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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760795

R. H. LEONARD
and
ERIE INSURANCE EXCHANGE

Appellants

v.

WILLIAM A. ARNOLD

Appellee

APPENDIX

NORMAN A. WEST
West & Zabriskie
4021 University Drive
Fairfax, Virginia 22030

Counsel for Appellants

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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Form No. ...

THE USE OF THIS FORM IS REQU ... THE PROVISIONS OF THE ... RKMEN'S COMPENSATION ACT

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

M067676

Case of .....
File No. .....

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

Employer

1. Name of Employer Robert H. Leonard Phone No. 788-4434
2. Mail address: No. and St. Box 155 City or Town Catlett State Virginia
3. Location, if different from mail address
4. Insured by: Name of Company Erie Insurance Exchange
5. Nature of business (or article manufactured) Building Construction

Time and Place

6. (a) Location of plant or place where accident occurred Fauquier (City or County) State if employer's premises No
   (b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill —
7. (a) Date of Injury June 3 19 74 Day of week Mon. Hour of day 2 A. M. 2:30 P. M.
   (b) Was injured paid in full for day he was injured? YES
8. Date incapacity began June 3, 19 74 A. M. P. M. ✓
9. Was injured paid in full for day incapacity began? yes
10. When did you or foreman first know of accident? Immediately
11. Name of foreman Robert Leonard

Injured Person

12. Name of Injured William (First Name) A. (Middle Name) Arnold (Last Name) 236-30-4899 (Social Security No.)
13. Address: No. and St. General Delivery City or Town Calverton State Va.
14. Check (✓) Married ✓, Single..., Widowed..., Widower..., Divorced..., Male ✓, Female..., No of Dependent Children 2
15. Age 46 Did you have on file employment certificate or permit?
16. (a) Occupation when injured Carpenter (b) Was this his or her regular occupation? yes
    In what department regularly employed? Carpenter
17. (a) How long employed by you? 1 mo.; in present job? 1 mo. (b) Piece or time worker Time (c) Wages per hour $ 4.00
18. (a) No. hours worked per day 8 (b) Wages per day $ 32.00 (c) No. days worked per week 5
    (d) Average weekly earnings $160.00 (e) Work week starts on Mon. and ends on Fri. (f) Time shift started 8:00 A.M. P.M. (g) If board, lodging, fuel or other advantages furnished in addition to wages, give estimated value per day, week or month —

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 working on building approximately 7 ft high lost his balance and jumped to concrete below landing on his feet with most of his weight on right leg.
25. Name and address of witness Robert Leonard - same as above

Nature of Injury

26. Nature of injury (describe exact location of amputation or fractures, right or left) fracture of right heel
27. Probable length of disability 6 to 8 weeks 28. Has injured returned to work? No
    If so, date and hour At what wage $
29. At what occupation?
30. (a) Name and address of physician Dr. David Cook 210 W Shirley Ave., Warrenton, Va.
    (b) Name and address of hospital Fauquier Hospital, Warrenton Va.

Fatal Cases

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

Date of this report June 3, 1974 Firm Name Leonard Enterprises
Signed by [illegible] Official Title Owner

WC 8045b (Ed. 7-72) UNIFORM PRINTING & SUPPLY DIV.

SILVER SHEET

6-3-74 Fauquier Hospital Emergency Room
Dx: Closed, slightly displaced fracture right os calcis
Rx: Short leg cast, ice, elevation, Demerol #24

6-10-74 He is still having a great deal of pain at the fracture sight. Xrays look good. A walking heel was added to his cast and we will see him again in three weeks. DEC:cj

6-17-74 This man is currently being treated for a fracture of the os calcis. The man slipped and fell in a steak house on June 11, 1974, and was brought to the local emergency room complaining of severe pain at the fracture site. X-rays through his cast at that time showed no change in the fracture fragments and I did not feel that he had sustained any significant injury to the heel. He subsequently has developed severe pain in the right shoulder, which I believe represents post-traumatic bursitis. I accordingly injected the joint today. A soft spot in his cast was repaired and we'll see him back in two weeks for X-rays of his heel out of plaster. DEC:dg

6-24-74 Prescription for Percodan #30

7-1-74 His Xrays look fine and he is still severely symptomatic but we will discontinue his cast and let him begin weight bearing as tolerated, with a large foam rubber cushion under the heel. I will see him back in four weeks. DEC:Cj

8-1-74 All swelling is now subsided and physical examination is nonrevealing except for marked tenderness to palpation in the fracture site. He still professes extreme disability, stating that he can only stand to be on his feet for two to three hours at a time before the pain becomes excruciating. I'm afraid this is going to be one of the chronic painful feet following oscalsis fracture, but know of no treatment that will alter this course. I will see him again in six weeks. DEC:dp

9-5-74 This patient still complains of severe pain in his heel and states that his ankle turns easily. Physical examination is nonrevealing except for the same persistent tenderness to palpation at the fracture site.

He also has developed severe pain in the neck region, which radiates out into his shoulders. Physical exam is non-revealing. I injected the right shoulder today and have started him on Tandearil, four times a day. He's to return in one week. DEC:dp

9-12-74 He's still having neck pain and also continues with his ankle pain. Physical exam is nonrevealing. His neck X-rays look terrible. I'll treat him with a soft collar and a traction unit and have him back in three weeks. DEC:dp

9-23-74 Refilled Tanderil loo mgs. at Rhodes

-10-74 This man remains extremely symptomatic. He complains of constant, unrelenting pain in his neck radiating out into both shoulders and both upper extremities. He now describes profound loss of sensation throughout both upper extremities. He also describes chronic, unrelenting, aching pain within the right heel. Physical examination today shows subjective tenderness to palpation in the region of his os calsis fracture. He also has subjective tenderness to palpation throughout the cervical spine and shoulders. There is subjective diminished sensation throughout both upper extremities of a nondermatonal distribution.

A situation has arisen in which his compensation insurance carrier was notified that he was working for another firm and this has caused considerable anxiety on his part. He explains that he has been working some for one of his kinfolk without any pay. He states that this work has entailed only his driving a tractor and that he has worked only for a few hours at a time following which he would then return to his home for bedrest, etc. He emphatically states that he is not physically able to return to his former type employment, which would entail a great deal of bending, lifting, etc. Very frankly, I know of no specific treatment for his many ailments, except to wait for passage of further time and hope that most of these problems will subside. It might be well to have additional consultation, both orthopedic and neurosurgical, if the insurance carrier so desires. I plan to see him back in four weeks. DEC:dp

15% permanent partial disability for os calcis fracture.

1-7-74 This man is now five months post injury and although physical examination is nonrevealing, he still complains of the bitter chronic, unrelenting pain at the fracture site. The prognosis is looking worse all the time and I suspect it would be wise to see if we can get him accepted by Vocational Rehabilitation for retraining into an occupation which will allow him to work in a sitting position. I'll see him back in eight weeks. DEC:dp

-6-74 Refilled Librium at Rhoads.

-2-75 He still complains of pain in the region of his ankle fracture as well as his chronic neck pain. He has not been hospitalized for this and states that the Maryland Hospital refused to accept the liability insurance. At the rate he's improving perhaps this will not be necessary. I plan to see him again in two months. DEC:dp

-13-75 Refilled Librium at Rhoads.

-16-75 This man has recently experienced a severe exacerbation of his chronic neck pain. He complains of profound weakness in the right upper extremity with episodes of numbness. He was seen in the emergency room yesterday and given an injection for the pain, because of its unusual severity. I believe that further neurosurgical evaluation is in order and will ask Dr. Bortnick to see him. DEC:dp

Letter to Dr. Bortnick.

-6-75 This man underwent cervical disc surgery by Dr. Bortnick on 13 February 1975 and is enjoying a satisfactory post operative course. The pain related to the fracture of his heel bone is also gradually improving and I believe he eventually is going to enjoy a satisfactory result. I recommend no change in his treatment program, which currently consists of periodic soaks and exercises for his foot and he's wearing a thick sponge rubber pad in his shoe beneath the heel. I plan to see him again in six weeks. DEC:dp

-17-75 This man is still having a terrible problem with his cervical spine and describes chronic unrelenting pain, which prevents him from resting. The pain radiates down into the right shoulder and right upper extremity. He is due to see Dr. Bortnick for follow up within the next four or five days. He will evaluate this problem. He also complains of chronic continuous aching pain in the right heel at the region of his calcaneus fracture. His physical examination is unchanged. He continues to demonstrate full range of motion in the ankle and subtalar joint, which seems to be painless. He is quite tender to palpation over the medial and lateral aspects of the heel. The neurovascular status remains normal. I do not feel there is any available treatment for this problem, except for continued observation, encouragement, ambulation as tolerated, periodic warm soaks, etc. I have prescribed Tyelonol #3 to be used for pain control and plan to check him again in six weeks. I would like repeat x-rays of his heel at that time. DEC:dp

-28-75 I proceeded with the X-rays of the heel as suggested by Dr. Couk These show a little bit of OSCIGOAL over the insertion of the Achilles tendon and also a small plantarly located spur, but never of these are tender on palpation today. The main area which is uncomfortable is the medial aspect of the proximal portion of the os calcis just below the medial malleolus. I suggested trial of Butazolidin and gave him a prescription for 100 mgs. to be taken q.i.d. for a week, also I refilled his Librium prescription. I told him the Tylenol #3 contained Codeine which he already knew and we decided he would try to get along without that for awhile. Return to see Dr. Couk in six weeks. WRK:cj

-8-75 He returns today having been on Librium and Robaxin and is complaining of left hip pain to the posterior aspect but with no associated low back pain. He has positive straight leg raising on the left at 60° active with a positive Lasegues sign. There is negative sciatic tension test. There is no muscle atrophy or weakness noted. There

3-75 (Continued)--- is a vague sensory deficit in the S1 distribution on the left. The patient has other vague sensory deficits, which are inconsistent. He has a negative touch test, in example, when touching the patient in this area consistently he responds "I don't feel that" and this is with his eyes closed. The patient has pain with flexion,extension, inversion, and eversion of his ankle and it is difficult to say whether it is completely subtalar since there is vague superficial tenderness. Circulation of the left and right lower extremities are good. A review of the x-rays of his right ankle reveal the patient to have no significant post traumatic changes of either the ankle or subtalar joint. It is felt the patient should have lumbosacral spine films before returning next time. His prescriptions were refilled and I will continue following this patient to work out the most efficacious disposition for returning him to full function. DMS:dp

24-75 He returns today for follow up. His x-rays show some mild discogenic disease at the L4-5 level on the right side. There is a small amount on the right side at the L5-S1. He stated on this date that he was not better from the time of his last visit. He had been to see Dr. Bortnick and Dr. Lane, at that time he stated that he was loosing feeling in both sides of his leg from the waist down. He said that Dr. Bortnick mentioned three operations with an operation on the left hip totalling four operations. Because of this vague report, I asked the patient to come back in several weeks to give me a chance to talk to Dr. Bortnick myself. DMS:dp

P.S. Upon calling Dr. Bortnick he felt that no further surgery was indicated and that only a vigorous conservative regimen would be recommended.

