

ORDER

Injury No. 10-059484

Employee: Andrew Dickemann  
Employer: Costco Wholesale Corporation  
Insurer: Self-insured

**Introduction**

On March 27, 2014, the administrative law judge awarded weekly permanent total disability benefits of \$799.11 from the employer to employee. Employer and employee have submitted a Stipulation for Voluntary Settlement and Agreement to Commute Award (*Joint Agreement*). Under the arrangement described in the *Joint Agreement*, employer would pay to employee the lump sum of \$400,000.00 to resolve the permanent total disability award.

**Discussion**

Our determination in this matter is guided by the holdings in the two appellate decisions in *Nance v. Maxon Electric, Inc. (Nance I and Nance II)*.<sup>1</sup> The *Nance I* court considered our authority to approve settlements of workers' compensation issues after a workers' compensation award is final. The *Nance I* court explicitly recognized that § 287.390 does not itself confer upon the parties the right to "settle" a final award. Instead, the court identified three statutory provisions that permit the commission to make modifications to final awards (§§ 287.241, 287.470, and 287.530) and held that if parties to a final award have a dispute as to the availability of modification of the award under one of the enumerated sections, then the parties have the right to settle that dispute under § 287.390.<sup>2</sup> With this background in mind, we will consider the parties' *Joint Agreement* for approval.

Commutation under § 287.530 RSMo

The *Joint Agreement* does not contain allegations that, if true, will support commutation of the permanent total disability award. The *Joint Agreement* does not contain allegations that, if true, would establish:

- \$400,000.00 is the present value of the employee's permanent total disability award;<sup>3</sup>
- the existence of one of the statutory grounds supporting commutation;<sup>4</sup> and,
- unusual circumstances exist warranting a departure of the payment of permanent total disability benefits in the same manner in which wages are ordinarily paid.<sup>5</sup>

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<sup>1</sup> *Nance v. Maxon Elec., Inc.*, 395 S.W.3d 527 (Mo. App. 2012)(*Nance I*); *Nance v. Maxon Elec., Inc.*, 425 S.W.3d 926 (Mo. App. 2014)(*Nance II*).

<sup>2</sup> *Nance I*, 395 S.W.3d at 535-536.

<sup>3</sup> Accepting the parties' agreed-upon 20-year life expectancy and using the regulatory 4% discount rate, the present value of the permanent total disability award exceeds \$590,000.00.

<sup>4</sup> Section 287.530.1 provides that we may commute compensation "if it appears that the commutation will be for the best interests of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States or that the employer has sold or otherwise disposed of the greater part of his business or assets."

<sup>5</sup> Pursuant to the final dictate of § 287.530.2, we are only allowed to approve a commutation "when it clearly appears that some unusual circumstances warrant such a departure."

Employee: Andrew Dickemann

For the foregoing reasons, we deny commutation of the award.

Settlement under § 287.390 RSMo

We next consider whether we have authority to approve the parties' request under § 287.390 as interpreted by the *Nance* courts.

Under *Nance I*, we have no authority to approve a settlement after a final award unless there exists between the parties a dispute regarding the availability of one of the statutory provisions permitting modification of a final award. If our authority is triggered, we may approve a settlement so long as the settlement is not the result of undue influence or fraud, employee fully understands his rights and benefits, employee voluntarily agrees to accept the terms of the agreement, and the settlement is in accordance with the rights of the parties as given in Chapter 287.

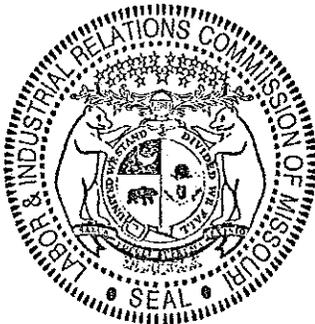
By the *Joint Agreement* the parties identify no dispute regarding the availability of award modification under § 287.241, § 287.470, or § 287.530. Nor do the parties explain how employer's payment of a mere 68% of the present value of employee's final award is in accordance with employee's rights under Chapter 287. We have no authority to consider the *Joint Agreement* for approval as a settlement under § 287.390.

**Order**

For the reasons set forth above, we deny approval of the *Joint Agreement* without prejudice to the right of the parties to submit a future request for approval of the arrangement described therein that satisfies either the requirements of § 287.530 or the requirements of § 287.390, as interpreted by the *Nance* courts.

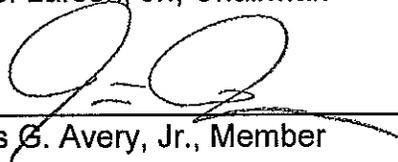
Given at Jefferson City, State of Missouri, this 5th day of January 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

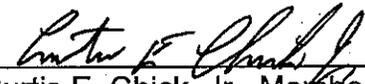




John J. Larsen, Jr., Chairman

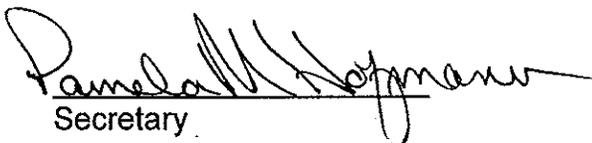


James G. Avery, Jr., Member



Curtis E. Chick, Jr., Member

Attest:

  
Secretary