

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

WILLIE ANDREWS, *Applicant*

vs.

CITY OF LOS ANGELES, *permissibly self-insured, Defendants*

**Adjudication Number: ADJ8825312
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration¹ in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the September 15, 2021 Findings and Order on Petition for Commutation (F&O), wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that it was in the best interest of the applicant to commute \$536,255.44 from his award of permanent and total disability.

Defendant contends that the need for commutation is not supported in the evidentiary record, and that because applicant's household can live without a commuted portion of the award, commutation is inappropriate.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the reasons expressed in the

¹ Commissioner Lowe, who was a member of this panel when it granted Reconsideration to further study the factual and legal issues in this case, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been assigned in her place.

WCJ's Report, which we adopt and incorporate as the decision of the Workers' Compensation Appeals Board, and for the reasons discussed below, we will affirm the F&O.

BACKGROUND

Applicant sustained injury to his head, brain, bilateral knees, bilateral upper extremities, neurocognitive disorder, hypertension, diabetes, psyche, urethra, and erectile dysfunction while employed as an Inspector/Supervisor by defendant City of Los Angeles from November 7, 2008 to June 12, 2013.

On February 18, 2020, applicant was determined to be permanently and totally disabled and was awarded 100 percent disability, entitling him to lifetime payments of \$1,066.72 per week. (Findings and Award, February 18, 2020, Finding of Fact No. 3.)

On June 1, 2020, the parties stipulated that defendant would pay home health services to three of applicant's family members and would reimburse prior home health services provided by those family members. (Stipulation and Award and/or Order, June 1, 2020.)

On October 28, 2020, applicant filed a Petition for Commutation of Future Payments, requesting \$536,255.44 be commuted from his weekly payments, along with an attorney fee of \$500.00.

On November 20, 2020, defendant objected to the petition, averring applicant had not made the necessary showing of financial hardship based on income received by applicant and his family. (Objection to Petition for Commutation, November 20, 2020.)

On July 6, 2021, the parties proceeded to trial, framing for decision the issue of applicant's Petition for Commutation. Applicant's spouse testified, and the matter was submitted for decision the same day.

On September 15, 2021, the WCJ issued the F&O, finding in relevant part that "it is in the best interest of the applicant to grant the October 27, 2020 petition for commutation of \$536,255.44 from his 100% permanent disability award." (Finding of Fact No. 2.) In the accompanying Opinion on Decision, the WCJ observed:

Labor Code section 5100(a) provides for commutation of future compensation if it is necessary for the protection of the applicant, or in the applicant's best interest. While it is not clear in this case that the commutation of \$536,255.44, requested to pay off cars and a home mortgage, is "necessary" for the protection

of Mr. Andrews, because Mr. Andrews could be cared for without the commutation, the commutation is indisputably “in the applicant’s best interest” because it helps to secure a residence and transportation for the use of his care providers and household, and it eliminates debts under Mr. Andrews’ name. It is clear from the use of the word “or” section 5100(a) that an order of commutation may issue if it is in applicant’s “best interest,” and it is not necessary to prove that it is “necessary” for “protection.” Subsection (a) requires the consideration of applicant’s ability to live and discharge debts without periodic payments, and it appears that commutation is warranted in this case under both considerations, based on the testimony of applicant’s wife and Guardian ad Litem, Stacey Andrews that she is fully employed by the DMV, through which she has been working as a contact tracing investigator for the CDC. It appears that the discharge of the car and mortgage obligations under applicant’s name will be in applicant’s best interest, and that applicant and his household will be able to live without the commuted portion of his permanent total disability award. Notably absent from section 5100 is any mention of the interests of defendant. The sole consideration prescribed is what is best for the injured worker.

(Opinion on Decision, p. 4.)