I am reviewing the patients os calcis films. He has had excellent fracture healing and it is somewhat surprising that the possibility of fusion has been mentioned to him. He's to return in three weeks for follow up. DMS:dp

21-75 He returns today and we discussed Dr. Bortnick's disposition as well as the surprising prolongation of symptoms with the heel considering the fracture. I told him that subtalar fusion for this nondisplaced fracture was not the usual course for such. He is to return in one month to see Dr. Couk, at which time disposition concerning his problem should be made. DMS:dp
P.S. I believe there is some functional overlay and have discussed the crucial need to get the patient back to work for he is over the age of 45 and he has been out of work for fourteen months. With each month the chance of getting him back to productive work on a full time basis becomes less and less. This is tragic for a man of his age. DMS:dp

-25-75 This patient returns today and remains highly symptomatic. He complains of severe chronic aching pain in the left hip region now and states that he would like to have a left total hip replacement operation. He also complains of the same chronic unrelenting pain in his right heel and says that one doctor told him that he should have an ankle fusion. I spent a great deal of time talking with this patient today while examining him.

Physical examination shows completely normal reflexes and motor function, but there is bilateral stocking anesthesia. I have told him that returning to his job would be the most valuable therapeutic measure available and he assures me that he is going out to look for a job and will be back at work by the fifteenth of October. I will plan to see him again in six weeks for follow up. DEC:dp

-25-75 This patient went back to work two weeks ago, after he was last seen here but states that the first day at work, he only lasted three hours and then, because of the incapacitating pain, had to leave the job. The second day he returned to his job and was able to work only the first half of the day before leaving. The third day he was unable to return to his job at all, because of the severe pain when he awakened that morning. Since that time, they have made him an "errand boy" and apparently, allow him to work as much and as often as he can. His physical examination today reveals very dramatic loss of sensation through most of the lower portion of his body, well up into the torso. Deep tendon reflexes, motor function remain normal. Straight leg raising is painless.

As an Orthopedic Surgeon, I am totally unable to explain his continued problems and have certainly not encountered anything like this in my Orthopedic practice. I would strongly recommend neurosurgical and perhaps psychiatric evaluation to more clearly define this problem. I continue to feel that this man has reached a point of maximum recovery with regard to the fracture of his right os calcis. In my opinion, he has received an excellent result from his cervical disc excision. I am unable to explain the etiology of his chronic low back pain, especially in view of his completely nonrevealing physical examination. He should be encouraged to pursue full, unlimited activities including gainful employment. I shall have him return in eight weeks for follow up evaluation. DEC:dp

X-RAY REPORT

ame Arnold, William Albert Age 46 Rm. No. ER Hosp. No.

ddress Box 34, Calverton, Va. Date 11 Jun 74 X-ray No. 104,873

ubmitted for X-ray film Treatment Filed

natomical part or region: Rt. tibia & fibula, rt. heel

Attending Physician Couk

ndings:

11 Jun 74: Examination of the right leg through plaster, not including he knee, is believed to demonstrate no bony injury.

Re-examination of the rt. os calcis through plaster shows the fragments emaining in satisfactory position and similar to the examination done 8 days go.

H. W. Stinson, M.D./wb

Dr.

Roentgenologist

rm 141 — Briggs Printing Co., Des Moines, Iowa

HE USE OF THIS FORM IS REQU. 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

le No. M 067,676

ase of William A. Arnold vs. Leonard Enterprises

ATTENDING PHYSICIAN'S REPORT

questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill 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): William A. Arnold

2. DATE OF INJURY (Mo., day, yr): 6-3-74

3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): Box 34 Calverton, Virginia 22017

4. DATE OF BIRTH (or age) (Mo., day, yr.): 7-30-27

5. SEX: M

6. NAME OF EMPLOYER: Leonard Enterprises

7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code): Calverton, Virginia 22017

8. DATE OF FIRST VISIT (Mo., day, yr.): 6-3-74

9. DATE DISCHARGED (Mo., day, yr.): Unknown

10. WHO AUTHORIZED TREATMENT? Emergency Room

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

Fell ten feet from roof, injuring right foot

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.)

Closed, slightly displaced fracture right os calcis

13. DIAGNOSIS: Same as #12

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

15. NATURE OF TREATMENT
6-3-74 Emergency room treatment short leg cast applied
6-10-74 Repeat Xrays look good, walking heel was added to cast 6-17-74 Cast repaired

16. DATES OF YOUR TREATMENT (Mo., day, yr.)
6-3-74
6-10-74
6-17-74

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

18. WERE X-RAYS TAKEN? [XX] 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
Fauquier Hospital Emergency Room
330 Hospital Drive
Warrenton, Virginia 22186

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

A. DATE DISABILITY BEGAN (Mo., day, yr.): 6-3-74

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): David E. Couk, M.D.

23. ADDRESS (Number and street, city, state, zip code): 210 W. Shirley Ave. Warrenton, Virginia 22186

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

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

25. DATE OF THIS REPORT: 6-20-74

S.S.#230-36-7741 Orthopedic Surgeon

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

orm No. 6 — 9/28/73-400M

No. 4—8-20-68—30M

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

ARNOLD, WILLIAM A. Employee

Robert H. Leonard/Leonard Enterprises Employer

Erie Insurance Exchange Insurance Carrier

MEMORANDUM OF AGREEMENT AS TO PAYMENT OF COMPENSATION

We William A. Arnold (Name of Employee or Dependents) residing at General Delivery (Number and Street)

City or Town Calverton State Va.

and Robert H. Leonard t/a Leonard Enterprises (Name of Employer)

Office address Box 185 (Number and Street) Catlett, (City or Town) Virginia (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 June 3, 1974 **Date disability began** June 3, 1974

Nature of injury Fracture of right heel.

Place of accident Fauquier County, Va.

Cause of accident Lost balance and jumped onto concrete floor, landing on feet with most of body weight on right leg, causing the fracture to my heel.

Probable length of disability Approx. 6 to 8 weeks

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

That the said William A. Arnold shall receive compensation at the rate of $ 80.00 per week based upon an average weekly wage of $160.00 and that said compensation shall be payable weekly

from and including the 11th day of June month 19 74 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia

x Peggy Leonard Witness

Address (Number and Street)

xx Ruth A. Arnold Witness

Calverton Va. 22016 Address (Number and Street)

Approved by (Commissioner or Board Member)

Date of Approval

x William A. Arnold Employee or Dependent

xx Robert H. Leonard Employer

Erie Insurance Exchange Carrier

By Thomas W. Elgin

Thomas W. Elgin

Title Assistant Claims Manager

Date of Agreement June 14, 1974

Form No. 9 — 6 1 71 — 100M

7-8-74

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

DIVISION OF CLAIMS

P. O. BOX 1794
RICHMOND, VIRGINIA 23214

Claim No. 415-237 (M067 676)

Case of William A. Arnold
Accident: 6-3-74

AWARD

Approval of Agreement

cm

Date July 3,1974

To Robert H. Leonard t/a Leonard Enterprises (Employer)
Box 185
Catlett, Virginia

and Mr. William A. Arnold, (Employee)
General Delivery
Calverton, Virginia

and Erie Insurance Exchange, (Insurance Carrier)
P O Box 567
Waynesboro, Virginia 22980

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 June 14,1974 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:

$80.00 per week, during incapacity, payable weekly, beginning June 11,1974.

Medical benefits are awarded for the full statutory period.

VA.
JUL 5 '74
SILVER STATE

INDUSTRIAL COMMISSION OF VIRGINIA

DAVID E. COUK, M. D.
ORTHOPEDIC SURGERY

210 W. SHIRLEY AVE.
WARRENTON, VA. 22186
PH. 347-9220

1051 OAKLAWN DRIVE
CULPEPER, VA. 22701
PH. 825-5362

July 17, 1974

Erie Insurance Company
8605 Cameron Street
P.O. Box 390
Silver Spring, Maryland 20907

RE: W.C.C. File: 415-237
Claim NO.: M 067,676
Employer: Robert H. Leonard
Employee: William A. Arnold
D/A: June 3, 1974

Dear Mr. Elgin:

Please find attached mimeographed copy of my office dictation on Mr. Arnold. You should be aware of the fact that fractures of the Os Calsis are, perhaps, one of the most treacherous orthopedic injuries with which we deal. They are characterized by chronic, unrelenting pain and disability. The severity of the fracture as noted on X-ray is not necessarily proportional to the degree of disability. In other words, some patients with more severe fractures seem to do fine while other patients with minor fractures seem to do miserably. It is not at all unusual for this type injury to result in a permanent partial disability. Frequently, reconstructive "salvage" surgical procedures, such as ankle fusion, etc., become necessary after a year or so.

I hope this information will be helpful to you, and if any other questions remain unanswered, don't hesitate to contact my office.

Sincerely yours,

David E. Couk, M.D.

