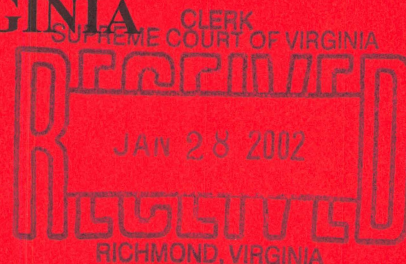


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IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. 011739



E.I. DUPONT DE NEMOURS AND COMPANY,

Appellant,

v.

BRENDA G. EGGLESTON,

Appellee.

**APPENDIX
VOLUME II OF II**

Joy C. Fuhr, Esquire
Kimberly R. Hillman, Esquire
McGUIREWOODS, LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
(804) 775-1127 (Telephone)
(804) 698-2153 (Facsimile)
Counsel for Appellant

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401
(540) 371-4444 (Telephone)
(540) 368-1025 (Facsimile)

Counsel for Appellee

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**McGUIRE WOODS
BATTLE & BOOTHE LLP**

One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

Kimberly R. Hillman
Direct Dial: 804-775-1127
Direct Fax: 804-698-2153
krhillma@mwbb.com

July 12, 1999

Via Hand Delivery

Deputy Commissioner P. Randolph Roach, Jr.
Workers Compensation Commission
1000 DMV Drive
Richmond, VA 23220

Brenda Eggleston v. DuPont de Nemours & Company
VWC No(s): 162-62-45
143-94-79
149-63-96

Dear Deputy Commissioner Roach:

On behalf of the employer E.I. duPont de Nemours and Company, I enclose Employer's
Trial Brief for filing with the other papers in this case.

Please do not hesitate to call me should you have any questions concerning the above-referenced claims.

Very truly yours,

Kimberly R. Hillman

Kimberly R. Hillman

KRH/dat

cc: Wesley G. Marshall, Esq.

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 13 1999

CHARGE #65

1144

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA EGGLESTON,

Claimant

v.

V.W.C. File Nos.: 143-94-79

149-63-96

162-62-45

E. I. DU PONT DE NEMOURS & COMPANY,

Employer and Self-Insured.

EMPLOYER'S TRIAL BRIEF

The employer and self insurer, E.I. du Pont de Nemours & Company ("DuPont"), by counsel, pursuant to Virginia Code Ann. § 65.2-708 and Rule 1.4 of the Rules of the Workers' Compensation Commission, are before the Commission based upon DuPont's application to (a) terminate Claimant's award for bilateral gamekeeper's thumb; (b) reduce the amount of temporary total disability benefits being paid to Claimant based upon the resolution of her bilateral gamekeeper's thumb injury; (c) award the employer a credit against future temporary total disability benefits paid to Claimant arising from the overpayment in temporary total disability benefits for the period of October 22, 1997, the date her gamekeeper's thumb resolved and February 17, 1999, the date the employer reduced the amount of temporary total disability benefits pursuant to its application for change of condition; and (d) award Employer a credit against future temporary total disability benefits to be paid to Claimant based upon the time worked by Claimant at light duty at her normal pre-injury wages.

VIRGINIA WORKERS'
COMPENSATION COMMISSION

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CHARGE #65

I. INTRODUCTION AND PROCEDURAL HISTORY

The claimant, Brenda Eggleston, is currently receiving Workers' Compensation benefits based upon three separate work related injuries and/or conditions. Specifically, Ms. Eggleston is receiving temporary total disability benefits for bilateral carpal tunnel syndrome, a right shoulder injury and bilateral gamekeeper's thumb. The relevant award information is summarized below.

A. Bilateral Carpal Tunnel Syndrome (VWC No. 143-94-79)

Ms. Eggleston first received an award for bilateral carpal tunnel syndrome pursuant to the Order of Deputy Commissioner Costa dated January 9, 1991. Deputy Commissioner Costa ordered the payment of temporary total disability benefits in the amount of \$306.19 weekly for the period of September 26, 1990 through October 30, 1990, based upon an average weekly wage of \$459.27. Thus, Ms. Eggleston received approximately 4 weeks in temporary total disability benefits as a result of her claim for bilateral carpal tunnel syndrome.

Bilateral Carpal Tunnel Syndrome (A.W.W. \$459.27; T.T. \$306.19)

I-----I
09/26/90 (4 weeks) 10/30/90

B. Right Shoulder (VWC No. 149-63-96)

Ms. Eggleston has also received temporary total disability benefits arising from an injury to her right shoulder that was sustained on November 28, 1990. A Memorandum of Agreement dated February 18, 1993 provided for the payment of temporary total disability benefits in the amount of \$293.90 for the period of October 1, 1992 through November 2, 1992, based upon an average weekly wage of \$440.85.

Therefore, Ms. Eggleston received approximately 5 weeks of temporary total disability benefits as a result of her claim for her right shoulder injury.

Right Shoulder

(A.W.W. \$440.85; T.T. \$293.90)

I-----I
10/01/92 (5 weeks) 11/02/92

C. Gamekeeper's Thumb (VWC No. 162-62-45)

Ms. Eggleston also received temporary partial disability benefits arising from a diagnosis of gamekeeper's thumb. Ms. Eggleston was awarded temporary partial disability benefits in the amount of \$74.35 weekly beginning June 13, 1993 and continuing, based upon an average weekly wage of \$446.00 and a pre-injury average week wage of \$557.53. Ms. Eggleston received temporary partial disability benefits through November 30, 1993, a total of 25 weeks.

Gamekeeper's Thumb

(A.W.W. \$557.53; T.P. \$74.35)

I-----I
06/13/93 (25 weeks) 11/30/93

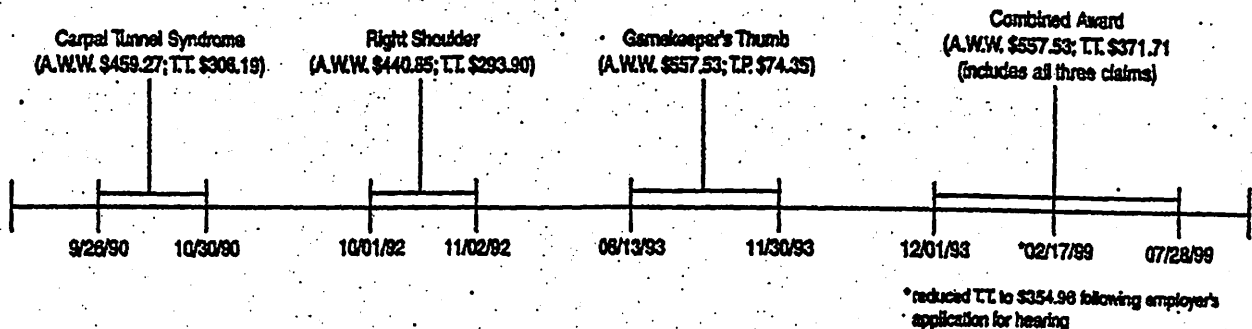
D. Combined Award (VWC 143-94-79; VWC 149-63-96; VWC 162-62-45)

On December 8, 1993, Claimant filed a change in condition application seeking an additional period of temporary total disability benefits on all three claims beginning December 1, 1993 and continuing. By Order dated August 25, 1994, Deputy Commissioner Gorman entered an award in favor of Claimant providing that temporary total disability benefits in the amount of \$371.71 be paid to Ms. Eggleston beginning December 1, 1993. Although the order does not expressly indicate the average weekly wage that was used to compute the temporary total disability amount, it appears that Commissioner Gorman based the award for temporary total benefits based upon an average weekly wage of \$557.53 (gamekeeper's thumb). Ms. Eggleston continues to receive temporary total disability benefits

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pursuant to this award and has also been receiving yearly cost of living increases.

II. ARGUMENT



A. Claimant is no longer impaired by Gamekeeper's Thumb.

Virginia Code Annotated § 65.2-708 provides that "[u]pon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Commission may review any award and on such review make an award ending, diminishing or increasing the compensation previously awarded . . ." Va. Code Ann. § 65.2-708. Based upon the change in Ms. Eggleston's medical condition as documented in her medical records and as discussed in Employer's memorandum in support of its application for change in condition, DuPont asserts that Ms. Eggleston is no longer disabled as the result of bilateral gamekeeper's thumb and this award should be terminated.

Enrique Silberblatt, M.D., F.A.C.S., examined Ms. Eggleston on October 22, 1997. At that time, Dr. Silberblatt noted that Ms. Eggleston "never gave a history ... suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and nonpainful." In fact, Dr. Silberblatt questioned whether Ms. Eggleston "has or ever had a gamekeeper's thumb." By letter dated December 3, 1997, Claimant acknowledged Dr. Silberblatt's assessment that her thumb condition had "resolved" and did not dispute this assessment.

