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Clerk's Office, Supreme Court of Appeals
Richmond, Va.

Record No. 7073

In the Supreme Court of Appeals of Virginia at Richmond

NORMA G. ROBINETTE, ET AL.

v.

KAYO OIL COMPANY, ET AL.

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

Record No. 7073

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

NORMA G. ROBINETTE and
STACY ALLEN ROBINETTE, an infant, Appellants,

against

KAYO OIL COMPANY and TWIN CITY FIRE
INSURANCE COMPANY, Appellees.

From the Industrial Commission of Virginia

Upon the petition of Norma G. Robinette and Stacy Allen Robinette, an infant, an appeal is awarded them from an award entered by the Industrial Commission of Virginia on the 10th day of May, 1968, in a certain proceeding then therein depending, wherein the said petitioners were claimants and Kayo Oil Company and another were defendants; upon Norma G. Robinette, or some one for her, entering into bond with sufficient security before the Secretary of the said Industrial Commission in the penalty of $300, with condition as the law directs, no bond being required of the infant claimant, Stacy Allen Robinette.

RECORD

* * * * *

Commonwealth of Virginia

Department of Workmen's Compensation

INDUSTRIAL COMMISSION OF VIRGINIA
Richmond

APPLICATION FOR A HEARING
IN FATAL CASE

(To be used by any claimant)

Docket for Wise County
Date of last payment.....
Reopen as of.....
Application filed 3-27-67
Referred to Docket 4-14-67
By.....??.....

Case of FRED ALLEN ROBINETTE, deceased
Norma G. Robinette, widow (Claimant)
v.
Kayo Oil Co. (Employer)
Chattanooga, Tennessee

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 58 of the Virginia Workmen's Compensation Act.

I hereby certify that the facts in the case are as follows:

1. Name of employer Kayo Oil Company Address Chattanooga, Tenn.; 2. Name of employee Fred Allen Robinette; Address Coeburn, Va.; 3. Date of accident 2-6-67; 4. Date of death 2-7-67; 5. The accident occurred as follows: exposure to severe cold and sleety weather while working for Employer's Automobile Gasoline Service Station

6. Place where accident happened Coeburn, Wise County, Virginia

7. The name and relationship of dependents claiming compensation are as follows:

Norma G. Robinette widow 19 Rt. 1, Coeburn, Va.
Widow is expecting claimant's child to be born within a few days.

8. This case cannot be settled by agreement for the following reasons: Employer claims that claim is not compensable.

(If the claimant was only partially dependent the following facts must also be given):

a. Deceased was in the employ of the above named employer for 6 months prior to his injury; b. The total earnings of the deceased for preceding year or part of year that he worked for employer amounted to $.....; c. The deceased contributed to the support of the above named dependents during the preceding year or part of year that he worked for the employer a total of $..... total support.

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

Jimmy Tincher Address Coeburn, Va.
Elmer Bates Address Coeburn, Va. Wise
Signed this 23 day of March, 1967.

Signature: Norma G. Robinette
Principal Claimant

* * * * *

page 2 }

* * * * *

Hearing before Deputy Commissioner RUSHBROOKE at Big Stone Gap, Virginia, on June 13, 1967.

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

By Deputy Commissioner Rushbrooke:

This claim is before the Commission upon application of the principal claimant, Norma G. Robinette, dated March 27, 1967, alleging that she is entitled to death benefits on account of the death of Fred Allen Robinette, who
page 3 } died February 7, 1967 and it's alleged that the death occurred by accident arising out of and in the course

of his employment with Kayo Oil Company. I will make whatever medical reports are contained in the file a part of the record, including the report of Dr. Strong of April 4, '67 and the medical examiner's certificate. Let the record further show that notice of date and time of this hearing was forwarded to all the parties on May 26, 1967 and we have a return receipt in the file dated June 1, '67 showing that the carrier, Twin City Fire Insurance Company received notice of the hearing, but there is no one here representing the defendant, Kayo Oil Company or the carrier, this afternoon, this morning. All right, Mr. Shannon or Mr. Newman, who's going to proceed here? Mr. Shannon?

JAMES H. TINCHER

By Mr. Shannon:
Q. What is your name?
A. James H. Tincher.

By Deputy Commissioner Rushbrooke:
Tincher?
A. Tincher.
Q. How do you spell it?

page 4 } By Deputy Commissioner Rushbrooke:

All right. We've got it.

Q. You've got it. Mr. Tincher, did you know Fred Robinette in his lifetime?
A. Well, I'd known Fred for quite awhile.
Q. Known Fred for quite awhile. Were you employed with him? And if so, where?
A. Yeah. At Kayo Oil Company.
Q. And where is that?
A. East Coeburn.
Q. And do you recall when he died?
A. Well, he died on a Tuesday night around 9:00 or 9:30, the 7th of February.
Q. 7th of February. Did you work with him three or four days prior to that?
A. Yes, sir, I did.
Q. What kind of weather was it?