DEC:dp

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
P. O. Box 1794, Richmond, Virginia 23214

e No. _____

se of _____

ATTENDING PHYSICIAN'S REPORT

questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill 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): William A. Arnold	2. DATE OF INJURY (Mo., day, yr): 6-3-74
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): Box 34, Calverton, Va. 22017	4. DATE OF BIRTH (or age) (Mo., day, yr.): 7-30-27 / 5. SEX: M
6. NAME OF EMPLOYER: Robert Leonard (Leonard Enterprises)	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code): Calverton, Va. 22017
8. DATE OF FIRST VISIT (Mo., day, yr.): 6-3-74	9. DATE DISCHARGED (Mo., day, yr.): Unknown yet / 10. WHO AUTHORIZED TREATMENT? Emergency Room

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

Fell 10 feet from roof while on job, landed on right foot injuring right heel.

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.)

7-1-74 X-rays look fine but he is severely symptomatic. 8-1-74 Swelling subsided and physical exam is nonrevealing except for marked tenderness to palpation in fracture site.

13. DIAGNOSIS: Closed, slightly displaced fracture right Os calcus	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: 7-1-74 Discontinue cast and let him begin weight bearing as tolerated.	16. DATES OF YOUR TREATMENT (Mo., day, yr.) (since last report) 7-1-74 8-1-74
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

20. WAS THERE DISABILITY FOR WORK? [X] 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.)
	6-3-74	?	

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): David E. Couk, M.D.	23. ADDRESS (Number and street, city, state, zip code): 210 W. Shirley Ave., Warrenton, VA. 22186

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

SIGNATURE David E. Couk M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT: 9-12-74

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

m No. 6 - 3/15/73 400M

HE 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
P. O. Box 1794, Richmond, Virginia 23214

le No. _____

ase of _____

ATTENDING PHYSICIAN'S REPORT

questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill 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): William A. Arnold

2. DATE OF INJURY (Mo., day, yr): 6-3-74

3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): Box 34 Calverton, Virginia 22017

4. DATE OF BIRTH (or age) (Mo., day, yr.): 7-30-27

5. SEX: M

6. NAME OF EMPLOYER: Leonard Enterprises

7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code): Calverton, Virginia 22017

8. DATE OF FIRST VISIT (Mo., day, yr.): 6-3-74

9. DATE DISCHARGED (Mo., day, yr.): Unknown

10. WHO AUTHORIZED TREATMENT? Emergency Room

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED
Fell while at work

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.)
10-10-74 & 11-7-74 Still symptomatic although physical exam is non revealing

13. DIAGNOSIS: Same as previous reports

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
Prognosis poor, will look formhelp from Vocational Rehabilitation for retraining for another occupation

16. DATES OF YOUR TREATMENT (Mo., day, yr.)
10-10-74
11-7-74

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

18. WERE X-RAYS TAKEN? [ ] 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

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

A. DATE DISABILITY BEGAN (Mo., day, yr.): 6-3-74

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

C. DATE ABLE TO RETURN TO REGULAR WORK (Mo. day, yr.):

21. WILL THERE BE PERMANENT DEFECT, OR FACIAL OR HEAD DISFIGUREMENT? [X] YES [ ] NO
(If "Yes," describe nature and extent of same. Estimate loss of function in % terms).
10 % permanent partial disability for os calcis fracture

22. NAME OF ATTENDING PHYSICIAN (Type or print): David E. Couk, M.D.

23. ADDRESS (Number and street, city, state, zip code): 210 W. Shirley Ave. Warrenton, Va. 22186

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT.
SIGNATURE David E. Couk M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT: 11-21-74

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

Form No. 6 – 10/21/74 400M

DAVID E. COUK, M. D.
ORTHOPEDIC SURGERY

210 W. SHIRLEY AVE.
WARRENTON, VA. 22186
PH. 347-9220

1051 OAKLAWN DRIVE
CULPEPER, VA. 22701
PH. 825-5362

December 3, 1974

Erie Insurance Company
8605 Cameron Street
P.O. Box 390
Silver Spring, Maryland 20907

RE: William A. Arnold
WCC File: 414-237
D/A: 6/3/74

Dear Mr. Elgin:

Please find attached a mimeographed copy of my most recent office dictation on Mr. Arnold. Apparently Mr. Arnold has gone "elsewhere" for additional evaluation and treatment, but I have no firsthand knowledge of this at all. In my experience, it is completely absurd to think that he is going to require an operation but must wait a year before this can be done. I strongly suggest that you contact Mr. Arnold, find out who made this recommendation, and obtain additional information from that particular physician.

Sincerely yours,

David E. Couk, M.D.

DEC:dp

Attachment

DAVID E. COUK, M. D.
ORTHOPEDIC SURGERY

210 W. SHIRLEY AVE.
WARRENTON, VA. 22186
PH. 347-9220

1051 OAKLAWN DRIVE
CULPEPER, VA. 22701
PH. 825-5362

February 5, 1975

Mr. Norman A. West
West and Zabriskie
Attorneys and Counsellors at Law
Suite 200
4085 Chain Bridge Road
Fairfax, Virginia 22030

RE: William A. Arnold

Dear Mr. West:

In reply to your correspondence of January 28, 1975, addressed to Mr. Arnold, please allow me to inform you of the latest development.

Mr. Arnold was originally seen by a neurosurgeon in Maryland, who recommended hospitalization for further evaluation and possible treatment of his chronic neck pain. Apparently he had difficulty gaining admission to that particular hospital in Maryland and asked me to refer him to a Virginia neurosurgeon. Accordingly, he was seen for evaluation by Dr. Ronald J. Bortnick, who has hospitalized him for the necessary diagnostic studies and possibly for corrective surgery. The problem for which he is currently admitted to Dr. Bortnick's service is completely unrelated to his compensation injury. As far as I know, he is still under my care for the fracture of his os calcis. I expect to see him back in my office for routine follow up once he has been discharged by Dr. Bortnick.

I hope this information clarifies this situation.

Sincerely yours,

David E. Couk, M.D.

DEC:dp

ERNESTO V. CASTRO, M. D.
RONALD J. BORTNICK, M. D.
WILLIAM A. ROUADY, M. D.
PROFESSIONAL ASSOCIATION
8301 ARLINGTON BOULEVARD · FAIRFAX, VA. 22030

NEUROLOGICAL SURGERY

(42)
RECEIVED
APR 1 (
RELIANCE INS. COS.
CHESAPEAKE CLAIM DEPT.
573-1144

April 8, 1975

Reliance Insurance Company
8630 Fenton Street
Silver Spring, Maryland 20910

Re: William Arnold
File #46-10286/A

Attn: N. Gitomer

Gentlemen:

Mr. Arnold was seen in consultation in the office on January 22, 1975. He fell on June 11, 1974 because he was on crutches due to the fracture of right os calcis incurred on June 3, 1974 when he fell off a building. At present, he has been complaining of constant pain of the neck, right arm and shoulder, and also pain of the right leg with no numbness and tingling of whole body. He has been having pain and a dull ache on left part of head. He has been extremely nervous and crys easily. X-ray of the neck shows post osteophyte C5-6 predominantly.

NEUROSURGICAL EXAMINATION: The cranial nerves were intact. Discs were flat. Motor was intact. Sensation was decreased over entire body and all extremities. The deep tendon reflexes were biceps 1+ right and left and the remainder 2+ bilaterally. The straight leg raising was positive at 60 degrees on right and negative on left.

IMPRESSION: Cervical and/or lumbar nerve root compression.

The patient had a lumbar myelogram which showed discogenic disease at the L4-5 interspace with an indentation on the contrast column on the left side there. There is a very small indentation on the right side at the L5-S1 level with this also associated with some spondylosis which may represent a small herniated disc there also.

The cervical myelogram showed indentation on the right side

of the column at the C5-6 interspace which is probably secondary to spondylosis although a small herniation cannot be excluded there. There is a bar defect at C4-5 interspace.

He was readmitted to the hospital (Fairfax Hospital) on February 12, 1975. On February 13, 1975, he underwent anterior cervical disc removal and fusion.

Mr. Arnold was seen in the office on March 27, 1975. He was six weeks postop C5-6 anterior fusion. Right upper extremity feels much better with only occasional pain. The pain was non-tender. Motor was intact. Sensation was decreased on right thumb and index finger. Deep tendon reflexes were 2+ bilaterally. He was advised to return in six weeks.

DIAGNOSIS: Cervical spondlyosis and cervical herniated disc.

PROGNOSIS: I would like to wait until this patient is fully recovered before giving a final prognosis.

Sincerely,

Ronald J. Bortnick, M.D.

RJB:bs

ERNESTO V. CASTRO, M. D.
RONALD J. BORTNICK, M. D.
WILLIAM A. ROUADY, M. D.
PROFESSIONAL ASSOCIATION
8301 ARLINGTON BOULEVARD • FAIRFAX, VA. 22030

NEUROLOGICAL SURGERY

573-1144

April 21, 1975

Mr. R. Craig Jennings
SLENKER, BRANDT, JENNINGS & O'NEAL
1012 North Utah Street
Arlington, Virginia 22201

Re: William Arnold

Dear Mr. Jennings:

It is my opinion, the patient's problem is related to the fall on June 11, 1974 because he was on crutches. He was on crutches because of the June 3, 1974 fall off a building.

It is my feeling that the reason for this patient's surgery was due to the accident on June 3, 1974 when he fractured his foot and subsequently required to use crutches.

It is my further opinion that Mr. Arnold's problems and necessary surgery had no connection with the January 31, 1974 injury, but rather the fall of June 3, 1974.

Sincerely,

Ronald J. Bortnick, M.D.

RJB:bs

DAVID E. COUK, M. D.
ORTHOPEDIC SURGERY

210 W. SHIRLEY AVE.
WARRENTON, VA. 22186
PH. 347-9220

1051 OAKLAWN DRIVE
CULPEPER, VA. 22701
PH. 825-5362

July 18, 1975

Norman A. West
West and Zabriskie
Attorneys and Counsellors at Law
Suite 200
4021 University Drive
Fairfax, Virginia 22030

RE: William A. Arnold

Dear Mr. West:

This is indeed a frustrating situation in that we are dealing with multiple medical problems with questionable relationship, one to another. While at work for Leonard Enterprises on June 3, 1974, the patient fell from a building, a distance of approximately ten feet and sustained a fracture of the right os calcis. This was treated with a short leg cast and crutches. On June 11, 1974, while attempting to go downstairs to a restroom in the Wheaton Plaza Steak House, he tripped over some stripping on the stairway which was worn and protruding. He fell and landed on his right shoulder and struck his head at that time. He was seen shortly thereafter in the emergency room complaining of extreme pain in his foot and ankle, which had previously been fractured. X-rays and physical exam revealed no evidence of further injury to the fractured heel.