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The report of Murray E. Joiner, Jr., M.D., P.C., also provides support for DuPont's position that Ms. Eggleston's thumb condition has resolved. Dr. Joiner performed an Independent Medical Examination on December 10, 1997. Dr. Joiner noted that Claimant had been treated with injections and given Zostrix "with decreased pain to point where pain became intermittent." According to Dr. Joiner, Claimant reported that her thumbs did not hurt "that much." Id. Claimant has not received any medical treatment for her thumb condition since Dr. Joiner's evaluation of December 10, 1997, and accordingly, her award for bilateral gamekeeper's thumb should be terminated.

B. Claimant's temporary total disability benefits must be adjusted downward consistent with the applicable average weekly wage.

Claimant's award for bilateral gamekeeper's thumb was based upon her average weekly wage of \$557.53. However, since Claimant is no longer entitled to benefits as the result of gamekeeper's thumb, her entitlement to temporary total disability benefits should be based upon the higher average weekly wage of the remaining two conditions for which she is receiving temporary total disability benefits. Thus, her entitlement to temporary total disability benefits should be based upon her average weekly wage at the time of her award for bilateral carpal tunnel syndrome, \$459.27. Taking into consideration cost of living increases dating from 1993, it is DuPont's contention that Ms. Eggleston should be receiving temporary total disability benefits in the weekly amount of \$354.96. Accordingly, DuPont requests that the Commission enter an Order adjusting Ms. Eggleston's weekly temporary total disability benefits downward from \$433.57 to \$354.96.

C. DuPont is entitled to a credit against future temporary total disability benefits arising from the overpayment of temporary total disability benefits paid following the resolution of Claimant's Gamekeeper's Thumb.

For the reasons stated above, DuPont contends that Claimant is no longer disabled as the result of bilateral gamekeeper's thumb. For this reason, it is no longer appropriate to base Claimant's temporary total disability benefits on her average weekly wage for the 52 weeks prior to the onset of this condition. Claimant's medical records suggest that she was no longer disabled as the result of bilateral gamekeeper's thumb as of the time of her October 22, 1997 visit with Dr. Silberblatt. It is DuPont's contention that in addition to the reduction in the amount of weekly temporary total disability benefits paid, it is also entitled to a credit against Ms. Eggleston's future temporary total disability benefits in an amount that corresponds with the temporary total disability overpayment made for the period of October 22, 1997, the date her thumb condition resolved, through February 17, 1999, the date DuPont reduced Claimant's temporary total disability payments pursuant to its application for change in condition.

D. DuPont is entitled to a credit for time worked by claimant at light duty for her normal wages.

Virginia Code Annotated § 65.2-518 states that "total compensation under this title shall in no case be greater than 500 weeks ..." Va. Code Ann. § 65.2-518. Claimant has received the following benefits:

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COMPENSATION COMMISSION
JUL 13 1999
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Award	Award Awarded	Temp Total Benefit	WVC Paid
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly, 10/01/92-11/02/92	5 weeks	Zero
VWC No. 162-62-45 Gamekeeper's Thumb	9/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks

It is DuPont's contention that Ms. Eggleston's entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks that she has been receiving the combined award. Thus, based upon the above information, it appears that Ms. Eggleston's remaining entitlement to temporary total disability benefits through July 28, 1999, the date of the hearing is as follows:

Award	Award Awarded	Temp Total Benefit	WVC Paid	Weeks of Compensation Remaining
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero	203 weeks
		293 weeks (combined award through 07/28/99)		
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly,	5 weeks	Zero	202 weeks
		293 weeks (combined award through 07/28/99)		
VWC No. 162-62-45 Gamekeeper's Thumb	09/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks	182 weeks
		293 weeks (combined award through 07/28/99)		

VIRGINIA WORKERS
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Additionally, it also appears that DuPont is entitled to a credit against the individual awards for time that Ms. Eggleston worked at light duty at her regular pre-injury pay as a result of her various compensable injuries.

Virginia Code Annotated Section § 65.2-708(C) states as follows:

All wages paid, for a period not exceeding twenty-four consecutive months, to an employee who (i) who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is provided work within his capacity at a wage equal to or greater than his pre-injury wage, shall be considered compensation.

Va. Code Ann. § 65.2-708.

Ms. Eggleston's DuPont employment records dated September 26, 1990 through January 12, 1991 reflect that Ms. Eggleston worked approximately 142.1 hours (17.76 days) (3.5 weeks) at light duty at her regular pre-injury wages following her award for carpal tunnel syndrome. Ms. Eggleston worked approximately 939.5 hours (117 days) (23.48 weeks) at light duty at her regular pre-injury wages from the period of January 12, 1991 through June 13, 1993, following the injury to her right shoulder. The above information is summarized on the following chart:

Period of Benefit Periods	Period from date of start of CTS benefits to date of time missed from work for Right Shoulder (1990)	Period from date of time missed from work for Right Shoulder to start of Guaranteed Annual Benefits (1993)	Total days worked light duty at base pay (24)
Days worked light duty at base pay (24)	17.76 days (3.5 weeks)	117 days (23.48 weeks)	134.76 days (26.95 weeks)

Based upon § 65.2-708, DuPont asserts that Ms. Eggleston's remaining entitlement to temporary total disability benefits should be reduced by the total number of weeks that DuPont provided Ms. Eggleston with light duty employment at her regular pre-injury wages as is summarized in the following chart.

Award	Actual Award	Est. Paid to Date	Est. PWC	Discrete Award Work	Weeks of Compensation Remaining (or Excess) (See Section II(C))
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero	approximately 3.5 weeks	203 weeks
		293 weeks (combined award)			
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly, 10/01/92-11/02/92	5 weeks	Zero	approximately 23.48 weeks	202 weeks
		293 weeks (combined award)			
VWC No. 162-62-45 Gamekeeper's Thumb	09/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks	0 weeks	182 weeks
		293 weeks (combined award)			

VIRGINIA WORKERS
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III. CONCLUSION

WHEREFORE, the employer and self-insurer, by counsel, respectfully request the Commission to enter an order (a) terminating Claimant's award for gamekeeper's thumb; (b) reducing the amount of temporary total disability benefits being paid to Claimant based upon the resolution of her game keeper's thumb; (c) award DuPont a credit against future temporary total disability benefits paid to Claimant arising from the overpayment in temporary total disability benefits for the period of October 22, 1997, the date her gamekeeper's thumb resolved and February 17, 1999, the date DuPont reduced Claimant's temporary total disability benefits pursuant to its application for change in condition; and (d) award DuPont a credit against future temporary total disability payments to be paid to Claimant based upon the time worked by Claimant at light duty at her normal pre-injury wages.

Respectfully submitted,

E.I. Du PONT De NEMOURS AND COMPANY

BY COUNSEL

Counsel:

Joy C. Fuhr, Esquire

Kimberly R. Hillman, Esquire

McGUIRE, WOODS, BATTLE & BOOTHE LLP

One James Center

Richmond, Virginia 23219

(804) 775-1127

Kimberly R. Hillman
Counsel for the Employer and Self-Insurer

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 13 1999

CHARGE #65

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Employer's Trial Brief was sent by first class mail, postage prepaid, to:

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401

on this 12th day of July, 1999.

William B. R. H. Marshall

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 13 1999
CHARGE -

**MCGUIRE WOODS
BATTLE & BOOTH, LLP**

One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

Direct Dial: (804) 775-1127

July 26, 1999

VIA FAX (804) 367-9740

Mr. P. Randolph Roach, Deputy Commissioner
VIRGINIA WORKERS' COMPENSATION COMMISSION
1000 DMV Drive
Richmond, Virginia 23220

Brenda Eggelston v. E. I. Du Pont de Nemours & Co.

VWC#: 143-94-79

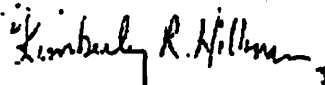
149-63-96

162-62-45

Dear Mr. Roach:

The case is set for hearing on this Wednesday, July 28. Enclosed is a revised page 9 for substitution in Dupont's trial brief concerning this matter. I apologize for any inconvenience this may have caused you, and thank you for your consideration of this amended information.