A. Well, it was awful bad. It was raining and snowing and cold and we had wade around in water and ice at the pumps.

Q. Well, how come you had to wade around in ice and water?

page 5 } A. Well, where it's standing, it's a low place at the pumps. There's no way to drain it off so we had to wade through it to get to the pumps to wait on the customers.

Q. Wait on customers. Well, about how often did you have to wait on customers?

A. Well, they come in pretty steady. Almost a steady flow.

Q. And were you furnished any gear in the way of raincoats or galoshes by Kayo, your employer, sir?

A. No, sir, not at all.

Q. Not at all. Now, at the time he was working there, the last shift, did he appear well?

A. Well, he seemed all right, but he was never one to complain.

Q. Never one to complain. Seemed all right. Well, when you'd come out and wait on a person, would you go back in to where it was warm and then come out again, or how did you manage?

A. We'd start back in, but most of the time we never got back in, we'd just turn on back around and come back out.

page 6 } Q. Did you get wet and keep wet?

A. Yes, sir, we was wet almost continuously.

Q. I believe you were the manager at that time?

A. Yes, sir.

Q. Did Fred do more of the tending to the customers than you did?

A. Well, he worked the morning shift, he came on at 6:00 and worked until 3:00 and I done the managing and I went on at 3:00 and I worked until 11:00, that night?

Q. About what was the temperature during his last shifts up there?

A. The temperature, I don't know, remember what it was, but it was awful pretty daggone cold there.

Q. Sleet and snow or—

A. Yes, sir, it was freezing.

Q. Now, about how often did you make more wages than the set wage per week?

James H. Tincher

A. Well, the only time we made anything extra is if we didn't have a man to work that extra shift, then we would work it ourself.

Q. Well, how often did you have a man to work that extra shift?

page 7 } A. Well, not too often because we couldn't get anybody for just a day or two.

Q. Couldn't get anybody.

OFF THE RECORD.

By Deputy Commissioner Rushbrooke:

MR. LESLIE M. MULLINS has now appeared to represent the defendants, and we will begin the case again with the testimony of Mr. Tincher.

By Mr. Shannon:

Q. State your name.

A. James H. Tincher.

Q. Now, Mr. Tincher, did you know Fred Robinette in his lifetime?

A. Yes, sir, for quite awhile.

Q. Did you work with him?

A. Yes, sir.

Q. And who is your employer?

A. Kayo Oil Company in East Coeburn.

Q. What position did you have with this Company?

A. Well, I was a manager and I also worked a shift too.

Q. What was your pay per week?

A. Well, they paid us—we had a monthly salary of $170.00 a month.

Q. Would you make over that at times?

A. Yes, sir. If we had—that was six days, if we

page 8 } had to work the seventh day, we got overtime for that day.

Q. You got doubletime on that day?

A. Yes, sir.

Q. Now—

By Deputy Commissioner Rushbrooke:

Q. Excuse me. Let me ask you this. How much did that amount to for a Sunday? The double time?

A. The double time would amount to—$11 and some few cents.

Q. That would be the double time? In other words, if you worked Sunday or if Mr. Robinette worked Sunday, he'd get $11. and some odd cents?

A. Well, yes, but that day would usually come on, through the week, we never had a Saturday or Sunday off.

Q. Well, did you'all—are you telling me that you worked about every Sunday?

A. Yes, sir.

Q. So, you'd get the $170.00 plus you'd get approximately $44.00 more dollars every month because of working on Sundays, is that right?

page 9 } A. Because of working on the off day, which did not fall on Sunday.

Q. Right.

A. It was through the week.

Q. Well, I understand, you worked the seventh day, you'd get $11.00 more and did Mr. Robinette do this?

A. Yes, he did.

Q. Practically every week?

A. Almost every week.

Q. And how long was he employed before he died?

A. Well, the last time he went to work there was, I believe, sometime in August and he died in February.

Q. All right. Go ahead, Mr. Shannon.

By Mr. Shannon:

Q. Mr. Tincher, did you work with him the last two or three shifts he worked there?

A. Yes, I did.

Q. What type of weather was it at that time?

A. Well, it was wet and cold, raining and snowing, it was miserable out there.

Q. How was the condition of the pumps, as far

page 10 } as the water or anything?

A. Well, the water was standing around the pumps and ice, and we had to wade through that to get to the pumps to wait on the customers.

Q. And did Mr. Robinette go through all this ice and snow at the time, waiting—

A. Yes, he did.

Q. I believe you were manager?

James H. Tincher

A. Yes, sir.

Q. Did he do more of that than you? The wading through the—

A. Well, he worked one shift and I worked the other. He went on at 6:00 to 3:00 and I managed in the morning and went on at 3:00 and worked until 11:00 at night.

Q. Did your employer furnish any gear, that is in the way of raincoats or galoshes or anything?

A. No, sir, he didn't.

Q. What would be the condition of Mr. Robinette or yourself after you'd worked about eight hours, as far as being wet and cold?

