

CLERK  
SUPREME COURT OF VIRGINIA

RECEIVED  
MAR 4 1974  
RICHMOND, VIRGINIA

Douglas B. Meade  
v.  
Clinchfield Coal Company  
No. 730922

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IN THE

SUPREME COURT OF VIRGINIA

DOUGLAS B. MEADE

APPELLANT

v.

CLINCHFIELD COAL COMPANY

APPELLEE

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APPENDIX

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Robert Austin Vinyard, Esq.,  
S. Strother Smith, III  
Smith, Robinson & Vinyard  
180 E. Main Street  
Abingdon, Virginia

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INDUSTRIAL COMMISSION OF VIRGINIA  
P.O. BOX 1794  
Richmond, Virginia, 23214

APPLICATION FOR HEARING

File No. \_\_\_\_\_

Employee Douglas B. Meade

Employer Clinchfield Coal Company, Dante, Va.

Date of Accident May 16, 1969. Average Weekly Wage \$180 + -

Place Where Accident Occurred Dickenson County, Va.

Nature of Injury or Occupational Disease Ruptured two disks

Date Disability Began: May 16, 1969.

Date of Return to Work: \_\_\_\_\_, 19\_\_\_, and wage then earned \$

The applicant requests a hearing before the Industrial  
Commission of Virginia on the grounds of:

- (1) Accidental Injury.....( )
- (2) Occupational Disease.....( )
- (3) Death on \_\_\_\_\_, 19\_\_\_, due to Accidental Injury.....( )
- Occupational Disease.....( )
- (4) Change in Condition..... (x)

If application is based on a change in condition, state  
nature of change: Original hurt on May 16, 1969. He came  
back in December 1969, could not work, he then went off  
from work again. He came back to work in June 1971. After  
working just a few days he again got down in his back.

Compensation was last paid at the rate of \$51.00 per week  
through the 1st day of June, 1971.

Signature of Applicant: (Sgd) Douglas B. Meade

Address: Rt. 4, Box 25

Signed this 24th day of October, 1972.

\_\_\_\_\_  
Norton, Va. 24273  
Counsel for Claimant

MEADE, DOUGLAS BOBBY JOE

ADMITTED: August 17, 1969

PROVISIONAL DIAGNOSIS: Ruptured disc.

HISTORY: Injury about a year ago with back and right hip pain. Re-injury in April, 1969, with recurrence of pain in the hip and back, unable to work since that time. Sudden severe exacerbation of pain about a week prior to admission.

Neurologic findings; marked restriction of straight leg raising on the left, some diminution in dorsiflexion of the left great toe, some sensory change in the L 5 distribution on the lateral aspect of the left leg.

LABORATORY DATA: Lumbar myelogram showed large filling defect between L 4 and 5 and a filling defect at L 3, 4, which may be the site of the needle insertion. VDRL was nonreactive, Rose test negative. Sedimentation rate 8 millimeters in an hour, hemoglobin 16.4 grams, 47 per cent microhematocrit. White blood count 9,990, 46 segmented forms, 37 lymphocytes, 8 monocytes, 8 eosinophils. Urinalysis was negative. Cerebrospinal fluid, no cells, total protein 55 milligrams per cent.

TREATMENT: Lumbar hemilaminectomy on August 28, 1969, with removal of massive extruded disc at L 4, 5 and lateral disc protrusion at L 3, 4.

HOSPITAL COURSE: Benign, with good relief of pain and full ambulation by time of discharge.

DISCHARGE: September 5, 1969, on Darvon Compound, to be followed up with office re-check in one month.

FINAL DIAGNOSIS:

1. Extruded disc, L 4, 5; lateral disc protrusion, L 3, 4, left.

D: 9-16-69  
 T: 9-16-69  
 jdc  
 cc: Drs. Shobe, Strang and Masloy  
 9/22/69

DISCHARGE SUMMARY F. B. O'Connell, M. D.

3-10-70 Sec  
 3-13-70 Va

NAME MEADE, DOUGLAS BOBBY JOE  
HOSP. NO.  
ROOM  
DATE ADMITTED: May 3, 1970

PROVISIONAL DIAGNOSIS: Possible recurrent disc protrusion.