Sincerely yours,



Kimberly R. Hillman, Esquire

VIRGINIA WORKERS'
COMPENSATION COMMISSION

Enclosure

cc: Wesley G. Marshall, Esquire

JUL 26 1999

CHARGE #65

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VWC No.	Order of Deputy Commissioner	Weeks	Weeks	Weeks	Weeks
VWC No. 143-94-79 Carpal Tunnel Syndrome.	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks 293 weeks (combined award)	Zero	approximately 3.5 weeks	199.5 weeks
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly, 10/01/92-11/02/92	5 weeks 293 weeks (combined award)	Zero	approximately 23.48 weeks	178.52 Weeks
VWC No. 162-62-45 Gamekeeper's Thumb	09/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero 293 weeks (combined award)	25 weeks	0 weeks	182 weeks

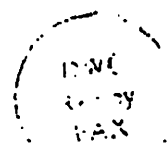
VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 26 1999

CHARGE #65

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-345-



employer's application in each file filed February 3, 1999. As I understand it, all of the previous awards in all three cases had ended except for the claimant's occupational disease of game keeper's thumb which is VWC File No. 162-62-45. The last award of the Commission was from December 1, 1993 and continuing. The claimant was due temporary total disability benefits at a rate of \$371.71 which was at the rate of her game keeper's thumb average weekly wage. The applications today are seeking a change of her temporary total disability award. To that, based on her average weekly wage she was earning when she was diagnosed with carpal tunnel syndrome, because it is alleged by the employer that the thumb condition resolved as of October 22, 1997, the employer seeks a credit for benefits paid at the higher rate dating back to October 22, 1997. The claimant objected to that in that the issue of the credit was not raised until a brief was filed in June, 1999 but was not...

MR. MARSHALL:

Deputy Commissioner...

DEPUTY COMMISSIONER ROACH:

I'm sorry to interrupt, but it was dated July 12, 1999 and we

received it about July 15, 1999.

DEPUTY COMMISSIONER ROACH:

I'm sorry. Okay. And it was your contention that the issue was, as you understood it with the memorandum that was attached to the application itself, they were seeking just a changeover to the current rate as of the date of the application or thereabouts.

MR. MARSHALL:

That is correct.

DEPUTY COMMISSIONER ROACH:

And with the July brief that came in, it is your contention that for the first time they raised the issue of the retroactive overpayment back to October, 1997. In looking through the file, it was my impression that attached---that the memorandum that was attached to the application itself raised the issue of the credit back through October, 1997 so the objection is overruled at that point. I will allow the claimant to brief his defenses to the employer's application, because I understand there may be some case law that---and statutory law that controls on whether I can award a credit back that far, but I think at least the issue is before me at this point. I will note claimant's objection to my ruling on

that issue. In addition, did I understand it, Mr. Marshall, you wanted at least the opportunity to present a motion as to whether you would have presented the evidence differently or...

MR. MARSHALL:

Yes, sir.

DEPUTY COMMISSIONER ROACH:

Today? Okay. Then I'll allow that as well. The issues also raised by the employer are that the employer asks that the claimant's entitlement to benefits in each award be reduced by the number of weeks she has been receiving the combined awards and that the employer should be provided a credit for wages paid the claimant at her pre-injury level which she was actually working light duty. And Ms. Hillman, I believe the periods are essentially outlined in the briefs that you've submitted. There will be some brief testimony on that today as well.

MS. HILLMAN:

That's correct.

DEPUTY COMMISSIONER ROACH:

The parties did stipulate that the claimant was paid at the temporary total disability rate in her game keeper's thumb file,

VWC File Nos. 162-62-45,
149-63-96 & 143-94-79

162-62-45, through February 16, 1999, and the employer switched over to the temporary total rate in the carpal tunnel syndrome file, which I believe is 143-94-79, so beginning February 17, 1999 and continuing, the employer has been paying temporary total based on the average weekly wage calculation in file number 143-94-79, which I think currently is \$354.96 per week, and that would be the temporary total rate, plus the cost of living of benefits. I believe her average weekly wage in that file was \$459.27, if I'm not mistaken here.

MS. HILLMAN:

I believe that is correct.

DEPUTY COMMISSIONER ROACH:

Okay. We have a designation of medical reports by both parties today. There is a motion to exclude the witnesses with---Catherine West is excluded today. Ms. Hillman had asked that she be here as well in the hearing room as a representative of the employer, and also allow Lucinda Gravely to be here as representative of the carrier. Is that correct? Or did I get that wrong?

MS. HILLMAN:

Other way around. That's backwards.

DEPUTY COMMISSIONER ROACH:

Okay. Sorry about that. But I did note it's the Commission's policy to allow only one employer and/or carrier representative in the room, but I will note your objection on the record for that, Ms. Hillman. Okay, Mr. Marshall, did you want to state your defenses to the application?

MR. MARSHALL:

Yes, sir. Deputy Commissioner, I just want to make a more specific statement regarding the issue that was raised in the employer's trial brief as indicated, we received that in our office on July 15. I was not back in my office until July 18 or 19 but from the original application, it's our contention that the application filed in February did not contain an allegation seeking a credit before the filing of the application for an overpayment of wage benefits based on adjustment of the average weekly wage and thus we may have wanted to present documentary or medical evidence or testimonial evidence regarding that, and without a formal request from the employer to have that deemed an amendment to the application for hearing, without a formal ruling from the Commission that it would be deemed an amendment of the application

for hearing, we were not on notice that those issues would be considered by the Commission today and respectively object to your ruling with regard to that. With regard to the issue of adjustment of the average weekly wage, the claimant's defenses are as follows. Number one, that the defendant has the burden of proof to prove a statutory change in condition and that the evidence does not establish that. Specifically, we rely on the J. A. Jones Construction Company v. Martin case. That's 198 Va. 370, and the Boxley v. Onaroto case, 218 Va. 931. And I will abbreviate the citations in this statement because we'll probably be making the same statements in our brief.

DEPUTY COMMISSIONER ROACH:

That's fine.

MR. MARSHALL:

Number two, the relief requested is barred because it essentially seeks a determination from the Commission that the facts originally found in August of 1994 by the Commission were really different than what the Commission concluded. And under the Allen v. Motley Construction case, 160 Va. 875, that the relief cannot be granted. Number three, that a retroactive award is in

derogation of the spirit and intent of Section 65.2-708 and that the relief cannot be requested---relief requested cannot be granted on that basis. We rely on Bristol Door & Lumber v. Hinkle, 157 Va. 474. The claimant also defends this portion of the application on the grounds that she continues to be disabled consistently, or consistent with the August 25, 1994 award of the Commission and that she is entitled to continuing temporary total disability benefits at the rate awarded by the Commission in its August 25, 1994 opinion. The claimant characterizes the employer's---or characterizes the Commission's August 25, 1994 application for hearing not as a finding of disability solely on the game keeper's thumb claim, but on all three claims and apply the highest applicable average weekly wage of those three cases. It is the claimant's position that any error in the award rate is res judicata and is final. The Commission's award became final, it was not appealed, and that any adjustment or correction in the average weekly wage as a result of the combined award is now final. We rely on Section 65.2-705. We also, as I may have already said, we rely on Section 65.2-708 specifically with regard to the credit issue from October 22, 1997 through February, 1999 when the application

was filed. It's our position that the Commission cannot adjust prior to the filing of the application, the average weekly wage, and they cannot award a credit based on any type of adjustment. Section 65.2-708 says, no such review, change in condition that is, shall affect an award as regard to monies paid, except pursuant to 712, 1105 or 1205. The only one of those which could be applicable in this case would be 712 and that deals with an unreported change in earnings or income, incarceration, or something of that sort. In the absence of fraud or a mutual mistake between the parties, 708 prevents the credit the employer is seeking. We also rely on the legal doctrine of waiver, that any error as to the average weekly wage in the August 25, 1994 opinion has been waived by both the employer's not taking an appeal, and also not taking further action in a timely fashion since some five years have passed. We rely on the legal doctrines of detrimental reliance and equitable estoppel, that the employer is estopped by it's conduct in payment, continuous payment, for over five years of benefits at the correct average weekly wage and temporary total disability rate from now claiming the rate should be changed. We rely upon the doctrine of imposition, namely that the---that follows from the detrimental

reliance and estoppel that the claimant has come to rely upon the validity of the Commission's award for over five years and the employer's continuing payments for that period and that it would--- the Commission has the authority and should do full and total justice in the circumstances, and that would preclude the employer from the relief requested. Finally, we rely upon the equitable doctrine of laches which has been applied in worker's compensation claims and in other legal cases for the proposition that five years of continuing payments at the same rate did not---prevents the employer from seeking the relief that it is seeking. As far as the credit, the second issue is, credit for the combined award periods, Deputy Commissioner our---I guess our position on that is that's purely a legal question for the Commission to determine and I think it really boils down to a question of, if it is a combined award, does the combined award go and apply one week of compensation against each claim for each week of benefits that are paid. And I think there is---there is both an intuitive appeal and opposition to that because the claimant, clearly, is not receiving three weeks of temporary total disability payments for every week that passes, so it seems rather unfair that she should have three weeks of

credit---the employer should be allowed three weeks of credit for each week that passes when she is receiving only benefits for one award. Does that make sense? I don't know that there's any...