As time passed, he developed a chronic pain syndrome characterized by unrelenting pain in the neck radiating down the right upper extremity. After failure to respond to the usual type conservative treatment measures, he was referred to Dr. Ronald Bortnick, a neurosurgeon practicing in Fairfax. Dr. Bortnick, after hospitalization for evaluation, proceeded with cervical disc surgery.

It is my opinion that Mr. Arnold sustained a fracture of the right os calcis which has resulted in a chronic, painful foot for which I have given him a 10% permanent partial disability rating. I emphatically feel that the injury to his neck and spine resulting in disc surgery, were unrelated to the injury which brought about the fracture of the right os calcis. Furthermore, I feel that his tripping and falling down the stairway of the Steak House was in all likelihood, responsible for triggering the problem with his spine.

Please find attached mimeographed copies of my office dictation which also contain entries by my two associates, Dr. Wynn Kearney and Dr. David M. Snyder. Perhaps this information will be of some help to you.

Sincerely yours,

David E. Couk, M.D.

DEC:dp

Attachments

cc: Eric Insurance Company

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794, Richmond, Virginia 23214

e No. _____

se of _____

ATTENDING PHYSICIAN'S REPORT

questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill 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*): William A. Arnold
2. DATE OF INJURY (*Mo., day, yr.*): 6-3-74
3. EMPLOYEE'S HOME ADDRESS (*Number and street, city, state, zip code*): Box 34 Calverton, Virginia 22019
4. DATE OF BIRTH (*or age*) (*Mo., day, yr.*): 7-30-27
5. SEX: M
6. NAME OF EMPLOYER: Leonard Enterprises
7. EMPLOYER'S ADDRESS (*Number and street, city, state, zip code*): Calverton, Virginia
8. DATE OF FIRST VISIT (*Mo., day, yr.*): 6-3-74
9. DATE DISCHARGED (*Mo., day, yr.*): Not yet
10. WHO AUTHORIZED TREATMENT?
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED
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.)
9-25-75 Pt. remains highly symptomatic, complains of severe pain inthe left hip and right heel. Physical exam shows completely normal reflexes and motor function but there is bilateral stocking anesthesia.
13. DIAGNOSIS: Fracture right os calcis
Low back pain
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: Pt. was told it would be very therapeutic for him to get back to work.
16. DATES OF YOUR TREATMENT (*Mo., day, yr.*)
17. WAS EMPLOYEE HOSPITALIZED? [ ] YES [ ] NO (*If "Yes," give name and address of hospital in item 19*)
18. WERE X-RAYS TAKEN? [ ] 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
20. WAS THERE DISABILITY FOR WORK? [X] YES [ ] NO (*If "Yes," answer 20-A, B, C*) →
A. DATE DISABILITY BEGAN (*Mo., day, yr.*): 6-3-74
B. DATE ABLE TO RETURN TO LIGHT WORK (*Mo., day, yr.*): Trial basis
C. DATE ABLE TO RETURN TO TO REGULAR WORK (*Mo. day, yr.*): 10-17-75
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*): David E. Couk, M.D.
23. ADDRESS (*Number and street, city, state, zip code*): 210 W. Fairley Ave. Warrenton, Virginia 22186
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT:
SIGNATURE D E Couk M. D.
SIGNATURE OF ATTENDING PHYSICIAN
25. DATE OF THIS REPORT: 10-14-75

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

Form No. 6-6-24-75-400M

FORM NO. 5—12-6-74—20M

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

APPLICATION FOR HEARING

File No. W.C.C. No. 414-237

Employee William A. Arnold Box 34, Calverton, Virginia 22017
(Address)

Employer Robert H. Leonard Calverton, Virginia 22017
(Address)

Date of Accident 6-3-74, 19____ Average Weekly Wage $ 160.00

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

Nature of Injury or Occupational Disease: Os calcis fracture

Date Disability Began: 6-3-74, 19____

Date of Return to Work: Not returned to work, 19____, and wage then earned $____

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

(1) Accidental Injury ..... ( )

(2) Occupational Disease ..... ( )

(3) Death on ____, 19____, due to Accidental Injury ..... ( )

Occupational Disease ..... ( )

(4) Change in Condition Request for rating ..... (X)

If application is based on a change in condition, state nature of change: Dr. Couk's reports of July 18 and September 9, 1975 indicate a 10% permanent partial disability of the right foot. It is requested that employee be rated pursuant to Title 65.1-56 and that temporary total payment be terminated. Applicant agreeable to paying 10% permanent partial disability as set forth in treating physician's letter. An agreed payment on this basis has been offered employee but not accepted.

Compensation was last paid at the rate of $ 80.00 per week through the 27th day of October, 19 75

COPY OF APPLICATION MUST BE SENT TO OTHER PARTY (SO INDICATE BY A CHECK) [X] YES

Signature of Applicant: /s/ NAW

ERIE INSURANCE EXCHANGE

Address: By: Norman A. West

4021 University Drive

Fairfax, Virginia 22030

Signed this 21st day of Oct, 19 75

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.

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to be true and correct to the best of his knowledge and belief by Norman A. West before me this 21st day of October, 1975.

/s/ Dortha J. Hartley
Notary Public

My Commission expires: June 12, 1977

illiam A. Arnold *Employee* *Claim Number* W.C.C. File 414-237

and

obert H. Leonard *Employer* *Date of Accident* 6-3-74

AGREED STATEMENT OF FACT

s agreed that the employee (returned to work) or (was able to return to work) on _____, 19____, at an average kly wage of $_____. The outstanding award is terminated on the above date subject to approval by the ustrial Commission. The employee may reopen the claim pursuant to § 65.1-99. **SEE NOTE BELOW**

e of Agreement _____ _____
Employer or Insurer

by: _____

_____ _____
tness to Employee's Signature *Employee*

al compensation paid $ 5,805.72 at $ 80.00 per week from

6/3/74 through 10/24/75. Medical Expense $ 475.10

TE: The signing of the above agreement is not a requirement for payment. This agreement is neither a receipt for money nor elease of claim. Should further disability result, the claim can be reopened by written application received by the Industrial nmission within twelve months from the last date for which compensation was paid; however, at a hearing on the application, npensation cannot begin more than 14 days prior to the date of filing.

SUPPLEMENTAL MEMORANDUM OF AGREEMENT

It is agreed that on 7/8, 19 75, the employee ~~(lost)~~ XXX (had permanent loss of use of) 10 cent of the right foot.

l a change in average weekly wage of $_____ to $_____.

It is further agreed that compensation will be paid and accepted beginning 10/27, 19 75, at the rate of 80.00 per week to continue for 12 1/2 weeks.
(Specify number of weeks or during disability)

te of Agreement 10/21/75 Erie Insurance Exchange
Employer or Insurer

by: Norman A. West

DAVID E. COUK, M. D.
DAVID M. SNYDER, M. D.
ORTHOPEDIC SURGERY

HIRLEY AVE.
N, VA. 22186
7-9220

1051 OAKLAWN DRIVE
CULPEPER, VA. 22701
PH. 825-5362

December 9, 1975

J. Hunt Brasfield
Ashcraft, Gerel & Koonz
Attorneys and Counsellors at Law
925 15th Street, N.W.
Washington, D.C. 20005

RE: William A. Arnold

Dear Mr. Brasfield:

The case of Mr. William A. Arnold has proven to be a truly frustrating experience! To briefly review historical events, the following information is extracted from my records.

I originally saw him on June 3, 1974, with a fracture of his right os calcis. He sustained this injury after having fallen from a roof, landing on concrete pavement some ten feet below. This fracture, although relatively minor, has resulted in a chronic (subjective) pain syndrome.

On June 11, he returned to the local emergency room complaining of severe pain at the fracture site. He gave a history of having tripped and fallen on the stairway of a Steak House. As a result of this fall, he landed with excessive force on his cast, precipitating this severe pain. He made no reference to pain in his neck or back at this time. Examination and x-rays demonstrated no additional injury to the fracture. He did describe a fault in the stairways that caused him to trip and fall. He described this fault as an area of stripping which was "loose and protruding". He returned to my office on June 17, 1974, still complaining of pain at the fracture site, but also complaining of pain in the right shoulder. Again, no reference was made to pain in his neck or back. It was my feeling that he perhaps had developed a post traumatic bursitis in the right shoulder, aggravated by the use of crutches and accordingly, he was treated with Cortisone injection. It was not until September 5, 1975, that I have a chart entry specifically related to his neck pain. X-rays of the cervical spine subsequently showed the presence of degenerative arthritic changes and presumptive evidence of degenerative disc disease. In retrospect, this process was most likely responsible for the shoulder pain described on June 17, 1974.

When he failed to respond to the usual conservative treatment measures for chronic neck pain, I sought additional consultation from Dr. Ronald Bortnick. Dr. Bortnick demonstrated a ruptured cervical disc and proceeded with surgical intervention with gratifying results. In my chart, the first reference to back pain or left hip pain is an entry dated July 8, 1975. He has later developed back pain in conjunction with this left buttocks pain.

It is my opinion that the fractured os calcis resulted from a fall which occurred at the place of his employment on June 3, 1974.

It is my opinion that this man had pre-existing degenerative arthritis and degenerative disc disease of the cervical spine.

It is my opinion that the fall in the Steak House on June 11, 1974 did not adversely affect the fracture of his right os calcis.

It is my opinion that the fall in the Steak House on June 11, 1974 aggravated his pre-existing cervical disc disease and in fact, was likely responsible for acute disc herniation.

It is my steadfast opinion that his fall in the Steak House was unrelated to his fractured os calcis. If a faulty stripping was responsible for this fall, it is a logical assumption that he would have fallen whether he was in a cast or not. On the other hand, the fact that he was indeed in a cast and on crutches may have contributed to his "clumsiness". Fortunately, the answer to this question is a legal one, not a medical one.

