

**STATE OF VERMONT
DEPARTMENT OF LABOR**

William Boyd

Opinion No. 33S-10WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Kennametal, Inc.

For: Valerie Rickert
Acting Commissioner

State File No. S-14574

**RULING ON CLAIMANT'S MOTION FOR SUPPLEMENTAL ORDER FOR LUMP
SUM PAYMENT**

The Commissioner previously decided this claim on November 10, 2010. The opinion determined that Claimant was permanently and totally disabled, and ordered that permanent total disability benefits be paid in accordance with 21 V.S.A. §645 commencing on May 18, 2008 (with credit for any permanent partial disability benefits paid since that date).

Claimant now requests that the minimum amount payable under §645(a) – 330 weeks at the applicable compensation rate – be paid in a lump sum in accordance with 21 V.S.A. §652(b), and prorated in accordance with 21 V.S.A. §652(c). The purpose of the latter section is to protect a claimant's ongoing entitlement to Social Security benefits by minimizing the offset that otherwise would occur were workers' compensation permanency benefits not prorated over his or her life expectancy.

In keeping with §652(b), Workers' Compensation Rule 19.3000 allows the commissioner to approve a claimant's request for lump sum payment of permanent disability compensation "if it is in the best interests of the claimant." The rule lists four "positive factors" to be considered in evaluating such a request:

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| 19.3010 | The claimant and/or the claimant's household receives a regular source of income aside from any workers' compensation benefit; |
| 19.3011 | The lump sum payment is intended to hasten or improve claimant's prospects of returning to gainful employment; |
| 19.3012 | The lump sum payment is intended to hasten or improve claimant's recovery or rehabilitation; |
| 19.3013 | The claimant presents other evidence that the lump sum award is in their best interests. |

Workers' Compensation Rule 19.5000 states that a lump sum payment shall not be approved if:

- 19.5010 The award was based upon a hearing decision for which an appeal has been filed and the employer or insurer objects to the payment of the lump sum; or
- 19.5011 The claimant is best served by receipt of periodic income benefits; or
- 19.5012 The payment is intended to pay everyday living expenses; or
- 19.5013 The lump sum payment is intended to pay past debts.

It is notable that while the language of Rule 19.5000 is mandatory, prohibiting a lump sum award if any of the four enumerated circumstances exist, the language of Rule 19.3000 is discretionary, in which the four enumerated circumstances are merely "positive factors" to be considered.

In support of his request here, Claimant asserts that since he began receiving permanency compensation his monthly Social Security Disability Income (SSDI) benefit has been reduced. Claimant's SSDI benefit represents a regular source of household income under Rule 19.3010, and it is in his best interests to maximize his income from that source. On those grounds, I conclude that there is good reason to approve the payment of the first 330 weeks of Claimant's permanent total disability award in a lump sum.¹

I further conclude that there is no basis under Rule 19.5000 for rejecting Claimant's request. Defendant has not appealed the formal hearing decision, and the appeal period has now run. Claimant is better served not by the receipt of periodic income benefits from workers' compensation, but by the maximization of his income from Social Security Disability. Neither party asserts that the proposed lump sum is intended to pay either everyday expenses or past debts.

¹ Having concluded that Claimant's SSDI benefit constitutes a regular source of alternative household income sufficient to satisfy Rule 19.3010, there is no need to consider the factual issues Defendant has raised as to whether Claimant's spouse is or is not regularly supplying additional household income so as to provide even further support for the request.

ORDER:

Based on the foregoing, Defendant is hereby **ORDERED** as follows:

1. Defendant shall pay as a lump sum 330 weeks of permanent total disability benefits in accordance with 21 V.S.A. §645 commencing on May 18, 2008 (with credit for any permanent partial disability benefits paid to date);
2. The award of benefits in this case, totaling \$239,085.41, is lump sum compensation for a permanent impairment that will affect Claimant for the rest of his life. Claimant's remaining life expectancy, based on the National Vital Statistics Reports, Vol. 54, No. 14 (April 19, 2006), is 36.3 years, or 435.6 months. Therefore, even though paid in a lump sum, Claimant's net benefit is \$189,336.68 (after the Commissioner's award of \$13,363.50 for attorney fees and deduction of attorney fees of \$63,112.23 from the total award), which shall be considered to be \$434.66 per month beginning on May 18, 2008.

DATED at Montpelier, Vermont this 29th day of December 2010.

Valerie Rickert
Acting Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.