DEPUTY COMMISSIONER ROACH:

I think I understand what you're saying.

MR. MARSHALL:

And I don't know that there's really any law. That's probably--it may be an issue of first impression when you have this combined award. I've never seen the opinions on the issue, but she's not--my point of view is she's not receiving three checks, so it shouldn't count as three weeks for each week that passes. Then the third issue is, credit for time worked in light duty employment. Our defenses are as follows. Number one, no credit is due pursuant to Section 65.2-708. Again, it says that no review shall affect monies paid except 712, 1105 and 1205. 712 is the only applicable provision. It requires the claimant to notify the employer and/or insurer of a return to earnings. In this case, the claimant returned to the self-insured employer, her pre-injury employer. They were on notice of it. And that they are not entitled to the relief---the credit that they now seek. I believe

there is authority, and I do not have the actual site, but I remember the name of the case. There are a couple of cases that have been decided saying where the claimant returns to the employer, a self-insured employer, and the employer is on notice that she has returned, but it still makes payment of benefits, that no credit is permitted. One of those lead cases on that was a case called Santirosa, S-a-n-t-i-r-o-s-a, versus Washington Metropolitan Area Transit Authority. The claimant relies upon the doctrines of res judicata and collateral estoppel that certainly when these claims came before the Commission and were decided in August of 1994, the employer could have, and should have, brought before the Commission any requests for a credit and that they are barred by the doctrines of res judicata and collateral estoppel. For the same reasons, we allege that they could have, and should have, come forward with regard to light duty employment and that they have waived those defenses with five years of continuing payments. We also rely upon detrimental reliance and equitable estoppel, imposition and latches. The request for a credit based on wages paid when the claimant returned to her pre-injury employer five years later, comes too late.

DEPUTY COMMISSIONER ROACH:

Each of these will be reiterated in your brief. Is that what you said?

MR. MARSHALL:

Yes, sir. As briefly as I can.

DEPUTY COMMISSIONER ROACH:

Okay. Anything else then?

MR. MARSHALL:

No, sir.

DEPUTY COMMISSIONER ROACH:

Anything else you wanted to add, Ms. Hillman, before we go forward?

MS. HILLMAN:

No.

DEPUTY COMMISSIONER ROACH:

Okay. If you'd like to call your first witness then.

LUCINDA GRAVELY, WITNESS

BY MS. HILLMAN:

Q. Lucinda, if you would please, state your full name for the record.

A. Lucinda B. Gravely.

Q. And could you tell me who your employer is, please?

A. E I Dupont.

Q. What is your employment address?

A. One Dupont Road, Martinsville, Virginia.

Q. How long have you been employed by Dupont?

A. Twenty-five years.

Q. And what is your current position?

A. I guess you would call me probably a manager for records.

Q. Okay. What does this entail?

A. Mainly my responsibility is to medical records, the oversee of medical records, coping medical records, some with worker's comp, OSHA records.

Q. Okay. Are you familiar with Dupont's time and record keeping practices?

A. Yes, I am.

Q. Can you tell me how you've come to be familiar with these practices?

A. With 25 years of being an employee there myself, I'm familiar with the restricted work. I also had a husband that worked there

for 30 years and I'm very well aware of how they're paid and the work schedules.

Q. Okay. I'm going to show you a document and ask you if you recognize this document.

MR. MARSHALL:

May I see that, please?

MS. HILLMAN:

Yes, you sure can.

A. Yes, I do.

Q. Can you tell me what this document is?

A. This document entails how a person---what the wages are for, whether it's regular overtime, whether it's call in time, whether it's regular wages, disability or restricted work. It's a code.

Q. Okay. And does that document have a date on the top?

A. Yes, it does.

Q. What is the date of that document?

A. May 5, 1993

Q. And were these codes in effect at the time of Ms. Eggleston's employment at Dupont?

A. Yes, they were.

MS. HILLMAN:

Your Honor, I would like to move
this document as exhibit---as
Dupont's Exhibit 1.

MR. MARSHALL:

No objection.

DEPUTY COMMISSIONER ROACH:

Okay. That will be Defense 1.

Q. Ms. Gravely, are you familiar with the payroll code number 21?

A. Yes, I am.

Q. Can you tell me what's meant by this code?

A. A person working restricted work at the regular wages.

Q. What is meant by restricted work?

A. It can go from sitting doing nothing to almost full job.

Q. Okay. But to clarify for the record, it's someone who is
not...

A. Not functioning at full capacity as expected of all forms or
fashions of the job.

Q. Are there other terms used to classify restricted work at
Dupont?

A. Light work is one.

Q. Are there any others that you can think of?

A. Light work, restricted work. I think that's all.

Q. Okay. And does a person who is on restricted work pursuant to code 21 have any salary decrease?

A. No, the salary remains the same.

Q. So pay code 21 reflects that a person is working at light duty at their normal pre-injury wages?

A. That's correct.

Q. I'd like to show you some other documents. Let's see. If you could tell me whether or not you recognize these documents.

A. Yes, I do.

Q. Could you tell me what they are, please?

A. It is the pay records for an employee.

Q. What employee? Which employee?

A. For Brenda Eggleston.

Q. Okay. And what is the date on those documents?

A. October 27, 1998.

Q. Okay.

A. I'm sorry, here it ended. This is just a...

- Q. Yeah, that's the day I'm looking for.
- A. The employee number in the period ending is 1990, September 15.
- Q. And what is the ending date on that stack of documents?
- A. Okay, the ending date is September 15, 1990.
- Q. How about on the last---what is the date of the last page?
- A. Oh, the last page?
- Q. Yes, ma'am.
- A. The ending date is January 12, 1991.
- Q. Okay. Have you seen these documents before today?
- A. Yes, I have.
- Q. Have you had occasion to review these documents before today?
- A. Yes, I have.
- Q. Did you make a determination as to how many days during that period of time Ms. Eggleston worked at light duty for her normal wages?

MR. MARSHALL:

Deputy Commissioner, I think that this testimony has to go a little bit beyond the scope of this

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witness' knowledge and I'll note an objection to any further testimony based on the wage records at this point because there has not been a foundation laid that these are admissible.

MS. HILLMAN:

Your Honor, it's our position that Lucinda is an employee of Dupont who has administrative duties at Dupont and has recognized these documents and has competence to testify as to what the documents contain.

MR. MARSHALL:

I don't think she's competent to testify---based on her testimony so far, I don't believe that she is competent to testify that these are accurate wage records or work records from Dupont. She is not in

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the personnel department or the human resources department. She's not charged with time keeping or interpreting time keeping. There could be all kinds of errors in these records all over the place and we don't have any way to challenge that.

DEPUTY COMMISSIONER ROACH:

Let me ask, how were these records produced right here?

A. They came from the payroll.

DEPUTY COMMISSIONER ROACH:

But are they---was this printed from a computer screen or xeroxed from hard copies, or what am I looking at here?

A. These are entered---at that time, they were entered by a supervisor onto the time keeping record.

DEPUTY COMMISSIONER ROACH:

But I see at the top, there are page numbers there that go like 49 and 50, 51. In the top right corner.

MR. MARSHALL:

I don't have that on the copy that I have, Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

I'm looking at the last few pages. I don't know how far. What pages are they from?

A. Each week is counted as a page.

DEPUTY COMMISSIONER ROACH:

Right. But I guess, if I went to your plant and wanted to see these, am I handed a book, or a computer screen to look at, or what am I looking at?

A. These records should be kept in personnel records.

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DEPUTY COMMISSIONER ROACH:

Okay. So if I pull Ms. Eggleston's
file, I would see something like
this?

A. A lot of the information is gone to computer and it would have
been entered by someone that has the knowledge to enter this, from
a paper record.

MR. MARSHALL:

The problem is, Deputy Commissioner,
we don't have the custodian of the
records. We can't authenticate them,
even with a reasonable degree of
certainty.

DEPUTY COMMISSIONER ROACH:

Do you have any role itself in
keeping these records or retrieving
them?

A. No.

DEPUTY COMMISSIONER ROACH:

Or entering the information in?

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A. No. That's a privileged information that only a couple of people can do at that particular time.

DEPUTY COMMISSIONER ROACH:

In your job as records manager, can you access these records any time you want?

A. I have been able to.

DEPUTY COMMISSIONER ROACH:

How do you do that? I mean, do you go to a computer screen?

A. (Affirmative response).

DEPUTY COMMISSIONER ROACH:

Is that what you do?

A. I don't do that now, no.

DEPUTY COMMISSIONER ROACH:

Okay. Well, who is, I guess, the custodian of these records? Who has access to these records?

A. Since our plant site has closed, these records can be kept in the hall of records. We have a storage area for records. We just

downsized to about 69 people that are on site now.

