216 Va. 442
CLERK
SUPREME COURT OF VIRGINIA
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AUG 1 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750170

KARVER E. SHAWLEY,

Appellant

v.

SHEA-BALL CONSTRUCTION CO., et al

Appellee

APPENDIX

J. HUNT BRASFIELD
ASHCRAFT, GEREL & KOONZ
Suite 220
4660 Kenmore Ave.
Alexandria, Va.

Counsel for Appellant

TABLE OF CONTENTS [Page 1 of 2]

Name of Paper	Date Filed			Page
Notice of Appeal and Assignments of Error [claimant]	1	29	1975	1, 2
* * * *				* * *
Employer's First Report of Accident	1	19	1973	3
Memorandum of Agreement	3	19	1973	4
AWARD [of Commission]	3	23	1973	5
Application for Hearing [change in condition], defendants	7	11	1974	6
MEDICAL REPORTS [made part of record]:				
[Dr. Herzmark]	3	24	1964	7
[Dr. Breton - Radiologist]	1	18	1973	8
[Dr. Van Herpe]	1	22	1973	9
[Dr. Lapadula]	1	28	1973	10
[Dr. Lapadula - attending physician]	1	28	1973	11
[Dr. Van Herpe - attending physician's report]	1	27	1973	12
[Dr. Van Herpe]	3	12	1973	13
[Dr. Van Herpe]	5	17	1973	14
[Dr. Herzmark]	6	14	1973	15
[Dr. Herzmark]	6	27	1973	16
[Dr. Van Herpe]	6	27	1973	17
[Dr. Herzmark]	7	13	1973	18
[Dr. Herzmark]	7	27	1973	19
[Dr. Van Herpe]	8	29	1973	20
[Dr. Herzmark]	9	17	1973	21
[Dr. Van Herpe]	8	29	1973	22
[Dr. Herzmark]	9	21	1973	23
[Dr. Heviaser]	11	19	1973	24, 25
[Dr. Heviaser]	12	4	1973	26
[Dr. Herzmark]	2	20	1974	27, 28

[CONTINUED]

TABLE OF CONTENTS [Page 2 of 2]

Name of Paper	Date Filed			Page
[Dr. Herzmark]	3	13	1974	29, 30
[Dr. Herzmark]	3	15	1974	31
[Dr. Van Herpe]	3	27	1974	32, 33, 34
[Dr. Lyons]	4	9	1974	35
[Dr. Corley] - Radiologist	4	8	1974	36
[Dr. Lyons]	5	2	1974	37
[Dr. Luthringer]	5	29	1974	38, 39
[Dr. Sawmill]	7	11	1974	40, 41
[Dr. Herzmark]	7	30	1974	42, 43
[Dr. Herzmark]	8	12	1974	44
[Dr. Wein]	8	19	1974	45, 46, 47
[Dr. Herzmark]	8	23	1974	48
[Dr. Wein]	9	4	1974	49
[Dr. Herzmark]	11	8	1974	50
[Dr.				
TESTIMONY [Alexandria]	8	20	1974	51 thru 62
Interrogatories [Dr. Wein - with answers]	10	2	1974	63 thru 66
Opinion [JOYNER]	11	13	1974	67, 68
Application for Review [defendants]	11	21	1974	69
Review Opinion [MILLER]	1	16	1975	70, 71, 72
Postal Receipts	1	17	1975	73
xxxxx	xxxxx			xxxxxx

V I R G I N I A:

IN THE INDUSTRIAL COMMISSION

KARVER SHAWLEY, Claimant	:	
vs.	:	I. C. FILE NO: 305-645
SHEA-BALL, Employer	:	
and	:	
ARGONAUT INSURANCE COMPANY, Insurer	:	

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

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

NOTICE OF APPEAL

Notice is hereby given in compliance with Rule 5:19(b) of the Rules of the Supreme Court of Virginia, that Karver E. Shawley, claimant, by counsel, appeals from a final award of the Industrial Commission of Virginia and announces his intention of applying for a Writ of Error to the Supreme Court of Virginia.

ASSIGNMENTS OF ERROR

(1) The Industrial Commission erred in making the award contrary to the law and evidence and without credible evidence to support the same.

(2) The Industrial Commission erred as a matter of law by stating that "the claim for back and right leg injury" is "barred by the Statute of Limitations".

FFICES
AND GEREL
REET, N. W.
D. C. 20005
3400

201
ON STREET
G. MD. 20910

(3) The Industrial Commission plainly disregarded evidence of a 60% permanent disability rating in this claimant's left ankle which 60% rating was rendered on December 4, 1973 by Thomas J. Neviaser, M.D., who was evaluating this claimant at the request of the insurance company.

(4) The Industrial Commission erred in stating that Dr. Van Herpe was the "attending orthopaedist...who followed throughout" and in according his opinions greater weight than other doctors (specifically one of whom became the sole treating physician and remained such for over a year.)

Dated this 27 day of JANUARY, 1975.

J. Hunt Brasfield
Counsel for Claimant
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed, postage prepaid, this 27 day of January, 1975 to Thomas C. Palmer, Jr., Esquire, Counsel for Employer and Insurer, 9302 Grant Avenue, P. O. Box 534, Manassas, Virginia, 22110.

J. Hunt Brasfield

OFFICES
T AND GEREL
STREET, N. W.
ON, D. C. 20005
9-6400
ITE 201
ERON STREET
ING, MD. 20910
0-1010
ITE 220

THE USE OF THIS FORM IS REQ D UNDER TI PROVISIONS OF T. WORKMEN'S COMPENSATION ACT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

Case of _____
Claim No. _____

EMPLOYER'S FIRST REPORT OF ACCIDENT
(Every question must be answered)

Employer

1. Name of Employer SHEA-BALL
2. Office address: No. and St. 1730 N. Lynn St. City or Town Arlington State Va.
3. Insured by: Name of Company ARGONAUT INSURANCE COMPANY
4. Give nature of business (or article manufactured) Construction

Time and Place

5. (a) Location of plant or place where accident occurred Arlington (City or County) Department Underground State if employer's premises Yes
   (b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill Underground
6. (a) Date of Injury Jan. 18 1973 Day of week Thurs Hour of day A. M. 1:30 P. M.
   (b) Was injured paid in full for day he was injured? Yes
7. Date incapacity began --- 19 A. M. P. M.
8. Was injured paid in full for day incapacity began? ----
9. When did you or foreman first know of injury? January 18, 1973
10. Name of foreman Ray Cann

Injured Person

11. Name of Injured KARVER SHAWLEY (First Name) (Middle Initial) (Last Name) 202-09-8264
12. Address: No. and St. 2715 Ordway City or Town Wash. State D. C.
13. Check (√) Married..., Single X, Widowed..., Widower..., Divorced..; Male X, Female...; White..., Colored...
14. Nationality USA Speak English
15. Age 51 Did you have on file employment certificate or permit? Yes
16. (a) Occupation when injured Carpenter (b) Was this his or her regular occupation? Yes
    (If not state in what department or branch of work regularly employed)
17. (a) How long employed by you? 5 mo. (b) Piece or time worker Time (c) Wages per hour $ 7.00
18. (a) No. hours worked per day 8 (b) Wages per day $ 56.00
    (c) No. days worked per week 5 (d) Average weekly earnings $ 230.00
    (e) If board, lodging, fuel or other advantages were furnished in addition to wages, give estimated value per day, week or month N/A

Cause of Injury

19. Machine, tool or thing causing injury ---- 20. Kind of power, (hand, foot, electrical, steam, etc.)
21. Part of machine on which accident occurred ----
22. (a) Was safety appliance or regulation provided? Yes (b) Was it in use at time? Yes
23. Was accident caused by injured's failure to use or observe safety appliance or regulation? No
24. Describe fully how accident occurred, and state what employee was doing when injured Employee was descending the ladder into a shaft and slipped, injuring his ankle.
25. Name and address of witness

Nature of Injury

26. Nature and location of injury (describe fully exact location of amputation or fractures, right or left) Left ankle
27. Probable length of disability ---- 28. Has injured returned to work? Yes
    If so, date and hour At what wage $ Same
29. At what occupation? Same
30. (a) Name and address of physician
    (b) Name and address of hospital Arlington Hospital

Fatal Cases

31. Has injured died? No If so, give date of death

Date of this report 1/19/73 Firm name
Form No. 3—
Signed by [signature] Official Title Safety Superintendent

003

CLM-234

No. 4 4-21-71—50M

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

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

RICHMOND

305-645

Karver Shawley Employee

Shea Ball Employer

Argonaut Insurance Company Insurance Carrier

MEMORANDUM OF AGREEMENT AS TO PAYMENT OF COMPENSATION

We Karver Shawley (Name of Employee or Dependents) residing at 2715 Ordway Street N. W. (Number and Street)

City or Town Washington, D. C. State

and Shea Ball (Name of Employer)

Office address 1730 N. Lynn Street, Arlington, Virginia (Number and Street) (City or Town) (State)

have reached an agreement in regard to compensation for the injury sustained by said employee and submit the following statement of facts relative thereto:—

Date of injury 1-18-73 **Date disability began** 3-1-73

Nature of injury right hip, left ankle

Place of accident Arlington, Virginia

Cause of accident Claimant descending a ladder, and fell approx. four feet.

Probable length of disability 3- 4 weeks

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

That the said Karver Shawley shall receive compensation at the rate of $ 70.00 per week based upon an average weekly wage of $ 230.00 and that said compensation shall be payable

from and including the 8 day of March month 19 73 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia

Helen K. Windle Witness

Z. C. VA Address (Number and Street)

B. Joanne Meeble Witness

4838 22nd South Arl. VA 22206 Address (Number and Street)

Karver Shawley Employee or Dependent

Karver Shawley

Shea Ball Employe

Argonaut Insurance Company Carri

Crawford & Company

By Corda M. Keys

Corda M. Keys

Title Adjuster

Approved by (Commissioner or Board Member)

Date of Approval

Date of Agreement 3/19/73

Form No. 9 7 1 72 100M

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

P. O. BOX 1794
RICHMOND, VIRGINIA 23214

DIVISION OF CLAIMS

AWARD

Approval of Agreement

pf

Claim No. 305-645 (66 625020 CK)

Case of Karver Shawley
Accident: 1-18-73

Date March 23, 1973

To Shea Ball, (Employer)
1730 North Lynn Street
Arlington, Virginia

and Mr. Karver Shawley, (Employee)
2715 Ordway Street, N.W.
Washington, D.C.

and Argonaut Insurance Company, (Insurance Carrier)
Crawford & Company
P.O.Drawer 506
Merrifield, Virginia 22116

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

Take notice that the Industrial Commission of Virginia has approved the memorandum of agreement entered into March 19, 1973 for the payment of compensation under the Workmen's Compensation Act, and in accordance with the provisions of said Act enters an award of compensation as follows:

$70.00 per week, during incapacity, payable weekly, beginning March 8, 1973.

Medical benefits are awarded for the full statutory period.

INDUSTRIAL COMMISSION OF VIRGINIA

If incapacity (disability) as indicated in [illegible] exceed six (6) weeks, compensation is [illegible] paid for each calendar day of incapacity to work, in accordance with Section [illegible] and Section [illegible] in addition to such [illegible] may be awarded under Section [illegible] of the Commission so advised.

FORM NO. 5 12 1 69 10M

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

APPPLICATION FOR HEARING

File No. 305-645

REVIEWED - PROBABLE CAUSE FOUND
Name 7-11-74 Date

Employee Karver Shawley

Employer Shea Ball

Date of Accident January 18, 19 73 Average Weekly Wage $230.00

Place Where Accident Occurred Arlington, Virginia (City or County), (State)

Nature of Injury or Occupational Disease:

right hip and left ankle

Date Disability Began: 3-1-73, 19

Date of Return to Work: ?, 19, and wage then earned $ 0

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

DOCKET FOR Arlington
DATE OF LAST PAYMENT 7-13-74
APPLICATION FILED 7-11-74
DATE PUT TO DOCKET 7-11-74
BY

(1) Accidental Injury
(2) Occupational Disease
(3) Death on , 19, due to Accidental Injury
Occupational Disease
(4) Change in Condition

If application is based on a change in condition, state nature of change:

Please see medical attached. Claimant has reached maximum improvement and has been rated as having 5% PPD of the left ankle. No medical to support additional loss of time.

Compensation was last paid at the rate of $ 70.00 per week through the 13 day of July, 1974.

Argonaut Insurance Company
By: Crawford & Company
Signature of Applicant: Representative

Address: 2990 Telestar Court
Falls Church, Va. 22042

Signed this 9th day of July, 19 74.

Subpoenas for witnesses will be issued by the Industrial Commission on request or may be obtained at the Clerk's Office of the City or County where the hearing will be held (§65.1-21, Code of Va.). Medical reports are acceptable in lieu of physicians' personal appearances.

Sworn and subscribed to by the above named Applicant, this 9th day of July 1974 at Falls Church, Virginia.