Based on my examination on September 25, 1975, it is my firm opinion that this patient should return to full, unrestricted employment promptly and to do so, would be extremely therapeutic. Because of his persistent pain, I have suggested a permanent partial disability rating of 10% with regard to the fractured os calcis. With regard to his cervical and lumbar spine problems, I prefer to have Dr. Bortnick register his opinion with regard to permanent partial disability. I have not seen the myelogram, nor was I present at the time of his cervical disc surgery.

Sincerely yours,

David E. Couk, M.D.

DEC:dp

WILLIAM A. ARNOLD, CLAIMANT

v. Claim No. 415-237

R. H. LEONARD, Employer
ERIE INSURANCE EXCHANGE, Insurer

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

Norman A. West, Esq.
4021 University Drive
Fairfax, Virginia 22030
for the Defendant

Hearing before Deputy Commissioner YATES, in Fairfax, Virginia on December 17, 1975.

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

DEPUTY COMMISSIONER YATES:

This is case file 415-237. This case is before us on application of the carrier filed October 22, 1975 on a stipulation all parties have accepted as compensable involving os calcis, heel bone foot injury. A rating of 10% has been affixed by Dr. David Cook, who is an orthopaedic specialist and surgeon, in Warrenton-Culpeper, Virginia. I gather from Mr. Brasfield's comments we have no contest as to the amount of the disability rating to the foot. The point has been raised however, by Mr. Brasfield, which is borne out by medical reports in the Commission file. These reports, that I see dated, are within the one year period from the date of the accident indicating that Mr. Arnold while elsewhere not at work, about 8 or 10 days after the June 3, 1974 incident, which we have before us, tripped, whether by a foot

STATEMENT

or a crutch catching-we will hear in a moment-tripped and fell down some steps causing a severe neck problem. Again, Dr. Couk speaks of this and Mr. Brasfield's contention is that his client is still disabled, not from the foot, but from the difficulties arising from the cervical problem which resulted in surgery. Do I fully and fairly state it, Mr. Brasfield?

MR. BRASFIELD:

I'd like to just add a few remarks, if I may. We are claiming that it's the carrier's burden in this case to prove a change in condition, and that means to show that the claimant, is in fact, reached maximum improvement. And that but for the heel injury he would be able to return to his former occupation. It's our position that because of the injury sustained on June 11, 1974, which we claim was indirectly related to the original industrial accident, Mr. Arnold remains temporarily partially disabled, and or temporarily totally disabled. We seek leave to submit a report which I have been told is in the mail to me from Dr. Couk and also leave to submit a report from Dr. Bortnick. Dr. Couk's report will speak to the os calcis fracture and the degree of disability as well as the relationship between the right os calcis fracture and the subsequent cervical disc problem. And, Dr. Bortnick's report will speak to the resulting disability from the cervical disc problem and the anterior fusion that was performed. I would represent also to the Commission and counsel that following the time that the employer ceased its payments based upon its application for hearing on change in condition having been granted, Mr. Arnold did return to work part-time; so we are making claim

for continuing disability benefits from October 17th or 24th, whenever the last day compensation was paid up to the present time and continuing into the future with credit being given for those periods of time during which he worked at a wage greater than he was making at the time of his injury. In that regard, we also seek leave to obtain and submit a wage statement from Grim's Home Improvement, which is located up in the Aberdeen, Maryland area and I will obtain all of these reports by December 31st and submit them with copies to counsel.

DEPUTY COMMISSIONER YATES:

The case before us is different, all over Jamerson and Falwell Well is 51 OIC 132 and the recent case which Mr. Brasfield is very well aware of-Shawley v. Shea-Ball, the issue in both these cases was another injury but from the same industrial accident but the other injury was not reported within one year from the date of the accident. The Supreme Court has just spoken in Shawley. It says it comes too late. This case is an accident that happened several days later for which Mr. Brasfield, of course, is contending is indirectly related simply because the man was defenseless on crutches.

MR. BRASFIELD:

And, I might note that both Dr. Couk and Dr. Bortnick are in complete agreement that there was no cervical disc problem attributable to the June 3, 1974 accident injury in which Mr. Arnold sustained the fracture of the right os calcis.

DEPUTY COMMISSIONER YATES:

Your defense to the new situation before us, Mr. West, is--

STATEMENTS

MR. WEST:

Essentially, it is that no report was made. No claim was filed, and the statute of limitations has run. And, though it may well be construed that the second injury arises out of and stems from the course of his employment because of his condition, the second injury is required to be reported to us and to the Commission in a normal fashion as another accident; and it hasn't been done. And, as a practical matter the employee has counsel and is pursuing a personal injury claim in Maryland against the premise owner in Maryland. And, he has not been without counsel in that matter and whether or not they did not pursue the claim in this case for tactical reasons or not, I don't know, but our position is that we never have received a claim from Mr. Arnold or anyone on his behalf, for payment under this second injury. Our payments have continued to be made under the first injury based on Dr. Couk's report that during the period of time that we made payments that he was unable to return to work.

DEPUTY COMMISSIONER YATES:

In effect, what Mr. Brasfield is asking is this, the second accident while not industrial, admittedly by both counsel is not industrial in terms of how it happened, it was not on the job, that the Title 65 of the Virginia Act sweeps its canopy of coverage; and you're in effect, claiming the same expenses under Title 65 on the basis of §87, I presume. Do you rest as far as the heel situation is concerned?

MR. WEST:

That's correct. I think we are in agreement as far as the heel is concerned. I think he wants to put testimony on

concerning the other injury.

DEPUTY COMMISSIONER YATES:

You don't contest the heel rating in itself, do you, Mr. Brasfield, just the 10%?

MR. BRASFIELD:

No.

DEPUTY COMMISSIONER YATES:

Go ahead. You rest, go ahead with your portion of it, Mr. Brasfield. I'll take the testimony on this second occurrence, knowing that I have no change in condition application in my file. I have no loss or notice of claim, I don't think I have, under §87 in my file for this other occurrence, but go ahead with your testimony.

MR. BRASFIELD:

In that regard, you do have an application for hearing and that application before you is the employer's application, and we are entitled to bring in all of our evidence to rebut its contention not to receive continuing compensation benefits under temporary total disability.

DEPUTY COMMISSIONER YATES:

Go ahead, all I need to hear then, would appear to me, is what happened on the second occasion.

WILLIAM A. ARNOLD, CLAIMANT:

BY MR. BRASFIELD:

Q Mr. Arnold, would you please state your full name and address for the record?

A William A. Arnold. I'm now staying at LaPlata, Maryland. Address is 138--

Q --Is the address Box 138 Z SR3, LaPlata, Maryland?

A Yes.

Q 20646?

A Yes.

Q When you were first injured on the job were you treated by Dr. Couk out in Warrenton?

A On 6-3, yes.

Q And, thereafter, did you sustain an injury in Wheaton Plaza Steak House?

A Yes, on the 11th of June.

Q Now, following that, did you again go back to see Dr. Couk?

A Yes, I did.

Q Now, when you complained of neck problems did he refer you to Dr. Bortnick up here in Fairfax?

A Yes, he did.

Q Let me direct your attention to June 11, 1974, where were you at that time, sir?

A June 11, 1974 I went to Wheaton to have lunch with my wife and her sister at the Charcoal House.

Q Did there come a time when you had occasion to visit the men's room?

A Yes.

Q Were they downstairs from the restaurant portion of the building?

A Yes, they were down on the second floor, second level.

Q You had been injured on June 3, 1974?

A Yes.

Q You sustained a fractured right os calcis?

A Yes.

Q As a result of that were you in a cast?

A Yes I was.

Q Were you wearing any other orthopaedic brace or appliance?

A At that time, no.

Q Were you on crutches?

A I was on crutches.

Q Would you describe the stairway going down from the restaurant portion of the Wheaton Club and Charcoal House to the restrooms?

A I was seated approximately 10 or 12 feet from the stairwell going down to the restrooms. It was four or five steps to the landing.

Q Was this the first landing on the stairway?

A Well, from the top of the step at a landing and then another set of steps. I went to the landing, made it alright, I stood there for a second or so to make sure I was alright; I started down the second set of steps and about the 2nd or 3rd one down I noticed the stripping was worn and torn on the edge of the step. I then put my crutch down and I started to take a step and the next thing I knew I was laying down at the foot of the steps up in the corner, the right shoulder was up in the corner and which it busted my cast and hit my head and my shoulder, the whole right side.

Q Now, were there hand rails in existence?

A Yes, there were on the right side.

Q Were you able to use those being on crutches?

A Not very well.

Q What actually caused you to fall?

A The stripping on the steps were worn and sticking up I'd say about a quarter of an inch.

Q Did part of you or something get caught on it?

A My crutch did.

Q Which crutch?

A My left crutch.

Q When that happened how did that affect your balance?

A For a split second I noticed it was caught and the next thing I knew I was at the bottom of the steps, laying in the corner.

Q When the crutch caught on this--was it a raised stripping?

A Yes.

Q Do I understand correctly that as you moved your crutch forward to set it down on the next step it became caught in the stripping?

A Yes.

MR. WEST:

I object to him leading the witness. I think the witness can tell us exactly what happened. I think he is leading him right by the hand down the road, and I object.

DEPUTY COMMISSIONER YATES:

Step by step, I concur. Go ahead.

WILLIAM ARNOLD, CLAIMANT

BY MR.BRASFIELD:

Q When your crutch became caught in the stripping was it still underneath your arm?

A Yes sir.

Q Were you in the process of---

DEPUTY COMMISSIONER YATES:

I had an objection as to leading questions and I think they still are.

BY MR. BRASFIELD:

Q Well, Mr. Arnold, tell me this, do you think you would have been able to prevent this fall if you had not been on crutches and had not been wearing a cast?

MR. WEST:

I think this is a leading question also, I object.

Q Do you or do you not think that you would have been able to prevent this fall?

MR. WEST:

I object to the question, it's leading.

DEPUTY COMMISSIONER YATES:

Sustained.