DEPUTY COMMISSIONER ROACH:

Okay. Is there anything else that
you wanted to add, Ms. Hillman?

MS. HILLMAN:

Yes, if I might just go back.

BY MS. HILLMAN:

Q. Lucinda, if you could, could you explain again, what is the
status of the Dupont site now in Martinsville?

A. The nylon manufacturing section is closed.

Q.. Okay. And is this the section that Ms. Eggleston worked in
back in '93?

A. Yes, it is. Yes.

Q. Do you have any records, custodians, still employed at Dupont
that were in charge of keeping Ms. Eggleston's time in 1993 and
prior to that time?

A. Probably one employee.

Q. Okay. And these---can you tell me what your understanding is
of how the information is input that get to that form?

MR. MARSHALL:

I'm going to object to that question, Deputy Commissioner. She's not the custodian. She doesn't input the form, and I think it's-- she's trying to---unfortunately what we're trying to do is we're trying to establish some method to authenticate records that really can't be authenticated, and because of that, they can't be impeached or cross examined or properly evaluated or given any weight.

DEPUTY COMMISSIONER ROACH:

Well, I'll let her testify as to her actual knowledge if she knows how these are encoded.

MR. MARSHALL:

If you would note my exception, Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. Lucinda, if you could go back and just tell us about the record keeping policies, how the time is kept by the individual employee, the process to get that information to payroll.

A. At that time, the supervisor kept the records as far as inputting the time. They would sign off on them on the time records and they would go to the payroll office at that time and then they were keyed in, and that's how the pay was calculated.

Q. By the payroll office?

A. By the payroll office.

Q. And is that where this information would have been provided?

A. This is where this information came from as a part of the record.

Q. Thank you. So Lucinda, did you have an opportunity to review these records and determine for that period of time how many days or hours that Ms. Eggleston worked at light duty at her normal wages?

A. Yes, I do.

MR. MARSHALL:

Deputy Commissioner, I'll note--- again I'm going to note an exception---or an objection at this point. Just because a Dupont employee has reviewed what are purported, but not authenticated as records, I don't think any employee can come in here and testify about when someone worked. This is a huge business. They've got payroll departments. They've got plenty of people who have responsibility for recording and keeping track of this information and for keeping custody of this information, and I just think it's inherently unfair to allow the---it's like allowing the cashier at McDonalds to state under oath what the gross receipts are for

the business for the year, and
that's not to belittle you at all.

A. I have no problem with that.

MR. MARSHALL:

It's a legal problem. It's not your
problem.

MS. HILLMAN:

Your Honor, it would be my position
that the records are very
straightforward. Lucinda has---Ms.
Gravely has the adequate knowledge
through her experience and years at
Dupont. Records management is a
large part of her duties. Just
because she didn't personally input
the information doesn't mean that
she doesn't have competence to
testify to what's on that piece of
paper as a representative of Dupont.

MR. MARSHALL:

I would agree that she may have some familiarity with it, but I think when you're talking about actual earnings records that are going to be going and be the only information that goes into the record, and we're dealing with periods of 1990, 1991, 1992 and 1993, and very clearly, Ms. Eggleston's memory, if it was able to stretch back that far, I would be surprised. These are the only records that we have, and we have no authentication.

MS. HILLMAN:

The fact that the records go back so far is part of the problem of having a Dupont---someone with personal knowledge to come in and give the testimony. Lucinda Gravely has---

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since the plant has closed, she has taken on a lot of administrative duties and is very well competent to testify.

MR. MARSHALL:

She's testified there is someone else with direct responsibility for maintaining custody of these records, and I know there is someone at Dupont who can testify as to the accuracy of those records.

DEPUTY COMMISSIONER ROACH:

Who was the other person currently there that has custody over these records?

A. There is a lady there now that keeps the time for employees that are there now.

DEPUTY COMMISSIONER ROACH:

Was she there back in '90 and '91 or do you know?

A. She was there, but I'm not sure that she was even in the record---no, we had a payroll office at that time.

Q. So to clarify, she---the person who you were referring to earlier, was an employee of Dupont at that time, but did not have...

A. She was an employee of Dupont at that time, but she was not in the payroll office. At that time, we had a very many tiered operation in there. As far as these records are concerned, I worked in the same---as a registered nurse there. Anyone that was out on disability, there was a form that came through the disability office to show the employee was absent and when they returned back to work.

MR. MARSHALL:

But, if I...

A. And it controlled the pay. It controlled the pay if you were absent or whether you got paid for being out of work. If you will look, when someone is out of work, say on regular disability, that came through our office in the medical section.

MR. MARSHALL:

I'd renew the same objection, Deputy

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Commissioner, because now she's saying that she has knowledge of how the record keeping is kept when people are not working or are out of work, and in fact, the question here is whether Ms. Eggleston worked on dates that nonauthenticated records suggest that she did.

MS. HILLMAN:

I'm not sure I understood that objection. My perspective would be that Lucinda has been there for a very long time and has very in-depth knowledge of many areas of Dupont's business.

MR. MARSHALL:

No, that type of---this type of documentary evidence is not normally the type of documentary evidence that the Commission would admit as

an exception to the hearsay rule without some foundation---an appropriate foundation being laid for it because based on the testimony that has been given, it's reliability is very much in question.

DEPUTY COMMISSIONER ROACH:

Let me ask if this is---are these documents created for everybody? I mean, would this be reflective of everybody?

A. For anybody that is wage roll, yes.

DEPUTY COMMISSIONER ROACH:

Okay. If this is a document that is created in the normal course of business, why is this not admissible under just the general business records exception, because they have their own indicia of reliability in

that they are created on a normal basis for everyone at the plant?

MR. MARSHALL:

I don't know how she can testify from firsthand knowledge that those are records that are kept in the normal course of business.

DEPUTY COMMISSIONER ROACH:

Well, I think payroll records are. That's the type of record you would think would be kept by a business, in the normal course of business.

MR. MARSHALL:

I always go back to the four corners of the hearsay rule, out of court statement of another submitted for the truth of the matter asserted and if it can't be authenticated, and it can't be impeached and cross examined because too much time has

passed, then it seems unfair to
admit it.

DEPUTY COMMISSIONER ROACH:

Except, unless it falls within one
of the exceptions, one of which is
the business records exception. Let
me ask, Ms. Gravely, is this in any
way anything right now you could
pull up on a computer and make
changes to or are these things that
only can be looked at.

A. No, you can---not everybody can look at them. Changes would---
I don't think you could make any changes to them now.

DEPUTY COMMISSIONER ROACH:

Okay. I'm going to go ahead and
admit them under the business
exception rule. I'll note your
objection for the record, Mr.
Marshall.

MR. MARSHALL:

Thank you, Deputy Commissioner.

MS. HILLMAN:

Thank you very much.

Q. Ms. Gravely, if you could, just let us know whether or not you had the opportunity to review these records to determine whether or not Ms. Eggleston worked at light duty for her normal wages during the period of time?

A. Yes, I have had an opportunity to look over them.

Q. And that would be 9/15/90 through 1/12/91?

A. (Affirmative response).

Q. Could you tell me how much time you found that Ms. Eggleston worked at light duty for her normal wages?

A. I had the records similar to this here.

Q. Pardon?

A. I had a record similar to this right here also.

Q. Okay.

A. But now looking back on these, I can establish by the pay code, and the pay code would be number 21. On each sheet you will see a code APR pay code, and that is records to these codes here.

DEPUTY COMMISSIONER ROACH:

And is the only thing I'm interested
in right now as far as your
questioning is the pay code 21?

MS. HILLMAN:

That's right. That's the only thing
we're focusing on.

A. And that shows restricted work.

Q. So Lucinda, did you come up with a total amount of time for
that period that she worked at light duty for her normal wages?

A. Yes.

Q. And what was that, please?

A. I don't have my paper in front of me, but...

Q. Do you have notes.

A. Well...

Q. Is the information on the chart an accurate...

A. The information here, I compared it with this.

Q. ...reflection?

A. Yes.

Q. Okay. So the information on that chart which indicates 3.5

weeks at light duty at her normal wages is an accurate reflection of your determination upon your independent review of those records?

A. Yes.

Q. Thank you. I have another batch of records that I would like to show you.

DEPUTY COMMISSIONER ROACH:

This chart is in your brief as well.

Is that correct?

MS. HILLMAN:

Yes, that's correct. And actually, Your Honor, I have a smaller copy of that that I'll get to you.

DEPUTY COMMISSIONER ROACH:

I can tell you right now, that's not going to fit in my records.

MS. HILLMAN:

No. Okay.