Defendant’s Petition for Reconsideration (Petition) contends that “Labor Code section 5100 is not the sole determination as to whether a commutation is warranted and proper,” (Petition, at p. 3:22) and that pursuant to *Hulse v. Workers’ Comp. Appeals Bd.* (1976) 63 Cal.App.3d 221 [41 Cal.Comp.Cases 691], this case does not reflect the types of urgency situations otherwise requiring a commutation. Defendant contends “commutation should not be ordered so that applicant can benefit financially and eliminate debts under applicant’s name,” (*Id.* at p. 4:8) and that “if [a]pplicant and his household are able to live without the commuted portion of his permanent total disability award, then there was no justifiable basis for ordering the commutation.” (*Id.* at p. 5:3.)

Applicant’s Answer observes that historically the need to pay pressing or emergency expenses has been sufficient to justify commutation, and that the board has previously allowed commutation where necessary to purchase a home so long as applicant can demonstrate their disability payments are not necessary to daily living expenses. (Answer, at p. 5:5.)

The WCJ’s Report explains that “[d]efendant’s contention that commutation is only permissible where required for the survival of an injured worker is not supported by the plain meaning of Labor Code section 5100.” (Report, at p. 4.) The WCJ further notes that defendant’s reliance on *Hulse, supra*, 63 Cal.App.3d 221, is misplaced, as the commutation requested by

applicant is not a hedge against inflation, but rather a reasonable effort by applicant to “secure his residence of the past 17 years as well as a vehicle that was acquired for his own medical transportation.” (*Ibid.*) The WCJ recommends we deny the Petition, accordingly.

DISCUSSION

Applicant has sustained industrial injury resulting in a February 18, 2020 Award of permanent and total disability, to be paid in biweekly installments for the duration of applicant’s lifetime. (Findings and Award, February 18, 2020, Finding of Fact No. 3.) However, by petition dated October 28, 2020, applicant seeks to commute a sum certain from his weekly payments to pay off his mortgage and satisfy various other debts incurred on his or his family’s behalf. (Petition for Commutation, dated October 28, 2020, at p. 1.)

Labor Code section 5100 provides:

At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

- (a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant’s ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.
- (b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.
- (c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.
- (d) That the employer is not a resident of this state.

(Lab. Code, § 5100.)

Applying the second clause of subdivision (a) to the facts of the present matter, the WCJ has determined that the requested commutation would be in the best interest of the applicant. The WCJ specifically notes that the commutation will allow applicant to secure his residence of

17 years, and to pay for the vehicle acquired to provide in part for his medical transportation. (Report, at p. 4.)

Defendant's petition contends that section 5100 is not the sole determination as to whether a commutation is warranted and proper. (Petition, at p. 3:22.) Defendant cites to *Hulse, supra*, for the proposition that a "commutation will not be granted without a showing of an immediate and necessary requirement of funds in excess of the installment payments, such as a need to pay pressing or emergency debts." (*Hulse, supra*, 63 Cal.App. at p. 227.)

In *Hulse*, applicant received an April 14, 1975 award of 74 percent disability, to be paid in 413.25 weekly installments, and thereafter, a life pension. On August 5, 1975, applicant petitioned to commute the remainder of his permanent partial disability payments for the purpose of investment. Applicant's petition averred, "...by permitting this commutation, Applicant will earn interest presently being paid at the rate of 6 1/4 % per annum which will tend to off-set the depreciation which is occurring in the purchase value of the monies awarded to applicant as he periodically receives the same because of the inflationary process now going on..." (*Hulse, supra*, 63 Cal.App.3d 221, at p. 225.) The referee denied applicant's petition, and the WCAB affirmed. Following applicant's Petition for Writ of Review, the court of appeal noted that "[w]hether to order commutation in the present case, and whether to order the commuted lump sum deposited subject to the board's continuing control, therefore rested within the board's discretion ... Its discretion may not be exercised arbitrarily, however[,] and its arbitrary denial of a petition for commutation is subject to judicial annulment as 'unreasonable.'" (*Id.* at p. 226.) The *Hulse* court noted the Appeals Board's general policy that commutation was warranted only in cases of "very great urgency," and upon a showing of an "immediate and necessary requirement of funds in excess of the installment payments, such as a need to pay pressing or emergency debts." (*Id.* at p. 227.) The court also considered the argument that to allow a commutation as a hedge against inflationary pressure would effectively render *any* award of periodic payments of permanent disability in favor of a lump sum award, vitiating the legislative intent to protect the injured worker through a steady stream of indemnity payments over time. (*Id.* at p. 228.) Conversely, the court observed that applicant had advanced a colorable argument that the "income-producing potential of the commuted investment," effectively afforded applicant a degree of protection against the effects of inflation on the uncommuted award. (*Ibid.*) Having considered the arguments advanced by the parties, the court returned to the salient question of whether the Appeals Board, in affirming

