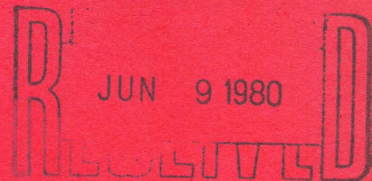


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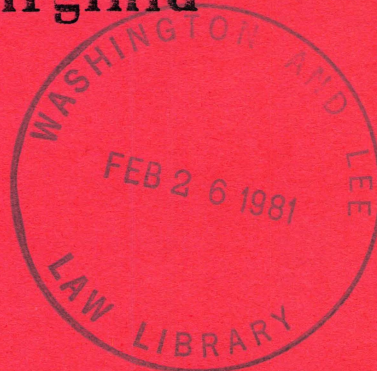
CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 791446



FAIRFAX HOSPITAL AND AETNA
CASUALTY AND SURETY COMPANY,

.....Appellants

v.

THERESA DeLaFLEUR,

.....Appellee.

JOINT APPENDIX

R. Craig Jennings
1012 North Utah Street
Arlington, Virginia 22201

Counsel for Appellants

Robert K. Richardson
Suite 202
4031 University Drive
Fairfax, Virginia 22030

Counsel for Appellee

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Mathew N. Smith, M.D., F.A.C.S., P.C.

NEUROLOGICAL SURGERY
FOUR SEASONS OFFICE BUILDING
3016 WILLIAMS DRIVE
FAIRFAX, VIRGINIA 22031
TELEPHONE 560-1146

April 5, 1978

R. Craig Jennings, Esquire
2936 Chain Bridge Road
Suite 230
Oakton, Virginia 22124

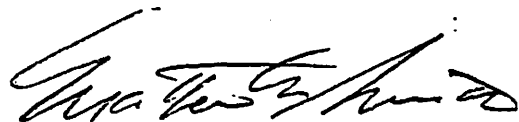
Re: Theresa DeLaFleur

Dear Mr. Jennings:

✓ Regarding your recent queries - as of mid-August, Mr. DeLaFleur was improving to the point where we anticipated a work return in September. The car accident therefore, which occurred in August, obviously played a major role in her inability to return to work at the Fairfax Hospital.

Based on her present condition, I believe that the likelihood was that she would have been back to work now sufficiently recovered from her accident of March 11, 1976 had not the car accident occurred. However this statement must be tempered by the fact that she did have a lesion on the myelogram at the L4-5 level on the left side before the car accident occurred. ✓

Very truly yours,



Mathew N. Smith, M.D.

MEIS/dc

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

File No. _____

Case of F 53 CC 467041 RG

ATTENDING PHYSICIAN'S REPORT

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

1. NAME OF INJURED EMPLOYEE (First, middle initial, last) <u>Theresa DeLaFleur</u>		2. DATE OF INJURY (Mo., day, yr.) <u>3-11-76</u>	
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) <u>4500 Kling Drive, Alexandria, Va. 22312</u>		4. DATE OF BIRTH (or age) (Mo., day, yr.) <u>1-28-43</u>	5. SEX <u>Female</u>
6. NAME OF EMPLOYER <u>Fairfax Hospital</u>		7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code) <u>Falls Church, Va.</u>	
8. DATE OF FIRST VISIT (Mo., day, yr.) <u>4-18-77</u>	9. DATE DISCHARGED (Mo., day, yr.) 	10. WHO AUTHORIZED TREATMENT? 	
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED <u>see previous report</u>			
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.) <u>Diminished range of motion - Trunk. Positive straight-leg right 70°, left 50°. Weakest EHL right. DTR - SL. Depressed left foot.</u>			
13. DIAGNOSIS <u>Wrip - L4-L5 - left</u>		14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM	
15. NATURE OF TREATMENT <u>Myelogram + surgery (L4-L5 + Fusion) drained abscess</u>		16. DATES OF YOUR TREATMENT (Mo., day, yr.) 	
17. WAS EMPLOYEE HOSPITALIZED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of hospital in item 19)		18. WERE X-RAYS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> 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 <u>see previous report</u>			
20. WAS THERE DISABILITY FOR WORK? <input type="checkbox"/> YES <input type="checkbox"/> 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.) <u>unknown</u>
		C. DATE ABLE TO RETURN TO REGULAR WORK (Mo., day, yr.) 	
21. WILL THERE BE PERMANENT DEFECT, OR FACIAL OR HEAD DISFIGUREMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms).			
22. NAME OF ATTENDING PHYSICIAN (Type or print) <u>Mathew N. Smith, MD, FACS, PC</u> <u>ID#54-1056080</u>		23. ADDRESS (Number and street, city, state, zip code) <u>3016 Williams Drive</u> <u>Fairfax, Virginia 22031</u>	
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT. SIGNATURE <u>Mathew N. Smith</u> M. D. SIGNATURE OF ATTENDING PHYSICIAN		25. DATE OF THIS REPORT <u>2-13-78</u>	

COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME. 2

Mathew N. Smith, M.D., F.A.C.S., P.C.

NEUROLOGICAL SURGERY
FOUR SEASONS OFFICE BUILDING
3016 WILLIAMS DRIVE
FAIRFAX, VIRGINIA 22031
TELEPHONE 560-1146



March 9, 1978

Aetna Casualty & Surety Division
7926 Jones Branch Road
McLean, Virginia 22101

526-832

Re: Theresa DeLaFleur
#F 53 CC 467041

Dear Mrs. Downey:

Theresa DeLaFleur presently has evidence of a herniated disc at L4-5 on the left side. She will re-enter the hospital for a myelogram this Monday and the surgery is to be done later on in the month by myself and Dr. Malka.

For further information, contact this office.

Very truly yours,

Mathew N. Smith, M.D.

MNS/dc

MAR 14 1978

THE FAIRFAX HOSPITAL

3300 GALLOWES ROAD
FALLS CHURCH, VIRGINIA 22046

DISCHARGE SUMMARY

DE LA FLEUR, Theresa

54-42-95

ADM:

3/12/78

DISCH: 3/15/78

PHYSICIAN:

Matnew N. Smith, M. D.

PRESENT ILLNESS: This is a readmission for this thirty-five year old female, who last Summer had a laminectomy for herniated disc, L5, S1 on the right side. At that time the myelogram showed a additional defect at L4, 5 on the left. This area was explored at operation and not found to warrant disc excision. Postoperatively she did well, was due to return to work in September, however in mid-August she was involved in a car accident and had exacerbation of her back pain and also neck, left shoulder and arm pain. Serial examinations, in this examiner's office, found weakness of extensor hallucis longus and positive straight leg raising on the left side. Repeat myelogram was suggested and for this reason the patient enters the hospital.

PHYSICAL EXAMINATION: Revealed little new since her discharge. She has a reasonably well healed laminectomy incision. She has become somewhat obese since her previous examination. Neurologic examination otherwise revealed some diminished range of motion of the neck and absence of positive findings insofar as weakness, sensory or reflex changes are concerned in the left upper extremity. Her back is limited somewhat range of motion. Straight leg raising positive bilaterally on the left at 60 degrees right about 30 degrees. There is weakness of extensor hallucis longus muscle on the left.

LABORATORY DATA: Lumbar and cervical myelograms revealed a small defect C 5,6 on the left. A prominent defect at L4,5 on the left side. CBC, urinalysis were normal. Spinal fluid studies were normal.

HOSPITAL COURSE: After the myelogram she remained for two days because of postmyelographic complaints. She is discharged for readmission for elective surgery in approximately twelve to fourteen days.

DIAGNOSIS: HERNIATED LUMBAR DISC, L4,5, LEFT SIDE.

MNS/mj
3/15/78
3/17/78

Matnew N. Smith, M. D.

THE FAIRFAX HOSPITAL

3300 GALLOWES ROAD
FALLS CHURCH, VIRGINIA 22046

DISEASE HISTORY:

COLLAPSE, Anorexia

#04-42-95

Adm: 3/26/76

DISCH: 4/4/76

PHYSICIAN: A. Smith, M.D.

PRESENT ILLNESS: This patient has a long rather involved history, returns at this time for elective laminectomy fusion the following morning. Please see her previous admission for details. Her interia history is not remarkable. Her symptoms are unchanged. The findings were the same, that is, specifically diminished trunk motion, positive straight leg raising on the left, weakness extensor hallucis longus muscle on the left.

PHYSICAL EXAMINATION: The general physical, aside from some obesity, is unremarkable.

LABORATORY DATA: CBC and urinalysis were normal. Chest X-ray was refused.

HOSPITAL COURSE: She was taken to the operating room on 3/27, laminectomy at L4-5 was carried out on the left with removal of a herniated disc followed by a spinal fusion by Dr. Malka. Postoperatively, she did well although she continued having significant back and leg pain. She was ambulated in routine fashion. She was afebrile and independently ambulatory with less pain but still some pain. She is discharged on Percodan. Her sutures will be removed at a later time. Postoperative hematocrit was 37.2.

FINAL DIAGNOSIS: HERNIATED INTERVERTEBRAL DISC
SPINAL INSTABILITY, CRATEL

AS/vk
4/4/76
4/5/76

M. Smith, M.D.

Mathew N. Smith, M.D., F.A.C.S., P.C.