Q. Lucinda, could you please state whether you've had the opportunity to review those records?

A. Yes, I have.

Q. And could you tell me what those records are?

A. These are records---weekly pay records.

MR. MARSHALL:

I'm going to note the same objection
previously noted on the same
ground...

DEPUTY COMMISSIONER ROACH:

Yes, sir.

MR. MARSHALL:

Not the custodian and not
authenticated.

DEPUTY COMMISSIONER ROACH:

Okay. Go ahead.

Q. Ms. Gravely, did you review those records to determine whether
or not Ms. Eggleston worked at light duty for her normal wages
during the period of time reflected in those records?

A. Yes, I did.

Q. And could we back up a step. Could you tell me what the
beginning and ending period dates are for those records?

A. This is from January 19, 1991 through May 29, 1993.

Q. And can you tell me the---what your determination was as to the amount of time that Ms. Eggleston worked at light duty for her normal wages during that period of time?

A. It corresponded with the chart here.

Q. Okay, so you're referring to the chart that indicates 23.48 weeks of light duty at her normal wages?

A. Yes.

Q. During the period of 1/19/91 through 5/29/93.

A. (Affirmative response).

MS. HILLMAN:

Your Honor, I would like to offer those documents into evidence as an exhibit.

DEPUTY COMMISSIONER ROACH:

Okay. They'll be Defense 2 and 3
with Mr. Marshall's objection noted.

Q. And just to clarify for the record, Lucinda, you have indicated that the chart that I referenced there is an accurate reflection of your review of the medical---of the payroll records?

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A. Yes.

Q. I'll give you a copy of this chart. And can you state for us whether or not the chart that I'm handing you is the same as the demonstrative exhibit that we've been referring to?

A. Yes, it is.

Q. Okay.

MS. HILLMAN:

Your Honor, I would like to move that into evidence as...

MR. MARSHALL:

Deputy Commissioner, that's a demonstrative exhibit and I certainly don't have any objection to you considering it, but I don't-- unless there is any need to have that admitted as an exhibit, it really just serves to clarify, and I think it's demonstrative.

DEPUTY COMMISSIONER ROACH:

Okay. I'm not going to admit it

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itself as a document since it's not particularly evidence...

MS. HILLMAN:

Okay.

DEPUTY COMMISSIONER ROACH:

But I will note that---I will just make a note at the bottom here that it is an illustrative chart of Defendant's Exhibits 2 and 3.

MS. HILLMAN:

Thank you. That's all the questions that I have for Ms. Gravely.

DEPUTY COMMISSIONER ROACH:

Okay. Mr. Marshall.

BY MR. MARSHALL:

Q. Ms. Gravely, when did you review these records for Ms. Eggleston from---and her earnings from September 15, 1990 through May 29, 1993?

A. When?

Q. Yes, ma'am.

A. It's been several weeks ago.

Q. Okay. And how did you come to review these records?

A. How did I?

Q. Yes.

A. They were given to me by the attorney.

Q. So Ms. Hillman, attorney for Dupont, gave you the pay records?

A. Yes.

Q. You did not get the pay records from Dupont?

A. I have a copy of them.

Q. You did not---you did not obtain them from Dupont?

A. No.

Q. You didn't obtain them from the human resources or the payroll department?

A. I have a copy of them from the human resources if you'd---yes, I have a copy, the very same records.

Q. When did you get those?

A. It's been several days ago.

Q. Okay. So first you receive them from the attorney for Dupont and then you receive them from the payroll department or...

A. Well, we don't have a....

Q. We don't have a payroll department now. It's the human resource person that keeps the records of the time.

Q. Okay. And that human resources person is responsible for keeping the records of the time for the Martinsville facility?

A. Yes.

Q. What is that person's name?

A. Helen Wood.

Q. You did not have any direct ongoing responsibility for maintaining the payroll records for the Dupont Martinsville facility?

A. No.

Q. When you reviewed the time records for Ms. Eggleston, and identified the periods of light duty that she worked, did you independently verify, other than the payroll records in any way, that she worked those times?

A. There are medical documents from the medical section when we put employees on restricted work, but we do not keep up with the total number of days that they are placed on restricted work. Some employees, if you restrict them for two days, they might decide they can go back to work in one day. Some days it's---sometimes

it's longer.

Q. My question is, Ms. Hillman gave you these payroll records. You added off all the time that was coded 21 on the payroll records?

A. Yes.

Q. Did you do anything else to verify that the coded time was time that Ms. Eggleston actually worked at Dupont?

A. The time that she worked there or the time that she was on restricted work?

Q. Okay. I'll rephrase the question for you. Apart from reviewing the payroll records provided by Dupont's attorney, did you do anything to verify that the information in the payroll records was correct?

A. No.

Q. When you were given the payroll records from Dupont by Ms. Hillman, were you given anything else? Let me speed it up. When you were given the payroll records by Ms. Hillman, were you given a calculation of the amount of time that Ms. Eggleston had worked light duty work?

A. Yes.

Q. So your testimony today, did that---and was that the same as your testimony today, the information that you were provided?

A. Yes, I went back and added up on the codes as to number of hours.

Q. But you were provided with some calculation and your calculation...

A. Matched.

Q. Was the same as that?

A. Yes.

Q. Okay. So you did independently verify that the information provided by Dupont's attorney was correct?

A. Well, I went through---yes. Yes.

Q. When an employee comes back to light duty work, and let's refer back to the periods of time that we're dealing with here in 1990, 1991 and 1992, were you---are you familiar with what the policies were for an employee who wants to come back and perform restricted work at that time?

A. Yes, I am.

Q. When an employee wants to come back on restricted work, what do they have to do?

A. What do they have to do?

Q. Yes.

A. They normally check through the medical section. We had a medical section at that time---with the restrictions from their physician, and we worked around those restrictions.

Q. Then they're given a light duty position to perform?

A. It's considered light duty if you're not able to perform all duties that are entailed in that job.

Q. Okay. And then you're put back on the payroll?

A. You've always been on the payroll.

Q. Okay. No way that anyone could come back on restricted duty at Dupont without Dupont knowing about it, is there?

A. When you say Dupont, who are you referring to, the supervisor?

Q. Supervisor.

A. No, because he was the one that signed the time card.

Q. Okay.

MR. MARSHALL:

I don't have any further questions,
Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

Anything else of this witness?

MS. HILLMAN:

No, I don't think so.

DEPUTY COMMISSIONER ROACH:

All right. Thank you very much. Did
you want to call Ms. West?

MS. HILLMAN:

Yes, I'm ready for Ms. West.

WITNESS STOOD ASIDE

(OFF RECORD)

CATHERINE WEST, WITNESS

BY MS. HILLMAN:

Q. Would you please state your full name for the record?

A. Catherine Cox West.

Q. And could you tell me who your employer is, please?

A. Kemper Insurance Companies.

Q. And what is your job title at Kemper?

A. Claims adjuster.

Q. And what is the address of the Kemper office?

A. 4805 Lake Brook Drive, Glen Allen, Virginia, 23058-5550.

Q. Ms. West, do you have a reason to be familiar with the worker's compensation claims of Brenda Eggleston?

A. Yes, I do.

Q. And could you tell me how you've come to be familiar with these claims?

A. I'm the claims adjuster handling the claims.

Q. Okay. And could you summarize for us the conditions for which Ms. Eggleston currently is receiving worker's compensation benefits?

MR. MARSHALL:

Deputy Commissioner, I'm going to note an objection at this point. I think that is all a matter of record and I'm worried about this witness testifying what conditions were held compensable, when, by the Commission, what award periods covered, which injuries or claims, because it's all a matter of record.

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If Ms. Hillman wants to present their position on that, I think a demonstrative exhibit is acceptable, but it's important for you to note that we don't necessarily agree with their interpretation of the Commission's records and we want the Commission to rely on it's own records, so to take testimony on that, I don't know that it's relevant. It has to be cumulative and duplicative of what's already in the Commission's award and to help you do your job, if Ms. Hillman wants to summarize that somehow, I don't have any objection to it.

DEPUTY COMMISSIONER ROACH:

Let me ask, is she just going to summarize Deputy Commissioner Gorman's opinion and what's been

paid since then according to that?

MS. HILLMAN:

Yeah, I was going to have her tell us about the various awards, the average weekly wage. It was really for the Commission's benefit. I was hoping to help you summarize the records that are before you, but for the most part, it is information that is in the record and that is in the brief. I would refer you specifically to the trial brief because I notice that there were a couple of transpositions from the original memorandum, were some clerical errors.

DEPUTY COMMISSIONER ROACH:

Okay. If she's just going to reiterate what was in Deputy Commissioner Gorman's opinion and

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what's been paid, I can do that
myself in going through the file.

MS. HILLMAN:

Okay.

DEPUTY COMMISSIONER ROACH:

The only thing I might not have
evidence of is what COLA rates might
be paid right now. If she would have
any information on that.

