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SUPREME COURT OF VIRGINIA
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In The

Supreme Court of Virginia

at Richmond

No. 74-0337

PHILANDER T. LUCAS,

Appellant,

-against-

RESEARCH ANALYSIS CORPORATION, Employer,
TRAVELERS INSURANCE COMPANY, Insurer,

Appellees.

From the Industrial Commission.

APPENDIX

WILLIAM M. KABLER
Attorney for Appellant
103 South Saint Asaph Street
Alexandria, Virginia 22314

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APPLICATION TO INDUSTRIAL COMMISSION FOR A HEARING ON A NON-FATAL CASE, FILED MARCH 13, 1967

Case of:

Philander T. Lucas, (Employee)

v.

Research Analysis Corp. (Employer)

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:

1. That on the 24 day of April, 1966, I was injured by accident arising out of and in the course of my employment while in the employ of Research Analysis Corp; that as a result of my accident I was compelled to quit work on the 24 day of October; that my employer had knowledge of my accident within 30 days from date thereof; that my was notified average weekly wages prior to the accident were $440.00 per mo.

Application to Industrial Commission for a Hearing on a Non-Fatal Case, Filed March 13, 1967

2. That the nature of my injury is as follows: I was turning up clocks for day light savings time and struck my right knee on door handle of base cabinet.

3. Place where accident happened: McLean, Va.

* * *

5. That I have been paid compensation in the sum of $ none.

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

I have a permanent injury to right knee and will have surgery on 4/4/67.

7. That I am unable to reach an agreement as to compensation with my employer for the following reasons: I have not been offered compensation. The Insurance Adjuster, Mr. Palprey, suggested I take the matter up with Industrial Commission.

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

Application to Industrial Commission for a Hearing on a Non-Fatal Case, Filed March 13, 1967

Dr. N.D. Kravetz, LCDR Address U.S. Naval Hospital,

Bethesda, Md.

s/ Philander T. Lucas
Employee.

Address: 10504 Parkwood Drive
Kensington, Md.

Filed: March 13, 1967

OPINION BY RUSHBROOKE, DEPUTY COMMISSIONER, AWARDING COMPENSATION, DATED DECEMBER 18, 1969

PHILANDER T. LUCAS, Claimant

v. Claim No. 902-972

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

William E. O'Neill, Jr., Esq.
925 - 15th Street, NW
Washington, D. C. 20005
for the Claimant.

Fred C. Alexander, Jr., Esq.
P. O. Box 1101
Alexandria, Virginia
for the Defendants.

Hearing before Deputy Commissioner RUSHBROOKE at Alexandria, Virginia, on September 12, 1969.

By application filed March 13, 1967, Philander T. Lucas made claim for compensation against Research Analysis Corporation, alleging incapacity for work and permanent injury to his right leg as a result of a right knee injury sustained by accident arising out of and in the course of his employment on April 24, 1966.

A hearing was held on this application on June 12, 1967 and on July 10, 1967 a written opinion was rendered denying compensation on account of the claimant's failure to give notice of the accident to his employer

Opinion by Rushbrooke, Deputy Commissioner, Awarding Compensation, Dated December 18, 1969

within thirty days after its occurrence as required by § 65-82 (now § 65.1-85), Code of Virginia.

Upon review, the Full Commission adopted the opinion and award of the Hearing Commissioner and affirmed his denial of the claim. Thereafter, Lucas successfully perfected an appeal before The Supreme Court of Appeals and on March 10, 1969, the Supreme Court of Appeals reversed and set aside the award of the Commission and remanded the case to us "for further proceedings and findings in conformity with the view expressed in the said written opinion of this Court." That opinion, also dated March 10, 1969, noted that the opinions of the Industrial Commission made no specific finding as to whether the evidence showed to the satisfaction of the Commission that the claimant had made a reasonable excuse for not giving notice within the time prescribed by statute nor was there a finding as to whether the Commission was satisfied that the employer had not been prejudiced by the claimant's failure to give timely notice. The Court directed the Commission to make these specific findings after a consideration of the evidence

heretofore heard and such other relevant evidence "as may be heard."

Following the mandate of The Supreme Court of Appeals, this case was again set down for hearing at Alexandria on September 12, 1969 when additional evidence was taken and the case is now before me for determination.

