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Supreme Court of Appeals
Richmond

209 VA 588

# Record No. 6914

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

## E. C. WOMACK, INCORPORATED, ET AL.

v.

## LONNIE ELLIS, JR.

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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6914**

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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 Wednesday the 6th day of March, 1968.

E. C. WOMACK, INCORPORATED, and
CONTINENTAL INSURANCE COMPANY, Appellants,

*against*

LONNIE ELLIS, JR., Appellee.

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From the Industrial Commission of Virginia

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Upon the petition of E. C. Womack, Incorporated, and Continental Insurance Company an appeal and *supersedeas* is awarded them from an award entered by the Industrial Commission of Virginia on the 22nd day of November, 1967, in a certain proceeding then therein depending, wherein Lonnie Ellis, Jr., 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 $20,000, with condition as the law directs.

## RECORD

* * * * *

page 1 }

* * * * *

Commonwealth of Virginia

Department of Workmen's Compensation

INDUSTRIAL COMMISSION OF VIRGINIA
Richmond

EMPLOYER'S FIRST REPORT OF ACCIDENT

(Every question must be answered)

Case of.....

Claim No.....

1. Name of Employer E. C. Womack, Inc.
2. Office Address: No. and St. 5792 Northampton City or Town Va. Beach State Va.
3. Insured by: Name of Company Continental Insurance Company
4. Give nature of business (or article manufactured) General Contractor
5. (a) Location of plant or place where accident occurred Merrimac Avenue ..... Department ..... 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 10-5 1965 Day of week Tuesday Hour of day 8:35 A. M. ..... P. M.
   (b) Was injured paid in full for day he was injured? No
7. Date incapacity began 10-5 1965 A. M. 8:35 P. M.....
8. Was injured paid in full for day incapacity began? No
9. When did you or foreman first know of injury? 10-6-65
10. Name of foreman B. F. Ferguson
11. Name of Injured Lonnie Ellis, Jr.
12. Address: No. and St. 46 Hobson St. Apt. 1 City or Town Portsmouth State Va.
13. Check (✓) Married X, Single....., Widowed....., Widower....., Divorced.....; Male X, Female.....; White....., Colored X

14. Nationality American Speak English Yes
15. Age 47 Did you have on file employment certificate or permit? Yes
16. (a) Occupation when injured Truck Driver (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? 2 Mos. (b) Piece or time worker Time (c) Wages per hour $1.50
18. (a) No hours worked per day.....(b) Wages per day $.....
(c) No. days worked per week.....(d) Average weekly earnings $70.00
(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.....20. Kind of power, (hand, foot, electrical, steam, etc.) .....21. Part of machine on which accident occurred.....
22. (a) Was safety appliance or regulation provided?.....
(b) Was it in use at time?.....
23. Was accident caused by injured's failure to use or observe safety appliance or regulation?.....
24. Describe fully how accident occurred, and state what employee was doing when injured Employee was involved in accident and was injured in same. Was backing truck up and hit bulldozer
25. Name and address of witness.....
26. Nature and location of injury (describe fully exact location of amputation or fractures, right or left)..... Hip. Back, Legs, Head
27. Probable length of disability Unknown 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. Jones, Professional Arts Bldg. Portsmouth, Va.
(b) Name and address of hospital.....
31. Has injured died? No If so, give date of death.....

Date of this report 10-18-65 Firm name E. C. Womack, Inc.

Signed by W. A. ???? Official Title Secretary

* * * * *

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* * * * *

Commonwealth of Virginia

Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA

Richmond

15219

Claim No.....

Case of.....

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: Lonnie Ellis Age: 47 Sex: Male
2. Address: No. and St. 46 Hobson St. City or Town Portsmouth, State Va.
3. Name and Address of Employer: E. C. Womack, Norfolk, Va.
4. Date of Accident Oct. 5, 1965 Hour 9:00 a.M. Date disability began Oct. 6, 1965
5. State in patient's own words where and how accident occurred: While at work driving truck, the man directing traffic gave wrong directions and truck and bull dozer collided.
6. Give accurate description of nature and extent of injury and state your objective findings: Mild Whiplash and myofacial sprain of back.
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 dis-

abling condition not due to this accident? no 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: Oct. 6, 1965 Who engaged your services? Company
13. Describe treatment given by you: Local analgesics and anodynes prescribed. Hospitalized and put in traction.
14. Were X-Rays taken? no By whom?.....When?.....
15. X-Ray diagnosis:.....
16. Was patient treated by anyone else? no By whom?..... When?.....
17. Was patient hospitalized? yes Name and address of hospital: Portsmouth Gen. Hosp.
18. Date of admission to hospital October 11, 1965 Date of discharge: Oct. 16, 1965
19. Is further treatment needed? yes For how long? D. K.
20. Patient was will be able to resume regular work on: about 4 to 5 weeks disability
21. Patient was will be able to resume light work on:.....
22. If death ensured give date:.....

REMARKS: (Give any information of value not included above).....

I am a duly licensed physician in the State of Virginia

I was graduated from Univ. of Pennsylvania Medical School in Philadelphia Year 1924

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

(Signed)T. ELMORE JONES

Address 411 Professional Building, Ports., Va. Telephone.....
Date of this report Oct. 22, 1965 (This report must be signed personally by physician).....

Complete this Report immediately after seeing patient for the first time.

* * * * *

page 3 }

* * * * *

Commonwealth of Virginia

Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA

Richmond

Case of:
Lonnie Ellis, Jr. (Employee)
*v.*
E. C. Womack, Inc. (Employer)

APPLICATION FOR A HEARING IN NON-FATAL CASE

(To be used by injured employee)

Not being able to reach an agreement as to compensation in the above styled case the undersigned hereby respectfully requests the Industrial Commission of Virginia for a hearing at a time and place to be fixed by said Commission in accordance with Section 65-91 of the Virginia Workmen's Compensation Act.

I hereby certify that when the hearing is held I expect to be able to prove the facts in the case as follows:

(Fill in only the facts applicable to your case)

1. That on the 5th day of October, 1965, I was injured by accident arising out of and in the course of my employment while in the employ of E. C. Womack, Inc.; that as a result of my accident I was compelled to quit work on the 6th day of October, 1965, that my employer had knowledge of my accident within 30 days from date thereof; that my average weekly wages prior to the accident were $70. straight time but consisted overtime averaging $85, week.

2. That the nature of my injury is as follows: I was treated for my leg, head and neck, and it was later discovered that my hand was broken.

3. Place where accident happened Norfolk, Virginia—overpass being built over Merrimac Avenue

[Fill in only one (a, b or c) under 4]

4. (a) That I returned to work on the ..... day of ....., at a weekly wage of $..... or (b) That I am still unable to return to work, and my estimated period of disability is unknown weeks from this date. or (c) That I returned to work on the ..... day of ....., 19....., at a weekly wage of $....., but again became disabled as a result of this injury on the ..... day of ....., 19.....

5. That I have been paid compensation in the sum of $89.14.

6. That as a result of this accident I have sustained a permanent injury as follows: unknown to date

7. That I am unable to reach an agreement as to compensation with my employer for the following reasons: I was hurt and out of work from the 5th of October through the 28th and have received one check but with no degree of regularity.

When a date for the hearing is fixed, I respectfully request the Commission to issue subpoenas for the following witnesses:

Dr. George Psimas Address 3315 County Street, Portsmouth, Virginia

Dr. T. Elmore Jones Address Professional Building High & Washington St.

Signed this 5th day of November, 1965.

Signature: Lonnie Ellis, Jr.
Employee.

Address: 46 Hobson Road, Apt. 1,
Portsmouth, Virginia

page 4 } Telephone EXport 3-0518

15219

GEORGE N. PSIMAS, M. D.
Orthopedic Surgery
3315 County Street
Portsmouth, Virginia 23707

November 5, 1965

Continental Insurance Company
3107 Virginia Beach Boulevard
Princess Anne Plaza
Virginia Beach, Virginia

Re: Lonnie Ellis, Jr.

Dear Sir:

This 46 year old, colored male was seen by me on October 26, 1965. He reported that while at work on October 5, 1965 he sustained multiple injuries when he backed into a bulldozer while driving a truck. He sustained injury to the right hand, left hip and leg. The patient also complained of a headache which persisted for two weeks after the accident. His primary complaints today are relative to the right hand and left hip.

EXAMINATION: Reveals a moderate sized, colored male complaining of pain in the knuckles of the right hand. The left hip reveals good range of motion but local soreness and tenderness over the fascial areas, lateral aspect of the hip indicating the presence of a subsiding sprain contusion here.

X-RAY: Is obtained which confirms a fracture of the fourth metacarpal head to be present with slight shortening.

DIAGNOSIS: Sprain contusion, left hip
Fracture, fourth metacarpal head, right

TREATMENT: Without anesthesia a cast was applied with the hand placed in an appropriate position to immobilize the fourth and fifth fingers and the wrist. The patient was given Darvon Compound for relief of pain and asked to return in an appropriate period for check.

Yours very truly,

GEORGE N. PSIMAS, M.D.

GNP:brs

CC: T. E. Jones, M.D.
Professional Building
Portsmouth, Virginia

Received Nov 8 1965 Virginia Beach, Va.
15219

* * * * *

page 5 } Commonwealth of Virginia

Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA
Richmond

MEMORANDUM OF AGREEMENT
AS TO
PAYMENT OF COMPENSATION

Lonnie Ellis, Jr. Employee
E. C. Womack, Inc. Employer
Continental Ins. Co. Insurance Carrier

We Lonnie Ellis, Jr. residing at 46 Hobson St., Apt. 1 City or Town Portsmouth, State Virginia and E. C. Womack, Inc. Office address 5792 Northampton Blvd., Virginia Beach, Virginia 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 10-5-65 Date disability began 10-6-65
Nature of injury Mild Whiplash and myofacial sprain of back, and broken right hand.
Place of accident Merrimac Avenue, Norfolk, Virginia
Cause of accident Driving truck and backing up and hit bulldozer.
Probable length of disability 4 to 5 weeks (?)