the denial of applicant's petition, had abused its discretion. The *Hulse* opinion noted specifically that "[i]f commutation of this applicant's award were to have the precedential effect which the board majority and respondents portend, it would indeed permit -- if not command -- commutation of any and every permanent disability award." (*Id.* at p. 229.) Thus, court of appeal in *Hulse* affirmed the Appeals Board's denial of the petition for commutation, noting that the wholesale use of commutations was inconsistent with legislative intent, and contrary to the legislature's plenary power to create a complete system of workers' compensation. (*Id.* at pp. 229-230.)

Two years after *Hulse*, the Appeals Board issued an en banc decision in *Paquette v. City of Ventura* (1978) 43 Cal.Comp.Cases 1129 [1978 Cal. Wrk. Comp. LEXIS 3369] (Appeals Board en banc). Therein, the Appeals Board held that largely for public policy reasons, it was inappropriate to commute an award of permanent disability for the purposes of anticipated returns on investment greater than inflation. The Appeals Board observed that, "[a]pplicant's hedge against inflation argument would apply equally to the great majority of workers' compensation awards ... [c]onsequently, if commutation were allowed in the instant case, it would be inequitable to deny similar commutations to injured workers in the same situation as applicant herein." (*Id.* at p. 1131.)

Thus, the proposed commutations in both *Paquette* and *Hulse* were primarily requested for the purposes of converting a series of weekly payments into a lump sum for purposes of investment and as against hedge against inflation. However, as is observed by the WCJ, the funds requested by applicant herein are not sought for either of these purposes. (Report, at p. 4.)

Our jurisprudence in this regard has long held that so long as applicant is not wholly dependent on permanent disability indemnity for living expenses, efforts to purchase a home or pay off an existing mortgage may be in the best interests of the applicant. In *City of Los Angeles v. Workers' Compensation Appeals Bd. (Gale)* (2002) 67 Cal.Comp.Cases 944, 946 [2002 Cal. Wrk. Comp. LEXIS 1413] (writ den.), we held that because applicant and his spouse were not dependent on permanent disability installments for their living expenses, applicant's plan to pay off debts, sell other properties and to buy a home constituted a "reasonable plan, in applicant's best interest." (*Id.* at p. 946.) And in *County of Los Angeles v. Workers Compensation Appeals Bd. (Weston)* (2000) 65 Cal.Comp.Cases 1060, 1061 [2000 Cal. Wrk. Comp. LEXIS 6486] (writ den.), we held that commutation was appropriate for the purchase of home in which applicant could live in and where her family members could take care of her. We reached similar conclusions in

Sonoran Roofing, Inc. v. Workers' Comp. Appeals Bd. (Perez-Vasquez) (2002) 67 Cal.Comp.Cases 1517, 1518 [2002 Cal. Wrk. Comp. LEXIS 1577] [commutation reasonable where applicant sought commutation of award to purchase home that could be modified for his disability], and *Los Angeles Unif. School Dist. v. Workers' Comp. Appeals Bd. (O'Hagan)* (2008) 73 Cal.Comp.Cases 923 [2008 Cal. Wrk. Comp. LEXIS 154] [commutation in applicant's best interests to purchase a residence/rental property].