After considering all of the evidence heretofore presented and that obtained at the hearing on September 12, 1969, it is felt that the statement of The Supreme Court of Appeals setting forth claimant's original testimony fairly states the facts with regard to the occurrence of the accident and causal connection between the accident and the resultant torn cartilage of the right knee. The facts are these:

> "The claimant * * * on April 24, 1966, in the course of his employment while adjusting a wall clock above a cabinet, he struck his right knee on a protrusion. While he suffered immediate pain, he 'thought nothing of it' and sat down for ten or fifteen minutes to recuperate. The pain then subsided and he continued with his work. In May or June he noticed 'a little swelling in the right knee', and in July called this to the attention of a dermatologist who was treating him at the out-patient clinic at the United States

Opinion by Rushbrooke, Deputy Commissioner, Awarding Compensation, Dated December 18, 1969

> Naval Hospital at Bethesda, Maryland. At first the dermatologist thought that the condition might be associated with psoriasis, for which he was then treating Lucas, but when the condition persisted into October he referred the patient to an orthopedic surgeon at the same hospital. On October 24 the orthopedic surgeon diagnosed the claimant's condition as a torn cartilage which had resulted from his accident on April 24, and so advised Lucas. This was, Lucas said, the first time that he was 'able to relate the injury to the accident.'
>
> "On November 11, 1966 the claimant wrote his employer a letter giving notice of the accident and injury which, he said, had occurred on April 24. In this letter he said that he had not given an earlier notice because he at first regarded the injury as trivial, but when the knee 'started to swell and was extremely painful' he went to the Naval Hospital where the trouble was properly diagnosed."

In its opinion of March 10, 1969, The Supreme Court of Appeals quotes extensively from and relies primarily upon the case of Maryland Casualty Co. v. Robinson, 149 Va. 307, 141 S.E. 225, as the basis for its reversal of the Commission's award. The Court quotes with favor this language from the Robinson case:

> "'* * * The requirement of notice necessarily implies knowledge of the injury for which claim is made. In

> this case it was not only impracticable but impossible to give the notice before the claimant first learned of the hernia through the external manifestation. * * *
>
> "'While the burden of showing a reasonable excuse for such delay in giving notice is upon the claimant, after this is shown to the satisfaction of the Commission, then the burden is upon the employer to show that he has been prejudiced by the delay. * * *'"

After its references to the Robinson case, the Court of Appeals in its opinion of March 10, 1969 had this to say:

> "The circumstances in the present case are quite similar to those in Robinson. Here, as there, the claimant employee first regarded the accident as trivial, but later learned through medical diagnosis that he had suffered therefrom a serious injury and then gave the required notice to his employer. In the Robinson case notice delayed until the employer had knowledge of the injury was held to be excusable.
>
> "In the present case the Commission should make a specific determination, in the light of the Robinson case, whether it was satisfied that the claimant had a reasonable excuse for the delay in giving the required notice. It should make a further specific finding on whether it was satisfied that the employer had not been prejudiced by such delay. These specific findings should be made after a consideration of the

> evidence which has heretofore been heard and such other relevant evidence as may be heard.
>
> "If the Commission should determine that a reasonable excuse was made to its satisfaction for the delay in giving the notice, and that the employer was not prejudiced thereby, it should make a proper award of compensation to the claimant. If, on the other hand, it should determine these issues adversely to the claimant, the award for compensation should be denied."

Following the directions of The Supreme Court of Appeals and considering the evidence heretofore presented and that presented on September 12, 1969 in conformity with the views expressed in the opinion of the Court of Appeals, I must find that Lucas has made reasonable excuse to my satisfaction for his delay in giving to the employer notice of the accident of April 24, 1966. I am further satisfied that the employer has failed to offer satisfactory proof that it was prejudiced by the delayed notice.

Having found that Lucas has made reasonable excuse for his delay in giving notice of the accident and that the employer was not prejudiced thereby, I am required to make "a proper award of compensation to the claimant."

Opinion by Rushbrooke, Deputy Commissioner, Awarding Compensation, Dated December 18, 1969

At the time of the accident on April 24, 1966, Lucas was earning an average weekly wage of $101.50 and it is so found. It is further found that Lucas was totally incapacitated for work by reason of the accidental injury of April 24, 1966, from October 24, 1966 through July 9, 1967. The attending orthopedic surgeon reported that Lucas was able to return to his former duties as a night watchman on July 10, 1967 and although Lucas maintains that the employer's physician would not permit his return on that date, we have no evidence from this physician to the effect that the employer's refusal to employ Lucas on July 10, 1967 was because of the knee injury. Accordingly, we find that compensable work incapacity ended as of July 9, 1967.

