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# Record No. 4996

## In the Supreme Court of Appeals of Virginia at Richmond

## MANCHESTER BOARD AND PAPER CO., INC., ET AL.

v.

## IRVING F. PARKER

FROM THE INDUSTRIAL COMMISSION OF VIRGINIA

### RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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## Record No. 4996

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VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Friday the 9th day of January, 1959.

MANCHESTER BOARD AND PAPER CO., INC., ET AL., Appellants,

*against*

IRVING F. PARKER, Appellee.

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From the Industrial Commission of Virginia

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Upon the petition of Manchester Board and Paper Company, Incorporated, and Liberty Mutual Insurance Company an appeal was awarded them by one of the justices of the Supreme Court of Appeals on January 8, 1959, from an award entered by the Industrial Commission of Virginia on the 29th day of October, 1958, in a certain proceeding then therein depending wherein Irving F. Parker was claimant and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the Secretary of the said Industrial Commission in the penalty of three hundred dollars, with condition as the law directs.

page 2 }

* * * * *

Rec'd. 1-13-59.

A. L. L.

MOTION FOR A WRIT OF *CERTIORARI.*

To the Honorable Chief Justice and the Justices of the Supreme Court of Appeals of Virginia:

The appellants, Manchester Board and Paper Company, Incorporated and Liberty Mutual Insurance Company, respectfully move this Honorable Court pursuant to the provisions of Section 8-473 of the Code of Virginia of 1950 to award a writ of *certiorari* to the Clerk of the Industrial Commission of Virginia to have brought before this Court parts of the record of the proceedings in the Industrial Commission of Virginia which were omitted in the transcript of the record heretofore certified to this Court, and in support of such motion set forth the following:

(1) That on November 14, 1958 after proper notice was given, application was made to the Industrial Commission of Virginia for a certified copy of the record in this cause, at which time the Secretary of the Industrial Commission of Virginia delivered to counsel for the appellants what purported to be a complete record herein.

(2) That upon inspection of the purported record by counsel for the appellants it was determined in the opinion of said counsel that certain material documents had been omitted from the same, and particularly the following:

(a) Notice of Award, Approval of Agreement dated October 14, 1957, which documents set forth the period during which compensation was to be paid under the agreement filed by the parties.

(b) Letter of the said Commission directed to Liberty Mutual Insurance Company dated January 16, 1958 requesting that a final medical examination of the claimant be

page 3 } had.

(c) Letter of the Commission directed to Irving F. Parker dated March 17, 1958 requesting him to report for a final medical examination.

(d) Employer's Supplemental Report of Injury dated November 19, 1957 reporting to the Commission that the employee had returned to work as of that date.

(e) Letter of the Industrial Commission directed to Liberty Mutual Insurance Company dated May 28, 1958 requesting the filing of a Final Settlement Receipt.

(f) Statement of days worked and gross earnings of injured employee dated July 8, 1958 setting forth the fact of the employee's full employment from November 19, 1957.

(3) That each of the above listed documents are either directives from the Industrial Commission or official forms required by the Industrial Commission to be filed with it by the carrier or the employer.

(4) That counsel for the appellants have inspected the file of the Industrial Commission of Virginia and find that each of said documents is contained therein, is available to be certified to this Court, and, it is assumed, were considered by the Commissioners in determining this cause.

(5) That the appellants feel that in order for this Court to properly decide the issues before it, it should have available to it a complete record of the proceedings had in the Industrial Commission of Virginia and particularly the documents set forth in paragraph (2) above.

Wherefore, the appellants respectfully move this Court to award a writ of *certiorari* to the Industrial Commission of Virginia directing it to transmit to the Clerk of this Court, duly certified, the complete record of all proceedings had before or considered by the said Industrial Commission of Virginia in this cause, including all documents, page 3 } reports, letters and other papers contained in its file and particularly the documents referred to in paragraph (2) above.

MANCHESTER BOARD AND PAPER COMPANY, INCORPORATED AND LIBERTY MUTUAL INSURANCE COMPANY, Appellants

By ERNEST G. GARRETT, JR., Counsel (MAY, GARRETT, MILLER & NEWMAN),
1233 Mutual Building,
Richmond 19, Virginia.

* * * * *

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 19th day of January, 1959.

MANCHESTER BOARD AND PAPER COMPANY, INCORPORATED, EMPLOYER, AND LIBERTY MUTUAL INSURANCE COMPANY, INSURANCE CARRIER, Appellants,

*against*

IRVING F. PARKER, Claimant, Appellee.

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Upon a Writ of *Certiorari.*

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This day came the appellants, by counsel, there having been no appearance by or on behalf of the appellee in this court, and moved this court to award a writ of *certiorari* to the clerk of the Industrial Commission of Virginia to have brought before this court parts of the record of the proceedings in the Industrial Commission of Virginia which were omitted in the transcript of the record heretofore certified to this court. And upon consideration thereof the court doth award said writ, and doth order that said Industrial Commission of Virginia transmit to the clerk of this court, duly certified, the complete record of all proceedings had before or considered by said Industrial Commission of Virginia in this cause, including all documents, reports, letters and other papers contained in its file and particularly the following:

(1) Notice of Award Approval of Agreement dated October 14, 1957.

(2) Letter of the Commission directed to Liberty Mutual Insurance Company dated January 16, 1958.

(3) Letter of the Commission directed to Irving F. Parker dated March 17, 1958.

(4) Employer's Supplemental Report of Injury dated November 19, 1957.

(5) Letter of Industrial Commission directed to Liberty Mutual Insurance Company dated May 28, 1958.

(6) Statement of days worked and gross earnings of injured employee dated July 8, 1958.

It is further ordered that an attested copy of this order, in lieu of a formal writ of *certiorari,* be served upon W. F. Bursey, Secretary of the Industrial Commission of Virginia.

# RECORD

* * * * *

(on back)

Legal service of the within writ is hereby accepted this 21 day of January, 1959.

W. F. BURSEY.

* * * * *

Vol. I.

COMMONWEALTH OF VIRGINIA
Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA
RICHMOND

File No. 392-781 (C33-89391 R)

Manchester Board & Paper Co., Inc., Employer

*v.*

Irving F. Parker, Employee.

APPLICATION FOR A HEARING ON THE GROUND OF CHANGE IN CONDITION.

The applicant, Manchester Board & Paper Co., Inc. and Liberty Mutual Insurance Company, respectfully requests a hearing before the Industrial Commission of Virginia in the above styled case on the ground that there has been a change in the condition of the injured person such as is contemplated by the provisions of section 65-95 of the Workmen's Compensation Act, and in support of this request makes the following statements:

1. Name and present address of injured is: Irving F. Parker, 4329 Lawson Street, Richmond, Virginia.
2. Name of the employer is: Manchester Board & Paper Co., Inc.
3. Claimant was last paid compensation at the rate of $30.00 per week up to the 18th day of November, 1957, inclusive.

4. At this time his condition has changed as follows (here state nature of change alleged and the reason for such allegation with any other grounds for requesting a hearing): Irving F. Parker returned to work for Manchester Board & Paper Co. Inc. on November 19, 1957 at the same or greater rate of pay as he was earning at the time of his injury on September 14, 1957. See Employer's Supplemental Report of Injury dated November 19, 1957 and attached affidavits of B. P. Burrow, Claims Manager, Liberty Mutual Insurance Company; J. F. Maher, Jr., Personnel Director, Manchester Board & Paper Co., Inc. and Dr. Earnest B. Carpenter.

5. Injured employee returned to work for Manchester Board & Paper Co., Inc. at 1850 9th Street Road at Richmond, (Name of present employer) (Address of present employer) Virginia at an average weekly wage of $69.35 or greater Or injured employee has been offered work which he is able to perform with ..... at $..... per week
(Employer)
but has refused such employment without just cause for so doing.

6. Has injured employee's injury caused loss or loss of function of a member If so, state member or members and extent of loss or loss of use.

Dr. Earnest B. Carpenter reports no permanency. (See his report of April 17, 1958).

7. Has copy of this application been sent to employer or employee as the case may be?
(Copy must be sent to opposing side in order to obtain a hearing on this application.) Yes

Note: Under the rules of the Commission an application by employer or insurer for a hearing on the ground of change in condition must show that compensation has been paid to the date of the filing of the application for the hearing in the office of the Commission and must state the reasons for claiming a change in condition, otherwise a hearing will not be allowed. Questions 1, 2, 3, 4 and 7 must be answered; and 5 and 6 must be answered if possible.

Dated at Richmond Virginia, this 23rd day of July, 1958.
Manchester Board & Paper Co., Inc. Liberty Mutual Insur-
(Name of applicant)
ance Company.

B. P. Burrow

cc: Employer
cc: Employee

Vol. I.
page 2 } Irving F. Parker, Claimant,

*v.*

Manchester Board & Paper Co., Inc., Employer
Liberty Mutual Insurance Company, Insurer

Claim No. 392-781.

