. Locke, Esq.,
Chairman Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

You have submitted to this office a form of decree in the case of Michael M. Smith for a partial lump settlement.

The following facts are recited in the decree:

That Michael M. Smith, while in the employ of the Anaconda Copper Mining Co., suffered permanent total disability by the loss of both eyes; that the claim of the injured party has been accepted by the company and he has received compensation for a period of 20 weeks at \$12.50

per week. He now wishes a lump settlement and the Accident Board has, in its discretion, decided to allow a partial lump settlement of \$2,000 in order to enable the said Michael M. Smith to pay off a mortgage on his home and to pay some of his current bills.

The plan of lump payment you have adopted is as follows:

You have, by reference to the American Experience Table of Mortality determined that the said Michael M. Smith has an expectancy of 14.37 years from October 21, 1922; during 380 weeks of this period he is entitled to compensation at the rate of \$12.50 per week, and during the remainder of which time he is entitled to compensation at the rate of \$5 per week, which, if converted into lump payment, must be discounted at the rate of 5 per cent per annum. You have estimated the commuted value of the payments for the remainder of the expectancy, after the 400-week period, to be \$841. You then add to this amount the commuted value of 130 weeks of the 400-week period, which gives you an amount (\$1,248.50) sufficient to make up the remainder of your approximate \$2,000.

This procedure naturally suggests the following question: Is the injured workman entitled to receive a lump payment, and, if so, for what period? Is he entitled to a commuted payment for part of the period, and, if so, can the Board designate the last half of the payment period as the portion to be commuted and order payments to continue for the remainder of the first half of this period.

Section 2913 Revised Codes of 1921 provides, in part:

"Such compensation (\$12.50 per week) shall be paid during the period of disability, not exceeding four hundred weeks, after which time payment shall continue during disability at the rate of five dollars per week."

That is, payments must continue during disability. In this case, disability is total and permanent. Therefore, payments must continue for the first 400 weeks at \$12.50 per week, and for the remainder of the life of the injured at the rate of \$5 per week.

In a lump settlement in a case of this kind, the payment should be computed on the life expectancy of the injured workman, since Section 2936 provides that:

"Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used."

Section 2926 provides, in part, as follows:

"The monthly payments provided for in this Act may be converted, in whole or *in part*, into a lump sum payment, *
* * Such conversion can only be made upon the written application of the injured workman, * * * and

shall rest in the discretion of the Board, both as to the amount of such lump sum payment, and the advisability of such conversion."

This clearly means that the workman not only has the right to choose a lump payment, but is not obliged to choose such method of payment immediately. He can, after having been paid his weekly allowance for the first three or four years, convert the remainder into a lump payment. This would no doubt be a lump payment "in part," and, since the right to choose a lump payment rests exclusively with him, how is the employer or insurer injured if he elects to receive the partial payment of the last portion of the payment period instead of the first?

It is true that in case no partial lump settlement be made the employer or insurer may benefit by the death of the injured before the end of his expectancy, but this would be true in the case of a lump settlement for the full period of expectancy. In other words, the employer has no more right to object to a lump settlement in the one case than in the other, since the matter of choice is with the injured party, subject to the approval of the Board.

It is my opinion, therefore, that the injured party not only has a right to a partial lump settlement, but that he is entitled to lump the last portion of the payment period and receive the commuted value thereof and have the current payments continued for the unexpired first half of his expectancy period.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.