The medical evidence further establishes, and we find, that Lucas has sustained 15% permanent loss of use of the right leg as a result of the accidental injury of April 24, 1966 and it is agreed that such loss of use was permanent as of November 25, 1967, the date on which Lucas actually returned to work.

Opinion by Rushbrooke, Deputy Commissioner, Awarding Compensation, Dated December 18, 1969

Lucas was, in fact, totally incapacitated for work from a physical standpoint from October 24, 1966 through July 9, 1967. There is, however, some evidence that Lucas was paid full salary during a portion of this time but it is unclear as to what company benefits which he had accumulated in the way of sick leave and vacation leave were charged against him by virtue of these payments. If accumulated sick leave or annual leave was charged to Lucas on account of these salary payments, then such payments were not made in lieu of compensation and the employer would not be entitled to any credit on the award now to be entered for such payments.

A W A R D

An award is hereby entered in behalf of Philander T. Lucas providing for compensation at the rate of $39.00 per week on account of total work incapacity beginning October 24, 1966 and continuing thereafter through July 9, 1967 when the award on account of total work incapacity shall terminate. A further award shall enter in behalf of Philander T. Lucas providing for compensation at the rate of $39.00 per week beginning November 25, 1967 and

Opinion by Rushbrooke, Deputy Commissioner, Awarding Compensation, Dated December 18, 1969

continuing thereafter for 26.25 weeks on account of 15% permanent loss of use of the right leg.

In addition to the compensation awarded, the employer shall pay the reasonable cost of necessary medical attention required by the nature of the injury sustained.

From the award of compensation there shall be deducted the sum of $850.00 to be paid William E. O'Neill, Jr., Attorney, Washington, D.C., for his services in behalf of the claimant.

A13

DEFENDANTS' (APPELLEES') APPLICATION FOR REVIEW, DATED DECEMBER 29, 1969

BOOTHE, DUDLEY, KOONTZ, BLANKINGSHIP AND STUMP

ATTORNEYS AND COUNSELLORS AT LAW

POST OFFICE BOX 1101

711 PRINCESS STREET

ALEXANDRIA, VIRGINIA 22313

KIng 9-5900

GARDNER L. BOOTHE (1872-1964)
ARNISTEAD L. BOOTHE
E. WALLER DUDLEY
WILLIAM W. KOONTZ
A. HUGO BLANKINGSHIP, JR.
JOHN S. STUMP
FRED C. ALEXANDER, JR.
PHILIP TIERNEY
J. JAY CORSON, IV

JAMES HOWE BROWN, JR.
CHARLES S. PERRY
MUNFORD R. YATES, JR.
RONALD K. INGOE
WYATT B. DURRETTE, JR.

FAIRFAX OFFICE
POST OFFICE BOX 189
4011 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

December 29th, 1969

FILE NO. 04034-5

Docket for Review
Date of last payment
Paid in full as of
Application filed 12-31-69
Referred to docket 1-5-70
By

Industrial Commission of Virginia
Department of Workmen's Compensation
P. O. Box 1794
Richmond, Virginia 23214

Re: Claim No. 902-972
Philander T. Lucas vs.
Research Analysis Corporation

Gentlemen:

Defendants, by counsel, hereby note their appeal and request for review of the Opinion by Deputy Commissioner Rushbrooke in the above claim rendered December 18, 1969, and request that counsel be furnished with a transcript of the hearing of September 12, 1969.

Thank you for your cooperation and processing of this request.

Very truly yours,

Fred C. Alexander, Jr.

Fred C. Alexander, Jr.

FCAjr/nf

cc: William E. O'Neill, Jr., Esquire
Travelers Insurance Company (B-1722745)

OPINION ON REVIEW, BY COMMISSIONER EVANS, DATED MARCH 13, 1970

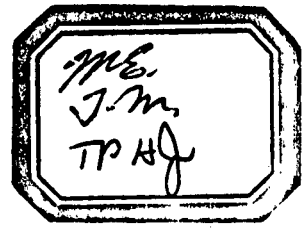
PHILANDER T. LUCAS, Claimant

v.