A. Well, he never was one to complain, so—

page 11 } Q. Well, I mean, of an average person, whether he complained or not, would he get wet, would a person get—

A. Yes, he would. There's no possible way of not getting wet.

Q. He's not related to you in anyway, is he?

A. No, sir, he's not.

Q. I think that's all.

By Mr. Mullins:

Q. Mr. Tincher, what is your first name?

A. James.

Q. And you're the assistant manager?

A. I was manager at that time. The manager was in the hospital.

Q. Yes. And you're the assistant manager now?

A. No, sir, I don't work there anymore.

Q. Don't work there anymore.

A. No, sir.

Q. Where are you now, sir? Where do you live?

A. I live in Coeburn.

Q. You live in Coeburn but you're no longer

page 12 } employed by the company. Did you have any falling out with them when you quit?

A. No.

Q. You say that Mr. Robinette worked out in the rain and snow?

A. Yes, sir.

Q. Well, that's a part of the usual situation of all filling station employees, isn't it? In otherwords,—

James H. Tincher

A. Yes, sir.

Q. In otherwords, there's nothing unusual about that because—

A. There's one thing unusual about that.

Q. What's that, sir?

A. That water standing around the pumps. A man having to wade through it to get to it. No one tried to drain it off.

Q. Well, did you have any boots on?

A. No, sir, they furnished us none.

Q. Furnished you no boots?

A. No, sir.

Q. Well, did you get boots?

page 13 } A. No, sir.

Q. In otherwords, you just got out in the water with your regular shoes on?

A. Well, I didn't have boots. I had a pair of these low-quarter overshoes.

Q. Overshoes?

A. Just for slippers only.

Q. Yes. But you did take the precaution of using overshoes?

A. Yes, but my feet still got wet, went through it?

Q. Well, why didn't you get some "arctics"?

A. A man can't live on $170.00 a month and buy "arctics".

Q. That's what you were getting, $170.00 a month?

A. $170.00, plus if we worked a day off.

Q. How about the Robinette boy? What is it, "Mr. Robinson"?

By Mr. Shannon:

Fred Robinette.

Q. Well, did he have any overshoes?

A. No, sir.

Q. And what other than—in otherwords, did the

page 14 } company buy any clothes for you at all?

A. No, sir.

Q. Were they expected to?

A. Well, as far as I know, they was supposed to furnish a raincoat anyhow, which they didn't.

Q. Well, did you have a raincoat at home?

A. No, sir.

Q. Don't even have a raincoat?

A. No, sir.

James H. Tincher

Q. Have an umbrella?
A. No, sir.
Q. You don't have anything. Well, how about Mr. Robinette? Didn't he have a raincoat?
A. That, I don't know.
Q. You don't know. Well, did you see him wear one?
A. No, sir.
Q. During that period of time you never did?
A. No, sir.
Q. How long—did he get sick before he died?
A. I don't remember.
Q. Do we have anything here that says—

page 15 } By Mr. Shannon:
I don't believe you have a copy of the medical report.
By Mr. Mullins:
I don't have a copy of the medical report of the cause of death.
By Deputy Commissioner Rushbrooke:
The carrier, of course, has it, because they sent it to us. (off the record)

By Mr. Mullins:
Q. Mr. Tincher, did you have the filling station heated?
A. Coal stove.
Q. Had a coal stove?
A. Yes, sir.
Q. And this happened on February, 1967—
A. That's correct.
Q. —and you say that this boy had been going out—in and out of the rain?
A. Continuously.
Q. Continuously. Well, did you talk to him, that he needed to get a raincoat?
page 16 } A. No.
Q. Didn't say anything about it?
A. Both of us wanted one, but they wouldn't get us one.
Q. You didn't get one yourself?
A. No, sir.
Q. Just went out and got wet?
A. Right.
Q. Well, how many hours a day did you work?

A. Both of us was there approximately nine hours a day.
Q. And were you on the same shift?
A. No, sir, he worked the morning shift and I worked the evening shift, the shift I managed in the morning.
Q. Where did he live?
A. He lived in Coeburn.
Q. Where abouts there?
A. In town—down in town.
Q. Do you know what he did on his off hours?
A. No, sir, I don't.
Q. You don't know for sure that this pneumonia is connected with his work?
A. Well, as far as I know, when he got off, he went home.
page 17 } Q. Went home.
A. Straight home everyday.
Q. I believe that's all.

By Mr. Newman:
That's all, Mr. Tincher, you can have a seat.

Witness stood aside.

By Mr. Shannon:
Q. You were the wife of Fred Robinette, I believe?
A. Yes, sir.
Q. Where were you married?
A. Sir?
Q. Where were you married?
A. Wise.
Q. Wise. When?
A. That would be August 3, 1966.
Q. At the time of his death, I believe it was—

By Deputy Commissioner Rushbrooke:
Q. August 3, 1966?
A. Yes, sir.

page 18 } By Mr. Shannon:
Q. I believe at the time of his death you were pregnant, is that right?
A. Yes, sir.
Q. Was a child born after that?