MS. HILLMAN:

Okay. Let me---if I could just
review my outline and see what
information we may need to cover.

DEPUTY COMMISSIONER ROACH:

Sure.

MS. HILLMAN:

And I would also just reiterate, I
have the charts that I can provide
which do summarize our positions as
to the average weekly wage TT

amounts for the various awards.

DEPUTY COMMISSIONER ROACH:

I do see the chart you have right now is in the brief. I recall seeing that before.

MS. HILLMAN:

That is in the trial brief that we filed, yes.

DEPUTY COMMISSIONER ROACH:

Okay.

MR. MARSHALL:

And just to note, I don't have any objection to your considering it as something that's demonstrative, helpful, expeditious.

MS. HILLMAN:

Right. That was...

DEPUTY COMMISSIONER ROACH:

Right.

MR. MARSHALL:

It doesn't mean that we agree with
it, I guess.

DEPUTY COMMISSIONER ROACH:

I understand.

MS. HILLMAN:

Okay. There are a couple of
documents that should be in the
Commission's file. If you wouldn't
mind, I would like to have Ms. West
look at those, and it just should
verify compensation paid for the
carpal tunnel syndrome and for the
right shoulder injury.

Q. Ms. West, if you could just tell me whether you identify this
document and describe what the documents are and what they reflect.

A. Okay. This is a letter dated May 13, 1991 from Kemper
Insurance to the Commission. Let's see. This indicated the Agreed
Statement of Fact reflected an incorrect amount paid. The actual
figure was \$1530.95 that was actually paid.

- Q. And for what condition was that? What award was that?
- A. This was I. C. File No. 143-94-79.
- Q. And that would be bilateral carpal tunnel syndrome?
- A. Yes.
- Q. And could you describe the second document for us, please?

MR. MARSHALL:

Deputy Commissioner, this is a
Worker's Compensation Commission...

MS. HILLMAN:

Verification.

MR. MARSHALL:

Verification.

DEPUTY COMMISSIONER ROACH:

Yeah, this is just a response to our
standard request as to what has been
paid up to this point. Is that
correct?

MS. HILLMAN:

That's correct. I just wanted...

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MR. MARSHALL:

Is this in response of this---this
is the Commission's record of what
they respond---how they respond.

DEPUTY COMMISSIONER ROACH:

Well, it's on Kemper letterhead
so...

MR. MARSHALL:

I'm sorry, I've gotten---maybe I've
gotten them backwards. I'm sorry.

Q. The second document, if you could just briefly describe.

A. The second document is VWC File No. 149-63-96. It describes
the---this is a verification of compensation paid to Ms. Eggleston,
total amount being \$1637.43.

Q. And that was for the right shoulder injury?

A. Yes.

Q. Okay.

MS. HILLMAN:

Your Honor, I realize these are
Commission documents. I just wanted

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to just clarify that Ms. Eggleston
did receive payment for those two
awards.

DEPUTY COMMISSIONER ROACH:

Okay. These are part of the file I
would presume?

MS. HILLMAN:

They should be. I believe that's
where they came from.

DEPUTY COMMISSIONER ROACH:

Okay.

MR. MARSHALL:

If you want to make them an exhibit,
Deputy Commissioner, I don't have
any objections.

MS. HILLMAN:

Okay. Thank you.

DEPUTY COMMISSIONER ROACH:

Okay. I'll just go ahead and make
them...

MR. MARSHALL:

That way they won't get lost.

DEPUTY COMMISSIONER ROACH:

...they're separate files. Is that correct?

MS. HILLMAN:

Yes, two separate.

DEPUTY COMMISSIONER ROACH:

Okay. I'll just go ahead and make them---I think it's four and five we're up to. The May 13 letter will be Defense 4, and Defense 5, okay.

Q. Ms. West, I have some additional---an additional document for you. If you could review that and identify it for the record.

A. This is the computer printout of the payment history for Ms. Eggleston for her worker's compensation claims.

Q. And for which injury was that?

A. This is for the bilateral carpal tunnel---no. I'm sorry. This is for the game keeper's thumb.

Q. How can you tell that that relates to the game keeper's thumb?

A. The...

MR. MARSHALL:

Deputy Commissioner, I'm going to---
I'll just note an objection to the
characterization that this relates
to the game keeper's thumb. That
may be Ms. West's record keeping.
That may be her bookkeeping, but
what is compliance with the
Commission's award is compliance
with the Commission's award. I...

DEPUTY COMMISSIONER ROACH:

Let me ask it this way. Are these
payments made pursuant to the last
award by the Commission back in '94?

MS. HILLMAN:

That's correct.

DEPUTY COMMISSIONER ROACH:

Okay. I'll accept it that way.

Q. Ms. West, could you just clarify at what point the indemnity

records indicate that the award was combined pursuant to the 1994 order of the Commission?

A. As of December 1, 1993.

Q. And that is through the present time.

A. Yes.

Q. Ms. West, does the demonstrative chart there behind you accurately reflect the compensation, or actually the period of award that have been paid to Ms. Eggleston on her various worker's compensation claims?

A. Yes, it does.

MS. HILLMAN:

This is a summary just for the Commission's references.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. Ms. West, have you had occasion to review Ms. Eggleston's worker's compensation claims in order to make a determination of how many weeks remain owing to Ms. Eggleston?

A. Yes.

Q. Can you tell me, based upon your review of the records, how

many weeks you feel are remaining with regard to the combined award.

MR. MARSHALL:

That's---I think that's a legal conclusion, Deputy Commissioner. Maybe to not make too much of an objection---maybe it would be more appropriate to ask her how many weeks, according to her records, she's paid on each claim.

DEPUTY COMMISSIONER ROACH:

Well, I'll allow their theory of the case.

MR. MARSHALL:

That's fine.

DEPUTY COMMISSIONER ROACH:

If she wants to estimate how many weeks they think they have left. As of what date, today?

MS. HILLMAN:

As of today, yes.

Q. If we would---maybe if we would back up or start with---yes, with the carpal tunnel. Based upon your review of the file, how many weeks remain in the carpal tunnel?

A. One hundred ninety-nine point five weeks.

Q. And how many weeks would remain as to the right shoulder injury?

A. One hundred seventy-eight point 5.2 weeks.

Q. And how many weeks would remain on the game keeper's thumb?

A. One hundred eighty-two weeks.

DEPUTY COMMISSIONER ROACH:

As of what date?

MS. HILLMAN:

That would be through today.

DEPUTY COMMISSIONER ROACH:

Through today?

Q. Is that correct, Ms. West?

A. Yes.

Q. Now, based upon the concurrent nature of Ms. Eggleston's

award, what is your position as to how many weeks remain on all three of the claims? If we take into consideration the fact that they're running concurrently, and that there's overlap between the three claims commencing December of '93 pursuant to Commissioner Gorman's award, how many weeks do you feel are remaining to Ms. Eggleston on these three awards?

A. One hundred seventy-eight point 5.2 weeks.

Q. So it's your position that that's the maximum that she would be entitled to?

A. Yes.

Q. Based upon the three awards in combination. And can you tell me...

DEPUTY COMMISSIONER ROACH:

We're talking about since December 1 of '93. Is that right?

A. That's right.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. Could you just summarize for me briefly how you came up with that number for the concurrent award?

A. Okay, there was 23.48 weeks of light duty paid at pre-injury wages.

Q. Okay.

A. Okay. And the combined award was 293 weeks paid and then there were five weeks of TT paid. The maximum was 500. We've used a total of 321.48 weeks, leaving a balance of 178.52 weeks.

Q. So it's your position that that is the absolute maximum entitlement that Ms. Eggleston would have remaining on these three awards?

A. Yes.

Q. And that would be the three awards combined. Has there been a recent change in the amount of TT benefits being paid to Ms. Eggleston on her concurrent award?

A. Yes, as of the date the application was filed on February 17 of '99, her TT benefits were reduced to \$354.57 from \$433.57.

Q. And on what did you base this change?

A. We received a letter from Dr. Silvablat dated October 22, 1997 indicating Ms. Eggleston did not have game keeper's thumb and since she no longer had the game keeper's thumb, it was felt that the average weekly wage should be based on the condition for which she

was presently out.

Q. And what condition would that be?

A. Bilateral carpal tunnel syndrome.

MR. MARSHALL:

I'm going to object to that---I'm
going to object to that question.

The medical records speak for
themselves, Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

I'll allow it just to explain why
they changed to a certain way, but I
will rely on the medical records
themselves. And when was that
changed, the rate changed?

A. February 17, 1999.

DEPUTY COMMISSIONER ROACH:

Okay. And what's the current rate,
I'm sorry?