HISTORY: Lumbar hemilaminectomy, August, 1969, for large extruded disc, L 5, and lateral disc protrusion, L 3, 4. Good response to surgery, returned to work in December, 1969. Injury on December 27, when the patient crawled a long distance out of the mines due to a power shutoff, with recurrence of left flank and left leg pain subsequently. Rather poor response to conservative measures.

NEUROLOGICAL FINDINGS: Slight list to the right, marked restriction of back motion. Some restriction of straight leg raising bilaterally with focal pain in the left hip area, questionable slight weakness dorsiflexion of the left foot.

LABORATORY DATA: Lumbar myelogram demonstrates defect, left L 4, 5 level, which is consistent with a herniated disc in this area. SMA 12 survey showed slight elevation of the glucose. Repeat fasting blood sugar was normal at 90. Urinalysis was negative. White blood count was 7.200, 47 segmented forms, 2 bands, 39 lymphocytes, 2 monocytes, 10 eosinophils. Red blood cells 5.3 million, hemoglobin 16 grams, hematocrit 46 per cent. Cerebrospinal fluid, no cells, 52 milligrams per cent.

HOSPITAL COURSE: Benign. The patient is not certain he wants to give in to another operation. He will be continued on conservative measures, including wearing of a back brace at all times.

DISCHARGED: May 6, 1970

FINAL DIAGNOSIS: Recurrent disc protrusion, left L 4, 5.

-3-

D: 5-21-70  
T: 5-22-70  
jdc

TYPE REPORT	DISCHARGE SUMMARY	SIGNED F. B. O'Connell, Jr., M. D.
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NAME MEADE, DOUGLAS BOBLY JOE  
 HCSP. NO.  
 ROOM  
 DATE

DATE OF ADMISSION: June 20, 1970.

PROVISIONAL DIAGNOSIS: Intervertebral disc protrusion.

HISTORY: The patient had been in the hospital one month earlier for evaluation of back and leg pain. Myelogram showed a defect at the left L-4-5 level which was consistent with disc protrusion. The patient did not desire surgery at that time and wanted to continue conservative measures. He did not improve and has been readmitted for surgery.

NEUROLOGICAL FINDINGS: List of the back to the right, virtually no flexion or extension. Limited lateral bending, better to the right than to the left. Straight leg raising restricted to eighty degrees on the left, about eighty-five degrees on the right with cross reference pain to the left. Slight weakness, dorsiflexion of the left foot. L-5 dermatome loss on the left foot.

LABORATORY DATA: Postoperative upper gastrointestinal studies June 26, 1970 negative. Urinalysis was negative. VDRL was nonreactive and hemoglobin 15.5 grams. Hematocrit 45 percent.

TREATMENT: Lumbar hemilaminectomy Left L-4-5 with removal of recurrent extruded disc fragment June 22, 1970.

HOSPITAL COURSE: Some difficulty postoperatively from epigastric burning and vomiting. Abdominal cramping which responded to an ulcer type program. No pathology on x-ray. Progress steady and satisfactory subsequently.

HOSPITAL DISCHARGE: June 29, 1970 on rehabilitation exercises, continuation of medications for stomach.

FINAL DIAGNOSIS:

1. Recurrent intervertebral disc protrusion, Left L-4-5.

D: 7-23-70.

T: 7-23-70.

lsm

TYPE REPORT	DISCHARGE SUMMARY	SIGNED F. B. O'Connell, Jr. M. D.
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MEAD, DOUGLAS BOBBY JOE

DATE OF ADMISSION: 8-23-71

PROVISIONAL DIAGNOSIS: Recurrent disc protrusion

HISTORY: Continued left leg pain and numbness in spite of conservative measures including rehospitalization at IVCH in the spring of 1971. Re-admitted for the purpose of myelogram to rule out a recurrent disc protrusion.

TREATMENT: Lumbar myelogram 8-24-71, shows a lateral defect at left L-4-5 level of minimal degree which could be either recurrent disc protrusion or scarring from the previous surgery.