A. Yes, seven weeks.

Q. Seven weeks after his death. What's the name of the child?

A. Stacy Allen Robinette.

Q. When was it born?

A. March 30th.

Q. March 30th. Your Honor, she was pregnant when—now, was your husband working there, I believe, for sometime?

A. Yes, he started working in August.

Q. What was the condition of the weather at the time that he died and a few days prior thereto?

A. Well, it was raining and snowing, it was real bad.

Q. And how was the condition of his clothes when he come in? Was he dry or wet?

page 19 } A. Well, they'd be wet.

Q. They'd be wet. And when did he take ill?

A. Well, it was February 6, he came home that evening and he said he felt like he was taking the flu and he went to bed.

Q. Went to bed. Did he ever get up anymore? Or get out anymore?

A. No, sir. He stayed in the house.

Q. Well, when did he die, the next day?

A. Yes, sir, that—February 7, it was about, I guess it was around 9:00 that night, February 7th.

Q. What was his health prior to that time? Good?

A. Yes, sir.

By Mr. Shannon:

That's all, Your Honor. Now, we have two more—

By Deputy Commissioner Rushbrooke:

Just a minute. Mr. Mullins:

By Mr. Mullins:

Q. Has your husband had pneumonia before?

A. Not that I know of.

Q. Do you know whether he's been hospitalized previous to this?

page 20 } A. No, sir, I don't think so.

Q. How old a man was he?

A. Well, he was twenty-five.

Q. Has he been in the Armed Forces?

A. Yes, sir.

Q. What service did he serve in?
A. In the Army.
Q. The Army?
A. Yes, sir.
Q. Do you know whether he'd received a medical discharge or not?
A. No, sir, he didn't.
Q. Where did he work before he worked for the Kayo Oil Company?
A. Well, when he went in the service, he—I believe he was working for the Kayo then.
Q. Has he worked any place else other than the Kayo? Who was his last employer before he worked for the Kayo?
A. Well, I don't know. That was before I met him.
Q. Before you met him?
A. Yes, sir.
Q. In otherwords, he'd worked for the Kayo
page 21 } during the entire time that you had met him and courted him and married him?
A. Yes, sir.
Q. I guess that's all.

By Deputy Commissioner Rushbrooke:
Q. Mrs. Robinette, is Stacy Allen Robinette the only child borne by you of your marriage to Fred Allen Robinette?
A. Yes, sir.
Q. To your knowledge, did Fred Allen Robinette have any other children by any other marriage? Before you?
A. No, sir.
Q. Have you remarried since his death?
A. No, sir.
Q. Where do you live now?
A. At my mother's.
Q. You stay with your mother. And is Stacy Allen with you?
A. Yes, sir.
Q. And do you work?
A. No, sir.
Q. You care for the child yourself?
A. Yes, sir.
Q. With your mother's help, I take it?
A. Yes, sir.
page 22 } Q. And how old are you?

A. Nineteen.

Q. All right. Mr. Shannon, do you-all have any other evidence?

By Mr. Shannon:

Your Honor, I have two more witnesses that would just be corroborant of the same conditions there, conditions of the weather.—

By Deputy Commissioner Rushbrooke:

You mean the weather conditions?

By Mr. Shannon:

That's right, uhuh.

By Deputy Commissioner Rushbrooke:

Is there a question about the weather conditions there, Mr. Mullins?

By Mr. Mullins:

I don't know, we might as well put them on and let's see.

By Mr. Shannon:

Well, if you want to call them, it's your witness.

page 23 } By Deputy Commissioner Rushbrooke:

You don't—that's your evidence—completes your evidence?

By Mr. Shannon:

Oh, yes, sir.

By Deputy Commissioner Rushbrooke:

All right, Mr. Mullins, do you have anything else? (off the record).

Witness stood aside.

TOY MASSEY

By Mr. Mullins:

Q. What is your name?

A. Toy Massey.

Q. And what relation, if any, are you to the deceased?

A. Well, I'm not any.

Q. Do you know anything about the weather on the day before—

A. Yes, it was awful rough and bad and cold.

Q. Snowing all the time?

A. And it was snowing, you know, and drizzling rain and just a lot of water and stuff around them pumps and everything. Stood there all the time.

page 24 } Q. And you stayed around there quite a bit?

A. Yeah, I hung around there with Fred right smart. I knowed the boy all his life.

Q. You were a pretty good friend of his?

A. Yeah, I was a good friend of his.

Q. That's all.

By Mr. Shannon:

That's all. (off the record)

By Deputy Commissioner Rushbrooke:

Mr. Mullins, within fifteen days, if you so desire, you can furnish the Commission with a copy to the other side, the records of what is it, Clinch Valley College Weather Station?

By Mr. Mullins:

Yes, sir.

By Deputy Commissioner Rushbrooke:

—Concerning the weather conditions on or about February 7, 1967 and a few days prior thereto.