MR. BRASFIELD:

Please note my exception.

BY MR. BRASFIELD:

Q How many crutches were you on, Mr. Arnold?

A One pair.

Q Sir?

A Two crutches.

Q One under each arm?

A Yes sir.

Q Where were your hands located?

A On the crutches.

Q So, then your hands were not on the hand rail?

A No.

Q Did you make any effort to grab hold of the hand rail?

MR. WEST:

Objection, he's leading again.

MR. BRASFIELD:

That's a straight inquiry, if I may suggest.

MR. WEST:

That's leading through step by step and he can probably tell us better than Mr. Brasfield can tell us.

DEPUTY COMMISSIONER YATES:

See if he can give some basic narrative--I've been on crutches and I know how they work, and I know where your hands are. Obviously he's using both crutches, he cannot--I take judicial notice, he cannot use the hand rail; effectively, he cannot.

BY MR. BRASFIELD:

Q Tell me this, Mr. Arnold, was or was not your weight on the crutches at the time that your left crutch became stuck?

A My weight was on the crutches, yes sir.

Q Following that injury, how many steps did you fall, how far a distance did you fall?

A I'd say four above, it could have been more, it could have been less.

Q And, what was the surface onto which you fell?

A It was a concrete floor and I believe it was covered with tile, I'm not sure, it's been so long.

Q It was a hard surface?

A Hard surface.

Q Now since that time, up to the time that the employer stopped paying compensation benefits, did you at any time return to work for wages?

A After my checks have been stopped, yes.

Q Now, before they had cut you off of compensation back in October?

A Before then, no.

Q Now, since that time, have you returned to work?

A Yes.

Q Was that full time or part-time?

A Dr. Couk suggested I go back and try to work and see if I could do it, which I did, and which I found out that I couldn't do.

Q What kind of work was it that you were trying to do?

A Carpentry work, that's my business, trade.

Q On June 3, 1974 what kind of work were you doing?

A Carpentry work.

Q Was that your usual occupation?

A Yes.

Q In the course of your employment as carpenter, how much weight would you have to be able to lift and carry?

A It would vary.

Q Let me have the usual amount, the maximum?

A The usual--100 to 120 pounds or so, roughly.

Q Does your work normally involve lifting as a carpenter?

A Yes.

Q How about carrying, and bending, and stooping and crawling?

A It does that also.

Q In the course of your carpentry occupation did you do overhead work?

A Quite a bit of it.

Q Are you now able to continue doing that kind of work?

A No sir.

MR. WEST:

I object to this line of questioning, unless his testimony's going to be that he cannot do this line of work because of his os calcis fracture. I object to his testimony regarding the neck problems because there's no notice and no application.

DEPUTY COMMISSIONER YATES:

Go ahead, Mr. Brasfield.

BY MR. BRASFIELD:

Q Do you attribute these problems to your cervical injury?

MR. WEST:

Note my exception to the taking of the testimony of that.

BY MR. BRASFIELD:

Q Is your inability to do these kinds of work because of your neck problem?

A It is at the present time, yes.

Q Now, at the time you were originally injured on June 3, 1974, who were you working for?

A Leonard Enterprises out of Calverton, Virginia.

Q Have they offered you any employment since that time?

A No, because I moved away from there.

Q Have they offered you any work?

A No.

Q Mr. Arnold, at the time that your crutch became caught on the stairs did you have time or did you make any effort to try to get rid of your crutches?

A I didn't have time.

Q Now, am I correct that you have drawn workmen's compensation since early June, 1974 without interruption until October, 1975?

A That's correct.

Q At which time the employer cut you off based on the permanency rating, is that right?

A Yes.

Q Does working as a carpenter also involve working on ladders?

A Yes.

Q Were you required to carry things up and down those ladders?

A Yes.

BY MR. WEST:

Q On this day, June 11th had you had anything to drink on that day before this fall took place?

A Yes.

Q Alcoholic?

A I had two beers, yes sir.

Q What time did the fall take place?

A Around lunch time.

Q What time did you arrive at the restaurant?

A The time, I don't know.

Q What time did the fall take place?

A I'd say about mid afternoon.

Q How many hours had you been at the restaurant?

A How many hours had I been there? 15 minutes before the fall.

Q You had been there 15 minutes?

A Thereabouts.

Q And, you drank the beers there or some other site?

A I drank them on my way up there from Calverton.

Q From that do I gather you drank them in the car or something of that nature?

A Yes.

Q And, you had just two?

A Yes sir.

Q Your specific recollection?

A Yes sir.

Q And, you had nothing else alcoholic to drink on that day prior to that accident?

A Nothing prior to the accident, no.

Q Now, you mentioned going down these steps--I presume you were aware that it was a little more difficult for you to go down steps once you were on crutches and had a cast on than had been you were able to walk normally prior to 6-3, isn't that correct?

A It was a little difficulty but I was adjusting myself to being careful.

Q So, I gather when you came to the top of the steps you looked down the steps to see what the path of travelling had in store for you?

A Yes, I did.

Q And, when you looked down the steps did you notice the stripping that was loose?

A On the first step as I went down, no, to the landing, no.

Q Didn't you see the stripping before you got there?

A No, I didn't.

MR. BRASFIELD:

I really wonder if this is going to help the Commission since even his own negligance would not bar---

MR. WEST:

Pardon. I'll make it very brief.

BY MR. WEST:

Q In other words, I understand your testimony is that you never saw the stripping before your crutch fall?

A Never before my crutch fall.

DEPUTY COMMISSIONER YATES:

Pardon me, do that question again.

Q You never saw the stripping before your crutch caught in it, isn't that correct?

A Before it caught, no.

MR. BRASFIELD:

You mean the defective stripping?

BY MR. WEST:

Q Now, are you talking about the defective stripping or the stripping at all?

A I'm talking about the defective stripping.

Q Can you tell us how high the defective stripping was?

A Oh, it was approximately sticking up maybe a quarter of an inch in some places.

Q Now, do I gather that your estimate of a quarter of an inch is arrived at from the time that it caught til the time that you fell?

A No.

Q How long were you standing there with your crutch caught in the stripping before you fell?

A I didn't know my crutch was caught.

Q Do I gather--did you see the defective stripping prior to your crutch catching it?

A No.

Q Then, do I gather that you don't know whether or not what caused you to fall was the defective stripping or not, that's just your presumption, isn't it?

A No, I stopped.

Q You stopped?

A Right.

Q And your crutch wasn't in it when you stopped?

A I didn't see it.

Q Do I understand that you never saw your crutch stuck in the stripping, against the stripping?

A Actually see, no.

Q Now, subsequent to this fall, who did you seek medical treatment from after your fall on June 11th?

A After my fall?

Q Yes sir.

A Dr. Couk.

Q When did you see Dr. Couk regarding this fall?

A It was that afternoon.

Q Did you seek treatment with anyone else prior to seeing Dr. Bortnick?

A Dr. Lane.

Q Dr. Lane, which Dr. Lane--Herbert Lane--

A --Herbert Lane--

Q --at Falls Church?

A Falls Church, yes.

Q What treatment did you seek from him?

A Dr. Lane and Dr. Bortnick did the operation on my leg.

Q Did you cause Dr. Lane to send in medical repots to the insurance company or to your employer?

MR. BRASFIELD:

I'm going to object here. Are you representing that there are such reports, because if so, I don't believe I have them.

MR. WEST:

I don't know whether they are or not but his allegation is notice to us and our knowledge, and I think this is the first time I've heard Dr. Lane's name.

DEPUTY COMMISSIONER YATES:

Go ahead.

BY MR. WEST:

Q Did you ask Dr. Lane to send in medical reports to us, when I say us, I mean to your employer, Robert Leonard?

A I don't remember whether I did or not.

Q When was the operation performed by Dr. Lane and Dr. Bortnick?

A 13th of February.

Q Did you go to Dr. Lane and Dr. Bortnick at Dr. Couk's request or at your own request?

A Dr. Couk's request.

Q Did you seek treatment from anyone else during that period between June of '74 and February, '75, medical treatment?

A Dr. Mindleson?

A I went to see Dr. Mindleson, I believe that's the name, I'm not sure, it's in Wheaton.

Q When did you see Dr. Mindleson?

A I don't know the dates cause Mr. Butler recommended me.

Q I see. Mr. Butler sent you to Dr. Mindleson?

A Yes sir, that's correct.

Q And, who is Mr. Butler?

A He's the attorney in Wheaton.

Q I see. And when did you retain Mr. Butler to represent you?

A I can't think right off hand but i had it in my papers.

Q Can you give me any idea with reference to June 11, 1974 when you retained Mr. Butler?

BY MR. BRASFIELD:

Q Was it before or after, if you know?

A It was after the accident.

Q Which accident?

A Wheaton Plaza.

BY MR. WEST:

Q Can you tell us whether it was 3 days or 3 weeks or 3 months or anything?

A It seems to me like it was in December, I'm not sure.

Q But it was before you went to see Dr. Mendleson, is that correct?

A (inaudible reply)

Q I believe you said that Butler sent you to Mendleson?

A Yes he did.

Q Can you recall when it was with reference to the time you went to Dr. Mendleson?

MR. BRASFIELD:

I really wonder whether this is going

to help the Commissioner.

Q Do I understand that you don't know?

MR. BRASFIELD:

I'll ask for a ruling?

DEPUTY COMMISSIONER YATES:

Go ahead with the question. I think it has to do with the notice situation and adequate legal representation. I think Mr. Pascal was well aware of it, if you know.

BY MR. WEST:

Q Can you find out when you first contacted Mr. Butler and advise your counsel and let him furnish the information to me and the Commission?

A I can find out, yes.

(OFF THE RECORD)

BY MR. WEST:

Q Are you now pursuing a claim for the injury you received on June 11, 1974 against the restaurant you were in?

MR. BRASFIELD:

We'll stipulate that the carrier has an interest if this case is held compensable.

Q Are you pursuing a claim, sir?

DEPUTY COMMISSIONER YATES:

Maybe in a common law or civil action or a liability claim against the restaurant where you fell, that's the question.

A Liability, yes.