Claimant appeared in person.

Mr. Ernest G. Garrett, Jr., Attorney-at-Law, Mutual Bldg., Richmond, Virginia, for the Defendants.

Hearing before Commissioner NUCKOLS at Richmond, Virginia, on September 22nd, 1958.

All witnesses having been duly sworn, the following testimony was taken.

Statement by Commissioner Nuckols: On September 14, 1957, Irving F. Parker, a lift truck operator employed by the Manchester Board & Paper Company, In., at an average weekly wage of $69.34, sustained a fracture of the external malleolus of the left tibia by accident arising out of and in the course of his employment. He was immediately
Vol. I. totally incapacitated for work. His wages were
page 3 } paid for the day of the injury. On October 4, 1957, the case was accepted as compensable by Liberty Mutual Insurance Company, the employer's workmen's compensation carrier, and based upon an agreed statement of fact, an award was entered on October 14, 1957, directing the payment of compensation at the maximum rate during incapacity, beginning September 27, 1957. Compensation payments under this award were continued to November 19, 1957, when they were discontinued, notwithstanding the fact that the award remained outstanding. No application for review of the award pursuant to Section 65-95, Code of 1950, as amended, was filed by the employer or the employer's insurance carrier until July 24, 1958, when such application was filed. The application showed on its face that compensation under the outstanding award was paid only to November 19, 1957, and not to the date that the application was filed. In other words, there was a complete failure to comply with the mandatory procedural requirements of Rule 13 of the

Industrial Commission, so much of which is applicable in this case, provides:

Vol. I. page 4 } "Petitions for review of outstanding awards under Section 65-95 of the Act, must be in writing and, in an informal way, state the ground *relief upon for relief*. Review of awards on the ground of change in condition shall be determined as of the date of the filing of the application in the office of the Industrial Commission."

"All applications for hearing by employer or insurance carrier under this Section shall show the date to which compensation benefits have been paid and no application will be considered by the Commission until all compensation under the outstanding award has been paid to the date such application is filed with the Commission. * * *"

On December 10, 1957, the Claims Division of the Industrial Commission received from Liberty Mutual Insurance Company a letter from the Personnel Director of the Manchester Board and Paper Co., Inc., Mr. J. F. Maher, Jr., which reads:

Vol. I. page 5 } "We are temporarily holding the final memorandum of agreement with regard to settlement and final check for disability payments in the case of Irving Parker.

"Parker is unwilling to sign the agreement until he has been seen by the attending physician at some indefinite date in December. It is our intention to withhold issuance of this check until such time as he signs the agreement. If you do not concur in this action, please advise.

"Manchester Board & Paper Company
J. F. Maher, Jr., Personnel Director."

On December 11, 1957, our Claims Examiner wrote the Liberty Mutual Insurance Company, as follows:

"We have the employer's letter of November 29, 1957, and assume he is referring to the final settlement receipt. If so, we call your attention to the fact that our award of October 14, 1957, remains outstanding and compensation payments should not be withheld from this claimant. If it is your intention to suspend the payment of compensation, the usual application for hearing on the ground of change in condition should be executed and filed."

Vol. I. page 6 } You now allege that Parker, the injured employee, returned to work for the same employer at a wage equal to or greater than the wage he was earning at the time of his accidental injury on November 19, 1957. Your contention is that the Rule requiring you to pay compensation under an outstanding award to the date that the application for hearing on the ground of change in condition is filed, is inconsistent with the provisions of the Workmen's Compensation Act, and is, therefore, invalid and unenforceable.

The effect of such a construction would be that the employer or the employer's insurance carrier could be the sole judge of determining when compensation benefits under an outstanding award should terminate. They could suspend or terminate payments under the outstanding award and do nothing more. The burden would then shift to the Commission to determine whether the provisions of the outstanding award are being complied with, or to the employee to compel payments under the outstanding award.

Vol. I. page 7 } This Rule was promulgated more than thirty years ago. I have examined a pamphlet containing the Virginia Workmen's Compensation law, and its Rules for the year 1926 and find that the rule is in this pamphlet. I am told by Mr. W. L. Robinson, our Claims Examiner, that the Rule was originally promulgated because the Commission found that certain employers and their insurance carriers were ignoring or disregarding the provisions of outstanding awards and terminating payments while the award was still in full force and effect. The effect of which was to compel the injured employee to accept in settlement of his claim inadequate sums of money. In other words, the injured employee was starved into submission.

Seven days after its entry, the award in this case became final and non-appealable, subject to change only in a proceeding under Section 65-95, Code of 1950, as amended, and the Commission's Rule #13, as is said in the case of *Wise Coal Company* v. *Roberts*, 157 Va. 782:

"In the absence of fraud, duress or other facts which would entitle the parties to invoke the aid of a Court of Equity for reformation of a contract, such an award is binding upon both parties, unless the statute provides otherwise.

Continuing the court said:

Vol. I. page 8 } "Section 47 (now Section 65-95, Code of 1950)

adds only one ground for the reopening of an award made by the Commission, i. e., a change in condition of the injured party."

This is not a case of first impression. As I construe *Bristol Door Company* v. *Hinkle*, 157 Va. 474, and *Gray* v. *Underwood Brothers*, 164 Va. 344, (Which latter case was reheard, the opinion on rehearing is reported in 182 S. E. 548), the court has passed on the question of the reasonableness of the Rule and its consistency with the provisions of the Act. In the HINKLE CASE the court, commenting on the Rule, said:

"The Industrial Commission of Virginia has adopted a rule requiring insurers and employers to pay compensation to the date upon which they make application for hearing on the ground of change in condition. Presumably, this rule was adopted and promulgated under warrant of the last sentence of the above section (now Section 65-95, Code of 1950). This section is the only statutory authority for a review on the ground of change in condition. If
Vol. I. the insurer or employer elect to make such applica-
page 9 } tion they must do so under this section of the act. The claimant derives the same right from the same source. It is difficult to perceive why the same rule should not apply alike to both applicants."

The effect of that is that the court held that if an injured employee seeks additional compensation on account of a change in condition, consideration can be given to his claim only from the date that he files his application, and impleads the parties in interest, and not from the date that the change in condition might have actually occurred.

The case of *Gray* v. *Underwood*, is not unlike the case at bar. There the claimant suffered an injury to his left leg in a compensable accident, and an award was entered on the basis of an agreed statement of fact, or memorandum of agreement providing for compensation for 90% loss of use of the injured leg. Payments under the award were made to July 6, 1933, but it was not until August 7, 1933, that the carrier filed application for hearing on the ground of change in condition, under old section 47, now section
Vol. I. 65-95, Code of 1950. A hearing was had and the
page 10 } Commission found that the degree of permanent loss of use of the injured extremity had decreased from 90% to 60% loss of use of the leg and a new award was entered providing for compensation at the same rate but for a lesser period. The new award spoke as of Feb-

ruary 19, 1932, which was the date of the original award, and was made subject to a credit for all compensation which had been paid to the claimant under the original award. The claimant assigned error because the application for review was made before the full compensation under the outstanding award had been paid. That is, to the date of the application.

The court on rehearing said:

"The record shows that the full compensation due the claimant in this case was not paid him prior to the time the appellees filed their application for a change in the award, and, on account of this failure of the appellees we are of the opinion that the order should be reversed and the cause remanded."

Vol. I. page 11 } Originally, the court speaking through the late Mr. Justice Browning—the original opinion is reported as previously said in 164 Va. p. 344, said a great deal more.

We believe that the Rule is consistent with the provisions of the Act, and that it is a reasonable rule. As you well know, the Commission is bound by its Rules. We cannot arbitrarily ignore them. We are of the opinion that the mandatory procedural requirements of the Rule should in all cases be enforced. They must be complied with by both claimants and defendants. Time and time again we have denied compensation to injured employees prior to the time that the application for hearing was filed on the ground of change in condition, this notwithstanding the fact that the evidence showed conclusively that incapacity for work as the direct result of his accidental injury occurred weeks or months prior to the filing of the application.

Since compensation under the outstanding award was not paid until the date your application in this case was filed, we are powerless to modify the award, or to give your application consideration, and no useful purpose will be served by receiving testimony to show a change in condition within the meaning of this law.

Vol. I. page 12 } By Mr. E. G. Garrett, Jr: Well, your Honor, I clearly understand your position and I think you clearly understand mine.

By Commissioner Nuckols: Yes, I do.

By Mr. Garrett: I desire to have a complete record to present to the Court of Appeals. Now, I feel that the only way that can be done is to put into the record the testimony that I would present here this morning. I don't mean by

that that you have to consider the testimony, you can certainly disregard it, and if you take the action there that your opinion indicates, I am satisfied that you will disregard it, but I think that to get this matter into appealable form that his Honor should allow me to put into the record, just as we do in common law cases before the jury, but in the absence of the jury, this evidence.

