BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

ANTHONY HAWKINS,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1243139
	)	
INTERSTATE INDUSTRIAL CORP.,	)	
	)	
Employer.	)	

ORDER

This matter came before the Board on June 28, 2012, on a motion by Interstate Industrial Corporation ("Employer") seeking enforcement of a commutation agreement reached with Anthony Hawkins ("Claimant").

The time line of events is of critical importance to this case. Claimant injured his low back in September of 2003, while shoveling stone. Claimant underwent two back surgeries, which included fusion surgery (L4 to S1). On October 25, 2010, the parties reached agreement on a settlement of Claimant's case. Under the terms of this agreement, a structured settlement was arranged to pay indemnity benefits to Claimant in the form of a lump sum of $30,000.00 followed by a payment of $1,000.00 annually from May 22, 2011, through May 22, 2025. This commutation of indemnity benefits was submitted to the Board and was approved on December 1, 2010.

However, as part of that October 2010 settlement, the parties also agreed that future medical treatment expenses would be covered by a Medicare Set Aside ("MSA") to be funded by an annuity paid for by the Employer. This settlement was conditional on the parties receiving approval of the MSA by the Center for Medicare & Medicaid Services ("CMS"). At the time this settlement agreement was reached, Claimant's treatment consisted primarily of medications

and the occasional doctor visit. Pursuant to the parties' agreement, Employer submitted the MSA to CMS for approval.

CMS took a long time to review the MSA. Specifically, it was not until February of 2012 (about fourteen months later) that CMS finally approved the MSA. Upon receiving this approval, Employer requested that Claimant finalize the settlement agreement by executing commutation documents for medical expenses.

Claimant refuses to execute these documents. In early December of 2011, Claimant's doctor proposed revision laminectomy and fusion surgery with hardware removal. Claimant had notified Employer's insurance carrier of this surgical proposal in December. Claimant's concern is that CMS may possibly have been unaware of the December 2011 surgical recommendation at the time that it issued its February 2012 approval of the proposed MSA.

Employer argues that a third-party vendor was in charge of providing medical records to CMS for the MSA approval process. CMS can and does ask for additional information when its review of the records warrants it and it will adjust the proposed funding of a proposed MSA based on its own independent determination. Following its own process, CMS has approved the MSA in this case. The settlement agreement between the parties was that a commutation of medical expenses would be entered into provided that CMS approved the MSA. As such, Employer requests that the Board compel Claimant to execute the documents to finalize the agreed settlement between the parties.

It is beyond dispute that the Board will enforce settlement agreements that are reached between parties. In *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154 (Del. 1998), it was found that the parties had reached a meeting of minds as to a commutation, but that the employee died before the commutation 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 Board did not need to find that a formal written agreement existed. All it needed to find was 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." *Anchor Motor Freight*, 716 A.2d at 156.

The issue, then, is whether the parties reached a meeting of the minds on all material terms of the settlement. There is no real dispute on this. Claimant agrees that, in October of 2010, he agreed to enter into a commutation of his medical benefits in exchange for Employer agreeing to pay for a CMS-approved MSA. There was a complete meeting of minds between the parties on this.

Claimant argues that this agreement or meeting of minds should be declared invalid because, subsequently, circumstances changed. Of course, circumstances changed in *Anchor Motor Freight*, too. The claimant in that case was receiving benefits under an agreement that would have ceased with his death. The parties then agreed that he would be paid benefits at a lower rate, but those benefits would be guaranteed for five years. Prior to this agreement being formally approved by the Board, the claimant died. *See Anchor Motor Freight*, 716 A.2d at 155. The Supreme Court held that that change of circumstance did not affect the parties' agreement. "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. In short, a subsequent change of circumstances does not invalidate a prior agreement when there has been a meeting of the minds.

In this case, there was no fraud or deception in the making of the agreement. Both parties agreed that, if Employer could obtain CMS approval of an MSA and funded it, then Claimant would commute his receipt of medical benefits in exchange for that MSA account.

Claimant's concern, really, is that the MSA approval might later be deemed invalid by CMS because of the recent surgical proposal and that he would then lose Medicare benefits. This is, however, speculative. Certainly, this Board does not have the jurisdiction or authority to declare the MSA approval invalid. Even if it did have that jurisdiction, the Board has no evidence to reach such a conclusion. Claimant is worried that CMS was not sufficiently informed of the surgical recommendation before it gave its approval of the MSA, but there is no evidence from which the Board can determine whether CMS was or was not informed.

What is clear and is undisputed is that CMS *did* approve an MSA for Claimant. There is no basis (either legally or factually) for the Board to deem that approval invalid. This was the one necessary condition for the parties' agreement to the commutation of medical benefits and, so long as that approval is in place, Claimant has no basis to refuse to complete the settlement agreement that it reached with Employer. The parties negotiated this agreement in good faith. When the agreement was made in October 2010, neither party had any basis or reason to believe that Claimant would need further substantial medical treatment causally related to the work accident.[1] At the time of the agreement, it was a reasonable compromise or settlement of a disputed case. To paraphrase the Supreme Court, the Board does not think that it serves the purposes of the Workers' Compensation Act to allow parties to avoid their commitments based on the fortuity of whether CMS is prompt in acting on requests to approve proposed MSAs.

[1] For that matter, even as things stand right now, there has been no Board finding that any further surgery would be reasonable for Claimant or that such surgery would be causally related to the work accident.

As such, the Board grants Employer's motion and orders Claimant to produce, within fourteen days of the date of this order, the appropriate documentation for finalization of the commutation settlement resolution and to cooperate with the MSA/CMS process to close out the medical aspect of this claim.

IT IS SO ORDERED this 9th day of August, 2012.

INDUSTRIAL ACCIDENT BOARD

MARILYN J. DOTO

WILLIAM F. HARE

OWC Staff

Mailed Date: 8/9/12

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