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

Claim No. 902-972

MAR 13 1970



William E. O'Neill, Jr., Attorney at Law, 925 - 15th Street, N. W. Washington, D. C. 20005, for the Claimant.

Fred C. Alexander, Jr., Attorney at Law, P. O. Box 1101, Alexandria, Virginia, for the Defendants.

Review before the full Commission at Richmond, Virginia, on March 3, 1970.

Opinion by EVANS, Commissioner.

The full Commission on review affirms the Findings of Fact and Conclusions of Law reached by the hearing Commissioner in the decision and award dated December 18, 1969, and adopt that opinion and award as that of the full Commission. Accordingly, that decision and award is

Affirmed.

The attorney fee awarded William E. O'Neill, Jr. Attorney at Law, Washington, D. C. is increased to $950.00 to cover additional legal service rendered on review.

TRAVELERS INSURANCE COMPANY'S LETTER DATED MARCH 31, 1970, SHOWING PAYMENT OF COMPENSATION AND INDUSTRIAL COMMISSION'S TERMINATION OF AWARD EFFECTIVE MAY 27, 1968

March 31, 1970

Boothe, Dudley, Koonts, Blankenship and Stump
P.O. Box 1101
Alexandria, Virginia

File: B-1722745
Research Analysis Corp.
Re: Philander T. Lucas
D/A:n 4-24-66
I.C. file: 902-972

Dear Mr. Alexander:

Attached is a copy of our insured's letter of March 30, 1970, relative to sick and annual leave taken by Mr. Lucas as a result of his accident of April 24, 1966. It appears, therefore, as if no credit is to be allowed, and that Mr. Lucas is due compensation from 10-24-66 to 7-9-69 inclusive, a period of thirty-seven (37) weeks for temporary total disability. At the compensation rate of $39.00 weekly, this amounts to $1,443.00. Mr. Lucas is also due compensation for 26.25 weeks for permanent partial disability benefits starting 11-25-67 for a total of $1,023.75. The total amount due is, therefore, $2,466.75, with Mr. Lucas due $1,516.75 and Attorney O'Neill due $950.00. Please advise if you agree with the figures as outlined.

The award also makes reference to the medical expenses. At this time, I have no bills whatever in my file. By carbon copy, I am asking Mr. O'Neill to forward same.

Very truly yours,

Enc.
PLG:MGP

s/ P. L. Grandy
P. L. GRANDY
Assistant Supervisor

c.c. Attorney William O'Neill
Industrial Commission of Virginia

Travelers Insurance Company's Letter Dated March 31, 1970, Showing Payment of Compensation and Industrial Commission's Termination of Award Effective May 27, 1968

APPROVED - AWARD TERMINATED

EFFECTIVE May 27, 1968

INDUSTRIAL COMMISSION OF VIRGINIA

BY PWG 4-15-70

LETTER ADDRESSED TO THE INDUSTRIAL COMMISSION BY THE CLAIMANT, PHILANDER LUCAS, DATED FEBRUARY 22, 1971

February 22, 1971

Industrial Commission of Virginia
P. O. Box 1794
Richmond, Virginia 23214

Ref: Claim No. 902-972
Accident: 4/24/66
Philander T. Lucas

Dear Sirs:

My knee has been giving me more trouble during the past year and I am sure my disability has increased. I would like to make application for your further consideration of the extent of my disability. I will have my doctor send you a report stating my present condition.

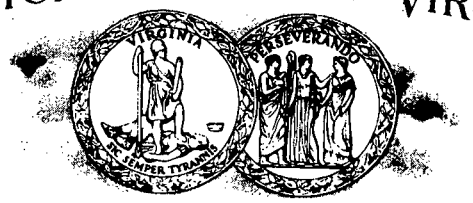
Very truly yours,

Philander T. Lucas
10504 Parkwood Drive
Kensington, Maryland 20795

cc: Mr. William O'Neill, Jr., Esq.
4660 Kenmore Avenue
Alexandria, Virginia 22304

REPLY LETTER OF THE INDUSTRIAL COMMISSION ADDRESSED TO THE CLAIMANT SIGNED BY GLADYS M. ALEXANDER, CLAIMS ASSISTANT DATED MARCH 9,1971