Witness stood aside.

Case concluded.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF HEALTH

BUREAU OF VITAL RECORDS AND HEALTH STATISTICS

COMMONWEALTH OF VIRGINIA – CERTIFICATE OF DEATH

DEPARTMENT OF HEALTH – BUREAU OF VITAL RECORDS AND HEALTH STATISTICS – RICHMOND

COPY B
FOR HEALTH DEPARTMENT

REGISTRATION AREA NUMBER: 197

CERTIFICATE NUMBER: 20

MEDICAL EXAMINER'S CERTIFICATE

STATE FILE NUMBER

DECEDENT

1. FULL NAME OF DECEASED (first) (middle) (last): Fred Allen Robinotte
2. SEX: male [X] female [ ]
3. DATE OF DEATH (mo.) (day) (year): Feb. 7, 1967
4. AGE OF DECEASED: 25 years — IF UNDER 1 YEAR: months, days; IF UNDER 1 DAY: hours, minutes
5. COLOR OR RACE: W

PLACE OF DEATH

6. NAME OF HOSPITAL OR INSTITUTION OF DEATH (if none, so state): Home
7. COUNTY OF DEATH (if independent city, leave blank): Wise
8. CITY OR TOWN OF DEATH (if rural, so state): Coeburn — inside city or town limits? yes [X] no [ ]
9. STREET ADDRESS OR RT. NO OF PLACE OF DEATH:

HARTFORD INS. GROUP RECEIVED 20 1967 ROANOKE, VA. CLAIM OFFICE

USUAL RESIDENCE OF DECEDENT

10. STATE (OR FOREIGN COUNTRY) OF DECEASED'S RESIDENCE: Virginia
11. COUNTY OF DECEASED'S RESIDENCE (if independent city, leave blank): Wise
12. CITY OR TOWN OF RESIDENCE: Coeburn — inside city or town limits? yes [X] no [ ]
13. STREET ADDRESS OR RT. NO OF RESIDENCE:

PERSONAL DATA OF DECEDENT

14. NAME OF FATHER OF DECEASED: Luther Robinotte
15. MAIDEN NAME OF MOTHER OF DECEASED: Edith Bell
16. DECEASED CITIZEN OF WHAT COUNTRY: U. S. A.
17. MARRIED [X] NEVER MARRIED [ ] WIDOWED [ ] DIVORCED [ ]
18. IF MARRIED OR WIDOWED NAME OF SPOUSE: Norma Hamm
19. SOCIAL SECURITY NUMBER:
20. IF VETERAN, name war or peacetime only, state: W 2
21. BIRTHPLACE (state or country) OF DECEASED: Scott Co.
22. DATE OF BIRTH (mo.) (day) (year) OF DECEASED: 8-26-1942
23. USUAL OR LAST OCCUPATION: Serv. Sta. Attendant (Filling Sta.)
24. KIND OF BUSINESS OR INDUSTRY:
25. INFORMANT – OR SOURCE OF INFORMATION: Mrs. Norma Hamm

26. CAUSE OF DEATH (Enter only one cause per line for (A), (B), and (C).) PART I. DEATH WAS CAUSED BY: — INTERVAL BETWEEN ONSET AND DEATH

RESERVED FOR BINDING
or print legibly with ball point pen leaving dark unfading ink
reproduction by microfilm and other photographic process.

MARGIN — IMPORTANT: Use black ribbon in typewriter. This is a permanent record and subject to

MEDICAL EXAMINER: (complete and sign cal certification 26) and give all ...ions to funeral director as soon as possible after inquiry

NOTE If "pending" must be indicated, notify registrar of final disposition as soon as possible

MEDICAL CERTIFICATION

IMMEDIATE CAUSE (A) Respiratory failure 24 hrs.

DUE TO (B) acute pulmonitis

Conditions, if any, which gave rise to immediate cause (A), stating the underlying cause last. DUE TO (C) Pneumonitis

PART II OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE TERMINAL DISEASE CONDITION GIVEN IN PART I (A)

26a AUTOPSY? yes ☐ no ☐ AUTHORIZED BY [illegible]

26b. IF FEMALE, WAS THERE A PREGNANCY IN PAST 3 MONTHS? yes ☐ no ☐ unknown ☐

26c EXTERNAL CAUSE OF DEATH WAS PRIMARY ☐ or CONTRIBUTING ☐

26d DESCRIBE HOW INJURY OCCURRED (enter NO if not described in Part I or part II)

26e TIME OF INJURY (mo.) (day) (year) _____ A.M. _____ P.M.

26f INJURY OCCURRED while at work ☐ not while at work ☐

26g PLACE OF INJURY (home, farm, factory, street, office bldg., etc.)