Clarinda F. Weeks Notary

My Commission Expires January 20, 1976

6

MAURICE H. HERZMARK, M.D.
1612 RHODE ISLAND AVENUE, N.W
WASHINGTON 6, D.C.

Date 3/24/64 Ref. by Ira Lowe
Name K. E. Shawley - 2715 Ordway St., N.W. Case No.
Address ~~1627 19th St., N.W.~~ #B Phone, res. ~~HU 3-9777~~ 362-1031
Washington, D.C.
Occupation Carpenter Phone, bus.
Bus. address Carpenter - self 20008 Age ~~42~~ 51
Financial Responsibility Spouse
Complaint Pain in right ankle

This patient states that about 2 weeks ago he fell and injured his right ankle. He thought it would heal in a few days and so did not seek medical attention until 3-23-64. He went to Geo. Washington Hospital where a plaster cast was applied to the foot and leg. Because the ankle was uncomfortable, the patient now seeks additional attention at this office.

Examination: There is a plaster cast from the toes to just above mid-calf. The foot is held in slight equinus. On removal of the plaster and X-ray, it was found that a small fragment of bone had broken from the medial malleolus. The area was tender as was also the external malleolus.

Diagnosis: Cortocal fracture medial malleolus partially healed.
Sprain, moderate, lateral malleolus

Treatment: Ankle firmly strapped with adhesive tape and an elastic bandage applied.

Following initial visit on March 24, 1964, there were three follow-up visits for physiotherapy and bandaging on March 31, April 3, and April 6, 1964. No treatment required after that time.

ARLINGTON HOSPITAL

DEPARTMENT OF RADIOLOGY

5129 N. 16TH STREET

ARLINGTON, VIRGINIA 22205

TELEPHONE
524-5900
EXT. 651-052-653

THOMAS G. MCWILLIAMS, M. D.
RICHARD C. VAUGHEY, M. D.
BERNARD F. SMITH, M. D.
JOHN C. VANCE, M. D.
ROLAND BRETON, M. D.

SEND REPORT TO
↓

ER COMP
DR. LAPADULA

REPORT OF ROENTGEN EXAMINATION

PATIENT'S NAME	AGE	ROOM NO.	ADDRESS							X-RAY NO.
[illegible]AWLEE, KARVER E.	51									15109
REFERRED BY	HOSPITAL # OR E.R. #		P.O.P.	P.C.	STU.	EMP.	CLINIC	EMER.	COMP.	DATE EXAMINED
DR. LAPADULA	26865							X	X	1-18-73

[illegible] ANKLE: There is no fracture or dislocation. The bone and joint structure show no [illegible]cant abnormalities.

[illegible] ISEL: There is no fracture or dislocation. The bone and joint structure show no [illegible]cant abnormalities.

Roland Breton, M.D.

[illegible]-73

ROLAND BRETON, M.D.
Radiologist

SUITE 60 - MEDICAL-DEN ENTER
3801 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203
525-8090

SUITE 103 - HERITAGE MEDICAL BUILDING
2520 L STREET, N. W.
WASHINGTON, D. C. 20006
338-1347

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

January 22, 1973

JAN. 29 1973

Michael Lapadula, M.D.
5275 Lee Highway
Arlington, Virginia 22207

Dear Doctor Lapadula: RE: SHAWLEY, Mr. Karbar

This patient, a 51-year-old white male, was seen today at your kind suggestion. He was perfectly well until January 18, 1973.

At this time while working on the Metro System in Rosslyn, he attempted to go down a ladder to gain access to the work area below, the ladder slipped and fell approximately four feet, and he was thrown against his right hip bruising this severely and took a great deal of weight on his left ankle. He was able to get about initially and felt reasonably well. When he awoke this morning, January 19, 1973, the ankle was markedly swollen. He went to Arlington Hospital where x-rays showed a fracture. He was referred to Dr. Lapadula. At that time Dr. Lapadula sent him immediately here.

Examination disclosed tremendous swelling of the ankle with marked amount of tenderness both medially and laterally. X-ray report from Arlington showed no evidence of fracture. It was felt that he had a severe sprain. He was placed in a short-leg walking cast, given a pair of crutches, given Percodan for pain, and advised to remain in the cast for three weeks. He may return to work within the limitations imposed by a cast on Monday, January 22, 1973, if he is able.

Yours very truly,

Leo Van Herpe

Leo B. Van Herpe, M.D.

LBVH/bl
cc: Shea-Ball

MICHAEL F. LAPADULA, M. D.
5275 LEE HIGHWAY, SUITE G-4
ARLINGTON, VA.

GENERAL SURGERY

KENMORE 6-7358

HOURS BY APPOINTMENT

January 28, 1973

Crawford & Company
2990 Telestar Court
Falls Church, Virginia

Gentlemen:

RE: Karver E. Shawley
EMP: Shea Ball Construction Co.
D/A: 1-18-73

This 51 year old male was seen in the emergency room of Arlington Hospital on 1-18-73 as an aftermath of an injury which occurred during the course of his everyday working activities. Apparently he was injured while working on a ladder.

Physical examination disclosed extreme swelling and pain of the left ankle area. He was subsequently sent to the x-ray department for further evaluation.

X-RAYS: 1-18-73
Examination of the left ankle disclosed no fracture or dislocation. The bone and joint structure show no significant abnormalities.

1-19-73: Examination on this date disclosed the massive swelling still persistent. He was referred to Dr. Leo B. Van Herpe, an orthopedic surgeon for further orthopedic treatment and evaluation.

DIAGNOSIS: Musculo-ligamentous strain left ankle (severe)

DISCUSSION: This patient sustained a massive musculo-ligamentous strain of his left ankle during his employment. He was referred to Dr. Van Herpe for further treatment. Any estimate of this patient's disability or loss of time should come directly from Dr. Van Herpe since he has undertaken the care of this patient from this point forward.

If I can be of any further assistance, please do not hesitate to call on me.

Yours very truly,

Michael F. Lapadula, M.D.

MFL:jc

THE USE OF THIS F[illegible]S REQUIRED UNDER THE PROVISIONS OF THE WORKMEN'S COMP[illegible]

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

P. O. Box 1794, Richmond, Virginia 23214

File No. _____

Case of _____

ATTENDING PHYSICIAN'S REPORT

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill out blank in ink using pen or typewriter, and mail promptly to the employer or the Claim Office of the insurance carrier.

1. NAME OF INJURED EMPLOYEE (*First, middle initial, last*): Karver Shawley

2. DATE OF INJURY (*Mo., day, yr.*): 1-18-73

3. EMPLOYEE'S HOME ADDRESS (*Number and street, city, state, zip code*): 2715 Ordway Street, N.W. Washington, D.C.

4. DATE OF BIRTH (*or age*) (*Mo., day, yr.*): 51 yrs.

5. SEX: M

6. NAME OF EMPLOYER: Shea Ball Construction Co.

7. EMPLOYER'S ADDRESS (*Number and street, city, state, zip code*): 1730 N. Lynn St. Arlington, Va.

8. DATE OF FIRST VISIT (*Mo., day, yr.*): 1-18-73

9. DATE DISCHARGED (*Mo., day, yr.*): 1-18-73

10. WHO AUTHORIZED TREATMENT? Arlington Hospital, ER

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED: Fell while working on a ladder injuring his left ankle.

12. FINDINGS UPON EXAMINATION (INCLUDE RESULTS OF X-RAYS, LABORATORY STUDIES, ETC. NOTE PRIOR INJURIES AND PRE-EXISTING CONDITIONS AND ANY REMARKS AND RECOMMENDATIONS ON THE REVERSE OF THIS FORM.): Massive musculo-ligamentous strain of the left ankle.

13. DIAGNOSIS: Same

14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? [X] YES [ ] NO — IF 'NO', EXPLAIN ON REVERSE OF THIS FORM

15. NATURE OF TREATMENT: Examination-evaluation, x-rays

16. DATES OF YOUR TREATMENT (*Mo., day, yr.*)

17. WAS EMPLOYEE HOSPITALIZED? [ ] YES [X] NO (*If "Yes," give name and address of hospital in item 19*)

18. WERE X-RAYS TAKEN? [X] YES [ ] NO (*If "Yes," give results in item 12*)

19. GIVE (1) NAMES, (2) ADDRESSES, AND (3) DATES OF TREATMENTS PROVIDED BY HOSPITALS OR OTHER DOCTORS FOR THIS INJURY:
Arlington Hospital
Arlington, Virginia

Leo B. Van Herpe, M.D.
3801 N Fairfax Drive
Arlington, Va.

20. WAS THERE DISABILITY FOR WORK? [X] YES [ ] NO (*If "Yes," answer 20-A,B,C*) →

A. DATE DISABILITY BEGAN (*Mo., day, yr.*): 1-18-73

B. DATE ABLE TO RETURN TO LIGHT WORK (*Mo., day, yr.*):

C. DATE ABLE TO RETURN TO TO REGULAR WORK (*Mo. day, yr.*): Dr. Van Herpe

21. WILL THERE BE PERMANENT DEFECT, OR FACIAL OR HEAD DISFIGUREMENT? [ ] YES [X] NO (*If "Yes," describe nature and extent of same. Estimate loss of function in % terms*).

22. NAME OF ATTENDING PHYSICIAN (*Type or print*): Michael F. Lapadula, M.D.

23. ADDRESS (*Number and street, city, state, zip code*): 5275 Lee Highway Arlington, Va.

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT

SIGNATURE [signature] M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT: 1-28-73

Form No. 6

COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME.

-VA Com - 505-645

THE USE OF THIS FORM IS REQUI D UNDER THE PROVISIONS OF THE ORKMEN'S COMPENSATION ACT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION

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

FEB. 21 1972

File No. _____

Case of _____

ATTENDING PHYSICIAN'S REPORT

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fi out blank in ink using pen or typewriter, and mail promptly to the employer or the Claim Office of the insurance carrier.

1. NAME OF INJURED EMPLOYEE (First, middle initial, last) SShawley, Karver E.	2. DATE OF INJURY (Mo., day, yr) 1-18-73
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) 2715 Ordway St. N. W. Washington, D. C. 20008	4. DATE OF BIRTH (or age) (Mo., day, yr.) 51 5. SEX M
6. NAME OF EMPLOYER Shea Ball Construction Co. - Metro	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). Washington, D. C.
8. DATE OF FIRST VISIT (Mo., day, yr.) 1-27-73	9. DATE DISCHARGED (Mo., day, yr.) OP
10. WHO AUTHORIZED TREATMENT? W ER	

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED

Patient had severe sprain of the ankle, and his cast has been destroyed

12. FINDINGS UPON EXAMINATION (INCLUDE RESULTS OF X-RAYS, LABORATORY STUDIES, ETC. NOTE PRIOR INJURIES AND PRE-EXISTING CONDITIONS AND ANY REMARKS AND RECOMMENDATIONS ON THE REVERSE OF THIS FORM.)

Reapplied cast

13. DIAGNOSIS Applied new cast to ankle	14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? [X] YES [ ] NO IF 'NO', EXPLAIN ON REVERSE OF THIS FORM
15. NATURE OF TREATMENT ER Exam, care and treatment	16. DATES OF YOUR TREATMENT (Mo., day, yr.) 1-27-73
17. WAS EMPLOYEE HOSPITALIZED? [ ] YES [X] NO (If "Yes," give name and address of hospital in item 19)	18. WERE X-RAYS TAKEN? [ ] YES [X] NO (If "Yes," give results in item 12)

19. GIVE (1) NAMES, (2) ADDRESSES, AND (3) DATES OF TREATMENTS PROVIDED BY HOSPITALS OR OTHER DOCTORS FOR THIS INJURY

Arlington Hospital
5129 North 16th St.
Arlington, Virginia 22205 1-27-73

20. WAS THERE DISABILITY FOR WORK? [ ] YES [ ] NO (If "Yes," answer 20-A,B,C) →	A. DATE DISABILITY BEGAN (Mo., day, yr.)	B. DATE ABLE TO RETURN TO LIGHT WORK (Mo., day, yr.)	C. DATE ABLE TO RETURN TO TO REGULAR WORK (Mo. day, yr.)

21. WILL THERE BE PERMANENT DEFECT, OR FACIAL OR HEAD DISFIGUREMENT? [ ] YES [ ] NO
(If "Yes," describe nature and extent of same. Estimate loss of function in % terms).

22. NAME OF ATTENDING PHYSICIAN (Type or print) ARl Hospital Emergency Room Assoc.	23. ADDRESS (Number and street, city, state, zip code) Arlington, Virginia 22205

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT

SIGNATURE _____ M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT

12

COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME

SUITE 60 - MEDICAL-DENTAL CENTER
3801 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203
528-8090

SUITE 103 - HERITAGE MEDICAL BUILDING
2520 L STREET, N. W.
WASHINGTON, D. C. 20006
338-1347

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

62502 CK

March 12, 1973

MAR 14 1973

Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

Attention: Corda M. Keys

RE: SHAWLEY, Mr. Karver

This patient who was seen in January when he originally injured his foot was placed in a short-leg walking cast for what was a severe sprain of his ankle. Mr. Shawley continued to try and work and demolished three casts over the next several weeks with his activity and his rather large size. The ankle remains swollen and tender but it seems to be a rather typical and subsiding severe sprain. He attempted to go back to work and was making out fairly well on a limited duty occupation, but when he had to go beneath ground again and work in boots and water under more strenuous conditions, the leg began to be quite swollen and very tender. At that point he was unable to get in his shoes.