We have also held that in certain instances, as supported by the facts in evidence, the commutation of a lump sum for purposes of remediation of debts incurred by the injured worker may be in the applicant's best interests. In *O'Brien v. Warden's Auto Repair* (June 25, 2010, ADJ2002839 [2010 Cal. Wrk. Comp. P.D. LEXIS 247]), we determined that applicant's best interests were served by commutation in order "to obtain necessary dental treatment, to acquire reliable transportation and to repair and maintain his home." (*Id.* at pp. 11-12.) Additionally, in *Roadway Express v. Workers' Comp. Appeals Bd. (Brownlee)* (2003) 68 Cal.Comp.Cases 1242, 1244 [2003 Cal. Wrk. Comp. LEXIS 390], applicant's best interests were served by commutation to allow for greater stability in applicant's finances and to pay off certain loans. We have reached similar conclusions in *Bennett v. Cal. Dep't of Corr. & Rehab. (December 20, 2021; ADJ9738543)* [2021 Cal. Wrk. Comp. P.D. LEXIS 372] [commutation appropriate for payment of payment of arrears on mortgage and various debt obligations]; *Roque v. State Dep't of Corr.* (February 4, 2020, ADJ9146527) [2020 Cal. Wrk. Comp. P.D. LEXIS 103] [debt to the Internal Revenue Service]; *Evans v. Nikolaus Tank Lines* (November 14, 2013, ADJ2022213) [2013 Cal. Wrk. Comp. P.D. LEXIS 601] [commutation appropriate for payment of family loans, utility bills, new vehicle engine, but not for credit card debt or co-payments for nonindustrial medical treatment]; cf. *Weitnauer v. Sacramento County Sheriff's Dep't* (April 16, 2012, ADJ6716371) [2012 Cal. Wrk. Comp. P.D. LEXIS 215] [commutation not warranted for purchase of motor home.]

Here, applicant seeks commutation of his award of permanent disability in large part to discharge his residential mortgage obligations. (Ex. 3, Mortgage statement from Fidelity Title Company, dated July 30, 2020.) In addition, applicant offers documentary evidence of various debts incurred in connection with the flooding of his residence (Ex. 1, Plumbing proposal from HGM Construction, dated April 7, 2021), and to pay off the loan for a vehicle used to transport applicant to therapy sessions. (Ex. 2, BMW Financial Services letter, dated October 23, 2020.) In addition, applicant's spouse testified without rebuttal that the family's residential mortgage

obligations were approximately \$485,000, and that it would be “financially beneficial to pay off the mortgage to avoid interest payments.” (Minutes of Hearing and Summary of Evidence (Minutes), dated July 6, 2021, at p. 5:2.) In addition, applicant’s spouse testified that when the family required a new vehicle to assist in transportation to and from therapy, they purchased a vehicle with sufficient trunk capacity for applicant’s wheelchair and walker. (*Id.* at p. 4:5.) Ms. Andrews thus offered un rebutted testimony that it would be in the best interests of applicant and his family to pay off the housing and automotive bills. (*Id.* at p. 4:8.)

Following our independent review of the record, we agree with the WCJ’s assessment that commutation of a lump sum in the current matter meets the standard described in section 5100(a) as being in the best interests of the applicant. (Lab. Code, § 5100(a).) Unlike in *Hulse* or *Paquette*, *supra*, the purpose of the commutation is not a hedge against inflation or a similarly speculative motivation. (*Hulse*, *supra*, 41 Cal.Comp.Cases 691; *Paquette*, *supra*, 43 Cal.Comp.Cases 1129.) Rather, the satisfaction of the obligations incurred in relation to applicant’s mortgage obligations, home maintenance costs, and purchase of a vehicle will afford significant financial relief to applicant and his family and contribute to their economic stability in the future. We also observe that pursuant to un rebutted trial testimony, applicant’s spouse is employed full-time, and the family is not reliant on the full extent of the award of permanent disability for day-today living expenses. (Minutes, at p. 8:3; 8:15.)