26h (city or town) (county) (state)

26i. I CERTIFY that I took charge of the remains described above, viewed the body, made inquiry and in my opinion death resulted at or about 4:50 (A.M. or P.M.) NATURAL CAUSES ☐ ACCIDENT ☐ SUICIDE ☐ HOMICIDE ☐ UNDETERMINED ☐ PENDING ☐ CITY OR COUNTY DATE 1-4-67

ACTUAL SIGNATURE [illegible] MEDICAL EXAMINER FOR Norton, Va. 24273

FUNERAL DIRECTOR

27. BURIAL ☒ REMOVAL ☐ CREMATION ☐

28 PLACE OF BURIAL, REMOVAL, ETC. Greenwood (name of cemetery or crematory) Cocburn, Va. (city or county) (state)

29 (signature of funeral director or person acting as such) [illegible]

NAME OF FUNERAL HOME AND ADDRESS Estes Funeral Home Cocburn, Va.

REGISTRAR 30. (signature of registrar) Revie Kennedy

DATE RECORD FILED 2/16/67

VS. 2A 1-66

This is to certify that this is a true and correct reproduction of the original record filed with the WISE COUNTY Department of Health, NORTON, Virginia.

Date issued 4/6/67

Revie Kennedy

DEPUTY Registrar

(SEAL)

page 26 } LEONELL C. STRONG, JR., M.D.
General Surgery and Gynecology
Medical Arts Building
Norton, Virginia 24373

April 4, 1967

Hartford Ins. Group Received Apr 20 1967 Roanoke, Va. Claim Office.

R. C. Shannon
Attorney At Law
Appalachia, Virginia

Re: Fred Robinette

Dear Mr. Shannon:

In my official capacity as the Medical Examiner for Norton, I was called to Coeburn, February 7, 1967, to examine this boy. He was dead in bed with the history of having died in an acute Respiratory Infection, Respiratory Failure and extremely High Fever. The history obtained was during the previous two or three days he worked all day in the wet rainy-weather getting his clothing soaked and as a part of his job was in and out the Service Station all day long. Each time getting chilled thoroughly. As a direct result of this exposure, within twenty-four hours he came down with a severe Upper Respiratory Infection and chest cold within hours he progressively got more severe developing an extremely high fever, difficulty in breathing and died within a very short time.

In my capacity as Medical Examiner I ordered an autopsy which revealed he died in Respiratory Failure secondary to Acute Bilateral Pneumonia, probably Viral in type. As a direct result of said exposure.

I trust this is the information you desired.

Respectfully Submitted,

L. C. Strong, Jr. M. D.

LCS:cm

page 27 } Weather Reports per Meteorologist Roy Wells
Clinch Valley University, Wise, Va.

	2/3/67	2/4	2/5	2/6	2/7
High	41	46	48	46	26
Low	26	27	27	25	12
Temp. @ 5 PM	33	43	46	26	20
Precipitation	Trace	0	Trace[1]	Trace of[1] Snow	.75 Prec.[2]
Barometer	30.07	29.85	29.78	No Record[3]	No Record[3]

page 28 } COMMONWEALTH OF VIRGINIA

Department of Health
Office of the Chief Medical Examiner
404-406 North 12th Street
Richmond, Virginia 23219

February 19, 1968

Joseph P. Rushbrooke
Deputy Commissioner
Department of Workmen's Compensation
Industrial Commission of Virginia
Richmond, Virginia 23214

Dear Commissioner Rushbrooke:

I must apologize most sincerely for the long delay in replying to your letter of January 8. Unfortunately, this file got filed inadvertently and only recently was brought to my attention again.

The question you asked concerns the death of Fred Allen Robinette, a 25-year-old male white service station attendant who died February 7, 1967, from respiratory failure secondary to acute fulminating pneumonitis. Acute fulminating pneumonitis is a clinical and not a pathological entity, its pathological counterpart probably being influenzal pneumonia or primary atypical pneumonia. Both of these are presumed to be caused by a virus, although in this case no virus was

FOOTNOTES

1. Trace—means less than one hundred (.01) inch.
2. .75 measurable *preciptation*—7" snow on ground at 5 P.M.

Note—Wise County Schools and C.V.C. closed on 2/7/67.
Temperature, Precipitation and Barometric pressure taken at 5 P.M. each day.
Temperatures 3 days prior to 2/6 above normal for February.

cultured from samples submitted to the Virginia State Department of Health Bureau of Laboratories. It is probable from its fulminating course that the more likely diagnosis in this case is that of influenzal pneumonia; although the pathological report that I have makes this purely speculation. Ordinarily respiratory diseases are diseases to which the general public is exposed and the antecedent conditions which precede the development of respiratory diseases are extremely variable. Nevertheless, if the facts as stated in this case are true in that the decedent was for two or three days subjected to exposure beyond what would ordinarily be expected of the average person. That is to say, he was in and out of the service station constantly being page 29 } thoroughly soaked and chilled, then I would have to regard this condition as an antecedent to the development of his pneumonitis or the development of his respiratory disease. It should be understood, however, that there are many people who can be exposed to this type of condition without ever developing respiratory infections. I've seen myself fishermen operating a boat under the foulest weather getting thoroughly chilled day in and day out and not developing this type of disease. Nevertheless, in a susceptible individual, however, given these facts of severe chilling over a period of two or three days, I would have to give it as my opinion that there was a cause and effect relationship between these conditions and the developments of his disease. You will appreciate this opinion is predicated purely on the facts as indicated in the hearing which are not at all clear and on the autopsy report which I have which is quite inadequate.