BY MR. WEST:

Q That case, I gather, has not been settled or resolved?

A No sir.

Q Now, you've indicated you have gone back to work. When did you go back to work?

A It was around the 25th of October.

Q How many hours a week have you been working since then?

A It varies.

Q Can you give us a rough idea?

A In that period of time I got in two full weeks and the others were partial weeks like two days, three days a week.

Q Is full time employment available to you there if you are physically able to perform?

A If I was physically able to perform my duties, yes.

Q You no longer reside in Calverton, do you?

A No.

Q You reside in LaPlata?

A Yes.

Q If you were offered employment in Calverton by your former employer would you accept it? Full time employment if you were physically able to perform it?

BY MR. BRASFIELD:

Q Did you understand the question?

A Not clearly.

BY MR. WEST:

Q If your former employer, Robert H. Leonard, offered you full time employment in Calverton, would you accept it if you

were determined to be physically able to perform the work?

A If I was physically able and financially able to move back down there, I would consider it.

Q You'd consider it. Now, with reference to your foot, is it your foot that is preventing you from working full time or is it your neck that's causing you the problem?

A Both.

Q Are you aware that Dr. Couk has indicated that, in his opinion, you are able to return to full time duties as far as your foot is concerned?

A Yes.

Q What is the problem you have with your neck in connection with your work as a carpenter?

A I can't bend it backwards, forwards or sideways.

Q Has any doctor told you that this condition was going to get better?

A No.

Q Have they indicated to you whether it's going to get worse?

A It will get worse.

Q Now, with reference to your leg, how does your leg affect you in your employment as a carpenter?

A I can't stand on it any length of time, I can't climb ladders.

DEPUTY COMMISSIONER YATES:

Pardon me, but if I have no disagreement from plaintiff's counsel for the 10% rating

I think now we are in lieu of all other compensation--taking care of that under §65.1-56.

Q With reference to your neck, your head and your back injury which you claim, does this prevent you from doing normal work on the ground, on the level area as far as carpentry work?

A Would you repeat that, please?

Q I'm talking about your neck, and your back ailment, does this prevent you from doing carpentry work on a flat surface like standing on the floor doing home improvement, for example, in a house as opposed to climbing a ladder or standing on joists and so forth?

A Yes it does prevent me from doing that because I cannpt sit any length of time. I'm talking like half an hour, I go numb.

Q Can you stand for any length of time?

A No.

Q How do you prevent yourself from going numb under normal circumstances if you can't neither sit nor stand?

A I get up and move around.

Q And, a job in which you moved around fair enough would be beneficial to you, would it not?

A It would harm me.

(OFF THE RECORD)

BY MR. BRASFIELD:

Q Mr. Arnold, you indicated that your work normally involves carrying and lifting and bending; is that the same kind of work normally involved in the type of work that Mr.

West questions this morning?

A Yes, Home improvement--carpenter's work.

Q Why did you stop working at Grim's Home Improvement?

A Cause I couldn't do the work.

(OFF THE RECORD)

WITNESS EXCUSED:

THOMAS W. ELGIN, WITNESS:

BY MR. WEST:

Q State your name please?

A Thomas W. Elgin.

Q And, what is your employment?

A Assistant Claims Manager for Erie Insurance Exchange, Silver Spring branch.

Q And, in connection with this, how long have you been so employed?

A 12 years.

Q Within the 12 years of your job do you have the subject matter of workmen's compensation for the company in the state of Virginia?

A Yes I do.

Q Is the case of Arnold v. Robert H. Leonard a file that you've been handling for the company?

A Yes, I have handled it.

Q Have you been handling this file since June 3, 1974?

A Yes sir.

Q Or the first notice you received of that claim? Since that time have you received any claim of any kind filed by

the employee, William A. Arnold, or anyone on his behalf, regarding an accident of June 11, 1974 in Wheaton, Maryland or any other location?

MR. BRASFIELD:

Note my objection. The answer to this question is completely irrelevant and immaterial.

A No, I have not.

DEPUTY COMMISSIONER YATES:

Go ahead, Mr. West.

BY MR. WEST:

Q Your answer is no, you have not?

A That's correct.

Q Have you received any indication of any other injuries to Mr. Arnold during the period of time June 11, 1974 to June 11, 1975?

A Yes I have.

Q What were they specifically?

A Fairfax Hospital wrote and asked if I would cover some type of treatment that was rendered in their hospital to Mr. Arnold for a neck or a back problem, they didn't make it clear what it was. At that time I declined payment saying I did not feel it was part of this accident. Then subsequent to that I also received a notice through the Department of Rehabilitation from a Dr. Bortnick who--that was the first notice that I ever had from Dr. Bortnick--his report was dated April 21, however, I did not receive it until I got a copy of correspondence to Fairfax Hospital, I did not

receive it until July 23, 1975.

Q Who was the letter from that you received on July 23, 1975?

A Well, it's a copy of a letter directed to Fairfax Hospital signed by A. R. Martin, Counselor, Department of Vocational Rehabilitation.

Q Was this the first indication that you had that anyone claimed the medical expenses or the injury were related to the original injury of June 3, 1974?

MR. BRASFIELD:

Note my objection to this question. The question speaks only to whether or not claim was made and it's not the inquiry, the inquiry is whether or not notice was given.

BY MR. WEST:

Q Now, Mr. Elgin--

MR. BRASFIELD:

I didn't hear the answer.

MR. WEST:

His answer was No.

MR. BRASFIELD:

I'm assuming I didn't hear a ruling.

DEPUTY COMMISSIONER YATES:

Well, what's the technical difference between notice and a claim?

MR. BRASFIELD:

I think a claim under the Commission's Statute is a written claim, in writing, under 87, notice is any knowledge. Actual constructive,

any awareness, and he's been assiduously avoiding answering a question as to notice or knowledge. And all of the questions that he's been answering are with regard to knowledge of the existence of a "claim".

DEPUTY COMMISSIONER YATES:

Get him to answer it briefly.

MR. WEST:

I'm going to ask--that's the next question.

DEPUTY COMMISSIONER YATES:

Go right ahead.

BY MR. WEST:

Q Aside from those two references you've made, have you received any notice of any kind of the existence of the other situation or incident prior to July 23, 1975?

MR. BRASFIELD:

Does this apply to the June 11, 1974 accident.

MR. WEST:

It does.

Q To the June 11, 1974 accident?

MR. BRASFIELD:

I withdraw my objection.

A With regard to the answer to Mr. West's second question this is the only notice, this is the first notice that I received that there was any belief that the June 11th fall at the restaurant was in any way connected with our workmen's compensation injury of June 3rd or 4th.

(OFF THE RECORD)

THOMAS ELGIN, WITNESS

STATEMENTS

BY MR. BRASFIELD:

Q Mr. Elgin, you've indicated that the first awareness you had that the June 11th accident was connected or alleged to be connected with your accident was in July of this year, but as a matter of fact, you knew that the claimant was wearing crutches on June 11th didn't you?

A Well, to answer your question specifically, I was not aware that he was on crutches, No, I don't know--

Q --You knew that he had been injured, did you not?

A Yes, I knew that he had been injured.

Q You knew that he had a fracture of the right os calcis?

A Right.

Q How long have you been in the claims industry?

A 12 years.

Q Are you aware that fractures of the right os calcis routinely involve the wearing of a cast and the use of crutches?

A No. To be truthful with you, in the 12 years I've never had an injury like this.

Q So, you weren't aware of it?

A No sir.

Q Again, however, the question was that July of this year was the first knowledge that you had that the June 11th accident was related to the June 3rd accident, but when was the first time that you knew about the June 11th accident?

A There's a memo in the file dated May 5, 1975 indicating that I talked to an attorney in Montgomery County, Maryland who inquired of me about the workmen's compensation accident

because he was defending a fall-down case that occurred in the Wheaton, Maryland restaurant. That was May 5th.

Q Do any of Dr. Couk's reports contain a reference to this other injury? Such as his reports during the period of September, '74, August, '74, or anything in that range---

(OFF THE RECORD)

Q --dated June 17th? Let me direct your attention to a report dated June 17th?

A Yes, there's a notation that he slipped and fell at a steak house on June 11, 1974 from Dr. Couk.

Q When did you receive that, sir?

A My date stamp is October 19, 1974.

Q And, does that report not also indicate subsequently developed severe pain in the right shoulder?

A Yes.

Q Let me direct your attention to a report dated September 5, 1974, does not that also mention severe pain in the neck with radiating pains into the shoulders as a result of the June 11th accident?

A Yes, it mentions that.

Q I assume you read these?

A Yes, I probably read them, I can't specifically recall, but I would assume if they came into my office I read them.

Q You are not denying that you knew about it at that time are you?

A I'm not denying that I received these reports and probably read it. Are you asking me whether I knew that it was connected with the first injury or whether I knew that he had slipped

and fallen in the restaurant?

Q Well, I already have your answer to the first part of the question and that is that you've testified you were not aware of the existence of any claim, but the fact of the matter is, is it not, that you were aware that he had fallen in the steak house when you read those reports?

A Yes.

Q You were aware that he had sustained a shoulder injury and that in September, at least, he had radiating pains from the neck into his shoulder and arm, isn't that right?

A Right.

Q So, then in fact, and furthermore, you authorized Dr. Couk to treat this patient, did you not?

A For which injury?

Q For the June 3rd injury?

A Yes.

(OFF THE RECORD)

BY MR. WEST:

Q I show you Dr. Couk's report of February 5, 1975, would you like to examine the line there in Dr. Couk's report there that I've checked, would you read that out for the Commissioner?

MR. BRASFIELD:

I object to this, the report certainly speaks for itself.

DEPUTY COMMISSIONER YATES:

Go ahead.

A The problem for which he is currently admitted to Dr. Bornick's service is completely unrelated to his compensation

injury.

DEPUTY COMMISSIONER YATES:

Dr. Bortnick says it's contrary and that's our function. Is that it?

MR. BRASFIELD:

In this regard, I would like to point out on the record that Dr. Couk's report that I'll be submitting speaks to this precisely.

DEPUTY COMMISSIONER YATES:

All right.

