

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GORDON SHELDON BAKER and
PATRICIA ANN BAKER

Bankruptcy No. X91-01806S

Debtor(s).

Chapter 7

MEMORANDUM OF DECISION AND ORDER RE: OBJECTION TO CLAIM OF EXEMPTION

Gordon Baker claims as exempt a cash deposit and future payments representing a workers' compensation award against his employer. Trustee has objected to the claim of exemption.

Hearing was held on January 7, 1992 in Sioux City, Iowa.

FINDINGS OF FACT

Gordon Baker is a truck driver. He suffered a heart attack in 1985 and has had subsequent heart attacks in 1986, 1988, 1990, and 1991. At all relevant times, he has been an Iowa resident. At the time of his first heart attack, he was employed by American Freight. He worked out of the trucking company's South Dakota terminal. He filed a workers' compensation claim in South Dakota and was awarded compensation benefits. He was paid \$14,000.00 out of which he netted \$9,000.00 after payment of legal expenses. He deposited these funds in a savings account at Norwest Bank in Sioux City, and at the time of the filing of the bankruptcy case, \$8,000.00 of it remained. All of the funds on deposit are from the compensation award. Under the award, he will receive future payments estimated at \$3,900.00 in 1992, \$3,400.00 in 1993, and approximately \$3,000.00 in 1994. From these payments, he must pay attorney's fees.

DISCUSSION

Baker claims the money in the savings account and the payments yet to be made as exempt property under two alternative sections of the Iowa Code. One is Iowa Code § 627.13 which exempts from execution "[a]ny compensation due or that may become due an employee or dependent under the provisions of chapter 85 . . ." Chapter 85 is Iowa's workers' compensation statute. Baker also claims the cash and future payments under Iowa Code § 627.6(8) (c) as his rights in "[a] disability or illness benefit."

The trustee objects, arguing that the workers' compensation award was made under the South Dakota workers' compensation statute and is therefore not exempt in Iowa under § 627.13. He also says that

the alternative provision, Iowa Code 627.6(8) (c), was not intended to include workers' compensation benefits.

Debtors' counsel contends that it would be improper for the state of Iowa to discriminate against those of its residents who have obtained workers' compensation awards from states other than Iowa. He argues that Iowa Code § 627.13 should be interpreted to include workers' compensation awards entered in other states. Alternatively, debtors' counsel contends that the Iowa exemption for a disability or illness benefit is broad enough to include a workers' compensation award from another state. As to the latter position, I agree, and therefore I indicate no opinion on the former question.

The parties have cited no cases which interpret Iowa Code § 627.6(8) (c). This section was enacted in 1981.⁽¹⁾ There is no legislative history for the court to rely on. However, the language of the section is nearly the same as provided by 11 U.S.C. § 522(d) (10) (C). The latter is a portion of the federal bankruptcy exemption statute, and it exempts "the debtor's right to receive-- . . . a disability, illness, or unemployment benefit . . ." This section was enacted in 1978 and was available to the Iowa legislature in revising its state law exemptions. Indeed, § 627.6(8) appears to copy almost completely 11 U.S.C. § 522(d) (10).

Section 522(d) (10) (C) has been interpreted by bankruptcy courts to include workers' compensation benefits. In re Cain, 91 B.R. 182 (Bankr. N.D. Ga. 1988); Matter of Evans, 29 B.R. 336 (Bankr. D. N.J. 1983); and In re LaBelle, 18 B.R. 169 (Bankr. D. Me. 1982). I agree with the reasoning of these courts that a debtor's rights in a disability or illness benefit includes compensation for earnings losses as provided by workers' compensation payments. Certainly the benefits which have been received and will be received by Baker are on account of a disability or illness and compensate him for his inability to earn wages.

Trustee argues that because the legislature enacted Iowa Code § 627.13 to deal specifically with workers' compensation awards, it must not have intended Iowa Code § 627.6(8) (c) to include the same property. However, as the trustee points out, Iowa Code § 627.13 deals only with Iowa awards. The trustee has not cited any authority for the proposition that § 627.6(8) (c) was not intended to deal with workers' compensation awards from other states. Moreover, Iowa Code § 627.13 was already in existence when the Iowa legislature passed § 627.6(8) (c). It is thus arguable that § 627.6(8) (c) was intended to include workers' compensation awards for other states because such awards were not already exempt under § 627.13.

The court also must consider whether a distinction must be made between the money already received and the payments to be received. Has the debtor lost part of his claim of exemption because money from the award has been deposited in a Norwest bank account? The exemption provided by Iowa Code § 627.6(8) (c) is for a "benefit." This benefit has been paid to the debtor in a form of cash. It is that benefit which he has deposited with the bank. The fact that depositing the money prevents the debtor from identifying the exact dollars, should not be fatal to his claim of exemption. See Staton v. Vernon, 209 Iowa 1123, 229 N.W. 763, 764 (1930).

Trustee argues also that interest earned on the deposit should not be exempt even if the funds on deposit are. Trustee cites authority for this proposition, Appanoose Co. v. Henke, 207 Iowa 835, 223 N.W. 876, 878 (1929). However, insufficient evidence has been presented by the trustee as to what, if any, portion represents accrued interest. The burden of proof regarding objection is on the trustee. If the court is not able to determine what portion of the deposit may be non-exempt interest, trustee's objection in this regard must also be overruled.

CONCLUSIONS OF LAW

Gordon Baker's deposit account at Norwest Bank is exempt pursuant to Iowa Code § 627.6(8) (c) as a disability or illness benefit. The post-petition payments to be received by Baker as a result of his workers' compensation award are exempt under Iowa Code § 627.6(8) (c).

ORDER

IT IS ORDERED that the trustee's objection to Gordon Baker's claim of exemption in a workers' compensation award deposit and future payments is overruled.

SO ORDERED ON THIS 8th DAY OF JANUARY, 1992.

William L. Edmonds
Bankruptcy Judge

1. The provision describing illness and disability benefits was originally enacted in 1981 as § 627.6(9) (c); it was renumbered in 1986.