COMMONWEALTH OF VIRGINIA



. E. EVANS, COMMISSIONER
HOMAS M. MILLER, COMMISSIONER
HOMAS P. HARWOOD, JR., COMMISSIONER
. M. SCOTT, CLERK

DIVISION OF CLAIMS
C. G. JAMES, EXAMINER

DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. BOX 1794
RICHMOND, VIRGINIA 23214

March 9, 1971

File No. 902-972 - Philander T. Lucas vs. Research Analysis Corporation
Accident: 4/24/66 (B 17722745)

Mr. Philander T. Lucas
10504 Parkwood Drive
Kensington, Maryland 20795

Dear Sir:

We have your letter of February 22, 1971 advising that you would like to make application for further consideration as to the extent of your disability. The Virginia Workmen's Compensation Act provides that claim for additional benefits may be made to the Commission providing such claim is made within one year from the date for which compensation was last paid. Our file indicates you were awarded and paid compensation to May 26, 1968. In view of this, the making of a further claim at this time is barred by the Statute of Limitations. We regret we are unable to give this matter any further consideration.

Very truly yours,

INDUSTRIAL COMMISSION OF VIRGINIA

Gladys M. Alexander
Claims Assistant

GMA:bc

cc: Mr. William O'Neill, Jr., Attorney
4060 Kenmore Avenue
Alexandria, Virginia 22304

TRANSCRIPT OF HEARING BEFORE DEPUTY INDUSTRIAL COMMISSIONER WILHOIT, AT FAIRFAX, VIRGINIA, DECEMBER 12, 1973

PHILANDER T. LUCAS, Claimant

v. Claim No. 902-972

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

Joseph A. Uzabel, Attorney at Law,
6049 Leesburg Pike,
Bailey's Crossroads, Virginia 22041,
for the Claimant.

Brian H. Rhatigan, Attorney at Law,
4057 Chain Bridge Road,
Fairfax, Virginia 22030,
for the Defendant.

Hearing before Deputy Commissioner WILHOIT at Fairfax, Virginia, on December 12, 1973.

DEPUTY COMMISSIONER WILHOIT:

This case is on the claimant's application, filed September 10, 1973, alleging a change in condition as a result of the injury sustained April 24, 1966.

Now we've had some little discussion, Mr. Uzabel. I told you, in my opinion, the statute of limitation has run on the claim and, therefore, we have no jurisdiction in the matter.

Now would you like to state briefly your thinking on this case?

MR. UZABEL:

Yes, sir.

My position is this: The claimant in this matter Mr. Lucas, was injured first on April 24th of 1966. A claim was filed some time subsequent to that and there was a hearing on that claim, which was-- and the results of that hearing was that the claim was denied. This was appealed and-- several times the case was appealed and set down for a hearing and re-appealed, and the hearing finally was held, the final hearing which determined an award-- that an award would be granted to Mr. Lucas was finally held at the very late date of March 13th, 1970 and an award was entered in Mr. Lucas' favor at that time and he did receive a check on April the 24th, 1970 covering that period. Now within a year after he received that check and within a year from the time that opinion was handed down Mr. Lucas-- As I said, that opinion was handed down on March 13th 1970. In February of '71 Mr. Lucas approached this Commission by the way of a letter stating that he, his condition had worsened from the time that award was entered. Now it's true that this first notice-- this notice that Mr. Lucas gave to the Commission did not come within one year from the date

he was awarded compensation, which my records would seem to indicate would be July 10, 1967, but, of course, one year from that would be July 10th 1968. Now at that time the matter was under appeal and no award had been made and it is our contention at this time that the one year statute of limitations limiting the time in which the claimant can file a claim based on change in condition cannot start to run at least until an award is in existence, and in this case an award didn't come into existence until March 13th 1970, and, therefore, when he filed his request in February of 1971 he was within the one year statute of limitations.

DEPUTY COMMISSIONER WILHOIT:

Well, Mr. Uzabel, I haven't gone through this file carefully but according to what my secretary has we have the application dated September 10, 1973. You maintain he filed one before that?

MR. UZABEL:

Yes, sir.

DEPUTY COMMISSIONER WILHOIT:

Was that the letter you mentioned in '71?

MR. UZABEL:

Yes, sir. Yes, sir. I have some correspondence

here.