LABORATORY DATA: SMA-12 survey within normal limits except for slight elevation of the inorganic phosphorous at 4.9, cerebrospinal fluid no cells, 45 milligrams percent total protein. White blood cells 8,000, 36 segmented forms, 45 lymphocytes, 13 eosinophils, red blood cell 5.21 million, hemoglobin 15.9 gram, hematocrit 45.4%. Urinalysis negative. VDRL nonreactive.

HOSPITAL COURSE: Benign.

Discharged 8-28-71 on continued conservative measures. The patient is not willing to consider an exploration with questionable relief at this time because the defect is not of the degree that complete relief of his pain can be promised by further surgery. Further conservatism will be carried out. The prognosis for return to work is uncertain.

FINAL DIAGNOSIS: Possible recurrent disc protrusion with known degenerative disc disease.

D: 9-15-71

T: 9-15-71

gjq

DISCHARGE SUMMARY

F. B. O'CONNELL, M. D.

FRANK B. O'CONNELL, JR. M. D.  
JAMES B. NICHOLS, JR., M. D.  
120 WEST RAVINE ROAD  
KINGSPORT, TENNESSEE 37660

NEUROLOGICAL SURGERY

TELEPHONE 246-8081

DECEMBER 3, 1971

Mr. William Thompson  
Clinchfield Coal Company  
Dante, Virginia

Re: Douglas Bobby MEADE  
Box 25 - Route #4  
Coeburn, Virginia

Dear Mr. Thompson:

Mr. Meade was rechecked in the office on December 3, 1971.

He shows considerable improvement since the previous examination.

On questioning him about the mechanism of his injury, since you had asked me this and I was not certain about it, he states he was reinjured on the job while lifting barrels in early July of 1971 and had reported this injury. His date of work stoppage was July 13, 1971.

On neurological examination he shows a good erect back, with no back muscle spasm. He is able to flex about fifty degrees; extension is nil and lateral bending is quite limited. Straight leg raising is essentially negative; the reflex activity is good. His right calf measures 1 cm. less than the left and there is minimal sensory change present.

At this time Mr. Meade is showing considerable improvement and I believe that, if the present rate of progress is maintained, we can anticipate his ability to do light work within a few months. I do not feel this man should go back to heavy lifting or any bending.

Let me know if you need additional information.

Sincerely yours,

F. B. O'Connell, Jr. M. D.

FED/jc

FRANK B. O'CONNELL, JR. M.D.  
JAMES B. NICHOLS, JR. M.D.  
120 WEST RAVINE ROAD  
KINGSPORT, TENNESSEE 37660

NEUROLOGICAL SURGERY

TELEPHONE 245-8061

APRIL 7, 1972

Mr. William Thompson  
Clinchfield Coal Company  
Dante, Virginia 24237

RE: DOUGLAS BOBBY JOE MEADE  
Box 25, Route #4  
Coeburn, Virginia 24230

Dear Mr. Thompson:

Since my last letter to you of December 3, 1971, Mr. Meade was rechecked in the office on January 7, appeared to be doing better, and it was hopeful that he might be able to return to a light-work status if such would ever be available for him; however, by the visit of February 7, he was much worse again, beginning to have considerable more pain in his left lower extremity and restriction of back motion. I felt that further surgery might be necessary.

As you know, a repeat myelogram of August, 1971, showed a lateral defect suggestive of some recurrent disc disease.

On recheck, April 8, 1972, he continues to be worse. It would appear to me that further surgery is most likely to be necessary to get this man out of his current pain problem. He has not yet been scheduled for hospitalization, but this may be necessary within the near future.

Sincerely yours,

Frank B. O'Connell, Jr., M.D.