The terms of this agreement under the above facts are as follows:—

That the said Lonnie Ellis, Jr. shall receive compensation at the rate of $39.00 per week based upon an average weekly wage of $70.00 and that said compensation shall be payable weekly from and including the 6th 12th day of October month 1965 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia
See let of 11-19-65
Katherine N. Davis Witness
4113 Clintwood La. Va. Beach Address
Mary Smith Witness
Virginia Beach, Va. Address
Approved by.....
(Commissioner or Board Member)
Date of Approval.....
X Lonnie Ellis, Jr. Employee or Dependent
..... Employer

CONTINENTAL INSURANCE COMPANY
Carrier

By B. E. Pierce, Jr.
Title Claims Manager
Date of Agreement Virginia Beach, Va.

page 6 }

THE CONTINENTAL INSURANCE COMPANIES

* * * * *

Southeastern Department - Atlanta, Georgia

November 19, 1965

3177 Virginia Beach Boulevard
P. O. Box 2177
Virginia Beach, Virginia 23452
Area Code 703 - Telephone: 340-7771

Industrial Commission
Richmond, Virginia
Attention: Mr. W. L. Robinson

Re: E. C. Womack, Inc.
Lonnie Ellis, Jr.
D/Acc: 10-5-65
File # 115 CM 15219
I. C. # 819-423

Dear Mr. Robinson:

Acknowledging receipt of your letter of November 17, 1965, regarding the above-captioned claimant.

We are, this date, paying the additional day's compensation, and authorize you to change the memorandum of agreement providing for compensation beginning October 12, 1965.

Very truly yours,

B. E. Pierce, Jr.
Claims Manager

BEP, Jr:ms

* * * * *

page 7 } Commonwealth of Virginia
Division of Claims
Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA
Richmond

NOTICE OF AWARD
Approval of Agreement

lw

Claim No. 819-423 (115 CM 15219)
Case of Lonnie Ellis, Jr.
Accident: 10-5-65

Date November 23, 1965

Note: The compensation herein awarded is to be paid by the insurance company or by the employer, if self-insurer. In the event that payment is delayed, the employee is requested to write the insurance company or his employer, before taking it up with the Commission.

To E. C. Womack, Incorporated, (Employer)
5792 Northampton Blvd.
Virginia Beach, Virginia
and Mr. Lonnie Ellis, Jr., (Employee)
46 Hobson Street Apt. 1
Portsmouth, Virginia
and Continental Insurance Company, (Insurance Carrier)
3177 Virginia Beach Blvd.
Virginia Beach, Virginia

Take notice that the Industrial Commission of Virginia has examined the memorandum of agreement described above and entered into November 1965 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: $39.00 per week, during incapacity, payable weekly, beginning October 12, 1965.

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.

INDUSTRIAL COMMISSION OF VIRGINIA

* * * * *

page 8}

Telephone EXport 3-0518
GEORGE N. PSIMAS, M.D.
Orthopedic Surgery
3315 County Street
Portsmouth, Virginia 23707

January 11, 1966

Continental Insurance Company
3107 Virginia Beach Boulevard
Princess Anne Plaza
Virginia Beach, Virginia

Attn: Mrs. Smith

Re: Lonnie Ellis, Jr. D/A:10/5/65

Dear Mrs. Smith:

Since my last report to you on November 5, 1965, the above named patient has been followed in my office at regular periodic intervals. He was seen on November 16, 1965, at which time the cast was removed and he was advised active use of the fingers, hand and knuckles. An x-ray after removal of the cast showed a healing fracture in good position and alignment. He returned on November 18, 1965 complaining of swelling since removal of the cast. The fingers are checked and there is a mild degree of swelling present but not enough to be alarmed or worried about. I explained this to the patient and asked him to return in appropriate period. He returned on December 7, 1965. He has slight swelling of the knuckle still, but motion is improving rapidly. He was asked to return in two weeks for possible discharge.

I next saw this patient in Orthopedic Consultation in Portsmouth General Hospital where he was admitted on December 28, 1965 by Dr. T. E. Jones. Please note the enclosed copy of my Consultation Record which is self-explanatory. Further report will be sent to you at a later date.

Enclosed is a copy of my bill to date.

Yours very truly,

George N. Psimas, M. D.

GNP:mhs
Enclosure (2)
CC: T. E. JONES, M. D.
Professional Building
Portsmouth, Virginia
Industrial Commission of Virginia
Richmond, Virginia

page 9 } Lonnie Ellis, Jr.
46 Hobson St.
Portsmouth, Virginia
Age: 47
Sex: Male

Race: Col.
Location: 241
Hospital #223 891
Dr. Jones
12-28-65

PORTSMOUTH GENERAL HOSPITAL
CONSULTATION RECORD

Attending Physician: Dr. Jones

Consulting Physician: Dr. G. Psimas Date:

This 47 year old colored male was admitted to the hospital with a chief complaint of pain or soreness in the left groin, left hip, and posterior buttock area, that was off and on, following an accident which occurred in October of 1965. He states that while employed at that time driving a truck on Interstate 264, the back of the truck was hit by a bulldozer, damaging the truck to about 800 dollars worth of damage, following which he came to on the ground and sustained a bitten lip, a headache, a sore hand. The next day he complained of pain in his leg, headache, and saw Dr. Jones. He was placed in the hospital and put in traction and later stated the left leg just seemed to give way from under him. During this period of time, some time after the original injury, I saw him first at my office with what appeared to be a fracture of the fourth metacarpal of the right hand. A closed reduction was performed. He was immobilized with the finger in flexion, and was followed periodically thereafter by me. On each occasion when he mentioned his left hip, I referred him to Dr. Jones in reference to this condition.

EXAMINATION today in reference to the right hand reveals almost complete range of motion, though there is some dropping of the knuckle, it is not as prominent as it was originally in pre-injury period.

SPINE: Specific examination here reveals the shoulder and pelvis to be not level. The spine has slight curvature. He stands with the left hip slightly flexed, the knee slightly flexed, and the heel off the floor. On attempting to straight this out, he grimaces and groans and makes considerable more audible reaction than in my opinion he should under these circumstances. There is no evidence of parispinal spasm. Flexibility of the spine to forward bending and hyperextension is complete. Lateral bending right and left is complete. In the erect position, he has an increased lumbar lordosis, and he also has very prominent pendulous abdomen. This undoubtedly contributes to the posture in the low back area.

page 10 } Specific examination in reference to the left hip: In attempting to flex the hip, extend the hip, abduct, or carry out a Patrick's sign, patient *withholds* to such a degree that it is difficult to evaluate practically the full degree of his discomfort. However, one gets the impression that there may be a positive Patrick sign on the left, indicative of some hip or gluteal involvement at this level. All signs in the right lower extremity were non-revealing. The reflexes in the lower extremities are physiological and equal with no abnormalities noted.

X-rays of the lumbosacral spine reveal a spina bifidia occulta, see films for details. This, of course, is not related to this accident whatsoever, and is a congenital change. The films of the left hip and AP of the pelvis are perfectly normal, and show no evidence of bony injury, dislocation, or any involvement of the hip joint whatsoever.

ORTHOPEDIC OPINION: Although this patient has certain signs in reference to the left hip, including a questionably positive Patrick sign, I believe he definitely exaggerates to all attempts to carry out appropriate tests which normally are not particularly painful. However, he does have a lurch to the left and leans to the left somewhat in the standing position, and it may be that this is related to muscular residuals or sprain associated with the accident initially reported.

I would recommend the following:

1. Hubbard tank daily.

2. Exercise program in PT Department to use the left hip.
3. Continuous bed rest, except for bathroom privileges.
4. Any muscle relaxant of your choice.
5. I will follow again to note and evaluate his response.

George N. Psimas, M. D.

page 11 }

T. ELMORE JONES, M.D.
Professional Building
Portsmouth, Virginia

January 14, 1966

Continental Insurance Company
Princess Anne Plaza
P. O. Box 2177
Virginia Beach, Virginia

Re: Lonnie Ellis
EMP. E. C. Womack

Gentlemen:

As per our telephone conversation in December, I hospitalized the above named, on December 28, 1965.

I had Dr. Frank Clare to see him in consultation, and a copy of his report is enclosed. I also had Dr. George Psimas to see him and a copy of his report has probably been mailed to you.

We gave him several physio-therapy treatments which produced no change in his subjective symptoms. Objectively, we found nothing to account for his symptoms.

I have felt that his symptoms were over exaggerated and for that reason I am discharging him and ordering him to return to work January 17, 1966.

My total bill to date is $125.00.

Very truly yours,

/s/ T. Elmore Jones
T. Elmore Jones, M. D.

Enclosure
TEJ/cd

page 12 } Lonnis Ellis, Jr.
46 Hobson St.
Portsmouth, Virginia
Age: 47
Sex: Male

Race: Col.
Location: 241
Hospital #223 891
Dr. Jones
12-28-65

PORTSMOUTH GENERAL HOSPITAL
CONSULTATION RECORD

Attending Physician: Dr. Jones

Date: 1-1-66

Consulting Physician: Dr. Clare

CHIEF COMPLAINT: Pain in the left groin, pain in the left hip joint area and going to the knee.

HISTORY OF PRESENT ILLNESS: This 47 year old, right handed, colored male states that he was in good health until the 5th of October, 1965. At that time, while driving a dump truck on interstate 264, and backing up in a cloud of dust, the back of the truck was hit by a bulldozer, damaging the truck to about $800.00 worth of damage. He doesn't know whether he was thrown out of the truck, or whether he jumped out of the truck, but when he came to, he was on the ground, and remembers a cigar in his mouth and a bitten lip, a headache, and slightly sore hand. He did not think he was severely hurt. However, the next day after that he complained of pain in his leg, headache and saw Dr. Jones. He was put in the hospital for his pain in the hip, and placed in traction with no relief. He states the left leg just gives out from under him. He also was seen by Dr. Psimas for his injured hand, and found to have a fracture of the metatarsal bones and was treated with a cast. He improved somewhat for a while, but continued to have pain in his left leg and difficulty in walking. Coughing or sneezing does not aggravate the pain. He complains of the pain as being of throbbing nature and most severe. He can get in a position and not move in bed that he is comfortable, but it is impossible when he walks.

PAST HISTORY is negative except for herniorrhaphy in 1936, asthma at one time. States he has nine children, ranging from 21 months to 25 years of age. He is 5′7″ and weighs 200 lbs.

EXAMINATION reveals a colored male in subacute distress.

HEAD: No remarkable.

EENT: Grossly intact.

NECK: Movements are well executed.

page 13 } CHEST: Lungs are clear. I am not certain whether the heart is enlarged, but on auscultation there are asthmatic wheezes throughout both lung fields. The blood pressure is 180/110, and his pulse rate is 86.

ABDOMEN: Obese. He is extremely tender in the left groin, just medical to the artery. The femoral artery pulsates nicely bilaterally. There is also tenderness over the greater trochanter on the left, and tenderness over the pubis on the left. There is some tenderness over the sciatic notch area on the left. Any movement involving the left hip joint appears to be painful.

The back has no areas of tenderness in any area.

