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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810790

PERCELL TALLEY

Appellant

v.

GOODWIN BROTHERS LUMBER CO., ET AL.

Appellees

JOINT APPENDIX

Peter M. Sweeny, Esq.
Ashcraft & Gerel
4660 Kenmore Avenue
Suite 220
Alexandria, VA 22304

Counsel for Appellant

Robert C. Metcalf, Esq.
Newman & Metcalf
5911 W. Broad Street
Richmond, VA 23226

Counsel for Appellees

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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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
P. O. BOX 1794 — RICHMOND, VIRGINIA 23214

WC556389
10/1/2879

Case of .....
File No. 52A-61674

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

8/6 Cpt 9. Holt (927)

Employer

1. Name of Employer: Goodwin Bros. Lumber Co. Phone No. 703-854-5561
2. Mail address: No. and St. ..... City or Town: Mine Run, State: Va.
3. Location, if different from mail address .....
4. Insured by: Name of Company: Bituminious Casualty Co.
5. Nature of business (or article manufactured): Manufacture Lumber

Time and Place

6. (a) Location of plant or place where accident occurred: Orange County (City or County)
State if employer's premises .....
(b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill .....
7. (a) Date of Injury: 4-17- 19 79 Day of week: Tuesday Hour of day ..... A. M. ..... P. M.
(b) Was injured paid in full for day he was injured? .....
8. Date incapacity began ....., 19..... A. M. ..... P. M. .....
9. Was injured paid in full for day incapacity began? .....
10. When did you or foreman first know of accident? .....
11. Name of foreman .....

Injured Person

12. Name of Injured: ~~Purcell~~ Purcell (First Name) Talley (Middle Name) (Last Name) 224-38-4892 (Social Security No.)
13. Address: No. and St.: Rt. 1, Box 84, City or Town: Mineral, State: Va.
14. Check (✓) Married...., Single X, Widowed...., Widower...., Divorced...., Male X, Female...., No of Dependent Children....
15. Age 46 Did you have on file employment certificate or permit? .....
16. (a) Occupation when injured: Laborer (b) Was this his or her regular occupation? yes
In what department regularly employed? .....
17. (a) How long employed by you? 10 years, in present job? ..... (b) Piece or time worker: Time (c) Wages per hour $3.00
18. (a) No. hours worked per day: 8 (b) Wages per day $ 24.00 (c) No. days worked per week: 5
(d) Average weekly earnings $ 120.00 (e) Work week starts on ..... and ends on ..... (f) Time shift started ..... 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: Splinter 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? ..... (b) Was it in use at time? .....
23. Was accident caused by injured's failure to use or observe safety appliance or regulation? .....
24. Describe fully how accident occurred, and state what employee was doing when injured .....
Handling lumber and stuck splinter in finger.
25. Name and address of witness .....

Nature of Injury

26. Nature of injury (describe exact location of amputation or fractures, right or left) .....
Deep puncture wound which got infected.
27. Probable length of disability ? 28. Has injured returned to work? 5/4/79
If so, date and hour ..... At what wage $ .....
29. At what occupation? .....
30. (a) Name and address of physician: Dr. Harold E. Young, Jr. Orange, Va. 22960
(b) Name and address of hospital .....

Fatal Cases

31. Has injured died? ..... If so, give date of death .....

Date of this report: 4/30/79 Firm Name: Goodwin Bros. ~~Lumber~~ Co. Inc.
Signed by: W. T. Goodwin Official Title: Partner

MAY 4 1979
BITUMINOUS
RICHMOND, VA.

Form No. 3-400M-9/27/73

001

No. 49/2/75—50M

IC # 627-248

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

61674

Purcell Talley Employee

Goodwin Brothers Lumber Co. Employer

Bituminous Casualty Corp. Insurance Carrier

MEMORANDUM OF AGREEMENT AS TO PAYMENT OF COMPENSATION

We Purcell Talley (Name of Employee or Dependents) residing at Route 1 Box 84 (Number and Street)

City or Town Mineral State Virginia

and Goodwin Brothers Lumber Co. (Name of Employer)

Office address Mine Run, Virginia (Number and Street) (City or Town) (State)

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

Date of injury 4/17/79 **Date disability began** 4/22/79

Nature of injury Infected puncture wound in finger of right hand

Place of accident Orange County, Virginia

Cause of accident splinter

Probable length of disability unknown

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

That the said Purcell Talley shall receive compensation at the rate of $ 80.00 per week based upon an average weekly wage of $ 120.00 and that said compensation shall be payable

from and including the 29th day of April month 19 79 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia

Olivia P. Strickland Witness

Locust Grove Va Address (Number and Street)

Witness

Mine Run Va Address (Number and Street)

X Purcell Talley Employee or Dependent

Goodwin Brothers Lumber Co. Employer

Bituminous Casualty Corp. Carrier

By Richard C. Hunter

Approved by (Commissioner or Board Member) 17-19-79 Title 002

Date of Approval Date of Agreement 3

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

P. O. BOX 1794
RICHMOND, VIRGINIA 23214

DIVISION OF CLAIMS

Claim No. 627-248 (52A 61674)

Case of Purcell Tallay
Accident: 4-17-79

AWARD

Approval of Agreement
scf

Date July 23, 1979

To Goodwin Brothers Lumber Company, (Employer)
Mine Run,
Virginia

and Mr. Purcell Tallay, (Employee)
Rt. 1 Box 84
Mineral, Virginia

and Bituminous Casualty Corporation, (Insurance Carrier)
8001 Franklin Farms Drive, Suite 200
Richmond, Virginia 23229

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 July 1979 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 April 29, 1979.

Medical benefits are awarded for as long as necessary.

4.

INDUSTRIAL COMMISSION OF VIRGINIA

If incapacity (disability) as indicated in Section 65.1-62 exceeds three (3) weeks, compensation is THEN to be paid for such calendar days of incapacity to work, in accordance with Section 65.1-54 and Section 65.1-56, in addition to such payments as may be awarded under Section 65.1-55 and the Commission so advised.

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

EMPLOYER'S NOTICE OF APPLICATION FOR HEARING

FROM: Goodwin Brothers Lumber Co.
Employer/Insurance Carrier

I. C. File No. 627-248

TO: Purcell Talley
Employee
Rt. 1, Box 84
Mineral, Virginia
Address

Date: 1/23/80

B. Condrey 2/7/80

You are hereby notified that workmen's compensation payments will be suspended on the date through which compensation has been paid as indicated below, if approved by the Industrial Commission for the following reason:

[1] Report of Dr. _____ to the effect you were able to:

a. return to your regular employment on _____;

b. return to light work on _____, which was was offered to you and refused without justification.

[Copy of this medical report is attached for your information]

[2] You returned to [light-regular] work on _____ at an average weekly wage of $ _____

[3] Failure to report to Dr. _____ for medical examination on _____

[4] Other [complete details and documentary evidence]: Dr. Kuland rated claimant for 25% loss of use of right hand - November 29, 1979.

To Employee: Any statement or evidence you wish to present to the Industrial Commission in opposition to this application should be filed in writing with the Commission on or before fifteen [15] days from the date of this application, as indicated below. The Commission will then determine whether or not payments should be suspended.

If the Commission determines from the preliminary evidence that payments should not be suspended, you will continue to receive your regular compensation payments.

If the Commission determines from the preliminary evidence that payments should be suspened, you will receive notice of the date, time, and place of hearing. Following a hearing the Commission will then determine whether or not payments should be terminated.

Compensation has been paid through 1/23/80

at the rate of $ 80.00 per week.

Orange 1-23-80

1.23.80
2.7.80

cc: Insured
cc: Claimant
cc: Attorney

CERTIFICATE 004

I hereby certify that the statements set out herein are true and correct to the best of my knowledge and that a copy of the foregoing notice and appilication for hearing, together with supporting documentary evidence, was mailed to the employee at the above address and to the Industrial Commission of Virginia on 1/23/ , 19 80

Date of Application: 1/23/80

Bituminous Casualty Corp.

Applicant

Subscribed and sworn to before me this 23rd day of Jan, 1980

My commission expires 10/26/80

Barbara J. Miller

Notary

5

COMMONWEALTH OF VIRGINIA

(Refer to I.C. File No. in all correspondence about this injury.)

I.C. FILE NO. 627-248

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

CARRIER'S NO. 52 A 61674

DATE OF ACCIDENT 4-17-79

NOTICE OF HEARING

10 days for Pl. to submit addl. med rpts

RE: PERCELL TALLEY
v.
Goodwin Brothers Lumber Co.

TO THE PARTIES ADDRESSED:

A hearing will be held at:

Municipal Building
Council Chambers
119 Belleview Avenue
ORANGE, Virginia

on MARCH 31, 1980 - at - 1:15 P.M.

SUBJECT OF HEARING

Employer's application, filed Jan. 23, 1980, based on claimant has been rated for 25% loss of use of right hand.

This hearing is part of a schedule. Postponement will cause inconvenience and extra expense. Continuance is entirely within the discretion of the Commission except as otherwise provided by law.

All medical reports are to be submitted to this Commission so they can be placed in the file prior to the date of hearing. Medical reports are acceptable in lieu of physicians personal appearances.

The parties must arrange to have all witnesses present to testify at the time and place designated. Failure of any party to appear at the time and place herein prescribed will result in action by the Commission as provided by law.

WILLIAM R. YATES, Deputy Commissioner

INDUSTRIAL COMMISSION OF VIRGINIA

Claimant

Percell Talley
(notice to counsel)

Employer

Goodwin Brothers Lumber Co.

Insurance Carrier

Bituminous Casualty Corp.
3001 Franklin Farms Drive,
Suite 200
Richmond, VA 23229

Claimant's Counsel

Did not appear

Lawrence J. Pascal, Esq.
4660 Kenmore Avenue, Suite 220
Alexandria, VA 22304

Defendant's Counsel

Nathaniel S. Newman, Esq.
P.O. Box 8661
Rich, Va 23226

3-10-80/mfk

Date of this Notice

6.

006

OPINION BY YATES
Deputy Commissioner

Hearing before Deputy Commissioner YATES, at Orange, Virginia on March 31, 1980.

This case is before us on application of the carrier, filed January 23, 1980, alleging a change in condition, in that the plaintiff has attained a plateau of medical improvement and the injured member (right hand) is now subject to a specific disability rating.

No contrary medical information to that contained in the report of Dr. D. N. Kulund has been furnished to this Commission.

It is our finding the defendants have borne the requisite burden of proving a change in condition, therefore, our outstanding Award of July 23, 1979 is terminated, effective January 23, 1980.

Our further Award shall enter granting to this plaintiff specific disability of 37.50 weeks representing a 25% functional loss of use of the right hand. The effective date of this Award shall be January 23, 1980, and all benefits which have accrued from that date to the nearest full week from the date of this opinion, at a compensation rate of $80.00, shall be paid in one lump sum directly to this plaintiff, but deducting therefrom a fee in the sum of $100.00 to be paid directly to Mr. Lawrence J. Pascal, Esq. for legal assistance furnished to this plaintiff.

Future benefits under this Award shall be paid weekly until any further change in condition is timely brought to our attention.

It appearing that no other matters remain before this Commission for determination, this case is dismissed and stricken from the Commission's Hearing Docket.

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

APPLICATION FOR HEARING

File No. 627-248

Employee PERCELL TALLEY, Rt. 1, Box 84, Mineral, Virginia 23117
(Address)

Employer GOODWIN BROTHERS LUMBER CO.,
(Address)

Date of Accident April 5, 19 79. Average Weekly Wage $ 120.00

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

Nature of Injury or Occupational Disease: right hand

Date Disability Began: _____, 19_____

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

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

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

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

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

Occupational Disease ..... ( )

(4) Change in Condition ..... (X)

DATE FOR Orange Co. 10/24/80 10/30/80

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

the claimant is unable to engage in his previous occupation per attached report of Dr. Daniel N. Kulund dated October 16, 1980.

Compensation was last paid at the rate of $_____ per week through the _____ day of _____, 19_____.

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

Signature of Applicant: Peter M. Sweeny
Peter M. Sweeny, Counsel for Claimant
Address: 4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

Signed this 21st day of October, 19 80.

009

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.

cc: Bituminous Casualty Corporation

Mr. Percell Talley

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

Warren G. Stamp, M.D., *Chairman*
Charles J. Frankel, M.D.
Michael W. Halakala, M.D.
Daniel N. Kulund, M.D.
Frank C. McCue, M.D.

Robert E. McLaughlin, M.D.
Michael D. Sussman, M.D.
Gwo-Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory

Colin A. McLaurin, Ph.D.
Steven I. Reger, Ph.D.

October 16, 1980

Mr. Peter M. Sweeny
Attorney-at-Law
Suite 220
4660 Kenmore Avenue
Alexandria, Virginia 22304

RE: Percell Tally
UVA #84 58 05

Dear Mr. Sweeny:

Mr. Percell Tally is a sawmill worker who had a serious infection of his right hand from a splinter. We were lucky to save the hand, but Mr. Tally now has residual stiffness of his right index finger. Because of this stiff finger, Mr. Tally will be unable to engage in his previous occupation at the sawmill.

Sincerely,

D. Kulund, MD

Daniel N. Kulund, MD
Assistant Professor
Orthopedic Surgery, Health
and Physical Education

DNK:jgc

COMMONWEALTH OF VIRGINIA

(Refer to I.C. File No. in all correspondence about this injury.)

I.C. FILE NO. 627-248

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

CARRIER'S NO. [illegible]

NOTICE OF HEARING

DATE OF ACCIDENT April 17, [illegible]

RE: Parcell Talley
v.
Goodwin Brothers Lumber Company

TO THE PARTIES ADDRESSED:

A hearing will be held at:

Circuit Court House
Upstairs Courtroom
ORANGE, Virginia

on December 22, 1980 -at- 10:40 A.M.

SUBJECT OF HEARING

Claimant filed application for hearing by counsel October 24, 1980 alleging claimant is unable to do his former occupation per report from Dr. Kulund.

This hearing is part of a schedule. Postponement will cause inconvenience and extra expense. Continuance is entirely within the discretion of the Commission except as otherwise provided by law.

All medical reports are to be submitted to this Commission so they can be placed in the file prior to the date of hearing. Medical reports are acceptable in lieu of physicians personal appearances.

The parties must arrange to have all witnesses present to testify at the time and place designated. Failure of any party to appear at the time and place herein prescribed will result in action by the Commission as provided by law.

Claimant

Mr. Parcell Talley
Route 1, Box 34
Mineral, Virginia 23117

Employer

Goodwin Brothers Lumber Company

Insurance Carrier

Bituminous Casualty Corporation
Box K-40
Richmond, Virginia 23288

Claimant's Counsel

Peter M. Sweeny, Esquire
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

Defendant's Counsel

INDUSTRIAL COMMISSION OF VIRGINIA
DEPUTY COMMISSIONER JERRY O. TALTON

Date of this Notice
November 3, 1980

10-A 012

Hearing before Deputy Commissioner TALTON in Orange, Virginia on December 22, 1980.

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

DEPUTY COMMISSIONER TALTON:

We're here on the application of the claimant alleging continuation of temporary total incapacity after the payment of permanency. A claim is made for temporary total incapacity benefits from October 12, 1980 and continuing. The grounds of defense Mr. Metcalf is that the claimant was able to return to selective work which was offered and refused without justification?

MR. METCALF:

Yes sir.

DEPUTY COMMISSIONER TALTON:

Any other defenses?

MR. METCALF:

No sir.

DEPUTY COMMISSIONER TALTON:

Mr. Sweeny.

MR. SWEENY:

May I ask that counsel state the date on which selective employment was offered to Mr. Talley and when was the alleged refusal?

MR. METCALF:

I think that will come out in the evidence.

MR. SWEENY:

Well, in order to present my case, if I'm going to present my direct entirely here or have to call Mr. Talley back for a response to your defense.

MR. METCALF:

Much depends on Mr. Talley, when he last saw the doctor.

DEPUTY COMMISSIONER TALTON:

Mr. Sweeny, you may proceed. If there is any need to requestion the claimant, you may recall him.

MR. SWEENY:

Well, one thing I'm not clear of Commissioner, is--

DEPUTY COMMISSIONER TALTON:

Well, let's go off the record.

(Off the record)

MR. SWEENY:

I call Mr. Talley.

PERCELL TALLEY, Claimant

BY MR. SWEENY:

Q Mr. Talley, have you been back to work anywhere since October 12, 1980?

A No sir.

Q Have you been back to see Dr. Kulund?

A I went back to see Dr. Kulund, I don't exactly know when it was but I went back to see him.

Q Have you continued to see Dr. Kulund since October 12, 1980?

A No, not since the last time I went because I had nothing to go over there with, I don't have no money or nothing.

Q I'd like you to show the Commissioner your right hand. Mr. Talley, can you straighten your first finger, can you straighten it out? Is that as far as you can straighten it?

A Yes sir.

Q Are you left handed or right handed?

A Right handed.

Q Mr. Talley, has Dr. Kulund ever advised you that you can return to work at the sawmill?

A No sir.

Q Has he ever advised you that you can return to any work?

MR. METCALF:

Objection to what the doctor told him.

A No sir.

DEPUTY COMMISSIONER TALTON:

I'll sustain the objection.

MR. SWEENY:

I have no further questions of Mr. Talley at this time.

DEPUTY COMMISSIONER TALTON:

Do you have any questions Mr. Metcalf?

BY MR. METCALF:

A Yes sir. Mr. Talley, you don't know when you were last seen by Dr. Kulund, is that your testimony?

A I don't exactly know the month or the date I went up there and seen him.

Q Was it before October, 1980?

A I don't exactly know what date it was but it was, you know, in '80.

Q It could have been early 1980 then, the last time you saw him?

A Yes sir.

Q Have you received any letters or communications from the Goodwin Brothers Company to return to work?

A Yes sir.

MR. SWEENY:

Objection, that's irrelevant. That is irrelevant to the issue presented by the claimant's Application for Hearing at this time.

DEPUTY COMMISSIONER TALTON:

Overruled.

Q You did receive that notification?

A Yes I got a letter from them right here.

Q What date?

A Last Wednesday.

Q Does this look like that letter?

DEPUTY COMMISSIONER TALTON:

Counsel is referring to a letter dated December 16, 1980 from Goodwin Brothers.

A I don't know, I can't read.

Q Does that look like the letter that you--Well, you can't read Mr. Talley?

A No sir.

Q Mr. Talley, when you received the letter from Goodwin Brother, did you take it to somebody?

A Yes sir, I had somebody read it to me.

Q Do you remember what they told you the letter said?

A Yes.

Q What was that?

A They said that the doctor said that I couldn't do no climbing or pushing, nothing like that, said I could only handle anything that was as heavy as 10 pounds.

Q Do you remember when it said to report back to work?

A It said for me to report back Friday.

Q Last Friday?

A Last Friday.

Q Did you go back?

A No sir.

Q If that job is still open would you go back and report?

MR. SWEENY:

Objection Mr. Commissioner, that's irrelevant. I think it's important at this point, this job offer was made on the 16th, he received it on the 17th, he was to report to work on the 19th. He has not had any communication from his doctor in this regard.

DEPUTY COMMISSIONER TALTON:

I think we have the claimant's testimony on this. Whether he would go back in the future is something in which he might have to speculate. He may not know whether he can go back yet, he hasn't had a chance to maybe formulate his opinion, so I don't think we need to go into that.

MR. SWEENY:

We're not saying that he won't, just so that's clear.

MR. METCALF:

I have no further questions of Mr. Talley.

DEPUTY COMMISSIONER TALTON:

Mr. Sweeny.

BY MR. SWEENY:

Q Mr. Talley, the letter that was explained to you by your

friends who could read, did you understand that to be a return to a job?

A The way they explained it to me is to return Friday, that was last Friday.

Q You received the letter when?

A Wednesday.

Q Did you have any communication with Dr. Kulund at all?

A No sir.

Q Did you have any communication from anyone at Goodwin Brothers concerning this job other than that letter?

A No.

Q Did anyone indicate to you at anytime that your doctor had approved this particular job that was in that letter?

A No sir.

MR. SWEENY:

Thank you Your Honor, no further questions of Mr. Talley.

WILLIAM T. GOODWIN, Witness

BY MR. METCALF:

Q Mr. Goodwin, would you please state your name for the record?

A William Teel Goodwin.

Q Your position?

A Part owner of Goodwin Brothers Lumber Company.

Q How long have you been in that position?

A Almost 20 years.

Q You work regularly on the job?

A Yes sir.

Q Are you familiar with Mr. Talley's work at Goodwin?

A Yes I am.

Q and the hiring practices in the company?

A Yes.

Q Do you do the hiring yourself?

A I do part of it.

Q Did you send a letter dated December 16th to Mr. Talley?

A Yes I did.

Q Is this a copy of the letter?

A Yes sir.

MR. METCALF:

I'd like to have that put into evidence Your Honor.

Q On Friday, was this job available to Mr. Talley?

A Yes sir.

Q Is it still available for Mr. Talley?

A Yes sir.

(Off the record)

DEPUTY COMMISSIONER TALTON:

Your witness Mr. Sweeny.

BY MR. SWEENY:

Q Mr. Goodwin, you are the W. T. Goodwin that authored that letter?

A Yes sir.

Q Did you ever present that job description to Dr. Kulund?

A No, not that I can recall.

Q Did you ever communicate to Mr. Talley in anyway that Dr. Kulund had approved this particular job in your letter of December 16, 1980?

A Ask the question again.

Q Did you ever tell Mr. Talley that this job in your letter of December 16, 1980 was approved by Dr. Kulund?

A No.

Q In fact it never was approved by Dr. Kulund, was it, this particular job?

A I don't know.

Q You had nothing to do with your communicating this job to Dr. Kulund?

A No.

Q Did you obtain this report from Dr. Kulund that has been presented by your attorney today dated December 16, 1980? Do you know which one I'm referring to?

(Off the record)

Q ---in that medical report?

A You know, I don't know.

Q You had no particular part in it?

A It could have come in my office because I really depend on my secretary on this thing. I read the letters that Percell

sent about he could lift ten pounds is all I did and signed it. I've know the case all along. I offered the job a long time before this all came up and told Percell to get himself together and come on back to work, I thought he could but that was a good while before this.

Q In terms of what happened within the last week, who advised you this time to prepare a job for Percell Talley for this past Friday?

A My secretary got the mail and it was Bituminous Insurance Company I assume.

Q So Bituminous Insurance Company told you to get a job description together and offer it to Mr. Talley by last Friday?

DEPUTY COMMISSIONER TALTON:

I don't see what difference that makes.

MR. SWEENY:

Well, it makes a big difference Commissioner because first of all, I think procedurally I object to the offer of selective employment being raised this late before the hearing without an Application for Hearing in the file. Procedurally I object to it as being correct.

DEPUTY COMMISSIONER TALTON:

Mr. Sweeny, you've already presented your defense to the defense.

PERCELL TALLEY, Claimant:

They didn't ask me if I had a job and I told them I did.

DEPUTY COMMISSIONER TALTON:

I think you're raising---a little late here.

MR. SWEENY:

Well, Commissioner, I don't think my objection is too late because here, I'm presented with the situation at this very day for the first time.

DEPUTY COMMISSIONER TALTON:

My question to you Mr. Sweeny is what difference would it make whether the light work was offered at the instance of the insurance company or whether on the defendants own initiative they offered the light work. It would be a question of whether or not there was an offer of light work and whether or not the claimant refused it.

MR. SWEENY:

Well, the question is whether or not it's proper, that's what is important---

DEPUTY COMMISSIONER TALTON:

I'm aware of the requirements for an offer of light work.

(off the record)

The job that you offered Mr. Talley on December 16, 1980

or in your letter of December 16, 1980 is not the job that he was doing at the time he was injured back in April of 1979, is it?

A Yes, it would be about the same job, practically the same job.

MR. SWEENY:

I have no further questions.

DEPUTY COMMISSIONER TALTON:

Anything further?

MR. METCALF:

No.

Witnesses dismissed.
Case concluded.

GOODWIN BROTHERS

DEALERS AND MANUFACTURERS

ROUGH AND DRESSED LUMBER

No. 2 COMMON AND BETTER

TELEPHONE: 854-5561

MINE RUN, VIRGINIA 22568

December 16, 1980

Mr. Purcell Talley
Rt. 1, Mineral, Va. 23117

Dear Purcell,

We understand the Doctor has advised that you are able to return to work, providing you do not get your bad finger near machines that will injure it, not lift more than 10 lbs. and do not do any pushing, pulling or climbing.

Please report to work Friday, December 19, 1980 at 8:00 A.M. We will pay you $3.10 per hour for a 40 hour week. Your duties will be cleaning up and driving a short bed dump truck in this area. You will not have to push, pull or climb or lift over 10 lbs, and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Sincerely,

GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

WTG:fs

cc: H. B. Brown-Bituminious Ins. Co.

DEC 17 198
BITUMINOUS
RICHMOND, VA.

p.15, record

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

P. O. Box 1794, Richmond, Virginia 23214

File No. _____

Case of _____ **ATTENDING PHYSICIAN'S REPORT**

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

1. NAME OF INJURED EMPLOYEE (First, middle initial, last): Percil Talley	2. DATE OF INJURY (Mo., day, yr.): 4-17-79
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): RFD 1, Box 84 Mineral ~~Goodwin Bros. Lumber Co. Mine Run Va~~	4. DATE OF BIRTH (or age) (Mo., day, yr.): 2-2-33 / 5. SEX: M
6. NAME OF EMPLOYER: Goodwin Bros Lumber Co	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code): Mine Run Va
8. DATE OF FIRST VISIT (Mo., day, yr.): 4-24-79 / 9. DATE DISCHARGED (Mo., day, yr.):	10. WHO AUTHORIZED TREATMENT?
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED: Stuck splinter in (R) Hand	
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.): Deep puncture wound (R) Hand w/ cellulitis	
13. DIAGNOSIS: See #12	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: Soaks, Keflex, Bandage, Tetanus, MCX	16. DATES OF YOUR TREATMENT (Mo., day, yr.): 4-24-79
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: —	MAY 4 1979
20. WAS THERE DISABILITY FOR WORK? ☐ YES ☐ NO (If "Yes," answer 20-A, B, C)	A. DATE DISABILITY BEGAN (Mo., day, yr.) / B. DATE ABLE TO RETURN TO LIGHT WORK (Mo., day, yr.) / C. DATE ABLE TO RETURN TO REGULAR WORK (Mo., day, yr.)
21. WILL THERE BE PERMANENT DEFECT OR 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)	23. ADDRESS (Number and street, city, state, zip code): HAROLD E. YOUNG, JR., M.D. Box 1250 Orange, Virginia 22960
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT — SIGNATURE: Harold E. Young, M.D. (SIGNATURE OF ATTENDING PHYSICIAN)	25. DATE OF THIS REPORT: 4-24-79

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

Form No. 6—5-4-78—400M

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
P. O. Box 1794, Richmond, Virginia 23214

IC# 627-248

MAKE CHECKS PAYABLE TO
UNIV. OF VA. CLINIC, PRIVATE DIV.
MEDICAL CENTER
CHARLOTTESVILLE, VA. 22901

File No. _____

Case of 84 58 05

ATTENDING PHYSICIAN'S REPORT

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

1. NAME OF INJURED EMPLOYEE (First, middle initial, last): Percell Tally

2. DATE OF INJURY (Mo., day, yr.): 4-29-79

3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code): Route 1, Box 84, Mineral, Virginia 23117

4. DATE OF BIRTH (or age) (Mo., day, yr.): 2-2-33

5. SEX: M

6. NAME OF EMPLOYER: Goodman Brothers

7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code): Mine Run, Virginia 22568

8. DATE OF FIRST VISIT (Mo., day, yr.): 4-29-79

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

10. WHO AUTHORIZED TREATMENT?:

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

punctured his right hand working at the saw mill

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.

right thenar space infection

RECEIVED
JUN 13 1979
CPD INSURANCE

13. DIAGNOSIS

same as above

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

surgery- right thenar space infection--4-29-79
dressing change with further debridement and evacuation of pus and debridement of superfical epithelial skin that had sloughed --5-2-79
debridement and dressing change--5-7-79

16. DATES OF YOUR TREATMENT (Mo., day, yr.) / ADDITIONAL CHARGE (ATTACHED)

4-29-79	150.00
5-2-79	150.00
5-7-79	150.00

17. WAS EMPLOYEE HOSPITALIZED? [XX] YES [ ] 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)

753.00

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? [XX] YES [ ] NO (If "Yes," answer 20-A,B,C) →

A. DATE DISABILITY BEGAN (Mo., day, yr.): 4-29-79

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

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

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): Daniel N. Kulund, M. D.

23. ADDRESS (Number and street, city, state, zip code): U Va. Med. Center, Pri. Orth., Box 159 Charlottesville, Virginia 22908

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

SIGNATURE Daniel N. Kulund M. D.
SIGNATURE OF ATTENDING PHYSICIAN

25. DATE OF THIS REPORT: 6-13-79

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

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

61674

Warren G. Stamp, M.D., *Chairman*
Charles J. Frankel, M.D.
Michael W. Hakala, M.D.
Daniel N. Kulund, M.D.
Frank C. McCue, M.D.

Robert E. McLaughlin, M.D.
Michael D. Sussman, M.D.
Gwo-Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory

Colin A. McLaurin, Ph.D.
Steven L. Reger, Ph.D.

October 11, 1979

Bituminous Insurance Companies
8001 Franklin Farms Drive
Suite 200
Box K-40
Richmond, Virginia 23288

Re: Percell Tally
UVA #84 58 05

Dear Sir:

This is an updated report on Mr. Percell Tally. Mr. Tally had a severe right hand infection. He received a splinter on the job and it worsened over a month and when I first saw him he had pus throughout his hand. I immediately took him to the operating room and drained the pus and we were able to save the hand but he has a marked limitation of function of his index finger. Fortunately, his palm has healed in very well and he is doing fine with his work on his other fingers but this index finger is not moving well.

Mr. Tally will never regain full function of that hand but he is now using a flexion strap that will gain some more index finger function. I am not able, as of yet, to give a disability rating as he is not achieved the maximum improvement. He will not be able to go back to work yet but I'll advise you when I think he's ready to return.

I've included a copy of his discharge summary and his operation notes.

Sincerely,

D Kulund, MD

Daniel N. Kulund, M. D.
Assistant Professor
Orthopedic Surgery and Health and
Physical Education

DNK/dly

OCT 15 1979

UNIVERSITY OF VIRGINIA
MEDICAL CENTER
Charlottesville, Virginia 22908
Telephone: 804-924-0211
HOSPITAL DISCHARGE SUMMARY

NAME: TALBT, FERRELL
HISTORY NO. 84-58-05
SERVICE: MEDICINE/ORTHOPEDICS (DR.GA
ADMISSION DATE 4-29-79
DISCHARGE DATE 5-22-79

PRIMARY DISCHARGE DIAGNOSIS:
1. INfected right hand.

ADDITIONAL DISCHARGE DIAGNOSES:

OPERATIONS AND PROCEDURES:
1. Excision and drainage of right hand infection, 4-29-79.
2. Debridement and dressing change in OR, 5-2-79, 5-7-79.

HISTORY: The patient is a 46 year old male who has splinter puncture at base of his right thumb web space approximately 10 days prior to admission. He saw his local medical doctor 5 days prior to admission because his hand was red and swollen and he was given prescription for Pen-Vee-K and wound was cleansed. He presented to the Emergency Room with gross infection of the thenar and mid-palmar space and question of dorsal space infection.

PAST MEDICAL HISTORY: Negative.

PHYSICAL EXAMINATION: Showed a well developed, well nourished 46 year old black male in moderate distress secondary to grossly swollen and infected right hand. Head and neck exam was normal except for very poor dentition. Neck was supple without nodes. Chest was clear to A and P. Heart was regular rhythm without murmurs. Abdomen was benign. Extremities were normal except for his right upper extremity which showed tenosynovitis of the dorsum of the right hand proximal to the MP crease as well as gross swelling and redness and heat of palmar area most particularly in thenar midpalmar area. There was small puncture wound at base of palmar aspect of thumb in the web space and there was extruding pus from puncture wound. There were positive epitrochlear nodes and no axial inguinal nodes.

HOSPITAL COURSE: Patient was taken to Operating Room 4-29-79 emergently at which time the web space was incised and gross infection was found in the thenar space at the base of the index finger. The hand was elevated in Curtis bag and patient was put on I.V. Keflin. He was on 5-2-79 changed to 1.5 grams I.V. q. 4 hrs. and was then maintained on this thru the remainder of his hospitalization until 5-17 at which time he was changed to P.O. Keflex. His hospital course consisted of continued elevation and I.V. antibiotics, returned to operating room 2 more times for debridement of wound and dressing changes with loss of skin at over the proximal phalanx of right index finger. After second return

UNIVERSITY OF VIRGINIA MEDICAL CENTER Charlottesville, Virginia 22908 Telephone: 804-924-0211 HOSPITAL DISCHARGE SUMMARY	NAME: ALLY, PERCELL HISTORY NO: 84-58-05 SERVICE: MEDICINE/ORTHOPEDICS ADMISSION DATE: 4-29-79 DISCHARGE DATE: 5-22-79

PAGE 2

93.32

HOSPITAL COURSE CONTINUED: to OR on 7th of May, the patient was begun on b.i.d. whirlpool and occupational therapy and was placed in splint to maintain MP joints in flexion and his IP joints in extension and received range of motion therapy to all of the joints in his hand. The wound cleaned up nicely and although still open, began to look very good and patient was discharged on 5-22-79 to continue to the outpatient whirlpool therapy daily and occupational therapy with range of motion. It was noted while in the hospital that patient had an elevated blood pressure in the range of 150 - 180/90 - 110 and he was put on a 4 gram sodium diet and started on Hydrochlorothiazide.

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93.14
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INSTRUCTIONS TO PATIENT:

A. Medications:
   1. Hydrochlorothiazide. 50 mgs. P.O. q. d.
   2. Phenaphen #3 for pain.
   3. Keflex, 500 mgs. P.O. q.i.d. for infection.

B. He will continue Outpatient therapy and whirlpool and was given appointment to return to see Dr.Kulund 1 week from date of discharge.

PHILIP GATES, M. D. DATE SIGNED
RESIDENT, DEPARTMENT OF ORTHOPEDIC SURGERY
PG:cn
D: 5-24-79
T: 5-28-79
CC: Dr. Harold Young, Orange,Va. 22960, Dr. Gates, Dr. Kulund

UNIVERSITY OF VIRGINIA
HOSPITALS
Charlottesville, Virginia 22908

OPERATIVE REPORT

NAME: TALLY, PERCELL
HISTORY NO: 84-58-05
AGE:
SERVICE: ORTHOPEDICS
NURSING UNIT: W 3
DATE OF SURGERY: 5-2-79

SURGEON: DR. KULUND

ASSISTANTS: DRS. NEMETH, GATES

PREOPERATIVE DIAGNOSIS: SEVERE RIGHT HAND INFECTION INVOLVING THENAR SPACE AND DORSUM OF HAND WITH BUTTON-HOLE ABSCESS BETWEEN THE INDEX AND LONG METACARPALS

POSTOPERATIVE DIAGNOSIS:
SAME

OPERATION: DRESSING CHANGE WITH FURTHER DEBRIDEMENT AND EVACUATION OF PUS AND DEBRIDEMENT OF SUPERFICIAL EPITHELIAL SKIN THAT HAD SLOUGHED

ANESTHESIA: GENERAL MASK

ANESTHESIOLOGIST:

TECHNIQUE: With the patient in supine position on operating table under satisfactory general mask anesthesia, the right upper extremity was prepped and draped in usual sterile fashion for hand case. The wound was explored and there was noted to be pus in the area of the index and long metacarpal down deep and there was some subepithelial pus extending around to the dorsum of the hand and up along the base of the proximal volar index finger. This surgical incision for drainage was then extended from the thenar space around with an ulnar based flap across the MP joint of the index finger obliquely across the proximal phalangeal volar skin. Sharp dissection was carried on down to subdermal fat and all pus in this area was expressed. Recultures were taken and sent for routine C and S. Wound was then copiously irrigated with 3000 ccs. of normal saline solution. Further debridement of devitalized tissue was done. The recesses that had been developed were packed loosely with Betadine impregnated sponges. Sterile compressive hand dressing was applied. There were no intraoperative complications. The patient was returned to the Recovery Room in satisfactory condition.

OCT 15 1979
VA.

WILLIAM NEMETH, M. D.
RESIDENT, DEPARTMENT OF ORTHOPEDIC SURGERY
DATE SIGNED

WN:cn
D: 5-3-79
T: 5-3-79
CC: Dr. Nemeth, Dr. Gates, Dr. Kulund

ROUGH DRAFT

UNIVERSITY OF VIRGINIA
HOSPITALS
Charlottesville, Virginia 22908

OPERATIVE REPORT

NAME: TALLEY, PERCELL
HISTORY NO: 85-58-05
AGE:
SERVICE:
NURSING UNIT: ER/W3
DATE OF SURGERY: 4-29-79

SURGEON: DRS. KULUND, JOHNSTON

ASSISTANTS:

PREOPERATIVE DIAGNOSIS: RIGHT THENAR SPACE INFECTION

POSTOPERATIVE DIAGNOSIS:

OPERATION:

ANESTHESIA: AXILLARY BLOCK

ANESTHESIOLOGIST:

OCT 15 1985

BRIEF HISTORY: This 46 year old male punctured the first web space of his right hand working in the saw mill where he is employed approximately 10 days ago. A splinter of wood was thought to enter the area of the first web space just on the palmar side of the web space. He presented to the Emergency Room with a swollen painful right hand and obvious pus draining from the puncture wound.

OPERATIVE PROCEDURE: After satisfactory anesthesia with axillary block was administered, the right hand was prepped and draped in the usual sterile manner to the elbow. The arm was elevated and the tourniquet inflated to 250 mms. An incision was made in the palmar flexion crease, beginning at the most radial aspect of the mid-palmar crease, carrying it down along the thenar eminence as in a standard carpal tunnel release incision. Immediately upon going thru subcutaneous tissue, a pus pocket was encountered and this was followed down into the thenar space. The thenar flap was elevated subcutaneously. The superficial palmaris was encountered and one branch of it was sacrificed Bovie-ing both sides. After thoroughly undermining the thenar flap and draining as much pus as could be obtained, the dorsal aspect of the first web space was explored by extending the incision proximally along the index metacarpal. This was curved down towards the base of the thumb and the adductor pollicis was dissected free and pus was found both superficial and deep to the transverse head of the adductor pollicis. This space was similarly opened thoroughly. Attention was then turned to the lumbrical canals going to the index finger. Pus was found along both canals going up into the second web space on the palmar aspect. Because the tissue around the median nerve and in the deep palmar space was found to be quite necrotic and apparently grossly infected, an official carpal tunnel release was done by carrying down the incision along the thenar eminence all the way to the wrist crease. The transverse carpal ligament was then identified and released using double sharp scissors. The median nerve was identified and was thought to be uninvolved in the septic process. The motor branch of the median nerve was not identified, but was protected all during this release by working on the ulnar aspect of the nerve. After thoroughly releasing all of the thenar compartments and the lumbrical canals as noted, the entire wound was then

PROCEDURE CONTINUED: thoroughly irrigated with 4 liters of sterile saline and the wound was packed open using a Betadine soaked Kerlix. Compressive dressing was placed on the hand and tourniquet was deflated after 45 mins. Estimated blood loss was negligible. Findings as noted in operative procedure.

CHARLES E. JOHNSTON, M. D. DATE SIGNED
RESIDENT, DEPARTMENT OF ORTHOPEDIC SURGERY
CEJ:cn
D: 4-30-79
T: 5-1-79
CC: Dr. Johnston, Dr. Kulund

DANIEL KULUND, M.D. DATE SIGNED

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

Warren G. Stamp, M.D., *Chairman*
Charles J. Frankel, M.D.
Michael W. Halakala, M.D.
Daniel N. Kulund, M.D.
Frank C. McCue, M.D.

Robert E. McLaughlin, M.D.
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Gwo-Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory
Colin A. McLaurin, Ph.D.
Steven L. Reger, Ph.D.

November 29, 1979

IC # 627-248

Department of Health, Education, and Welfare
Social Security Administration
Washington, D. C.

Re: Percell Talley
UVA #84 58 05

Dear Sir:

Mr. Percell Talley is a 46 year old man who had a splinter in his right hand about six weeks before coming to the University of Virginia Emergency Room. During that time a very serious infection set up in the hand which almost destroyed it. The infection contained white pus that went all around his palm and down into his index finger and his hand was swollen like a balloon and stiff.

I brought Mr. Talley to the operating room and removed the large amount of pus from his palm and finger area. After the operation his hand did well but of course he had a large wound in the palm and some loss of skin on the index finger.

I've seen Mr. Talley many times in the clinic and did changes of dressings and he now has a fully healed wound in the palm but his proximal interphalangeal joint that is the middle joint in the index finger is stiff. I do not expect him to achieve any further motion in that index finger and I feel that this finger will keep him from doing the type of work that he was doing which involves lifting and manipulations. I rate his disability as a permanent/partial disability of 25 percent of his hand.

Sincerely,

D N Kulund, MD

Daniel N. Kulund, M. D.
Assistant Professor
Orthopedic Surgery and Health and
Physical Education

DNK/dly

DEC 3 1979

SURGERY CLINIC
UNIVERSITY OF VIRGINIA HOSPITAL
SICK CERTIFICATE

Name PERCELL TALLY Date 12/17/79

Address

To whom it may concern:

This is to certify that the above patient was under my professional care from 7/79

to STILL inclusive.

Remarks: I AM TREATING HIM FOR DEEP VEIN THROMBOSIS OF THE LEG

Phone:
924-5225

Dr.

DEC 27 1979
BITUMINOUS
RICHMOND, VA.

(IC # 627-248
12-22

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

Warren G. Stamp, M.D., *Chairman*
Charles J. Frankel, M.D.
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Gwo-Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory

Colin A. McLaurin, Ph.D.
Steven I Reger, Ph.D.

December 16, 1980

Mr. Henry Brown
Bituminous Insurance Company
8001 Franklin Farms Drive
Suite 200
Box K-40
Richmond, Virginia

RE: Percell Tally
UVA #84 58 05

Dear Mr. Brown:

Mr. Percell Tally had a splinter enter his right hand on the job in the sawmill, back in October of 1979. I saw him about six weeks after the injury occurred, and during the time, a very serious infection set up in his hand, which almost destroyed it. The infection contained white pus that went all around his palm and down into his index finger, and his hand was swollen like a balloon and stiff.

I brought Mr. Tally to the operating room and removed a large amount of pus from his palm and finger area. Luckily, we were able to save his hand, but he, of course, had a large wound in his palm and some loss of skin on the index finger.

His palm wound is now fully healed, but his proximal interphalangeal joint, that is the middle joint in the index finger, is stiff. I do not expect him to achieve any further motion in the index finger, and I feel that his finger will keep him from doing the type of work that he was doing at the sawmill, which involves lifting and manipulations. I have rated his disability as a permanent partial disability of 25 percent of his hand.

Although Mr. Tally cannot return to his old job at the sawmill, he can certainly do any job that does not involve the use of two good hands. I would not want his hand with the finger sticking out near any machinery, or in work that would involve carrying objects of over ten pounds with both hands, pushing, pulling or climbing.

DEC 17 1

Sincerely,

Kulund, MD

Daniel N. Kulund, MD
Assistant Professor
Orthopedic Surgery, Health
and Physical Education

036

DNK:jgc
cc: Goodwin Brothers Lumber Company, Mine Run, Virginia

Opinion by TALTON,
Deputy Commissioner

Hearing before Deputy Commissioner TALTON at Orange, Virginia, on December 22, 1980.

This case is before us on the application of the claimant, filed October 24, 1980, by counsel, on ground of change in condition alleging that the employee continues to be unable to perform his regular work. Weekly compensation benefits for permanent partial incapacity have been paid through October 11, 1980.

The claim is defended on the grounds that the employee has refused an offer of selective work.

Mr. Talley's regular job was that of a laborer and the October 16, 1980 report of Dr. Daniel N. Kulund, Assistant Professor of Orthopedic Surgery, Health and Physican Education, with the University of Virginia clearly establishes that the employee is unable to engage in his previous occupation at the sawmill.

Although the employer has offered the claimant work driving a short bed dump truck and performing other clean up activities, Dr. Kulund has not been provided with a detailed job description for his review and approval. It may well be that the physician would not permit Mr. Talley to perform this work and the Commission cannot find that the defendants

have persuasively established a definite refusal of an offer of selective work within the claimant's physical capabilities.

A finding is made that the claimant continues to be incapacitated for his regular occupation from October 12, 1980 to the present and continuing.

An award will be entered accordingly.

A W A R D

An award is hereby entered on behalf of the claimant against the defendants at the rate of $80.00 per week beginning October 12, 1980, to continue during temporary total incapacity. From accrued compensation the sum of $300.00 shall be deducted and paid to attorney Peter M. Sweeny for legal services rendered to Mr. Talley.

The case is ordered removed from the hearing docket.

NEWMAN & METCALF
ATTORNEYS AT LAW
5911 WEST BROAD STREET
RICHMOND, VIRGINIA 23230

TELEPHONE 804-285-9076

NATHANIEL S. NEWMAN
ROBERT C. METCALF

MAILING ADDRESS:
POST OFFICE BOX 8661
RICHMOND, VIRGINIA 23226

January 5, 1981

INDUSTRIAL COMMISSION OF VIRGINIA
Post Office Box 1794
Richmond, Virginia 23214

Re: Claim No. 627-248
Percell Talley vs.
Goodwin Brothers Lumber Co.

Gentlemen:

This office represents the employer and insurance carrier in the above styled matter. Please consider this a request for review before the Full Commission of the opinion by Deputy Commissioner Talton dated December 31, 1980.

Please send a copy of the transcript to this office.

Thank you for your cooperation.

Copy of transcript sent 2-4-81. Charged $3.30 for 11 pages. MPH

Yours very truly,

Robert C. Metcalf

RCM:sbd

CC: Peter M. Sweeny, Esquire

DOCKET FOR Review (T)
1-6-81
1-9-81
bc

GOODWIN BROTHERS
DEALERS AND MANUFACTURERS
ROUGH AND DRESSED LUMBER
No. 2 COMMON AND BETTER
TELEPHONE: 854-5561
MINE RUN, VIRGINIA 22568

December 16, 1980

RECEIVED
FEB 9 1981
BITUMINOUS
RICHMOND, VA.

Mr. Purcell Talley
Rt. 1, Mineral, Va. 23117

Dear Purcell,

We understand the Doctor has advised that you are able to return to work, providing you do not get your bad finger near machines that will injure it, not lift more than 10 lbs. and do not do any pushing, pulling or climbing.

Please report to work Friday, December 19, 1980 at 8;00 A.M. We will pay you $3.10 per hour for a 40 hour week. Your duties will be clearing up and driving a short bed dump truck in this area. You will not have to push, pull or climb or lift over 10 lbs, and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Sincerely,

GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

WTG:fs

cc: H. B. Brown-Bituminious Ins. Co.

RECEIVED
DEC 17 1980
BITUMINOUS
RICHMOND, VA.

The above correspond to the limitations in my DEC. 16, 1980 letter.

D. Kulund, MD

RECEIVED
JAN 7 1981
BITUMINOUS
RICHMOND, VA.

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

EMPLOYER'S NOTICE OF APPLICATION FOR HEARING

FROM: Bituminous Casualty Corporation
Employer/Insurance Carrier

I. C. File No. 627-248

TO: Purcell Talley
Employee

Date: 2/17/81

Rt. 1
Mineral, Virginia
Address

You are hereby notified that workmen's compensation payments will be suspended on the date through which compensation has been paid as indicated below, if approved by the Industrial Commission for the following reason:

[1] Report of Dr. Kuland to the effect you were able to:

a. return to your regular employment on _____;

b. return to light work on 12/16/80, which was was offered to you and refused without justification.

[Copy of this medical report is attached for your information]

[2] You returned to [light-regular] work on _____ at an average weekly wage of $ _____

[3] Failure to report to Dr. _____ for medical examination on _____

[4] Other [complete details and documentary evidence]: _____

To Employee: Any statement or evidence you wish to present to the Industrial Commission in opposition to this application should be filed in writing with the Commission on or before fifteen [15] days from the date of this application, as indicated below. The Commission will then determine whether or not payments should be suspended.

If the Commission determines from the preliminary evidence that payments should not be suspended, you will continue to receive your regular compensation payments.

If the Commission determines from the preliminary evidence that payments should be suspened, you will receive notice of the date, time, and place of hearing. Following a hearing the Commission will then determine whether or not payments should be terminated.

Compensation has been paid through 10/12/80

at the rate of $ 160.00 per week.

CERTIFICATE

I hereby certify that the statements set out herein are true and correct to the best of my knowledge and that a copy of the foregoing notice and appilication for hearing, together with supporting documentary evidence, was mailed to the employee at the above address and to the Industrial Commission of Virginia on 2/17, 1981

Date of Application: 2/17/81

Applicant

Subscribed and sworn to before me this 17th day of February, 1981

My commission expires 10-5-83

Ruth C. Barlow
Notary

cc: Claimant
cc: Insured
cc: R. C. Metcalf

38

GOODWIN BROTHERS

DEALERS AND MANUFACTURERS

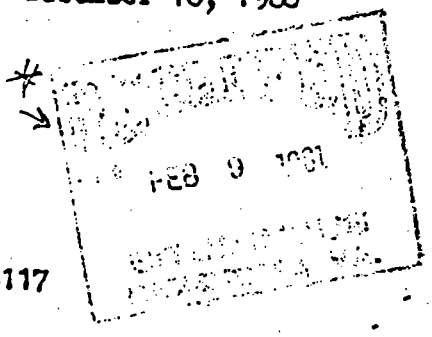
ROUGH AND DRESSED LUMBER

No. 2 COMMON AND BETTER

MINE RUN, VIRGINIA 22568

TELEPHONE: 854-5561

December 16, 1980



Mr. Purcell Talley
Rt. 1, Mineral, Va. 23117

Dear Purcell,

We understand the Doctor has advised that you are able to return to work, providing you do not get your bad finger near machines that will injure it, not lift more than 10 lbs. and do not do any pushing, pulling or climbing.

Please report to work Friday, December 19, 1980 at 8:00 A.M. We will pay you $3.10 per hour for a 40 hour week. Your duties will be cleaning up and driving a short bed dump truck in this area. You will not have to push, pull or climb or lift over 10 lbs, and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Sincerely,

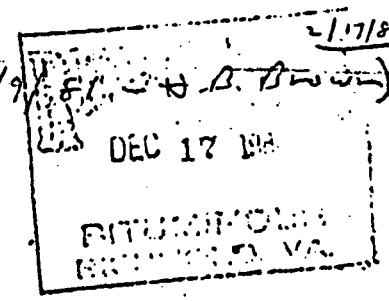
GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

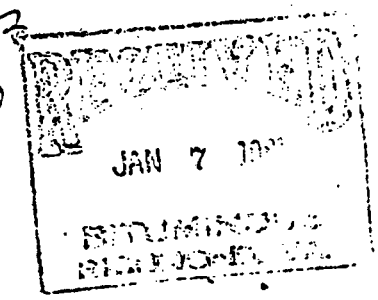
WTG:fs

cc: H. B. Brown-Bituminious Ins. Co. (Rec'd 4/9/81 H. B. Brown)



The above correspond to the limitations in my Dec. 16, 1980 letter.

D Kulund, MD



39.

GOODWIN BROTHERS

DEALERS AND MANUFACTURERS

ROUGH AND DRESSED LUMBER

No. 2 COMMON AND BETTER

TELEPHONE: 854-5561

MINE RUN, VIRGINIA 22568

December 16, 1980

Mr. Purcell Talley
Rt. 1, Box 84,
Mineral, Va. 23117

Dear Purcell,

We understand the Doctor has advised that you are able to return to work, providing you do not get your bad finger near machines that will injure it, not lift more than 10 lbs. and do not do any pushing, pulling or climbing.

Please report to work Friday, December 19, 1980 at 8;00 A.M. We will pay you $3.10 per hour for a 40 hour week. Your duties will be cleaning up and driving a short bed dump truck in this area. You will not have to push, pull or climb or lift over 10 lbs. and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Sincerely,

GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

WTG:fs
CC: H. B. Brown- Bituminious Ins. Co.

2/13/81

Purcell,

This job offer is still open, upon receipt of this letter.

Sincerely,

W. T. Goodwin

Goodwin Lumber Corp.

40

044

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

Warren G. Stamp, M.D., *Chairman*
Charles J. Frankel, M.D.
Daniel N. Kulund, M.D.
Frank C. McCue, M.D.

Robert L. McLaughlin, M.D.
Michael D. Sussman, M.D.
Gwo Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory

Colin A. McLaren, Ph.D.
Steven L. Rego, Ph.D.

December 16, 1980

RECEIVED
FEB 9 1981
BITUMINOUS
RICHMOND, VA.

Mr. Henry Brown
Bituminous Insurance Company
8001 Franklin Farms Drive
Suite 200
Box K-40
Richmond, Virginia

RE: Percell Tally
UVA #84 58 05

Dear Mr. Brown:

Mr. Percell Tally had a splinter enter his right hand on the job in the sawmill, back in October of 1979. I saw him about six weeks after the injury occurred, and during the time, a very serious infection set up in his hand, which almost destroyed it. The infection contained white pus that went all around his palm and down into his index finger, and his hand was swollen like a balloon and stiff.

I brought Mr. Tally to the operating room and removed a large amount of pus from his palm and finger area. Luckily, we were able to save his hand, but he, of course, had a large wound in his palm and some loss of skin on the index finger.

His palm wound is now fully healed, but his proximal interphalangeal joint, that is the middle joint in the index finger, is stiff. I do not expect him to achieve any further motion in the index finger, and I feel that his finger will keep him from doing the type of work that he was doing at the sawmill, which involves lifting and manipulations. I have rated his disability as a permanent partial disability of 25 percent of his hand.

Although Mr. Tally cannot return to his old job at the sawmill, he can certainly do any job that does not involve the use of two good hands. I would not want his hand with the finger sticking out near any machinery, or in work that would involve carrying objects of over ten pounds with both hands, pushing, pulling or climbing.

DEC 1?

Sincerely,

Daniel N. Kulund, MD
Assistant Professor
Orthopedic Surgery, Health
and Physical Education

RECEIVED
JAN 7 1981
BITUMINOUS
RICHMOND, VA.

DNK:jqc
cc: Goodwin Brothers Lumber Company, Mine Run, Virginia

41.

DISTRICT OF COLUMBIA

LEE C. ASHCRAFT
MARTIN E. GEREL
LEONARD J. RALSTON, JR.
LAWRENCE J. PASCAL
JAMES A. MANNINO
THOMAS F. SANTER
J. HUNT BRASFIELD
MARK L. SCHAFFER
ROBERT B. ADAMS
WAYNE M. MANSULLA
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KEVIN B. BYRD
MICHAEL H. FELDMAN
MICHAEL V. KOWALSKI
KARL N. MARSHALL
ROBERT A. TAYLOR, JR.

ASHCRAFT & GEREL
ATTORNEYS AND COUNSELLORS AT LAW
SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VIRGINIA 22304
(703) 751-7400

ROCKVILLE, MD. 20852
SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
(301) 770-3737

WASHINGTON, D.C. 20036
SUITE 700
2000 L STREET, N. W.
(202) 783-6400

LANDOVER, MD. 20785
METRO 400 BLDG.
4301 GARDEN CITY DRIVE
(301) 459-8400

BALTIMORE, MD. 21202
SUITE 805
10 EAST BALTIMORE STREET
(301) 539-1122

MARYLAND

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VIRGINIA

LEE C. ASHCRAFT
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J. HUNT BRASFIELD
PETER M. SWEENY
WAYNE M. MANSULLA
BARRY A. STIEFEL
MARK T. DALY, JR.
JULIA H. BUTLER

February 20, 1981

Department of Workmen's Compensation
Industrial Commission of Virginia
Richmond, Virginia 23214

RE: Purcell Talley v. Goodwin Brothers
I. C. File No: 627-248

Gentlemen:

I received today an Employer's Notice of Application for Hearing. This case is presently pending upon review currently scheduled for March 6, 1981. The review has been requested by the employer in this case. The review involves the very subject which the employer's Notice of Application for Hearing recently filed attempts to address.

In addition to the above stated reasons, the Application is defective for two other reasons: compensation has not been paid through the date of filing of the Application, nor the date of the alleged refusal of selective employment; the Application is not signed and has been notarized in blank.

I respectfully request that this Application be denied as being improper in form as well as subject to a pending review.

Very truly yours,

Peter M. Sweeny

Peter M. Sweeny

PMS:jlb

cc: Robert C. Metcalf, Esquire
Bituminous Insurance Company
Mr. Percell Talley

42,

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

EMPLOYER'S NOTICE OF APPLICATION FOR HEARING

FROM: Bituminous Casualty Corporation
Employer/Insurance Carrier

I. C. File No. 627-248

TO: Purcell Talley
Employee

Date: 2/24/81

Rt. 1
Mineral, Virginia 23117
Address

You are hereby notified that workmen's compensation payments will be suspended on the date through which compensation has been paid as indicated below. if approved by the Industrial Commission for the following reason:

[1] Report of Dr. Kuland to the effect you were able to:

a. return to your regular employment on _____;

b. return to light work on 12/16/80, which was was offered to you and refused without justification.

[Copy of this medical report is attached for your information]

[2] You returned to [light-regular] work on _____ at an average weekly wage of $ _____

[3] Failure to report to Dr. _____ for medical examination on _____

[4] Other [complete details and documentary evidence]: _____

RECEIVED FEB 1981 Industrial Commission of Virginia

To Employee: Any statement or evidence you wish to present to the Industrial Commission in opposition to this application should be filed in writing with the Commission on or before fifteen [15] days from the date of this application, as indicated below. The Commission will then determine whether or not payments should be suspended.

If the Commission determines from the preliminary evidence that payments should not be suspended, you will continue to receive your regular compensation payments.

If the Commission determines from the preliminary evidence that payments should be suspened, you will receive notice of the date, time, and place of hearing. Following a hearing the Commission will then determine whether or not payments should be terminated.

Compensation has been paid through 10/12/80

at the rate of $160.00 per week.

CERTIFICATE

I hereby certify that the statements set out herein are true and correct to the best of my knowledge and that a copy of the foregoing notice and application for hearing, together with supporting documentary evidence, was mailed to the employee at the above address and to the Industrial Commission of Virginia on 2/24, 19 81

Date of Application: 2/24/81

Henry B. Brown (Cir)
Buchanan County Corp.
Applicant

Subscribed and sworn to before me this 24th day of February, 19 81

My commission expires 10-5-83

Ruth C. Barlow
Notary

cc: Claimant
cc: R. C. Metcalf
cc: P. M. Sweeny

KB.

GOODWIN BROTHERS

DEALERS AND MANUFACTURERS

ROUGH AND DRESSED LUMBER

No. 2 COMMON AND BETTER

TELEPHONE: 854-5561

MINE RUN, VIRGINIA 22568

December 16, 1980

Mr. Purcell Talley
Rt. 1, Box 84,
Mineral, Va. 23117

Dear Purcell,

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Please report to work Friday, December 19, 1980 at 8;00 A.M. We will pay you $3.10 per hour for a 40 hour week. Your duties will be cleaning up and driving a short bed dump truck in this area. You will not have to push, pull or climb or lift over 10 lbs. and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Sincerely,

GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

WTG:fs
CC: H. B. Brown- Bituminious Ins. Co.

RECEIVED FEB 4 1981 Industrial Commission of Virginia

2/13/81

Purcell,

This job offer is still open, upon receipt of this letter.

Sincerely,

W. T. Goodwin

Goodwin Lumber Corp.

44

049

DEALERS AND MANUFACTURERS

ROUGH AND DRESSED LUMBER

No. 2 COMMON AND BETTER

TELEPHONE: 854-5561

MINE RUN, VIRGINIA 22568

December 16, 1980

RECEIVED FEB 9 1981 BITUMINOUS RICHMOND VA.

Mr. Purcell Talley
Rt. 1, Mineral, Va. 23117

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Sincerely,

GOODWIN BROS. LUMBER CO.

W. T. Goodwin

W. T. Goodwin

WTG:fs

cc: H. B. Brown-Bituminious Ins. Co.

RECEIVED DEC 17 1980 BITUMINOUS RICHMOND VA.

The above correspond to the limitations in my Dec. 16, 1980 letter.

D Kulund, MD

RECEIVED JAN 7 1981 BITUMINOUS RICHMOND VA.

RECEIVED FEB 1981 Industrial Commission of Virginia

2/2 Attorney

DEPARTMENT OF ORTHOPEDICS AND REHABILITATION
University of Virginia Medical Center
Charlottesville, Virginia 22908

...en G. Stamp, M.D., *Chairman*
...rles J. Frankel, M.D.
...uel N. Kuland, M.D.
...nk C. McCue, M.D.

Robert L. McLaughlin, M.D.
Michael D. Sussman, M.D.
Gwo Jaw Wang, M.D.
Richard Whitehill, M.D.

Research Laboratory
Colin A. McLaurin, Ph.D.
Steven L. Reger, Ph.D.

December 16, 1980

RECEIVED
FEB 9 1981
BITUMINOUS
RICHMOND, VA.

Mr. Henry Brown
Bituminous Insurance Company
8001 Franklin Farms Drive
Suite 200
Box K-40
Richmond, Virginia

RE: Percell Tally
UVA #84 58 05

Dear Mr. Brown:

Mr. Percell Tally had a splinter enter his right hand on the job in the sawmill, back in October of 1979. I saw him about six weeks after the injury occurred, and during the time, a very serious infection set up in his hand, which almost destroyed it. The infection contained white pus that went all around his palm and down into his index finger, and his hand was swollen like a balloon and stiff.

I brought Mr. Tally to the operating room and removed a large amount of pus from his palm and finger area. Luckily, we were able to save his hand, but he, of course, had a large wound in his palm and some loss of skin on the index finger.

His palm wound is now fully healed, but his proximal interphalangeal joint, that is the middle joint in the index finger, is stiff. I do not expect him to achieve any further motion in the index finger, and I feel that his finger will keep him from doing the type of work that he was doing at the sawmill, which involves lifting and manipulations. I have rated his disability as a permanent partial disability of 25 percent of his hand.

Although Mr. Tally cannot return to his old job at the sawmill, he can certainly do any job that does not involve the use of two good hands. I would not want his hand with the finger sticking out near any machinery, or in work that would involve carrying objects of over ten pounds with both hands, pushing, pulling or climbing.

Sincerely,

Daniel N. Kuland, MD
Assistant Professor
Orthopedic Surgery, Health and Physical Education

RECEIVED
JAN 7 1981
BITUMINOUS
RICHMOND, VA.

RECEIVED
FEB 2 1981
Industrial Commission of Virginia

DNK:jgc
cc: Goodwin Brothers Lumber Company, Mine Run, Virginia

DISTRICT OF COLUMBIA

LEE C. ASHCRAFT
MARTIN E. GEREL
LEONARD J. RALSTON, JR.
LAWRENCE J. PASCAL
JAMES A. MANNINO
THOMAS F. SANTER
J. HUNT BRASFIELD
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ASHCRAFT & GEREL
ATTORNEYS AND COUNSELLORS AT LAW
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ONE CENTRAL PLAZA
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WASHINGTON, D. C. 20036
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(202) 783-6400

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METRO 400 BLDG.
4301 GARDEN CITY DRIVE
(301) 459-8400

BALTIMORE, MD. 21202
SUITE 805
10 EAST BALTIMORE STREET
(301) 539-1122

MARYLAND

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MARK L. SCHAFFER
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JOHN E. SUTTER
MICHAEL H. FELDMAN
CLIFFORD B. SOBIN
BARRY M. CHASEN
ALAN B. GROSS

VIRGINIA

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LAWRENCE J. PASCAL
J. HUNT BRASFIELD
PETER M. SWEENY
WAYNE M. MANSULLA
BARRY A. STIEFEL
MARK T. DALY, JR.
JULIA H. BUTLER

February 26, 1981

Department of Workmen's Compensation
Industrial Commission of Virginia
Richmond, Virginia 23214

RE: Purcell Talley v. Goodwin Brothers
I. C. File No: 627-248

Gentlemen:

I have received a second Application for Hearing in the above styled case. The only difference between this Application and that filed on February 17, 1981 is that the recent one is now signed and notarized. My objections to this second Application are the same as are stated in my letter of February 20, 1981.

Very truly yours,

Peter M. Sweeny

PMS:jlb

cc: Robert C. Metcalf, Esquire

Bituminous Insurance Company

Mr. Purcell Talley

46-A

COMMONWEALTH OF VIRGINIA

(Refer to I.C. File No. in all correspondence about this injury.)

I.C. FILE NO. 527-248

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

CARRIER'S NO.

DATE OF ACCIDENT 4/17/79

NOTICE OF REVIEW

RE: PERCELL TALLEY
v.
GOODWIN BROTHERS LUMBER COMPANY

TO THE PARTIES ADDRESSED:

A REVIEW before the full Commission will be held at:

INDUSTRIAL COMMISSION COURTROOM
Blanton Building – 3rd Floor
Governor and Bank Streets
Richmond, Virginia

on March 5, 1981 at 9:30 AM

Defendants, by counsel, made application for Review before Full Commission of decision of Deputy Commissioner TALTON, dated December 31, 1980.

This review is a part of a schedule and cannot be postponed without considerable inconvenience. The Commission will not consent to postponement except upon strictly legal grounds.

No additional evidence of any nature is taken at the time of review before the full Commission.

The Commission's procedure permits the filing of briefs in lieu of appearance or oral arguments.

All parties in interest have the privilege, if they so desire, of being present at the above time and place.

NOTICE TO:

Claimant

Percell Talley
[Notice to Counsel]

Employer

Goodwin Brothers Lumber Company

Insurance Carrier

Bituminous Casualty Corporation
[Notice to Counsel]

Claimant's Counsel

Peter M. Sweeny, Esquire
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

Defendant's Counsel

Robert C. Metcalf, Esquire
P. O. Box 8661
Richmond, Virginia 23226

INDUSTRIAL COMMISSION OF VIRGINIA

053

Date of this Notice 2/11/81 pg

EMPLOYER'S BRIEF ON REVIEW

On April 17, 1979, the claimant got a splinter in his finger while handling lumber at Goodwin Brothers Lumber Company. When injured, the claimant was employed as a laborer. The claim was accepted for compensation which was paid through January 23, 1980 with an award of specific disability of 37.50 weeks representing 25% functional loss of use of his right hand and terminated by the same award, benefits having been paid through October 11, 1980. The claimant, by counsel, filed an application for hearing on October 24, 1980, based on change in condition alleging that the employee continued to be unable to perform his regular work. The employer defends on the grounds of the employee has refused an offer of selective work. Dr. Daniel N. Kuland, the treating physician, stated in a letter of December 16, 1980:

> Although Mr. Talley cannot return to his old job, he can certainly do any job that does not involve the use of two good hands. I would not want his hand, with the finger sticking out near any machinery, or in work that involves carrying objects over 10 pounds with both hands pushing, pulling or climbing.

It is obvious that the claimant can do some kind of work. A job description requesting the claimant to report to work was sent to the claimant on December 16, 1980 stating:

> Your duties will be cleaning up and driving a short-bed dump truck in this area. You will not have to push, pull or climb or lift over 10 pounds and we do not want you to put your bad hand near any machines that would possibly injure your hand.

Deputy Commissioner Talton opined that the job description was not approved by the doctor and that it was not detailed enough. A similar situation existed in Ross vs. Finecastle Country Club, Inc., et al, ~~503~~ 53 O. I. C. 315 (1971) where the employer offered a claimant employment within restrictions laid down by the treating physician, though the treating physician did not specifically approve the job description. As in this case, the claimant did not feel that she was able to perform the type of work offered. In Ross, the Commission stated:

> The ability or inability of an injured employee to return to his regular occupation or any gainful occupation is a determination primarily for the medical profession and the opinion of the treating physician in this case who is a specialist must be given great weight.

Dr. Kuland, the treating physician, approved of work for the claimant within the claimant's physical limitations. A job was offered and received by the claimant within those limitations and this job was refused by the claimant. The employer testified that the job remains available for him today. Dr. Kuland specifically approved the job offered by the employer.

Claimant's attorney will probably argue that the employer really offered the same pre-injury job. There is a grain of truth in that argument. The claimant's prior work was as a general laborer. The new job description includes those activities sometimes done by a general laborer but specifically limits the new job to activities within the

capability of the claimant.

Commissioner Talton was concerned about the job description lacking details. It would be impossible to detail every activity of a clean-up laborer but the limitations are specific.

Should more strenuous activities than authorized be within the scope of general clean-up or driving, then the claimant is certainly justified in refusing to do them based on his job description. As to driving a short-bed dump truck, the job description could have mentioned starting and stopping the truck, accelleration, breaking, driving to and from suppliers. But all of those activities are part of driving a truck and need not be detailed in a job description.

The claimant was unjustified in refusing this offer of work simply because he does not think he can perform that job. It is obvious that the treating physician approved the job generically before the hearing by his letter of December 16, 1980 and specifically after the hearing. The doctor is the best judge of the ability to return to work. Ross vs. Finecastle, supra.

GOODWIN BROTHERS LUMBER COMPANY, Employer, and BITUMINOUS CASUALTY CORPORATION, Insurance Carrier

By Robert C. Metcalf
Counsel

Robert C. Metcalf
NEWMAN & METCALF
5911 West Broad Street
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that I have given a copy of the foregoing Employer's Brief on Review to Peter M. Sweeney, counsel for the employee, this 7th day of March, 1981.

Robert C. Metcalf

MEMORANDUM

STATEMENT OF FACTS

The claimant, Percell Talley, was injured on April 5, 1979 when his right hand was pierced with splinter on the job he had working in a lumber mill for Goodwin Brothers. On April 9, 1980 Deputy Commissioner Yates awarded a twenty-five (25) percent permanent partial disability of the right hand effective January 23, 1980. On October 24, 1980 Mr. Talley, through counsel, filed an Application for Hearing on change in condition alleging that the claimant was unable to engage in his previous occupation according to his treating physician, Dr. Daniel N. Kulund, in a report of October 16, 1980.

A hearing was scheduled in Orange, Virginia before Deputy Commissioner Talton on December 22, 1980.

On December 17, 1980, the Wednesday before the hearing, the claimant received a letter dated December 16, 1980 from W. T. Goodwin offering a job which proported to be within the restrictions of Dr. Kulund. Mr. Goodwin's letter directed Mr. Talley to report to work on that Friday, December 19th. Mr. Talley did not report to this job as directed by Mr. Goodwin's letter.

Mr. Goodwin appeared as a witness at the hearing held on December 22, 1980. No medical evidence was presented by the employer to contradict Dr. Kulund's statement of October 16, 1980 as to the claimant's continued disability. The only evidence of-

fered by the employer was the testimony of Mr. Goodwin. Upon cross-examination, Mr. Goodwin conceded that the job offered in the December 16, 1980 letter was Mr. Talley's pre-injury job. The events of the six days preceding the hearing surrounding this attempted offer of selective employment was the only basis for the employer's defense to the Application for reinstatement of benefits on change in condition.

On December 31, 1980 Deputy Commissioner Talton concluded that the claimant had met its burden of proof of a change in condition and was entitled to disability benefits beginning October 12, 1980. Specifically, Deputy Commissioner Talton concluded that the employer had failed to show that the treating physician had approved the detailed job description prior to the job being offered to Mr. Talley and accordingly, ruled against the employer on its defense. By letter dated January 5, 1981 the employer sought review of Deputy Commissioner Talton's decision.

While this matter has been pending review, the employer has taken further steps to suspend compensation. By date of February 17, 1981, the employer filed an un-notarized Application for Hearing alleging that the claimant was able to return to light work on December 16, 1980 which was unjustifiably refused. In support of this position, they attached their letter of December 16, 1980 with the addition of a hand-written notation by Dr. Kulund stating that the job description contained in the letter corresponded with his limitations outlined in his letter of December 16, 1980. (Emphasis added.) In that medical report which was addressed to the carrier, Dr. Kulund stated: "Although Mr. Talley cannot return to his old job at the sawmill, he can certainly do any job that does not involve the use of two good hands." (Emphasis added)

That report was not received by the insurance carrier until January 7, 1981, subsequent to the December 22nd hearing, and was not submitted to the claimant or counsel until the Application for Hearing was filed on February 17, 1981. After objection by counsel to the February 17, 1981 un-notarized Application for Hearing, a second Application for Hearing was filed by the Employer under date of February 24, 1981 which was notarized. Counsel for the claimant has objected to both Applications for Hearing and the Claims Division has yet to rule upon these Applications.

ARGUMENT

Initially, the claimant filed an Application for Hearing on change in condition alleging that he continued to be temporarily totally disabled following the payment of permanent partial disability. Up until December 16, 1980 this was the one and only issue raised by the claimant. No evidences has ever been offered to contradict the proof of disability between October 12th and December 16, 1980. That issue was straightforward.

The second issue of the alleged offer of selective employment was obviously raised by the employer and carrier in an eleventh-hour attempt to minimize its liability prior to the hearing of December 22, 1980. The fact that the job offer was concocted and presented to the employee in less than a week before the hearing and required his response within 72 hours of the hearing obviously shows that the employer was not making a sincere effort to provide selective employment but rather, was attempting to legally maneuver the employee into a Hobson's choice. This attempt failed in the opinion of Deputy Commissioner Talton.

While his decision is the subject of review at this time, the subsequent events by the employer are now bound-up with the matter of review before the Commission at this time. The latest Applications for Hearing are an attempt to cure the defect found by Deputy Commissioner Talton in his Opinion of December 31, 1980. Furthermore, the employer is attempting to allege that there was in fact a valid offer of selective employment on December 16, 1980 and a subsequent unjustified refusal. This issue has already been determined by Deputy Commissioner Talton. The employer would contend that this offer continues to be outstanding and is approved by Dr. Kulund. This is patently not the case. A review of the December 16, 1980 letter of Dr. Kulund indicates that the employee is not able to return to his pre-injury job. Mr. Goodwin conceded under oath that the job offer of December 16, 1980 was an offer of a pre-injury job. Dr. Kulund's report of December 16, 1980, which was never presented at the hearing on December 22nd, clearly indicates that he is of the opinion that the employee cannot return to his pre-injury job. Furthermore, with the exception of the Application for Hearing filed in February of 1981, the claimant and his counsel have never been advised that a selective employment job was open to the employee and was approved by his physician. Thus, if there is in fact an offer of selective employment and refusal, it could not have occurred prior to February 17, 1981.

It would appear at first blush that the February, 1981 Applications are a separate matter to be considered by the Claims Division and eventually scheduled for hearing if appropriate. However, the job offers upon which the Applications are based are no different than that presented to Deputy Commissioner Talton in

the issue which is presently upon review. Thus, it would be appropriate for the Full Commission to consider these Application in keeping with this Full Review.

CONCLUSION

In conclusion, the claimant submits that he has borne his burden of proof as to continued disability after October 12, 1980 and that the evidence fails to preponderate in showing that the employer properly offered selective employment approved by his treating physician as alleged by the employer. In addition, the applications presently filed by the employer should be rejected by the Full Commission as an attempt to circumvent defects existing at the prior hearing and failing to meet the requisite burden of probable cause. Benefits should be awarded as outlined in the decision of Deputy Commissioner Talton.

Respectfully submitted,

PERCELL TALLEY, Claimant

BY: Mark T. Daly for Peter M. Sweeny
Counsel

ASHCRAFT & GEREL
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

BY: Mark T. Daly for Peter M. Sweeny
Peter M. Sweeny
Counsel for Claimant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed postage prepaid, this 4th day of March, 1981 to all counsel of record.

Mark T. Daly for Peter M. Sweeny
Peter M. Sweeny

Opinion by JOYNER,
Chairman

MAR 19 1981

REVIEW before the Full Commission at Richmond, Virginia, on March 6, 1981.

This claim is before the Full Commission for review of the opinion of December 31, 1980, finding that the claimant continues to be disabled after a specific rating of permanent disability to his right hand.

The record establishes that the claimant, a 46-year old laborer who had been in this employ for a period of some ten years, suffered injury by industrial accident on April 17, 1979, when a splinter became lodged in the thumb of his right hand. The hand subsequently became infected and, after treatment for a period of approximately one year, it was medically determined that the claimant had suffered a twenty-five percent loss of use of the right hand. Compensation for this specific disability rating was paid through October 11, 1980. Thereafter, the claimant filed his current application for hearing on October 24, 1980, alleging that he continued to be totally disabled. Compensation for continuing disability was awarded essentially upon the grounds that certain selective employment, offered by his former employer, had not been medically approved.

The evidence in this regard established [Tr.10] that at some unspecified date certain work in and about the employer's premises which involved cleaning up and some limited truck driving duties had been offered to the claimant. After the claimant's application for hearing was filed on October 24, 1980, the employer made a specific offer of the same employment by letter dated December 16, 1980, which is made part of the record in this claim. This offer stated in part that:

> ". . .Your duties will be cleaning up and driving a short-bed dump truck in this area. You will not have to push, pull, climb or lift over ten pounds and we do not want you to put your bad hand into any machines that would possibly injure your hand."

This job description was within the physical limitations earlier set forth by Dr. Daniel N. Kuland by report of December 16, 1980.

The claimant, who apparently is functionally illiterate, offered no explanation for his refusal of this job offer [Tr.7]. Apparently his basis for refusing this offer was the failure on the employer's part to have the job medically approved.

While we have held in numerous cases that an offer of selective employment extended to a claimant who is receiving compensation for temporary total or temporary partial disability must be medically approved, tthe Industrial Commission has not had occasion to consider an offer of selective employment following a rating for permanent disability. This case, therefore, is one of first impression.

Prior to its amendment in 1975, Section 65.1-56 made no provision for an employee to make a claim for continuing disability after a rating for specific disability. That Code Section was changed effective July 1, 1975 to provide in part that:

> ". . . after compensation has been paid as provided herein, the employee may within one year from date compensation was last due under this section file an application for compensation for incapacity to work, subject to the provisions of §65.1-54 and 65.1-55. . ."

The Legislative intent herein was to compensate a claimant who continued to suffer a partial or total disability as the result of an industrial accident after his compensation for a specific disability rating had been paid.

In this case, the claimant has been offered selective employment which appears to be within his physical capabilities. He has declined to accept this employment without any attempt at performing it. We cannot, upon the basis of this record, find that his refusal to accept the selective employment was justified. Therefore, the opinion of December 31, 1980, is reversed and set aside and compensation is suspended effective October 11, 1980, the date for which compensation for specific disability was last paid.

MOTION TO RECONSIDER

COMES NOW the claimant, Percell Talley, by counsel, and moves the Full Commission to reconsider its review opinion of March 19, 1981. In support hereof the claimant avers the following:

1. THE FULL COMMISSION RELIED UPON EVIDENCE WHICH WAS NOT A PART OF THE RECORD IN THIS CASE AT THE TIME OF THE HEARING.

The review opinion states, at page 2, that the job description involved in this case was within the physical limitations set forth by Dr. Daniel N. Kuland by report of December 16, 1980. While this became apparent later, it was not known by the claimant or his counsel until the employer filed an Application for Hearing in February of 1981. That is, the report of December 16, 1980 was never submitted to the Commission until after Deputy Commissioner Talton issued his opinion on December 31, 1980. The receipt stamps of the carrier themselves verify that the carrier did not have the report until eight days after Deputy Commissioner Talton's opinion was issued. It would violate the claimant's constitutional right to due process to predicate a decision upon evidence which was never revealed to the claimant or his counsel until months after the hearing was held and no opportunity for cross-examination existed.

2. THE FULL COMMISSION FAILED TO RULE ON THE CLAIMANT'S APPLICATION ON CHANGE IN CONDITION.

This proceeding was initiated by the claimant's Application for Hearing on change in condition pursuant to Section 65.1-56 and Section 65.1-99 alleging he continued to be totally disabled after receipt of his permanent disability. The selective employment issue was not raised until the week before the hearing held on December 22, 1980. Even assuming, arguendo, the Full Commission is correct that selective employment was properly offered and refused, it is unrefuted that between October 11, 1980 and December 16, 1980 the claimant was temporarily totally disabled and no selective employment was offered. The Full Commission's opinion upon review failed to rule on this issue. (Claimant does not, by this argument, concede the issue of selective employment.)

3. THE VIRGINIA WORKMEN'S COMPENSATION ACT DOES NOT CREATE A SEPARATE CLASS OF DISABILITY AFTER PERMANENCY HAS BEEN PAID.

The Full Commission's Opinion seeks to distinquish a claimant's status according to whether or not he has been paid permanency. There is no statutory basis for this distinction and such a distinction is arbitrary and capricious. When the Legislature amended Section 65.1-56 in July of 1975 it did not by doing so affect or amend Section 65.1-54, 55 or 63. Thus, these statutes, and their interpretations, were not superseded by that amendment. To do so by decision exceeds the authority of the Commission under Section 65.1-18.

WHEREFORE, it is respectfully submitted that the Commission should grant claimant's Motion to Reconsider, or in the alternative, remand this case for further proceedings.

Respectfully submitted,

BY: _____
Counsel for Claimant

ASHCRAFT & GEREL
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

BY: _____
Peter M. Sweeny
Counsel for Claimant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 24th day of March, 1981 to Robert C. Metcalf, Esquire, P.O. Box 8661, Richmond, Virginia 23226, Counsel for Employer.

_____
Peter M. Sweeny

MEMORANDUM IN OPPOSITION TO
CLAIMANT'S MOTION TO RECONSIDER

COMES NOW the defendants by counsel and for their memorandum in opposition to Claimant's Motion to Reconsider, states as follows:

1. The Full Commission relied on evidence which was a part of the record at the time of the hearing on December 22, 1980. Claimant's attorney, Peter M. Sweeney, states in his motion:

> ...the report of December 16, 1980 (Dr. Daniel N. Kuland, the treating physician's report hereinafter referred to as The Report) was never submitted to the Commission until after Deputy Commissioner Talton issued his opinion of December 31, 1980.

Mr. Sweeney's statement is untrue. The Report was received by the Industrial Commission on December 18, 1980 as evidenced by the Industrial Commission stamp on the reverse side of The Report. After checking to be certain that The Report was in the Industrial Commission file, the writer of this memorandum also placed The Report in the hands of the claimant's counsel on december 22, 1980 prior to the hearing on this matter. While it is true that there are other copies of The Report submitted to the Commission after the December 22, 1980 hearing, the original report was received by the Industrial Commission and marked at the date of receipt on December 18, 1980.

The physical limitation placed on the claimant by Dr. Kuland, in his report, were incorporated into a modified job description by the employer in a letter to the claimant dated December 16, 1980 and received by the claimant on or about December 19, 1980 (See Transcript of Testimony, page 5). In other words, the Full Commission and the Deputy Commissioner based their respective decisions upon the report of Dr. Kuland dated December 16, 1980 and the employer's modified job description of the same date.

2. We believe the other points in claimant's motion need not be addressed at this time.

GOODWIN BROTHERS LUMBER CO.,
Employer, and BITUMINOUS CASUALTY
CORPORATION, Insurer

By _____
Counsel

Robert C. Metcalf
NEWMAN & METCALF
5911 West Broad Street
Richmond, Virginia 23230

CERTIFICATE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Claimant's Motion to Reconsider, was mailed to Peter M. Sweeney, Suite 220, 4660 Kenmore Avenue, Alexandria, Virginia, 22304, this 7th day of April, 1981.

_____

AMENDED OPINION by JOYNER,
Chairman

APR 16 1981

This claim is again before the Full Commission upon a motion of the claimant, by counsel, that the Commission's opinion of March 19, 1981, be reconsidered, which motion is objected to by the employer upon the grounds set forth in its Memordandum filed in Response.

The claimant alleges essentially two grounds for reconsideration: First, that the medical report of Dr. Daniel N. Kuland of December 16, 1980, was not before the Deputy Commissioner at the hearing of this claim on December 22, 1980. This allegation apparently is based upon the mistaken belief that subsequent copies of this report, which were marked received at the Industrial Commission after the date of the hearing, were the only copies filed. However, the record establishes that the original of Dr. Kuland's report was marked received on December 18, 1980, and was therefore properly considered in connection with this claim.

Second, the claimant moves for reconsideration upon the ground that the evidence is unrebutted that he was disabled between October 11 and December 16, 1980, when Dr. Kuland issued his report indicating that the claimant could perform work which did not involve the use of two good hands and setting forth certain work limitations. This report was

followed by an offer from the claimant's former employer, also dated December 16, 1980, of work within the limitation set forth by Dr. Kuland. The next prior report is that of Dr. Kuland of October 16, 1980, which notes disability at that time. We, therefore, find upon reconsideration that the claimant's motion to reconsider in this regard is well taken and that compensation should be awarded for a period commencing fourteen days prior to the filing of the claimant's application for hearing [I.C. Rule 13], to December 16, 1980, the date on which the selective employment within the claimant's physical capabilities was offered to him and declined without justification.

The opinion of the Full Commission of March 19, 1981 is, therefore, annulled and set aside. The opinion of December 31, 1980, is reversed and set aside and the following award shall be entered.

A W A R D

An award is entered in favor of the claimant at the rate of $80.00 per week for temporary total disability commencing October 10, 1980, and continuing to December 16, 1980.

From compensation there shall be deducted and paid to Peter M. Sweeney an attorney's fee of $250.00 for legal assistance rendered the claimant in this matter.

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one)
- [x] Show to whom and date delivered ____¢
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  Show to whom, date, and address of delivery $____
  (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: RO-627-248
Peter M. Sweeney
4660 Kenmore Ave, Suite 2200
Alexandria, VA 22304

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 327190 | INSURED NO.

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I have received the article described above.
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L. Robbins

4. DATE OF DELIVERY

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APR 20 1981
CHARLEY DUKE

5. ADDRESS (Complete only if requested)

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CLERK'S INITIALS

☆ GPO: 1979-272-303

NOTICE OF APPEAL

COMES NOW, Percell Talley, by counsel, and hereby serves Notice of his appeal from the Opinion of the Commission and that the Appellant challenges the sufficiency of the evidence to support the findings of the Commission.

PERCELL TALLEY, Claimant

BY: _____
Counsel

ASHCRAFT & GEREL
4660 Kenmore Avenue, Suite 220
Alexandria, Virginia 22304

BY: _____
Peter M. Sweeny
Counsel for Claimant

APR 1981
Industrial Commission

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 24th day of April, 1981 to Robert C. Metcalf, Esquire, P.O. Box 8661, Richmond, Virginia 23226, Counsel for Employer.

_____
Peter M. Sweeny

ASSIGNMENTS OF ERROR

1. The Industrial Commission misinterpreted and misapplied Section 65.1-63, Code of Virginia, in concluding that the claimant had unjustifiably refused a valid offer of selective employment.

2. The decision of the Industrial Commission that the claimant's refusal of the alleged selective employment offered pursuant to Section 65.1-63 was unjustified was unsupported by and contradicted by the evidence.