

BEFORE THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

KARI-ANN JONES,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1412276
	)	
UNIVERSAL HEALTH SERVICES, INC.,	)	
	)	
Employer.	)	

**ORDER**

This matter came before the Board on August 20, 2020, on a motion to enforce a commutation agreement between Kari-Ann Jones (“Claimant”) and Universal Health Services, Inc. (“Employer”). Pursuant to the Industrial Accident Board’s COVID-19 Emergency Order dated May 11, 2020, this motion hearing was conducted by video conferencing using the WebEx video platform.

**Background:** Claimant was injured in a compensable work accident on April 6, 2014. The recognized injury was to the right hand and wrist. In November of 2014, she underwent surgery for a triangular fibrocartilage complex (“TFCC”) tear and debridement. *See Jones v. Universal Health Services*, Del. IAB, Hearing No. 1412276, at 3 (July 24, 2017), *aff’d*, Del. Super., C.A. No. K17A-08-002, Clark, J. (August 16, 2018). In 2015, she was found to have a large herniated disk at C5-6 in her cervical spine, as well as a C6-7 disk bulge. She underwent a cervical discectomy and fusion at C5-6 and C6-7. *Jones*, at 5. Claimant filed a petition to have the cervical condition considered as part of the compensable work injury, but her petition was denied. *Jones*, at 12.

In 2018, Claimant’s total disability status was terminated. *See Jones v. Universal Health Services*, Del. IAB, Hearing No. 1412276 (August 29, 2018)(ORDER). Claimant entered into an agreement for partial disability to be paid at the rate of \$150.00 per week. Claimant was also

compensated for a 20% permanent impairment to the right upper extremity and received compensation for disfigurement.

In 2020, the parties entered into negotiations for a full commutation of benefits. On May 22, 2020, Employer offered a full commutation for \$40,000.00. Claimant's counsel asked if Employer would agree to continue to pay partial disability benefits until the commutation was approved. On May 26, Employer agreed to pay partial disability until approval. Later that same day, Claimant confirmed her agreement to the proposed commutation, and Employer's counsel began to prepare the legal documents for the commutation.

Unfortunately, on June 1, 2020, before the documents were completed, Claimant and her husband died in a motor vehicle accident, leaving behind three minor children. Claimant's counsel notified Employer of this event on June 8.

Claimant's estate maintains that the commutation should be enforced because the parties reached a meeting of the minds on all material terms of the commutation. Employer argues that the commutation is unenforceable in light of the fact that the commutation documents were not signed, much less approved by the Board.

**Analysis:** It has long been established that, if parties reach a meeting of the minds on a settlement, the Board can enforce that settlement even if a party then has second thoughts. *See Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 156 (Del. 1998) (Board may approve and enforce an agreement if the Board finds that "the parties had reached a meeting of the minds as to all material terms and had entered into a binding agreement notwithstanding the absence of a formal contract."). *See also Johnson v. Food Lion*, C.A. No. N13A-08-010, Scott, J., 2014 Del. Super. LEXIS 3413, at \*11 (April 14, 2014); *Soto v. Pettinaro Construction*, Del. IAB, Hearing No. 1256246, at 2 (October 2, 2009)(ORDER); *Woodall v. Diamond State Port Corp.*, Del. IAB,

Hearing No. 1191596, at 2-4 (August 8, 2002)(ORDER); *Curry v. Wendover, Inc.*, Del. IAB, Hearing No. 1119976, at 11 (March 22, 2001), *aff'd*, Del. Super., C.A. No. 01A-04-003, Del Pesco, J. (August 23, 2001)(ORDER).