FBC/sg

FRANK B. O'CONNELL, JR., M. D.  
JAMES B. NICHOLS, JR., M. D.  
120 WEST RAVINE ROAD  
KINGSPOET, TENNESSEE 37650

LEGAL SURGERY

TELEPHONE 24-8081

September 25, 1972

C  
Mr. Billy D. Thompson  
Clinchfield Coal Company  
Dante, Virginia 24237

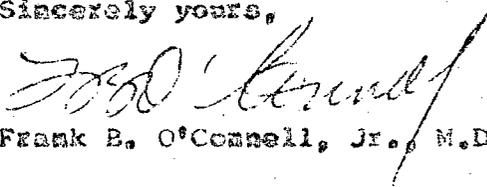
RE: Douglas Bobby Joe Meade  
SS #231-52-3783

Dear Mr. Thompson:

O  
Mr. Meade was rechecked in the office on September 22, 1972, and is unimproved. His mother died on September 2, 1972 from her degenerative nervous system disease. He is now ready to be rescheduled for further disc surgery and spinal fusion.

He is currently scheduled for admission on December 9, 1972, the first open date for non-emergency surgical admission at our hospital.

P  
Sincerely yours,

  
Frank B. O'Connell, Jr., M.D.

FBO/dg

Y  
cc: Dr. Joseph K. Maloy  
120 West Ravine Road  
Kingsport, Tennessee 37660

Department of Vocational Rehabilitation  
Disability Determination Section  
P.O. Box 1300  
Richmond, Virginia 23210

1 VIRGINIA  
2 IN THE INDUSTRIAL COMMISSION

3 DOUGLAS B. MEADE, Claimant

4 v. Claim No. 49-057

Opinion by JOYNER,  
COMMISSIONER

5 CLINCHFIELD COAL COMPANY, Employer  
6 SELF INSURED

SEP 26 1973

7 W.H. Robinson, Attorney at Law  
8 P.O. Box 311, Norton, Virginia 24273  
9 for the Claimant.

10 J. Thomas Fowlkes, Attorney at Law,  
11 208 East Main Street, Abingdon,  
12 Virginia 24210, for the Employer.

13 REVIEW before the full Commission at Richmond, Virginia,  
14 on September 11, 1973.

15 This claim is before the full Commission, pursuant to  
16 §65.1-96, for determination of the question of whether or  
17 not the payment of medical benefits tolls the one year  
18 statute of limitations for applications for hearing provided  
19 for in §65.1-99.

20 The claimant was injured on May 16, 1969, while  
21 employed at an average weekly wage of \$150.00. Disability  
22 began on the day of injury and continued until December 2,  
23 1969, when the claimant returned to work. The claimant  
24 again became disabled on January 4, 1970 and was disabled  
25 until June 14, 1971, when he again returned to his regular  
26 employment. Compensation was last paid for June 13, 1971.

27 The two periods of disability were the result of the

1 injury of May 16, 1969, and compensation for both periods  
2 was paid pursuant to awards of the Industrial Commission  
3 which were entered upon agreed statements of fact volunta-  
4 rily entered into by the parties.

5 The claimant, then, on October 26, 1972, filed an  
6 application for hearing with the Industrial Commission on  
7 the ground of change in condition.

8 The sole question presented for determination is  
9 whether or not the payment of medical expenses is considered  
10 the payment of compensation so as to toll the statute of  
11 limitations for the filing of any application for hearing.

12 We have held consistently, and hereby reaffirm and  
13 hold, that the payment of medical expenses is not the  
14 payment of compensation which would toll the running of the  
15 statute of limitations. Byrd v. Manchester Board & Paper  
16 Co., Inc. 43 O.I.C. 13; Higgins v. Howard P. Foley Co.,  
17 44 O.I.C. 122; Blevins v. Brunswick Corp. 50 O.I.C. 35.  
18 See, also, Larson on Workmen's Compensation §78.43(b).

19 In the Byrd case, supra, the Commission treated  
20 Marshall v. Pletz, 317 U.S. 383, 63 S. Ct. 284, as con-  
21 trolling. In that case the U.S. Supreme Court held that  
22 the furnishing of medical aid was not the payment of  
23 compensation as contemplated by the Workmen's Compensation  
24 Act, and we so hold in this case. The claimant's application  
25 herein is hereby denied and dismissed.

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We also note, parenthetically, that §65.1-88 was amended by the 1973 Session of the General Assembly to the effect that lifetime medical benefits are now payable in all claims for workmen's compensation under the Virginia Act. If the claimant's position were sustained, with these lifetime benefits the effect would be that the statute of limitations on claims for compensation for total or partial disability would not expire during the claimant's lifetime nor until one year after his death.