NEUROLOGICAL SURGERY
FOUR SEASONS OFFICE BUILDING
3016 WILLIAMS DRIVE
FAIRFAX, VIRGINIA 22031
—
TELEPHONE 560-1146

October 2, 1978

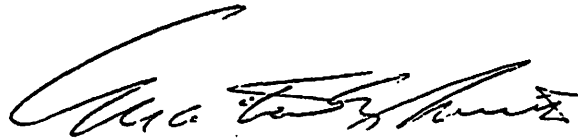
Robert K. Richardson, Esquire
4031 University Drive - Suite 202
Fairfax, Virginia 22030

Re: Theresa DeLaFleur

Dear Mr. Richardson:

I don't entirely understand the need for clarification. I have no intention of changing my opinion in this case as there is no evidence for me to change my opinion. In essence as stated on several occasions, Mrs. DeLaFleur had an exacerbation of a pre-existing condition. The condition being a disc injury related to an industrial accident and the exacerbation resulting from an auto accident. //

Very truly yours,



Mathew N. Smith, M.D.

MNS/dc

THERESA DeLaFLUER, Claimant

v. Claim No. 526-832

FAIRFAX HOSPITAL, Employer
AETNA CASUALTY & SURETY COMPANY, Insurer

Mr. Robert K. Richardson
Attorney at Law
4031 University Drive
Suite 202
P. O. Box 367
Fairfax, Virginia 22030
for the Claimant

Mr. R. Craig Jennings
Attorney at Law
1012 North Utah Street
Arlington, Virginia 22201
for the Defendants

Hearing before Deputy Commissioner HINER, at Fairfax,
Virginia, on January 10, 1979.

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

DEPUTY COMMISSIONER HINER:

Mr. Jennings, it's on your application, what do you rely
on?

MR. JENNINGS:

We rely upon the medical report of Dr. Smith under date of
April 5, 1978, wherein he indicates that as of that date he feels

that Mrs. DeLaFluer, as of that time, could return to work on her regular duties if it had not been for the car accident that occurred back in August of '77.

DEPUTY COMMISSIONER HINER:

other

Do you have any/evidence you want to put on at this time?

MR. JENNINGS:

No. Mr. Richardson.

MRS. THERESA DeLaFLUER, CLAIMANT

BY MR. RICHARDSON:

Q Mrs. DeLaFluer, in addition to Dr. Smith you were also being treated by Dr. Malaka, Dr. Jeffrey Malaka?

A Yes. Right.

Q What was Dr. Malaka doing as compared to what Dr. Smith was doing in your treatment?

A Dr. Malaka performed a spinal fusion for orthopedic surgery.

Q He did the surgery-- Dr. Smith did the diagnosis and Dr. Malaka did the surgery?

A Dr. Smith did a laminectomy. Dr. Malaka did a spinal fusion at the same time.

Q Okay. And then between the two doctors who was the one that you were supposed to report to to find out when you could go back to work with regard to the fusion?

A Dr. Malaka.

Q And the report from Dr. Malaka, the handwritten note August 1978, was when you were released to return to work by Dr. Malaka

A Right.

Q And did you subsequently apply for work?

A Yes, I did.

Q How long did it take you to find a position?

A I returned to work on October 16.

Q October 16, and that was at again Fairfax Hospital?

A Right, same position.

Q Have any of your medical bills for any of the surgery or treatment, which have been made a part of the record previously for any of the medical treatment related to the injury been paid by Aetna?

MR. JENNINGS:

I object to that. I think that's immaterial.

MR. RICHARDSON:

Well, if Aetna has paid any medical---

MR. JENNINGS:

It's irrelevant.

MR. RICHARDSON:

The reason for bringing the point up is a previous

ruling by the Commission, the medical expenses were ordered paid.

MR. JENNINGS:

Well, who said that they have come from-- Your contention is that they came from the car accident, so why should we be paying them?

MR. RICHARDSON:

Well, that's the point that I want to clarify to what extent we're going to have to determine what medical bills are to be paid out of this action and what medical bills are not.

MR. JENNINGS:

Well, okay. Let me just say my position real quick. Until some doctor says that it came from the industrial accident not the car accident, then I'm not going to pay for them, that is, or suggest to Aetna that they pay for them. I mean I don't think you can have your cake and eat it too, claim it in the car accident case and then have us pay for them in the industrial accident.

MR. RICHARDSON:

We would take the position that the disability

caused by the injury from the treatment of those injuries is related to the--is covered by compensation

DEPUTY COMMISSIONER HINER:

I'd simply say this, Mr. Richardson, that the Commission's award simply requires the employer to pay all medical bills occasioned by this industrial accident.

MR. RICHARDSON:

That's correct.

DEPUTY COMMISSIONER HINER:

That's it.

MR. RICHARDSON:

And there is apparently a dispute as to which ones are occasioned by the industrial accident. We're taking the position that if the disability is occasioned by the industrial accident, the medical expenses related to that disability occasioned by arising from the industrial accident and are proper for compensation, and Mr. Jennings takes---

DEPUTY COMMISSIONER HINER:

Well, that's what they've got to prove then depending on what the evidence is, the reason for the

cause of the particular hospitalization. I think we have to get into that issue.

MR. JENNINGS:

Couldn't agree more. We've already paid for, I think, one laminectomy that was occasioned by the industrial accident.

DEPUTY COMMISSIONER HINER:

I think what you're going to have to do, Mr. Richardson is be specific about what you're claiming, about what medical expences haven't been paid. Because I'm not going to be able to separate them unless I know what you contend the carrier owes. I don't think they can respond just generally without some indication from you as to what you expect or claim is compensation related and what isn't.

MR. RICHARDSON:

I can obtain itemized statements from each of the attending physicians and from the doctors who---

DEPUTY COMMISSIONER HINER:

I think it's going to require more than that. I think it's going to require a statement from doctors as to what caused it, as to which accident or which

incident did occasion the treatment of---

MR. RICHARDSON:

I believe we've already got that from the standpoint of Dr. Smith indicating that---

DEPUTY COMMISSIONER HINER:

Well, I have not been back, I have not read all these medicals in this file. If you're satisfied to submit it on the medical evidence that's in the file now, that's all right with me. I'm just telling you what I'm going to have to have to have to decide the case.

MR. RICHARDSON:

I would request leave to review the medical expenses we've got and verify what has been submitted to the Commission because, to be honest, I don't know what expenses have been submitted and what have not. Some of them have been sent to Mrs. DeLaFleur, some to me and to some of the insurance companies. I don't know where all the different treating physicians and doctors have been sending their bills.

DEPUTY COMMISSIONER HINER:

I would simply say this. If they're no further

along than that, I don't know that that issue can even be tried today. I think maybe you ought to get that together and get together with Mr. Jennings and see exactly what the issue is. I think it's a probative issue now.

MR. RICHARDSON:

Then the issue we're talking about today is compensation from when it was last ordered through the time she returned to work?

DEPUTY COMMISSIONER HINER:

Right. Now I don't object to going into the issue of the medicals if the file was in posture and if the evidence was in posture, we could do it, but if you're unable to tell me exactly what bills you think should be compensation, have not been paid, then I don't think I'm in any position to rule on it. I think you've got to be more specific in what you claim.

MR. RICHARDSON:

I'd have to get itemizations on the bills because I don't know which ones have not been paid.

DEPUTY COMMISSIONER HINER:

All right. Well, I suggest you do that, get

together with Mr. Jennings if there is still an issue and it can be decided on the record as it is now. If not, we'll just have to set it down for a hearing on that issue.

MR. RICHARDSON:

Fine.

DEPUTY COMMISSIONER HINER:

Okay? Mr. Jennings? All right?

MR. JENNINGS:

Yes, sir.

DEPUTY COMMISSIONER HINER:

Okay, go ahead.

MR. RICHARDSON:

I have no further questions of Mrs. DeLaFluer.

MR. JENNINGS:

Let me ask you a few if I may.

BY MR. JENNINGS:

Q You were released by Dr. Jeffrey Malaka, orthopedic surgeon, to return to work, regular duties, on August 29? ✓

A Yes.

Q Now, you had a car accident back in August of 1977?

A Right.

Q And you were under Dr. Smith's care at that time?

A Yes.

Q You remained under Dr. Smith's care after that car accident?

A Yes.

Q Indeed, you were under Dr. Smith's care and had been hospitalized in March of 1978?

A Yes.

Q And you had a lumbar laminectomy and a removal of a disc in March of 1978?

A Yes.

Q And a fusion at that time?

A Right.

Q That's where Dr. Malaka came in.

A Yes.

Q You remained under Dr. Smith's care throughout 1978 up until, I guess, as recently as last month?

A And Dr. Malaka's care.

Q And Dr. Malaka's care, right. Both of them.

A Yes.

Q By the time you had your car accident in August of 1977, there had been no discussion at that time about any further disc surgery had there?

A Yes, because my myelogram previous to that surgery showed two ruptured discs and they only did one.

Q They operated on one?

A Yes.

Q You say it showed two?

A Yes.

Q And he had operated on one back in--what?

A July of '77.

Q July of '77. Had he discussed with you getting ready to release you to return to work in September of '77?

A Yes.

Q But the car accident happened and then you couldn't go back to work, is that correct?

A Right.

Q Now you do have a claim against the driver of the other car?

A Yes. We haven't settled that claim.

Q So you have a claim pending, right?

A Yes.

Q And in that claim you're contending that the surgery in March of last year, '78, was caused by the car accident?

A No.

Q You're not contending that?

A No.

Q Has suit been filed? You don't know?

A No.

Q Okay.

DEPUTY COMMISSIONER HINER:

Your answer is that you don't know, is that correct?

A Right.