He has been off work for the past nine days. He presents in the office this morning, March 9, 1973. The foot has some redness in the skin which is different than the opposite side. There is some generalized swelling about the ankle. He limps rather badly and holds his foot in an externally rotated position when walking. He has a lot of guarding of ankle and subtalar motion. Re-x-ray of his ankle, however, fails to show any significant abnormalities. I have injected the ankle with Hydrocortisone and Xylocaine, started him on a program of physical therapy, and will for the present time keep him off of work. Re-examination is scheduled for one week.

Yours very truly,

Leo B. Van Herpe, M.D.

LBVH/bl
Enclosure

SUITE 60 - MEDICAL-DENTAL CENTER
3601 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203
525-8080

VA

SUITE 103 - HERITAGE MEDICAL BUILDING
2520 L STREET, N. W.
WASHINGTON, D. C. 20006
338-1347

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

May 17, 1973

Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

305-645

Attention: Corda M. Keys

RE: SHAWLEY, Mr. Karver
Shea-Ball

This letter will confirm our telephone conversation on May 11, 1973, regarding Mr. Shawley's ability to return to his usual occupation.

Mr. Shawley was most recently seen in this office on May 11, 1973. At that time he was still complaining of some generalized soreness in his foot and ankle. We had injected the ankle on three previous occasions with minimal relief; however, these injections did not completely alleviate the problem. I have recommended that Mr. Shawley come into the office daily for ultrasound to his foot and ankle in hopes that this will relieve his discomfort. He still walks with a slight limp.

I feel that Mr. Shawley could do light work on a limited basis, but he definitely can not return to his normal occupation at this time.

Yours very truly,

Leo B. Van Herpe

Leo B. Van Herpe, M.D.

LBVH/bl
Enclosure

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009
ORTHOPEDIC SURGEON
TELEPHONE 232-0600

June 14, 1973

MEDICAL REPORT

Mr. Karver E. Shawley

D/A: 1/18/73

305-645

HISTORY: Mr. Karver E. Shawley, of 2715 Ordway Street, N. W., Washington, D. C., has been referred to this office by Dr. Leo Van Herpe for consultation, requesting an evaluation of his condition. Mr. Shawley gives a history of an injury which occurred on January 18, 1973, while employed as a carpenter by Shea-Ball Company in Arlington, Virginia, and working on the Metro System. On that occasion, the ladder on which he was standing slipped so that he fell a distance of fifteen to twenty feet, injuring his left foot and ankle. He was seen in the Emergency Room of Arlington Hospital the following day, where he saw Dr. Michael Lapadula, who referred him to Dr. Leo Van Herpe. He was treated with a short-leg walking cast which broke when it was required to bear any weight. Thus, he wore several casts over a five to six week period, attempting to work until March 1, 1973. He also received whirlpool and ultrasonic treatments, as well as some injections. Since the ankle continued to remain swollen and painful, Dr. Van Herpe then referred the patient to this office for further consultation and evaluation.

PAST HISTORY: He gives a history of a fracture of the right ankle in 1964, which was treated in this office; and he also has a history of a back injury in 1959, for which he has been treated in this office, and which was re-injured in 1966.

EXAMINATION: June 14, 1973 - The patient is a large, white male, age 51, who walks with a limp on the left side. The left ankle is markedly swollen. There is a limp on walking, and a good deal of the swelling appears to be limited to the ankle region. However, it is also noted that the calf appears swollen. Movement of the left ankle shows that dorsi-flexion and plantar flexion are impaired and very painful. There is a definite impairment of internal rotation of the left ankle. Measurements:

Left ankle, across the malleoli, 12 1/4 inches.
Right ankle, across the malleoli, 11 5/8 inches.

Left calf, at the widest point, 17 inches.
Right calf, at the widest point, 17 3/8 inches.

X-RAY EXAMINATION OF THE LEFT FOOT AND ANKLE: June 14, 1973 - It is seen that in the ap. view, there is evidence of a healing fracture of the lateral side of the astragalus, with the fracture line running obliquely to a point just beneath the external malleolus. In the lateral view, one can see irregularity of the astragalus, suggestive of healing fracture. There is also an irregularity of the posterior surface of the sustentaculum tali, suggestive of traumatic arthritis. On the medial side of the foot, there are irregularities and calcified areas, suggestive of traumatic arthritis resulting from the severe sprain.

IMPRESSION:
1. Healing fracture of the astragalus of the left ankle, without displacement.
2. Injury to the sustentaculum tali of the left foot.
3. Severe sprain of the left ankle, with traumatic arthritis now present.

TREATMENT: The left foot was bandaged.

15

MAURICE H. HERZMARK, M.D.

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

June 27, 1973

62502-CK

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley

D/A: 1/18/73

HISTORY: Mr. Karver E. Shawley, of 2715 Ordway Street, N. W., Washington, D.C., has been referred back to this office for continuation of treatment. Since his original examination on June 14, 1973, he returned for a follow-up X-Ray on June 21, 1973. He now complains of swelling, pain, and stiffness of the left ankle.

RE-EXAMINATION: June 27, 1973 - Re-examination of the left foot and ankle shows that the left ankle is markedly swollen, painful, and limited in the range of motion. It is very painful to walk on, and he walks with a limp on the left side.

X-RAY EXAMINATION OF THE LEFT FOOT AND ANKLE: June 21, 1973 - The X-Ray confirmed the findings noted in the previous X-Ray of June 14, 1973, of the healing fracture of the astragalus, which runs obliquely from the lateral and upward toward the medial side of the bone. There is some callus noted on the lateral margin.

X-RAY EXAMINATION OF THE LEFT FOOT AND ANKLE: June 27, 1973 - There is seen a healing fracture of the left astragalus, as previously noted. There is also seen some adventitious bone on the medial side.

REVIEW OF X-RAYS OF THE LEFT FOOT AND ANKLE, Taken by Dr. Leo Van Herpe - An X-Ray dated March 9, 1973, shows a fracture of the anterior tip of the tibia and a healing fracture of the anterior portion of the astragalus, with some irregularity. An X-Ray dated May 4, 1973, of the left foot, shows the astragalus so ill defined as to be not diagnostic.

IMPRESSION:
1. Healing fracture of the astragalus of the left ankle, without displacement.
2. Injury to the sustentaculum tali of the left foot.
3. Severe sprain of the left ankle, with traumatic arthritis now present.

TREATMENT: He has been started on treatment, consisting of physiotherapy and supportive bandage.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

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3801 NORTH FAIRFAX DRIVE
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338-1347

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

JUL 2 197

June 27, 1973

622502-CK

Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

Attention: Corda M. Keys

RE: SHAWLEY, Mr. Karver

Following our last letter to you indicating that we desired another orthopedic consultation on this gentleman and he was to see Dr. Herzmark, the patient indeed did consult Dr. Herzmark. I am enclosing a copy of Dr. Herzmark's report to us concerning that evaluation.

Indeed on re-examination today it is obvious that the patient does have a considerable amount of subtalar irritation which we have noted in the past and whether or not this is due to a fracture (undisplaced) of the talus I think is somewhat problematic. At any rate there appears to be definite irritability of the subtalar joint. It appears to be localizing more in this joint though before the symptoms have been more widespread in distribution. He has only about 10 to 15 degrees of subtalar motion whereas the ankle motion is virtually normal. The ankle motion, however, still is productive of pain when he bears weight.

I feel that conservative treatment in my hands has basically been exhausted. Dr. Herzmark feels that he may be able to offer him some additional help with conservative management. I certainly have no objective to his pursuing this. I would think that if the symptoms continue as they have been; however, that the patient will either have to abandon his present occupation and take up something where he would be more likely to be able to walk on level ground or else submit to a triple arthrodesis of the left foot. With this patient's tremendous weight and with his past history of breaking down walking casts, a subtalar arthrodesis would be difficult to accomplish but certainly not impossible. Mr. Shawley does not desire to consider an operation at this time. I have, therefore, told him I have little else to offer him at this point.

Yours very truly,

Leo B. Van Herpe, M.D.

LBVH/bl
Enclosure

V H Corr -

JUL 1 3 73

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

July 13, 1973

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley

vs.

Shea-Ball Company
D/A: 1/18/73

305.645

HISTORY: Mr. Karver E. Shawley, of 2715 Ordway Street, N.W., Washington, D. C., has been under the care of this office since June 14, 1973, and he has been receiving treatment in the form of physiotherapy and supportive bandaging of the left foot and ankle, as well as medication.

PRESENT COMPLAINTS: The patient complained today of persistent, severe pain of the left foot and ankle whenever he walks or stands on it, even for short periods of time. The patient also complains of swelling and stiffness, with difficulty walking.

TREATMENT: Because of the persistent pain and swelling complained of by the patient and noted on examination, a plaster of Paris bandage was applied from the toes to the knee on the left side, and he was advised to use crutches.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

V.A. Com -

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232.0800

July 27, 1973

RE: Mr. Karver E. Shawley
vs.
Shea-Ball Company
Ins. File No. 66-62502-CK
Co. File No. 44X110997
Date of Injury: 1/18/73

#305-645

Crawford and Company
Insurance Adjusters
7990 Telestar Court
Falls Church, Virginia 22042

Attention: Corda M. Keys, Adjuster

Gentlemen:

Mr. Karver E. Shawley returned today, wearing a plaster of Paris cast, which was applied to his left-lower extremity on July 13, 1973.

Because of the fact that the patient is still uncomfortable, it was felt that the plaster should be worn at least another week. However, because of the need for re-enforcement, a new heel was applied and the plaster re-enforced.

At the end of the following week, the plaster may be removed at which time, with the aid of several weeks of physiotherapy, he may be able to return to work.

Very truly yours,

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

MEDICAL CENTER
DRIVE
VIRGINIA 22203
[illegible]

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

August 29, 1973

Corda Keys, Adjuster
Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

Dear Miss Keys:

RE: SHAWLEY, Mr. Karver
Shea Ball Company

Relative to your letter of August 3, 1973, on Karver Shawley and the attached report from Dr. Maurice Herzmark dated July 27, 1973, I would submit the following.

The patient is an extremely large and heavy man and has demolished a tremendous number of casts which we tried to immobilize him with earlier in his care. The amount of wear on the casts certainly suggests the patient was using his foot vigorously. It makes one surprised he did not make a better recovery; however, he seems to be prospering under Dr. Herzmark's treatment. I feel that if Dr. Herzmark, indeed, can return him to work by the end of August which is what he proposed in his letter that that would be a great accomplishment in view of my experience with this individual where I was having an exceeding amount of difficulty in bringing him back to employment.

Yours very truly,

Leo B. Van Herpe, M.D.

[illegible]/bl

V H Cohen File No. 44X110977

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

SEP 19

September 17, 1973

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley

vs.

Shea-Ball Company

D/A: 1/18/73

HISTORY: On the visit of Mr. Karver E. Shawley to this office on August 3, 1973, the plaster which had formerly been placed on the left ankle and foot on July 13, 1973, because of pain and swelling was removed, and the patient continued to walk with crutches. Following that, treatment was given consisting of physiotherapy and supportive bandage, which improved the swelling to some extent, but failed to completely remove the pain. Presently, though, the patient is no longer using crutches. It is believed that the patient has now reached maximum benefits from treatment, and he was examined this day for the purpose of determining permanent disability.

RE-EXAMINATION: September 17, 1973 - The patient walks with a limp on the left side. He has a markedly swollen, painful, and stiff left ankle. Inversion and eversion of the left ankle are almost nil. The right ankle is within normal limits. The measurements show the following:

Right ankle, maximum dorsi-flexion, 85°.
Left ankle, maximum dorsi-flexion, 90°.

Right ankle, maximum plantar flexion, 130°.
Left ankle, maximum plantar flexion, 125°.

Right ankle, across the malleoli, 12 inches.
Left ankle, across the malleoli, 12 1/2 inches.

Right foot, across the mid-tarsal region, 10 3/8 inches.
Left foot, across the mid-tarsal region, 11 1/4 inches.

Right calf, at the widest point, 17 1/2 inches.
Left calf, at the widest point, 16 3/4 inches.

DIAGNOSIS:
1. Fracture of the astragalus, left ankle, without displacement.
2. Mal-united fracture of the sustentaculum tali, left ankle.
3. Severe sprain and traumatic arthritis, sub-astragalar, left ankle.