There is some vague spotted hypesthesia in the left lower leg. Strength in the left lower extremity cannot be adequately tested on account of pain. His gait is very bizarre.

GENERAL NEUROLOGICAL EXAMINATION, other than stated below is not remarkable. The deep tendon reflexes are two plus, biceps and patellar one plus, triceps and Achilles. They are bilaterally equal. The abdominal reflexes are absent, the cremasteric are present. Babinski is plantar. Rectal examination was not performed, since it had twice been performed by Dr. Jones.

IMPRESSION: It is not known what this patient has. It is not felt likely that it is intervertebral disc problem or spinal cord tumor.

It is felt he should have X-rays of his lumbar spine, hip joints and pelvis, as well as his chest. It is also felt that perhaps Dr. Psimas should see him again, and if all fails, a myelogram might be considered, although I do not feel it is likely to

bear fruit. Sedimentation rate and acid and alkalin phosphatase have also been ordered.

Frank B. Clare, M. D.

Ina

page 14 } Docket for Norfolk
Date of last payment 1-18-66

re-open as of
Application filed 1-20-66
Referred to Doctor 1-26-66
By GM

Commonwealth of Virginia
Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA
Richmond
I. C. # 819-423
File No. 115 CM 15219
APPLICATION FOR A HEARING ON THE GROUND OF CHANGE IN CONDITION

E. C. Womack, Inc., Employer
vs.
Lonnie Ellis, Jr., Employee

The applicant, Continental 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: Lonnie Ellis, Jr., 46 Hobson St., Apt. 1, Portsmouth, Virginia

2. Name of the employer is: E. C. Womack, Inc.

3. Claimant was last paid compensation at the rate of $39.00 per week up to the 18th day of January, 1966, 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):

Dr. Jones reports that he has dismissed Mr. Ellis, and ordered him to report to work January 17, 1966.

5. Injured employee returned to work for ..... at ..... at an average weekly wage of $..... Or injured employee has been offered work which he is able to perform with .....

at $..... per week 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.

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 Virginia Beach, Virginia,
this 18th day of January, 1966

CONTINENTAL INSURANCE COMPANY
By B. Z. BRUCE, JR.

page 15 }

DR. J.A. JACKSON
Physician and Surgeon
Specializing in X-Ray Work
Office Hours: 12 to 4 and 7 to 9 p.m.

Office:
400 Effingham St.
Phone: EX 7-3915
Reg. No. 6581

Residence
48 Deep Creek Blvd.
Phone: EX 9-0711
Portsmouth, Va.

Name Lonnie Ellis Age 47
Address 46 Hobson Street Date 1/24/66

the above named person is under my medical care—totally disabled and unable to work.

J. A. Jackson M.D.
Refill 0 1 2 3

Zedd's Pharmacy
Prescription Drug Store
High at Chestnut, Portsmouth, Va.
Quality Drugs of the Finest
Dial EX 3-2911

page 16 }

John A. Jackson, M. D.
450 Effingham St.
Portsmouth, Va.

February 28, 1966

Mr. Horace L. Wise
Attorney at Law
214 New Kirn Building
Portsmouth, Virginia

Re: Mr. Lonnie Ellis, Jr.

Dear Mr. Wise:

This is to certify that the above named patient was originally examined in my office on January 24, 1966 and *sugsequently* treated thereafter for injuries sustained in an accident on October 5, 1965. Permit me to submit the following medical opinion and report.

HISTORY:
The patient volunteers the information that he was injured while at work for the E. C. Womack Construction Company. The patient states that he had stopped for the dust to settle and while waiting in his truck, a bulldozer suddenly backed into the rear of his truck.

EXAMINATION:
Examination reveals a slightly obese male who entered the consultation room in acute distress. He had marked physiologic dyspnea and wheezing. He denies any history of asthma or other allergic conditions. His vital signs were within the normal range with the exception of a very rapid pulse. His blood pressure was essentially high and he also denies any previous history of hypertension.
He complained of severe headaches and vertigo. The right hand was swollen, cold, and painful with pain and swelling extending to the elbow. There was no grip in the right hand and the patient states that he has not been able to use the right hand since the accident.
The lumbar region was painful to movement, palpation, and pressure. Extension or movement of the lower extremities induced much discomfort. The left extremity was swollen and painful to weight bearing and pressure. The patient complained of severe pain in the left knee and left hip which occurs at intervals with exertion or movement.

page 17 } His gait is impaired and can best be described as a marked limp. Ambulation has been limited since the accident since the slightest exertion induces dyspnea, wheezing, and tremors resembling Parkinson Disease.

TREATMENT:
Initial treatment included diuretics, hypertensive drugs, muscle relexants, and sedatives. Diathermic treatments and massages were given with poor response.

IMPRESSIONS:
1. Acute Hypertensive Disease
2. Traumatic injury to the right hand
3. Traumatic injury to the lumbar region and left extremity
4. Traumatic injury to the central nervous system

COMMENTS:
It is my opinion that the patient's subjective complaints and objective signs are compatible with the above mentioned impressions with the patient presenting evidence of two hospitalization periods under the treatment of two prominent physicians of this city and the patient presenting evidence of total disability since the date of the accident to the present date which appears to be casually related to the accident of October 5, 1965. It is, also, my opinion that this patient is totally incapacitated, and needs immediate hospitalization for medical, neurosurgical, and orthopedic evaluation.

Respectfully submitted,
/s/ J. A. Jackson
John A. Jackson, M. D.
JAJ:wj

page 18 } T. ELMORE JONES, M. D.
Professional Building
Portsmouth, Virginia

January 21, 1965

Wise, Wise and Wise
404-406 New Kirn Building
Portsmouth, Virginia 23704

RE: Lonnie Ellis
EMP: C. E. Womack

Gentlemen:
I did recommend that this man return to work, knowing at the time that he would not do so.

Since his accident, he was first hospitalized October 11, 1965. Under four or five days treatment with traction, he was symptom free and walking about the ward normally, so I discharged him. He was back in the office the next day, complaining with his back.

I recently hospitalized him again and had consultation with a Neuro-surgeon and Orthopedist. We were unable to find any objective cause for his complaints. There was no improvement with physio-therapy or muscular relaxant thearpy.

I felt that everything had been done for this man that could be done and that recovery should have been complete by this time. I also felt that he exaggerated his symptoms. With this in mind, I requested he return to work, realizing that a hearing before the Industrial Commission would probably be requested.

Your truly,

/s/ T. Elmore Jones
T. Elmore Jones, M. D.

Copy to:
Continental Insurance Company

page 19 } LONNIE ELLIS, JR., Claimant
*v.* Claim No. 819-423
E. C. WOMACK, INCORPORATED, Employer
CONTINENTAL INSURANCE COMPANY, Insurer

Donald G. Wise, Attorney at Law,
404 New Kirn Building, Portsmouth, Virginia,

John M. Payne, Attorney at Law,
Maritime Tower, Norfolk, Virginia,
for the Defendants.

Hearing before Commissioner HARWOOD at Norfolk, Virginia, on March 25, 1966.

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

Commissioner Harwood

This case is before us upon the insurer's application for hearing on the ground of change in condition, filed January 20, 1966. All medical reports contained in the file are made a part of the record.

Upon what does the carrier rely, Mr. Payne?

Mr. Payne

We rely on the two reports of Dr. Jones, which
page 20 } are in the file, January 14 and January 21 as well as prior reports.

Commissioner Harwood

All right, Mr. Wise, I assume you want to examine Mr. Ellis. You go right ahead.

MR. LONNIE ELLIS, Claimant

By Mr. Wise

Q. Your name is Lonnie Ellis?

A. Yes sir.

Q. And when were you injured, Mr. Ellis?

A. I was injured October 5, 1965.

Q. And I believe you were a truck driver at the time?

A. Truck driver.

Q. And a bulldozer ran into the back of your truck?

A. Yes, we backed together. I ran up on the highway where we were going to dump at and all that dust—it was right along that dusty time and—

Q. You all were working on 274 Interstate?

A. That's right.

Commissioner Harwood: It won't be necessary—the accident is admitted, and the injuries and everything else.

Mr. Wise: All right, sir.

page 21 } Q. Since the time that you were injured, have you been employed?

A. No, sir, I haven't done anything.

Q. Have you been able to go back to work?

A. No, sir, I haven't been able to sleep much at night.

Q. Tell us specifically what your complaints are?

A. It's my hip—from my hip down to my knee.

By Commissioner Harwood

Q. That's your left hip to your left knee?

A. Yes sir.

Q. All right.

A. The one that was on that clutch, and then when I get up and walk some on it I just gets to aching and I just can't—I ache all the time, and my head and this hand here. See that bone—

Q. This is your right hand?
A. Yes sir.
Q. See that bone where it was broke.

By Mr. Wise
Q. Was that hand broken at the time?
A. Yes sir.
Q. Has the hand been swollen since then?
A. Yes sir.
Q. All right, step up there and show him. Compare the two hands.

page 22 } Commissioner Harwood: I see the depressed knuckle—

Q. Do you have any more specific complaints, your head or anything?
A. Well, my head is bothering me a lot. I bleeds a lot. I bleeds every day, sometimes twice a day from my nose.
Q. When was the last time you bled from your nose?
A. Yesterday and last night too.
Q. When was the last time you saw Dr. Jackson regarding your injuries, do you recall?
A. Tuesday of this week and I have to go back today. I have an appointment today at eleven.
Q. All right, sir.

By Commissioner Harwood
Q. Mr. Ellis, before Mr. Payne examines you, as a truck driver did you load and unload the truck or simply drive?
A. Just simply drive.
Q. You were the driver, I see.
A. Yes sir, they had cranes to unload with.
Q. Have you told all of the physicians who have seen you—I believe Dr. Psimas, Jones, Dr. Jackson, all of these physicians—what your troubles are such as you have told me this morning, what hurts you and—
A. Yes, sir, I have.
Q. All right, answer Mr. Payne.
page 23 } A. Dr. Jackson he has been giving me some shots in my hip and legs through a needle, and then he give me medicine through my mouth too, I mean, pills. And he give me one or two some sort of treatments through a machine.

By Mr. Payne

Q. Mr. Ellis, you have seen in the course of your problems Dr. Psimas with regard to that break of your right hand, have you not? You have been treated by Dr. Psimas for that break of your hand? Is that true?

A. Dr. Psimas, yes sir.

Q. Have you been back to Dr. Psimas recently about the problem that you are having with the hand?

A. With the hand?

Q. Yes.

A. No, sir, I haven't. I haven't seen Dr. Psimas since the day that I was discharged from the hospital by Dr. Jones, and Dr. Psimas told me that day that Dr. Jones would take care of me from then on, that he was through as far as he was concerned.