VIRGINIA

1 IN THE INDUSTRIAL COMMISSION OF VIRGINIA

2 DOUGLAS B. MEADE, Claimant

3 v. CLAIM NO. 49-057

4 CLINCHFIELD COAL COMPANY, Employer

5 NOTICE OF APPEAL

6 TO: The Clerk of the Industrial Commission  
7 P.O. Box 1794  
8 Richmond, VA 23214

9 Mr. J. Thomas Fowlkes, Attorney at Law  
10 208 East Main Street, P.O. Box 759  
11 Abingdon, VA 24210

12 Take notice that the claimant in the above-styled  
13 case intends to appeal the Decision rendered by the Full  
14 Industrial Commission on September 26, 1973, to the Supreme  
15 Court of Virginia.

16 ASSIGNMENT OF ERROR

17 The claimant would assign as error the following:

18 1) That the Industrial Commission's Decision  
19 relating to whether or not the payment of medical expenses  
20 is considered the payment of compensation so as to toll the  
21 statute of limitations for the filing of any application for  
22 hearing was erroneous as a matter of law.

23 Respectfully submitted,

24 DOUGLAS B. MEADE, Claimant  
25 By Counsel

26 SMITH, ROBINSON & VINYARD  
27 Attorneys at Law  
28 100 East Main Street  
29 Abingdon, Virginia 24210

30 By (sgd) William Hobart Robinson  
31 For the Firm

1 CERTIFICATE OF SERVICE

2 This is to certify that on the 4th day of October,  
3 1973, I mailed a true copy of the foregoing to the Clerk  
4 of the Industrial Commission of Virginia, Mrs Helen Cooper,  
5 P.O. Box 1794, Richmond, Virginia 23214, and to Mr. J.  
6 Thomas Fowlkes, Attorney for the Defendant, 208 East Main  
7 Street, Abingdon, Virginia, 24210

8 (Sgd) William Hobart Robinson

9 William Hobart Robinson

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IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

DOUGLAS B. MEADE,  
Petitioner

vs.

CLINCHFIELD COAL COMPANY,  
Respondent

STIPULATION OF FACTS

The parties, by counsel, stipulate that the petitioner, Douglas B. Meade, was paid medical benefits by the respondent, Clinchfield Coal Company, pursuant to Va. Code Ann. § 65.188 within the one year period preceding the date on which he filed an Application for Hearing with the Industrial Commission pursuant to Va. Code Ann. § 65.1-99.

(Sgd) Strother Smith  
S. STROTHER SMITH, III

(Sgd) J. Thomas Fowlkes  
J. THOMAS FOWLKES  
Counsel for Respondent

1 SUPREME COURT OF VIRGINIA

2 Douglas B. Meade, Appellant,  
3 against Record No. 730922  
4 Clinchfield Coal Company, Appellee  
5  
6

7 From the Industrial Commission of Virginia

8 CERTIFICATE

9 Pursuant to Rule 5:30 of the Rules of the Supreme Court  
10 of Virginia, I, Howard G. Turner, Clerk of the said Court,  
11 do hereby certify that an appeal was awarded on January  
12 23, 1974, from an award entered by the court below on  
13 September 26, 1973, in the suit therein depending under the  
14 short style of Douglas B. Meade v. Clinchfield Coal Company.

15 Appeal bond is required in the penalty of \$300 in  
16 conformity with Code, §8-477, and within the time allowed by  
17 Code, §8-489.

18 This certificate, constituting the summons on appeal,  
19 was this day mailed to the court below and to Robert Austin  
20 Vinyard, 180 East Main Street, Abingdon, Virginia, 24210  
21 S. Strother Smith, III, 180 East Main Street, Abingdon,  
22 Virginia, 24210, Counsel for Appellant  
23 J. Thomas Fowlkes, 208 East Main Street, P.O. Box 759,  
24 Abingdon, Virginia, 24210  
25 Counsel for Appellee

Given under my hand this 24th day of January, 1974.

-16- (Sgd) H.G. Turner Clerk