EVALUATION: Because of the persistence of symptoms and signs, it is felt that this patient can no longer resume his former occupation as a carpenter; and although anatomically he has a permanent disability equal to a loss of use of 35% of his left-lower extremity, industrially, he has lost his trade and will have to be re-trained for other employment not requiring climbing or prolonged walking or standing.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

21

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WASHINGTON, D. C. 20006
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LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

August 29, 1973

Corda Keys, Adjuster
Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

Dear Miss Keys:

RE: SHAWLEY, Mr. Karver
Shea Ball Company

305-645

Relative to your letter of August 3, 1973, on Karver Shawley and the attached report from Dr. Maurice Herzmark dated July 27, 1973, I would submit the following.

The patient is an extremely large and heavy man and has demolished a tremendous number of casts which we tried to immobilize him with earlier in his care. The amount of wear on the casts certainly suggests the patient was using his foot vigorously. It makes one surprised he did not make a better recovery; however, he seems to be prospering under Dr. Herzmark's treatment. I feel that if Dr. Herzmark, indeed, can return him to work by the end of August which is what he proposed in his letter that that would be a great accomplishment in view of my experience with this individual where I was having an exceeding amount of difficulty in bringing him back to employment.

Yours very truly,

Leo B. Van Herpe, M.D.

LBVH/bl

V.

22

MAURICE H. HERZMARK, M. D.
1010 18TH STREET, N. W.
WASHINGTON, D. C. 20009
BOARD CERTIFIED TELEPHONE 202-0

September 21, 1973

RE: Karver E. Shawley
vs.
Shea-Ball Company
D/A: 1/18/73
File No. 673000K (or [illegible])

Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

Attention: Corda M. Keys

Gentlemen:

In response to your recent speed letter, this is to inform you that Mr. Karver E. Shawley's attorney is Mr. William Schweitzer, Suite 500, Southern Building, Washington, D. C. 20005. He is with the firm of Frost, Towers, Hayes, and Beck.

The consultation which was held on September 7, 1973, and which was billed for $15.00, was held with the patient, Mr. Shawley.

Very truly yours,

MAURICE H. HERZMARK, M.D.

MHHsmac

SUITE 101

TELEPHONE 466-2430
BY APPOINTMENT

WASHINGTON ORTHOPAEDIC CLINIC
2430 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C. 20037

JULIUS S. NEVIASER, M. D.
SANFORD H. EISENBERG, M. D.
CHIA-CHING LIU, M. D.
THOMAS J. NEVIASER, M. D.

November 19, 1973

Orthopedic Report

305-645

Examination of — Karver Shawley
2715 Ordway Street, N.W.
Washington, D.C.

Date of Examination — October 31, 1973

Chief Complaint — Injury to his left ankle.

History — While employed by Shea Ball on January 18, 1973 he was a carpenter stewart on his job when he was going down into an excavator and when he stepped on the ladder it collapsed. He was not unconscious. He was driven to Arlington Hospital where x-rays were taken and he was referred to Dr. Van Herpe. New x-rays were taken and a below the knee plaster cast was applied. He was given crutches to use and the cast was remov after about six weeks. It was changed one time. Dr. Van Herpe diagnosed his injury as a sprain of the left ankle. He was sent back to work and worked daily until March 8, 1973.

On March 8, 1973 he stated he went on workman's compensation because he could not perform the duties of his occupation. He continued to see Dr. Van Herpe until June 1973. He then consulted Dr. Herzmark for another opinion who took x-rays and told him he had a displaced fracture of the left ankle.

He was started on ultra sonic treatments to his left ankle for about six weeks. After that a short leg cast was applied which he wore for six weeks. After the cast was removed he was started back on physical therapy treatments. He was discharged from Dr. Herzmark's care stating his injury was permanent.

At this time he can only walk a short distance without discomfort. He has numbness and "pins and needles" sensation in his left ankle. He has swelling of the left ankle. It feels as though it will give way on him several times. Walking up and down steps bothers him. His right ankle is aching now because he is putting most of his weight on his right side.

Past History — He is not a diabetic. No previous problems with his ankle. No drug allergies. No other serious illnesses.

Physical Examination He is a rather large heavy set male who walks with an obvious limp on both sides at this examination. He complains of pain referable to both ankles.

Left ankle - He has a swollen tender ankle joint which is quite painful on palpation over the deltoid ligament, the lateral collateral ligament and over the sinus tarsi. There is eviden of a synovitis of the ankle joint and also evidence of a mild effusion. There is no obvious instability on medial or lateral stress; however, one is able to move the talus within the ankle joint anteriorly and posteriorly in an abnormal fashion. This creates a good deal of pain for the patient. Dorsiflexion- 5o. Plantar flexion- 35o. There is no inversion or eversion of the subtalar joint.

Right ankle- Tenderness in the sinus tarsi and lateral collateral ligament. No evidence of synovitis or effusion but there seems to be some soft tissue swelling about the right ankle of unknown etiology. Dorsiflexion- 15o. Plantar flexion- 40o. Inversion and eversion- 20o. No laxity of the right ankle joint.

X-ray Findings X-rays of the left foot shows some narrowing of the medial side of the joint with some osteophytic changes of the medial malleolus. T lateral view of the left talus seems to be somewhat displaced anteriorly. There is some narrowing of the subtalar joint on the left.

X-rays of the right ankle reveals narrowing of the joint on the medial side with more osteophytic changes of the talus than

Opinion I am unable to demonstrate any evidence of either recent or old fracture of the talus or the subtali joint of the left foot at this time.

Opinion It is my opinion that this patient's left ankle has instability and traumatic arthritis secondary to his original accident and evidence of changes in the right ankle compatible with a mild amount of arthritis which is due to an old injury which the patient had many years ago.

Treatment of this patient is quite difficult in the fact that the instability of the ankle in face of arthritis changes are hard to correct without a bony fusion and there is also some evidence of the subtalar joint is also involved with degenerative changes. Since th subtalar motion is decreased I would expect to find traumatic arthritis in the joint also.

Signed,

T. J. Neviaser, M.D.

125

X-RAYS: X-rays taken in this office of the lumbar spine revealed marked degenerative changes especially involving the L5-S1 area. Severe hypertrophic changes were noted at L4-L5 level, along with severe sclerosis of the lateral articular facets. The patient has six lumbar vertebrae.

The left ankle x-ray revealed a great deal of arthritic change in the subtalar joint. Also noted was an osteophyte at the distal end of the medial malleolus. Some other areas of calcification were observed about the talus. The right ankle showed no particular severe bone or joint pathology.

CONCLUSION: In my opinion, Mr. Shawley is not capable of performing ordinary carpen activities and should refrain from any similar occupation. Actually with his back disabili and both ankle difficulties I consider him to be unemployable at this time. My judgment is that he has a five percent permanent residual rating of his right ankle based on subjective complaints alone. The left ankle has a thirty-five percent permanent residual disability because of both subjective and objective findings. As far as his lower back is concerned, he has a twenty percent permanent residual disability rating as it effects the use of his body as a whole, which is in addition to the thirty-five percent already established for his back previously.

Truly yours,

Arthur B. Wein M.D.

Arthur B. Wein, M. D.

ABW: sm

Enclosures

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

February 20, 1974

SUPPLEMENTARY MEDICAL REPORT

Mr. Harvey L. Shanley

D/A: 1/13/73

Employer: Shoe-Dell Company

[illegible]: Mr. Harvey L. Shanley consults this office today because of back pain. [illegible] a history of a fall which he estimates was about fifteen to twenty [illegible] he consists while employed as a carpenter on January 13, 1973. He was [illegible] by Dr. Leo Van Harpe, who applied a short-leg walking cast due to what [illegible] to be severe sprain, and the patient was told to try to work, which he did [illegible] 1, 1973, when he was not able to continue his employment. At that time, [illegible] complaint was pain, swelling, and stiffness of the left ankle, which [illegible] that he eventually consulted this office on June 14, 1973, and he was [illegible] to have fracture, sprain, and traumatic arthritis of the left ankle. [illegible] that the ankle pain was no worse because of the fracture, which had not [illegible] until three months after the injury, only the ankle was treated at [illegible], and no attention was given to his back. The ankle was treated until [illegible] 1973, when he was given a 35% permanent disability of his left-lower [illegible]. [illegible] he now returns because of increased back pain, and examination [illegible] the following findings:

[illegible]: February 20, 1974 - The patient is a large, white male, [illegible] of the lumbar spine shows that his back seems to be [illegible] there is no muscle spasm on either side. He has some difficulty [illegible] of the spine, and he does not reach any closer than within [illegible] floor. His expiration is almost nil. Lateral bending to the right is [illegible] 50% of normal, and also to the left. He has some difficulty [illegible] the weight-bearing leg, but he can stand on the right satisfactorily. [illegible] only able to pick up objects from the floor by going [illegible] leg-raising test on the right side is positive at about [illegible] that point. The heel-to-toe test is positive. On the left [illegible] leg-raising test is positive at 10°; and the heel-to-toe [illegible].

[illegible] OF THE LUMBAR SPINE: February 20, 1974 - It is [illegible] is backward, and also noted in the lateral [illegible] the anterior margins of L-4 and L-5.

[illegible]: 1. Chronic osteoarthritis of the lumbar spine, symptomatic, [illegible] by trauma.

2. Aggravation of pre-existing instability of the lumbar [illegible] apparatus.

DISCUSSION: There is a history which indicates that this patient has had back problems since an injury in 1959. However, after treatment which has been required from time to time, he has been able to work and has actually needed no treatment for his back for several years until the recent fall aggravated his condition to such an extent that it is felt that the chance that he will be able to resume his employment as a carpenter is very slim. Meanwhile, he is being treated with the hope that he may recover from some of the pain which he is now suffering.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

March 13, 1974

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley

D/A: 1/18/73

Employer: Shea-Ball Company

HISTORY: Mr. Karver E. Shawley has been receiving regular treatments to his back since the last examination and report of February 20, 1974. He was examined today for the purpose of determining the present status of his complaints. At this time, his complaints are directed to his back, his left ankle, his right ankle, which he states are painful and stiff, and also headaches. He was rated by this office as having a 35% disability of the left-lower extremity on September 17, 1973, because of the left ankle injury. The right ankle was previously injured in March, 1964, but required only two months treatment by this office. Following that, the patient made no further mention of the right ankle injury, though seen in this office for his back from time to time. Since his fall from a ladder on January 18, 1973, he has noted increasing pain and stiffness of the right ankle.

RE-EXAMINATION: March 13, 1974 - Lumbar Spine: His back seems unusually flat, and the muscles are very spastic. Flexion is markedly limited so that he cannot touch closer to the floor with the tips of his fingers than 20 inches. Hyperextension is impaired. The patient does not use his back but uses his pelvis. Lateral bending is similarly impaired and painful. The patient is unable to perform this without complaints. He is very unsteady on the unsupported right leg. He is very unsteady on the left, too. The patient cannot squat in the normal manner. The straight-leg-raising test on the right side is positive at about 125°. The heel-to-knee test is positive on the right side. On the left side, the straight-leg-raising test is also positive at 125°. The heel-to-knee test is moderately positive on the left side. Ankles: Measurements show the following:

Right ankle, across the malleoli, 11 5/8 inches.
Left ankle, across the malleoli, 11 3/8 inches.

Right ankle, maximum dorsi-flexion, 95°.
Left ankle, maximum dorsi-flexion, 100°.

Right ankle, maximum plantar flexion, 125°.
Left ankle, maximum plantar flexion, 135°.

X-RAY EXAMINATION OF THE RIGHT ANKLE: March 13, 1974 - There is seen the presence of a spur attached to the astragalus on the medial side, and evidence of a healed fracture of the medial malleolus. Some irregularity is noted of the tarsal bones and the margin of the lower end of the tibia.

IMPRESSION:

1. Traumatic arthritis, with permanent limitation of motion and pain, right ankle.
2. Fracture of the astragalus, left ankle, without displacement.
3. Mal-united fracture of the sustentaculum tali, left ankle.
4. Severe sprain and traumatic arthritis, sub-astragalar, left ankle.
5. Chronic osteoarthritis of the lumbar spine, symptomatic, aggravated by trauma.
6. Aggravation of pre-existing instability of the lumbo-sacral apparatus.

DISCUSSION: This carpenter has been suffering as a result of injuries since 1959; but since the January 18, 1973, injury, his condition has become severe so that he has not been able to resume his normal occupation, despite considerable treatment. It is felt that because of his severe disability regarding many parts of his body, he is no longer able to ever return to his work as a carpenter. He should be assigned to some rehabilitative program.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

March 15, 1974

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley

vs.

Shea-Dall Company

D/A: 1/18/73

HISTORY: Mr. Karver E. Shawley has been complaining of pain in his chest, and also complained today of hemorrhaging of blood orally. A chest X-Ray was made to see if the lungs were involved, and also to determine if there was any rib injury.

X-RAY EXAMINATION OF THE CHEST: March 15, 1974 - No abnormality or pathology is noted in the chest X-Rays.

DISCUSSION: If the hemorrhaging persists, he will be referred to a chest surgeon.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mas

SUITE 60 - MEDICAL-DENTAL CENTER
3801 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203
525-8090

V A.