Q. How did you happen to go to Dr. Jones in the first place?

A. Well, on October 5 when I got hurt, well I didn't see him—I don't know what happened, but I mean when I backed up—

Q. I don't mean the details of the accident or why you were hurting. I just mean how did you happen to select Dr. Jones as a physician.

page 24 } A. Well, the next day when they told me to come back to work—I didn't go to the doctor the same day I got hurt, and they told me to come on back to work the next morning if I felt all right. So I went back to work and I made on load and I felt—my hand and leg—I couldn't make it so I didn't make but one load and I went on back in and told them. They told me to go on and go to any doctor I wanted to in Portsmouth—I lived in Portsmouth—to go on back to Portsmouth and see a doctor if I wanted to.

Q. Right.

A. So when I got back to Portsmouth, I went to five or six different places trying to find a doctor and all was closed on account of it was Wednesday. Then the lady at Dr. Ziv's office—it was a lady in there and she said the doctor wouldn't be in but I could go down to the Professional Building, that Dr. Jones was on staff for that day, so that's how I managed to see Dr. Jones. I didn't know him and I never herad nothing of him before in my life.

Q. When did you last see Dr. Jones?

A. The last of my seeing Dr. Jones was on the 11th of January when he discharged me from the hospital, but I

wasn't getting any better and I did go back to see him again and he told me that it won't nothing else that he
page 25 } could do for me and as far as he was concerned I could go back to work and live with it. That's the last thing he told me.

Q. Now, you say you last saw him on the 11th of January but you went back again. Then you did see him after January 11?

A. I did go back up there after January 11 because I was hurting and I was swoll and I showed him my hand and told him about my leg, and he said well it wasn't nothing else he could do. He said he had did everything he could do. He said I could go back to work if I wanted to because as far as he was concerned I could live with it, that I just had to go out there and live with it. That's the last thing he told me.

Q. He did tell you to go back to work, is that right?

A. He said to go back to work if I wanted to or see another doctor.

Q. Did you make any effort to go back to work?

A. No, sir, I couldn't go back to work swoll up one how or other like I was. I went to see Mr. Wise then.

Q. Right, sir.

A. And Mr. Wise called Dr. Jones and tried to send me back up there, and I don't know their conversation, but he did call him.

By Commissioner Harwood

Q. Mr. Ellis, you went in the hospital on December 28. How long did you stay? When did you get out, January 11?
page 26 } A. January 11.
Q. And Dr. Jones treated you then and had Dr. Psimas see you while you were in the hospital, is that right?

A. Dr. Psimas?

Q. Yes.

A. I don't know whether Dr. Jones had him to see me or not because I was supposed to see Dr. Psimas again on January 3 and I was in the hospital and I conferred with the nurses that I was supposed to see him and they said they would call him, but he did come to see me in the hospital.

By Mr. Payne

Q. Did you ever tell anybody from E. C. Womack that you

were dissatisfied with Dr. Jones' treatment or anything he did?

A. Did I ever tell anybody from E. C. Womack?

Q. That's right.

A. No sir.

Q. How about Dr. Psimas, did you ever—

A. No, sir, I never had any trouble with him.

Q. Did you ever inform a representative of E. C. Womack that you were going to Dr. Jackson until after you had already been?

A. Did I inform—

Q. Did you tell anybody from E. C. Womack that you were going to change—that you were going to Dr. Jack-
page 27 } son, before you actually went? Did you ever tell anybody from E. C. Womack that?

A. No, sir, I didn't tell anybody that myself, but when I went to Dr. Jackson he asked me what company was I working for when I got hurt and I told him and he went to the telephone and talked with somebody. I don't know who he talked with but he went to the telephone and talked with somebody and then he come back and told me that everything was all right, he could treat me.

Q. That's all the questions I have.

Commissioner Harwood: Let the record show that I suggested to the parties, and they are in agreement, that he be examined by Dr. Gervas S. Taylor, Jr., an orthopedic surgeon of this city. Mr. Payne will arrange for the examination as soon as possible and notify Mr. Ellis through Mr. Wise, and that the carrier will furnish whatever necessary transportation expenses that goes along with the examination in Norfolk. I will make Dr. Taylor's report a part of the record. Thank you all.

Witness dismissed.

Case ended.

page 28 }

Dr. John A. Vann
Dr. Gervas S. Taylor, Jr.
Dr. W. Clarke Pole
Dr. Ira M. Cantin
112 Burleigh Avenue
Norfolk, Virginia
Phone 583-5222
Practice Limited to Orthopedic Surgery

April 21, 1966

Mr. B. E. Pierce, Jr., Claims Manager
The Continental Insurance Companies
3177 Virginia Beach Blvd.
P. O. Box 2177
Virginia Beach, Virginia

Re: E. C. Womack, Inc.
Lonnie Ellis, Jr.
D/A 10/5/65
File #115 CM 15219
I. C. #819-423

Dear Mr. Pierce:

Mr. Lonnie Ellis, Jr., age 48, was seen by me on April 15, 1966.

This is a man who states he was injured while backing a truck at work for E. C. Womack, Inc. on October 5, 1965. The patient stated that he was blinded by dust and was backing up when he collided with a *bulldozier*. The patient stated that he was stunned by bumping his head on the back of the seat and was standing beside his truck on the ground when he recovered. The patient stated that he noted at that time that he had bitten the left upper lip and had a headache. The patient continued to work that day and apparently went to work the following day driving one load of *materila* before stopping. He was advised to go to see a doctor and went to Dr. T. Elmore Jones on October 7, 1965. At this time the patient was complaining of pain in the left knee and left thigh in addition to the cut lip and headache. The patient was subsequently hospitalized at Portsmouth General Hospital where traction was applied to the left leg for six days and then he was discharged. The patient was next seen by Dr. George Psimas who found that because of swelling of the right hand he had a fracture of the right fourth metacarpal

near its distal end. He was put in a plaster of paris cast in which he remained until December 1st, 1965.

On December 23, 1965, the patient states that he made a misstep on his left leg which gave away and hurt him again, and at this time he returned to see Dr. T. Elmore Jones who again admitted him to the hospital where he remained until January 11, 1966. During this time he had x-rays made of his back and hip and was again seen by Dr. Psimas who discharged him, and the patient was subsequently discharged and told he could return to work. The patient states that he was unable to return to work and complained of continued swelling of the right hand and of a dragging sensation of the left leg.

page 29

The patient then saw Dr. John A. Jackson in Portsmouth and since that time has been under his care.

The patient states at this time that he is unable to work because of inability to use the right hand and because of disability of the left leg. He also states that he has recurrent nose bleeds since the accident and he has pain in the right ear. Examination on April 15, 1966, revealed an apparently healthy male who did not use the right hand at all. He dragged the left leg and walked dragging the tip of the left foot. Examination of the head did not reveal any abnormalities or deformities. The pupils reacted to light. His hearing was apparently good and he did not have any nose bleeds at this time and free of crusted blood in the nose and throat at this time. The patient could swallow well. His speech was of a nervous nature and probably not the normal speech of this patient on that day. The function of the neck was normal. Examination of the upper extremities was normal except for the function of the right wrist and fingers. The right shoulder function was good and right elbow function was normal, but the patient resisted any attempts to flex or extend the wrist except for minimal amount and same for the fingers. The patient did not have any reflex changes and did not have any sensory paralysis and did not have any motor paralysis of the right upper extremity. The patient was felt to have some slight shortening of the right fourth metacarpal but no swelling or dislocation or discoloration was noted here. The head of the metacarpal could not be palpated in the palm of the right hand. The patient actually could use the wrist and fingers when he did so unconsciously. Examination of the chest and abdomen was normal. No pain was noted in the abdomen. Examination of the back was normal. The back had a normal flexibility. No muscle spasm or scoliosis was present. The patient complained bitterly of pain in the left buttock

and resisted all attempts to straight leg raise the left leg and to a large degree to even rotate the hip. However, the patient could sit with his hip flexed to 90 degrees without difficulty. His left knee joint could be extended while this was in progress. A rectal examination was not performed in this case as it had been done previously and the patient page 30 } was told that it was normal. Examination of the lower extremities did not show any abnormalities on the surface and both thighs measured equally six inches above the mid point of the patella and both calves measured equally six inches below the mid point of the patella. The patient would not allow normal knee function to be performed in the left knee, but no effusion, ligamentous instability, or other abnormalities could be detected. He could flex the knee beyond 90 degrees when sitting. Dorsiflexion of the ankle caused the patient to flinch but could be performed. The patient walked with a partial foot drop gait but he does not have any atrophy of the anterior tibial or peroneal muscles. He does not have any sensory abnormalities of the foot and the patient can raise the foot from the floor and stand on his left heel. He can also dorsiflex the toes.

X-rays were made of the lumbar spine, pelvis and right hand. These showed no significant abnormalities of the lumbar spine and no loss of the normal lumbar lordosis. His spine was straight on the AP view. The hip joints were normal, this examination being made because the patient resisted rotation of the left hip. Examination of the right hand revealed that if the patient had had a fracture of the neck of the fourth metacarpal that it had healed in such a fashion that it could not be seen a this time.

It is my opinion that this patient is for some reason or other deliberately not using the right hand and left leg. I explained to him that there was evidence of any organic physical defect or disability that would prevent him from using either the left arm or right hand, and I felt this was a matter he should consider carefully. I frankly can find no evidence of disability other than some mental abboration here that causes this reluctance to use both the left leg and right arm. He does not have a shoulder hand problem or a reflex causalgia of either extremity involved.

I believe that this patient definitely should see a neurosurgeon for at least one visit to be sure that he has not suffered brain damage as a result of his accident, and then if this is normal, as I suspect it would be, then he should see a psychiatrist or return to work. The patient at this time does

not have any physical or organic reason for an orthopedic standpoint for not returning to work.

Sincerely yours,
Gervas S. Taylor, Jr., M. D.

GST/bt
cc: Mr. Horace Wise
cc: Dr. John A. Jackson

Received Apr 25 1966 Virginia Beach, Va.

page 31 } April 27, 1966

Re: Claim No. 819-423
Lonnie Ellis, Jr. v. C. E. Womack, Incorporated

Donald G. Wise, Esq.
404 New Kirn Building
Portsmouth, Virginia

John M. Payne, Esq.
Maritime Tower
Norfolk, Virginia

GENTLEMEN:

I assume that you have received a copy of Dr. Gervas S. Taylor's report of April 21, which has been made a part of the record.

