

RULE 47

LUMP SUM SETTLEMENT

- A.** Before any application for an order approving a lump sum settlement in a compensation case shall be approved or otherwise acted upon by this court, an application, signed and verified by all parties, must first be filed with the compensation court and entered of record by the clerk thereof.
1. Each time that an application for an order approving a lump sum settlement is submitted or resubmitted after being withdrawn or disapproved, it must be accompanied by the statutory filing fee of \$15.00.
 2. At least one medical report by an attending or examining physician, substantiating the disability for which compensation is to be paid, shall accompany the application for approval. Copies of all medical reports to be submitted with the application shall be provided to the claimant prior to claimant's signing and verifying the application.
 3. Sufficient evidence must be submitted with the application to establish that the settlement is for the best interests of the claimant and that the application is in conformity with the workers' compensation schedule and law.
 4. An application will not be considered for approval without a proposed order of approval. A standard order developed by the court shall be used for this purpose.
- B.** The following information shall be included in or submitted with the application for an order approving lump sum settlement. A standard form or forms developed by the court may be used to meet these requirements.
1. The application is to be venued "In The Nebraska Workers' Compensation Court" and the title must clearly identify it as an application for approval of lump sum settlement.
 2. The salary paid, and whether it is on an hourly, daily, weekly, monthly, or other basis must be shown.
 3. The number of weeks and dates of temporary total and temporary partial disability sustained and the number of weeks which have been paid and/or are being paid under the settlement must be clearly stated.
 4. The percentage of permanent impairment and/or loss of earning power sustained, the number of weeks paid and to be paid and the amount of compensation per week must be clearly stated.
 5. An itemized list of all medical, hospital and miscellaneous expenses incurred and whether paid or to be paid and by whom paid or to be paid must

be clearly stated. This shall include payments made by Medicaid. Any payments which have been reduced by operation of the Diagnostic Related Group inpatient hospital fee schedule established in section 48-120.04 or a fee schedule adopted by the court pursuant to Rule 26 must be clearly identified. If the application provides for payment of future medical expenses incurred by the employee, there must be a statement in the application that in the event that a dispute arises as to payment of a medical expense, the parties may submit the matter to a judge of the compensation court for a determination.

6. In those cases in which there is subrogation, the full liability under the compensation law and the amount being subrogated must be set out. In addition, the extent of each party's participation in achieving any third party recovery must be set forth.
7. The computation must always be shown on the application.
8. The application must state whether or not the claimant has returned to work and if so, the date, the type of work, and wage.
9. In every case there must be a statement in the application that the claimant understands his or her rights regarding vocational rehabilitation, and there must be a waiver by the claimant of any further rights to vocational rehabilitation benefits. This is required even if the claimant has returned to work. The reason for the waiver must be given. Waivers will be closely scrutinized by the court, and in most cases will not be approved if the claimant has not returned to suitable employment. Attempts to "buy out" vocational rehabilitation will not be approved.
10. When an annuity or structured settlement is used to effectuate a lump sum settlement, the terms of said annuity or structured settlement together with the name of the annuity carrier must be included in the application, although the cost of the annuity or structured settlement need not be set forth; however, the cost of any annuity must be separately provided in writing to the court with the submission of the application. Any such application shall recite that the workers' compensation insurer, risk management pool, or self-insured employer shall be responsible for all payments in the application in case the annuity carrier or any entity to which the annuity has been assigned fails to fulfill any of its obligations. The application shall also state that the owner of the annuity or structured settlement shall be someone other than the employee or other beneficiary, and that the employee or other beneficiary shall have no control over or right to transfer the annuity or structured settlement.
11. The Social Security account number of the claimant must be on file with the court or submitted with the application in accordance with Rule 2.

12. The application must state whether, at the time the settlement is executed, the claimant is eligible for Medicare, is a Medicare beneficiary, or has a reasonable expectation of becoming eligible for Medicare within 30 months after the date the settlement is executed. If the claimant has a reasonable expectation of becoming eligible for Medicare within 30 months of the date the settlement is executed, the date of expected Medicare eligibility should be provided.

If the claimant is a Medicare beneficiary at the time the settlement is executed, the application must state whether a conditional payment investigation through the Centers for Medicare and Medicaid Services has been completed. The application shall provide that the employer will reimburse Medicare for conditional payments made by Medicare, or that the employer will reimburse Medicare an amount agreed to by Medicare in satisfaction of its interests regarding such payments.

- C. If the court requests additional information from the parties prior to the approval of the application, the deadline for submission of the information shall be 10 calendar days from the date of the court's request. An extension of up to seven days may be granted upon good cause shown, if either party, on their own initiative, contacts the court to request the extension. At the expiration of the 10 day deadline or a court granted extension, an Order of Disapproval shall be entered if the requested information has not been submitted.
- D. After approval in compensation court and payment of the settlement has been made, the employer, insurer, or risk management pool must file with the compensation court a subsequent report showing all amounts paid in the case. The subsequent report shall be filed in accordance with Rule 30.
- E. Sums being paid under the lump sum settlement are to be paid directly to those entitled to said sums, not into court. Payment must be made within 30 days after approval in compensation court.
- F. Compromise settlements will not be approved unless there is evidence submitted with the application which satisfies the court that the matter is doubtful and disputed. A lump sum settlement will not be approved if all of the compensation payable under such settlement is due and no reasonable controversy exists, unless a reasonable additional amount is paid as consideration for such lump sum settlement. All requirements of the compensation court must be satisfied before any lump sum settlement will be approved.
- G. A hearing will be scheduled when the court, in its discretion, deems it necessary.
- H. For cases involving life expectancies the U.S. Life Table, 2010, shall be the minimum life expectancy table used. A copy of this table may be found in the addenda to these rules.

- I.** For cases in which the employer has continued to pay full salary, credit will be allowed only for that portion of the full salary payment that was intended to apply to workers' compensation benefits, not to exceed the weekly income benefit owed pursuant to the Nebraska Workers' Compensation Act.
- J.** For cases in which an order of dismissal is required pursuant to § 48-139(4), upon making payment owed by the employer as set forth in the release, the parties shall file a receipt, satisfaction, or joint stipulation for dismissal setting forth the amount(s) received by the employee from the employer. The parties shall also submit a proposed order of dismissal to be signed by the judge together with certificate of service of mailing to be signed by the clerk of the court via e-mail attachment sent to wcc.proposedordersonly@nebraska.gov or via e-filing. The e-mail attachment shall be in either editable Microsoft Word format (*.doc or *.docx) or Rich-Text Format (*.RTF) file formats. The subject line of the e-mail shall include the case name and number.

Sections 48-138, 48-144, 48-163, 48-165, R.R.S. 2010, and 48-139, R.S. Supp., 2014.
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