SUITE 103 - HERITAGE MEDICAL BUILDING
2520 L STREET, N. W.
WASHINGTON, D. C. 20006
338-1347

LEO B. VAN HERPE, M. D.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY

March 27, 1974

Corda M. Keys
Crawford and Company
2990 Telestar Court
Falls Church, Virginia 22042

JUL 5 1974

Dear Miss Keys:

RE: SHAWLEY, Mr. Karver
vs.
Shea Ball

Relative to your request of March 18, 1974, Mr. Shawley returned to my office on March 26, 1974, for an evaluation.

As you know I have not seen him since June 26, 1973, and I covered that in a letter to you dated August of 1973.

The patient states that at that time he did return to Dr. Herzmark's care and that Dr. Herzmark had done essentially the same types of things that we had done to him. He used some ultrasound on his left ankle, gave him some heat treatment, did not give him any whirlpool, and apparently used no specific medicines other than some Percodan, Talwin, and Valium to control his pain and anxiety. Mr. Shawley tells me that since his last visit here, however, that a number of other problems are underway.

First, he continues to have pain in his left ankle. This seems to be worse with weight-bearing and pressure and relieved somewhat by rest. He continues to have swelling on this side and inability to bear weight well and tolerates being up and around only a short period of time. He also has tenderness in his heel on the left. When he steps on this, pain radiates up to his back. He states also that he has pain in his right ankle. He has a swelling that has occurred laterally in the ankle and has bothered him a great deal. He states that this occurred at the time of his original fall which he tells me was approximately 20 feet. There is an area in the plantar surface of the rightheel which when pressed sends pain also radiating up to his back. He states further he had a back injury in 1957 and has had low back pain since that time. He has been told that he has arthritis or degenerative disc and that the back pain causes him to be uncomfortable when standing for any period or even when sitting for more than approximately one hour. For this reason, he can only drive a short distance. He feels that the pain sometimes radiates from the back into his

right heel. He also describes spitting up some dark colored blood at night time and a cough which seems to be increasing recently. He relates this to the accident.

Apparently Dr. Herzmark has made an appointment for him to see Dr. Joseph Peabody on April 4. Dr. Peabody is a chest surgeon. The patient states also that he has an unusual situation where when he sits and leans forward he has a pain which begins down around his bladder, radiates up the anterior abdominal wall, strikes his head and causes him to have a momentary blackout spell, though he has never fallen as a result of this.

Physical examination reveals a very obese white male (290 pounds). A dry and nonproductive cough is noted during the examination. He moves about with a great deal of difficulty. He is obviously a rather hostile individual though he does nothing during the course of the examination to exhibit this hostility toward the examiner. I did not examine his low back but instead examined both lower extremities which is the only area I feel is related to his injury.

On the right side he has essentially normal configuration of his ankle. There is a little fullness laterally but this is not unusual in a patient this obese. There is a great deal of tenderness around the lateral aspect of the ankle to palpation. The patient complains on subtalar and ankle motion that he has a great deal of pain though these ranges of motion seem appropriate. There is no redness, local heat, or significant swelling in the ankle. The pulses are normal. All muscle power is present. The circumference of this ankle measures 11 inches compared to 12½ on the opposite side. The calves are equal bilaterally in circumference. On the left side where there is obvious swelling, there is again no redness or heat. There is a definite restriction, voluntarily on the patient's part, of ankle and subtalar motion. It is difficult to assess what a full range of motion would be without the guarding. He complains of a great deal of pain on both of these motions. He has no sensory abnormality to pin prick on either lower extremity.

X-rays from Dr. Herzmark's office were requested on March 27, 1974, and arrived in this office on June 14, 1974. They include a number of films of the lumbar spine, the most recent of which are dated August 17, 1970, and include an AP and lateral of the lumbar spine. These x-rays show some degenerative disc disease at L5-S1 and home hypertrophic changes at several levels above. There is an AP and lateral of the right ankle dated March 23, 1964, that shows a chip distal to the medial malleolus which appears to be old and no other evidence of significant problem is present. There is also a view of the right ankle dated March 13, 1974, which shows no evidence of any appreciable change from those films made 10 years earlier. There are also

views of the left ankle and foot dated June 14, 1973, June 21, 1973, and June 27, 1973. These films are essentially normal except for the following features. There is a small obstacle distal to the medial malleolus on those films on June 27, 1973, those would appear to be old. There is a slight suggestion of irregularity of the posterior facet between the talus and the os calcis on those films of June 27, 1973.

Essentially this patient had a severe sprain of the ankle on the left side. He continues to have some residual pain, swelling, and tenderness. I feel that this represents residual of a severe ankle sprain. The decreased range of motion in the ankle and subtalar joint appears to be voluntary on the patient's part, and it is difficult to assess whether there is any evidence of subtalar irritability causing continuation of his symptoms. At the most I would think that this patient could be assigned a 5% partial permanent impairment of the left ankle as a result of his injury. I see absolutely no indication on the basis of my prolonged treatment of this patient that he sustained any injury to his right ankle, low back, or any of the other areas of which he now currently complains as a result of the most recent injury. I do not feel that they are pertinent to his current complaints.

Yours very truly,

Leo Van Herpe

Leo B. Van Herpe, M.D.

LBVH/bl
Enclosure

OPERATIVE RECORD

Hospital No. 402475

Date 4/9/74

Name SHAWLEY, MR. KARVER

Preoperative Diagnosis HEMOPTYSIS

Postoperative Diagnosis NORMAL ESOPHAGUS AND NORMAL TRACHEOBRONCHIAL TREE

Surgeon LYONS Anesthetist SLIJEPCEVIC Began 1200

Anesthesia IVET Closed 1230

Instrument Nurse HOLMES Sponge Nurse BROWN Drainage

Operation BRONCHOSCOPY AND ESOPHAGOSCOPY

(Incision—Findings—Technique)

This gentleman was having hemoptysis, the nature of which is somewhat obscure. He denies that he actually coughs it up, denies that he actually regurgitates it. It does not come from his nose. His chest xray is negative. He gives history suggestive of hiatus hernia with incompetence of the cardia. He otherwise had compensation neurosis associated with his back.

PROCEDURE: Under satisfactory endotracheal anesthesia esophagoscopy was carried out without difficulty using the 50 cm. new type Jackson instrument. Good visualization was obtained from the pharynx to the stomach which was entered without difficulty. On withdrawal of the instrument it was apparent that the esophagogastric junction was quite mobile, a finding consistent with the finding of hiatus hernia. It would appear that the cardia was mobile to the extend as much as 5 cm. There were no lesions in the esophagus but there were a number of smooth bulges from the mediastinum which I would think probably due to mediastinal fat or lipoma. In as much as the patient had tolerated the procedure well, he was then bronchoscoped using the 8 x 40 instrument. Very good visualization [illegible] the tracheobronchial tree was obtained [illegible] and no blood were found. Following removal of the bronchoscope an attempt was made to examine the hypopharynx and mouth using the anesthesiologist laryngoscope. The patient was getting rather light at the time and the examination could not be termed completely satisfactory. However, we can say that there are no lesions of the palate, gums or floor of the mouth or tongue. The oral pharynx was also clear. There may be some recesses in the puriform sinuses not completely seen. The nasopharynx was not examined. Prior to removal of the bronchoscope a direct smear was made in the right lung for PAP stain and the washings were sent for TB culture. Patient tolerated procedure well and left the operating room in good condition.

Signature

William Lyons, M.D./st 4/9-4/9/74

Form 38

121

RALPH M. CAULK, M.D.
U. VINCENT WILCOX, M.D.
KARL C. CORLEY, M.D.
C. E. DICKHAM, JR., M.D.
F. V. SCHUMACHER, M.D.
GREGORY T. HENESY, M.D.
ALBERT J. MIELE, M.D.
GUNTER J. AUGUSTIN, M.D.
DOMENICO E. SABATINI, M.D.
W. RAYMOND MIZE, JR., M.D.
RUSSELL L. HUGHES, M.D.
JOSEPH P. MOCK, M.D.

TELEPHONE: 541-4646

DRS. GROOVER, CHRISTIE AND MERRITT, P.C.
1835 EYE STREET, N.W.
WASHINGTON, D.C. 20006

RADIOLOGISTS TO
DOCTORS HOSPITAL, WASHINGTON HOSPITAL CENTER
AND SIBLEY MEMORIAL HOSPITAL

THOMAS A. GROOVER, M.D. 1916-1940
EDWIN A. MERRITT, M.D. 1916-1946
ARTHUR C. CHRISTIE, M.D. 1916-1956
FRED O. COE, M.D.
EDGAR M. MCPEAK, M.D.
AUBREY O. HAMPTON, M.D.
JAMES E. WISSLER, M.D. 1

Report of roentgen findings in the case of Mr. Karver E. Shawley, 4/8/74 for Dr. Lyons, #595425.

PA and lateral film chest study shows the heart, great vessels, lungs and pleurae to appear essentially normal.
KCC/dah

KCCorley

RALPH M. CAULK, M.D.
U. VINCENT WILCOX, M.D.
KARL C. CORLEY, M.D.
C. E. DICKHAM, JR., M.D.
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W. RAYMOND MIZE, JR., M.D.
RUSSELL L. HUGHES, M.D.
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JOSE L. BASELGA, M.D.
ROBERT P. ODENWALD, M.D.

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EDWIN A. MERRITT, M.D. 1916-1946
ARTHUR C. CHRISTIE, M.D. 1916-1956
FRED O. COE, M.D. 1922-1973
EDGAR M. MCPEAK, M.D. 1927-
JAMES E. WISSLER, M.D. 1934-1972
AUBREY O. HAMPTON, M.D. 1946-1955

Report of roentgen findings in the case of Mr. Karver E. Shawley 4-10-74 for Dr. Lyons #595561

Survey abdominal film showed visceral shadows to appear normal.

The gastro-intestional track showed the esophagus, stomach, duodenum to appear normal.

KCC/pjo

KCCorley

CHAWLEY, MR. KARVER E. WILLIAM LYONS, M.D. 402475

DISCHARGE SUMMARY:
ADMITTED: 4/7/74
DISCHARGED: 4/10/74

This gentleman was admitted to the hospital because of hemoptysis, the nature of which was somewhat obscure. He had a history of hiatus hernia with incompetence of the cardia. His chest x-ray was negative. In any event, because of the nature of his symptoms we felt that esophagoscopy was necessary. This was carried out without difficulty in the operating room. While the findings were consistant with hiatus hernia there was no evidence of esophagitis or any other lesion in the esophagus which might jbe productive of bleeding. The patient was discharged in satisfactory condition to be followed up by his medical doctor.

William S. Lyons, M.D./jc 5/2-5/2/74

NSULTATION BY
APPOINTMENT

ROBERT V. CHOISSER, M. D.
DAVID G. LUTHRINGER, M. D.
5530 WISCONSIN AVE., N.W. SUITE 1240
WASHINGTON, D. C. 20015

May 29, 1974

Maurice H. Herzmark, M.D.
1616 18th Street, N.W.
Washington, D.C. 20009

RE: Karvel E. Shawley

Dear Dr. Herzmark:

Your patient, Mr. Karvel E. Shawley was seen in consultation on April 26th and May 9th, 1974 on referral through the Emergency Room at Doctors Hospital.

When seen, his major complaint was that of chest pains. The patient stated that since about January of 1974 he had noted sharp moderately severe pain in the sternal area. This was most noted when pressure was applied against the thoracic spine as in sitting in a chair or lying down. Generally, the pain disappeared shortly after this pressure against the spine was relieved as in a change of position. It was quite difficult to get a more percise or reproducable history concerning these pains. In any event the patient denied any chest pain related to exertion. There was no particular shortness of breath, and no ankle swelling. There was no past history of any cardiovascular problems. His most severe episode of pain had occurred following his discharge from Doctors Hospital on April 10th, 1974. He had been admitted to Doctors Hospital on the service of Dr. Lyons because of the expectoration of what appeared to be old and occasionally fresh blood, up to 2 to three teaspoonfuls per day. This expectoration occurred following a sensation of material welling up in his throat. It was not clearly related to a cough or to regurgitation. While hospitalized Mr. Shawley had undergone esophagoscopy, bronchoscopy and examination of the throat with no abnormalities noted. An upper G.I. series was obtained and was also normal. Chest x-ray was normal.

Past medical history revealed that Mr. Shawley had been in good general health apart from his extensive orthopedic problems resulting from series of injuries occurring since 1959. These problems are obviously well known to you and will not be reviewed. Past medical history was otherwise unremarkable. A system review revealed that there had been some elevation of the blood pressure noted at times, but no treatment had been undertaken. He also had noted some difficulty with headaches and transient black out spells. Otherwise, there were no complaints.

On physical examination the height was 6 ft. 3 inches, the weight 290 pounds, the pulse 80 and the blood pressure was 160/90. General physical examination exclusive of the musculoskeletal system revealed no abnormalities apart from his overweight.

The electrocardiogram was normal. A chemical profile showed an elevated blood sugar at 145 mg.%. All other studies were normal. A repeat blood sugar two hours following a meal was normal at 95 mg.%.

