

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR KENT COUNTY**

ELTON R. WOOD,	)	
	)	
Appellant,	)	C.A. No. 01A-07-011 JTV
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
	)	
Appellees.	)	

*Submitted: March 12, 2002*

*Decided: May 24, 2002*

Walt F. Schmittinger, Esq., Dover, DE 19901

J. R. Julian, Esq., Wilmington, DE 19801

*Upon Consideration of Appellant's Appeal From  
the Industrial Accident Board*

**AFFIRMED**

**VAUGHN, Resident Judge**

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**ORDER**

Upon consideration of the parties' briefs and the record of the case, it appears that:

1. This is an appeal from a decision of the Industrial Accident Board ("the Board") dismissing Alice Wood's petition for death benefits for the death of her husband, Elton Wood. Mr. Wood, a correctional officer, received severe injuries in 1971 when he was assaulted while working at the Stevenson juvenile facility. He suffered a 100% loss of use of his brain and received workman's compensation benefits from then until his death in 2001. In 1999 Mr. Wood, with Mrs. Wood acting on his behalf with a power of attorney, and the employer entered into a stipulation which commuted partial disability benefits, permanent impairment benefits, disfigurement benefits and death benefits for the sum of \$50,000.00. This stipulation was approved by the Board on March 18, 1999 after a hearing. Total disability and medical expenses were expressly excepted from the agreement. Two years later, in 2001, Mr. Wood died. Despite the fact that death benefits were commuted in the 1999 stipulation approved by the Board, Mrs. Wood filed a petition for death benefits, contending that the Superior Court case of *Molitor v. Wilder*<sup>1</sup> and the Board case of *Adams v. T.G. Adams & Son, Inc.*<sup>2</sup> allow for the reopening of commuted benefits. She also contended that the death benefits claim is a survivor's

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<sup>1</sup> 195 A.2d 549 (Del. Super.Ct. 1963), *aff'd* 196 A.2d 214 (Del. 1963).

<sup>2</sup> IAB Hearing No. 782582 (March 30, 2001).

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claim which Mr. Wood, the actual party to the 1999 agreement, could not legally compromise. In support of this second contention, Mrs. Wood emphasized that she signed the 1999 agreement solely in a representative capacity for Mr. Wood, not for herself individually. The Board, after considering Mrs. Wood's arguments, concluded that the two cases mentioned were distinguishable and that Mrs. Wood had waived any claim to death benefits. These same contentions form the basis for the appellee's arguments on this appeal.

2. On appeals from the Industrial Accident Board, the Court's limited function is to determine whether the Board's decision is supported by substantial evidence and free of legal error.<sup>3</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>4</sup> The appellate court does not weigh the evidence, determine questions of credibility or make its own factual findings.<sup>5</sup> It merely determines if the evidence is legally adequate to support the agency's factual findings.<sup>6</sup>

3. The following additional facts are relevant to this appeal. In February 1999 the parties were involved in negotiations over outstanding compensation issues in Mr. Wood's case. These negotiations ultimately led to the stipulation which was

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<sup>3</sup> *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993); *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>4</sup> *Oceanport Ind. V. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986).

<sup>5</sup> *Johnson*, 213 A.2d at 66.

<sup>6</sup> 29 *Del. C.* § 10142(d).

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approved by the Board. During the course of the negotiations, counsel for the employer wrote counsel for the claimant a letter confirming that “we have reached a global resolution and settlement concerning Mr. Wood’s claim.” As part of this resolution, he wrote:

[t]he employer will pay Mr. Wood \$50,000.00 in a lump sum in return for a full and complete commutation of any and all past, present and future partial disability benefits, permanent impairment benefits, disfigurement benefits and death benefits (including funeral benefits) related to Mr. Wood’s industrial injury that occurred on November 17, 1971.

On the same date, counsel for Mr. Wood wrote counsel for the employer as follows:

This confirms that the above captioned case is settled on the following basis. . . . Second, you will pay \$50,000.00 to commute his claim for permanent partial disability and diminished earning capacity. We will also commute any potential claim for death benefits should he die.

A petition for commutation based upon the above settlement was filed the next month. As mentioned, Mr. Wood was completely incapacitated and Mrs. Wood acted for him through a general power of attorney which he had signed in 1995. At the hearing on the petition, the following exchange took place between counsel for the employer and Mrs. Wood:

Counsel: Now there is one other benefit that I put in the stipulation and I negotiated with [counsel for claimant] just so it’s clear on the record. You are also commuting any kind of death benefits, do you understand that?

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Mrs. Wood: Yes.

Counsel: In other words if Mr. Wood, when Mr. Wood eventually passes away you would not come back and file a petition for death benefits as a widow.

Mrs. Wood: No.

Counsel: Is that your understanding?

Mrs. Wood: I understand that.

Counsel: Alright. And you are satisfied with this arrangement?

Mrs. Wood: Yes I'm satisfied with that.

The stipulation commuting benefits was signed by the employer and by Mrs. Wood for her husband. An order approving the stipulation was signed by the Board members who heard the petition.

4. While it is correct that the commutation agreement was signed by Mrs. Wood as agent for her husband and not by her individually, the above exchange provides substantial evidence that it was understood between the parties involved, including Mrs. Wood, that commutation was being offered and accepted in full settlement of the named benefits, including death benefits. Counsel's questions were specifically directed to her in her future capacity as a widow. Mrs. Wood's answers express her agreement not to file a petition for death benefits as a widow. They were consistent with the language of the agreement and the exchange of correspondence

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between counsel which indicated that commutation of death benefits was part of the settlement. Had she indicated that she was not willing to give up the possibility of seeking death benefits later if her husband died of his injuries, counsel for the employer would no doubt have dealt with that issue at that time in the context of the 1999 proceeding. A waiver is the voluntary and intentional relinquishment of a known right.<sup>7</sup> On this record, the Board's decision that Mrs. Wood had waived any future death benefits is supported by substantial evidence and is free of legal error.

5. The two cases relied upon by Mrs. Wood do not require a contrary result. In *Molitor* the issue was whether or not a claimant who had received a commutation of permanent-partial disability benefits could petition for additional compensation later when his permanent-partial disability worsened. No such changed circumstances are present here. And in *Adams* there was no issue of the survivor having waived any right to petition for death benefits. The Board's analysis distinguishing these cases does not contain legal error.

6. The decision of the Board is ***affirmed***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

\_\_\_\_\_  
Resident Judge

\_\_\_\_\_  
oc: Prothonotary  
xc: Walter F. Schmittinger, Esq.  
J. R. Julian, Esq.  
Elton R. Wood

<sup>7</sup> *Dudziak v. Dudziak*, 1975 Del. LEXIS 228 (Del. Ch.)

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Order Distribution