In keeping with Dr. Taylor's recommendation that Ellis definitely should see a neurosurgeon, I am requesting you, Mr. Payne, to arrange, through the insurer, for a neurosurgical examination and report. The record will remain open for receipt of the neurosurgeon's report.

It may be that the examination I have requested has already been arranged; if so I am appreciative for your early attention to Dr. Taylor's recommendation.

Very truly yours,

Thomas P. Harwood, Jr.
Commissioner

H:r

page 32 }

FRANK B. CLARE, M. D.
Neurological Surgery
Fort Nelson Medical Building
226 Fort Lane
Portsmouth, Virginia 23704

LONNIE ELLIS, JR. RECHECK 5/20/66

This 48 year old, right handed, colored male was seen by me on 1/1/66. At that time he was complaining of pain in the left groin, pain in the left hip joint area and going down the knee. He also apparently had some difficulty with his right hand altho this was overshadowed by his leg pain. At present he complains of inability to use his right hand properly, pain in his right hand, pain down his left leg, headaches, and nosebleeds on the right side. Physical examination now reveals a dyspneic male in subacute distress. Blood pressure is 220/130. His pulse rate is 90. He weighs 196 lbs. and is 66½ inches tall. Head, negative. EENT, not remarkable. Chest, lungs show numerous asmatic type wheezing throughout. Heart, I cannot tell whether the heart is enlarged. There are no murmurs. The abdomen is somewhat obese. Genitalia, not remarkable. Rectal examination, shows tenderness in the prostate. There is no tenderness over the back and gait is guarded in the left leg. He resists flexion movements of the left hip. Neurological examination is essentially negative except for some rather vague hypesthesia involving the lower extremity on the left and the ulnar aspect of the right hand. There is a deformity of the fourth metatarsal on the right hand. Grip in the right hand is poor. Deep tendon reflexes are as follows: Biceps, 2+. Triceps, 1+, Patellar, 3+, Achilles 2+. All bilaterally equal. Babinski, bilaterally plantar. Cerebellar tests cannot be adequately tested but are not remarkable. The abdominal reflexes are about 1+ and a little more active on the right than they are on the left. He is tender in the left groin and left inguinal region. I cannot determine whether or not coughing produces a bulge at the femoral canal due to tenderness. His retna are negative except for thinning of the retnal arteries.

IMPRESSION. This patient is an extremely difficult one to evaluate. I feel a tremendous amount of his trouble is associated with his marked hypertension for which he needs treatment. However, he undoubtedly has tenderness and disability in the right hand and seems to have some problem with his left leg. There is a large hysterical component. I do not believe it is deliberately malingering. I feel he should be

evaluated by a psychiatrist for conversion reaction. It may be well to have him seen by a general surgeon for the possibilities for a femoral hernia on the left which is always difficult to rule out. I do not feel he has any neurosurgical problem that I can pinpoint.

Frank B. Clare, M. D.

FBC/bjm

cc: Dr. J. W. Jackson—Continental Insurance Companies—Attorney

page 33 } OPINION BY HARWOOD, COMMISSIONER

Jun 6, 1966

* * * * *

Hearing before Commissioner HARWOOD at Norfolk, Virginia, on March 25, 1966.

On October 5, 1965 Lonnie Ellis, Jr., employed as a truck driver by E. C. Womack, Incorporated at an average weekly wage of $70.00, sustained multiple injuries by accident arising out of and in the course of the employment.

The case was accepted as compensable, and our award of November 23, 1965 directed the payment of $39.00 weekly compensation during incapacity.

This case is now before the Commission upon the insurer's application for hearing on the ground of change in condition, filed January 20, 1966.

The day following accidental injury Ellis came under the care of Dr. T. Elmore Jones, a physician of his selection. Hospitalization at Portsmouth General Hospital under Dr. Jones' care followed from October 11 to October 16.

On October 26, 1965 Ellis was first seen by Dr. George N. Psimas, orthopedic surgeon, with primary complaints confined to the right hand and left hip. Dr. Psimas' diagnoses were a sprain and contusion of the left hip and a fracture of the fourth right metacarpal head.

page 34 } Dr. Jones again hospitalized Ellis at Portsmouth General Hospital from December 28, 1965 to January 11, 1966. During this period of hospitalization Ellis was seen in consultation by Dr. Psimas and by Dr. Frank B. Clare, neurosurgeon. On January 14, 1966 Dr. Jones made a report which concluded in this manner:

"Objectively, we have found nothing to account for his symptoms.

"I have felt that his symptoms were over exaggerated and for that reason I am discharging him and ordering him to return to work January 17, 1966."

On January 24, 1966 Ellis was first seen by Dr. John A. Jackson, who stated: "The above named person is under my medical care—totally disabled and unable to work."

In a report of February 28, 1966, Dr. Jackson had this to say:

"IMPRESSIONS:

1. Acute Hypertensive Disease
2. Traumatic injury to the right hand
3. Traumatic injury to the lumbar region and left extremity
4. Traumatic injury to the central nervous system

"COMMENTS:

It is my opinion that the patient's subjective complaints and objective signs are compatible with the above mentioned impressions with the patient presenting evidence of two hospitalization periods under the treatment of two prominent physicians of this city and the patient presenting evidence of total disability since the date of the accident to the present date which appears to be causally related to the accident of October 5, 1965. It is, also, my opinion that this patient is totally incapacitated, and needs immediate hospitalization for medical, neurosurgical, and orthopedic evaluation."

At the trial of this case Ellis testified that he has been unable to work since the date of accidental injury because of the following complaints; left hip to left knee; right hand; and head (bleeds every day rom the nose).

We suggested an examination by Dr. Gervas S. Taylor, Jr., orthopedic surgeon. Dr. Taylor examined Ellis on April 15, 1966, and in his report of April 21 had this to say:

page 35 } "The patient states at this time that he is unable to work because of inability to use the right hand and because of disability of the left leg. He also states that he has recurrent nose bleeds since the accident and he has pain in the right ear. Examination on April 15, 1966, revealed an apparently healthy male who did not use the right hand at all. He dragged the left leg and walked dragging the

tip of the left foot. Examination of the head did not reveal any abnormalities or deformities. The pupils reacted to light. His hearing was apparently good and he did not have any nose bleeds at this time and free of crusted blood in the nose and throat at this time. The patient could swallow well. His speech was of a nervous nature and probably not the normal speech of this patient on that day. The function of the neck was normal. Examination of the upper extremities was normal except for the function of the right wrist and fingers. The right shoulder function was good and right elbow function was normal, but the patient resisted any attempts to flex or extend the wrist except for minimal amount and same for the fingers. The patient did not have any reflex changes and did not have any sensory paralysis and did not have any motor paralysis of the right upper extremity. The patient was felt to have some slight shortening of the right fourth metacarpal but no swelling or dislocation or discoloration was noted here. The head of the metacarpal could not be palpated in the palm of the right hand. The patient actually could use the wrist and fingers when he did so unconsciously. Examination of the chest and abdomen was normal. No pain was noted in the abdomen. Examination of the back was normal. The back had a normal flexibility. No muscle spasm or scoliosis was present. The patient complained bitterly of the left leg and to a large degree to even rotate the hip. However, the patient could sit with his hip flexed to 90 degrees without difficulty. His left knee joint could be extended while this was in progress. A rectal examination was not performed in this case as it had been done previously and the patient was told that it was normal. Examination of the lower extremities did not show any abnormalities on the surface and both thighs measured equally six inches above the mid point of the patella and both calves measured equally six inches below the mid point of the patella. The patient would not allow normal knee function to be performed in the left knee, but no effusion, ligamentous instability, or other abnormalities could be detected. He could flex the knee beyond 90 degrees when sitting. Dorsiflexion of the ankle caused the patient to flinch but could be performed The patient walked with a partial foot drop gait but he does not have any atrophy of the anterior tibial or peroneal muscles. He does not have any sensory abnormalities of the foot and the patient can raise the foot from the floor and stand on his left heel. He can also dorsiflex the toes.

"X-rays were made of the lumbar spine, pelvis and right hand. These showed no significant abnormalities of the lum-

bar lordosis. His spine was straight on the AP view. The hip joints were normal, this examination being made because the patient resisted rotation of the left hip. Examination of the right hand revealed that if the patient had page 36 } had a fracture of the neck of the fourth metacarpal that it had healed in such a fashion that it could not be seen at this time.

"It is my opinion that this patient is for some reason or other deliberately not using the right hand and left leg. I explained to him that there was (no) evidence of any organic physical defect or disability that would prevent him from using either the left arm or right hand, and I felt this was a matter he should consider carefully. I frankly can find no evidence of disability other than some mental abberation here that causes this reluctance to use both the left leg and right arm. He does not have a shoulder hand problem or a reflex causalgia of either extremity involved.

"I believe that this patient definitely should see a neurosurgeon for at least one visit to be sure that he has not suffered brain damage as a result of his accident, and then if this is normal, as I suspect it would be, then he should see a psychiatrist or return to work. The patient at this time does not have any physical or organic reason from an orthopedic standpoint for not returning to work."

Because of Dr. Taylor's recommendation that Ellis "definitely should see a neurosurgeon for at least one visit to be sure that he has not suffered brain damage as a result of his accident," an examination was performed by Dr. Frank B. Clare, neurosurgeon, on May 20, 1966. These were Dr. Clare's impressions:

"IMPRESSION: This patient is an extremtly difficult one to evaluate. I feel a tremendous amount of his trouble is associated with his marked hypertension for which he needs treatment. However, he undoubtedly has tenderness and disability in the right hand and seems to have some problem with his left leg. There is a large hysterical component. I do not believe it is deliberately malingering. I feel he should be evaluated by a psychiatrist for conversion reaction. It may be well to have him seen by a general surgeon for the possibilities for a femoral hernia on the left which is always difficult to rule out. I do not feel he has any neurosurgical problem that I can pinpoint."

A mature consideration of this record convinces us, and we

find, that compensable incapacity for work had ceased by the date of examination by Dr. Taylor on April 15, 1966. Put differently, the evidence preponderates in proving the cessation of compensable incapacity for work by at least April 15, 1966.

AWARD

The award of November 23, 1965 is vacated and
page 37 } set aside as of April 15, 1966. From accrued compensation there shall be deducted and paid to Donald G. Wise, Esq., $75.00 for legal assistance rendered the claimant.

The employer shall pay, or cause to be paid, the cost of medical attention rendered the injured employee through May 20, 1966, including the cost of medical attention rendered by Dr. John A. Jackson.

page 38 }

* * * * *

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

I. C. # 819-423
File No. 115 CM 15219

Docket for Norfolk
Date of last payment 4-15-66
Reopen case of .....
Application filed 10-25-66
Referred to Docket 10-26-66

By * * *

APPLICATION FOR A HEARING
ON THE GROUND OF CHANGE
IN CONDITION

E. C. Womack, Incorporated, Employer
vs.
Lonnie Ellis, Jr., Employee

The applicant, Lonnie Ellis, Jr., 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: Lonnie Ellis, Jr. 312 Armstrong Street, Apartment 1, Portsmouth, Virginia

2. Name of the employer is: E. C. Womack, Incorporated

3. Claimant was last paid compensation at the rate of $39.00 per week up to the 18th day of January, 1966, 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):

A diagnosis by a psychiatrist of emotional disorder resulting from the accident of October 5, 1965, causing total incapacity.

5. Injured employee returned to work for .....
(Name of present employer)
at ..... at an average weekly wage of
(Address of present employer)
$..... Or injured employee has been offered work which he is unable 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.

.....

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.

*Lonnie Ellis, Jr., Claimant*

Dated at Norfolk, Virginia, this 24th day of October, 1966.

LONNIE ELLIS, JR.
(Name of applicant)
By LEONARD B. SACHS
Of Counsel

ACKNOWLEDGED: 10-27-66
CLAIMANT'S ATTY.: .....
INS. CARRIER: ..... C.W.

page 39 }

* * * * *

Hearing before Commissioner HARWOOD at Norfolk, Virginia, on March 1, 1967.

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

By Commissioner Harwood:

This case is before us upon the claimant's application for hearing on the ground of change in condition filed October 25, 1966. All medical reports contained in the file are made a part of the record.

All right, if you'll *procede* please, Mr. Sachs.

page 40 } LONNIE ELLIS, JR., Claimant

By Mr. Sachs:

Q. Tell us your name please.

A. Lonnie Ellis, Jr.

Q. Your age?

A. Forty-eight.

Q. Your place of residence?

A. I live—312 Armstrong Street in Portsmouth.

Q. Now, Lonnie, you were employed by E. C. Womack, Inc. as a truck driver, is that correct?

A. Yes, sir.

Q. And you were involved in an accident on the—what day of what year?

A. The fifth day of October, 1966—'65.

Q. And that was an accident in which you were in a collision with a bulldozer on a job, is that correct?

A. Correct, yes, sir.

Q. As a result of that accident, you received personal injuries, is that correct?

A. Yes, sir.

Q. And as a result of that accident, you've been to see many, many doctors, is that correct?

page 41 } A. That's correct.

Q. And as a result of that accident, can you tell us what condition you still have—physical condition you still have?

A. Yes, what do you mean, where I'm hurting at—my trouble?

Q. Yes.

A. I'm having terrible trouble with my head. I've been bleeding ever since at the nose and my hand is still swollen, my knuckle knocked out of place and my hand is still aching me.

Q. Which, your right hand?

A. My right hand.

Q. And you've been bleeding out of your nose, I believe?

A. Terribly, yes, sir. And it's getting worser all the time.

Q. All right. What other—

A. My hips—the misery, it was from my hip to my knee—

Q. In your left side?

A. In my left side, but my knee don't bother me now as bad as my hip, but right in the work of my hip bone, it looks like where my bone sticks in, it just looks like it's something or other, that it's lose or something and hurts one side of my private, it just aches, aches, ache all the time in my hip and when I make a step on it, like I'm going downstairs, if I make the wrong step on it, I give away on that side and fall right out. I fell out once or twice with it. I can't just

page 42 } put all my weight down right on there, it's right in the work of my hip and one side of my private.

Q. All right. Now, do you have any headaches?

A. Terrible, my head is aching me now so bad I don't know what to do.

Q. All right. Now, did you have anything in your left hip or left knee before this accident?

A. No, no, I was getting along fine, working every day.

Q. Did you have any headaches before the accident?

A. No, I've never had no head trouble in my life, as I know anything about.

Q. How about your right hand?

A. Never had no trouble with my right hand.
Q. Answer this lawyer.

By Mr. Miller:
Q. You were working as a truck driver, weren't you, Mr. Ellis?
A. Yes, sir.
Q. And can you drive a truck now?
A. No, sir, I'm not—the reason I can't drive a truck now, I'm not able, I have this, look like a nervous condition and my head aches me bad and I bleeds at my right nose. Yesterday morning I started bleeding about 3:00, I bled
page 43 } on until today, I called my doctor and he said for them to rush me on to the Emergency Room of Portsmouth General Hospital and they called the Police Department and they sent a wagon there to rush me there. Another thing, I can't drive, the doctors—my doctor say he's not going to sign any papers for me to drive with a high blood pressure like I've got and I can't find the driver's license.
Q. Do you have a driver's license?
A. No, sir, I don't have one.
Q. Why don't you have a driver's—didn't you have one when you were working for Womack?
A. Yes, sir.
Q. Why don't you have one now?
A. Because I can't buy one, because I've got this high blood pressure—not physical fit for buying a license, you have to put that on your report when you fill out the blank and the doctor say he wasn't going to send that report in that I'm free of sickness that I can drive because he wasn't going to jeopardize himself and I go out there and black out or something and get killed.

By Mr. Sachs:
Q. All right. All he wants to know, is did your other license expire?
page 44 } A. Yes, sir, my other license expired—

By Mr. Miller:
Q. And have you made an application for a new one?
A. I went up to make an application for one and when I —as I say, I put that on there, was I—physical and I was under the doctor's care and I couldn't do that because I was under the doctor's care.

Q. So, you didn't put in the application?

A. So, I didn't put in the application.

Q. Are you telling me you can't drive the truck now because you're—I'm talking about physically, not whether under the law you're permitted to drive, but physically, why can't you drive a truck?

A. On account of my hip, my head and my hand.

Q. They just—they hurt, don't they?

A. Yes, sir—

Q. All right. Can you move them?

A. I can move that hand up there, I can't move those fingers right there (indicating) but I can't use that whole right hand.

Q. Now, you've been to see Dr. Mingione over in Portsmouth, haven't you? A psychiatrist in Portsmouth?

A. I went to see a doctor in Portsmouth, Dr. Mingione—

page 45 } By Mr. Sachs:

Mingione.

Q. Mingione?

A. Dr. Mingione.

Q. And you have only seen him twice, isn't that right?

A. Yes, sir.

Q. About how long were you in there seeing him each time? How long did you spend in his office seeing Dr. Mingione?

A. I was in there, the last time I was in there I reckon about five or six hours, I reckon, or more.

Q. All that time, was he with you, talking to you and examining you?

A. No, he wasn't with me all that time, but he was with me when I first went there and then he put me on something that he had there, it was—I can't tell the name of the thing—and then I worked with that awhile and then he talked with me again.

Q. Some kind of a test?

A. That's right. Some kind of a test he had now.

Q. This was the last time you were there?

A. That was the last time. The first time I was in there about four hours, I imagine.

Q. Did he give you some tests then too?

page 46 } A. Yes, he give me some tests then.

Q. Have you been back to see him since then?

A. No, sir, I have an appointment with him to see him.

Q. Has he given you any medicine of any kind?

A. No, sir, he hasn't given me any medicine.

Q. I have no further questions.

By Mr. Sachs:

All right. At this time, I would like to offer for the record, xerox copies of a letter of Dr. Mingione dated October 18, 1966, a letter of Dr. Jerome Adamson, dated February 18, 1967, a letter-report of Dr. John A. Jackson, dated February 28, 1966, a report of Dr. Jackson, dated December 2, 1966 and all of these have been furnished to counsel for the carrier last week, I believe. Well, also, I would like to make a part of the record, the letter of Dr.—I believe it's Clare—(Off the Record) I would also like to make a part of the claimant's case the letter of Dr. Clare, dated May 1966, in which he states that the claimant, in his opinion, is not malingering, and that's the claimant's case.

page 47 } By Commissioner Harwood:

Q. Mr. Ellis, tell me, before I forget to ask you, I notice here, did you see Dr. Mingione or—woman, man or woman doctor when you went over to Portsmouth?

A. Dr. Mingione, he was a man.

Q. All right.

By Mr. Sachs:

Well, for the record, Your Honor, I think he also saw his wife—didn't you see a lady over there and work on tests with her?

A. Yeah, a lady was with me on the tests, yes, sir.

By Mr. Miller:

Now, I don't think there's any question that these are doctors that he went to and we did not ask to—

By Mr. Sachs:

Right. Now, for the record, in view of the fact that we have alleged a change of condition, which is the traumatic neurosis, we would ask that the carrier be made to pay for the cost of therapy as necessary for at least the therapy rendered to date, for the investigation of opinion rendered to date and also for the examination of Dr. Adamson with respect to the right hand which is not a functional

page 48 } but a physical disability.

By Commissioner Harwood:

I'll consider all of those.

By Mr. Sachs:
That's the claimant's case.

By Mr. Miller:
Your Honor, let me state my position. I would object to the reports of Dr. Jackson and Dr. Adamson and object to the—any evidence about any physical condition from which this man is now—may or may not be now suffering. The application clearly states that the only basis for this claim on change of condition is traumatic neurosis, a mental condition. There is no allegation made that there's been any change in his physical condition and that is what the claimant should be limited to. Also, Mr. Sachs has mentioned something about requiring us to pay, if this case is found to be—if it's found to be a change of condition, something about investigation and report, of course, we would object to paying anything other than the medical bills and medical treatment rendered. For the record, I would state that
page 49 } it is the position of the carrier that this is a claim, according to the application, for a mental condition of traumatic neurosis, that this is considered a separate injury as distinguished from the physical complaints that he previously had and injuries that he had, that we also would object to the awarding of any compensation because he has not filed an application for compensation for this injury, traumatic neurosis was not filed within one year from the date of the accident.

Witness stood aside.

Case concluded.

page 50 }

* * * * *

JOHN A. JACKSON, M. D.
450 Effingham St.
Portsmouth, Va.

December 2, 1966

TO WHOM IT MAY CONCERN:

Re: Mr. Lonnie Ellis, Jr.
312 Elm Avenue
Portsmouth, Virginia

HISTORY:

This is to certify that the above named person was examined in my office on January 24, 1966 and subsequently treated thereafter for injuries sustained when the truck that he was driving was backed into by a bull-dozer on October 5, 1965. The patient states that he was employed as a truck driver for the E. C. Womack Company when his disability began.

He states that following the accident, he was treated by Doctor Elmore Jones, who sent him to Portsmouth General Hospital for several days. After being discharged from the hospital he went to Dr. Jones's office for follow-up care and discovered that Dr. Jones was out of town. Due to the persistent pain in his head, hand, and hip, he was forced to find another doctor. Dr. George N. Psimas was then engaged. Dr. Psimas made X-Rays of the right hand which showed a fracture of the hand and put the right hand in a plaster paris cast. He was also, told by Dr. Psimas that he would treat the hand and Dr. Jones would treat the head and hip.

Upon Dr. Jones return to the city, he put the patient back in the hospital for the second time for more treatment of the head and hip and Dr. Psimas did continue to treat the patient in the hospital for the fractured right hand. The patient was admitted on December 27, 1965 and discharged January 16, 1966, which was the second period of hospitalization. It was also, then that the patient was discharged from the services of Dr. Jones and was told by Dr. Jones that he had done all that he could for him and he should return to work or find another doctor. Dr. Psimas discharged the patient to return to work also, upon his discharge from the hospital.

The patient states that he was still having severe headaches, pain in the right hand, and his left hip was also, stiff, painful to weight bearing, and movement. Ambulation was limited, the patient had to rely on a cane and a crutch.

page 51 } EXAMINATION:

Examination reveals a slightly obese male, age 47, who entered the consultation room on a crutch and a cane. The patient's eyes were red, watery, and the patient complained of severe headaches. He states that his head feels tight all the time, his ears has a ring-sensation and during the night and sometimes during the day he spits up large amounts of bright and dark blood. His nose bleeds frequently. This sometimes measures to a pint and more of dark red and bright red blood. His Blood Pressure was 250/140; Pulse—80; Tem-

perature—99.F; Respiration—40. He denies any previous blood pressure problems and other allergic conditions. He had a marked physiologic dyspnea and wheezing. His chest was congested and the patient expectorated a thick clear to blood tinged *mocus*. His heart rate was rapid. The right hand was swollen with some muscle spasms present. There was no grip, neither could the patient bend or use the fingers due to the pain and discomfort. The hand felt cold and clamy with very little sensation.

The left hip was stiff and painful to weight bearing. It was very tender to palpation, pressure, and movement. The patient complains of numbness in the hip extending to the knee. During inclement weather the patient complains of severe pain in the hip with swelling extending to the knee. The knee also, pains when the patient tries to walk or stand.

The patient complains of polyuria, nocturia, diaphoresis, and states that he has not had a good nights rest since the accident. He has been observed while in the office to go to the restroom several times during each visit and as soon as he arrives to the office he has to go immediately to the rest room.

I have been called to his home on several occasions to treat him for falls. There are certain ways he has to position his left extremity to prevent these falls, if not positioned right the patient' left extremity will give completely away, causing the patient to fall.

TREATMENT:

This patient has been on a long, broad regime of medical and physical therapy with very poor response. Several different kinds of hypertensive drugs, tranquilizers, muscle relaxtants, sedatives, analgesics, diathermic treatment, hydrotherapy, diuretics, and two previous periods of hospitalization by other doctors.

page 52 } DIAGNOSIS:

1. Traumatic Injury to the Right Hand and Left Hip
2. Post Psychiatric Neurosis and Psychiatric Disturbance
3. Traumatic Hypertropy Arthritis
4. Chronic Cardio-Vascular Hypertensive Disease Resultant

COMMENTS:

After taking into consideration the long, broad regime of

medical therapy, the two periods of hospitalization, and the poor response to the previous and present prescribed therapy, the present physical and mental condition of the patient, and comparing them with the patient's activities prior to the accident, it is my honest belief due to the patient subjective complainants and objective signs which are compatible with the above mentioned diagnosis with the patient presenting evidence of total disability from the date of the accident on October 5, 1965.

It is also, my belief that this patient is totally incapicated and permanent disable to ever returning to any type of gainful employment.

Respectfully submitted,

JOHN A. JACKSON, M.D.

page 53 }

* * * * *

CHARLES E. HORTON, M.D.
HUGH H. CRAWFORD, M.D.
JEROME E. ADAMSON, M.D.

603 Medical Tower — MA 7-0286
Norfolk, Virginia 23507

Newport News, Virginia
Enterprise 901
February 13, 1967

Mr. Leonard B. Sachs
Attorney at Law
Suite 1106, Plaza One
Norfolk, Virginia

Re: Mr. Lonnie Ellis, Jr., 16979
312 Armstrong Street
Portsmouth, Virginia

Dear Mr. Sachs:

I am pleased to send a report concerning Mr. Ellis who was first seen by me February 10th, 1967, complaining of pain, weakness, and stiffness of his right hand. These symptoms, along with symptoms of headache and left knee and hip pain, are apparently the result of injuries he received in an

automobile accident on October 5th, 1965, while working for the E. C. Womack Company. At that time he was driving a truck which was involved in a collision with a bulldozer. The details of this are not clear to Mr. Ellis. Since that time he has been treated by numerous physicians in Portsmouth. Dr. George Psimas apparently treated his right hand for a fracture of the fourth metacarpal (bone in the palm of the hand) with casting for approximately five weeks. Since that time he has been followed carefully by Dr. John A. Jackson for what apparently is hypertensive vascular disease.

At the time of my initial examination there was noted to be variable amounts of weakness of the right hand, but minimal evidences of muscle atrophy in the forearm. The hand was slightly swollen and reddened. There was stiffness of the fingers in all joints, especially of the ring finger.

As I explained to Mr. Ellis, I feel that his history and examination suggest to me that he is having mild reflex sympathetic dystrophy as a result of the injury received in October of 1965. Frequently, this disorder can be satisfactorily improved by appropriate sympathetic blocks. These nerve blocks, which would be given to the nerve centers in his neck, would be performed on a very short hospital stay. If these blocks are effective, they are not only diagnostic of this type of disorder but are usually quite helpful in alleviating the symptoms. I would be pleased to make arrangements for his hospitalization if you and he desire it.

page 54 } I feel that he should not be rated for any permanent disability until he has undergone the appropriate diagnostic treatment procedures which may improve his circumstances.

If you wish any further information at this time please let me know.

Sincerely yours,

JEROME E. ADAMSON, M.D.

JEA:bgd

Enclosure (2)

Statement
Assignment

page 55 } D. L. MINGIONE, M. D.
Psychiatry

ANN D. MINGIONE, Ph. D.
Clinical Psychology

CITIZEN'S TRUST BUILDING, SUITE 322
355 Crawford Parkway
Portsmouth, Virginia 23704

399-5921 or 399-3416

18 October 1966

Mr. L. B. Sachs
Attorney at Law
1106 Plaza 1
Norfolk, Virginia 23510

Dear Mr. Sachs:

I have seen Mr. Lonnie Ellis, Jr. on two occasion, the 26th of September 1966 and 6 October 1966. The history as obtained from Mr. Ellis, who is considered to be a reliable historian, indicates that he was involved in an accident on 5 October 1965 and has been unable to be gainfully employed from that date to this. His complaints include pain in the left hip, inability to use the right hand and he reports increasing subjective awareness of tension, anxiety, and extreme apprehension. He reports that he is under the care of a family physician for hypertension. An attempt was made to have Mr. Ellis complete a Minnesota Multiphasic Personality Inventory Test, which is a series of true and false questions, approximately 550 in number; Mr. Ellis was only able to arrive at a definitive answer to two of these indicating the extreme degree of uncertainty and lack of decisiveness that is so pervasive within him.

In terms of the formal mental status his speech is slow, he appears to be the stated age, his memory for events recent past, immediate past and distant past is good; his intelligence is within the broad limits of normal, his mood is labile, in that there are frequent episodes of gross anxiety and tremors which are difficult to see as being other than psychologically induced. There are outbursts of tearfulness and a general thought content which is depressive in tone.

The psychiatric symptoms are multiple, and are felt to be incapacitating. While there may be an element of secondary gain from these symptoms it is felt to be minimal and the servity and the multiplicity of the symptoms are felt to be

such so as to preclude Mr. Ellis's being gainfully employed at this time. The association between the onset of these symptoms and the accident is such so as to suggest a relationship, especially in the seeming absence of psychopathology prior to the injury I am unable to comment as to the true presence of any physical disability as my examination of Mr. Ellis was limited to the psychiatric sphere.

page 56 } Psychological studies might be helpful, but consideration of psychiatric treatment is considered to be a necessity. It is quite possible that in-patient treatment might be needed but this would hoped to be avoided as it would be felt to only further establish and implant in Mr. Ellis the degree of disability. I trust that this report is sufficient, if you have any additional questions please do not hesitate to communicate with me.

Sincerely yours,

D. L. MINGIONE, M.D.

DLM;t

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LEONARD B. SACHS
Attorney at Law
Suite 207 Plaza One
Norfolk, Virginia 23510
Telephone 627-0631

April 28, 1967

The Honorable Thomas Harwood
Commissioner, Industrial Commission
of Virginia
Richmond, Virginia

Re: Lonnie Ellis v. E. C. Womack, Incorporated
Accident: 10-5-65
Claim No.: 819-423

Dear Mr. Harwood:

I have just received a letter from Dr. D. L. Mingione, a Psychiatrist of Portsmouth, with respect to the injuries sustained by my client Lonnie Ellis in the industrial accident on which the hearing was recently held on a Change of Condition Petition, not yet decided.

In view of the tremendously important evidence contained

in this letter, I would respectfully request that the matter be set down on the Norfolk docket on your next trip to the area for the taking of further evidence by way of this report. If agreeable, to the Commissioner and counsel, however, I would be pleased to forward this report to you, with a copy to counsel, to be made an exhibit and counted as evidence in this case.

Respectfully,

LEONARD B. SACHS

S/f
E

cc—James L. Miller, Esquire
Williams, Cocke, Worrell & Kelly

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* * * * *

WILLIAMS, COCKE, WORRELL & KELLY
1200 Maritime Tower
234 Monticello Avenue
Norfolk, Virginia 23510

May 1, 1967

The Honorable Thomas P. Harwood, Jr.
Commissioner
Industrial Commission of Virginia
Department of Workmen's Compensation
Post Office Box 1794
Richmond, Virginia 23214

Re: Lonnie Ellis, Jr. v. E. C. Womack, Inc.
and Continental Insurance Company—
Claim No. 819-423

Dear Commissioner Harwood:

I have received my copy of Mr. Sachs' letter to you, dated April 28, 1967, requesting that this case be either set down for another hearing or that he be allowed to file an additional medical report by Dr. D. L. Mingione. The defendants object to either procedure on the ground that, in effect, the claimant is asking for leave to re-open the case to permit the taking

of additional testimony, which is not authorized by Rule 3 of the Rules of the Industrial Commission under the circumstances of this case. No such request was made at the hearing on March 1, 1967 or any indication made that this was necessary nor does counsel for the claimant now allege the existence of such facts as would authorize the introduction of such evidence in accordanec with Rule 3 of the Industrial Commission.