DEPUTY COMMISSIONER WILHOIT:

Well I suppose we have it in the file but I--

MR. UZABEL:

Yes. Let me just give you a--

DEPUTY COMMISSIONER WILHOIT:

I have it, February 7-- Wait a minute this is February 7, '73. That's just a request for a transcript.

MR. UZABEL:

I have.

(OFF THE RECORD)

DEPUTY COMMISSIONER WILHOIT:

The letter he's referring to from Mr. Lucas is February 22nd 1971 and I have it in the file.

MR. UZABEL:

Yes, sir. That's the notice that we claim is within the year.

DEPUTY COMMISSIONER WILHOIT:

All right.

Is there anything you want to say, Mr. Rhatigan?

MR. RHATIGAN:

Two items, Mr. Commissioner. First of all it's our position that under the applicable section of the Virginia

Workmen's Compensation Act the claim is clearly barred by the statute of limitations contained in that section, 65.1-99. The key language in that section is "No such review shall be made after twelve months from the last day for which compensation was paid pursuant to an award." They don't say twelve months after an award. It says twelve months after the last day for which compensation was paid. Secondly, if this particular change of condition did come about or alleged change of condition did come about within that year's time, the claimant certainly had the opportunity, and as a matter of fact, was represented by counsel during this particular time and had the opportunity to re-open the record or at least apply to re-open the record and ask that additional evidence of a worsening or alleged worsening of his condition be introduced. This was not done. He was under the advice of competent counsel at the time, Mr. O'Neill, and this was not done and it would be my contention that under either of those two particular points, the claim should be barred.

Case concluded.

:acm 12/13/73

#9 Statements

OPINION BY WILHOIT, DEPUTY INDUSTRIAL COMMISSIONER,
DATED DECEMBER 18, 1973

VIRGINIA:
IN THE INDUSTRIAL COMMISSION

PHILANDER, T. LUCAS, Claimant

v. Claim No. 902-972

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

Joseph A. Uzabel, Attorney at Law,
6049 Leesburg Pike
Bailey's Crossroads, Virginia 22041
for the Claimant.

Brian H. Rhatigan, Attorney at Law,
4057 Chain Bridge Road,
Fairfax, Virginia 22030,
for the Defendant.

Hearing before Deputy Commissioner WILHOIT at Fairfax, Virginia, on December 12, 1973.

Philander T. Lucas sustained an injury to his right leg by accident April 24, 1966 while employed by Research Analysis Corporation receiving an average weekly wage of $101.50.

This claim was originally denied by this Commission and appealed to the Virginia Court of Appeals where it was remanded for additional evidence.

The case was heard the second time on September 12, 1969 and as a result of that hearing an award was entered

Opinion by Wilhoit, Deputy Industrial Commissioner,
Dated December 18, 1973

December 18, 1969 providing the claimant compensation at the weekly rate of $39.00 for total work incapacity beginning October 24, 1966 through July 9, 1967 and for 15% permanent partial loss of use of the right leg, beginning November 25, 1967 and continuing for a period of 26-1/4 weeks. This award was reviewed by the full Commission and affirmed by the Commission on March 13, 1970.

The award was paid out on May 26, 1968.

The case is now before us upon the claimant's application filed September 10, 1973 alleging a change in condition as defined by § 65.1-8, Code of Virginia.

The party alleging change in condition has the burden of proof. J. A. Foust Coal Co. v. Messer, 195 Va. 762, 80 S.E. (2d) 533.

The claim is defended by the employer and its insurer on the grounds that the application is barred by § 65.1-99, Code of Virginia, in that it was not filed within twelve months from the date for which compensation was last paid.

It is the claimant's position that he wrote a letter

Opinion by Wilhoit, Deputy Industrial Commissioner,
Dated December 18, 1973

to this Commission February 22, 1971 which would suffice as an application for a hearing and said application was filed within twelve months from the March 13, 1970 review opinion of the full Commission affirming the December 18, 1969 award and that the claimant need not do more.

The employer and its insurer avers that this Commission is without jurisdiction to enter an award by virtue of § 65.1-99, Code of Virginia, which reads as follows:

> "Upon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Industrial Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but no such review shall be made after twelve months from the last day for which compensation was paid, pursuant to an award under this Act."

Limitation of time is jurisdictional and the jurisdiction of the Industrial Commission cannot be enlarged

Opinion by Wilhoit, Deputy Industrial Commissioner,
Dated December 18, 1973

by "judicial inclination". Robinson v. Nello L. Teer Co., 45 O.I.C. 209.