Mr. Shawley's chart from Doctors Hospital was reviewed and the additional normal or negative studies noted: bronchial washings cytology, serology, complete blood count, and urinalysis.

On the basis of the above, the findings are as follows:

1. Chest pain, probably of musculoskeletal origin.
2. Borderline blood pressure.
3. Overweight.

I was unable to detect any disease of the internal organs which might account for his chest pain. These pains do to an extent seem related to his problems with the musculoskeletal system. Concerning his hemoptysis, all studies at Doctors Hospital were normal and I think that any serious problem of the respiratory or gastrointestinal system has been ruled out.

Sincerely,

David G. Luthringer, M.D.

DGL/rjr

cc: Karvel E. Shawley
2715 Ordway St. N.W.
Washington, D.C. 20008

Northern Virginia Orthopaedic & Allied Specialties Clinic, Inc.

FORT WARD TOWERS • 2500 NORTH VAN DORN STREET • ALEXANDRIA, VIRGINIA 22302 • (703) 578-1300

File # 305-645

ORTHOPAEDIC SURGERY
Forrest M. Swisher, M.D.
James H. Masterson, M.D.
Frederick W. Rook, M.D.
John W. Leabhart, M.D.
Joseph T. Kaye, M.D.
Samuel R. Sawmiller, M.D.
Elmer C. Bigley, Jr., M.D.

PHYSICAL MEDICINE & REHABILITATION
Arthur E. White, M.D.

RADIOLOGY
Eugene R. Jacobs, M.D.
Marion C. Restivo, M.D.
Sheldon J. Rosenthal, M.D.

REPORT ON: SHAWLEY, KARVER E.
2715 Ordway Street, NW
Washington, DC

DATE OF EXAMINATION: July 11, 1974

HISTORY: Mr. Shawley is a 52 year old male construction carpenter who comes in stating he has been having difficulty with his back since an injury January 18, 1973.

He states he was on an extension ladder when the extension mechanism broke, allowing the patient and the ladder to fall approximately 24 feet, the patient landing on his feet, then the patient and the ladder both fell down about another seven feet onto another deck. As a consequence of this fall he sustained fractures of both ankles and injuries to his back and his neck.

He has had various treatments and various recommendations for this. Today, he comes in essentially for a confirmatory opinion as to the proper method of treatment for the problem of the low back.

He states that he has severe pain in the low back after walking for two blocks, after riding in a car for 15 minutes, when goint from a sitting to a standing position or going from a lying to a standing, or standing to a lying po sition. He states that after he has been in a car, or standing for 15 minutes or walking about 2 blocks he has pain radiating from the low back down the back of both legs and into the feet. This is accompanied by paresthesia of the lower extremities and intermittent and occasional weakness of the lower extremities. He states for the last 18 months the legs have given way and he has fallen three times.

His treatment has consisted of physical therapy, 3X a week for the last seven months. In addition, he has had a neurological evaluation and has had a Myelogram. His only current medication is Talwin for pain.

He states he had a similar, but real in retrospect quite minor injury to his back in 1959 for which he was treated at the Anderson Clinic, but following his release from the hospital in 1959 had worked steadily and with virtually no difficulty until the injury in January 1973.

He has had various recommendations, including some sort of recommendation for non-specific surgery.

EXAMINATION: Leg length, calf and thigh circumferences are equal; there is hypesthesia of the lateral aspect of the left, but sensation is otherwise intact; the left Achilles' reflex is totally absent even with agumentation, however, the other reflexes are

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are intact; pulses and extensor hallicus longus strength are intact; straight leg raising is markedly positive, just raising the legs up to check the Achilles' reflex causes considerable back pain.

When the patient stands, this is a 6'4" 275 pound male with a large gut which causes and increased lumbar lordiosis. There is tenderness over the entire lower spine from L3 to S2, but there is little paralumbar spasm. Precussion over the spine produces considerable painas does extension and lateral bending to eith side. The greater trochanters and sciatic notches are nontender.

X_RAYS: These are furnished from Dr. Boles, and Assoc., College Park, Md. dated 3/6/74; these are films of the LS spine. The x-rays are of excellent technical quality and show marked changes of degenerative arthritis an increased lumbar lordiosis and an open and obviously moving joint at would seem to be S1-2. There is no AP of the dorsal spine so that it can be determined at to whether this bad joint is at L5,S1 or S1-2, but I suspect it is S1-2.

DIAGNOSIS: Severe degenerative arthritis, with a movable and painful joint at the S1-2 level.

In light of the size of this gentleman I have strongly urged a new chair back brace and I feel his only salvation will be a spinal fusion over the bad joints from L5 to S3.

SRS:pam
7/15/74

1016 10TH STREET, N. W.
WASHINGTON, D. C. 20009

RTHOPEDIC SURGEON

TELEPHONE 232-0800

July 30, 1974

SUPPLEMENTARY MEDICAL REPORT

Mr. Karver E. Shawley
vs.
Shea-Ball Company
D/A: 1/18/73
Workmen's Compensation File No. 305645

HISTORY: Mr. Karver E. Shawley was re-examined today because of continued complaints of backache, despite treatment, and which he states is very severe. He also complains of continued pain of both ankles; and as previously noted, the left has been given a 35% permanent disability. The re-examination of his back today revealed the follow

RE-EXAMINATION: July 30, 1974 - The patient is a large, white male, age 53. The examination of his lower back shows that there is considerable spasm on either side of the spine, and the back is unusually flat. The patient has considerable difficulty on flexion of the spine, and the maximum that he can reach to the floor is 17 inches. Hyperextension is nil, and lateral bending is only one-third of the normal, with complaints of pain to both sides, probably due to the spicules which have been noted. He has some difficulty balancing on either unsupported leg. He is not able to squat. The straight-leg-raising test on the right side is positive at 150°, with complaints of severe pain. On the left side, the straight-leg-raising test is positive at about 135°. The heel-to-knee test on the right side is positive, and on the left side, it is positive. The coccyx is tender and seems to be bent anteriorly slightly, but it is not movable.

REVIEW OF X-RAYS TAKEN BY DOCTORS WENER, BOYLE, AND ASSOCIATES, in College Park, Maryland, on March 20, 1974, and brought in by the Patient - Lumbar Spine: A lateral view shows marked proliferative changes on the margins of the vertebrae. The anterior margins especially show outgrowths which are quite prominent, and beginning with the third, fourth, and fifth, show degeneration of the intervertebral spaces, especially between the third and fourth, and the fourth and fifth. This is also noted in the ap. view. The ap. view shows degeneration of the intervertebral discs, and the margins of the intervertebral bodies show marked proliferative growths, which are sharp and are a source of pain. There is an oblique view which also shows the proliferations, and also degenerative changes due to arthritis. Cervical Spine: There is seen degenerative changes and loss of the normal curve, with the margins indicating arthritic proliferations. The joints show arthritic changes. Left Ankle: There is seen a healed fracture of the lower end of the fibula and a distortion of the ankle bones. There is also seen a healed fracture of the tibia. In the lateral view, the fracture of the lower-medial end of the tibia shows angulation and distortion.

IMPRESSION:
1. Severe osteoarthritis with proliferative changes, aggravated by trauma, lumbar spine.
2. Aggravation of pre-existing unstable lumbo-sacral apparatus.
3. Fracture of the astragalus, left ankle, without displacement.
4. Mal-united fracture of the sustentaculum tali, left ankle.
5. Severe sprain and traumatic arthritis, sub-astragalar, left ankle.
6. Traumatic arthritis, with permanent limitation of motion and pain, right ankle.

EVALUATION: This former carpenter is now completely disabled from employment in that field. Anatomically, his body is permanently disabled in the amount of 50%, which is in addition to the 35% loss of use of his left ankle that was noted previously. It is apparent that in order to be employable at all, he will have to seek work of a very sedentary and light nature.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

August 12, 1974

RE: Karver E. Shawley
vs.
Shea Ball Company
D/A: January 18, 1973
File No.: 305-645

Mr. J. Hunt Brasfield
Suite 220
4660 Kenmore Avenue
Alexandria, Virginia 22304

Dear Mr. Brasfield:

Replying to your letter concerning Mr. Karver E. Shawley, I can state the following:

1. The left ankle of Mr. Shawley now shows a permanent disability equal to a loss of use of 35%, and which makes it impossible for him to continue his former employment.

2. The permanent disability of Mr. Shawley's right ankle, if it had to be rated, would be in the amount of 10%.

3. It is felt that all of his disability is below the knees, involving both ankles.

4. Regarding the right ankle, I do not feel that the previous injury of March, 1964, could have caused his present disability, but feel that it is only related to the fall of January 18, 1973.

5. In my opinion, Mr. Shawley now has a permanent disability of his back in the amount of 50%. Thus, the fall caused an aggravation of a pre-existing condition, as this office previously noted that he had a 35% permanent disability of his back because of injuries sustained in January, 1959. His back disability has, therefore, been increased 15% because of the fall in January, 1973.

Mr. Shawley has been considered as being incapable of returning to his former employment as a carpenter, and he has been advised to register for some rehabilitation so that he may be employed for some less strenuous activity.

Enclosed are copies of all reports in his case.

Very truly yours,

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

Enc.

144

ARTHUR B. WEIN, M. D.
SUITE 1012
1712 EYE STREET, N. W.
WASHINGTON, D. C. 20006
337-6363

ORTHOPEDIC SURGERY

August 19, 1974

Lawrence J. Pascal, Esquire
Suite 220
4660 Kenmore Avenue
Alexandria, Virginia 22304

Re: Karver Shawley

Dear Mr. Pascal:

On 1-18-73, while employed by the Shea-Ball Company, as a carpenter and working on the Metro system in the Rosslyn area, Mr. Karver Shawley sustained an injury to his left ankle, right ankle and lower back. The patient stated that he was in the process of going down a ladder towards a work area, when the ladder slipped away and he fell from one level, a distance of approximately sixteen feet and then fell a second time a distance of another five feet or so, landing on another level. By car he was taken by the time-keeper to the Arlington Hospital emergency room where he came under the care of Dr. Michael Lapadula. X-rays were taken of his left ankle and foot. He was referred to Dr. Van Herpe for further treatment.

Two days after the accident, he was seen by Dr. Van Herpe, more x-rays were taken and a cast was applied in the doctor's office and crutches were dispensed. The diagnosis at that time by Dr. Van Herpe was that of a musculo-ligamentous strain of the left ankle. With the cast, however, he was able to return to his usual occupation as a carpenter and remained working until March of that year. When the cast was removed he found that his swollen ankle and the pain were so disabling that he could not carry on. The patient at this time also had back pain and trouble with his right ankle which altogether made him feel that he could not continue with his usual occupation.

He has been under the care of Dr. Herzmark and also under the care of Dr. Van Herpe, who has given him Cortisone injections on several occasions. It is important to note that x-rays were taken in the office of Dr. Herzmark who reported the presence of a healing fracture of the astragalus of the left ankle. Dr. Herzmark compared x-rays that were taken in the office of Dr. Van Herpe which also showed a fracture of the anterior tip of the tibia and a healing fracture of the anterior portion of the Astragalus with some irregularity.

Despite treatment and reapplication of a cast in July, 1973, which was worn for about six weeks, the patient never did make a satisfactory recovery and continued to complain of disability in his left and right ankles and lower back. He was seen by Dr. Neviaser who suggested that a subastragalar arthrodesis be performed. The patient, although he did not desire this operation at the time he was seen by Dr. Van Herpe did accept to have it done when offered by Dr. Neviaser, but at this point the insurance carrier refus to comply to that request for surgery.

At the present time, Mr. Shawley, who weighs in the neighborhood of 280 pounds, continually complains of a swollen left foot and ankle. He is unable to use his back satis factorily. Squatting is impossible and climbing ladders and standing for long periods of time and even sitting are impossible. It has been suggested by some doctors that he cha his occupation if he does return to work.

PAST HISTORY: In 1959 he suffered an injury to his back while employed, from which h has had a permanent disability. This was a 35% permanent disability rating. Past histo was essentially negative except that associated with the particular disability he has had with his stomach and chest disorder which I am unable to relate.

PHYSICAL EXAMINATION: In the standing position, the patient walked forward on his tip-toes with instability and very severe instability while walking backward on his heels. Squatting was poorly performed and he took only a few steps in a mid-squatting position very poorly. The patient as mentioned above is definitely obese. Flexion of the lumbar spine revealed that he could reach to the level of his knees when bending forward and the lumbo-sacral spine pain was ellicited. Hyperextension was negligible and associated wi pain. Lateral bending and rotation in both directions was poorly and painfully performe More stability was noted when bearing weight on his right tip-toes than on his left. Both tests were again poorly performed.

In the sitting position the knee jerks were absent and ankle jerks were weak but equal. Hamstrings were tight bilaterally. The left ankle showed a definite loss of range of mot of inversion and eversion as compared with the normal right side. Dorsi-flexion and pla tar-flexion were also somewhat restricted as compared with the normal right side. Pai was quite acute when pressure was applied over the subtalar fossa. The entire left ankl joint was hypersensitive to the examination and even to gentle palpation.

