

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELTON WOOD,)
) No. 307, 2002
 Claimant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) C.A. No. 01A-07-011
)
 Employer Below,)
 Appellee.)

Submitted: November 13, 2002
Decided: January 23, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 23rd day of January 2003, on consideration of the briefs of the parties, it appears to the Court that:

(1) Alice Wood, widow of Claimant-Appellant Elton Wood appeals from the decision and Order of the Superior Court affirming an Order of the Industrial Accident Board. The Board conducted a hearing at the request of the Employer/Appellee, the State of Delaware, seeking dismissal of her petition for death benefits. The Board granted the State's request and dismissed the petition because the parties previously commuted the death benefits by way of Stipulation and Order of Commutation, I.A.B. No. 483858, dated March 18, 1999. Alice Wood filed an appeal from the Board's decision to the Superior Court on July 31,

2001. By order Dated May 24, 2002, the Superior Court affirmed the decision of the Board.

(2) On November 17, 1971, Elton Wood sustained an injury while working as a prison guard at the Stevenson House in Milford, Delaware. While he was on duty, an inmate struck him on the head with a pool cue and severely beat him. As a result, Mr. Wood sustained a brain injury that caused total disability. His spouse, Alice, cared for him during his initial incapacity. Mr. Wood entered a nursing home during the final years of his life because his wife could no longer provide the necessary care.

The State paid Mr. Wood total disability benefits from the date of his injury until his death on February 24, 2001. In addition, the State compensated Mr. Wood for a 100% permanent impairment to the brain and a 26% permanent impairment to his right ear. Mr. Wood also received disfigurement benefits for a scar on top of his head.

In February 1999, Alice Wood acting under a power of attorney granted earlier by Elton, entered into a commutation agreement with the State. The agreement stipulated that the State would continue to pay total disability and all causally related medical expenses, including nursing home charges, until Elton's death. The State and Alice, acting for Elton, also agreed to commute certain benefits, including partial disability benefits, permanent impairment benefits, and

allegedly, death benefits, related to the 1971 injury. Alice Wood testified in support of the commutation. The following conversation took place between the State's counsel and Wood:

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

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.

(3) Alice Wood now asserts she is entitled to survivor's benefits. First, she argues that, through her appointment as attorney for her husband's affairs, she could only commute his benefits and not the benefits of a third party (i.e., her benefits as widow). Second, Alice argues that commutation of benefits does not foreclose the right to petition for and receive additional benefits in the future. We conclude that Board correctly dismissed Alice Wood's petition for survivor's benefits pursuant to 19 *Del. C.* § 2330.

(4) With respect to her first argument, we find that Alice overtly manifested at the 1999 commutation hearing that the agreement commuted her death benefits from her husband's injury. "The formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration."¹ "The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act."² While it is correct that Alice signed the commutation agreement while acting for Elton and not individually, the exchange between her and the State's counsel at the commutation hearing provides substantial evidence that the parties understood that commutation of death benefits was being offered and accepted in exchange for full settlement of the named benefits. Counsel specifically directed questions to Alice addressing her potential as a future claimant. This is not a case where the claimant agreed to waive death benefits without the death benefits beneficiary's permission or consent. Here, the potential beneficiary/claimant dealt directly with the employer and specifically waived her right to benefits in return for the benefits flowing from the commutation. Accordingly, this case is distinguishable from the cases cited by Alice.³

¹ Restatement 2d of Contracts, § 18.

² *Id.* at § 19.

³ *Adams v. T.G. Adams & Son, Inc.*, Del. I.A.B., Hearing No. 782582 (March 30, 2001) (Order); *Molitor v. Wilder*, 195 A.2d 549 (Del. 1963).

(5) Alice correctly asserts that commutation of benefits is not a foreclosure of the right to petition for and receive additional benefits under certain, specific situations.⁴ However, none of those situations apply here. Alice's circumstances did not change nor is she requesting benefits not included in the earlier commutation agreement. Accordingly, Alice Wood's argument is without merit.

NOW, THEREFORE, IT IS ORDERED that the decision of the Superior Court be, and hereby is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁴ See *Molitor v. Wilder*, 195 A.2d 549 (Del. 1963).