Q Have you submitted the bills for the hospitalization and the laminectomy and fusion to either the insurer for the person who hit you?

A No. I had a different injury in the car accident that had nothing to do with my back.

Q Nothing to do with your back at all?

A Not my lower back, no. I hurt my neck in the car accident.

Q When Dr. Smith reports that you flared up your back condition again, that's not correct?

A That's possible, but I think in a further report, if you keep on reading, he said it would have happened no matter what, the next time I sneezed, the next time I lifted something at work; it was a pre-existing condition before the car accident.

Q If the says that, Mrs. DeLaFluer, I don't know where he says that.

A Well, it's in there.

Q Well, if it's in there, it's in there. You don't know if suit has been filed in this other claim though?

A No. We haven't settled that claim, period.

Q Well, let me ask you, did you have medical pay coverage on your car, on your automobile?

A Yes.

Q Did you submit the bills for the treatment that has been rendered by Dr. Smith and Dr. Malaka to the medical pay carrier?

A Only as far as my neck is concerned.

Q Nothing as far as your back? Hasn't been submitted?

A Pardon?

Q Didn't submit the hospitalization in March of last year to them?

A No.

Q Where have you submitted the bill.

A I haven't.

MR. JENNINGS:

That's all I have.

MR. RICHARDSON:

To clarify the personal injury case, suit has not

yet been filed. To what extent the medicals and disability related to the automobile accident as compared to the industrial accident are going to be claimed in that case is totally dependent on what the doctors say. Dr. Smith is going to be the same doctor we'll be relying on in the personal injury case as we are here. We can do no more than what he tells us in his reports. We are bound by what he has already said in these reports, so if he says there is a toss-up there on to what extent they're related each way---

DEPUTY COMMISSIONER HINER:

Well, we may just have another issue here in this case later on, unfortunately, over some of these medicals, that's what I'm talking about.

MR. RICHARDSON:

That's correct. I think there's going to have to be a determination on the personal injury case as to how much of them go there and how much go here.

DEPUTY COMMISSIONER HINER:

Do you have any other questions for her?

MR. RICHARDSON:

No, I do not.

DEPUTY COMMISSIONER HINER:

Okay.

BY DEPUTY COMMISSIONER HINER:

Q What day did you go back to work?

A October 16, 1978.

Q October 16, '78, so you're not claiming any compensation after that date, is that correct.

MR. RICHARDSON:

That's correct.

BY MR. RICHARDSON:

Q You've been working full time on your---

A No.

Q --permanent part-time basis as you worked prior to the accident since October 16?

MR. JENNINGS:

I don't mean to pick at a dead horse, but I think the release to return to regular duty says on August 29, is the date. I don't care if she ever went back to work.

DEPUTY COMMISSIONER HINER:

I understand that, but she has testified as to when she went back to work and I haven't the vaguest

notion. I'm just dependent upon what the---

MR. JENNINGS:

Oh, okay.

DEPUTY COMMISSIONER HINER:

Thank you.

(Witness Excused)

(Case Concluded)

V I R G I N I A : I N T H E I N D U S T R I A L C O M M I S S I O N

THERESA DeLaFLUER, Claimant

v. Claim No. 526-832

Opinion by HINER
Deputy Commissioner

FAIRFAX HOSPITAL, Employer
AETNA CASUALTY & SURETY COMPANY, Insurer

MAY 18 1979

Mr. Robert K. Richardson
Attorney at Law
4031 University Drive, Suite 202
P. O. Box 367
Fairfax, Virginia 22030
for the Claimant.

Mr. R. Craig Jennings
Attorney at Law
1012 North Utah Street
Arlington, Virginia 22201
for the Defendants.

Hearing before Deputy Commissioner HINER, at Fairfax,
Virginia, on January 10, 1979.

This case is before us on application of the employer,
filed April 19, 1978, alleging a change in condition in that the
employee was able to resume regular employment by April 5, 1978.

The case has been the subject of previous awards of the
Commission, pursuant to which compensation on account of total
incapacity resulting from an injury to the back has been paid at
a rate of \$64.01 per week through April 19, 1978.

The record establishes that the claimant was about ready
to return to work in August or September of 1977, having substantially
recovered from the injury of March 11, 1976, when she was involved
in an automobile accident. This accident and the subsequent
injuries caused considerable complications in the management of

this particular case.

The employer in support of the application relies primarily upon the medical record of the case, with particular reference to the report of Dr. Mathew N. Smith of April 5, 1978. Dr. Mathew Smith is the treating neurosurgeon who treated the claimant all along and who participated in the operative procedures performed upon the claimant. In this report Doctor Smith stated:

"Regarding your recent queries - as of mid-August, Mr. DeLaFleur was improving to the point where we anticipated a work return in September. The car accident therefore, which occurred in August, obviously played a major role in her inability to return to work at the Fairfax Hospital.

Based on her present condition, I believe that the likelihood was that she would have been back to work now sufficiently recovered from her accident of March 11, 1976 had not the car accident occurred. However this statement must be tempered by the fact that she did have a lesion on the myelogram at the L4-5 level on the left side before the car accident occurred."

In addition, the employer relies upon the report of Dr. Jeffrey S. Malka, the orthopedic surgeon who also participated in the last operative procedure and performed the spinal fusion. Doctor Malka reported on August 29, 1978:

"May return to full duty including lifting, etc. & labor & delivery."

On October 2, 1978, in response to an inquiry from the

claimant's attorney, Dr. Mathew Smith reported further:

"I don't entirely understand the need for clarification. I have no intention of changing my opinion in this case as there is no evidence for me to change my opinion. In essence as stated on several occasions, Mrs. DeLaFleur had an exasperation of a pre-existing condition. The condition being a disc injury related to an industrial accident and the exasperation resulting from an auto accident."

The claimant herself testified that she did return to work at Fairfax Hospital at her pre-injury position on October 15, 1978. She claims no compensation beyond that date.

At the hearing an issue arose regarding the responsibility of the employer for certain medical expenses. Due to the unavailability of sufficient evidence to decide that issue, this opinion will be confined to the return to work issue in the pending application.

From an entire review of this record, we are persuaded, and find, that the claimant had recovered from the disabling effects of the industrial accident of March 11, 1976 by April 19, 1978. The reports of Doctor Smith, who treated the claimant during both injuries, clearly on October 2, 1979 attributes the disability subsequent to his April report to the exacerbation of the industrial injury by the auto accident and does not change his previous appraisal of her industrially related disability.

Our award shall enter accordingly.

A W A R D

It is hereby ordered that the outstanding award of the Commission be, and it hereby is, vacated and set aside effective April 19, 1979.

The employer shall continue to provide medical attention limited to that which can be proven to have been occasioned by the accident of March 11, 1976.

The case is ordered removed from the docket.

COMMONWEALTH OF VIRGINIA



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

I.C. FILE NO. 526-832

DEPARTMENT OF WORKMEN'S COMPENSATION INDUSTRIAL COMMISSION OF VIRGINIA

P. O. BOX 1794

RICHMOND, VIRGINIA 23214

CARRIER'S NO.

DATE OF ACCIDENT 3/11/76

NOTICE OF REVIEW

RE: Theresa DeLaPluer
v.
Fairfax Hospital

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 July 31, 1979 at 11:00 A.M.

Claimant, by counsel, made application for review before full Commission of decision of Deputy Commissioner HINEZ, dated May 18, 1979.

[Claimant, by counsel, also asks for determination concerning responsibility for certain medical expenses]

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.

INDUSTRIAL COMMISSION OF VIRGINIA

Claimant

Theresa DeLaPluer
[notice to counsel]

Employer

Fairfax Hospital

Insurance Carrier

Aetna Casualty & Surety Company
[notice to counsel]

Claimant's Counsel

Robert K. Richardson, Esq.
4031 University Drive, Suite 202
P. O. Box 367
Fairfax, Virginia 22030

Defendant's Counsel

R. Craig Jennings, Esq.
1012 North Utah Street
Arlington, Virginia 22201

Submit brief
7/9/79
Date of this Notice 27



VIRGINIA:
IN THE INDUSTRIAL COMMISSION

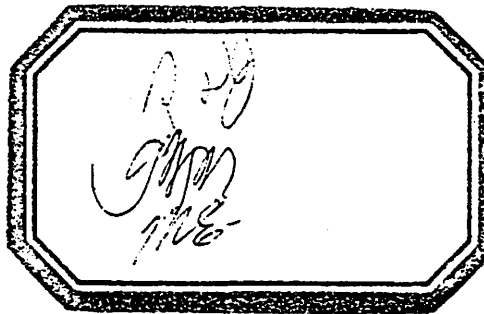
THERESA DeLaFLUER, Claimant

v. Claim No. 526-832

FAIRFAX HOSPITAL, Employer
AETNA CASUALTY & SURETY COMPANY, Insurer

Robert K. Richardson, Esquire
P.O. Box 367
Fairfax, Virginia 22030
for the Claimant.

R. Craig Jennings, Esquire
1012 North Utah Street
Arlington, Virginia 22201
for the Defendants.



Opinion by JOYNER,
Chairman

SEP 4 1979

REVIEW before the Full Commission at Richmond, Virginia, on
uly 31, 1979.

This claim is before the Full Commission for review of the opinion
of May 18, 1979, finding that the claimant had recovered from the effects of her
industrial accident of March 11, 1976, and that she could have returned to her
regular employment but for other non-related injuries by April 5, 1978.