Further examination of the patient in the recumbent supine position showed degrees straight leg raising to be 60 on the right and the same on the left and together about 60 with discomfort in the lumbo-sacral area. The hips, knees and ankle joints were otherwise satisfactory except for the left ankle findings just mentioned above. Sensory examination of both lower extremities was satisfactory.

In the recumbent prone position, hyperextension of the right and left legs performed separately and together was negligible and productive of pain. Fistpercussion of the lumbo-sacral area was productive of pain. There was no pain on deep palpation over either sciatic notch nor along the thighs and calves.

DECEMBER 4, 1973

CRAWFORD AND COMPANY
2000 TELSTAR COURT
SUITE 102
FALLS CHURCH, VIRGINIA

RE: HARVER SHAWLEY

GENTLEMEN:

I FEEL THAT THIS PATIENT SHOULD BE GIVEN A 60% PARTIAL PERMANENT DISABILITY RATING TO HIS LEFT FOOT, HOWEVER, SURGERY ON THE ANKLE SHOULD GIVE HIM A GOOD FUNCTIONAL RESULT TO HIS FOOT AND MINIMAL PAIN AND INSTABILITY SO THAT THE FATIAL PERMANENT DISABILITY RATING COULD BE MATERIALLY REDUCED.

SIGNED,

T.J. Neviaser MD

T.J. NEVIASER, M.D.

126

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

August 23, 1974

RE: Mr. Karver E. Shawley

To Whom It May Concern:

This is to certify that Mr. Karver E. Shawley's ankle disability is itself disabling and prevents him from performing his usual occupation as a carpenter.

Exclusive of the ankle disabilities, Mr. Shawley is unable to work at his usual trade as a carpenter by reason of his back condition; that is, that Mr. Shawley's back condition is in itself disabling and prevents him from performing his usual occupation as a carpenter.

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHH:mac

48

ARTHUR B. WEIN, M. D.
SUITE 1012
1712 EYE STREET, N. W.
WASHINGTON, D. C. 20006
337-6363

ORTHOPEDIC SURGERY

September 4, 1974

J. Hunt Brasfield, Esq.
Ashcraft and Gerel
15th Street, N. W.
Washington, D. C. 20005

Addendum

Re: Karver Shawley

Dear Mr. Brasfield:

In reply to your correspondence of 8-23-74 concerning Mr. Karver Shawley, I am definitely able to say that Mr. Shawley's back problem alone is sufficient reason for him to be unable to perform as a union carpenter. This work takes into consideration his usual duties which involve moderate to heavy lifting, bending, stooping, and climbing ladders.

Very truly yours,

Arthur B. Wein M.D.

Arthur B. Wein, M. D.

ABW:ct

305-645

MAURICE H. HERZMARK, M. D.
1616 18TH STREET, N. W.
WASHINGTON, D. C. 20009

ORTHOPEDIC SURGEON

TELEPHONE 232-0800

November 8, 1974

RE: Mr. Harvey E. Shanley
vs.
Shoe-Ball Company
Ins. File No. 66-62503-CK
Co. File No. AAM110997
D/A: January 18, 1973

Crawford and Company
Insurance Adjusters
2990 Telestar Court
Falls Church, Virginia 22042

Attention: Carla M. Hays, Adjuster

Gentlemen:

Mr. Harvey E. Shanley has now reached maximum benefits from treatment and is advised to rest for two to three weeks in order to determine what results are obtained.

It is felt that he will never be able to return to his former employment or trade as a carpenter because of the permanent disability which has been previously noted.

Very truly yours,

Maurice H. Herzmark

MAURICE H. HERZMARK, M.D.

MHHimac

Enc.

50

KARVER SHAWLEY, Claimant

v. Claim No. 305-645

SHEA-BALL, Employer
ARGONAUT INSURANCE COMPANY, Insurer

J. Hunt Brasfield, Attorney at Law,
4660 Kenmore Avenue - Suite 220,
Alexandria, Virginia 22304,
for the Claimant.

James F. DeDeo, Attorney at Law,
P. O. Box 534, Manassas, Virginia
22110, for the Defendants.

Hearing before Chairman JOYNER at Alexandria, Virginia, on August 20, 1974.

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

KARVER E. SHAWLEY, Claimant
BY
BY MR. BRASFIELD:

Q Mr. Shawley, would you please state your full name.

A Karver Eugene Shawley.

Q And, you live on Ordway Street in Washington, D. C.?

A Yes sir.

Q And, what is your social security number?

A 202-09-8264

Q On January 18 you were working for Shea-Ball. How long had you been working on that job Mr. Shawley?

A Oh, approximately 8 or nine months.

Q Did you have a position there?

A Yes sir. I was steward on the job. Being the first man on the job, that's the fellow who usually gets the steward's job.

Q Did you work regularly?

A Yes sir, everyday.

Q Did you also work overtime?

A Yes sir. We had overtime almost everyday and one day of the weekend.

Q Do you have any other trade or occupation, Mr. Shawley?

A No sir, I don't.

Q How long have you been a carpenter?

A Twenty-five years.

Q And, what kind of work do you have to be able to do in order to do your job as a carpenter?

A Well, you have to be in real good shape or you won't be able to do the work. You have to be able to squat and you have to be able to climb and you have to be able to get down in holes and you have to be able - - -

CHAIRMAN JOYNER:

I think we are fairly familiar with carpentry work and after all, we're familiar with manual labor. Was this heavy construction or - - -

A Heavy construction like tunnels, subways, bridges

and things like that.

Q Now Mr. Shawley, would you please describe to the Commissioner what you were doing when this accident happened on January 18th, and how the accident happened?

A Well, I was getting ready to descend into a work area which would require me to climb on a ladder at the top of an excavation and go down about 20 feet or so to the first deck. And, as I stepped on the ladder, the ladder collapsed and me and the ladder went down approximately, I don't know, 15 or 16 feet, something like that, and I landed on my heels I think. It all happened so quick. But, I landed on my heels, I believe, on the concrete and then me and the ladder, being very close to the edge of the concrete deck, slipped off and I went down backwards another 6 or 7 feet landing on my back and my right hip. Then what my feet hit going down that second fall I don't know because I can't remember nothing about that second fall.

CHAIRMAN JOYNER:

What did he land on at the end of the fall?

A Concrete. It was all concrete, yes sir.

Q Now, Mr. Shawley, would you just stand up for me please. Now, when the ladder broke the first time and you fell to the first level, what was the position that you were in when you hit the ground?

A I was on a 12 foot extension, an aluminum ladder, and

naturally the ladder was leaning up against the wall and protruding on up above the ground level and when I fell the first time, I was watching out for my hands, and my feet was clear of the rungs, and I was holding on to the ladder like this with my hands inside; I didn't want the fingers to get messed up, and bingo, down I go and I landed on the first deck and then when the ladder went off -- me and the ladder went off that deck and went down in another hole, then I was in this position, and that's when I landed, I believe, that's when the right foot got injured up real good, and my back against the wall; it hit.

Q So, when you hit the ground on the second level you were leaning backwards - - -

A I was leaning back like this and a little bit to the side.

BY CHAIRMAN JOYNER:

Q How did the ladder happen to fall the first time?

A Well, the ladder naturally -- like I say, was up like this but the best I can recollect about the whole thing is that there was probably some little gravel or something down there under the stoppers, you know, on the bottom of the ladder.

Q Did the base of the ladder slide out from under you?

A Yes, the base of the ladder went that way - - -

Q It just slipped out?

A Karver Shawley, Claimant

A Just slipped out and then it came sliding down and when the ladder went into that second hole it just closed up like a trombone.

BY MR. BRASFIELD:

Q Mr. Shawley, I show you these receipts and ask you if you can identify these. Are these prescriptions that you purchased out of your own money?

A Yes sir, I did.

Q Have you been reimbursed for these?

A No, I haven't.

Q All right, sir.

A And, these are not all of them, by the way. These are the ones that I just grabbed in a hurry. I have some more in boxes at home. These are for pain pills.

CHAIRMAN JOYNER:

And, that is all prescribed?

A Yes sir. Percodan. They are mostly from Dr. Van Herpe and the, Herzmark, he is not a believer in giving a man drugs.

CHAIRMAN JOYNER:

What do they total?

MR. BRASFIELD:

$27.00 in round figures, plus there is a receipt for elastic stockings for $17.50.

A And, also Dr. Herzmark had me get a cane but I have been unable to locate the receipt for that. But, the cane

was $10.00.

Q Now, Mr. Shawley, from the time you were first injured -- you were able to return to work shortly thereafter, isn't that right, within a day or two?

A Yes sir. I think that the accident happened on a Thursday or Friday and Dr. Van Herpe said that it was nothing more than a severe sprain and to keep on my feet and to keep walking, walk, walk, walk, and I said, "How about work?" He said, "Yes, you are going back to work Monday." So, I went back to work and -- I went back to work in a cast and on crutches but the superintendent on the job wouldn't let me go to work unless I had a letter from Dr. Van Herpe saying that I was okay and was nothing more than a sprain.

Q All right, so then you got that letter?

A And, I got that letter and I returned to work and I stayed there until March the 8th.

Q And, you have not worked since March the 8th?

A No sir.

Q And, you had an old back injury back around 1959, isn't that right?

A Yes sir. That's true.

Q You were given a 35% permanent disability rating on your back, isn't that right?

A That is what I understand.

Q But, since 1959 or 1960 or 1961, whenever that injury was, you have been working regularly, isn't that right?

A Well, my work is pretty seasonal. I would say that, you know, if you get nine or ten months out of the year, you are doing good.

Q But, you were able to do that with regularity?

A Yes sir.

Q In spite of your previous accident?

A In spite of it.

CHAIRMAN JOYNER:

Hasn't he been out since January 18 when he was hurt?

MR. BRASFIELD:

No sir. No, the doctor -- the reading of the x-rays originally did not disclose the existence of the fracture of the left ankle. So, they sent him back to work and the fracture wasn't discovered, in fact, until he went to see Dr. Herzmark some four or five months later.

A Six months later.

CHAIRMAN JOYNER:

What is the period of disability?

MR. BRASFIELD:

From March 18th until the present.

Karver Shawley, Claimant

CHAIRMAN JOYNER:

He worked up till March 18th?

MR. DeDEO:

March the 8th, sir.

(off the record)

BY MR. DeDEO:

Q Can you give an explanation as to why all the medical reports up to the 20th day of February 1974 contain no mention of any injury to the right ankle?

A Up to what day sir?

Q February 20, 1974, Dr. Herzmark's report.

A Well, there was some mention of it. I went to see Dr. Neviaser at the request of the insurance company on October the 31st.

Q And, that report describes an old injury involving arthritis. There is no claim here that you injured your ankle - - -

A I don't know what he wrote down but he asked me, he said, "And, what are your complaints today, Mr. Shawley?" I said, "Well, other than my left ankle, the right ankle." He said, "What about the right ankle?" I said, "My heel feels like I am walking on nails." And, he said, "Well, how does that effect you?" Then he raised my leg and pushed on my heel. He said, "Do you feel that up in your lower back?" I said, "I certainly do." He said, "Those

are calcium deposits known as spurs."

Q And, is that the first time that you told any doctor about your right ankle?

A No sir. I mentioned it many times to Dr. Van Herpe but he passed it off. He said it was the strain.

Q What about Dr. Herzmark?

A I mentioned it many times to him and I finally got him to take an x-ray of it and he said, "There it is Mr. Shawley, a spur."

Q You worked for a period of time after the accident, didn't you?

A From -- yes, from January to March - - -

Q No back problems then?

A Oh yes, but given 35%, you know, in years gone by that thing never completely left me and I always thought it was the strain put upon by carrying this thing around on my left foot and my left leg because of the time that they got that cast on there and -- this thing just felt like a concrete -- that I was lugging around and I complained about it and both -- well, at that time there was only Dr. Van Herpe involved, but he said, "Well, it's just probably a strain from carrying around your left leg -- dragging it around." I said, "Well, I hope it goes away." He said, "Well, it probably will." But, it never did, especially when he let off with the pills. Now, from June, when Dr.

Van Herpe cut me loose -- or should I say discharged me to go to Dr. Herzmark for another opinion, the pills were cut off and I tried to get a prescription from Dr. Herzmark. He said, "Mr. Shawley, let's not get in the habit of giving you pills. What they have geen giving you is too strong. I don't want you to get addicted to them." I said, "It's kinda tough going around like this." He said, "Just sort of bear with it."

Q Mr. Shawley, four doctors, Dr. Lapadula, who initially treated you, Dr. Herzmark, Dr. Van Herpe and Dr. Neviaser all saw you within a period of time after the accident and up to some 10 months after, the only problem that is anywhere mentioned in any of the reports is a left ankle problem. Now, you tell me all four doctors omitted what you told them about anything other than the left ankle?

A I tend to believe that, yes sir.

Q As a conspiracy against you?