In summary I would state that although generally speaking respiratory diseases of the nature suffered by the decedent are generally regarded as diseases to which the ordinary public is generally subject to and are a hazard of living. Nevertheless, if it can be shown that an individual was subjected to climatic conditions where he was thoroughly soaked and chilled over an extended period of time, say two or three days, then there would be a cause and effect relationship between the development of his respiratory disease and the conditions to which he was exposed to.

I trust that I have sufficiently answered your queries. If I can be of further service to you, please do not hesitate to call upon me.

With kindest regards,

Very sincerely yours,

Geoffrey T. Mann, M.D., LL.B.

GTM/bab

page 30 } COMMONWEALTH OF VIRGINIA

Department of Workmen's Compensation
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794
Richmond, Virginia 23214

January 5, 1968

File No. 905-752
Re: Fred Allen Robinette (Deceased)
v.
Kayo Oil Company

Mr. R. C. Shannon, Attorney
Appalachia, Virginia

Mr. Leslie M. Mullins, Attorney
The Law Building
Norton, Virginia 24273

Gentlemen:

Pursuant to the authority of § 65-87, Code of Virginia, I am forwarding a copy of the record in this case to Dr. Geoffrey T. Mann, Chief Medical Examiner, Commonwealth of Virginia; Professor and Chairman of Department of Legal Medicine and Professor of Forensic Pathology, Medical College of Virginia, Richmond, Virginia, for his opinion. Dr. Mann's report will be made a part of the record and will be made available to the parties and leave will be granted for the examination of Dr. Mann on his report, if the parties are advised, upon request made five days after receipt of Dr. Mann's report.

As soon as Dr. Mann's report is received by the Commission a copy will be forwarded immediately to you. I regret the delay in this matter but have determined that this procedure is necessary to fairly determine this matter.

Very truly yours,

INDUSTRIAL COMMISSION
OF VIRGINIA

Joseph P. Rushbrooke,
Deputy Commissioner

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OPINION BY RUSHBROOKE
DEPUTY COMMISSIONER

Apr 3 1968

Hearing before Deputy Commissioner RUSHBROOKE at Big Stone Gap, Virginia, on June 13, 1967.

Fred Allen Robinette, an employee of Kayo Oil Company at an average weekly wage of $50.00, died on February 7, 1967. His wife, Norma G. Robinette, makes claim for compensation on behalf of herself and a child of the deceased, Stacy Allen Robinette, born March 30, 1967, alleging that death resulted from exposure to wet and cold climatic conditions to which Robinette was subjected by reason of his employment.

The deceased was a service station attendant who normally worked from 6:00 o'clock A.M. until 3:00 o'clock P.M. On the two or three days immediately prior to the page 32 } date of death, the deceased worked in weather described by witnesses as rainy, snowy, and cold. There was standing water around the gasoline pumps and the deceased apparently worked without benefit of boots, overshoes, or a raincoat.

Robinette last worked on February 6, 1967. He came home that evening and told his wife that he felt he was "taking the flu." He died the following evening.

According to Dr. L. C. Strong, medical examiner for Norton, Virginia, the immediate cause of death was "Respiratory Failure secondary to Acute Bilateral Pneumonia, probably viral in type."

Following the hearing, the Industrial Commission, pursuant to the authority of § 65-87, Code of Virginia, referred its file to Dr. Geoffrey T. Mann, Chief Medical Examiner, Commonwealth of Virginia, for his opinion. Dr. Mann, who is also Professor and Chairman of the Department of Legal Medicine and Professor of Forensic Pathology, Medical College of Virginia, is eminently qualified. Dr. Mann's report concludes:

"In summary I would state that although generally speaking respiratory diseases of the nature suffered by the decedent are generally regarded as diseases to which the ordinary public is generally subject to and are a hazard of living. Nevertheless, if it can be shown that an individual thoroughly soaked and chilled over an extended period of time, say two or three days, then there would be a cause and effect relationship between the development of his respiratory disease and the conditions to which he was exposed to."

page 33 } The evidence before us establishes to our satisfaction that the respiratory disease responsible for Robinette's death developed as a result of his exposure to the elements during the days immediately prior to his death. Nevertheless, the claim for death benefits must be denied.

§ 65-42, Code of Virginia, defines occupational disease as one arising out of and in the course of the employment, but provides also that no ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of an occupational disease, or when it is infectious or contagious disease contracted in the course of employment in a hospital, or sanitarium.