No useful purpose would be served here by a detailed review of the
extensive medical records before the Commission. Suffice it to say that the claimant
suffered back injuries on March 11, 1976, by industrial accident which resulted in
an initial period of disability commencing on April 8, 1976. Various awards for

periods of disability has been entered since that time. On May 3, 1977, a myelogram indicated a ruptured disc at the L5-S1 interspace on the right and at the L4-5 interspace on the left. However, this initial diagnosis was not confirmed by surgery in July of 1977. Following this surgery there was no medical evidence that the claimant had recovered to the point that she could resume her regular occupational duties before she suffered back injury by automobile accident in October of 1977. A careful review of all medical evidence since that date does not persuade us that the employer has met the requisite burden of proof in establishing that the claimant recovered from the effects of her industrial accident until August 29, 1978, when she was released to return to her regular employment. The opinion appealed from will be modified to provide for compensation for temporary total disability from April 19, 1978, the date for which compensation was last paid, until August 28, 1978. We further find that the March, 1978 surgery was causally related to the industrial accident of March 11, 1976, and that the employer should be responsible for the cost of this medical treatment.

A W A R D

An award is entered in favor of the claimant at the rate of \$64.01 per week for temporary total disability beginning April 19, 1978 through August 28, 1978¹⁹⁷⁸, 1979.

The employer shall pay or cause to be paid the cost of medical treatment rendered the claimant in March, 1978, by surgery.

From compensation there shall be deducted and paid to Robert K. Richardson an attorney's fee of \$450.00 for legal assistance rendered the claimant herein.

SLENKER, BRANDT, JENNINGS & JOHNSTON

ATTORNEYS AND COUNSELLORS AT LAW

1012 NORTH UTAH STREET

ARLINGTON, VIRGINIA 22201

(703) 522-4678

NORMAN F. SLENKER
JOHN J. BRANDT
R. CRAIG JENNINGS
WALTER L. O'NEAL (1936-1974)
JOHN H. JOHNSTON
JOSEPH D. ROBERTS
JOHN K. COLEMAN

September 6, 1979

FAIRFAX COUNTY OFFICE
4085 CHAIN BRIDGE ROAD, SUITE 400
FAIRFAX, VIRGINIA 22030

INDUSTRIAL COMMISSION OF VIRGINIA
Department of Workmen's Compensation
Post Office Box 1794
Richmond, Virginia 23214

Re: I. C. File No. 526-832
Theresa DeLaFleur
v.
Fairfax Hospital

ATTN: Honorable Robert P. Joyner, Commissioner

Gentlemen:

I am in receipt of the Review Opinion dated September 4, 1979. In the award the insurer is directed to pay temporary total benefits beginning April 19, 1978, through August 28, 1979. I assume the latter date is a typographical error and should read August 28, 1978. I assume this aspect of the matter can be corrected by the Commission.

I also note in the Award that the employer is required to pay for the laminectomy and fusion performed in March 1978. I would like to be reheard by the Commission in connection with this issue for two reasons. First, there is no medical evidence in the record whatsoever causally connecting that surgery to the industrial accident. Secondly, that issue has never been before the Commission for resolution and I am respectfully drawing your attention to the first paragraph on Page 3 of Deputy Commissioner Hiner's Opinion of May 18, 1979. I am at a loss to explain to my client how we are now made responsible for that surgery when that matter was not the subject of the application before the Commission, nor was it in any fashion the subject matter of the Hearing Commissioner's Opinion. I believe it was understood at the hearing that that matter was not before the Commission and, therefore, we took no steps whatsoever to present any evidence on this point.

I would hope that these items could be resolved promptly inasmuch as the time for filing a Petition for Appeal is running.

Sincerely yours,


R. Craig Jennings

cc: Robert K. Richardson, Esq.
ODIN, FELDMAN AND PITTLEMAN
Post Office Box 367
Fairfax, Virginia 22030



September 11, 1979

Re: Claim No. 526-832
Theresa DeLaFleur v. Fairfax Hospital

R. Craig Jennings, Esquire
1012 North Utah Street
Arlington, Virginia 22201

Dear Mr. Jennings:

We acknowledge your letter of September 6, 1979, and you are correct that there was a typographical error in the period for which compensation is to be paid for temporary total disability. This letter will serve as an Order of the Industrial Commission amending the award entered by the Full Commission dated September 4, 1979, to the effect that compensation shall be paid to the claimant at the rate of \$64.01 per week for temporary total disability beginning April 19, 1978 through August 28, 1978, rather than August 28, 1979, as noted in the award. In all other respects the opinion and award of September 4, 1979, shall remain the same.

Your request to be heard by the Commission in connection with the finding that the laminectomy and fusion performed in March, 1978, is the responsibility of the employer is denied. You are correct that Deputy Commissioner Hiner in his opinion did not consider the issue with respect to responsibility for certain bills as there was insufficient evidence and the issue was not before him.

The opinion of Deputy Commissioner Wilholt, dated January 25, 1978, clearly makes a finding that the industrial accident of March 11, 1976, caused or set in motion the additional disabling back condition which the claimant has suffered since the automobile

accident of August 17, 1977, and that the accident aggravated or hastened the condition. It is obvious from the medical reports that the employee had a lesion at L4-5 prior to the automobile accident.

It may be that there are still disputed bills even with this finding but we assume that the parties can separate the bills between the automobile accident and the industrial accident. If this cannot be done there can be a hearing on this basis but not on the basis that the second laminectomy and fusion was not the result of the industrial accident.

Very truly yours,

Charles G. James,
Chief Deputy Commissioner

CGJ:l

cc: Robert K. Richardson, Esquire
P.O. Box 367
Fairfax, Virginia 22030

ASSIGNMENTS OF ERROR

1. The Commission erred in issuing its Opinion and Award of September 4, 1979.
2. The Commissioner erred in finding that claimant's work incapacity did not terminate until August 29, 1978.
3. The Commissioner erred in holding that the employer and insurer in this industrial accident case are responsible for costs and expenses associated with claimant's laminectomy and fusion occurring in March 1978.