By Commissioner Nuckols: Mr. Garrett, the only issue here this morning is the reasonableness of the Rule and its consistency with the Act. As you pointed out in your letter to the Claims Examiner, the Commission has the authority to promulgate rules consistent with the Act. The only issue in this case is whether or not this rule is consistent with the Act. We are not concerned at this time with the merits of the case. Your position is that you are here prepared to show that there has been a change in condition, but we are not at this time concerned with but one thing, that is whether you have complied with the mandatory procedural requirements of the Rule. You concede that you have not. No useful purpose will be served by hearing testimony. If the Court of Appeals should reach the conclusion that this Rule is not consistent with the Act, then, of course, the case will be remanded for the taking of testimony on the issue of change in condition. I am not going to receive testimony going into the merits at this time. I don't think it is necessary in order for the case to be in appealable form.

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By Mr. Garrett: Well, Judge, you and I differ on that and I would like to have the opportunity to put it in the record. What I have is not extensive, as a matter of fact, if his Honor would allow me I would like to have these affidavits made a part of the record as they contain everything that I desire to bring out.

Vol. I. page 14

By Commissioner Nuckols: I am going to overrule the motion and refuse to allow any testimony to come in until such time as there is a compliance with the mandate of the Rule.

By Mr. Garrett: Well, your Honor is the Judge and I am at the bar. I can't do anything further.

By Commissioner Nuckols: We don't have but one issue, Mr. Garrett, and that is whether or not this Rule is consistent with the provisions of the Act. Now, as Mr. Justice Browning said in the Underwood Case:

"If under our ruling the claimant receives more compensation that is provided by section 31 of the act (Acts 1918, chapter 400, as amended by Acts 1930, chapter 54), it is an

Vol. I.
page 15 } unavoidable consequent of the proper construction of section 47 of the act. In our view, however, the two awards are independent and distinct, though the claimant is identical. In neither award, viewed as separate acts, does the claimant receive more than the statutory maximum. * * *"

By Mr. Garrett: Judge, you have no power to give it back to us once we pay it to a man.

By Commissioner Nuckols: The Legislature has already said that nobody can give it back to you in this very section; that no award under Section 95 shall affect monies already paid.

By Mr. Garrett: Very well, sir.

Now, may I at least let the record show that we had Dr. Carpenter, Mr. Maher and Mr. Burrow here to testify.

*Case ended.*

JEH-9-23-58.

Vol. I.
page 16 } Irving F. Parker, Claimant,

*v.*

Manchester Board & Paper Co., Inc., Employer
Liberty Mutual Insurance Company, Insurer.

Claim No. 392-781.

Opinion by NUCKOLS, Commissioner.

Claimant appeared in person.

Ernest G. Garrett, Jr., Attorney at Law, Mutual Building, Richmond, Virginia, for the Defendants.

Hearing before Commissioner NUCKOLS at Richmond, Virginia, on September 22, 1958.

The sole issue if the validity of the Rule of the Commission, numbered 13, requiring payment of compensation under an outstanding award to the date of the filing of an application for hearing upon the ground of change in condition. So much of the Rule as is pertinent reads:

"Petitions for review of outstanding awards under Section

65-95 of the Act must be in writing and, in an informal way, state the ground relied upon for relief. Reviews of awards on the ground of change in condition shall be determined as of the date of the filing of the application in the office of the Commission.

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"All applications for hearing by employer or insurance carrier under this Section shall show the date to which compensation benefits have been paid and no application will be considered by the Commission until all compensation under the outstanding award has been paid to the date such application is filed with the Commission."

On July 24, 1958, the insurance carrier filed application for hearing on the ground of a change in condition, alleging that the injured employee had returned to work on November 19, 1957, at the same or a greater wage than he was earning at the time of his injury. The application shows on its face that compensation under the outstanding award was paid only through November 18, 1957.

We are of the opinion that no evidence may be received touching upon the allegations of change in condition until Rule 13 is complied with by payment of compensation under the outstanding award to the date application was filed, viz: July 24, 1958.

The essential *facrs* are: On September 14, 1957, Irving F. Parker, a lift truck operator employed by Manchester Board and Paper Company, Inc., at an average weekly wage of $69.34, sustained a fracture of the external malleolus of the left tibia by accident arising out of and in the course of his employment. Pursuant to an agreed statement of fact, an award was entered October 14, 1957, directing conpensation at the rate of $30.00 per week during incapacity. Payments were made to November 19, 1957, when they were discontinued without application to the Commission to terminate the award, and without a stipulation that incapacity for work had terminated.

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On December 10, 1957, the Claims Division of this Commission received from the insurance carrier, Liberty Mutual Insurance Company, a letter from the Personnel Director of Manchester Board and Paper Company, Inc., addressed to the carrier, which reads:

"We are temporarily holding the final memorandum of agreement with regard to settlement and final check for disability payments in the case of Irving Parker.

"Parker is unwilling to sign the agreement until he has been seen by the attending physician at some indefinite date in

December. It is our intention to withhold issuance of this check until such time as he signs the agreement. If you do not concur in this action, please advise.

Vol. I.
page 19 } "Manchester Board & Paper Company
J. F. Maher, Jr., Personnel Director."

On December 11, 1957, the Claims Examiner wrote the Liberty Mutual Insurance Company, as follows:

"We have the employer's letter of November 29, 1957, and assume he is referring to the final settlement receipt. If so, we call your attention to the fact that our award of October 14, 1957, remains outstanding and compensation payments should not be withheld from this claimant. If it is your intention to suspend the payment of compensation, the usual application for hearing on the ground of change in condition should be executed and filed."

After the expiration of fifteen days from the entry thereof, there being no application for review as provided in Section 65-93, the award of October 14, 1957, became final and non-appealable. *Wise Coal Co.* v. *Roberts*, 157 Va. 782, 161 S. E. 911. It was then subject to modification only in a proceeding under Section 65-95 upon the ground of a change in condition. Idem. Under Section 65-13 the Commission has power to make rules, not inconsistent with the Act, for the purpose of carrying out its provisions.

Vol. I. More than thirty years ago when it was found
page 20 } by the Commission that some employers were arbitrarily disregarding the effect of outstanding awards and terminating payments directed by such awards, a rule—the same now before us—was promulgated providing that compensation be paid to the date application was made for a proper termination under Section 65-95 (then Sec. 1887 (47) ). The rule has since been continuously in force.

In our opinion, this rule has already received the sanction of the Supreme Court of Appeals. In *Bristol Door & Lumber Co.* v. *J. W. Hinkle*, 157 Va. 474, 161 S. E. 902, decided January 14, 1932, the rule was given its converse effect. There the injured employee returned to work subsequent to an award of compensation and executed a receipt stipulating that fact. He quit work on November 26, 1930, and on March 9, 1931, made application on the ground of a change in condition. It was found that there had been a change in condi-

tion and an award was entered providing for compensation beginning with a date prior to the filing of the application. The Court found the ante-dating of the award to be error, saying:

Vol. I. page 21

"The Industrial Commission of Virginia has adopted a rule requiring insurers and employers to pay compensation to the date upon which they make application for hearing on the ground of change in condition. Presumably, this rule was adopted and promulgated under warrant of the last sentence of the above section (now Section 65-95, Code of 1950). This section is the only statutory authority for a review on the ground of change in condition. If the insurer or employer elect to make such application they must do so under this section of the act. The claimant derives the same right from the same source. It is difficult to perceive why the same rule should not apply alike to both applicants."

Since that time, in accordance with the rule, we have consistently held that compensation upon change in condition may be awarded only from the date of the filing of an application even though it clearly appears that incapacity for work has existed for months prior thereto. We perceive that when the Court of Appeals reversed an ante-dated award, citing the rule, it clearly approved the rule as being consistent with the Act.

A failure to pay compensation under an outstanding award to the date application for hearing was filed has already been held to bar the relief sought. See *Gray* v. *Underwood Brothers,* 164 Va. 344, 180 S. E. 317, (upon rehearing the language of the opinion was substantially altered, see Errata, page 679 Vol. 164 Va., and 182 S. E. 547). There an award was entered providing for compensation for 90% loss of use of the workman's left leg. Believing that there was a change in condition for the better, the carrier stopped payments on July 6, 1933, but it was not until a month later, August 7, 1933, that *if* filed application for hearing on the ground of a change in condition. The Industrial Commission amended the award while there remained unpaid compensation to the date of the award, and this action was assigned as error. The Court reversed the Commission saying:

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"The record shows that the full Compensation due the claimant in this case was not paid to him prior to the time

the appellees filed their application for a change in the award, and, on account of this failure of the appellees we are of the opinion that the order should be reversed and the cause remanded."

If we should entertain this application and enter an order altering the outstanding award, we would be flying in the teeth of this ruling. Moreover, we cannot arbitrarily ignore our rules. If we ignore it in this case, even though Vol. I. its enforcement may appear to produce a harsh page 23 } result, the rule will have reached the vanishing point and become no rule at all. We believe that the mandatory procedural requirements of the rule should be enforced in all cases.

