

**IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
JUNE 2001 SESSION**

**WAYNE WOOD, D/B/A WAYNE WOOD TIMBER CONTRACTOR, MEADOWBROOK  
INSURANCE GROUP, and ASSOCIATION SELF INSURANCE SERVICES, INC. v.  
SAMMY DALE BENSON**

**Direct Appeal from the Chancery Court for Lewis County  
No. 3762, Jeffrey S. Bivins, Judge**

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**No. M2001-00107-WC-R3-CV - Mailed - July 17, 2001**

**Filed - August 20, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with the Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. The issue on appeal is whether the trial court erroneously granted a partial lump sum commutation of permanent total disability benefits. This panel has concluded that the judgment of the trial court should be affirmed as modified.

**Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Chancery Court Affirmed.**

Frank G. Clement, Jr., Sp.J., delivered the opinion of the court, in which Frank F. Drowota, III, J., and Ben H. Cantrell, Sp. J., joined.

Mac E. Robinson, Jr., Nashville, TN for the appellants, Wayne Wood, d/b/a Wayne Wood Timber Contractor, et al

Steve Beal, Lexington, TN for the appellee, Sammy Dale Benson

**MEMORANDUM OPINION**

Sammy Dale Benson ("Benson"), the employee-appellee, was working for Wayne Wood, d/b/a Wayne Wood Timber Contractor ("Wood"), the employer-appellant on March 1, 1997 while operating a "skidder" dragging fallen trees from the woods. Benson lost control of the skidder while driving down a hill. He jumped off the skidder, striking the ground with such force as to cause serious injury to his left ankle, leg, hip, back, and much of his body. Benson had several surgeries to treat his injuries. His permanent injuries include the shortening of his left leg by one and one-half

inches and the loss of movement in his ankle. The trial court found that Benson had a very limited education and that his job skills limited his employment opportunities to jobs requiring manual labor. The doctors assigned an anatomical disability rating of 37% to the body as a whole. The trial court awarded Benson permanent total disability benefits plus future medical benefits.

The court held two hearings upon motions of Benson requesting substantial lump sum payments. Benson initially requested commutation of the entire award. Little evidence was presented at the first hearing. The trial court denied the request for a commutation of the entire award upon a finding that Benson could not effectively manage such a substantial sum of money. Accordingly, Benson's request for commutation of the entire award was denied.

Subsequently, Benson presented a more limited request, totaling only \$65,000.<sup>1</sup> This request was supported by the testimony of a financial expert. Moreover, Benson identified two specific needs, \$50,000 for the purchase of a home and \$15,000 to pay off a bank loan from Bank of Lexington, which was incurred to pay the medical and related expenses incurred as a result of this injury.

While the trial court maintained its previous determination that "the Court did not find that Plaintiff had the ability to wisely manage and control an unrestricted lump sum award," the court awarded Benson a lump sum payment of \$65,000, upon the condition that the money "go directly and solely for the purchase of the real property described at the hearing in this cause and for the payment of the debt under the bank note."<sup>2</sup> The remainder of the benefits, minus attorney's fees, were to be paid in statutory installments.

Our review is de novo with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The court must consider (1) whether the commutation will be in the best interest of the employee and (2) the ability of the employee to wisely manage and control the commuted award to commute an award to a lump sum payment. Tenn. Code Ann. § 50-6-229. The burden of proof is on the employee to satisfy both requirements. No established formula exists to determine satisfaction of these two prongs. Courts may exercise their own discretion and analyze each case on an ad hoc basis. See N. Am. Royalties, Inc. v. Thrasher, 817 S.W.2d 308, 311 (Tenn. 1991).

Wood argues that the initial finding that Benson was not able to wisely manage and control an unrestricted lump sum award precluded the trial court from commuting any part of the award. Wood reasons that such a ruling is in contradiction with the statutory two prong test. According to Wood, once the trial court denied a request for an unrestricted lump sum on the basis of an inability

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<sup>1</sup>The second request for commutation of a lump sum award is relatively modest for the entire award, excluding medicals, exceeds \$400,000.00.

<sup>2</sup>See, Memorandum Opinion of the trial judge dated August 31, 2000.

to manage a large sum of money, the court did not have the authority to grant any lump sum, restricted or unrestricted, whole or partial. We disagree.

Our Supreme Court has previously affirmed the granting of a partial lump sum for specific purposes. See, Forkum v. Aetna Life & Casualty Ins. Co., 852 S.W.2d 230, 232 (Tenn. 1993). In Forkum the trial court ordered a worker to use a lump sum payment to repay debts. On appeal, our Supreme Court commented, “It is interesting to note that the trial judge did not leave the injured worker any funds to manage, but required that the entire commuted sum be paid out to creditors.” Accordingly, our courts have previously approved a restrictive procedure.

Wood also contends that the trial court had no jurisdiction to conduct a second hearing or to modify its previous determination once it denied the first request for a commuted lump sum. Wood cites no authority to support this position. Moreover, we find it unpersuasive. The trial court determined it appropriate to conduct a second hearing. Since there is no authority prohibiting it from doing so, we find no error.

The trial court was presented with and found sufficient evidence to satisfy the two prong test for the amounts and specific purposes identified. Specifically, the trial court found that Benson had a contract for the purchase of a home and Benson presented evidence of a bank note of \$15,000 for debt incurred as a result of this injury. While the trial court maintained its previous determination that Benson could not effectively manage an unrestricted sum of money, the court specifically found that payment of the sums requested were in the best interest of the employee and, with the restrictions imposed by the court, the necessary controls were established. Accordingly, we find no error with the trial court conducting a second hearing.

Wood next argues that Benson might fail to use the \$65,000 in accordance with the court order. While we agree that safeguards are necessary, the argument by Wood is clearly not intended to preclude misuse of the funds; the argument is a transparent effort to deny the commuted award. The trial court made it clear that it was concerned that the employee might misuse some or all of these sums; accordingly, the court imposed restrictions. Such restrictions eliminate the risk addressed by Wood. If Wood were concerned with this possibility, Wood could and should have presented it to the trial court instead of this court.

Our courts have previously approved restrictive procedures to minimize the possibility of misuse or mismanagement of funds by persons deemed unable to manage money. See Forkum, supra. While it is not expressly set forth in the trial court’s order, it is clearly implied that the trial court intended to entrust these funds to someone, such as the Clerk of the Court or to counsel, to assure the funds were disbursed for the benefit of the employee as required by the order. This practice has been approved in other matters wherein a court has awarded sums for specific purposes.

See generally Perdue v. Green Branch Mining, 837 S.W.2d 56, 60 (where periodic payments for minor children were made to chancery court clerk to be held for the benefit of the minors).

In order to avoid further hearings in the trial court and corresponding delays in the remittance of the benefits to which the employee is clearly entitled, we modify the order of the trial court requiring that the \$65,000 at issue shall be remitted to counsel for the employee, who shall deposit said sum in his trust account until such time as he can remit the two payments in the amounts and to the payees as specified in the judgment of the trial court.

Accordingly, the judgment of the trial court is affirmed as modified.

Costs on appeal are taxed to the appellants, Wayne Wood, d/b/a Wayne Wood Timber Contractor, et al.

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Frank G.  
Clement, Jr., Special Judge

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellants, Wayne Wood, d/b/a Wayne Wood Timber Contractor, et al, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM