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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 771194

RAY C. BERRY,

Claimant/Appellant

v.

HENRICO COUNTY/DIVISION OF FIRE,

Employer/Appellee

and

LUMBERMENS MUTUAL CASUALTY COMPANY,

Insurer/Appellee

ON APPEAL FROM THE
INDUSTRIAL COMMISSION OF
VIRGINIA

APPENDIX

Michael S. Shelton
COHEN, ABELOFF & STAPLES, P.C.
1128 Ross Building
Richmond, Virginia 23219

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• KEMPER INSURANCE •

☐ LUMBERMENS MUTUAL CASUALTY COMPANY
☐ AMERICAN MOTORISTS INSURANCE COMPANY
☐ AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY

908 NORTH THOMPSON STREET
RICHMOND, VIRGINIA 23230

ON FATAL AND OTHER SERIOUS CASES
TELEPHONE 353-4421 (AREA 703) OR TELEGRAPH

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA
RICHMOND

M. E. EVANS
THOMAS P. HARWOOD, JR.
THOMAS M. MILLER
} COMMISSIONERS

E. M. SCOTT, CLERK

se of _____

aim No. _____

EMPLOYER'S FIRST REPORT OF ACCIDENT

(Every question must be answered)

ployer

1. Name of Employer Henrico County, Division of Fire
2. Office address: No. and St. 8716 Landmark Rd. City or Town Richmond State Va. 23228
3. Insured by: Name of Company Lumbermans Mutual Casualty Co.
4. Give nature of business (or article manufactured) Fire Prevention & Fire Suppression

e

5. (a) Location of plant or place where accident occurred Henrico County (City or County)
5207 Moncure Avenue Richmond, Va. Department State if employer's premises No
(b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill? N/A
6. (a) Date of Injury 10-3 19 76 Day of Week Sunday Hour of day A.M. 3:00 P.M.
(b) Was injured paid in full for day he was injured? Yes
7. Date incapacity began 10-3 19 76 A.M. P.M. 3:00
8. Was injured paid in full for day incapacity began? Yes
9. When did you or foreman first know of injury? 10-4-76
10. Name of foreman B. G. Martin

red
on

11. Name of Injured Ray (First Name) C. (Middle Initial) Berry (Last Name) 224-36-4336 (Soc. Sec. No.)
12. Address: No. and St. 5207 Moncure Ave. City or Town Richmond State Va. 23231
13. Check (✓) Married X, Single ..., Widowed ..., Widower ..., Divorced ...; Male X, Female ...; White X, Colored ...
14. Nationality American Speak English? Yes
15. Age 45 Did you have on file employment certificate or permit? Yes
16. (a) Occupation when injured Firefighter (b) Was this his or her regular occupation? Yes
(If not state in what department or branch of work regularly employed)
17. (a) How long employed by you? 5 yr. 10 (b) Piece or time worker Time (c) Wages per hour $
18. (a) No. hours worked per day 24 (b) Wages per day $ 70.66
(c) No. days worked per week 3 - 4 (d) Average weekly earnings $ 247.33
(e) If board, lodging, fuel or other advantages were furnished in addition to wages, give estimated value per day, week or month $ 1.28 per week.

e
y

19. Machine, tool or thing causing injury None 20. Kind of power, (hand, foot, electrical, steam, etc.) None 21. Part of machine on which accident occurred N/A
22. (a) Was safety appliance or regulation provided? N/A (b) Was it in use at time N/A
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 had been sleeping. When he woke, he was having pains in his chest.
25. Name and address of witness Mrs. Rosie Hicks Berry, 5207 Moncure Ave. Richmond, Va. 23231

re
y

26. Nature and location of injury (describe fully exact location of amputation or fractures, right or left) Heart attack.
27. Probable length of disability Unknown 28. Has injured returned to work? No.
If so, date and hour N/A At what wage $ N/A
29. At what occupation? N/A
30. (a) Name and address of physician Dr. Fred Robinson, MCV
(b) Name and address of hospital Medical College of Virginia, Richmond, Va.

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

of this report 10-9-76 Firm Name Henrico County, Division of Fire

Signed by _____ Official Title Captain

No. 3
490-3 RICH 9-69 25M

PRINTED IN U.S.A.

Name: Berry, Ray C. (Last, First, Middle Initial) Date: Dec. 11, 1970

Address: 2287 Forest Drive, Richmond, Va. Occ: Firefighter

Phone: 222-2267 Date of Birth: Sept. 28, 1931

Tuberculosis: 0 Bronchitis: 0 Asthma: 0

Heart Disease: 0 Kidney Disease: 0 Diabetes: 0

Other: Pneumonia 1932,

Injuries: 0

Operations: Appendectomy 1952, right herniorrhaphy 1953.

Seizures: 0

	Vision	With Glasses	Reading	With Glasses
Eyes: Right	20/40		20	
Left	20/40		20	

Inspection eyes: 0 Color Vision: Normal

Ears: Right: Fingers Hearing: 5' Whisper Right

Left: Fingers 5' Whisper Left

Height	67"	Weight	172½ lbs	Build	Medium
Teeth		Throat	0	Thyroid	0
Heart	0	Blood Pressure	130/88 (left)	Pulse	96 reg
Lungs	0	Abdomen	0	Hernia	0
Skin	0	Reflexes	0	Lymph nodes	0

Remarks: Fit for duty as firefighter

Urine: sp. gr. ____ color ____ appearance ____
blood ____ albumin ____ glucose ____
sediment ____ pH ____
microscopic ____

Blood urea nitrogen ____ Wassermann ____
Blood smear ____ Kahn ____
Blood type ____
Blood glucose ____ pero punction ____

Results noted, date Dec. 11, 1970

Signed: James R. Smith M.D.
Examining Physician

BERRY,RAY C. DATE 08/24/73

MALE CAUCASIAN 5'08'' 187 LBS. BORN 09/28/31

P E R S O N A L H I S T O R Y

THE PATIENT IS MARRIED. THE PATIENT'S EDUCATION IS COMPLETE THROUGH HIGH SCHOOL GRADE 4. THE PATIENT'S FATHER IS NOT LIVING. HIS DEATH OCCURRED UNDER 50 YEARS OF AGE. THE PATIENT'S MOTHER IS NOT LIVING. HER DEATH OCCURRED BETWEEN 70 AND 79 YEARS OF AGE.

GENERAL FAMILY HISTORY -

THE PATIENT'S PARENTS HAVE OR HAVE HAD THE FOLLOWING DISEASES OR CONDITIONS-

ASTHMA
HEART TROUBLE

THE PATIENT'S SIBLINGS HAVE OR HAVE HAD THE FOLLOWING DISEASES OR CONDITIONS-

ARTHRITIS
HIGH BLOOD PRESSURE
HEART TROUBLE
CATARACT

GENERAL PERSONAL HISTORY

THE PATIENT ACKNOWLEDGED HAVING OR HAVING HAD THE FOLLOWING DISEASES OR CONDITIONS-

ARTHRITIS

THE PATIENT HAS HAD THE FOLLOWING TESTS-

CHEST X-RAY
AUDIOGRAM
ELECTROCARDIOGRAM

THE PATIENT IS CURRENTLY TAKING THE FOLLOWING MEDICINE(S)-
ANTIBIOTICS

THE PATIENT HAS BEEN HOSPITALIZED FOUR(4) TIMES. THE PATIENT WAS HOSPITALIZED FOR THE FOLLOWING REASON(S)-

SURGICAL OPERATION

GENERAL COMMENTS-
HEALTH IS GENERALLY GOOD
GAINING WEIGHT
ANNOYED BY 'LITTLE' THINGS
OCCASIONALLY DRINK ALCOHOL
HEAVY SMOKER

THE FOLLOWING IS A REVIEW OF THE PATIENT'S HEALTH BY SYSTEMS-

MUSCULO-SKELETAL, SPECIFIC COMMENTS-

PAINFUL JOINTS

RESPIRATORY, SPECIFIC COMMENTS-

HAVE HAD PNEUMONIA

WEAR GLASSES

MOOD, SPECIFIC COMMENTS-

VERY FORGETFUL

T E S T D A T A

ISION TEST

PATIENT WEARS CORRECTIVE LENSES.

VISUAL ACUITY	FAR	NEAR
LEFT EYE	20/30	20/20
RIGHT EYE	20/30	20/100
BINOCULAR	20/20	20/50

LATERAL PHORIA - (PRISM DIOPTERS) 0 (NORMAL).

VERTICAL PHORIA - (PRISM DIOPTERS) -3 (NORMAL).

COLOR BLINDNESS - PASS.

EARING TEST

FREQ	LEFT EAR	RIGHT EAR
500	30DB	10DB ..
1000	10DB ..	10DB ..
2000	0DB	0DB
3000	0DB	10DB ..
4000	10DB ..	20DB ....
6000	40DB	30DB .....

HEST X-RAY

THE FILM INDICATED - NO SIGNIFICANT ABNORMALITY.

LECTROCARDIOGRAM

NORMAL ELECTROCARDIOGRAM.

HEART RATE	69.
R DURATION (MSECS)	91.
PR INTERVAL (MSECS)	173.
RT INTERVAL (MSECS)	389.

LOOD PRESS

PRESSURE	VALUE	LIMITS	V	V	V	V	V
SYSTOLIC (MM OF HG)	124.	113. TO 127.			***		
DIASTOLIC (MM OF HG)	82.	[illegible]			*		

DIAGNOSTIC	VALUE
TE	

FVC (LITERS)	4.86	4.22	(115%)	*****
FEV1.0 (LITERS)	3.99	3.38	(118%)	******
FEV3.0 (LITERS)	4.6	3.8	(121%)	*******
PF (LITERS/SEC)	8.73	4.52	(193%)	**********

URINALYSIS

APPEARANCE - CLEAR COLOR - NORMAL PH- 5
GLUCOSE - NEGATIVE KETONES- NEGATIVE PROTEIN - NEGATIVE
HEMOGLOBIN - NEGATIVE
SP. GR. - 1.027
MICROSCOPIC
WBC'S - 1-3 EPITH CELLS - OCCAS
THE MICROSCOPIC EXAMINATION OF THE URINE FURTHER SHOWED
OTHER PARTICLES THAT WERE NOT CLASSIFIED

CHEMISTRY

TEST	VALUE	LIMITS	V V V V V
CA++ (MG%)	9.7	8.5 TO 10.5	**
INOR. PHOS. (MG%P)	4.4	2.5 TO 4.5	******
GLUC (MG%)	100.	65. TO 110.	****
CREATININE (MG%)	0.9	0.7 TO 1.4	***
URIC ACID (MG%)	4.8	2.5 TO 8.0	**
CHOLESTEROL (MG%)	220.	150. TO 300.	*
T.P. (GM%)	7.6	6.0 TO 8.0	****
ALB. (GM%)	5.1	3.5 TO 5.0	*******
T. BILI (MG%)	0.4	0.2 TO 1.4	****
ALK. PHOS. (MU/ML)	80.	30. TO 85.	*****
LDH (MU/ML)	164.0	100.0 TO 225.0	*
SGOT (MU/ML)	24.	8. TO 40.	*

CHEMISTRY COMMENTS-
GLUCOSE CHALLENGE DOSE NOT GIVEN.

HEMATOLOGY

TEST	VALUE	LIMITS	V V V V V
NEUTROPHILS(%) -	56.	50. TO 75.	****
LYMPHOCYTES -	36.	20. TO 45.	**
MONOCYTES -	5.	2. TO 10.	**
EOSINOPHILS -	3.	0. TO 6.	*
BASOPHILS -	0.	0. TO 1.	******
RBC COUNT (MILL/CMM)	5.06	4.6 TO 5.8	**
WBC COUNT (THOUS/CC)	9.5	5.0 TO 10.0	*****
HEMOGLOBIN (GMS %)	15.7	14.0 TO 18.0	**
HEMATOCRIT (%)	45.9	42.0 TO 52.0	**
RBC INDICES-			
MCV (CU.MICRA)-	91.	86. TO 98.	**
MCH (MMG)-	31.0	27.0 TO 31.0	*******
MCHC (%)-	34.8	32.0 TO 36.0	***

RED CELL MORPHOLOGY - APPEARS NORMAL.
PLATELETS APPEAR ADEQUATE.

PATHOLOGY

VDRL - NEGATIVE

VIRGINIA COMMONWEALTH UNIVERSITY - HEALTH TESTING CENTER

TONOMETRY

INTERNAL PRES. OF-	DATA	RANGE	V	V	V	V	V
LEFT EYE (MM OF HG)	22.	13. TO 22.			*******		
RIGHT EYE (MM OF HG)	20.	13. TO 22.			****		

THE TESTING PROCEDURE USED WAS THE MACKAY-MARG.

PHOTOMOTOGRAPHY

	DATA	RANGE	V	V	V	V	V
RESULTS(MSEC.)	280.	250. TO 280.			****		

PANOREX (DENTAL X-RAY)

THE FOLLOWING DENTAL CONDITIONS WERE NOTED-

MAXILLARY DENTAL CARIES
TOTAL MISSING TEETH 6.

SUGGESTED DENTAL FOLLOW-UP ROUTINE.

E N D O F S U M M A R Y

Claimant #3

ROBERT EDGAR MITCHELL, JR., M. D.
311 MEDICAL ARTS BUILDING
RICHMOND, VIRGINIA 23219

February 3, 1977

Mr. Michael S. Shelton
1128 Ross Building
Richmond, Virginia 23219

Re: Mr. Ray C. Berry
File No. 518-136

Dear Mr. Shelton:

Mr. Ray C. Berry was first seen by me 3/19/69. He has been seen at irregular intervals since until 12/3/73 when he was last seen for work-up. There was no evidence of hypertension or arteriosclerotic cardiovascular disease in any of these examinations. He was found to have degenerative osteoarthritis of his spines to a moderate degree. He was referred to Dr. Henry A. Yancey, Jr. for this and was seen by Dr. Yancey July 6, 1972. A Health Testing Center screening test at the Medical College of Virginia Hospital done 8/24/73 showed no evidence of hypertension.

I have no knowledge of Mr. Berry's condition since he was last seen and examined by me 12/3/73.

I am in the private practice of Internal Medicine.

I trust this is the information you desire.

Yours sincerely,

Robert Edgar Mitchell, Jr., M. D.

REMjr:bw
Enclosures

5207 Moncure Ave Richmond, VA ~~October~~ November 3, 1976 10:45 AM
STREET CITY STATE DATE

1. My name is Ray~~mond~~ RCB C. Berry. I reside at the above address with my
2. wife, Rosie. We have 3 children - aged - Robin is 12, Jimmy is 11, and
3. Clyde is 6 months. I am 45 years of age born on Sept. 28, 1931. My
4. social security number is 224-36-4336. I have been employed by
5. Henrico County as a firefighter for almost six years now. I have worked
6. at 2 stations - one at Laburnum Ave for about three years and my
7. present station on Rt. 5 and Strath Rd. My earnings bi-weekly is $494.67
8. gross. My boss or foreman is Wesley "Tiger" Lane. My accident happened
9. on Sunday, October 3 around 3 or 4 PM. I was home at home. We had
10. been at my brother's home that morning and came back around 12:00 or 1:00 PM.
11. I came in and took a nap and got up about 3:00 PM to watch the ball
12. game. I came into the living room and asked my son what he was watching
13. I immediately felt a bad pain in my chest. At first I thought it might be
14. indigestion and got under the shower. My brother suggested that since the
15. pain was getting worse that I call the rescue squad. He felt that I
16. had the symptoms of a heart attack. The rescue squad came and took me
17. to the MCV Emergency Room. They checked me out with the usual procedures
18. and diagnosed me as having a heart attack. I was admitted into the
19. intensive care unit immediately from the emergency room. Dr Fred Robinson
20. and several interns treated me and I am still under Dr Robinson's
21. care. I stayed in intensive care until Wednesday. I stayed in a private
22. room a week and three days. I was to come home but they formed an

RCB

5207 Monroe Ave Richmond, Va November 3, 1976 10:45 AM

irregular heart beat. I was put back into intensive care for about three more days and then back to a private room. I was discharged on October 23. Since then I have stayed at home and saw Dr Roberson yesterday which was 10 days after the release. I am to see him again on Nov. 9th. I have never had any history at all of heart trouble. I took a stress test at the Health Center at MCV (Nelson Clinic) on August 20, 1973. This was required by the County or rather, required by state law to test for hypertension and I was told that nothing showed up - I was never called. The only unusual type of stress that I felt previous to my attack ~~but~~ RED was the switching in personnel that the entire department was going thru. This had been going on for about two months and nobody knew who or where they were going to be working. I do not remember any particular ~~job~~ RED fire call that had unusual stress attached to it. Every ~~job~~ fire call RED carries with it a certain amount of hypertension in that you never know what you are going to run into answering a call. I have read the above statement of 1 page and it lies and it is true to the best of my knowledge.

P Vaughan Noble Jr. Ray C. Berry

REPORT OF PHYSICIAN

he physician rendering the following report:

important to give a full report of the patient's illness and the details of your findings, so that the dical Board will have a clear picture of the patient's condition. Simply stating "arthritis", "Heart ase", nervous trouble", etc., without going into the details of the patient's complaints and objec- findings, the degree of disability, and a reasonably comprehensive statement as to the prognosis treatment, does not give sufficient information on which to adequately evaluate the report. Lack fficient medical evidence will result in the Medical Board not being able to promptly and properly ermine whether or not the applicant is mentally or physically incapacitated for further performance uty.

complete cooperation will avoid delay in processing the claim and will be very much appreciated.

reby certify RAY BERRY has been under my professional care since

e of this examination:

gnosis of patient's illness, disease, or injury: Acute myocardial infarction 10-3-76 Ventricular tachycardia

tment indicated: Coronary intensive care unit. Rest

nosis: (Please include information as to the expected duration of disability and the extent of the bility, particularly with regard to ability to perform duties of the patient's regular occupation.)
MR. BERRY should not return to fire fighting because of his myocardial infarction

eral Remarks:

ou consider this patient to be ~~mentally~~ or physically incapacitated for further performance of duty.
) Yes ( ) No

Signature of Physician

FRED D. ROBINSON MD
Type or Print Name

Box 83 Medical College of Va.
Address
Richmond, Va.

10-13-76

: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

No. _____

of _____

ATTENDING PHYSICIAN'S REPORT

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

NAME OF INJURED EMPLOYEE (First, middle initial, last): Ray C. Berry	2. DATE OF INJURY (Mo., day, yr.): 10-3-76
EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): 5207 Moncure Ave. Richmond, Va 23231	4. DATE OF BIRTH (or age) (Mo., day, yr.): 5. SEX
NAME OF EMPLOYER: Board of Supervisors of Henrico Co.	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code):
DATE OF FIRST VISIT (Mo., day, yr.): 9. DATE DISCHARGED (Mo., day, yr.):	10. WHO AUTHORIZED TREATMENT?

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

Chest pain while fighting fire

. 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.)

EKG Diaphragmatic MI, Anterior MI, Sinus Rhythm ST & T wave changes of inferior lateral injury 10-7-76 - Portable chest 10-3-76 - lungs clear, cardiomegaly c̄ a tortuous aorta, slight prominence to pulmonary vasculature

. DIAGNOSIS: Acute Myocardial Infarction, Ventricular Tachycardia	14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? ☒ YES ☐ NO — IF 'NO', EXPLAIN ON REVERSE OF THIS FORM
. NATURE OF TREATMENT: Medication - rest, Hospital Care	16. DATES OF YOUR TREATMENT (Mo., day, yr.): 10-3-76 to present
. 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)

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

Medical College of Va. 1200 E. Broad St. 10-3-76 to present

. WAS THERE DISABILITY FOR WORK? ☒ YES ☐ NO (If "Yes," answer 20-A,B,C) ⟹	A. DATE DISABILITY BEGAN (Mo., day, yr.)	B. DATE ABLE TO RETURN TO LIGHT WORK (Mo., day, yr.)	C. DATE ABLE TO RETURN TO TO REGULAR WORK (Mo. day, yr.)
	10-3-76		

. 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).

. NAME OF ATTENDING PHYSICIAN (Type or print): Fred D. Robinson M.D.	23. ADDRESS (Number and street, city, state, zip code): Box 83 MCV Station Richmond, Va. 23298
4. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT: SIGNATURE _____ M. D. (SIGNATURE OF ATTENDING PHYSICIAN)	25. DATE OF THIS REPORT: 10-21-76

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

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

E USE OF THIS FORM IS REQ ED UNDER THE PROVISIONS OF TI WORKMEN'S COMPENSATION ACT.

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

CLAIM-RICHMOND
NOV

99214

e No. 518-136

ne of

ATTENDING PHYSICIAN'S REPORT

uestions 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): Ray C. Berry

2. DATE OF INJURY (Mo., day, yr.): 10-3-76

3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): 5207 Moncure Ave. Richmond, Va 23231

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

5. SEX:

6. NAME OF EMPLOYER: Board of Supervisors of Henrico Co.

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

8. DATE OF FIRST VISIT (Mo., day, yr.): 10-3-76

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

10. WHO AUTHORIZED TREATMENT?

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED: Chest Pain while fighting fires

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.)
EKG - Diaphragmatic MI, Anterior MI, Sinus Rhythm, ST & T wave changes of inferior lateral injury (10-7-76)
Portable Chest 10-3-76 Lungs Clear, Cardiomegaly c̄ a tortuous aorta
slight prominence to pulmonary vasculature

13. DIAGNOSIS: Acute Myocardial Infarction

14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? ☒ YES ☐ NO — IF "NO", EXPLAIN ON REVERSE OF THIS FORM

15. NATURE OF TREATMENT: Hospital Care, Medication, Rest

16. DATES OF YOUR TREATMENT (Mo., day, yr.): 10-3-76 to present

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
Medical College of Va.
1200 E. Broad St.
10-3-76 to present

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

A. DATE DISABILITY BEGAN (Mo., day, yr.): 10-3-76

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): Fred D. Robinson, M.D.

23. ADDRESS (Number and street, city, state, zip code): Box 63 MCV Station Richmond, Va. 23298

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT.
SIGNATURE [signature] M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT: 11-3-76

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

4

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

Claimant #4

MEDICAL COLLEGE OF VIRGINIA
VIRGINIA COMMONWEALTH UNIVERSITY
MCV Station • Richmond, Virginia 23298

February 2, 1977

L. W. Hiner, Deputy Commissioner
Industrial Commission of Virginia

RE: Ray C. Berry
I.C. File No. 518136

Fred D. Robinson, M.D. - Qualifications
Medical Degree from University of Virginia 1958
Diplomate of Board of Family Practice
Diplomate of Board of Internal Medicine
Diplomate of Board of Cardiology
Director Coronary Intensive Care Unit - MCV
Assistant Professor of Internal Medicine - MCV
Specialty Practice at Present Time - Cardiology

This is to state that I first treated Mr. Berry in October 3, 1976, at the Medical College of Virginia, where he was admitted with a large heart attack(myocardial infarction). He was in the Medical College from 10-3-76 to 10-24-76. His hospital course was complicated with a life threatening arrhythmia ventricular tachycardia late in his hospital course. His myocardial infarction involved both the inferior wall and anterior wall of his left ventricle. He had noticed some chest pains while fighting fires prior to his heart attack. Mr. Berry has a total incapacity to perform his duties as a firefighter. This will be a permanent disability. His present medications are Quinidex 300 mg. b.i.d. to prevent occurence of his life threatening arrhythmia, Isordil 5 mg. before each meal and at bedtime to improve his coronary circulation and Nitroglycerin to take prn in case of bad angina attack. In the near future he will enter in the Cardiac Rehabilitation Program at the Medical College of Virginia.

Yours truly,

Fred D. Robinson, M.D.

Fred D. Robinson, M.D.
Director
Coronary Intensive Care Unit
Medical College of Virginia

FDR/clj

cc: Michael S. Shelton
Cohen, Abeloff and Staples
Richmond, Virginia 23219

MEDICAL COLLEGE OF VIRGINIA
VIRGINIA COMMONWEALTH UNIVERSITY
MCV Station • Richmond, Virginia 23298

February 11, 1977

Mr. Dannehl Aldridge, Jr.
Harris, Aldridge, & Pigeon
110 North Second Avenue
Hopewell, Virginia 23860

Dear Mr. Aldridge:

I have reviewed the information provided me regarding Ray C. Berry vs. Board of Supervisors of Henrico County (1). On the basis of the information provided, it is my medical opinion that the "heart attack" Mr. Berry sustained on October 3, 1976 is not an occupational disease arising from his employment as a fireman. My opinion is based on the following reasons:

The "heart attack" Mr. Berry sustained was an acute myocardial infarction. A myocardial infarction is a process in which a portion of the heart muscle receives inadequate blood supply, and necrosis (death of tissue) of the heart muscle occurs. In the United States, the most common cause of the inadequate blood supply is atherosclerosis of the coronary arteries. This process narrows the arteries of the heart and limits the amount of blood that can be provided to the heart muscle.

Atherosclerosis is a process of long duration, present for many years in a person before the process becomes clinically evident by the development of a myocardial infarction, or some other clinical condition (such as angina pectoris).

It is generally accepted that in most cases the worsening of the underlying disease process (atherosclerosis of the coronary arteries) to the point at which clinical ischemic events (myocardial infarction, angina pectoris, arrhythmias, sudden death and/or heart failure) occur, represents the natural progression of the disease process. In a few cases unusual physical and/or emotional events may aggravate the process and produce a clinical event.

The relationship of this disease (atherosclerotic coronary artery disease) to an occupation could occur in one of several ways.

A. A particular occupation produces or is a factor in producing the atherosclerosis or is a factor in accelerating or worsening the underlying pathological process of atherosclerosis (is causative).

B. Activity of a particular occupation brings to light (surfaces) a cardiac problem which was previously subclinical and/or tolerated.

C. A particular event or unusual activity of the occupation initiates (precipitates) and/or aggravates a particular clinical event.

In the case of Mr. Berry, each of these can be examined and rejected as reasonable medical probabilities.

Atherosclerosis is a chronic process of unknown etiology but probably is caused by many factors. Factors which are known to be associated with an increased risk of development of clinical coronary heart disease (atherosclerosis) include familial history of premature atherosclerosis, sex (male), abnormal serum lipids (cholesterol and/or triglycerides), hypertension, cigarette smoking, obesity, and diabetes mellitus (4).

It is noted in Mr. Berry's record from the Health Testing Center/Virginia Commonwealth University on August 24, 1973 that there is a family history of heart trouble (siblings and parents) and that his father died under the age of 50 years. It was also noted by the patient that he was a "heavy smoker", but his cholesterol, blood sugar, and blood pressure were normal. In addition, his weight in 1973 was recorded at 187 pounds and his height was 68 inches. The upper limits of ideal weight for a person of his height with a large frame would be 166 pounds and for a medium frame 152 pounds. His weight, therefore, was between 114 percent and 124 percent above above his ideal weight depending on his frame size.

It must be emphasized that less than half of the patients with coronary heart disease have these major identified and accepted risk factors. The absence of such risk factors does not mean that the disease will not occur because other factors as yet unidentified may produce the disease.

There is no specific occupation that has been clearly identified as increasing the risk of coronary heart disease independently of other risk factors (2). I am not aware that there is evidence of increased incidence of coronary heart disease in firemen compared to other occupations. Even if such increased incidence were found, such incidence in itself does not "prove" causation by occupation of the disease since personality factors or other socio-economic factors which may be related to the selection of the job of firemen may play a role.

Mr. Berry alludes to the possible "hypertension" associated with every fire call, and I assume he refers to "stress" when using this word. I believe he implies that fire calls may be associated with "stress" or "tension" and thus may have been related to the development of his heart disease. There are no definitive data in man to establish a relationship between stress and the development of atherosclerosis (2). There are studies which have shown some relationship between the development of coronary heart disease and certain social and psychological factors. These include socio-cultural mobility, social and educational incongruity, personality behavorial patterns, and specific life events, none of which relate to the specific occupation as such. There seems to be no definitive medical knowledge to indicate that Mr. Berry's job as a fireman was a factor in producing or worsening atherosclerosis.

In regarding items B and C above, there is no evidence presented to indicate that the clinical event of "heart attack" was related to any specific event of his

occupation but indeed occurred at home following a two week period during which Mr. Berry only worked one day and that day one of routine duty.

Mr. Berry states that he had had no previous history of heart disease and presents evidence that he was tested for hypertension in August 1973 at the Health Testing Center, Virginia Commonwealth University. The results of that study showed a normal electrocardiogram and a normal blood pressure. He states that he had a stress test but no such test is indicated in the results from the Health Testing Center which are available to me. The presence of a normal electrocardiogram does not exclude the presence of coronary atherosclerosis. As has been noted, this is a progressive process and becomes clinically evident only after it reaches a particular state in a particular patient. Prior to that time, routine laboratory tests will not exclude its presence. Even after certain clinical events have occurred (e.g., development of angina pectoris), the routine laboratory studies may remain normal.

There are exercise stress tests which can be administered to individuals "to surface" subclinical disease. We have no evidence to indicate that Mr. Berry had such a test. A normal test would not have entirely excluded disease since there may be a false-negative test (a normal test in the presence of significant coronary artery disease or risk of development subsequent to coronary artery disease). False-negative tests occur in between 65 percent and 33 percent of cases depending on the type of testing used (double Masters' two-step and Bruce multi-stage maximal treadmill exercise test, respectively) (3).

To be "found free from . . . heart disease" would require at least maximal exercise stress testing and if negative, consideration of coronary angiography (X-ray pictures of the coronary arteries) showing normal vessels before one could be certain that coronary atherosclerosis was not present at the time of employment. Even if this were shown, the subsequent development of the process does not mean cause of the process by the occupation.

It is on the basis of the above medical information that I believe in all probability that the heart attack of Mr. Berry was not related to his employment. It is my medical opinion that his heart attack was due to the natural progression of the underlying disease process.

Sincerely yours,

David B. Propert, M.D.
Associate Professor of Medicine (Cardiology)
Co-Director, Heart Station
MCV Hospitals

rs

1A. Report of examination on Ray C. Berry - Health Testing Center, Virginia Commonwealth University - August 24, 1973.

B. Letter to B.V. Noble, Jr. from A.H. Kinzie regarding work schedule and activity of Ray Berry, September 18, 1976 - October 2, 1976.

C. Written statement by Ray C. Berry.

D. Dept. of Workman's Compensation, Employer's first report of accident (Form #3). Dated October 9, 1976 on Ray C. Berry.

E. Dept. of Workman's Compensation, Attending Physician's Statement. By Fred D. Robinson, M.D., dated November 3, 1976, on Ray C. Berry.

2. Proceedings of the National Conference on Emotional Stress and Heart Disease. J. of South Carolina Medical Association, Vol. 72, February 1976 supplement.

3. Bruce, R.A.: Progress in Exercise Cardiology. In Yu and Goodwin. Progress in Cardiology, 3:113-172, 1974.

4. Blackburn, H.: Progress in the Epidemiology and Prevention of Coronary Heart Disease. In Yu and Goodwin. Progress in Cardiology, 3:1-36, 1974.

CURRICULUM VITAE

PERSONAL INFORMATION:

1.1 David Boyd Propert, M.D.
1.2 March 15, 1933, Philadelphia, Pennsylvania
1.3 U.S. Citizen
1.4 227-42-0857
1.5 Married, 2 children
1.6 7711 Lake Shore Drive, Richmond, Virginia 23235
telephone number 272-0735
1.7 P.O. Box 882, Medical College of Virginia, Richmond, Virginia 23298

LICENSURE:

2.1 Pennsylvania and Virginia (license number 19753, June 13, 1969)
2.2 American Board of Internal Medicine, September 23, 1966
2.3 American Board of Internal Medicine, Cardiovascular Disease, October 21, 1975

EDUCATION:

Jefferson Medical College, Philadelphia, Pennsylvania - M.D. (Physiology Price - Alpha Omega Alpha) - 1954-1958
University of Richmond, Richmond, Virginia - 1950-1954 - B.S. (Chemistry) (Phi Beta Kappa - Omicron Delta Kappa - Chemistry Price - 1954)

MILITARY SERVICE RECORD:

U.S. Naval Hospital, Key West, Florida - Medical Officer, Medical Service 1962-1964 - Lieutenant Commander
U.S. Naval Reserve - Commander - 1964 to present

POSTDOCTORAL TRAINING or SPECIAL EXPERIENCE:

Veterans Administration Hospital, Richmond, Virginia, Research Associate, 1965-1967
Veterans Administration Hospital, Richmond, Virginia, Resident Cardiovascular Diseases, 1964-1965
Washington Hospital Center, Washington, DC, Resident Internal Medicine - Chief Administrative Resident, 1961-1962
Washington Hospital Center, Washington, DC, Resident Internal Medicine, 1959-1961
Washington Hospital Center, Washington, DC, Rotating Intern, 1958-1959

ACADEMIC APPOINTMENTS:

Associate Director, ECG-VCG Laboratory, Medical College of Virginia, 1972 to present
Associate Professor of Medicine, Medical College of Virginia (VCU), 1971 to present
Chief Cardiovascular Section, Medical Service, Veterans Administration Hospital, Richmond, Virginia, 1969-1972
Assistant Professor of Medicine, MCV/VCU, 1967-1971
Chief, Cardiovascular Laboratory, Veterans Administration Hospital, Richmond, Virginia, 1967-1969
Instructor in Medicine, MCV/VCU, 1965-1967

7. MEMBERSHIP - SCIENTIFIC, HONORARY and PROFESSIONAL SOCIETIES:

Fellow, American College of Cardiology
Fellow, Council on Clinical Cardiology, American Heart Association
Member, American College of Physicians
Richmond Academy of Medicine
Medical Society of Virginia
Society for Health and Human Values
Richmond Society of Internal Medicine

8. MEMBERSHIP IN COMMUNITY ORGANIZATIONS:

Richmond Area Heart Association (Board of Directors 1967-1977; Chairman, Professional Education Committee 1968; Member, Research and Education Committee 1974; Chairman, Research and Education Committee 1977)
Ruling Elder, Bon Air Presbyterian Church
Church Leadership Consultant Bank, Hanover Presbytary
Joint Administrative Committee of Joint Office of Worship, Presbyterian Church in U.S. (Treasurer)
Board of Directors, Virginia Institute of Pastoral Care Inc.
Board of Directors, Presbyterian Outlook, Inc.

9. SPECIAL AWARDS:

Outstanding Teaching Award by Class of 1973 - 1971
Faculty Good-Guy Award by Class of 1972 - 1972
Top Ten Teachers Award (1971-72) by Class of 1974 - 1972
Teacher of the Year Award by Class of 1976 - 1974
Teacher of the Year Award by Class of 1977 - 1975
S.A.M.A. Golden Apple Award by Class of 1976 - 1976

0. MAJOR COMMITTEES:

Member, Department of Medicine, M-III Clerkship Committee (Coordinator - M-III Medicine "Core Curriculum")
Co-Chairman, Combined Curriculum Committee, Introduction to Clinical Medicine, 1973-77
Chairman, M-II Cardiovascular System Committee, 1969-1972
Co-Director, M-II Cardiovascular System Curriculum, 1973
Co-Chairman, Combined Cardiovascular System Committee, 1974-1977
Coordinator, M-IV Cardiopulmonary Survey Elective, 1972-1975
Member, Professional Advisory Committee for Patient Counseling Program, School of Allied Health, Health Sciences Division, VCU
Chairman, Coronary Intensive Care Unit Advisory Committee
Member, University Assembly, 1976

. OTHER SIGNIFICANT SCHOLARLY, RESEARCH or ADMINISTRATIVE EXPERIENCE:

None

BIBLIOGRAPHY:

12.1 Tanenbaum, H.L., Sager, J.H., Peiser, I.H., Propert, D.B. and Rogers, D.L.: Hypertension Secondary to Unilateral Renal Ischemia. Med. Annals of Dist. Columbia, 30:530, 1961.

Blount, A.W., Jr., Propert, D.B.: Electric Shock Therapy of Cardiac Arrhythmias, Virginia Medical Monthly, 93:491, 1966.

Howell, T.R., McCue, C.M., Propert, D.B., and Neal, J.P., Jr.: Radiologic and Other Diagnostic Clues in Congenital and Acquired Heart Disease. Radiologic Clinics of North America, 9:397-433, 1971.

Reed, Sandra and Propert, D.B.: Fundamentals of Electrocardiography, Programmed Text, 1975. Medical College of Virginia, Avline Citno 451247.

12.2 Propert, D.B.: Coronary Blood Flow in Experimental Pulmonary Embolism. Clinical Research, 14:84, 1966.

12.3 Propert, D.B. and Hastillo, A.: Diseases of the Pericardium in Tice-Harvey Practice of Medicine. Vol. VI, Chapter 12, pp. 1-33, Harper & Row, 1974.

12.4 Propert, D.B., Worsham, J.E., Jr., Porter, R.R., Bryce, W.F., Jr.: Stereoscopic Display of Vectorcardiograms. Scientific Exhibit at Annual Meeting American Heart Association, San Francisco, California, October 20, 21, 22, 1967.

Hearing before Deputy Commissioner HINER at Richmond, Virginia on February 14, 1977.

DEPUTY COMMISSIONER HINER:

We are here on Mr. Berry's application filed December 9, 1976. Mr. Shelton will you state the basis of your claim and what you are claiming?

MR. SHELTON:

The basis of the claim is that Mr. Berry suffered a heart attack on October 3, 1976, which we alleged to be connected with his occupation and therefore under the presumption and workmen's comp. statute.

DEPUTY COMMISSIONER HINER:

All right. Mr. Aldridge, would you state your defense for the record?

MR. ALDRIDGE:

Yes, Your Honor, I wish to state that the defense is varied in view of the novel situation presented to me at least and therefore I wish to assert - first - that there was no injury by accident within the meaning of the law. Second - that there was no - is no occupational disease as defined by the law. Third - that these is - the claimant does not - will not show by the evidence he comes within the provisions of 65.1-47.1 Code of Virginia 1950 as amended and further that the section itself is unconstitutional under the laws and Constitution of Virginia for various reasons which I will not attempt to set at here but I wish to assert that in the record at this time for future reference.

* * *

TESTIMONY OF MR. BERRY; BY MR. SHELTON (page 4):

Q. At the time that you came to your employment with the County of Henrico were you given a medical exam?

A. Yes, sir.

MR. SHELTON: We offer a certificate I've marked Claimant #1 by Dr. Smith, which happens to be the pre-employment physical given by the County of Henrico. I've provided Mr. Aldridge with a copy.

MR. ALDRIDGE: For the record and simply for the record I object to the admission of that examination for the reason that it does not appear to apply with the provisions of §65.1-47.1 which seem to be specific about such examinations with respect to employment with the fire fighting departments of the various countries in the Commonwealth.

DEPUTY COMMISSIONER HINER: All right, I'll take it subject to a later ruling on your objection.

Q. Mr. Berry during your course of employment with Henrico particularly in 1973 did you have an occasion to go to M.C.V. to the M.C.V. Testing Center?

A. We were all called to the Testing Center.

Q. When you say "we were all called" everybody in the fire department.

A. I assume everybody in the fire department.

Q. And could you describe just the day that you went down for the test, did you come down to M.C.V.?

A. M.C.V. for the Clinic that they have down there.

Q. Did you submit yourself to all of the tests that were requested of you?

A. Yes, sir.

MR. SHELTON: I have marked this Claimant #2 the copy of the M.C.V. test result were provided the County of Henrico.

MR. ALDRIDGE: The same objection for the same reasons.

DEPUTY COMMISSIONER HINER: The same ruling.

Q. As as - at the time that you took the test did they offer you the opportunity to have the medical test results forwarded to your family physician?

A. They sent it to my family physician.

Q. They offered you that opportunity?

A. Yes, sir.

Q. And did you have the results sent to your family physician?

A. Yes.

Q. What is your family physicians name?

A. Dr. Mitchell.

MR. SHELTON: I believe already in the record is a report from Dr. Mitchell with references to his having received the test results.

DEPUTY COMMISSIONER HINER: Dated February 3, '77?

MR. SHELTON: Yes, sir.

Q. Mr. Berry could you then address the events of October 3, 1976, were you employed by the County of Henrico on that date?

A. Yes, sir.

Q. Would you describe what happened?

A. Well, I got up that morning and went to visit my brother for a little while, left my brother's house, came home and I laid down for a short while. I was planning on getting up watching a ball game on television. When I got up a couple of hours later and suffered these pains and then we called the rescue squad and went to the hospital.

Q. What hospital did you go to?

A. M.C.V.

Q. Do you know what doctor examined you at M.C.V.?

A. No, sir. I can't recall the interns that were there and the doctors when I first got there I don't know, it was several of them, I don't recall all of their names.

Q. How long were you at M.C.V.?

A. I was admitted October 3 and I think it was the 23rd that I got out.

Q. And during this stay at M.C.V. did you come under the care of Dr. Fred D. Robinson?

A. Yes.

* * *

TESTIMONY OF MR. BERRY; BY MR. SHELTON (page 8):

Q. Are you presently under the care of Dr. Robinson?

A. Yes, sir.

Q. And on Dr. Robinson's advise have you returned to work?

A. No, sir. I haven't returned to work.

Q. Has Dr. Robinson talked to you about returning to your duties as a fire fighter with the County of Henrico?

A. He said I could never return as a fire fighter, never return.

Q. And did he say this was a result of your medical condition?

A. Yes, sir. He did.

Q. What prognosis does Dr. Robinson have for you? Are you in any kind of a program now?

A. He has me lined up for some type of therapy they are suppose to contact me later this month for the therapy.

Q. What has been his present advice to you now in regards to your activities?

A. He says just to take it easy, not to become excited and no physical exertion.

* * *

BY MR. ALDRIDGE (page 9):

Q. Now, Mr. Berry was your duty, if any, on the 2nd day of October? of '76?

A. That was the last day I was on duty, as a fire fighter.

Q. You were on duty or off duty that day?

A. October the 2nd, are you speaking of the last day I was on duty.

Q. Sir, as I understand it you had your heart attack at home on the 3rd.

A. The morning of the 3rd, that's right.

* * *

TESTIMONY OF MR. BERRY (page 14)

MR. SHELTON: He worked even days from September 4th through September 16th. Was off September 17th through September 28th. Was working on the 30th, was off the 1st, 2nd, and 3rd of October.

A. That is correct.

MR. SHELTON: I am sure that my records come from somebody going back to the Engine House the same way yours did. I would stipulate to that.

MR. ALDRIDGE: So, that as you understand it is the correct sequence of events?

A. Yes, sir. It is hard to recall all of these days it has been a right smart while and I've had alot happen to me since then.

Q. Now, Mr. Berry, do you recall having an interview with a young man by the name of Noble, who is representing the insurance company, Lumbermens Insruance Company?

A. Yes.

Q. Do you recall that he took down a written statement which you signed which was initialled by you?

A. Yes, sir.

Q. Various places throughout the interview?

A. Yes, sir.

Q. Does this appear to be a copy, a machine copy of the report or the interview record that was made that day he interviewed you?

A. Yes, sir.

MR. ALDRIDGE: Does the Commission have the original?

DEPUTY COMMISSIONER HINER: No, sir.

MR. ALDRIDGE: I offer a copy in lieu of the original and if the original is necessary I will try to obtain that from the carrier.

Q. That statement was very carefully read to you, was it not?

A. Everything he read to me.

Q. And you went through it and where you saw any inaccuracies they were changed and initialled by you where those changes were made?

A. Yes.

Q. Now, this examination that you underwent in 19-- when was it that you had the examination at M.C.V.?

A. At the Clinic at M.C.V.?

Q. Yes.

A. Was in 1973 I believe.

Q. That was after you had been at work for sometime with the County.

A. Yes, sir.

Q. What was your understanding as to the purpose of that examination when it was made?

A. It was an examination that I understood everyone had to take that worked for the fire department.

Q. You don't know whether it had to do with anything with your retirement or your disability so far as your retirement plan is concerned?

A. I really couldn't say. We were told we had to take it it was required of everyone.

Q. So, you really don't know what the purpose was?

A. No, sir.

Q. Did you have another one earlier than that? Another physical examination in connection with your employment?

A. Yes, sir, I had one before I was employed by the County.

Q. Before you went there?

A. Before I went to work for the County.

Q. Do you know what the purpose of that particular one was?

A. That is to see if you qualified for the fire department.

Q. That also was at M.C.V.?

A. No, sir. That was down at the County Building on Main Street.

Q. Do you know who performed that examination?

A. I know the fellow's name but I can't recall his name the county doctor at that time.

Q. Some doctor, who is employed by the County?

A. He is the County Physician at that time.

Q. All right, sir.

A. Smith, I believe was the doctor's name.

* * *

BY MR. SHELTON (page 18):

Q. When you took the test in 1970, your pre-employment physical.

A. Yes.

Q. You submitted to every test that the County requested.

A. Yes, sir.

Q. And the same at the M.C.V. physical in 1973?

A. Yes, sir, Both of them.

Q. Since the heart attack on October the 3rd has the County or the insurance carrier requested you to submit to any independent medical examination by some other doctor?

A. No, sir.

Q. They have not requested it.

A. No, sir.

* * *

DR. DAVID B. PROPERT, WITNESS (page 20)

BY MR. ALDRIDGE:

Q. State your name, occupation, and your address?

A. My name is David B. Propert, I am a physician, my office address?

Q. Yes.

A. Medical College of Virginia.

Q. What field of medical practice are you engaged in, Dr. Propert?

A. Cardiology.

Q. How long have you been so engaged in that field?

A. Since 1962. Correction since '64.

Q. How long have you been so engaged at the Medical College of Virginia?

A. I've been at the Medical College of Virginia since 1972.

Q. Since 1972?

A. Yes. Prior to that I was a faculty member and on the staff full time at the Veterans Administration Hospital.

MR. SHELTON: Excuse me, I don't have any problem with his qualifications, if that will save any time.

MR. ALDRIDGE: I'd like to offer these for the record for whatever purpose they may serve in the record. The qualifications and background of the physician.

Q. What is your current status at M.C.V.?

A. I am Associate Professor of Medicine and a Co-Director of the Heart Station.

Q. You engage in teaching students at the Medical College?

A. I teach students, I do students and post-graduate students and also do some small amount of practice.

Q. You do some practice there.

A. Yes, sir.

Q. What field do you teach in, primarily?

A. Cardiology.

Q. And what field do you practice in?

A. Cardiology.

* * *

A. Let me look at the first phone call. The first phone call discussion I had with you was the 12th of January.

Q. This year?

A. This year.

Q. All right, sir. Were you furnished certain copies of medical records and file material that I had available to me?

A. Yes.

Q. Now, the report you have filed today - that has been filed here today which you prepared dated the 11th day of February, is that the report I received from you late Friday afternoon?

A. Yes, sir.

Q. Late Friday afternoon was the first time that report was available was it not.

A. That's right. It was typed Friday morning and became available Friday afternoon.

Q. And appended to that report is an addendum which - does that indicate the various items that were taken into consideration by you in arriving at your conclusions in this reports?

A. Yes, sir. Items 1A through 1E are the material you had supplied previously.

Q. All right, now, in addition to what was furnished to you, you have been here in this courtroom this morning and have been sitting next to me where you could see, observe and hear the claimant testify.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And were you able to hear clearly every word that he said?

A. Yes, sir.

Q. Based upon the testimony of the claimant and the evidence that has been presented to you for your examination and consideration do you have any medical opinion as to causal relationship between the myocardial infarction suffered by Mr. Berry and his employment as a fire fighter for the Department of Fire of Henrico County?

A. Yes, it is my opinion that his myocardial infarction did not arise out of his employment but was the result of natural progressing of his underlining disease process.

Q. What was that underlining disease process?

A. Atherosclerosis of the coronary arteries.

Q. In your experience as a Cardiologist is there any known cause of this malady you just referred to?

A. Artherosclerosis?

Q. Yes, sir.

A. There is no single known cause, it appears to be a disease of any which is associated with many factors which make a person have an increased risk but there is no single cause of

Q. Is it a disease, doctor, to which the general public is exposed?

A. Yes, sir.

Q. Is there any evidence available to you in your field as a physician or cardiologist indicating any relationship between the disease you have described and occupation of any sort?

A. There is no clear information in the medical literature to indicate a definite causal relationship between any occupation

and this disease as a cause of the underlying artherosclerosis.

Q. I show you this three page report with the addendum dated February the 11th and signed by you, is that a report prepared by you personally?

A. Yes, sir.

* * *

BY MR. SHELTON:

Q. Doctor, I believe, in your report you state that the disease - you cannot attribute a particular risk factor to the disease because and I quote "because other factors as yet unidentified may produce the disease." There is no studies telling the types of things that could produce this disease, sort of an open ended scale of what the risk factor is in generating this disease might be?

A. There are many studies trying to relate certain risk factors to the disease of which I've outlined clearly increase one's risk but it may be that the basic underlying factor has never been identified.

* * *

Q. But there is no direct study that goes with exertion, a period of exertion as opposed to a period of non-exertion or an occupation involving --

A. I am not sure what you are asking. Studies have indicated that people who seem to be more active jobs physically active all other things being equal seem to have less risk of developing the process.

Q. Is there any study that relates the advent of this disease to a stress factor like the kind of stress factor you would imagine in a fireman, a sudden emergency type situation or stress factor?

A. As far as the underlying atherosclerosis is concerned I don't think that has been shown.

Q. It has never been shown one way or the other?

COMMISSIONER HINER: The answer is No.

A. No.

Q. And I believe you reported in a couple of occasions you just list there is no definite data in man to establish a relationship between stress and development of the disease, there is no definite medical knowledge to indicate this one particular job was a factor in producing or worsening - there is no medical knowledge or definite data to the contrary either, is there?

A. Not that I'm aware of.

Q. That would disprove that this sort of thing would either reduce the disease or worsen the disease.

A. That's right.

Q. Now, when you are talking about the exertion is there any study that relates exertion to a worsening of the disease as opposed to the production of the disease?

A. There is no indication that the underlying disease progression of atherosclerosis is worsened by effort. There is no question that a particular extreme effort at a particular time can surfact underlying disease but there is no evidence that per se causes a progression in the atherosclerosis. It only converts a non-clinical to a clinical situation. Surfaces a disease that was not previously surfaced.

Q. So, that instead of your just having the disease and still being able to function it comes a sort of a head, and an event such as a heart attack occurs. Do I understand your writings to contain that?

A. A particular exertion at a particular time could precipitate an event.

Q. Could it worsen the condition without precipitating it?

A. There is no evidence to that.

Q. Any evidence to disprove that?

A. There is no direct evidence. There is indirect evidence to indicate because the way most persons have heart attacks, that most of them are unrelated to any specific exertion or unusual activity. In other words, most people have their heart attacks during their daily activities.

Q. Unrelated to exertion?

A. Unrelated to specific exertion.

Q. It is my understanding from the way you described the process of the disease that there is a sort of closing of the arteries leading into the heart, is that sort of a laymen's --

A. That is correct.

Q. --simplification. would, in your opinion, exertion bring on the advent of a clinical event, bring on or produce a clinical event as opposed to producing disease and at all increase the probability or increase the likelihood or increase the period that in which a person would get - have the disease but would not have a clinical event?

A. I am not sure which of those you want me to answer.

Q. Well, is any one of them wrong?

A. The person can have the underlying process and having unusual exertion could precipate an event at that particular point in time. No evidence that heavy exertion will make that person more likely to get the event earlier in life than he would have otherwise.

Q. There is no evidence to indicate this.

DEPUTY COMMISSIONER HINER: The answer is No.

A. No.

Q. Any evidence to disprove that the exertion could bring on a clinical event quicker in the future although not produce a clinical event at the time of the exertion?

A. I guess no.

Q. No. From - the last point that I have is that from the last page of your report you indicate some of the tests that would be required in order to show that a person was found free from heart disease, could you describe for me some of these procedures that you lay out here that you don't feel were performed in the M.C.V. testing?

A. The requirement to say someone is free from this disease would require a test so sensitive that an abnormality indicates the disease and there are no false negatives, I mean, somebody could have the disease and this test would still be negative. The tests I listed are stress test, exercise test which are - a person is either walked on a or over a set of steps for as I've so called the Masters' two step or is put on a treadmill exercise at varying degrees depending on the particular test. The attempt of this is to bring out electrocardigraphic abnormalities that would not be there at rest. A positive test would be suggestive but not diagnostic of underlying disease. A negative test does not rule out disease as I've pointed out cause there are such things as false negatives. The next step it seems to me if you had a negative and you wanted to unequivocally rule out the disease would be actual pictures of the coronary arteries.

Q. To your knowledge are these routinely performed over at M.C.V. on patients for the type of testing procedure or just a general physical examination?

A. No, they are not.

Q. They are not. The degenerative process that you have had an opportunity to review Mr. Berry's records could you give any kind of estimation on the length of time that it took for his disease to generate whether or not test results should have been returned positive in 1973 or in 1970, when the two examinations which have been introduced.

A. The two test he had.

Q. Yeah one in 1970 and one in 1973 is there someway you can tell the time period for the degeneration of this disease?

A. No. The disease progresses at various times and as I pointed out in my statement that even in patients who have developed symptions of clinical coronary disease such as angina pectoris may have a perfectly normal electrocardiogram, other laboratory tests and other physical examinations and this is not helpful in saying what the rate of progression of the disease is.

* * *

MR. SHELTON: (page 31)

I don't like to reserve the right to provide some rebuttal evidence, I was not aware of this report or the doctor's testimony until this morning. I would like to have the right to have Dr. Robinson, who is the treating physician, who's reports have already been listed in the record to refute some of this information and comment on whatever and use it as rebuttal evidence.

MR. ALDRIDGE: Object.

DEPUTY COMMISSIONER HINER: You want to take Dr. Robinson's deposition didn't you?

MR. ALDRIDGE: I reserved the right to do it, yes. Which is normal and customary.

DEPUTY COMMISSIONER HINER: Will, I am asking you now, do you want to?

MR. ALDRIDGE: If we are going to get into _____ I'll withdraw that, to that extent, that is to say if we come back and forth producing evidence and then rebutting evidence I certainly don't want to go along in screwing this record up to that point. So, I will withdraw the reservation or request for reservation to cross-examine these other two physicians.

DEPUTY COMMISSIONER HINER: I have a feeling Mr. Aldridge being brought in here this morning and your having been in contact with the Dr. Propert since January and in light of the --

MR. ALDRIDGE: January the 11th, I believe it was.

DEPUTY COMMISSIONER HINER: And in light of Rule 17 of the Commission of which you are familiar these reports not having been filed earlier I am inclined to go ahead and overrule your motion to deny his right to bring in --

MR. ALDRIDGE: All right, sir. I would like to reassert the right to cross-examine.

DEPUTY COMMISSIONER HINER: It is your right, okay. I'd like to have a time here, though as to when this is going to take place cause I don't want to in light of this evidence delay this any longer than either of you gentlemen.

MR. ALDRIDGE: I had requested two weeks, fourteen days.

MR. SHELTON: For the record, we are taking the deposition of Fred D. Robinson, M.D., and it is a deposition to be submitted in evidence to the Industrial Commission of Virginia in the case of Ray C. Berry versus Henrico County, Division of Fire, Industrial Commission File No. 518-136.

START

DR. FRED D. ROBINSON, a witness called by the plaintiff, first being duly sworn, deposes and says, viz:

DIRECT EXAMINATION

BY MR. SHELTON:

Q Dr. Robinson, would you please state your full name for the record?

A Fred D. Robinson.

Q And what is your present position?

A The Director of the Coronary Intensive Care Unit at the Medical College of Virginia.

Q Very briefly, Dr. Robinson, can you state some of your background and qualifications?

A I graduated from medical school at the University of Virginia. I took a year of rotating internship at the University of Virginia Medical School, and a year of OB/GYN at Wise Memorial Hospital, United Mine Workers Hospital,

and then seven years of general practice of medicine. Then, three years of residency in internal medicine. Then, two years of cardiology at the Medical College of Virginia.

Q And what is your present specialty?

A Cardiology.

Q Do you hold any position with any professional organizations?

A The A.M.A., the Southern Medical Society, Richmond Academy of Medicine, Virginia Academy of Family Practice, American Academy of Family Practice.

Q I believe on the document you sent in to the Commission there was some reference to a Board of Cardiology?

A Right.

Q And you are a member?

A A Diplomate of the American Board of Cardiology. A Diplomate of the American Board of Family Practice, and a Diplomate of the American Board of Internal Medicine.

Q Are you familiar with the case of Ray C. Berry?

A Yes, sir.

Q Can you please state how you became familiar with it?

A Mr. Berry was admitted to the Coronary Intensive Care in the Medical College of Virginia on October 3, 1976, and became a patient of mine at that time, during his

hospital stay at the Medical College.

Q Is he presently under your care?

A Yes, he is.

Q Now, what were the dates of Mr. Berry's hospitalization?

A He was in Medical College from October 3rd until October the 24th, 1976.

Q And on his entry to the hospital, what was your diagnosis of Mr. Berry's problems, if any?

A He had a heart attack known as an acute myocardial infarction.

Q Could you give a little detail as to what your examination revealed when he came in?

A He was admitted with mild heart failure, was having pain and was having premature ventricular contractions or ectopic heartbeats.

Q And he was admitted to--

A To the Coronary Intensive Care Unit.

Q And how long was he there?

A He was in the Coronary Intensive Care Unit a few days, and then transferred up to the medical floor.

Q During his stay in the hospital, was his stay uneventful, or was it complicated?

A He did have a complication. The day he was to be discharged, he developed ventricular tachycardia, which

we consider a life-threatening arrhythmia.

Q And your current diagnosis of Mr. Berry? You say he was still under your care. What is his present status? Is he under medication?

A Yes, he is. He is on Isordil, which is a medication to dilate the vessels, and aspirin.

Q When you say to dilate the vessels -- to make them wider, is that what you mean?

A Right.

Q To your knowledge, has he returned to work?

A No, he has not.

Q And his inability to return to work, was that on your advice?

A Yes.

Q And Mr. Berry, in your case history and all, informed you he was a fire fighter with the Henrico Fire Department?

A Yes, sir.

Q Based upon his stay in the hospital, and the evidence and the examinations that you have made of Mr. Berry, will he be able to return to his duties as a fire fighter?

A I would not advise him to return to his duties as a fire fighter.

Q And his inability to return, would that

be permanent in your opinion?

A As a fire fighter, yes.

Q And has he been given any rehabilitation program to date?

A He is to be entered into the rehabilitation program with the Medical College of Virginia. He is awaiting a slot to get into that program.

Q It's my understanding from the medical testimony that was presented at the hearing, and the medical testimony that you presented, that Mr. Berry's ailment was caused by lack of oxygen going to the heart, is that correct?

A That is correct.

Q Is there a medical term for the condition that he had?

A Yes. He had atherosclerosis or hardening of the arteries, involving the coronary arteries, the arteries of the heart.

Q And you were able to determine that the heart attack was caused by this disease, atherosclerosis?

A Yes, that was the etiology or the cause of the heart attack.

Q To your knowledge, is there any cause for this atherosclerosis?

A There is. There are certain risk factors, those being high blood pressure, elevated cholesterol in the

1 blood, cigarette smoking, being overweight, lack of exercise,
2 family history of heart disease.
3 Q You say that cigarette smoking is one of the
4 risk factors. What is the correlation between cigarette smok-
5 ing and the development of the disease?
6 A This mostly causes arrhythmia or sudden
7 death with a heart attack, cigarette smoking involved in
8 heart attacks.
9 Q When you say arrhythmia, are you referring
10 to the death of heart cells?
11 A Irregular heartbeat, usually ventricular
12 fibrillation.
13 Q To the extent that smoking is a risk factor
14 as to the cause of the disease, would any exposure to cut-off
15 of oxygen also be?
16 A This would be one of the things that could
17 make a patient have a heart attack, if he has narrowing of
18 the arteries in his heart.
19 Q So that a lack of oxygen would result in a
20 clinical event of a heart attack?
21 A It could, yes.
22 Q Could it in any way be traced to the develop-
23 ment of the disease itself?
24 A I don't think so.
25 Q Is there any evidence to show one way or the

other?

A Not that I know of.

Q And given a natural development of this disease, would exposure to a situation where there is a lack of oxygen be some contributing factor to bring on a clinical event?

A Yes, sir.

Q How about the physical exertion, would that be a cause that would bring on a clinical event?

A That would require the heart to need more oxygen, exertion. If the vessel is narrow already and can't deliver the oxygen.

Q And from a medical standpoint, a stress situation such as answering a fire alarm, would that have--

MR. ALDRIDGE: Objection. It is leading.

BY MR. SHELTON: (Continuing)

Q Would that have any--

MR. ALDRIDGE: Objection, and have the record show that I object on the ground that it is leading.

MR. SHELTON: Your objection is noted.

Q Would that have any effect in bringing on a clinical event?

A There have been some studies to show that pediatricians, when the phone rings early in the morning and

1 awakens them, they do have arrhythmias.

2 Q Is there any medical testimony to show a
3 link between a constriction of the arteries and a stress
4 event such as answering a fire alarm?

5 A As far as I know, there is not a good study
6 that shows that to be present.

7 Q And given the natural development of the
8 disease, is there any indication that heat and cold extremes
9 would be a contributing factor?

10 A Yes, they do put an extra burden on the
11 heart.

12 Q Which would affect the oxygen supply going
13 into the heart?

14 A It more or less affects the requirement
15 of oxygen, the demand for oxygen of the heart. If someone is
16 cold, the blood pressure goes up and the heart has to pump
17 harder and requires more oxygen.

18 Q In a situation where the supply of oxygen
19 to the heart is restricted or cut off, what effect does that
20 have on the heart, in terms of the actual heart cells?