Since compensation under the award of October 14, 1957, was not paid to the date of the filing of application, we are powerless to give consideration to the application. The application is denied, and the case dismissed from the hearing docket.

Vol. I.
page 24 } DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

Claim No. 392-781 (C33-89391)

NOTICE OF AWARD

Case of Irving F. Parker
Acc. 9/14/57

DATE: October 7, 1958.

TO: Manchester Boafd & Paper Co., Inc.
1850—9th Street Rd.
Richmond, Virginia
(Employer)

AND: Liberty Mutual Insurance Co.
18 North Fifth Street
Richmond, Virginia
(Insurance Carrier)

Ernest G. Garrett, Jr. Atty. R
Mutual Building
Richmond, Virginia

AND: Mr. Irving F. Parker
4329 Lawson Street
Richmond, Virginia
(Claimant)

You are hereby notified that a hearing was held in the above styled claim before Nuckols, Commissioner, at Richmond, Virginia, on September 22, 1958, and a decision rendered by Nuckols, Commissioner, on October 7, 1958, directing the case be dismissed from the docket on the ground the Commission is powerless to give consideration to the application since compensation under the award of October 14, 1957, was not paid to the date of the filing of application. The case is accordingly dismissed from the docket.

INDUSTRIAL COMMISSIONER
OF VIRGINIA
(Signed) M. E. NUCKOLS, JR.
Commissioner.

ATTEST:
(Signed) W. F. BURSEY
Secretary.

Notice of Award.

Vol. I.
page 25 } Irving F. Parker, Claimant,

*v.*

Manchester Board & Paper Co., Employer
Liberty Mutual Insurance Co., Insurer.

Claim No. 392-781.

Oct. 29, 1958.

Claimant appeared in person.

Ernest G. Garrett, Jr., Attorney at Law, Mutual Building, Richmond, Virginia, for the Defendants.

Review before the full Commission at Richmond, Virginia, on October 20, 1958.

EVANS, Chairman, rendered the opinion.

The full Commission concurs in the opinion and award of the hearing Commissioner and adopts that opinion and award as that of the full Commission on review.

Opinion on Review.

Vol. I.

page 26 } DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

NOTICE OF AWARD

Claim No. 392-781 (C33-89391)

DATE: October 29, 1958.

Case of: Irving F. Parker
Acc. 9/14/57.

TO: Manchester Board & Paper Co., Inc.
1850—9th Street Rd.
Richmond, Virginia
(Employer)

AND: Liberty Mutual Insurance Co.
18 North Fifth Street
Richmond, Virginia
Ernest G. Garrett, Jr., Atty. R
Mutual Building
Richmond, Virginia

AND: Mr. Irving F. Parker
4329 Lawson Street
Richmond, Virginia
(Claimant)

You are hereby notified that a Review was held in the above styled claim before the full Commission at Richmond, Virginia, on October 20, 1958, and a decision rendered by Evans, Chairman, on October 29, 1958, adopting the Findings of Fact and Conclusions of Law of the Hearing Commissioner as those of the full Commission and affirming the award of October 7, 1958.

INDUSTRIAL COMMISSION OF VIRGINIA
(Signed) M. E. EVANS, Chairman.

ATTEST:

(Signed) W. F. BURSEY
Secretary.

Notice of Award on Review.

Vol. I.
page 27 } I, W. F. Bursey, Secretary, Industrial Commission of Virginia, hereby certify that the foregoing, according to the records of this office, is a true and correct copy of statement of Findings of Fact, Conclusions of Law and other matters pertinent to the questions at issue in

Claim No. 392-781, Irving F. Parker, Claimant, *v.* Manchester Board & Paper Co., Inc., Employer, Liberty Mutual Insurance Co., Insurer.

I further certify that claimant had notice that the Secretary, Industrial Commission of Virginia, would be requested to furnish certified copy of the record, including the evidence, for the purpose of *appear* to the Supreme Court of Appeals of Virginia, and that the employer would allege in its petition that the award of the Industrial Commission of Virginia is not supported by the evidence.

I further certify that, as evidence by U. S. Postal Registry Return Receipt Card, the employer and its insurance carrier, through counsel, received on October 30th, 1958, copy of award of the Industrial Commission of Virginia, dated October 29th, 1958.

Given under my hand and seal of the Industrial Commission of Virginia, this the 10th day of November, 1958.

Seal

W. F. BURSEY
Secretary.
INDUSTRIAL COMMISSION OF VIRGINIA.

Vol. II.
Page 1

LAW OFFICES

MAY, GARRETT, MILLER AND NEWMAN
1233 Mutual Building
Richmond 19, Virginia

January 19, 1959.

*Re*: Claim No. 392-781 Irving F. Parker *v.* Manchester Board & Paper Company—Supreme Court Record No. 4975.

Hon. M. E. Nuckols, Jr.
Commissioner,
Industrial Commission,
Blanton Building,
Richmond, Virginia.

Dear Mr. Nuckols:

Upon our motion, the Supreme Court of Appeals of Virginia this morning awarded a writ of certiorari to the Clerk of the Commission directing that a complete record of all

proceedings had before or considered by the Commission in this cause, including all documents, reports, letters and other papers contained in its file be certified to the Supreme Court of Appeals. I imagine that Mr. Bursey will receive a copy of the writ of certiorari, or a copy of an order in lieu thereof, within the next day or so.

Referring now to your letter of November 10, 1958 directed to me, by which you returned the affidavits of Mr. Burrow, Mr. Maher and Dr. Carpenter, I am returning the same to you herewith since I do not imagine that they should be in my file in view of the action of the Supreme Court of Appeals referred to above.

Very truly yours,

MAY, GARRETT, MILLER AND NEWMAN
By (Signed) ERNEST G. GARRETT, JR.

EGGJr/ram

Enclosures

Vol. II.
page 2 } Claim No. 393-781 (C33-89391)
Claimant: Irving F. Parker
Employer: Manchester Board and Paper Company, Incorporated
Insurance Carrier: Liberty Mutual Insurance Company

This day in the City of Richmond, Virginia personally appeared before me as Notary Public of and for the City of Richmond, Virginia, B. P. Burrow, Claims Manager of Liberty Mutual Insurance Company, who made oath that to the best of his knowledge and belief workmen's compensation benefits were paid to Irving F. Parker under an award of the Industrial Commission of Virginia in the amount of Two Hundred, Seventy Eight & 58/100 ($278.58) Dollars covering compensation for temporary total disability from September 15, 1957 to and including November 18, 1957 and that the said Irving F. Parker returned to work on November 19, 1957 at the same or a greater wage per week than he was earning at the time of his accident. Medical expense paid amounts to $170.50; that on November 20, 1957 the Final Compensation Settlement Receipt was mailed to the employer to be executed by the claimant; by letter dated November 29, 1957 the employer advised that the employee refused to sign; by letter

dated June 2, 1958 the Final Compensation Settlement Receipt was again mailed to the employer for execution by the claimant, and by letter dated June 9, 1958 the employer advised that the claimant refused to sign.

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page 3 }

(Signed) B. P. BURROW
Claims Manager, Liberty Mutual Insurance Company.

Subscribed and sworn to before me this 22 day of July, 1958.

(Signed) C. I. WETZEL
Notary Public.

My commission expires Jan. 8, 1960.

page 4 } Claim No. 392-781 (C33-89391)
Claimant: Irving F. Parker
Employer: Manchester Board and Paper Company, Incorporated
Insurance Carrier: Liberty Mutual Insurance Company

This day in the City of Richmond, Virginia personally appeared before me as Notary Public of and for the City of Richmond, Virginia J. F. Maher, Jr., Personnel Director of Manchester Board and Paper Company, Incorporated, who made oath that to the best of his knowledge and belief workmen's compensation benefits were paid to Irving F. Parker under an award of the Industrial Commission of Virginia in the amount of $278.58 covering compensation for temporary total disability from September 15, 1957 to and including November 18, 1957 and that the said Irving F. Parker returned to work on November 19, 1957 at the same or greater wage than he was earning at the time of the accident. Medical expense paid amounts to $170.50; that on or between the dates of November 21, 1957 and November 29, 1957 the Final Compensation Settlement Receipt was submitted to Irving F. Parker for execution and he refused; that on June 9, 1958 the Final Compensation Settlement Receipt was again submitted to Irving F. Parker for his execution and he refused; that as of this writing the said Irving F. Parker is still in our employ earning the same or a greater
Vol. II. wage than he was earning at the time of his accident
page 5 } on September 14, 1957, as shown by the wage charts attached hereto.

(Signed) JOSEPH F. MAHER, JR.
Personnel Director, Manchester Board and Paper Company, Incorporated.

Subscribed and sworn to before me this 22nd day of July, 1958.

(Signed) R. A. MEHAFFEY
Notary Public.