AD
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. _____

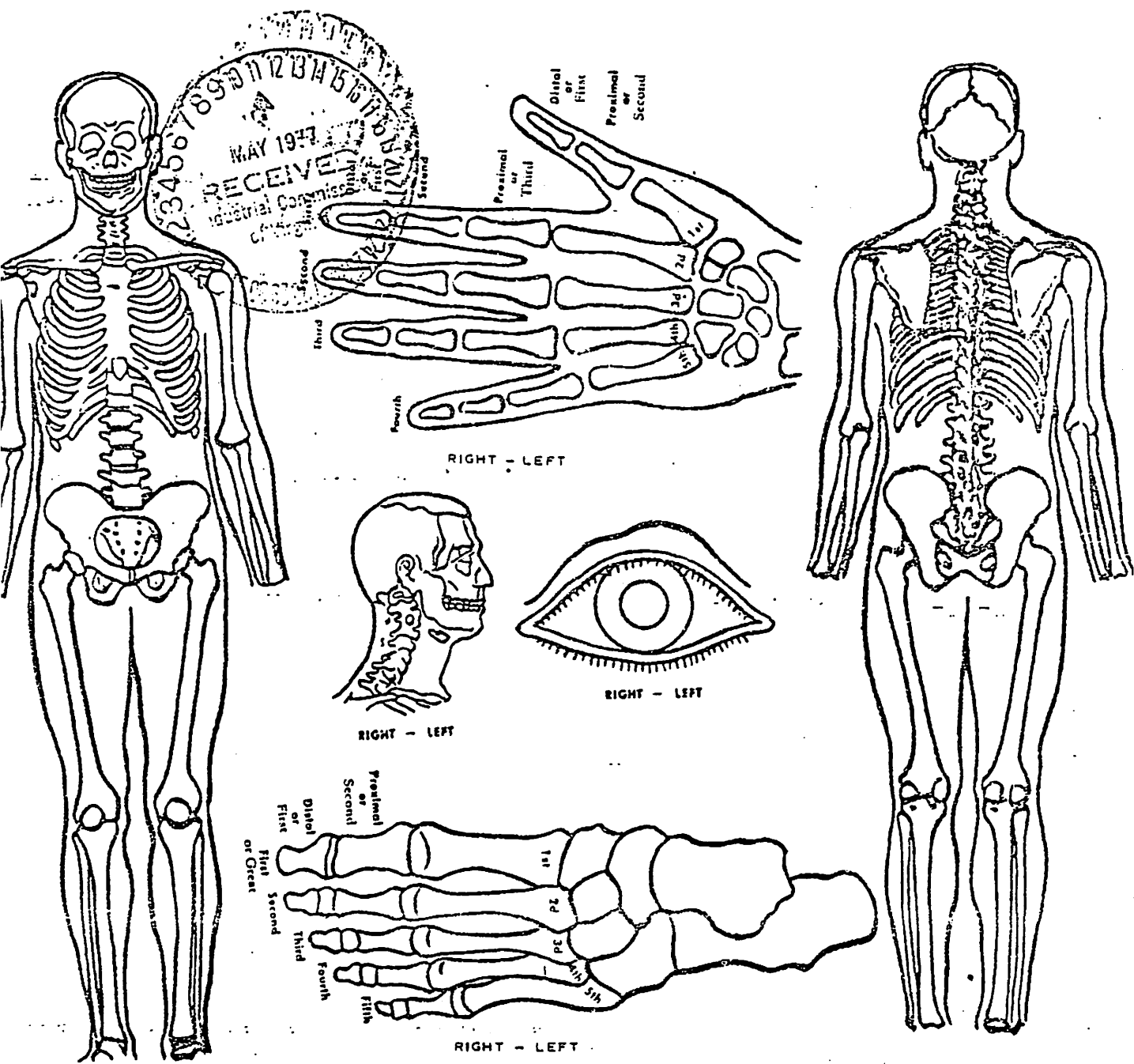
Case of _____

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) Theresa DeLaFleur		2. DATE OF INJURY (Mo., day, yr.) March, 1976	
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) 4500Kling Drive, Alexandria, Va. 22312		4. DATE OF BIRTH (or age) (Mo., day, yr.) 1-28-43	5. SEX Female
6. NAME OF EMPLOYER Fairfax Hospital		7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). 3300 Gallows Road, Falls Church, Va.	
8. DATE OF FIRST VISIT (Mo., day, yr.) 4-18-77	9. DATE DISCHARGED (Mo., day, yr.)		10. WHO AUTHORIZED TREATMENT?
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED injured back lifting heavy patient			
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.) <i>Tenderness L5/S1. S2N p4 60° RT.</i>			
13. DIAGNOSIS <i>Hermetized Intervertebral Disc L5/S1 - RT.</i>		14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM	
15. NATURE OF TREATMENT Examination <i>new - myelogram.</i> patient is to have lumbar myelogram probably 1st week in May		16. DATES OF YOUR TREATMENT (Mo., day, yr.) 4-18-77	
17. WAS EMPLOYEE HOSPITALIZED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of hospital in item 19)		18. WERE X-RAYS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> 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 Edward MacMahon, Alexandria, Va.			
20. WAS THERE DISABILITY FOR WORK? <input type="checkbox"/> YES <input type="checkbox"/> 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 FACIAL OR HEAD DISFIGUREMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms).			
22. NAME OF ATTENDING PHYSICIAN (Type or print) Mathew N. Smith, M.D. ID#54-0937561		23. ADDRESS (Number and street, city, state, zip code) 3016 Williams Drive Fairfax, Virginia 22030	
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT: SIGNATURE <i>Mathew N. Smith</i> M. D. SIGNATURE OF ATTENDING PHYSICIAN			25. DATE OF THIS REPORT 4-18-77

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



REMARKS

2

The Fairfax Hospital

Report of Radiologic Consultation

Name: DE LA FLEUR, Theresa (1-28-43)

History No.: 54-42-95

Physician: M. Smith

Date: 5-3-77

Room: 664-1

Interpretation:


LUMBAR MYELOGRAM:

Through a needle at the L3-4 level, 12 cc. of contrast material was introduced into the lumbar subarachnoid space. There was free flow of the dye throughout up to the lower dorsal area outlining a normal cord. There were two extra dural filling defects noted in the lower lumbar region. The largest defect is on the left side at the L4-5 level. A second smaller defect is noted on the right side at the L5-S1 level. The findings seen at both of these levels are most consistent with sequelae of herniated disc. No other lateralizing filling defect is seen.

IMPRESSION:

Extra dural defects at L4-5 on the left and L5-S1 on the right side.

LWS/nm
5-4-77


L. W. Stanton, M.D.

AD

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

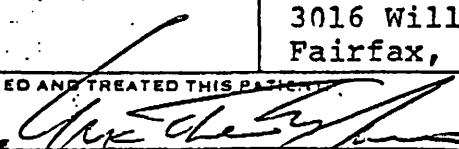
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794, Richmond, Virginia 23214

File No. _____

Case of _____

ATTENDING PHYSICIAN'S REPORT

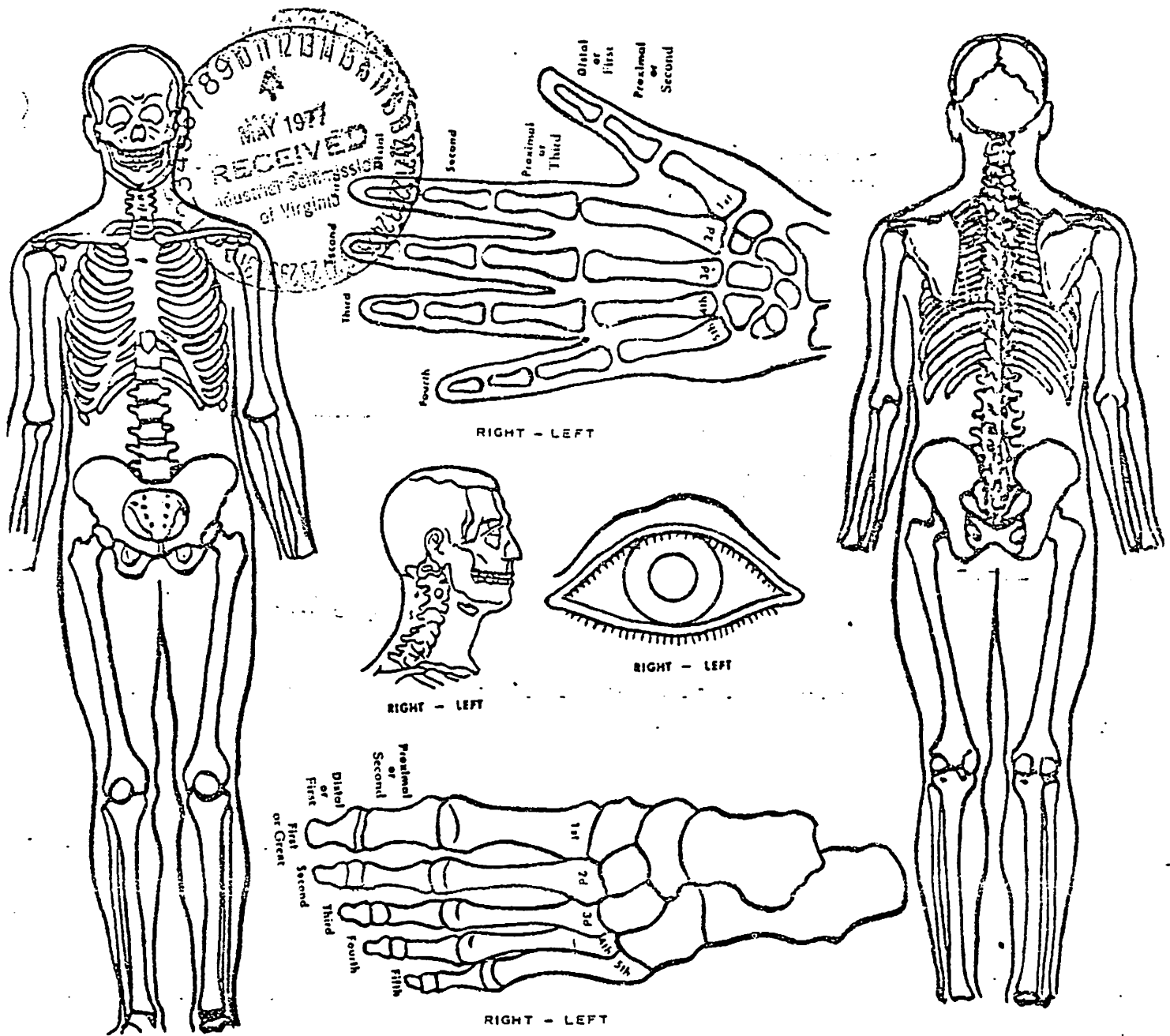
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1. NAME OF INJURED EMPLOYEE (First, middle initial, last) Theresa DeLaFleur		2. DATE OF INJURY (Mo., day, yr.) March, 1976	
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6. NAME OF EMPLOYER Fairfax Hospital		7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). 3300 Gallows Road, Falls Church, Va. 22046	
8. DATE OF FIRST VISIT (Mo., day, yr.) 4-18-77	9. DATE DISCHARGED (Mo., day, yr.)	10. WHO AUTHORIZED TREATMENT?	
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED see previous report			
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.) herniated lumbar disc per myelogram			
13. DIAGNOSIS herniated lumbar disc at L4-5, left		14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM and L5-S1 on right	
15. NATURE OF TREATMENT PT myelogram headache		16. DATES OF YOUR TREATMENT (Mo., day, yr.) 5-9-77	
17. WAS EMPLOYEE HOSPITALIZED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of hospital in item 19)		18. WERE X-RAYS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> 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 see previous reports			
20. WAS THERE DISABILITY FOR WORK? <input type="checkbox"/> YES <input type="checkbox"/> 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 FACIAL OR HEAD DISFIGUREMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms).			
22. NAME OF ATTENDING PHYSICIAN (Type or print) Mathew N. Smith, M.D. ID#54-0937561		23. ADDRESS (Number and street, city, state, zip code) 3016 Williams Drive Fairfax, Virginia 22030	
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT. SIGNATURE  M. D. SIGNATURE OF ATTENDING PHYSICIAN			25. DATE OF THIS REPORT 5-9-77

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

MAY 10 1977

38



REMARKS

THE FAIRFAX HOSPITAL

3300 GALLOW'S ROAD
FALLS CHURCH, VIRGINIA 22046

OPERATIVE REPORT

DELFLEUR, TERESA

#54-42-95

DATE OF OPERATION: 1/21/77

SURGEON: H. Smith, M.D.

PREOPERATIVE DIAGNOSIS: HERNIATED NUCLEUS PULPOSUS
L-5, S-1 RIGHT
POSSIBLE HERNIATED NUCLEUS
PULPOSUS L-4-5 LEFT SIDE
POSSIBLE INSTABILITY OF SPINE

POSTOPERATIVE DIAGNOSIS: SAME

OPERATION: Laminectomy L-5, S-1 right side
Removal of herniated disc
Exploratory laminectomy, L-4-5
left side, no evidence of disc
herniation
Examination by Dr. Malka

ESTIMATED BLOOD LOSS: 100 cc.

PROCEDURE: Under general anesthesia with endotracheal tube in place and antiembolic stockings in place, the patient is placed prone on the laminectomy frame. The skin of the back is prepared and draped in the usual manner. A midline vertical incision is marked in the skin centered in the L-4-5 area. An incision is made and carried sharply through subcutaneous tissue. Clamps are applied to the subcuticular layer. Bleeding vessels are coagulated. The dorsal lumbar aponeurosis is cleaned of rather thick areolar tissue and incised bilaterally. Using a knife and periosteal elevators, the paraspinal muscles are freed sharply from their attachments to the upper border of the sacrum and the spinous processes and laminae of L-5 and L-4 bilaterally. A large self retaining retractor is placed in the wound. Attention is turned to the ligamentum flavum on the right side at L-5, S-1. This structure is windowed and removed in piece meal fashion. The nerve root is displaced laterally by a large bulging mass. The root is protected and retracted medially and the mass is made up of attenuated posterior longitudinal ligament. This is incised in cruciate fashion and there is immediate eruption of soft nucleus pulposus. This is removed in small watery like fragments. The disc space is then entered and is curetted and cleaned with various sized Pituitary rongeurs and curettes. The root is markedly decompressed and is readily moved from side to side. Exploration is then carried out at L-4-5 on the left. At this level, the root is freed. The disc is flat. There is no evidence of herniation. At this point, Dr. Malka screws in examines the spine and determines that there is no evidence of significant instability which would warrant a spinal fusion. The wound is then irrigated and closed in layers in usual

THE FAIRFAX HOSPITAL

3300 GALLOWES ROAD
FALLS CHURCH, VIRGINIA 22046

OPERATIVE REPORT

DELFLEUR, TERESA

#54-42-95

PAGE II

manner with 2-0, 3-0 and 4-0 black silk sutures. A dry sterile dressing is applied. The procedure is well tolerated. The patient is transferred to recovery room in satisfactory condition.

HS/DP
7/27/77
7/28/77

M. Smith, M.D.

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

File No.

526-832

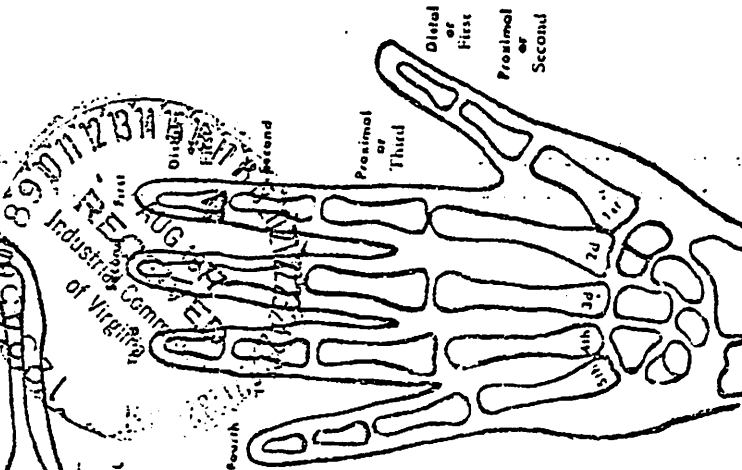
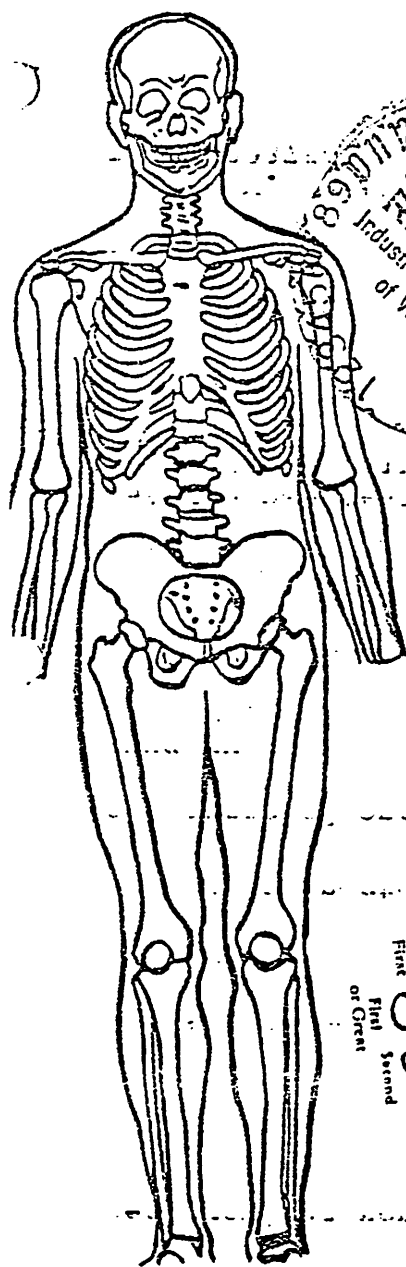
Case of F 53 CC 467041 MR

ATTENDING PHYSICIAN'S REPORT

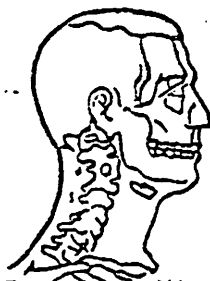
All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill in blank in ink using pen or typewriter, and mail promptly to the employer or the Claim Office of the insurance carrier.

1. NAME OF INJURED EMPLOYEE (First, middle initial, last) Theresa DeLaFleur		2. DATE OF INJURY (Mo., day, yr.) 3-11-76	
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) 4500 Kling Drive, Alexandria, Va. 22312		4. DATE OF BIRTH (or age) (Mo., day, yr.) 1-28-43	5. SEX female
6. NAME OF EMPLOYER Fairfax Hospital		7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). 3300 Gallows Rd., Falls Church, Va. 22046	
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11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED see previous report			
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.) herniated lumbar intervertebral disc at L5-S1			
13. DIAGNOSIS Lumbar laminectomy (7-27-77) ✓ see attached operative report		14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM	
15. NATURE OF TREATMENT surgery		16. DATES OF YOUR TREATMENT (Mo., day, yr.)	
17. WAS EMPLOYEE HOSPITALIZED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of hospital in item 19)		18. WERE X-RAYS TAKEN? <input checked="" type="checkbox"/> YES <input type="checkbox"/> 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 Fairfax Hospital - 3300 Gallows Road, Falls Church, Va. 22046 Dr. Jeffrey Malka			
20. WAS THERE DISABILITY FOR WORK? <input type="checkbox"/> YES <input type="checkbox"/> 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 FACIAL OR HEAD DISFIGUREMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms.)			
22. NAME OF ATTENDING PHYSICIAN (Type or print) Mathew N. Smith, M.D. ID#54-0937561		23. ADDRESS (Number and street, city, state, zip code) 3016 Williams Drive Fairfax, Virginia 22030	
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT SIGNATURE <u>Mathew N. Smith</u> M.D. SIGNATURE OF ATTENDING PHYSICIAN		25. DATE OF THIS REPORT 8-9-77	

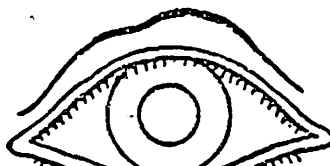
COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME. 1977



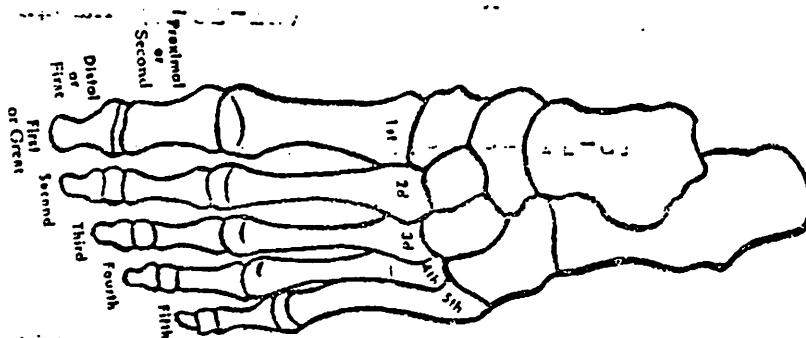
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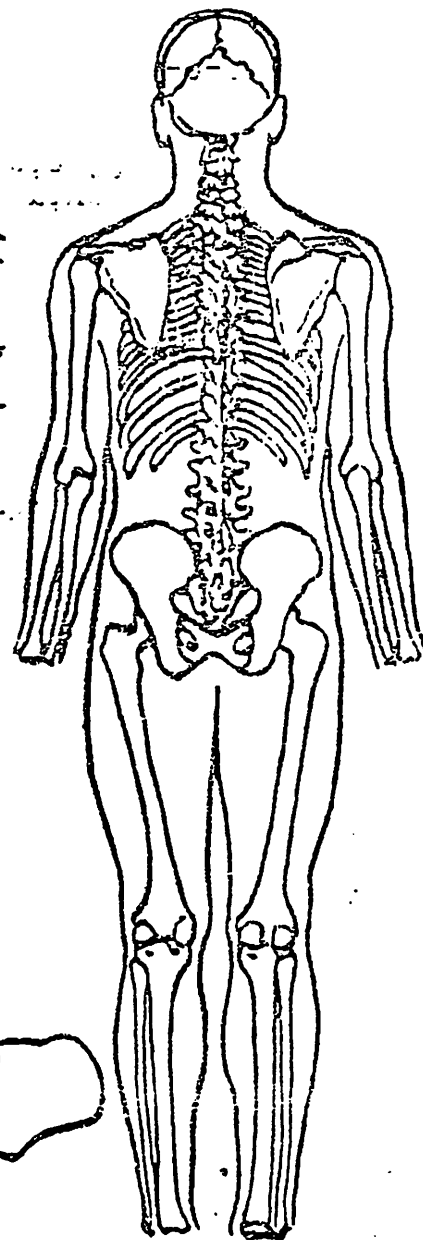
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RIGHT - LEFT



RIGHT - LEFT



REMARKS

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

[Handwritten initials]
AD

File No.

F 53 CC 467041 MR

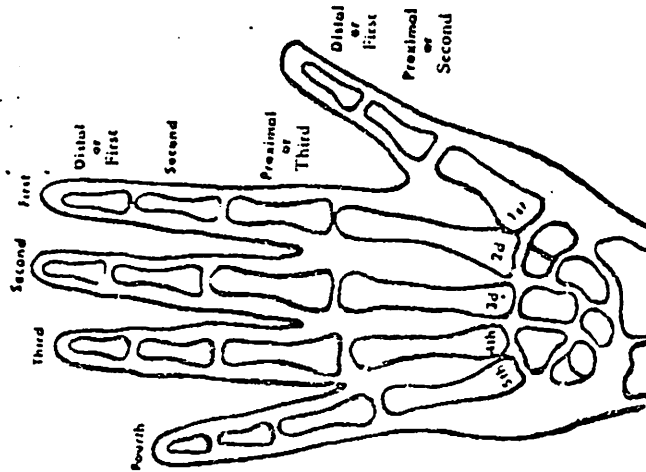
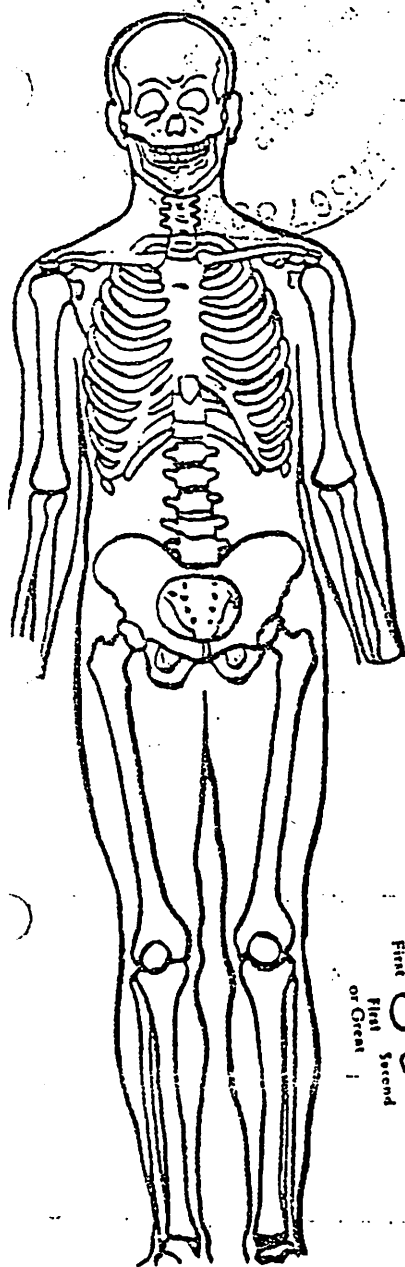
ATTENDING PHYSICIAN'S REPORT

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

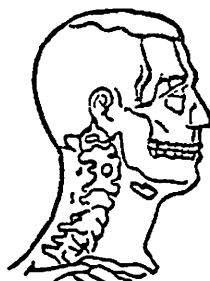
1. NAME OF INJURED EMPLOYEE (First, middle initial, last) Theresa DeLaFleur		2. DATE OF INJURY (Mo., day, yr.) 3-11-76	
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) 4500 Kling Drive, Alexandria, Va. 22312		4. DATE OF BIRTH (or age) (Mo., day, yr.) 1-28-43	5. SEX female
6. NAME OF EMPLOYER Fairfax Hospital		7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code) Falls Church, Va.	
8. DATE OF FIRST VISIT (Mo., day, yr.) 4-18-77	9. DATE DISCHARGED (Mo., day, yr.)	10. WHO AUTHORIZED TREATMENT?	
11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED see previous report			
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.) (Auto accident 9-17-77) <i>Broken lower lumbar vertebrae. No fracture seen.</i> <i>Spine - normal. No fracture seen.</i>			
13. DIAGNOSIS Status post lumbar laminectomy (7-27-77)		14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM	
15. NATURE OF TREATMENT Examination (RETURN TO OFFICE IN ONE MONTH)		16. DATES OF YOUR TREATMENT (Mo., day, yr.)	
17. WAS EMPLOYEE HOSPITALIZED? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," give name and address of hospital in item 19)		18. WERE X-RAYS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> 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 see previous report			
20. WAS THERE DISABILITY FOR WORK? <input type="checkbox"/> YES <input type="checkbox"/> 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 FACIAL OR HEAD DISFIGUREMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms).			
22. NAME OF ATTENDING PHYSICIAN (Type or print) Mathew N. Smith, M.D. ID#54-0937561		23. ADDRESS (Number and street, city, state, zip code) 3016 Williams Drive Fairfax, Virginia 22030	
24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT. SIGNATURE <i>[Signature]</i> M. D. SIGNATURE OF ATTENDING PHYSICIAN		25. DATE OF THIS REPORT 8-24-77	

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

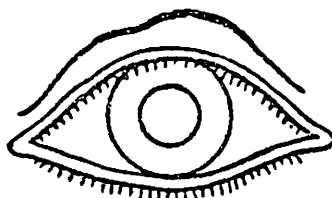
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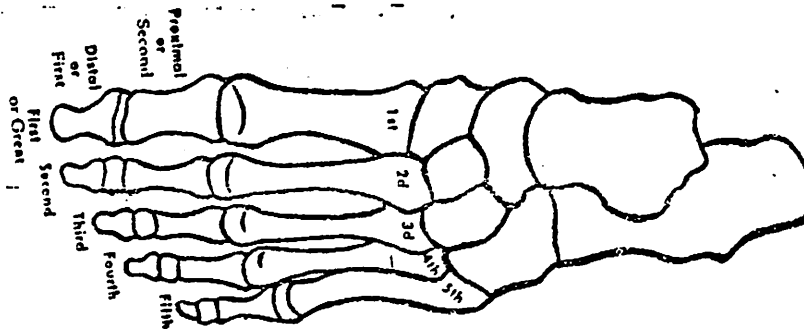
RIGHT - LEFT



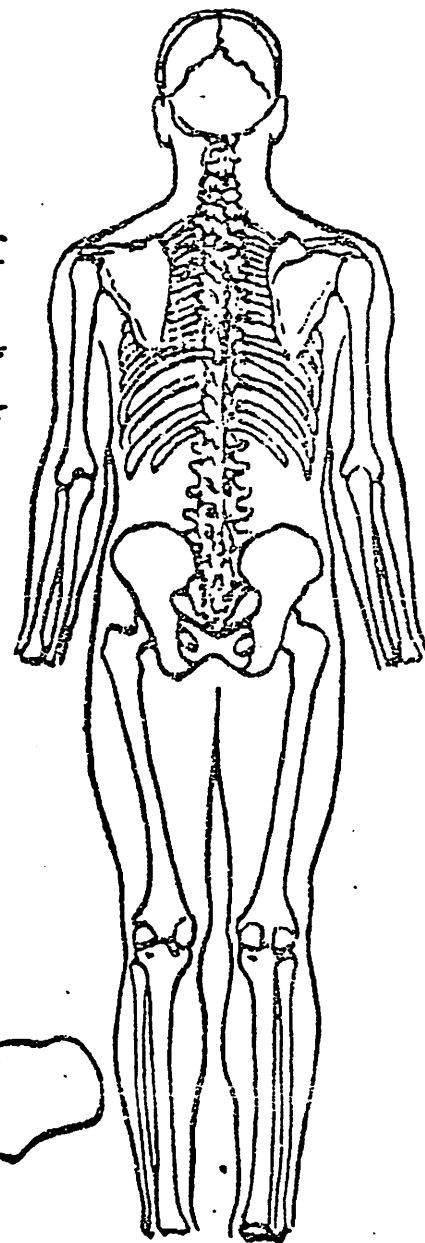
RIGHT - LEFT



RIGHT - LEFT



RIGHT - LEFT



REMARKS

✓
Mathew N. Smith, M.D., F.A.C.S.

NEUROLOGICAL SURGERY

FOUR SEASONS OFFICE BUILDING

3016 WILLIAMS DRIVE

FAIRFAX, VIRGINIA 22116

Fairfax, Va. 22030

TELEPHONE 560-1148

AD

emo?
FAIRFAX Hos.