Respectfully,

JAMES L. MILLER

JLM/mm

page 59 } The Honorable Thomas P. Harwood, Jr.
Page 2
May 1, 1967

cc: Mr. Leonard B. Sachs
Attorney at Law
Suite 207 Plaza One
Norfolk, Virginia 23510

page 60 }

LEONARD B. SACHS
Attorney at Law
Suite 207 Plaza One
Norfolk, Virginia 23510

Telephone 627-0631

May 4, 1967

Thomas P. Harwood, Jr., Esquire
Commissioner, Industrial Commission
Richmond, Virginia 23214

Re: Ellis v. E. C. Womack, Inc. and Continental Insurance Co.
Claim No. 819-423

Dear Mr. Harwood:

I have a copy of Mr. Miller's letter of May 1, 1967 and his objections contained therein have been noted.

It is my position that Rule 3 is inapplicable at this juncture in view of the fact that no opinion and award has been rendered by the Commissioner.

Although the proceedings were quite confused on the morning on which Ellis' hearing was held because of the necessity that I appear at another hearing on the same morning in the case of Jennings and, at the same time appear in Federal Court pursuant to an Order, it is my recollection that the medical reports which were submitted as evidence on behalf of Ellis stated that a final, certain diagnosis and prognosis would require further visits and evaluation. The letter which I now seek to introduce in evidence gives the doctor's opinion in firm, rather unequivocal terms based on examinations made after the ones on which the provisional diagnosis and prognosis were made.

It may be, therefore, that this is such evidence as was not available at the time of hearing or prior thereto and is therefore admissible as after discovered evidence in accordance with Rule 3, if it be applicable.

Because of the confusion attending the hearing that morning I am not certain of the state of the record and would appreciate being advised as to the exhibits now in evidence on behalf of the claimant and particularly those introduced in support of the petitioner's Change of Condition application filed on October 24, 1966 which was the subject of the last hearing.

page 61 } I should also be pleased to hear any other suggestions or comments which the Commissioner might have which would expedite concluding the evidence in this matter.

Respectfully,

LEONARD B. SACHS

S/f

cc—James L. Miller, Esquire

page 62 } May 19, 1967

Re: Claim No. 819-423
*Lonnie Ellis Jr. v. E. C. Womack, Incorporated*

Leonard B. Sachs, Esq.
Suite 1106 Plaza One
Norfolk, Virginia

James L. Miller, Esq.
1200 Maritime Tower
Norfolk, Virginia

GENTLEMEN:

Each of you has mentioned this case to me. As you know, it was heard before me at Norfolk on March 1 upon Ellis' application for hearing on the ground of change in condition, filed October 25, 1966.

By letter of April 28, 1967, the claimant, by counsel, moved for the introduction into evidence of a further report from Dr. D. L. Mingione, either directly or by way of a further hearing. This motion was opposed by the defendants, by counsel. Having carefully considered the motion, it is denied. The October 18, 1966 report of Dr. Mingione was admitted into evidence.

In your letter of May 4, 1967, Mr. Sachs, you noted your uncertainty as to the state of this record and asked advice as to the exhibits now in evidence, particularly those introduced at the hearing. Therefore, for both your and Mr. Miller's information, I am enclosing transcripts of the hearing. Page 8 of the transcript probably answers your question. All medical reports in the file are in evidence.

Aside from the substantive issues raised by the present application on the ground of change in condition, both of you are quite aware of the legal issue involved.

Before deciding this case, I want to give you an opportunity to attempt a compromise settlement. For that reason, I will defer a decision until you have had an opportunity
page 63 } to confer with your clients and discuss settlement possibilities with each other.

Please keep me advised as to the status of your negotiations.

Very truly yours,

THOMAS P. HARWOOD, JR.
Commissioner

H:r
encl.

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* * * * *

Opinion by HARWOOD Commissioner—Sep. 7, 1967

* * * * *

Hearing before Commissioner HARWOOD at Norfolk, Virginia, on March 1, 1967.

On October 5, 1965 Lonnie Ellis, Jr., employed as a truck driver by E. C. Womack, Incorporated, at an average weekly wage of $70.00, sustained multiple injuries by accident arising out of and in the course of the employment.

The case was accepted as compensable, and our award of November 23, 1965, directing the payment of $39.00 weekly compensation during incapacity, was vacated and set aside as of April 15, 1966, upon the insurer's application for hearing on the ground of change in condition, filed January 20, 1966. The termination of the award of compensation was by decision and award of the Commission of June 6, 1966, to which reference is made. That decision enumerates at length Ellis' complaints and medical care through May 20, 1966.

It is noted that Dr. Gervas S. Taylor, Jr., orthopedic surgeon, who examined Ellis on April 15, 1966, concluded his report of that examination by suggesting that Ellis see a neurosurgeon to be certain that he had not suffered brain damage, and, if the neurosurgical examination was page 65 } normal, then Ellis should see a psychiatrist or return to work.

Dr. Frank B. Clare, neurosurgeon, who examined Ellis on May 20, 1966, found a large hysterical component present; did not believe that Ellis was deliberately malingering; and felt that Ellis should be evaluated by a psychiatrist for conversion *reacion.*

On September 26 and October 6, 1966 Ellis was examined by Dr. D. L. Mingione, psychiatrist, Portsmouth, Virginia, who had this to say in his report of October 18, 1966:

"The psychiatric symptoms are multiple, and are felt to be incapacitating. While there may be an element of secondary gain from these symptoms it is felt to be minimal and the severity and the multiplicity of the symptoms are felt to be such so as to preclude Mr. Ellis's being gainfully employed at this time. The association between the onset of these symptoms and the accident is such so as to suggest relationship, especially in the seeming absence of psychopathology prior to the injury. I am unable to comment as to the true presence of any physical disability as my examination of Mr. Ellis was limited to the psychiatric sphere."

On October 25, 1966 the claimant, by counsel, filed an application for hearing on the ground of change in condition, alleging that Ellis was totally incapacitated for work because of an emotional disorder resulting from the accident of October 5, 1965. It is upon this application that the case is before us.

Also in evidence is the December 2, 1966 report of Dr. John A. Jackson and the February 13, 1967 report of Dr. Jerome E. Adamson.

Ellis testified that he was unable to work at his former employment as a truck driver for a variety of reasons. His complaints were essentially those made at the prior trial of this case on March 25, 1966.

On the record as now constituted, it is the finding of the Commission that Ellis is incapacitated for work as a result of the accident of October 5, 1965, and has been so
page 66 } incapacitated since the filing of his application for hearing on the ground of change in condition on October 25, 1966. We may not consider the application prior to its date of filing. *Bristol Door & Lumber Co.* v. *Hinkle,* 157 Va. 474, 161 S.E. 902.

We find and conclude that a change in condition, within the meaning of § 65-7.1, Code of Virginia, has been proved. *Newsome* v. *Adley Express Co.* (Claim No. 535-113) October 29, 1962, affirmed on review January 8, 1963.

The evidence now before us preponderates in proving, and we find, that Ellis' incapacity for work is the result of a combination of factors, some of which are unrelated to the accident of October 5, 1965, and some of which flow directly and indirectly from the accident. It is our view of the evidence that, standing alone, the evidence does not support a finding of physical incapacity for work as a result of the injuries sustained in the accident of October 5, 1965, but, when the physical injuries are coupled with psychiatric symptoms, commonly called a neurosis, the net result is disability for work. The emotional disorder, flowing from the injuries received in the accident of October 5, 1965, causes incapacity for work for which compensation payments must be granted. See *Burlington Mills Corp.* v. *Hagood,* 177 Va. 204, 13 S.E. 2d 291.

## AWARD

An award is hereby entered in favor of the claimant at the rate of $39.00 per week, beginning October 25, 1966, to continue until subsequent conditions require a modification thereof.

The employer shall pay, or cause to be paid, the cost of medical attention rendered the injured employee to the extent provided by law, that is, for two years from the date of accidental injury.

page 67 } From accrued compensation there shall be de-

ducted and paid to Leonard B. Sachs, Esq., $250.00 for legal assistance rendered the claimant.

page 68 } September 22, 1967

Docket for Review (H)
Date of last payment.....
Reopen as of.....
Application filed 9/22/67
Referred to Docket 9/25/67

By V.

BY HAND

Industrial Commission of Virginia
Department of Workmen's Compensation
Blanton Building
Richmond, Virginia

Re: Lonnie Ellis, Jr. v. E. C. Womack, Inc.
and Continental Insurance Company
IC Claim No. 819-423

Gentlemen:

Pursuant to the provisions of Section 65-93, Code of Virginia of 1950, as amended, the defendants hereby file their application for review by the full Commission of the decision of Commissioner Harwood, dated September 7, 1967, in the above case.

Very truly yours,

JAMES L. MILLER (emc)

jlm/emc

CC: Mr. Leonard E. Sachs
Suite 1106 Plaza One
Norfolk, Virginia 23510

Received September 22, 1967 4:15 P.M.

HELEN G. COOPER

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* * * * *

Nov. 22, 1967

* * * * *

REVIEW before the Full Commission at Richmond, Virginia, November 8, 1967.

MILLER, Commissioner, rendered the opinion.

The full Commission upon review adopts the findings of fact and conclusions of law contained in the decision and award of September 7, 1967.

Accordingly, the said decision and award of September 7, 1967 appealed from are

AFFIRMED.

page 70 }

* * * * *

Dec. 15, 1967

* * * * *

REVIEW before the Full Commission at Richmond, Virginia, November 8, 1967.

MILLER, Commissioner, rendered the amended opinion.

The opinion of the full Commission on review dated November 22, 1967 having failed to provide for an attorney's fee, that opinion is amended to this extent:

"AFFIRMED, with the modification that the fee for the claimant's attorney is hereby increased to the total sum of $290.00."

I, Helen G. Cooper, Secretary to the Industrial Commission of Virginia, do hereby certify that the foregoing is a true and correct copy of the Findings of Fact, Conclusions of Law and other matters pertinent to the questions at issue in Claim No. 819-423, Lonnie Ellis, Jr., Claimant, v. E. C. Womack, Incorporated, Employer, Continental Insurance Company, Insurer.

Given under my hand and seal of the Industrial Commission of Virginia this the 19 day of December 1967.

HELEN G. COOPER
Secretary, Industrial Commission
of Virginia

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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