My commission expires January 30, 1960.

Vol. II.
page 6 } Claim No. 373-781 (C33-89391)
Claimant: Irving F. Parker
Employer: Manchester Board and Paper Manufacturing Company, Inc.
Insurance Carrier: Liberty Mutual Insurance Company

This day in the City of Richmond, Virginia personally appeared before me as Notary Public of and for the City of Richmond, Virginia Dr. Earnest B. Carpenter, orthopedic surgeon, who made oath that on September 14, 1957 he examined and treated Irving F. Parker at the request of his employer, Manchester Board and Paper Company, Incorporated and the insurance carrier, Liberty Mutual Insurance Company, and that said Irving F. Parker had on that date suffered an industrial accident; that he continued to treat Irving F. Parker and on November 14, 1957 he rendered the following report:

"Irving Parker, employee of Manchester Board and Paper Company was last examined by me on November 13th in regard to injuries sustained to his left leg as a result of an industrial accident on September 14th.

"Examination at this time reveals this man to have improved to the point that I feel he can return to work as of November 25, 1957. He has not, as yet, reached maximum recovery and supplemental report regarding the condition of his leg after full recovery is reached will be sent to you at that time. I cannot say definitely at this time whether he will recover without residual disability, but should he have any residual disability of his leg, I believe it will be of a minimum degree.

"With kind regards, I am."

That on April 17, 1958 he rendered the following report:

Vol. II.
page 7 } "Irving F. Parker, an employee of Manchester Paper Company, was last examined by me at your request on April 16 in regard to the present condition of his left leg. This man sustained a fracture of his left tibia and fibula on September 14, 1957. He has since returned to work at the same type of duty he was doing prior to the above accident. The patient states that his left leg has swelling and he has soreness on the inside of his left ankle at times.

"On examination made at 4 p. m. on April 16 there was no evidence of swelling or thickening or any soft tissue enlargement about the left lower leg or ankle or foot as compared to the right. There was full range of motion to the ankle in flexion and extension with no evidence of instability of the supporting ligaments of the ankle. X-rays were repeated and these show the fragment to be healed in excellent position. The joint space is well preserved with no evidence of narrowing and no evidence of irregularity, of the joint surface. It is my feeling that this man has recovered fully from the above injury with no evidence of residual disability.

"If there is any additional information I can send you regarding this man, please let me know.

"With kind regards, I am"

(Signed) EARNEST B. CARPENTER.

Subscribed and sworn to before me this 22 day of July, 1958.

(Signed) C. I. WETZEL
Notary Public.

My commission expires Jan. 8, 1960.

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page 8 }

* * * * *

DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
RICHMOND 14

November
Tenth
1958

*Re*: Irving F. Parker *v.* Manchester Board & Paper Co. Claim No. 392-781

Mr. Ernest G. Garrett, Jr.
Attorney at Law
1233 Mutual Building
Richmond, Virginia

Dear Mr. Garrett:

Mr. Bursey has referred your letter of November 3rd to me.

The affidavits of Mr. Burrow, Mr. Maher, and Dr. Carpenter which are in this file are not a part of the record. If evidence going to the merits of this case had been allowed to come in the affidavits, as you know, would have been inadmissible. The application for hearing is a part of the record and is included.

I am returning to you the affidavits. A transcript of the record is being mailed you under separate cover.

Very truly yours,

MARVIN E. NUCKOLS, JR.
Commissioner.

menjr;hc
encls:

Vol. II.
page 9 }
Claim No. 392-781

November 7, 1958.

Irving F. Parker

*v.*

Manchester Board and Paper Company, Inc.

Mr. Ernest G. Garrett, Jr.
Attorney at Law
1233 Mutual Building
Richmond 19, Virginia

Dear Mr. Garrett:

Receipt is acknowledged of your letter on the 3rd instant

requesting certified copy of the record in the foregoing case for the purpose of an appeal to the Supreme Court of Appeals of Virginia.

I note that you desire us to include the application dated July 23, 1958, filed by the employer and insurance carrier, together with supporting affidavits attached to the application.

In accordance with your request, the record will be prepared at once. The application will be included as a part of the same but we cannot include the supporting affidavits which were attached to said application.

Upon receipt of the usual notice showing service accepted by the claimant, the record will be sent to you.

Very truly yours,

Secretary.

WFB;sp

Vol. II.
page 10

LAW OFFICES

MAY, GARRETT, MILLER AND NEWMAN
1233 Mutual Building

RICHMOND 19, VIRGINIA

November 3, 1958.

Claim No. 392-781 Irving F. Parker *v.* Manchester Board and Paper Company, Inc.

Industrial Commission of Virginia,
Blanton Building,
Richmond, Virginia.

Attention: Mr. W. F. Bursey, Secretary.

Dear Mr. Bursey:

It is our intention to appeal the award entered in the above matter on October 29, 1958. Is is requested that the record for an appeal be prepared by your office. We desire including in the record the application dated July 23, 1958, filed by the employer and insurance carrier and the supporting affidavits attached to the application.

We will serve proper notice requesting the record within the prescribed time.

Very truly yours,

MAY, GARRETT, MILLER AND NEWMAN
(Signed) By ERNEST G. GARRETT, JR.

EGGJr/lf

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page 11 }

* * * * *

INDUSTRIAL COMMISSION OF VIRGINIA
RICHMOND 14

October 13, 1958.

*Re*: Claim No. 392-781

Irving F. Parker *v.* Manchester Board & Paper Company, Inc. (C33-89391)

Gentlemen:

This is to advise that the above styled case will be reviewed by the full Commission at its office—Room #300, Blanton Building, RICHMOND, Virginia, on October 20, 1958, at 9:30 A. M.

A hearing was held in this case before Commissioner Nuckols at Richmond, Virginia, on September 22, 1958, and a decision rendered on October 7, 1958, directing that the case be dismissed from the docket.

The defendants have requested a review before the full Commission as provided in Section 65-93 of the Act.

All parties in interest have the privilege, if they so desire, of being present at the above time and place.

Yours very truly,

INDUSTRIAL COMMISSION OF VIRGINIA

Secretary.

copy to:

Mr. Irving F. Parker, 4329 Lawson Street, Richmond, Va.
Manchester Board & Paper Co., Inc. 1850—9th St. Road, Richmond, Va.
Liberty Mutual Insurance Company, 18 North 5th St., Richmond, Va.
May, Garrett, Miller & Newman, Attys., Mutual Bldg., Richmond, Va.

page 12 } LAW OFFICES

MAY, GARRETT, MILLER AND NEWMAN
1233 Mutual Building
RICHMOND 19, VIRGINIA

October 9, 1958.

Claim No. 392-781 Manchester Board and Paper Co., Inc. *v.* Parker.

Industrial Commission of Virginia
Blanton Building,
Richmond, Virginia.

Attention: Mr. W. F. Bursey, Secretary.

Dear Mr. Bursey:

We have the notice of award dated October 7, 1958 in the above styled matter.

As attorneys for the employer and insurance carrier it is respectfully requested that a review of the matter be had by the Full Commission.

Thanking you, we remain

Very truly yours,

MAY, GARRETT, MILLER AND NEWMAN
(Signed) By ERNEST G. GARRETT, JR.

EGGJr/ram

Vol. II.
page 13 }

• • • • •

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND 14

September 10, 1958.

*Re:* Claim No. 392-781
Irving F. Parker *v.* Manchester Board & Paper Co., Inc. (C33-89391)

Gentlemen:

This is to advise that the above styled case will be heard in the Industrial Commission Courtroom—Room #300, Blanton Building, RICHMOND, Virginia, on September 22, 1958, at 10:00 A. M.

This case is being set for hearing upon request of the defendants on the ground of a change in condition, as provided in Section 65-95 of the Act.

All parties in interest are requested to be present with any witnesses whom they desire to have testify in their behalf. If it is desired that any witnesses be summonsed by this Commission, their names and addressed should be sent to this office. Thereupon, subpoenas will be prepared and sent to the party requesting the same, to be served by the proper officer.

If we can be of further assistance in this matter, please do not hesitate to call upon us.

Yours very truly,

INDUSTRIAL COMMISSION OF VIRGINIA

Secretary.

copy to:

Mr. Irving F. Parker, 4329 Lawson St., Richmond, Va.

Manchester Board & Paper Co., Inc., 1850—9th St. Rd., Richmond, Va.

Liberty Mutual Insurance Company, 18 North 5th St., Richmond, Va.

May, Garrett, Miller & Newman, Attys., Mutual Bldg., Richmond, Va.

Vol. II.
page 14 } August 15, 1958.