Section 65.1-99, Code of Virginia, provides the time in which the injured employee must exercise his right and deprives the Commission of jurisdiction after the expiration of said time. Bristol Door & Lumber Co. v. Hinkle, 157 Va. 474, 161 S.E. 902; Wise Coal Co. v. Roberts, 157 Va. 782, 161 S.E. 911. The exception would be a waiver of the one year time period by agreement of the parties. Binswanger Glass Co. v. Wallace, 214 Va. 70.

Whether or not the claimant has experienced a change in condition as defined by § 65.1-6, Code of Virginia, as a result of the injury sustained April 24, 1966 is of no moment as the application before us was not filed within one year from the date for which compensation was last paid pursuant to an award. Therefore, this Commission is powerless and without jurisdiction to enter a subsequent award. We so hold.

Accordingly, the application must fail and hereby is denied.

The case is ordered removed from the docket.

REVIEW OPINION BY COMMISSIONER MILLER, DATED MARCH 15, 1974

IN THE INDUSTRIAL COMMISSION OF VIRGINIA

PHILANDER LUCAS, Claimant

v. Claim No. 902-972

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

Brian H. Rhatigan
Attorney at Law
4057 Chain Bridge Road
Fairfax, Virginia, 22030
for the Defendant

REVIEW before the Full Commission at Richmond, Virginia, March 5, 1974.

MILLER, Commissioner, rendered the opinion.

This case comes on the application on behalf of the claimant for review to an opinion of December 18, 1973 denying the claimant's application and dismissing the case upon finding that the application on ground of change in condition filed September 10, 1973 was not filed within one year of date for which compensation was last paid (to May 26, 1968).

From the record it is manifest and found that as no application was filed within one year of the date for which compensation was last paid, the Commission is now without power or legal authority to enter subsequent or

Review Opinion by Commissioner Miller, Dated March 15, 1974

further awards for benefits or further entertain this case.

Accordingly, the findings of fact and conclusions of law contained on the opinion below are hereby adopted as those of the full Commission on review and the opinion of December 18, 1973 is

AFFIRMED.

ASSIGNMENTS OF ERROR, FILED BY CLAIMANT'S (APPELLANT'S) COUNSEL MARCH 29, 1974

BEFORE THE INDUSTRIAL COMMISSION OF VIRGINIA

PHILANDER LUCAS,

Claimant

CLAIM NO. 902-972

v.

RESEARCH ANALYSIS CORPORATION, Employer
TRAVELERS INSURANCE COMPANY, Insurer

* * *

Assignments of error are the following:

1. The Industrial Commission erred in finding that as no application was filed within one year of the date for which compensation was last paid, the Commission is without power or legal authority to enter subsequent or further awards.

2. The Industrial Commission erred in its finding that the limitation of time as set forth in Section 65.1-99, Code of Virginia, 1950 as amended, is jurisdictional and deprives the Commission of jurisdiction twelve months after the last day for which compensation was paid.

3. The Industrial Commission erred in not finding

Assignments of Error, Filed by Claimant's (Appellant's) Counsel March 29, 1974

the employer and the insurer estopped to plead the time limitation provision of Code Section 65.1-99.

4. The Industrial Commission erred in literal application of the limitation of time set forth in Code Section 65.1-99 when the date for which compensation was last paid had been fixed retroactively and initially determined to be a time that expired more than twelve months before the date such award was first made.

William M. Kabler
Counsel for claimant
103 South Saint Asaph Street
Alexandria, Virginia 22314

ORDER OF SUPREME COURT OF VIRGINIA, IN RICHMOND, AWARDING APPEAL, DATED JUNE 10, 1974

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 10th *day of* June, 1974.

Philander T. Lucas, Appellant,

against Record No. 740337

Research Analysis Corporation, et al., Appellees.

From the Industrial Commission of Virginia

Upon the petition of Philander T. Lucas, sometimes known as Philander Lucas, an appeal is awarded him from an order entered by the Industrial Commission of Virginia on the 15th day of March, 1974, in a certain proceeding then therein depending, wherein the said petitioner was claimant and Research Analysis Corporation and another were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the secretary of the Industrial Commission of Virginia in the penalty of $300, with condition as the law directs.

A Copy,

Teste:

Clerk