A No, I don't think it is a conspiracy. I just think they looked at it as a - - - like I said before, it was a strain from toting around my left -- because I was in pretty bad shape. As a matter of fact, that left ankle just swole up and went against that cast as tight as can be. You couldn't get a piece of anything in it; a piece of paper between me and the cast.

Q You think four medical doctors are going to ignore a

sign of complaint?

A No. I mentioned it to all of them. Now, if they didn't write it down -- well, I can't tell them what to write down.

Q Didn't you insist on treatment for it?

A I asked Dr. Van Herpe many times -- I said, "Dr. Van Herpe, you know when I fell I had two feet like anybody else, and when I fell both of those feet hit on the concrete. My right one is hurting me now."

Q Didn't you also tell one of your doctors that you were going to try and get as much out of this thing as you possibly could?

A Try and get it out?

Q As much money out of this as you possibly could?

A I don't recall saying anything like that.

Q You don't recall saying that?

A Because that's not -- I didn't think that was their concern. I wouldn't say that anyhow.

Q You threatened to sue one doctor?

A I don't call -- tell what I was going to do. What I do is -- this is a free country. If I want to sue somebody, I'll sue them. If I loose -- well, it will pass like everything else. That certainly doesn't have anything to do with the price of eggs.

~~Ir.~~ Karver Shawley, Claimant

Q All right, Mr. Shawley that is all the questions that I have.

Witness dismissed.

Case concluded.

INTERROGATORIES

To: Arthur B. Wein, M. D.
1712 Eye Street, N. W.
Washington, D. C. 20006

Comes now Thomas C. Palmer, Jr., counsel for the employer and insurer in this matter, and propounds the following Interrogatories to be answered fully and under oath by Arthur B. Wein, M. D.:

1. State the date or dates upon which you have examined Karver Shawley.

2. Itemize each and every medical report supplied to you prior to or subsequent to your initial examination of Karver Shawley.

3. State when your records show or any records supplied to you the first complaint of any back problem by Karver Shawley subsequent to the date of January 18, 1973.

4. State whether or not you viewed any x-rays, or reviewed any medical reports taken or made prior to January 18, 1973. If your answer is in the affirmative, described said x-rays and medical reports.

5. State what, if any, conversations or telephone calls you had with Karver Shawley's counsel prior to or subsequent to your initial examination of the said Karver Shawley.

LEWIS,
CKTER
MER
AT LAW
NT AVE.
X 534
GINIA 22110

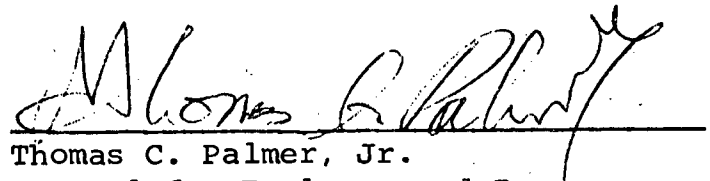
6. State what, if any, conversations you have had with any other physicians who have treated or seen said Karver Shawley and if you have had any such conversations, state when they took place and the substance of said conversations.

7. What, if any, treatment did Karver Shawley receive subsequent to January 18, 1973 with reference to his back?

8. What, if any, treatment did Karver Shawley receive subsequent to January 18, 1973 with regard to his right ankle?

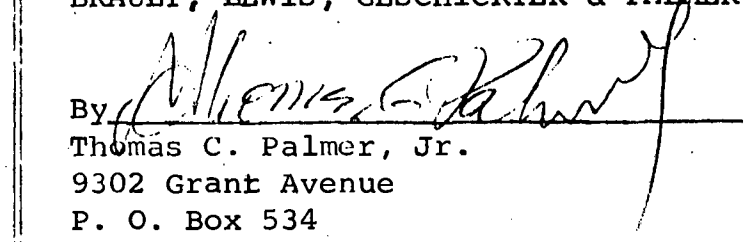
9. State what history was given you with regard to previous injuries prior to January 18, 1973 to either of Mr. Shawley's ankles.

10. What is Mr. Shawley's height and weight?

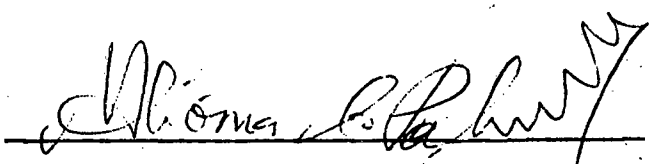


Thomas C. Palmer, Jr.
Counsel for Employer and Insurer

BRAULT, LEWIS, GESCHICKTER & PALMER

By 
Thomas C. Palmer, Jr.
9302 Grant Avenue
P. O. Box 534
Manassas, Virginia 22110
Counsel for Employer and Insurer

I hereby certify that copies of these Interrogatories were mailed postage prepaid to Arthur B. Wein, M. D. and to J. Hunt Brasfield, Esquire, counsel for claimant, this 23rd day of September, 1974.



October 2, 1974

Thomas C. Palmer, Jr., Esq.
9302 Grant Avenue
P.O. Box 534
Manassas, Virginia 221100
Counsel for Employer and Insurer

Dear Mr. Palmer:

The following answers are being submitted to your interrogatories in the case of Mr. Karver Shawley:

1. August 19, 1974.

2. Enclosed are copies of all reports which you request.

3. Refer to medical reports attached. In the history you will note that Mr. Shawley himself noted that his back was injured in the accident of January 18, 1973.

4. No x-rays were reviewed. All medical reports available to this office are dated from January 18, 1973 up to July 11, 1974.

5. The answer to this question is privileged communication both from a medical and from a legal point of view; but assuming that this question merely pertains to communications concerning Mr. Shawley, Mr. Brasfield did call my office several days prior to August 19, 1974 in order to set up an appointment. Following my examination of Mr. Shawley, Mr. Brasfield called me and I related to him my findings and evaluations as subsequently reduced to writing in my report dated August 19, 1974 and addressed to Lawrence J. Pascal, Esquire. To the best of my recollection, there was only one other telephone communication or conversation between Mr. Brasfield and myself concerning Mr. Shawley, and that was when Mr. Brasfield asked me to respond specifically to the question that I answered in my report dated September 4, 1974, and also regarding a conversation on what to do with these interrogatories.

6. Assuming that this question pertains to conversations concerning Karver Shawley, I have had the following conversations with other physicians who have treated or seen this gentleman: None.

7. No direct knowledge. He received no treatment from me; see medical reports.

8. No direct knowledge. He received no treatment from me; see medical reports.

9. None.

10. Approximately 6'5"; weight approximately 280 lbs. See report.

Enclosed is a statement for time involved in answering the above interrogatories and for making copies of all medical reports in my possession.

Truly yours,

Arthur B. Wein, M.D.

Arthur B. Wein, M.D.
Orthopedic Surgery

ABW:dd

enclosures

Opinion by JOYNER,
Chairman

NOV 13 1974

Hearing before Chairman JOYNER at Alexandria, Virginia, on August 20, 1974.

This claim is before the Commission upon the application of the employer, filed July 11, 1974, alleging a change in condition as of that time in that the claimant had reached maximum improvement as to his left leg and should be rated for permanent disability.

The application is resisted on the ground that the claimant continues to be totally disabled from other injuries received in his industrial accident on January 18, 1973.

The employer relies primarily upon the medical report of Dr. L. B. Van Herpe of March 27, 1974, which supports the employer's application. In addition, Dr. Van Herpe states that he can find no indication of injury to the claimant's right ankle or low back received in the industrial accident.

The claimant's evidence consists of the reports of Dr. Arthur B. Wein of August 19, 1974 and September 4, 1974, and Dr. Maurice H. Herzmark's reports of July 30, 1974, August 12, 1974, and August 23, 1974. Both Dr. Wein and Dr. Herzmark indicate in

their various reports that the claimant aggravated a pre-existing arthritic condition in his back in the industrial accident and that his back injury renders him totally disabled. Dr. Herzmark [8-12-74] further indicates a 35% permanent disability to the left ankle and a 10% disability to the right ankle, both as a result of the industrial accident.

Upon this evidence we find that the claimant has reached his maximum improvement both as to his left and right ankles which were injured in this industrial accident but that he is totally disabled as a result of the back injury also received in this accident and therefore cannot be rated at this time as to either leg, although both have reached their maximum improvement.

For these reasons the employer's application is denied and dismissed.

A W A R D

Compensation under the outstanding award of March 23, 1973 for temporary total incapacity shall be resumed as of July 14, 1974, to be continued until subsequent conditions justify a modification thereof.

In addition, the employer shall reimburse the claimant for certain medication prescribed by Dr. Herzmark in the sum of $27.00, a cane in the amount of $10.00, and travel expenses for medical treatment prior to September 6, 1974 in the sum of $77.40.

From compensation there shall be deducted and paid to J. Hunt Brasfield, Esq., the sum of $350.00 for legal assistance rendered the claimant.

For prior legal services rendered the claimant an attorney's fee of $150.00 shall be deducted from compensation and paid to the firm of Baker, Hostetler, Frost & Towers, Southern Building, Washington, D.C. 20005.

APPLICATION FOR REVIEW

The employer and insurer in this matter hereby file this their Application for Review and ask that this matter be set for review by the full Commission at the earliest possible date.

DOCKET FOR Review
DATE OF LAST PAYMENT
APPLICATION FILED 11-19-74
ENTERED TO DOCKET 11-21-74
BY tc

SHEA-BALL CONSTRUCTION NO.

By _____
Its Counsel

ARGONAUT INSURANCE COMPANY

By _____
Its Counsel

BRAULT, LEWIS, GESCHICKTER & PALMER

By _____
Thomas C. Palmer, Jr.
Counsel for Employer and Insurer

I hereby certify that copies of this Application for Review were mailed to J. Hunt Brasfield, Esquire, counsel for claimant, this 18th day of November, 1974.

_____

NOV 1974
RECEIVED
Industrial Commission of Virginia

LT, LEWIS,
CHICKTER
PALMER
RNEYS AT LAW
GRANT AVE.
O. BOX 534
S, VIRGINIA 22110

KARVER SHAWLEY, Claimant

JAN 16 1975

v. Claim No. 305-645

Opinion by MILLER, Commissioner

SHEA-BALL, Employer
ARGONAUT INSURANCE COMPANY, Insurer

J. Hunt Brasfield
Attorney at Law
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia, 22304
for the Claimant

Thomas C. Palmer, Jr.
Attorney at Law
9302 Grant Avenue
P.O. Box 534
Manassas, Virginia, 22110
for the Defendant

REVIEW before the full Commission on January 8, 1975.

This case comes on review by the defendants on those portions of the decision and award of November 13, 1974 denying defendants' application for specific left leg permanency rating and at the same time awarding continuing compensation for back and right leg injuries allegedly occurring in the original January 18, 1973 accident.

Significantly, the original agreement entered into by the parties reads: "right hip, left ankle". Appropriately the left leg (ankle) was the only diagnosis and only subject of treatment for some thirteen months. See reports of Dr. Van Herpe March 27, 1974 and Dr. Neviaser November 19, 1973. (The bruised hip recovered early.)

No written claim for injury to the back or right leg was filed with the Commission within one year from the date of accident

as required by §65.1-87, Code of Virginia. Moreover and admittedly, it was only beginning around February 1974 that the first reference was made or appears in reports to any back or right leg condition.

The evidence herein plainly establishes that no assertion or complaint of back or right leg injury was even made under thirteen months after the occurrence of the January 18,1973 accident.

Accordingly, even if there were sufficient evidence of related injury to the back or right leg at the time of the January 18, 1973 accident (which appears questionable from this record) the Industrial Commission is without jurisdiction or legal authority to award disability benefits by virtue of said §65.1-99. Discussed; see Jamerson v. Falwell Well Corp., 51 O.I.C. 132.

The claim for back and right leg injury being barred by the statute of limitation it is not necessary to determine the possible relationship, if any, of such asserted conditions with the original accident.

With regard to injured left leg (ankle) Dr. Van Herpe, attending, has estimated 5% permanency and Doctors Herzmark and Wein have estimated 35% permanency to the left ankle. The finding of the attending orthopedist (Dr. Van Herpe who followed throughout) should be accorded the greater weight pursuant to established legal principles.

Therefore, upon consideration of the entire record this Commission on review reverses and vacates the decision and award of November 13,1974.

However, the Commission does find that by July 13,1974 maximum improvement for rating had been attained with the injured left leg and finds a 20% permanent partial loss of use of the left leg.

An award is hereby entered vacating the original outstanding award as of July 13,1974.

Moreover, an award is hereby entered as of July 13,1974 in behalf of the claimant against the defendants providing for payment of compensation of $70.00 weekly for 35 weeks for 20% left leg permanency.

The defendants shall pay for all related medical attention pertaining to the left leg.

From the award to the claimant the total sum of $250.00 shall be deducted and paid to J. H. Brasfield, attorney, for legal services rendered.

Moreover, the sum of $100.00 shall also be deducted from the award and paid to Baker, Hostetler, Frost and Towers, Southern Building, Washington, D.C. for prior legal services rendered herein for the claimant.