Thus, and on this record, we conclude that the WCJ appropriately exercised the discretion afforded under section 5100(a) to grant commutation in those instances where it is in applicant’s best interests. Accordingly, we affirm the Findings and Order.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order on Petition for Commutation, issued on September 15, 2021, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 23, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**STACEY SHAW ANDREWS
GALUBER BERENSON
CITY ATTORNEY OF LOS ANGELES**

SAR/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

Defendant City of Los Angeles has filed a timely, verified petition for reconsideration from the September 15, 2021 Findings and Order on Petition for Commutation, which found that based on California Labor Code section 5100, applicant's petition for commutation, and the exhibits and testimony provided at trial, it is in the best interest of the applicant to grant the October 27, 2020 petition for commutation of \$536,255.44 from his 100% permanent disability award. Defendant's petition contends that this decision was without or in excess of the undersigned's powers, that the evidence does not justify the findings of fact, and that the findings do not support the order of commutation. Specifically, defendant contends that because it is possible for applicant to live without commutation, there can be no justifiable basis for ordering the commutation. At the time of preparation of this report, an answer has not yet been filed by applicant's counsel.

**II
FACTS**

A trial was conducted by telephone on July 6, 2021, in Case Number ADJ8825312 only, at which the sole issue submitted for decision was the October 27, 2020 petition for commutation of \$536,255.44 from the 100% permanent disability award of applicant Willie Andrews herein. Judicial notice was taken of the February 18, 2020 joint findings and award, entitled Amended Findings and Award, which found that applicant Willie Andrews, while employed during the period of November 7, 2008 through June 12, 2013, through age 65, as an Inspector/Supervisor, Occupational Group Number 213, at Los Angeles, California, by defendant City of Los Angeles, pernissibly self-insured, sustained injury arising out of and in the course of employment to his head, brain, bilateral knees, bilateral upper extremities, neurocognitive disorder, hypertension, diabetes, psyche, urethra, and erectile dysfunction arising out of and occurring in the course of employment, causing permanent disability of 100%, with indemnity commencing on February 28, 2020 at the rate of \$1,066.72 per week, less commuted attorney fees of \$129,674.40.

At trial, applicant's wife testified that she has been married to applicant Willie Andrews for 26 years, and although her husband is currently in the hospital, they have always lived together.

(Minutes of Hearing and Summary of Evidence, July 6, 2021, page 4, lines 16-19). They have one child, Simeon, who lives with them in a house where they have lived since 2004 (*Id.*). Earlier this year, their house flooded, and the homeowners insurance denied their claim, so they had to pay for plumbing work themselves, causing financial hardship (*Id.*, lines 21 -23; Applicant's 1, Plumbing proposal from HOM Construction dated April 7, 2021, page 1). They had refinanced their house last year, taking no cash out, and they owe \$475,000.00 on their mortgage (Minutes of Hearing and Summary of Evidence, July 6, 2021 , page 5, lines 21-23; Applicant's 3, Mortgage statement from Fidelity Title Company, dated July 30, 2020, page 2). Simeon dropped out of college to help to take care of his father, and they bought him a car in 2019 that he uses to transport the applicant to and from therapy (Minutes of Hearing and Summary of Evidence, July 6, 2021 , page 4, lines 5-7). The car is [a] BMW 740i because it has a large trunk that can hold applicant's wheelchair and walker, and the estimated payoff balance for this car is \$46,014.44 (Minutes of Hearing and Summary of Evidence, July 6, 2021, page 5, lines 5-10; Applicant's 2, BMW Financial Services letter, dated October 23, 2020, page 2). Applicant receives \$3,469.65 per month from LACERA as of May 31, 2021 (Defendant's N, Pension information from LACERA, June 17, 2021, page 2), and his award currently pays \$2,081.18 every two weeks (Defendant's K, Payment listing, June 9, 2021, page 4). Ms. Andrews and Simeon have received additional income for providing applicant with home health care, with Ms. Andrews having been paid \$1,740.00 and Simeon \$2,250.00 so far this year (Defendant's B, Home Health Care payments, June 16, 2021, page 1). Ms. Andrews earns a salary of \$4,600.00 per month from the California DMV, but she makes payments of about \$2,698.00 per month on applicant's home mortgage and about \$2,174.00 per month on their cars, with insurance, plus another \$1,650.00 to \$1,800.00 per month (adding together estimates that were provided at trial) for food, gas, cell phones, electricity, and medications (Minutes of Hearing and Summary of Evidence, July 6, 2021, page 6, line 1 through page 7, line 9).