September 19, 1977

Aetna Casualty & Surety Division
7926 Jones Branch Drive
McLean, Virginia 22101

526-882

Re: Theresa DeLaFleur

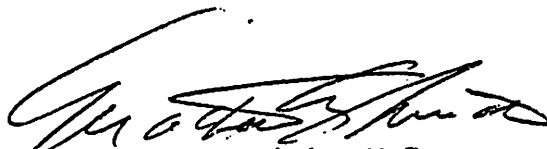
Dear Mrs. Downey:

Theresa DeLaFleur was doing well in August 9th visit to my office with some residual leg pain and hoping to return to work in September.

17.
She was in a car accident on August 14, 1977 when she sustained a cervical sprain and exasperbation of her low back problem. She also sustained a closed abdominal injury. The major injury was to her neck and low back.

She was started on a course of physical therapy. She remains out of work principally on the basis of her car accident situation. Unfortunately there has been some exasperbation of her low back problem in that she sustained a back sprain superimposed on her healing laminectomy site. I would anticipate that this will extend her loss of time from work at least three and possibly as long as six months.

Very truly yours,


Mathew N. Smith, M.D.

MSN/dc

Mathew N. Smith, M.D., F.A.C.S.PC

NEUROLOGICAL SURGERY
FOUR SEASONS OFFICE BUILDING
3016 WILLIAMS DRIVE
MERRIFIELD, VIRGINIA 22116
Fairfax, Va. 22030
TELEPHONE 560-1146

November 23, 1977

Robert K. Richardson, Esquire
4031 University Drive
Suite 202
Fairfax, Virginia 22030

RE: Theresa DeLaFleur

Dear Mr. Richardson:

Mrs. DeLaFleur was re-examined on November 23, 1977. This time she has complaints of constant and worsening left leg pain. In typical sciatic distribution exam reveals strongly positive straight leg raising at about 40° and weakness of extensor hallicis longus muscle on the left. These findings were not previously noted. Therefore she has clinical evidence of probable herniated disc at L4-5 on the left.

I would summarize the situation as follows:

This patient had mvelographic unsuspected evidence of disc pathology at L4-5 on the left while in the hospital. Her clinical picture then related to L5-S1 on the right. At operation, herniated disc was found and removed at L5-S1 on the right. On the left side, at L4-5, the disc was explored. It seemed to be normal. This represents then, an exacerbatation of a pre-existing condition. Undoubtedly the exacerbatation being caused by the car acci-ent and the ensuing problems. It is true however that the evidence speaks for itself, that there was a pre-existing problem at L4-5 on the left side and it certainly dates back to the industrial injury.

For further information, please contact this office.

Very truly yours,



Mathew N. Smith, M.D.

MNS/dc
Enclosure

Mathew N. Smith, M.D., F.A.C.S. PC

NEUROLOGICAL SURGERY

FOUR SEASONS OFFICE BUILDING

3016 WILLIAMS DRIVE

MERRIFIELD, VIRGINIA 22116
Fairfax, Va. 22031

TELEPHONE 560-1146

January 11, 1978

Re: Theresa DeLaFleur

TO WHOM IT MAY CONCERN:

Please be advised that it was noted on examination in my office on May 9, 1977 that Mrs. DeLaFleur had numbness of the toes on the left foot.

For further information, please contact this office.

Very truly yours,



Mathew N. Smith, M.D.

MNS/dc

VIRGINIA:
IN THE INDUSTRIAL COMMISSION

THERESA DeLaFLEUR, Claimant

Opinion by WILHOIT
Deputy Commissioner

v. Claim No. 526-832

JAN 25 1978

FAIRFAX HOSPITAL, Employer
AETNA CASUALTY & SURETY COMPANY, Insurer

Robert K. Richardson, Attorney at Law,
4031 University Drive, Suite 202,
P. O. Box 367
Fairfax, Virginia 22030,
for the Claimant.

J. H. Johnson^x, Attorney at Law,
1012 N. Utah Street
Arlington, Virginia, 22201
for the Defendants.

Hearing before Deputy Commissioner WILHOIT at
Fairfax, Virginia, on January 23, 1978.

Theresa DeLaFleur, a thirty-three year old female,
sustained a back injury (herniated lumbar disc at L4-5, left and
L5-S1 on right) by accident March 11, 1976, which arose out of ..
and in the course of her employment as a "Registered Nurse" with
Fairfax Hospital while receiving an average weekly wage of \$96.02.

The employer's insurer accepted this claim and paid
the claimant compensation for total work incapacity at the weekly
rate of \$64.01 pursuant to awards of this Commission. The last
award was entered June 6, 1977, and compensation was paid pursuant

thereto beginning April 2, 1977 through April 14, 1977, and beginning May 6, 1977 through November 17, 1977.

The case is now before us upon the insurer's application, filed November 16, 1977, alleging a change in condition as defined by § 65.1-8, Code of Virginia, which would justify termination of the outstanding award, if proven, in that the claimant was released for her regular work on September 30, 1977.

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

It is the claimant's testimony that she is unable to work because she has pain in her left wrist and down the left leg with numbness in the toes.

The treating physician in this case is Dr. Mathew N. Smith, a neurosurgeon.

The record reveals that subsequent to the accidental injury of March 11, 1976, the claimant developed pain in her right lower back and right leg with numbness of the left toes.

On July 27, 1977 an operation was performed by Dr. Smith to repair a herniated disc in the claimant's low back.

On August 17, 1977, while recuperating from the industrial accident the claimant was involved in an automobile accident when her car was struck broadside. It is the claimant's testimony that subsequent to this accident she began to experience pain in her left low back and down her left leg.

The application before us relies upon a report dated November 7, 1977 from Dr. Smith wherein he advised he had examined the claimant on August 19, 1977, and had anticipated that she would be able to return to work early in September of 1977.

In an effort to help clarify the situation Dr. Smith wrote again on November 23, 1977, and said in part as follows:

"I would summarize the situation as follows:

(TR. 3) "This patient had myelographic unsuspected evidence of disc pathology at L4-5 on the left while in the hospital. Her clinical picture then related to L5-S1 on the right. At operation, herniated disc was found and removed at L5-S1 on the right. On the left side, at L4-5, the disc was explored. It seemed to be normal. This represents then, an exacerbation of a pre-existing condition. Undoubtedly the exacerbation being caused by the car acci-ent and the ensuing problems. It is true however that the evidence speaks for itself, that there was a pre-existing problem at L4-5 on the left side and it certainly dates back to the industrial injury."

In the last report from Dr. Smith dated January 11, 1978, he advised his office notes made May 9, 1977 revealed that the claimant did experience numbness of the toes and the left foot.

This Commission has consistently held that an anticipatory return to work date by a physician is not sufficient proof to establish that the claimant is, in fact, capable of returning to the full duties of her pre-injury occupation, or any occupation. The report from Dr. Smith dated November 7, 1977 is clearly antici-

patory and came about because of the automobile accident in August of 1977. Further, we believe that it is Dr. Smith's opinion that the industrial accident of March 11, 1976 caused or set in motion the additional disabling back condition which the claimant has suffered since the automobile accident of August 17, 1977, and that that accident aggravated or hastened the condition.

After a careful consideration of the evidence we make the finding that said evidence fails to preponderate in proving a change in condition within the meaning of the Workmen's Compensation Law. We do not believe that the evidence before us preponderates in proving that incapacity for work attributable to the March 11, 1976

4)

accidental injury had ceased nor that the claimant is or was capable of returning to the full duties of her pre-injury occupation.

Accordingly, for want of proof, the application must fail and hereby is denied.

The following award shall enter.

AWARD

The payment of compensation pursuant to our June 6, 1977 award shall commence as of November 18, 1977, and continue until conditions justify a modification thereof.

Compensation having accrued shall be paid in a lump sum and the remainder each two weeks thereafter.

From the compensation awarded \$500.00 shall be deduct-

ed and paid to Robert K. Richardson, Attorney, Fairfax, Virginia, for legal services rendered Theresa DeLaFleur.

The employer shall pay for necessary medical care caused by the March 11, 1976 accidental injury for as long as necessary.

The case is ordered removed from the hearing docket.

VIRGINIA:
IN THE INDUSTRIAL COMMISSION

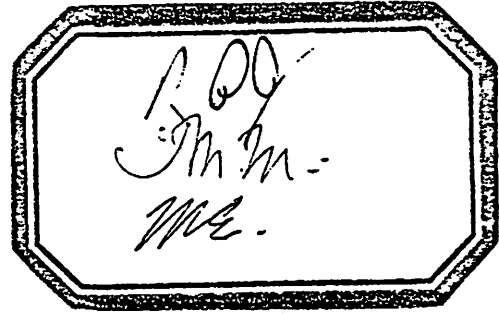
THERESA DeLaFLEUR, Claimant

v. Claim No. 526-832

FAIRFAX HOSPITAL, Employer
AETNA CASUALTY & SURETY COMPANY, Insurer

Robert K. Richardson, Esquire
4031 University Drive, Suite 202
P.O. Box 367
Fairfax, Virginia 22030
for the Claimant.

John H. Johnston, Esquire
1012 North Utah Street
Arlington, Virginia 22201
for the Defendants.



Opinion by JOYNER,
Chairman

MAR 14 1978

REVIEW before the Full Commission at Richmond, Virginia,
on March 7, 1978.

The Full Commission, upon review, adopts the findings of
fact and conclusions of law contained in the decision of January 25, 1978.

Accordingly, the said decision of January 25, 1978, is
AFFIRMED, with the modification that the fee for claimant's counsel is in-
creased to a total fee of \$650.00.