21 A If the heart, the heart muscle, cannot
22 receive oxygen, it dies.

23 Q The heart cells die, or the heart itself?

24 A The heart cells, which make up the heart.

25 Q Is it possible to have some cells in the

heart die and not all the cells?

A Yes. Yes, that is correct.

Q Is there some medical way of determining at each point when there is a constriction or reduction of oxygen going into the heart, the extent of the heart cell loss?

A Yes, there is, and these are serum enzymes.

Q I believe in your medical report you stated that Mr. Berry had related to you that he had previous complaints of chest pains while fighting fires?

A Yes, sir.

Q Would this or could this indicate to you that there was some--

MR. ALDRIDGE: Objection. It is leading.

MR. SHELTON: The objection is again noted.

Q Could this indicate to you some restriction of the oxygen supply--

A Yes, sir.

Q --going into the heart?

[illegible]

[illegible]

[illegible]

[illegible]

brought in with a large heart attack such as Mr. Berry, is there any way to determine, after there has been a determinati

that there is a certain amount of heart cells lost, how many of them are lost or what portion are lost as a result of this particular loss of oxygen, and how many resulted from some prior loss? Is there any way to determine that?

A There is no way we can determine that, unfortunately.

Q So, in your opinion, is it possible that a particular loss of oxygen going into the heart could later manifest itself in a heart attack?

MR. ALDRIDGE: Objection. It is leading.

A I don't quite understand. Could I have the question again? I don't quite understand the question there.

Q We are talking about the loss of oxygen going into the heart as resulting in the death of certain heart cells. Is it possible that that occurrence could happen and then not manifest itself into a heart attack at that point, but manifest itself into a heart attack at some point in the future?

A Yes, it could be. It could be. It is possible.

Q And, to your knowledge, have there been any studies indicating any correlation between the development of atherosclerosis and resulting clinical events of a heart attack, and any certain occupation or any certain occupational trait?

1 A Yes, I have. In the 1950s, reported by
2 the English people, they found that conductors in the trolleys
3 in England as compared to the people that walked around and
4 collected the fares and walked up and down the double deck,
5 buses and trolleys, the ones that just sat down and ran the
6 trolleys had a higher incidence of death in heart attack than
7 the ones that were walking around, exercising.
8 Q So, would it be fair to say from that study
9 that physical exertion would be a factor that would lower the
10 risk of heart attack?
11 A Continuous physical exertion could lower
12 the risk of heart attack.
13 Q Have there been any other studies that would
14 either tend to prove or disprove any other risk factors as
15 being particular risk factors involved with an occupation,
16 which is physical exertion, stress, smoke inhalation?
17 A There has been a study with longshoremen
18 in this country that shows that the longshoremen who are
19 constantly physically active have a lower incidence of heart
20 attack than the ones that are not constantly physically
21 active.
22 Q Have there been any studies to show any
23 correlation between the development of the disease and stress?
24 A There has been by Dr. Friedman on the
25 West Coast, that shows people who are Type A personality, who

always put themselves under stress, have a higher incidence of heart attack than the lackadaisical Type B personality.

Q To your information, are there any studies that would relate the development of the disease or the onset of the clinical event to smoke inhalation?

A We have seen patients who have had heart attacks with smoke inhalation, who we have thought had normal coronary arteries.

Q So, there has been some indication to you from medical studies that there is a relation to the clinical event itself--

MR. ALDRIDGE: Objection. It is leading.

BY MR. SHELTON: (Continuing)

Q --if I understand you correctly.

A That is more my personal experience.

Q Are there any studies that show a relationship between smoke inhalation and the actual development of atherosclerosis?

A Not that I am aware of. Smoke inhalation has been shown -- or not necessarily smoke inhalation but lack of oxygen has been shown to cause ischemic changes on the EKG, if someone does have hardening of the arteries to start with.

MR. SHELTON: I don't have any other questions, Dr. Robinson. Please, answer any questions that

1 Mr. Aldridge might have.
2
3 CROSS-EXAMINATION
4 BY MR. ALDRIDGE:
5 Q Dr. Robinson, the claimant was admitted to
6 Medical College of Virginia Hospital on the 3rd day of
7 October, 1976. Correct?
8 A Yes, sir.
9 Q And would you have seen him on that day?
10 A I would have to have his record to tell you
11 if I saw him on that day. I was attending in the unit in that
12 month, as I recall. So, I quite often see the patient the
13 next morning if they come in, in the evening. They are seen
14 by the resident, usually, if they come in at nighttime.
15 Q So, you can't really recall whether you saw
16 him when he made his entry or not?
17 A I am sure I did not see him the first few
18 hours after admission.
19 Q All right.
20 A But it would be the next morning.
21 Q Would the history normally be taken by
22 someone other than you, such as the resident on duty at the
23 time that the man is admitted?
24 A That is right. It is taken by the intern
25 in the emergency room, then the resident in the Coronary Care

1 Unit, and the intern in the Coronary Care Unit, and then
2 there are two attendings in the Coronary Care Unit, and it
3 would depend on which attending would see the patient the
4 next morning.
5 Q Then the history would be taken normally
6 by someone other than you personally?
7 A Well, I would take the history also, if I
8 am the attending there, also.
9 Q Do you know whether in this particular
10 case it was taken by you?
11 A It was taken by a group of people. I did
12 take a history from Mr. Berry.
13 Q And when did you take the history?
14 A That, I would have to look at his record.
15 Q You do not know at this point?
16 A No, not without the hospital record.
17 Q Would the history taken by you be identified
18 as your--
19 A By my signature.
20 Q --work in the record itself?
21 A Yes, sir. I think someone in Mr. Berry's
22 family asked me to care for him, if I am not mistaken. I
23 mean I would have to look at the record.
24 Q Of course, that would have occurred after
25 he had gotten into the hospital?

A That is correct.

Q Are you familiar with other members of his family, Dr. Robinson, by some previous experience?

A No, not that I know of.

Q Do you have any reason why some member of his family would specifically ask for you?

A I think maybe they knew someone I had taken care of, something like that.

Q All right. If I were to call your attention to the initials PTA appearing in the history taken by someone in the medical record, do you know what that stands for?

A Yes. That means prior to admission, usually.

Q Were you aware that this fireman had also engaged in another occupation at the same time that he was a fireman, for some time prior to the time that he suffered this heart attack?

A No, sir.

Q You were not aware of that?

A If I was, I have forgotten it.

Q If I told you that the history taken by the intern, which is called the Intern Admitting Note, indicates that for the past two weeks patient has worked two jobs, fireman 24 hours on, 24 hours off, and delivery man for a florist on days off, to "keep busy." Would you have any knowledge of that?

1 A I was unaware of that.
2 Q Now, who is Dr. Gottwald?
3 A Let me see the signature. He might have
4 been the intern.
5 Q Dr. William Gottwald.
6 A He was the intern who was on the Medical
7 Service at the time of the discharge of Mr. Berry.
8 Q Well, the discharge summary that appears
9 in the records of MCV signed by Dr. Gottwald, is that the
10 official discharge summary--
11 A That is correct.
12 Q --from the institution?
13 A The intern dictates the discharge summary
14 on the patients on the Department of Medicine.
15 Q And in that discharge summary, the first
16 paragraph, it states: "The patient's risk factors for
17 myocardial infarction included three packs per day smoking
18 history, and moderate obesity, the family history of the
19 father dying of a myocardial infarction in the fifth decade,
20 and the brother had MI," meaning myocardial infarction "at
21 age 50."
22 Is that what you were referring to earlier
23 when you listed a number of risk factors that were related
24 to the disease, that are underlying or indicating the tendency
25 toward the disease that Mr. Berry is suffering from?

1 A Yes, sir, these are risk factors.
2 Q That is to say that people with those risk
3 factors listed by you, and those just quoted by me from the
4 discharge summary, are indications that the individuals that
5 have that type of history have a higher likelihood of suf-
6 fering a heart attack as a result of underlying disease
7 factors?
8 A That is correct.
9 Q And this disease that in your opinion Mr.
10 Ray Berry is suffering from, is athero-- How do you pro-
11 nounce it?
12 A A-t-h, atherosclerosis. Athero is a Greek
13 word, meaning gruel, like to gruel a porridge, and it means
14 hard gruel in the vessels in the body.
15 Q And, Doctor, I take it that is different
16 from arteriosclerosis?
17 A No. There are really three types of arterio-
18 sclerosis. Arterio means, arteriosclerosis, hardening of the
19 arteries. There are really three types. One is athero-
20 sclerosis, which deposits cholesterol, which is fatty material
21 inside the vessels.
22 The other kind is the Mönckeberg's sclerosis,
23 and the other medial sclerosis. Most people that have heart
24 attacks have them. Atherosclerosis is one of the three forms
25 of arteriosclerosis.

1 Q So, this is more specific, as you say?
2 A Right.
3 Q And it is your opinion that he is suffering
4 from the malady--
5 A Of atherosclerosis of the artery of the
6 heart.
7 Q Atherosclerosis. Dr. Robinson, is this
8 malady just referred to by you one which is an ordinary
9 disease of life, to which the general public is exposed?
10 A It is the American way of life that causes
11 this. That is what kills two out of every three attorneys.
12 Q Would it be fair to say that attorneys
13 have a relatively high incidence of myocardial infarction?
14 A The highest of any profession in this
15 country.
16 Q And is that in your opinion related to any
17 underlying disease process in attorneys as a group?
18 A Well, I think stress has a lot to do with
19 it. I think cigarette smoking has a lot to do with it. I
20 think the food attorneys eat has a lot to do with it.
21 Q Basically, those that are suffering heart
22 attacks who are attorneys have this underlying disease process
23 involved?
24 A That is correct.
25 Q If I told you, Dr. Robinson, that I have

1 painstakingly examined the voluminous hospital records of
2 MCV in an attempt to find a reference to the claimant having
3 given a history to anyone of having suffered chest pain while
4 fighting fires, could you tell me where in that record I
5 could find such a reference?
6 A No, I couldn't. I remember Mr. Berry telling
7 me that himself, and on the discharge summary, I think there
8 is something on here that he was having pain one week prior
9 to admission. He experienced the onset of substernal pain on
10 exertion, decreased by rest, right here. (Indicating)
11 Q But you don't know when that was?
12 A No. I remember Mr. Berry telling me that
13 when I was talking to him one morning when I was seeing him
14 in the hospital.
15 Q But you don't know whether--
16 A Whether that was recorded or not? No. That
17 would probably be in the history of present illness, I would
18 imagine, on the admission note.
19 Q All right. Now, what we refer to in this
20 particular field of law as the attending physician's report,
21 which is a form filed with the Industrial Commission, this
22 appears to be a copy or facsimile of that report?
23 A Right.
24 Q This report is apparently dated the 3rd day
25 of November, 1976, which is roughly a month subsequent to the

1 admission of Mr. Berry. Do you know why it was delayed for
2 such a length of time?
3 A A month?
4 Q Yes.
5 A That's the report for the Industrial
6 Commission?
7 Q Yes.
8 A I think that is fast. At least for a
9 report like that to get out of my office, that is fast.
10 Q Now, if I told you that in the intern's
11 admitting note this history appears, "One week prior to
12 admission, onset of substernal ache, similar to that three
13 years prior to admission, which spreads across pericardium
14 but does not radiate. Pain brought on at various times -
15 seemingly unrelated to exertion, meals, cold, coitus, stress,"
16 would that seem to contradict?
17 A No. That pain could be anything.
18 Q Well, didn't you just refer to stress, a
19 statement about stress?
20 A Right. I have one here that says he had
21 pain on exertion, decreased by rest. Then that was a differ-
22 ent kind of pain described there not brought on by exertion.
23 Q Right. And of course there is no history
24 anywhere that you are aware of at this moment where he suffered
25 any pain related to fighting fires?