In *Anchor Motor Freight*, it was found that the parties had reached a meeting of minds as to an agreement concerning future compensation, but the employee died before the agreement was formally approved by the Board. The Supreme Court found that the Board retained the authority “to approve an agreement on compensation or other benefits regardless of whether the claimant has died.” *Anchor Motor Freight*, 716 A.2d at 158. “The employer had made a bargain that, in hindsight, was not as beneficial as originally anticipated. We do not think it serves the purposes of the Workers’ Compensation Act to allow parties to avoid their commitments based on the fortuity of whether a claimant dies before the Board acts.” *Anchor Motor Freight*, 716 A.2d at 158-159. The Supreme Court did not consider the agreement in that case to be a “commutation,” even though both the Board and Superior Court had characterized it as such. *Anchor Motor Freight*, 716 A.2d at 157 & n. 7. Superior Court had recognized that, by statute, the Board could approve a commutation if it was in the best interest of the employee or of the dependents of a deceased employee. *Anchor Motor Freight*, 716 A.2d at 157 (citing DEL. CODE ANN. tit. 19, § 2358).

The Board does not find the difference between an agreement as to compensation (as was in issue in *Anchor Motor Freight*) and a commutation of benefits (as is in issue here) to be significant. Rather, the Board agrees with the approach taken in *Johnson v. Food Lion, supra*. The threshold issue is whether the parties reached a meeting of the minds on all material terms of the alleged settlement. If it is found that there was a meeting of the minds, then the next issue would be whether the Board would *approve* the proposed commutation as being in the best interest

of the employee or the dependents of a deceased employee. *See Johnson*, 2014 Del. Super. LEXIS 3413, at \*14-\*15 (after finding meeting of minds, the court considers whether there was substantial evidence that the commutation was in the claimant's best interest).

The first stage of the analysis is clear. There can be no doubt that the parties reached a meeting of the minds on a full commutation for \$40,000.00 with the added requirement that Employer would continue to pay Claimant her partial disability benefits until the commutation was signed. E-mails between counsel establish that these terms were agreed to by both parties on May 26.

The second stage is whether this commutation is in Claimant's best interest. Obviously, approving it would now be in the interest of Claimant's three minor children, but the proper question to ask is whether, at the time that the agreement was reached, it was in Claimant's best interest. A review of the file shows that it clearly was. As discussed above, Claimant failed to have her cervical condition included as part of her compensable injury. It follows that symptoms and limitations attributable to the cervical condition were not compensable, which could potentially complicate her receiving future treatment for right upper extremity complaints (which might be attributable to the cervical condition). Claimant's claim for total disability had ended. Permanent impairment has already been paid, as well as compensation for disfigurement from surgical repair to her right upper extremity. Thus, Claimant had no reasonable expectation of future benefits with respect to those items. With regard to partial disability, by the time the parties had reached agreement on the commutation, she had already received over 95 weeks of compensation (since roughly July 20, 2018) and was going to continue to receive partial disability compensation until the commutation documents were finalized. Partial disability benefits, of course, are capped at a maximum of 300 weeks. Therefore, even without reducing it to its present-

day value, at her established partial disability compensation rate that left only about \$30,000.00 of future partial disability compensation left. The commutation sum was for \$40,000.00.

Based on all of the above, the Board finds that the commutation that the parties had agreed to was in Claimant's best interest. It was adequate to compensate her for her likely future entitlement to workers' compensation benefits without her having to face the risk of further litigation that might reduce or eliminate those benefits.

Accordingly, the Board finds both that the parties did reach a meeting of the minds on the commutation and that the commutation was in Claimant's best interest at the time that the parties entered into their agreement. It does not serve "the purposes of the Workers' Compensation Act to allow parties to avoid their commitments based on the fortuity of whether a claimant dies before the Board acts." *Anchor Motor Freight*, 716 A.2d at 158-159. The Board therefore finds the agreement valid and enforceable. Employer shall complete the necessary documents to finalize the commutation for the benefit of Claimant's estate.

**IT IS SO ORDERED** this 24<sup>th</sup> day of August, 2020.

**INDUSTRIAL ACCIDENT BOARD**

Mark A. Murowany /cs  
MARK A. MUROWANY

Robert J. Mitchell /cs  
ROBERT J. MITCHELL

I, Christopher F. Baum, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

Christopher F. Baum

Mailed Date: 8/31/20

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OWC Staff

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Paul V. Tatlow, Attorneys for Employer