Claim No. 392-781—Irving F. Parker *v.* Manchester Board & Paper Co.
Accident: 9/14/57 (C33 89391)

Mr. Irving F. Parker
4329 Lawson Street
Richmond, Virginia

Dear Sir:

We have for consideration your workmen's compensation claim as a result of your injury of September 14, 1957. In order that we may give the matter proper consideration will you please advise if the information furnished by the insurance company was correct. We want to know if you returned to work on November 19, 1957 and if you suffered any wage loss following your return to work. Your wage as agreed upon at the time compensation was awarded was $69.34 per week. Will you please write on the bottom of this letter and return the letter indicating whether or not you returned to work on November 19, 1957 and, also, whether or not you suffered a wage loss. This should have your immediate attention if we are to give the matter further consideration.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Examiner.

SLR;vq

Vol. II.
page 15 }

LAW OFFICES
MAY, GARRETT, MILLER AND NEWMAN
1233 Mutual Building
RICHMOND 19, Virginia

August 11, 1958.

Claim No. 392-781 (C33 89391) Irving F. Parker *v.* Manchester Board and Paper Company, Inc.

Mr. W. L. Robinson, Examiner,
Industrial Commission of Virginia,
Richmond 14, Virginia.

Dear Mr. Robinson:

Our client, Liberty Mutual Insurance Company, has referred to our office their file in the above styled matter, including Mr. Burrow's letter of July 23, 1958, directed to you and your reply of July 28, 1958, acknowledging receipt of the application but stating that you are unable to place the claim on the docket until compensation is paid to July 23, 1958, inclusive.

You will notice from the application and the supporting affidavits that the employee, Parker, returned to work on November 19, 1957, and has since suffered no other compensable losses. The effect of your request that payment be made through July 23, 1958, is to ask our client to pay compensation during a period which the employee is not entitled to compensation. We are, of course, aware of your rule referred to in your letter but, as we view the matter, under the circumstances of this case either your rule of the interpretation placed upon it by your office is contrary to the statutory provisions of the Workmen's Compensation Act. Specifically the Act provides that the employer is obligated to pay compensation during total incapacity or partial incapacity and nothing more. Indeed, the only award entered in the matter, that of October 14, 1947, specifically provides that compensation shall be paid "during incapacity." Thus, a forced compliance with your request would be not only a violation of the Statute but also of the Commission's own award.

We call to your attention that the Section granting the Commission certain rule making powers provides that the rule shall not be inconsistent with the Act. In view of what has been said, we respectfully demand that the case be placed on the hearing docket notwithstanding our client's failure to pay compensation through July 23, 1958, inclusive.

Your early advice will be appreciated.

Very truly yours,

MAY, GARRETT, MILLER &
NEWMAN
(Signed) By ERNEST G. GARRETT, JR.

EGGJr:gw

cc: B. P. BURROW, Esquire

ing On The Ground of Change In Condition and the supporting Affidavits.

It will be appreciated if you will place this case on the Hearing Docket.

This is requested since the employee has refused to sign the Final Compensation Settlement Receipt.

Very truly yours,

(Signed) B. P. BURROW
Claims Manager.

BPB/ffc

cc: Employer

Vol. II.
page 19 } MANCHESTER BOARD AND PAPER CO., INC.
RICHMOND 9, VIRGINIA

June 9, 1958.

Liberty Mutual Insurance Company
18 North Fifth Street
Richmond 19, Virginia.

Attention: Mr. Henry C. Wimberley

Gentlemen:

Your letter of 2 June 1958, Claim #c-33-89391, Irving F. Parker, refers.

This morning I discussed with Parker the claim settlement enclosed with your letter for final compensation. Parker complained of swelling in his left ankle and states that until the swelling and soreness disappears he will not consider signing the final compensation settlement receipt.

As you recall, this is the second occasion that Parker has refused to sign this receipt. Please advise if there is any further action that we may take to assist you in clearing the file in this case.

Yours very truly,

MANCHESTER BOARD &
PAPER CO.
(Signed) J. F. MAHER, JR.
Personnel Director.

page 16 } July 28, 1958.

Claim No. 392-781—Irving F. Parker *v.* Manchester Board & Paper Co.
Acc. 9/14/58 C33-89391

Liberty Mutual Insurance Company
18 North Fifth Street
Richmond, Virginia

Gentlemen:

We have your letter of July 23, 1958, together with application for hearing on the ground of change in condition, and note compensation was paid to November 18, 1957, inclusive. The application was not received in our office until July 24, 1958. Under the Rule of the Commission, you are required to pay compensation up to the date the application is filed with the Industrial Commission of Virginia. For this reason, we will be unable to place the claim on the docket unless and until compensation is paid to July 23, 1958, inclusive.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Examiner.

GMA/jl

Vol. II.
page 17 } LIBERTY MUTUAL INSURANCE COMPANY

Haase Building, 18 North Fifth Street, Richmond, Va.

July 23, 1958.

Mr. W. L. Robinson, Examiner
Industrial Commission of Virginia
Richmond 14, Virginia.

Claim No. 392-791 (C33-89391 R) Irving F. Parker *v.* Manchester Board & Paper Co., Inc.

Dear Mr. Robinson:

You will please find enclosed our Application For A Hear-

J:FM:mp

Vol. II.
page 20 } LIBERTY MUTUAL INSURANCE COMPANY

Hasse Building, 18 North Fifth St., Richmond 19, Va.

FORM No. 7-A

THE USE OF THIS FORM IS REQUIRED UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT.

M. E. NUCKOLS, Jr., Commissioner
J. G. CRENSHAW, Commissioner
M. E. EVANS, Commissioner

W. F. BURSEY, Secretary

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
RICHMOND

I. C. CLAIM No. 392-781

STATEMENT OF DAYS WORKED AND GROSS EARNINGS OF INJURED EMPLOYEE

| 1958 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | Amount Earned | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan. | | X | X | X | | X | X | X | X | X | | | X | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | 342 | 49 |
| Feb. | X | | X | X | X | X | X | X | | X | X | X | X | X | | | X | X | X | X | X | X | | X | X | X | X | X | | | | 340 | 56 |
| Mar. | X | | X | X | X | X | X | X | | X | X | X | X | X | | | X | X | X | X | X | | | X | X | X | X | X | X | | X | 285 | 78 |
| Apr. | X | X | X | X | X | | | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | | 342 | 67 |
| May | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | X | 371 | 35 |
| June | | X | X | X | X | X | | | X | X | X | X | X | X | | X | X | X | X | X | | X | X | X | X | X | X | X | | | | 346 | 33 |
| July | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Aug. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sept. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Oct. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Nov. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Dec. | | X | X | X | X | X | X | | X | X | X | X | X | X | | X | X | X | X | X | X | | | X | X | X | X | X | | | | 120 | 89 |
| | | | | | | | | | | | | | | | | | | | | | | | | | X | X | | | X | X | 262 | 33 |

$76.07 - A. W. W.

TOTAL 2412.40

Was this employee furnished rent, lodging, fuel, lights or other farm or dairy products? No (Yes or No)

If so, state what he was furnished _____

Did he receive a bonus, commission, tips, meals or other advantages? No (Yes or No) If so, give information as to what he received and whether it was on a weekly, monthly or yearly basis _____

I/We Manchester Board & Paper Co., Inc. employer of Irving F. Parker who was injured on 14th day of Sept., 1957, while in our/my employ do hereby certify that the above is a true and correct statement of the days worked and gross earnings of said employee during the year or part of year that he was engaged in the occupation he was injured in while in our employ since his accident.

Manchester Board & Paper Co., Inc.
Employer.

(Signed) By Joseph F. Maher, Jr.

Dated at Richmond, Va. this 8th day of July, 1958.

INSTRUCTIONS

In filling out this form place a check mark in the proper squares to indicate days worked and leave blank spaces to indicate days not worked. Fill in the proper column to indicate weekly, semi-weekly or monthly earnings. If the nature of employee's work changed during the period reported on, this fact should be reported, indicating what the nature of the change was and what, if any, was the change in the rate of pay. This form must show claimant's *gross* earnings, including overtime, before any deductions are made for taxes, social security, etc.

13

21

Manchester Board & Paper Co.
1850 9th St. Road
Richmond, Virginia.

In *Re*: Irving F. Parker *v.* Manchester Board & Paper Co., Inc.
C33-89391

Gentlemen:

We enclose herewith a copy of Dr. Carpenter's letter under the date of April 17, 1958 from which you will observe that, in his opinion, the claimant retains no permanent disability as a result of his injury of September 18, 1957.

We attach herewith also a Final Compensation Settlement Receipt with the request that the claimant be requested to execute same and return it to this office at your earliest convenience.

If for any reason the claimant steadfastly refuses to execute the Final Receipt, we would appreciate your so advising us by letter and setting forth his reasons.

Thanking you for your assistance in this matter, we are

Yours very truly,

HARRY C. WIMBERLY
Claims Supervisor.

HCW/ffc

Vol. II.
page 23 } JAMES THOMAS TUCKER, M. D.
BEVERLEY BOYDEN CLARY, M. D.
ERNEST BETTS CARPENTER, M. D.
JAMES B. DALTON, JR., M. D.
401 Medical Arts Building
RICHMOND, VIRGINIA

April 17, 1958.