1 A Yes, what he told me. I distinctly remember
2 that.
3 Q But nothing in the record that I have been
4 able to find.
5 A Not that I know of.
6 Q As far as you know?
7 A No.
8 Q Dr. Robinson, if I were to ask you to
9 pronounce me, as attorney-at-law, free of coronary disease
10 or arterial disease, could you, as an expert in your field,
11 do that?
12 A Yes.
13 Q And how would you go about doing it?
14 A Do the treadmill exercise test on you,
15 stress test, and I could assure you if that was normal, you
16 had an 85 percent chance of having no evidence of ischemic
17 heart disease. Then, if you say you wanted a hundred percent
18 chance to know that you did not have an arteriosclerotic
19 heart disease, you would have a cardiocatheterization.
20 Q That means go inside my body with some sort
21 of a scope?
22 A That means putting a small tube in your
23 artery of the leg, and passing it up to your heart, and
24 injecting the vessels in your heart with contrast media, and
25 getting X-rays while this is being done.

1 Q And that way you could be sure that the
2 artery was not diseased?
3 A That you did not have blockage of the
4 arteries. That carries a risk, however.
5 MR. ALDRIDGE: I have no further questions.
6 MR. SHELTON: I don't have any further
7 questions.
8 AND FURTHER THIS DEPONENT SAITH NOT.
9 SIGNATURE WAIVED BY AGREEMENT OF COUNSEL AND THE WITNESS.
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V I R G I N I A : IN THE INDUSTRIAL COMMISSION

RAY C. BERRY, Claimant

v. Claim No. 518-136 Opinion by HINER
Deputy Commissioner

HENRICO COUNTY, DIVISION OF FIRE, Employer
LUMBERMENS MUTUAL CASUALTY COMPANY, Insurer MAY 9 1977

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Hearing before Deputy Commissioner HINER, at Richmond, Virginia, on February 14, 1977.

This case is before us on application of Ray C. Berry, filed December 9, 1976, alleging a heart attack arising out of and in the course of his employment with the defendant on October 3, 1976. He claims compensation for continuous total incapacity from October 3, 1976 and related medical expenses.

The case is defended on the ground that the heart attack was not the result of an accident arising out of and in the course of the employment and is not an occupational disease. In addition, the case is defended on the ground that the case does not come within the provisions of § 65.1-47.1, Code of Virginia, and that the particular code section is itself unconstitutional.

The record reveals, and we find, that on October 3, 1976 Berry was employed by the defendant as a firefighter at an average weekly wage of $247.33. He had been employed in this capacity by the defendant for a period of approximately six years, and had previously worked as a firefighter for the City of Richmond.

have suffered an occupational disease.

In this case the claimant had been examined by his family physician, Dr. R. E. Mitchell, Jr. intermittently between March of 1969 and December of 1973. It was Dr. Mitchell's opinion, as set forth in his report of February 3, 1977, that the claimant exhibited no evidence of hypertension or arteriosclerotic cardiovascular disease during this period of time. The claimant was examined by Dr. Fred B. Robinson, Director, Coronary Intensive Care Unit, Medical College of Virginia, in August of 1973, and found at that time to have a normal heart function. This evidence, in my opinion, is sufficient to bring the claimant within the purview of §65.1-47.1.

Following the disabling heart attack of October 3, 1976, the claimant came under the care of the same Dr. Fred Robinson, who reported on August 21 and November 3, 1976, that the claimant's disabling heart attack was related to his employment. To rebut this evidence, the employer offers the opinion of Dr. David Propert, who reviewed arteriosclerosis as it affected the general population and concluded that the claimant's disability was the natural progression of this disease.

The issue, then, is whether or not Dr. Propert's opinion is sufficient to rebut the presumption raised by §65.1-47.1 and, in addition, the opinion of the treating physician that the claimant's disabling heart attack was causally related to his employment. It is my view that Dr. Propert's opinion is insufficient in both regards and that compensation for temporary disability should therefore be awarded.

This statute pertains to a certain class of people, including firefighters, and provides in effect:

> 1. The diseases mentioned in the title shall be presumed to be an occupational disease suffered in the line of duty that is covered by this Act unless the contrary be shown by competent evidence.
>
> 2. Provided, prior to making claim for said disease evidence shall be submitted to show that the claimant or deceased has been found free of the presumed diseases.
>
> 3. If requested by the employer and/or its insurer the claimant shall submit to physical examination if a claim is made for disability or in case of a death the body shall be submitted for a postmortem examination.

The word "presumption" as defined by Black's Law Dictionary is as follows:

> "An inference affirmative of disaffirmative of the truth or falsehood of any proposition or fact drawn by a process of probable reasoning in the absence of actual certainty of its truth or falsehood, or until such certainty can be ascertained."

The record reveals that Berry was examined on several occasions prior to his heart attack. The reports from these previous examinations do not indicate the presence of any predisposing medical condition. There is competent medical evidence in the record, however, that the examinations and tests so administered are not and could not be, because of their inherent limitations, determinative of the presence or absence of atherosclerosis of the coronary arteries. This evidence fails to prove that the claimant was free of the condition prior to making his claim.

Subsequent to the hearing and without leave having been asked or granted, the claimant filed certain testimony and articles

asking that they be made a part of the record. They are identified as exhibits A-1 through A-8. The defendant objected to the admission of these documents to the record for reasons stated in a letter dated February 28, 1977. The objection of the defendant is sustained and no inspection of or reference to these documents has been made, though they are retained in the Commission's file.

After a careful consideration of the evidence in its entirety, particularly the lengthy and comprehensive medical record, and after applying § 65.1-47.1, Code of Virginia, to the evidence before us, we are compelled to make the finding that Berry's heart attack was not the result of an accidental injury which arose out of and in the course of his employment or an occupational disease.

Even if the employee had proved himself free of the disease, his burden as required by § 65.1-47.1 in order for the presumption to apply, there is ample competent medical evidence to rebut the presumption, leaving a medical record which fails to preponderate in establishing a causal relationship between any act, incident, or condition of the employment and Berry's heart attack and subsequent work incapacity.

Our award shall enter accordingly.

A W A R D

For failure to sustain the requisite burden of proof, the relief sought by the claimant in his application of December 9, 1976 must be, and hereby is, denied, and the case

DISMISSED.

VIRGINIA:
IN THE INDUSTRIAL COMMISSION

RAY C. BERRY, Claimant

v. Claim No. 518-136 Opinion by MILLER, Commissioner

HENRICO COUNTY, DIVISION OF FIRE, Employer,
LUMBERMENS MUTUAL CASUALTY COMPANY, Insurer JUL 29 1977

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REVIEW before the Full Commission at Richmond, Virginia, July 6, 1977.

The majority of the Commission, upon review, adopts the findings of fact and conclusions of law contained in the decision and award of May 9, 1977.

According, the said decision and award of May 9, 1977, appealed from are

AFFIRMED.

JOYNER, dissenting:

I cannot concur with the conclusion reached by the majority of the Commission in this claim and must, therefore, dissent for the following reasons:

Section 65.1-47.1 provides that a firefighter, who has undergone medical examination and found to be free from heart disease and who subsequently became disabled as a result of heart disease, is presumed to

The record clearly reveals that Berry had worked as a firefighter only one day, September 30, 1976, between September 17, 1976 and October 3, 1976. On September 30, 1976 there had been no alarms and his work had been housekeeping at the station.

The medical record also reveals that during this same period Berry was employed full time as a florist delivery truck driver.

It is not contested that Berry sustained a heart attack on October 3, 1976. He had visited his brother's house in the morning, returned home and rested prior to watching a ball game on television. When he got up from his nap after a couple of hours, he was suffering pains and was taken to the Medical College of Virginia, where he was admitted at 5:40 P. M. for a condition finally diagnosed as an inferior myocardial infarction with a secondary diagnosis of ventricular ectopy. He was discharged from the hospital on October 23, 1976 with advice not to resume his employment as a firefighter. He has since retired from this occupation.

To prevail the claimant must prove by a preponderance of the credible evidence that he suffered an injury by accident or an occupational disease. He must establish that the injury was received at a particular time, in a particular place, by a particular accident. The incident, act done or condition encountered, must be shown to have occurred at some reasonably definite time. Aistrop v. Blue Diamond Coal Company, 181 Va. 287, 24 S.E. (2d) 546. The claimant also has the burden of establishing an occupational disease as defined in § 65.1-46, Code of Virginia. Van Geuder v. Commonwealth, 192 Va. 548; 65 S.E. (2d) 565.

In establishing his case, Berry has the benefit of § 65.1-47.1, enacted effective July 1, 1976, entitled, "Presumption as to death or disability from respiratory disease, hypertension or heart disease".

ASSIGNMENTS OF ERROR

The claimant, pursuant to Rule 5:21, assigns as error the following:

1. The failure of the Industrial Commission to apply the presumption created by §65.1-47.1 of the Code of Virginia, *as amended*, to the benefit of the claimant.

2. The failure of the Industrial Commission to give proper weight to the presumption created by §65.1-47.1 of the Code of Virginia, *as amended*.

3. The failure of the Industrial Commission to give proper consideration to the rebuttal evidence tendered on behalf of the claimant.