§ 65-43.1, Code of Virginia, sets forth a schedule of certain diseases and conditions which shall be deemed to be occupational diseases provided they are in fact occupational within the meaning of the term "occupational disease" as defined in § 65-42. Pneumonia, as such, is not scheduled as a disease under § 65-43.1, but paragraph 11 thereof provides:

"(11) Infectious or contagious disease contracted in the course of employment in or in immediate connection with a hospital or sanitarium or public health laboratory."

Pneumonia is an infectious disease and as clearly pointed out by Dr. Mann, is an ordinary disease of life to which the general public is exposed outside of the employment.

Accordingly, the compensability of the claim before
page 34 } us must be determined by application of these sections of the Act.

These statutory provisions were discussed at length by our Supreme Court of Appeals in *Van Geuder* v. *Commonwealth,* 192 Va. 548, 65 S.E. (2d) 565 (1951). In that case claimant alleged that she contracted tuberculosis in the course of her employment as a nurse in a general hospital. At that time paragraph 11 of § 65-43 (now § 65-43.1) provided that infectious or contagious diseases contracted in the course of employment in or in immediate connection with a hospital or sanitarium in which persons suffering from such diseases are cared for and treated were occupational diseases. The Court affirmed the Commission's finding that the defendant hospital was not a hospital in which tuberculosis was cared for and treated as provided in § 65-43 (11) and denied compensation.

§ 65-43 was repealed in 1952, but was then re-enacted in 1958 as § 65-43.1 and after such amendment paragraph 11 read as follows:

"Infectious or contagious diseases contracted in the course of employment in or in immediate connection with a hospital or sanitarium."

This provision would have entitled Mrs. Van Geuder to recover if she had proven her disease arose out of and in the course of her employment.

In 1962 paragraph (11) was again amended to include public health laboratories.

page 35 } Keeping in mind the changes as outlined above it would be well to quote the Court's language in the Van Geuder case. In construing § 65-42 and § 65-43 (now § 65-43.1) the Court said:

"It is clear that the Legislature did not intend by the enactment of the occupational disease law to provide a general system of health insurance. It provided compensation only

for occupational diseases and carefully spelled out what was required to fill that description. It provided that no ordinary disease of life to which the general public is exposed outside of the employment shall be compensable. Certain named diseases were made compensable but only if they arose out of the employment as that term is defined in the law. Certain unnamed diseases, embraced in the general description of infectious or contagious diseases were included, provided (1) they are in fact occupational as defined; (2) they were contracted in the course of employment; (3) in or immediately connected with a hospital or sanitarium; (4) in which persons suffering from such diseases are cared for and treated.

"No compensation is provided for infectious or contagious diseases that do not meet those terms. If a contagious or infectious disease not specifically named in the statute is contracted in the course of employment in a factory, in a store, in a restaurant, in a garage, or any other place where men and women are employed, it is not compensable, but treated as one of the ordinary diseases of life to which the general public is exposed outside of that employment. Thus the broad provision of § 65-42 that no ordinary disease of life shall be compensable is qualified and an exception made with respect to infectious or contagious diseases if, but only if, they meet the four requirements stated above.

"Among those requirements are that the disease must be contracted in a hospital or sanitarium, and that hospital or sanitarium must be one in which persons suffering from that disease are cared for and treated."

To make out a successful claim for compensation, the evidence must establish that the disease of pneumonia which produced death, was (1) in fact occupational as defined by § 65-42; (2) that it was contracted in the course of page 36 } employment; (3) in or immediately connected with a hospital, sanitarium or public health laboratory; or that (4) it followed as an incident of occupational disease as defined in the Act.

From this record it is clear that pneumonia is an ordinary disease of life to which the general public is exposed. It is equally clear that the disease producing Robinette's death did not follow as an incident of occupational disease, and that it was not contracted in the course of employment in a hospital, sanitarium, or public health laboratory. See *Lawson* v. *Blue Diamond Coal Co.*, 36 OIC 105 (Asthma); *Watkins* v. *Newport News Shipbuilding & Dry Dock Co.*, 32 OIC 106

(Asthma); *Barron* v. *Hampton Roads Sanitation District Commission,* 41 OIC 1, 4 (Appeal denied) (Infectious Hepatitis); *Lewis* v. *City of Richmond,* Claim No. 616-226 (Mumps); *Bundick* v. *Lewis Bros.,* 46 OIC 35 (Emphysema and Bronchitis); *Robertson* v. *Fairfax County School Board,* 48 OIC 206 (Bronchitis); *Hass* v. *City of Waynesboro,* 38 OIC 8 (Infectious Jaundice).

It is our conclusion that the evidence in this case fails to show that Robinette's death was the result of either accidental injury or occupational disease within the purview of the Workmen's Compensation Act. For this reason, we are compelled to deny the application of the claimants and to dismiss the case from the docket, and it is,

So ordered.

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REVIEW, before the Full Commission at Richmond, Virginia, May 8, 1968.

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 April 3, 1968.

Accordingly, the said decision and award of April 3, 1968 appealed from are

AFFIRMED.

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A Copy—Teste:

Howard G. Turner, Clerk.

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