Mr. E. F. Clements
Liberty Mutual Insurance Company
18 North Fifth Street
Richmond 19, Virginia

*Re*: Irving F. Parker *v.* Manchester Board & Paper Co.

Dear Mr. Clements:

Irving F. Parker, an employee of Manchester Board and Paper Company, was last examined by me at your request on April 16 in regard to the present condition of his left leg. This man sustained a fracture of his left tibia and fibula on September 14, 1957. He has since returned to work at the same type of duty he was doing prior to the above accident. The patient states that his left leg has swelling and he has soreness on the inside of his left ankle at time.

On examination made at 4 P. M. on April 16 there was no evidence of swelling or thickening or any soft tissue enlargement about the left lower leg or ankle or foot as compared to the right. There was full range of motion of the ankle in flexion and extension with no evidence of instability of the supporting ligaments of the ankle. X-rays were repeated and these show the fracture fragment to be healed in excellent position. The joint space is well preserved with no evidence of narrowing and no evidence of irregularity, of the joint surface. It is my feeling that this man has recovered fully from the above injury with no evidence of residual disability.

If there is any additional information I can send you regarding this man, please let me know.

With kind regards, I am

Most sincerely,

(Signed) EARNEST B. CARPENTER, M. D.

EBC/aj

Vol. II.
page 24 } March 17, 1958.

Claim No. 392-781 Irving F. Parker *v.* Manchester Board & Paper Co., Inc.
Accident 9-14-57 (C33 89391)

Mr. Irving F. Parker
4329 Lawson Street
Richmond, Virginia

Dear Sir:

It appears that you have been requested to report to Dr.

Carpenter for a final examination to determine whether or not you have any permanent incapacity, as a result of your accident of September 14, 1957. However, as we have not received the doctor's report, we assume you have not reported for this examination.

Unless we receive the doctor's report or hear from you within the next fifteen days, we shall upon receipt of final settlement receipt, close our file, subject to your right to have same reopened, providing request is made to the Commission, within one year from the date of expiration of payments, under an award of the Commission.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Examiner.

sda

cc Liberty Mutual Insurance Company
18 North 5th Street
Richmond, Virginia

Vol. II.
page 25 } LIBERTY MUTUAL INSURANCE COMPANY

Hasse Building, 18 North Fifth St., Richmond, Va.

January 23, 1958.

Mr. Irving F. Parker
4329 Lawson Street
Richmond, Virginia

*Re*: Irving F. Parker *v.* Manchester Board & Paper Co., Inc.
C33-89391; IC #392-781

Dear Mr. Parker:

Please report back to Dr. E. B. Carpenter for a final Medical examination in connection with your injury of 9/14/57.

Very truly yours,

(Signed) F. F. CLEMENTS
Claims Department.

FFC/gma

cc: Dr. Carpenter
Industrial Commission.

Dear Dr. Carpenter:

When your examination has been completed, please send us a report covering the question of whether or not this employee has sustained any permanent disability as a result of the above injury; if so, your estimate of the percentage of disability he will retain. If you feel it is too early to answer this question, kindly let us know the approximate date on which you feel it can be determined.

Vol. II.
page 26 } January 16, 1958.

Claim No. 392-781 Irving F. Parker *v.* Manchester Board & Paper Co., Inc.
Accident 9-14-57 (C33 89391)

Liberty Mutual Insurance Company
18 North 5th Street
Richmond, Virginia

Gentlemen:

Please arrange for a final medical examination to determine whether or not this claimant has any permanent incapacity, as a result of his accident of September 14, 1957.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Examiner.

sda

Vol. II.
page 27 } EMPLOYER'S SUPPLEMENTAL REPORT OF INJURY.

If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental

Report of Injury should be completed and filed immediately after return to work of the employee; or at the end of 60 days. In the event of death of the employee, this report should be filed immediately.

1. Name of Employer: MANCHESTER BOARD & PAPER CO., INC.
2. Office address: 1850 9th St. Road, Richmond, Va.
3. Insured by LIBERTY MUTUAL INSURANCE COMPANY.
4. Named of injured: Irvin Francis Parker.
5. Present addrsss: 4329 Lawson St., Richmond, Va.
6. Date of injury: 14 Sept. 1957. Day of week. Sat., 10:30 A. M.
7. Date Disability began: 15 Sept. 1957, 8:00 P. M.
8. Has injured returned to work? Yes. 19 November 1957, 8:00 A. M.
9. Is injured person earning same wages as before injury: Yes.

MANCHESTER BOARD &
PAPER CO., INC.
(Signed) J. F. MAHER, JR.
Pers. Dir.

Date of this report:
19 Nov. 1957.

Vol. II.
page 28 } December 11, 1957.

Claim No. 392-781—Irving F. Parker *v.* Manchester Board & Paper Co.
Acc. 9-14-57 C33 89391

Liberty Mutual Insurance Company
18 North 5th Street
Richmond, Virginia

Gentlemen:

We have the employer's letter of November 29, 1957 and assume he is referring to the final settlement receipt. If so, we call your attention to the fact that our award of October 14, 1957 remains outstanding and compensation payments should not be withheld from this claimant. If it is your intention to suspend the payment of compensation, the usual

application for hearing on the ground of change in condition should be executed and filed.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Examiner.

GMS/gh

Vol. II.
page 29 } MANCHESTER BOARD AND PAPER CO., INC.
RICHMOND 9, VIRGINIA

November 29, 1957.

Claim Section
Liberty Mutual Insurance Company
18 North Fifth Street
Richmond 19, Virginia

Gentlemen:

We are temporarily holding the final memorandum of agreement with regard to settlement and final check for disability payments in the case of Irving Parker.

Parker is unwilling to sign the agreement until he has been seen by the attending physician at some indefinite date in December. It is our intention to withhold issuance of this check until such time as he signs the agreement. If you do not concur in this action, please advise.

Yours very truly,

MANCHESTER BOARD & PAPER CO.
(Signed) J. F. MAHER, JR.
Personnel Director.

JFM;mp

Vol. II.
page 30 } JAMES THOMAS TUCKER, M. D.
BEVERLEY BOYDEN CLARY, M. D.
EARNEST BETTS CARPENTER, M. D.
JAMES B. DALTON, M. D.

RICHMOND, VIRGINIA

November 14, 1957.

Liberty Mutual Insurance Company
18 North 5th Street
Richmond, Virginia

*Re*: Irving F. Parker *v.* Manchester Board & Paper Company

Gentlemen:

Irving Parker, employee of Manchester Board and Paper Company was last examined by me on November 13th in regard to injuries sustained to his left leg as a result of an industrial accident occurring on September 14th.

Examination at this time reveals this man to have improved to the point that I feel he can return to work as of November 25th, 1957. He has not, as yet, reached maximum recovery and supplemental report regarding the condition of his leg after full recovery is reached will be sent you at that time. I cannot say definitely at this time whether he will recover without residual disability, but should he have any residual disability of his leg, I believe it will be of a minimal degree.

With kind regards, I am

Most sincerely,

(Signed) E. B. CARPENTER
EARNEST B. CARPENTER, M. D.

EBC/mm

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* * * * *

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

AWARD
NOTICE OF

Approval of Agreement

mg

Claim No. 392-781 (C33 89391)
Case of Irving F. Parker
Acc: 9-14-57

Date October 14, 1957

To Manchester Board and Paper Co., Inc., (Employer)
1850 9th Street Road
Richmond, Virginia

and Mr. Irving F. Parker, (Employee)
4329 Lawson Street
Richmond, Virginia

and Liberty Mutual Insurance Company, (Insurance Carrier)
18 North 5th Street
Richmond, Virginia.

Take notice that the Industrial Commission of Virginia has examined the memorandum of agreement described above and entered into October 4, 1957 for the payment of compensation under the Workmen's Compensation Act, and in accordance with the provisions of said Act has approved the same as follows: $30.00 per week, during incapacity, payable weekly, beginning Sept. 22, 1957.

If any party in interest doubts that the agreement made has been made strictly according to law, he may address the Commission with an inquiry or complaint. It will receive prompt attention.

Your truly,

INDUSTRIAL COMMISSION OF VIRGINIA
M. E. NUCKOLS, JR.
Chairman.

Attest:

W. F. BURSEY
Secretary.

In view of the nature of the injury sustained by this claimant, before closing the file, we will require a final medical report covering the question of permanent disability.

If incapacity for work (disabiltiy) exceeds six (6) weeks, compensation is THEN to be paid for the first seven (7) days and the Commission so advised. Sec. 65-59.

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INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

MEMORANDUM OF AGREEMENT AS TO PAYMENT OF COMPENSATION.