(CASE CONCLUDED)

mfk: 3-15-76

WILLIAM A. ARNOLD, Claimant

v. Claim No. 415-237 Opinion by YATES
Deputy Commissioner

FEB 20 1976

R. H. LEONARD, Employer
ERIE INSURANCE EXCHANGE, Insurer

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Hearing before Deputy Commissioner YATES, in Fairfax, Virginia on December 17, 1975.

This case is before us on application of the carrier filed October 22, 1975 alleging a change in condition under appropriate statutes and our Rule 13. The basis for the application is that this plaintiff's disability has now become static and is subject to a rating for specific disability in accordance with provisions of §65.1-56 (14), Code of Virginia. Compensation benefits have been paid through October 27, 1975.

It is the contention of plaintiff's counsel that while the carrier is before the Commission on an application under §65.1-99, Code of Virginia, this case is not susceptible to a specific rating so as to terminate our outstanding award of July 3, 1974. The plaintiff, is contending in effect, that he has also sustained a change in condition brought about by circumstances, while novel, have been before this Commission previously.

A brief recital of the facts will clarify the matter at hand. The plaintiff sustained an industrial accident on June 3, 1974

which was the subject of our original award of July 3, 1974. Just eight days later, the plaintiff was in a restaurant, descending some stairs when his crutch caught on a fringe of the carpet throwing him off balance and down the step, causing injuries to his back, shoulder, and neck. That the carrier was advised of the fall in the restaurant and the physical difficulties stemming therefrom is not controverted, by finding of this Commission, in view of various comments made by the attending physicians to the carrier subsequent to the occurrence of June 11, 1974. That the fall at the restaurant did not complicate or aggravate the fractured heel bone is not in dispute based on a medical report of Dr. David Couk of December 9, 1975. This same physician in the same report indicates the fall on June 11, 1974 did aggravate "pre-existing cervical disc disease and in fact, was likely responsible for acute disc herniation". The contention of the defendant is that no notice or claim was ever made within one year as preseribed by §65.1-87, Code of Virginia. This defense was considered collaterally by our Supreme Court in Shawley v. Shea-Ball, decided on December 1, 1975; 219 S.E. (2d), 845. In Shawley, supra, the claimant contended more than a year later that another portion of his body was injured from the same industrial accident for which he was receiving compensation benefits. The Supreme Court held that the notice of the second claimed injury from the same accident was beyond the period prescribed by §65.1-87, Code of Virginia and was, therefore, too late. That situation does not prevail in this case.

The case at hand, is more analogous to the facts before this Commission and our Supreme Court in Womack , Inc., v. Ellis, 209 Va. 588,(1969). The Court concluded (affirming the Commission's earlier holding) as follows:

> "The evidence detailed above provides adequate suppoer for the conclusion of the Commission, that Ellis' condition was not a new injury such as would be barred by the time limitation of §65.1-84, of the Code, but a development proceeding from the injury as received in the accident of October 5, 1965, the limitation on which is 12 months from the last day for which compensation was paid"---

See also Immer v. Brosnahan, 207 Va., 720, (1967). The sole question was whether injuries in Immer, supra, were sustained while the employee was on the way to his doctor for required medical attention as a result of the original compensable accident. Brosnahan actually testified he had had an occasional blackouts "for a number of years", and it was a blackout that caused him to crash while driving his car to the doctor. Clearly, the blackout, from the testimony of the doctor in that case came from a seizure caused by his long pre-existing vascular condition. See also Miller v. Wilson Laurel Farms, Inc., 52 OIC 178. A very analogous situation was before Commissioner Evans, in Glenn v. Goodman Brothers and Home Indemnity Co., 52 OIC, 110. The employee sustained compensable broken leg accident and was found at his home (later) at the bottom of some steps. At the time, he was on two crutches and had a full length leg brace on the injured leg. The employee died two days thereafter from spinal cord injuries sustained in the home fall. Commissioner Evans made the following finding:

> "There can be no question but that Glenn was severely handicapped in descending the stairway on November 22, since at that time he was using crutches and wearing a full length leg brace. These appliances were necessitated by the accidental injury of July 23, 1968 and it is obvious that their use would make it more difficult to descent a stairway. It is therefore found, that the fall of November 22, 1968 was causally related to the industrial injury on July 23, 1968."

Death benefits were awarded in that case.

It is the finding of the Commission in the instant case that what happened to this plaintiff on June 11, 1974 was not a new accident such as required/under notice §65.1-87, Code of Virginia, but rather a change in condition under §65.1-99, Code of Virginia which was and has been timely brought. Compensation benefits were paid through October 27, 1975 and this Commission has accepted the change in condition posture of the plaintiff at the scheduled hearing.

It is our further finding this plaintiff has sustained injuries from his fall of June 11, 1974 which continued to incapacitate him other than for a brief work interval commencing October 20, 1975 through December 5, 1975. It is to be noted that this plaintiff underwent cervical surgery during, 1975, but was being paid general disability benefits in accordance with our outstanding award. He actually worked for a very brief period of time (October 20, 1975 to December 5, 1975) prior to the hearing application filed by the carrier. It is our finding the claimant earned an average weekly wage of $90.00 for this temporary work.

It is the further finding of the Commission in the instant case that the use of the crutches rendered movement by this plaintiff on a level surface more hazardous than was enjoyed by him before his original industrial accident, and as Commissioner Evans found in Glenn, supra, this plaintiff was severely handicapped in attempting to negotiate the stairway in the restaurant. It is our further finding that the fall sustained by this plaintiff on June 11, 1974 flowed as a natural consequence from the original industrial accident of June 3, 1974 and for this reason there is no merit to the defense of §65.1-87, Code of Virginia.

Our award shall issue accordingly.

A W A R D

An award is hereby entered granting request of the carrier to terminate our outstanding award of July 31, 1974, but with modification. The outstanding award will be modified effective October 27, 1975 to pay partial weekly benefits of $46.66 through December 5, 1975 at which time general disability benefits shall be reinstated at a weekly rate of $80.00. All benefits which have accrued from December 5, 1975 to the nearest full week from the date of this award, shall be paid in one lump sum directly to this plaintiff; but deducted therefrom shall be a fee in the sum of $275.00 to be paid directly to Mr. J. Hunt Brasfield, for legal

services furnished to this plaintiff. The defendants shall be responsible for all medical costs incurred as a result of examination, treatment, hospitalization, and surgical intervention therefrom for the injury sustained by this plaintiff as a result of his fall of July 11, 1974, as they pertain to his shoulder, and cervical regions.

Medical benefits will be extended to the maximum time provided by statute.

This case will be dismissed and stricken from the Commission hearing docket.

V I R G I N I A :

IN THE INDUSTRIAL COMMISSION OF
THE STATE OF VIRGINIA

WILLIAM A. ARNOLD	*	
Claimant	*	
v.	*	CLAIM NO. 415-237
R.H. LEONARD	*	
Employer	*	
and	*	
ERIE INSURANCE EXCHANGE	*	
Insurer	*	

PETITION FOR REHEARING BY FULL COMMISSION

COMES NOW the employer, R. H. Leonard, and the insurer, Erie Insurance Exchange, by counsel, and pursuant to Title 65.1-97, apply for a rehearing of the award entered herein on February 20, 1976 by Deputy Commissioner Yates.

NORMAN A. WEST
Counsel for Employer and Insurer

Certificate of Service

I hereby certify that a true copy of the foregoing Petition has been mailed, postage prepaid, to J. Hunt Brasfield, Esq., Counsel for Employee, 4660 Kenmore Avenue, Suite 220, Alexandria, Virginia 22304, this 23rd day of February, 1976.

NORMAN A. WEST

IN THE INDUSTRIAL COMMISSION OF VIRGINIA

WILLIAM A. ARNOLD, Claimant

v. Claim No. 415-237

Opinion by MILLER, Commissioner

MAY 20 1976

R. H. LEONARD, Employer
ERIE INSURANCE EXCHANGE, Insurer

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

Norman A. West, p.d.
4021 University Drive
Fairfax, Virginia, 22030

REVIEW before the Full Commission at Richmond, Virginia, May 12,1976.

The full Commission upon review adopts the findings of fact and conclusions of law contained in the decision and award of February 20,1976.

Accordingly, the said decision and award of February 20, 1976 appealed from are

AFFIRMED, with the modification that the fee for the claimant's attorney is hereby increased to the total sum of $350.00.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: Mrs. Helen Cooper, Secretary
Industrial Commission of Virginia
P.O. Box 1794
Richmond, Virginia 23214

The employer, R. H. Leonard, and insurer, Erie Insurance Exchange, hereby give notice of appeal from the final decision of the full Industrial Commission rendered herein on May 20, 1976 and assign the following errors as required by Rule 5:19(b), Rules of Court:

1. The Industrial Commission erred in finding that the fall of June 11, 1974 was a change of condition under Title 65.1-99, Code of Virginia, and not a new accident such as required notice to the employer under Title 65.1-85, Code of Virginia, and the filing of a claim with the Industrial Commission as required by Title 65.1-87, Code of Virginia.

2. The Industrial Commission erred in finding that the knowledge of the treating physician and his general comments in the medical reports relieved the claimant of the statutory duties imposed by Title 65.1-85 and Title 65.1-97 requiring notice to the employer and filing of a claim with the Industrial Commission.

3. The Industrial Commission erred in finding a change of condition based on injuries which existed prior to the original award and which were known to the employee at the time of the execution of the Memorandum of Agreement and not made a subject of the award.

4. The evidence submitted was insufficient to support the findings of the Industrial Commission to which error is assigned in paragraphs 1, 2 and 3 hereinabove.

Dated this 28th day of May, 1976.

(S) D.W.

R. H. LEONARD, Employer
and
ERIE INSURANCE EXCHANGE, Insurer
By Counsel

(S)

NORMAN A. WEST
Counsel for Employer and Insurer
4021 University Drive
Fairfax, Virginia 22030

Certificate of Service

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was delivered to J. Hunt Brasfield, Esquire, Counsel for Employee, 4660 Kenmore Avenue, Suite 220, Alexandria, Virginia 22304, this 28th day of May, 1976.

(S)

NORMAN A. WEST