Following trial, a September 15, 2021 Findings and Order on Petition for Commutation found that based on California Labor Code section 5100, applicant's petition for commutation, and the exhibits and testimony provided at trial, it is in the best interest of the applicant to grant the October 27, 2020 petition for commutation of \$536,255.44 from his 100% permanent disability award. Defendant City of Los Angeles has petitioned for reconsideration of the September 15, 2021 Findings and Order, contending that this decision was without or in excess of the

undersigned's powers, that the evidence does not justify the findings of fact, and that the findings do not support the order of commutation.

III DISCUSSION

Labor Code Section 5100 reads as follows:

At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

(a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.

(b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.

(c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.

(d) That the employer is not a resident of this state.

Labor Code section 5100(a) provides for commutation of future compensation if it is necessary for the protection of the applicant, or in the applicant's best interest. While it is not clear in this case that the commutation of \$536,255.44, requested to pay off cars and a home mortgage, is "necessary" for the protection of Mr. Andrews, because Mr. Andrews could survive without the commutation, the commutation is indisputably "in the applicant's best interest" because it helps to secure a residence and transportation for the use of his care providers and household, and it eliminates debts under Mr. Andrews' name. It is clear from the use of the word "or" section 5100(a) that an order of commutation may issue if it is in applicant's "best interest," and it is not necessary to prove that it is "necessary" for "protection." Subsection (a) requires the consideration of applicant's ability to live and discharge debts without periodic payments, and it appears that

commutation is warranted in this case under both considerations, based on the testimony of applicant's wife and Guardian ad Litem, Stacey Andrews that she is fully employed by the DMV, through which she has been working as a contact tracing investigator for the CDC. It appears that the discharge of the car and mortgage obligations under applicant's name will be in applicant's best interest, and that applicant and his household will be able to live without the commuted portion of his permanent total disability award. Notably absent from section 5100 is any mention of the interests of defendant. The sole consideration prescribed is what is best for the injured worker.

Because section 5100 provides for commutation if "any" of the conditions in subsections (a) through (d) apply, it is not necessary to consider subsections (b) through (d), although it is noted that under subsection (b), the commutation does prevent inequity by eliminating debts under applicant's name while he is unable to work, and does not cause undue expense or hardship to applicant. Subsections (c) and (d) clearly do not apply to defendant City of Los Angeles. Defendant's contention that commutation is only permissible where required for the survival of an injured worker is not supported by the plain meaning of Labor Code section 5100. Defendant's petition cites *Hulse v. Workers' Comp. Appeals Bd.* (1976) 63 Cal.App.3d 221 [41 Cal.Comp.Cases 691] in support of its position, but *Hulse* is distinguishable from the present case insofar as the sole basis for the commutation request in *Hulse* was to "protect [Hulse] against inflation by providing for deposit of the commuted lump sum in an income-producing investment with a financial institution," and the First District Court of Appeal was reviewing whether a denial of commutation was unreasonable (63 Cal.App.3d at 224). In contrast, Mr. Andrews has been granted commutation because he is seeking to secure his residence of the past 17 years as well as a vehicle that was acquired for his own medical transportation. This distinction on the basis of the particular facts of this case should easily prevent the *[reductio] ad absurdum* suggestion of defendant's petition that all commutation petitions must be granted if Labor Code section 5100 is to be applied literally. The First District Court of Appeal in *Hulse* acknowledges that commutation has always been decided on a "case-by-case" basis, and nothing in the September 15, 2021 opinion granting commutation was meant to imply that commutation must be automatically granted to all injured workers.

IV
RECOMMENDATION

It is respectfully recommended that the petition for reconsideration be denied.

DATE: 10/ 15/2021

Clint Feddersen
Workers' Compensation
Administrative Law Judge