Claim No. 392-781 (C33-89391

Irving F. Parker Employee
Manchester Board & Paper Co. Employer
Liberty Mutual Ins. Co. Insurance Carrier

We Irving F. Parker residing at 4329 Lawson St.
City or Town Richmond State Va. and Manchester Board & Paper Co., Inc. Office address Richmond, Va. have reached an agreement in regard to compensation for the injury sustained by said employee and submit the following statement of facts relative thereto:—

Date of injury 9/14/57 Date disability began 9/15/57
Nature of injury Fracture of left tibia
Place of accident Richmond, Va.
Cause of accident bale of paper from pile jammed and injured foot
Probable length of disability ?
The terms of this agreement under the above facts are as follows:—

That the said Irving F. Parker shall receive compensation at the rate of $30. per week based upon an average weekly wage of $69.34 and that said compensation shall be payable weekly from and including the 22nd day of Sept. month 1957 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia.

J. F. Maher, Jr. Witness
510 Gardiner Road Address
.....Witness
.....Address

Approved by .....
Date of Approval .....

(Signed) IRVING F. PARKER
Employee or Dependent
Manchester Board & Paper Co., Inc. Employer
Liberty Mutual Insurance Co. Carrier
By F. F. CLENENTS
Title .....
Date of Agreement 10-4-57,

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INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND 14

October 1, 1957.

Liberty Mutual Insurance Company
18 North 5th Street
Richmond, Virginia

I. C. Claim No: 392-781 (C-33-89391)
Employee: Irving Francis Parker
Employer: Manchester Board & Paper Co., Inc.

Date of Accident or Injury: 9-14-57

Gentlemen:

We have received report of an accident or injury captioned as above.

| We Have: | | Please File: |
|---|---|---|
| [x] | Employer's First Report of Accident, Form No. 3 | [ ] |
| [x] | Attending Physician's Report, Form No. 6 | [ ] |
| [ ] | Memorandum of Agreement, Form No. | |

4 [x]
or
[ ] Supplemental Return to Work Report, Form No. 3a [x]

ALL REPORTS AND OTHER DATA INVOLVING THIS CLAIM, INCLUDING MEDICAL COSTS, MUST SHOW THE ABOVE CLAIM NUMBER.

After first filing is made do not file further forms or reports until claim number is furnished you by the Claims Division.

Please report at once any error in the above.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA
W. L. ROBINSON
Examiner.

gt

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Vol. II.
page 34

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INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

C33 89391

Case of Industrial Commission
Claim No. .....

EMPLOYER'S FIRST REPORT OF ACCIDENT

(Every question must be answered)

1. Name of Employer Manchester Board & Paper Co., Inc.
2. Office address: No. and St. 1850 9th St. Rd. City or Town Richmond State Virginia
3. Insured by: Name of Company Liberty Mutual Insurance Co.

4. Give nature of business (or article manufactured) Paperboard Mfrs.
5. (a) Location of plant or place where accident occurred 1850 9th St. Rd., Richmond, Va. Sea. Department Receiving State if employer's premises Yes
   (b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill —
6. (a) Date of Injury 9-14 1957 Day of week Sat. Hour of day 10:30 A. M. . . . . P. M.
   (b) Was injured paid in full for day he was injured? Yes
7. Date incapacity began 9-15 1957 A. M. 7:00
8. Was injured paid in full for day incapacity began? No
9. When did you or foreman first know of injury? Immediately
10. Name of foreman R. B. McCrone
11. Name of Injured Irving Francis Parker
12. Address: No. and St. 4329 Lawson St. City or Town Richmond State Va.
13. Check (√) Married x, Single.., Widowed.., Widower.. Divorced..; Male x, Female..; White.., Colored x
14. Nationality American Speak English Yes
15. Age 22 Did you have on file employment certificate or permit? No
16. (a) Occupation when injured Lift Truck Oper. (b) Was this his or her regular occupation? Yes
    (If not state in what department or branch of work regularly employed) —
17. (a) How long employed by you? 2½ mon. (b) Piece or time worker Time (c) Wages per hour $1.29½
18. (a) No. hours worked per day 8 (b) Wages per day $10.36
    (c) No. days worked per week 5 (d) Average weekly earnings $51.80
    (e) If board, lodging, fuel or other advantages were furnished in addition to wages, give estimated value per day, week or month —
19. Machine, tool or thing causing injury Bale of paper
20. Kind of power, (hand, foot, electrical, steam, etc.) None
21. Part of machine on which accident occurred—
22. (a) Was safety appliance or regulation provided? no (b) Was it in use at time? —
23. Was accident caused by injured's failure to use or observe safety appliance or regulation? No
24. Describe fully how accident occurred, and state what employee was doing when injured Parker was working in the Receiving Department in the vicinity of some

bales of paper. At the time of the accident he was standing on the floor of the bldg. near his lift truck. A bale of paper fell from the pile and jammed his foot between the bale and the lift truck.

25. Name and address of witness C. C. Robinson, MB&P Co.
26. Nature and location of injury (describe fully exact location of amputation or fractures, right or left) Fracture external surface of left tibia.
27. Probable length of disability 2 weeks
28. Has injured returned to work? No
    If so, date and hour ..... At what wage $....
29. At what occupation? .....
30. (a) Name and address of physician Dr. Fred Walls, Jr., Medical Arts, Bldg. Richmond Va.
    (b) Name and address of hospital .....
31. Has injured died? No If so, give date of death .....

Date of this report 9-17-57 Firm name Manchester Board & Paper Co., Inc.

Signed by J. F. Maher, Jr. Official Title Personnel Director.

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INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

ATTENDING PHYSICIAN'S REPORT

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill out blank in ink using pen or typewriter, and mail promptly to the Commission at its Richmond office.

1. Name of Injured Person: Irving F. Parker Age: 22 Sex: Male
2. Address: No. and St. 4329 Lawson St. City or Town Richmond State Va.
3. Name and Address of Employer: Manchester Board & Paper Company
4. Date of Accident September 14, 57 Hour 10:30 A. M. Date disability began September 14, 1957

5. State in patient's own words where and how accident occurred: "I caught my left ankle between a bail of paper and a fork-lift."
6. Give accurate description of nature and extent of injury and state your objective findings: Simple fracture of external malleolus of left tibia.
7. Will the injury result in (a) Permanent defect? No If so, what? .....
   (b) Facial or head disfigurement? No

(Permanent disability such as loss of whole or parts of fingers, facial or head disfigurement, etc., must be accurately marked on chart on reverse side of this report.)

8. Is accident above referred to the only cause of patient's condition? Yes If not, state contributing causes: ....
9. Is patient suffering from any disease of the heart, lungs, brain, kidneys, blood, vascular system or any other disabling condition not due to this accident? .....
   Give particulars .....
10. Has patient any physical impairment due to previous accident or disease? No Give particulars: .....
11. Has normal recovery been delayed for any reason? No Give particulars: .....
12. Date of your first treatment: Sept. 14, 1957 Who engaged your services? Employer
13. Describe treatment given by you: Examination and referred to Dr. Ernest B. Carpenter for treatment.
14. Were X-rays taken? Yes By whom? Dr. Henry Spencer When? Sept. 14, 1957
15. X-ray diagnosis: Simple fracture of external malleolus of left tibia
16. Was patient treated by anyone else? No By whom?.... When? .....
17. Was patient hospitalized? No Name and address of hospital: .....
18. Date of admission to hospital .... Date of discharge:..
19. Is further treatment needed? Yes For how long? 6 weeks
20. Patient was / will be able to resume regular work on: See report of Dr. Ernest C. Carpenter
21. Patient was / will be able to resume light work on: .....
22. If death ensued give date: .....

REMARKS: (Give any information of value not included above) No further treatment needed by me.

I am a duly licensed physician in the State of Virginia

I was graduated from Medical College of Va. Medical School in Medicine Year 1947

I certify that I personally examined and treated the above named patient: .....

(Signed) Fred Walls, Jr.

Address 706 Medical Arts Building Telephone 25294

Date of this report Sept. 16, 1957 (This report must be signed by physician) .....

COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME

Vol. II.
page 36 } In conformity with an Order of the Supreme Court of Appeals of Virginia, entered the 19th day of January, 1959, in Claim No. 392-781—Irving F. Parker, employee, *v.* Manchester Board and Paper Company, employer—Liberty Mutual Insurance Company, insurance carrier, I hereby certify that the foregoing, according to the records of this Commission, is a true and correct copy of the file of papers in its entirety in said claim as they appear in the records of this Commission with the exception, however, of that portion of the record which was certified by the Secretary of the Commission under date of the 10th day of November, 1958 and delivered to counsel representing the employer and carrier.

Given under my hand and the seal of the Industrial Commission of Virginia, this the 2nd day of February, 1959.

Seal

W. F. BURSEY
Secretary,
INDUSTRIAL COMMISSION OF VIRGINIA.

A Copy—Teste:

H. G. TURNER, Clerk.

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## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
JUN 10 1959
RECEIVED
RICHMOND, VIRGINIA