A. \$354.57.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. Ms. West, can you tell us how you came up with that number, \$354.97 as the current award, current rate of compensation?

A. This is based on the average weekly wage at the time---let's see. Based on the average weekly wage for the carpal---bilateral carpal tunnel claim.

Q. Okay.

A. Let's see, and the COLA rate was applied as requested from 1993 through 1997. This gives a total, temporary total disability of \$354.96.

Q. Okay. And is it your position, as a representative of the insurer, that Ms. Eggleston has been overpaid as a result of the continuance of benefits at the higher amount dating from October 22, 1997?

A. Yes, it is.

MR. MARSHALL:

Before you answer, Ms. West, I'll note an objection just to that question with regard to the motion

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and objection we noted to
consideration of this issue, just a
continuing.

DEPUTY COMMISSIONER ROACH:

Right. Okay. Go ahead.

Q. You can answer.

A. Yes, it is.

DEPUTY COMMISSIONER ROACH:

Do you have a total figure, by the
way?

A. \$4986.46.

DEPUTY COMMISSIONER ROACH:

\$4986.46?

A. Yes.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. Ms. West, can you briefly describe how you came up with that
number?

A. She was paid at the rate---Ms. Eggleston was paid at the rate
of \$413.11 for nine weeks from October 22, 1997 through December

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31, 1997 and she should have been paid at the rate of \$335.24. The overpayment there is \$700.83. In 1998, 52 weeks from January 1 of 1998 through December 31 of 1998 she was paid at the rate of \$426.94 and should have been paid at the rate of \$354.96. The overpayment is \$3732.56. In 1999 for seven weeks she was paid at the rate of \$426.94. Her benefits were reduced as of February 17, 1999. The total---the overpayment for 1999 covers the period of January 1, 1999 through February 17. That total is \$553.07 overpayment.

Q. And what was the total amount again?

A. \$553.07.

Q. That was the overpayment in 1999?

A. Yes.

Q. And is it the insurer's position that you are entitled to a credit against future TT benefits payable to Ms. Eggleston as a result of this overpayment?

A. Yes, it is.

Q. I don't have---well, do you have an idea of how many weeks of credit you should receive?

A. Sixty-eight weeks.

MS. HILLMAN:

I don't have any additional questions.

DEPUTY COMMISSIONER ROACH:

Let me ask one question. My records revealed that in the bilateral carpal tunnel syndrome case she received a permanent partial disability award. Is that correct or not?

MS. HILLMAN:

I believe she did receive a permanent partial.

DEPUTY COMMISSIONER ROACH:

Okay. Was that in any way figured into the calculations?

MS. HILLMAN:

We did not figure that into the credit.

DEPUTY COMMISSIONER ROACH:

Okay. And that's correct as far as
your understanding?

A. That's right.

DEPUTY COMMISSIONER ROACH:

Okay. Mr. Marshall do you want to
ask any questions?

MR. MARSHALL:

Yes.

BY MR. MARSHALL:

Q. Ms. West, your position is that Ms. Eggleston is entitled to
additional compensation for all three claims in the total amount of
178.52 weeks. Did I understand your testimony correct?

A. That she is entitled to...

Q. That the most she would be entitled to is an additional 178.52
weeks?

A. Yes.

Q. Okay. Now, she had a claim for a right shoulder injury,
right?

A. That's right.

Q. And she has been paid 298 weeks of compensation for that award, or for that injury, correct?

A. No, that's under the combined award which included all three...

Q. Let's just look at how much she's been paid for her right shoulder claim.

A. For her right shoulder claim, she was paid five weeks, October 1 of 1993 through November 2, 1992 (sic).

Q. So is it true that Kemper's bookkeeping shows that that's the only award that has been entered and paid with regard to the right shoulder injury?

A. No, Kemper's books shows that she has a combined award for all three claims.

Q. Okay. And under the combined award, there was 293 weeks paid?

A. Yes.

Q. And then we add five to that that was paid on the right shoulder, so for the right shoulder, she has been paid a total of 298 weeks of compensation, correct?

A. Under the combined award, yes.

Q. So if she's been paid 298 weeks of compensation, and she's

theoretically entitled under that right shoulder claim to a total of 500 weeks of compensation, why isn't she entitled to 199 weeks of compensation?

A. Because we have also paid under the bilateral carpal tunnel syndrome which is under the combined award, four weeks from September 26, 1990 through October 30, 1990.

Q. You have not sent Ms. Eggleston three temporary total disability checks for every week she has been under the combined award. Isn't that true?

A. That's true.

Q. You have only paid her one check for each week that has passed at the temporary total disability rate for the game keeper's thumb claim?

A. That's right. What was paid under the bilateral carpal tunnel syndrome was the permanent partial which is not included.

Q. From October of 1997 until February of 1999, neither Kemper nor Dupont filed any application for hearing alleging that they had made an overpayment, correct?

A. I don't know about Dupont.

Q. Okay, Kemper.

A. From October of '90 indicating we had made an overpayment?

Q. Well, you just testified you made an overpayment because Ms. Eggleston's game keeper's thumb was resolved as of October of 1997. I'm asking you from October of 1997 until the application that we're here on today that was filed in February of 1999, did Kemper file any application seeking to recover any overpayment?

A. No, we did not.

Q. When the---was Kemper involved in this claim when the combined award was entered in August of 1994?

A. Yes, Kemper was.

Q. And Kemper didn't do anything to appeal that or dispute that decision once that came out?

A. I have not seen any evidence of that.

Q. And you have reviewed your files for those medicals?

A. Yes.

Q. From October, 1997 until February of 1999, did Kemper ever advise Ms. Eggleston that they thought she was no longer entitled to benefits at the rate she was receiving them?

A. Not until the application was filed.

Q. Ms. Eggleston wouldn't have had any reason to know that there

was any mistake or anything wrong with the award from Kemper's perspective?

A. Not that I know of.

Q. Are you aware of any problem or any situation when Ms. Eggleston returned to work with Dupont that Dupont was not aware of?

A. I wouldn't be able to speak for Dupont's records.

Q. Okay. Are you aware of any time when Ms. Eggleston returned to work at Dupont and Kemper was not notified?

A. I am not aware of anything like that.

Q. You're here today, in part with Dupont, and you all are seeking a credit for light duty wages that Ms. Eggleston earned in 1990 and '91 and '92. Is that correct?

A. That's correct.

Q. What, if any, explanation do you have for why it's been some seven years or more than neither---well, that Kemper has not requested a credit based on that?

A. I have no explanation prior to my handling the claim, and in my handling the claim, I found this to be odd.

Q. When did you find it to be odd?

A. When I began handling the claim in '97.

Q. Okay. So you began---you discovered an issue with regard to light duty she had worked in '91 and '92, correct?

A. Well, let's say that was more recently, more down the road. More toward 1998. I began handling the claim in '97. There were--- because of the three files, all of them had to be reviewed and it took awhile to go through all of the reviews.

Q. Did Kemper never...

A. I had to review them.

Q. But nobody ever took any action with regard to that problem until an application is filed in February of 1999?

A. That's right.

Q. It's true, isn't it, that Kemper could have raised the issue regarding the light duty work that Ms. Eggleston had performed in 1990, '91 and '92 before the Commission when they disputed her entitlement to benefits in 1994.

MS. HILLMAN:

I would object to that. It's asking her to speculate when she wasn't involved in the case handling at

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that time.

DEPUTY COMMISSIONER ROACH:

I don't know if she can testify as to if it was within their knowledge at that time since she wasn't involved in the case.

MR. MARSHALL:

I think the real---honestly, Deputy Commissioner, probably the relevant considerations, whether it was in the employer's knowledge, and it's the same employer, so we don't have one of those problems of someone going back to work with a true unreported change in earnings. I'll just withdraw the question.

DEPUTY COMMISSIONER ROACH:

Okay.

Q. How many---how long have you been adjusting claims?

A. Since '95.

Q. And during that entire time, you on occasion have noticed or identified issues with regard to cases that you felt it was necessary to refer out to counsel?

A. Yes.

Q. And Kemper does that on a regular basis?

A. Yes.

Q. They dispute some claims?

A. Yeah, disputes.

DEPUTY COMMISSIONER ROACH:

That's why I have a job, I guess.

MR. MARSHALL:

Probably everyone in the room.

Q. As far as you're aware, the first notice to Ms. Eggleston of these overpayment issues was in February of 1999. Was that correct?

A. That's correct.

Q. This is obvious, but Kemper never sent Ms. Eggleston any notice saying here are your continuing temporary total disability checks, don't cash them because we may ask for some of that later?

A. I wouldn't expect that to be done, no.

Q. As far as you are aware, is there anything that Ms. Eggleston

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did, or did not do, which caused any of these overpayments?

A. As far as I know, no.

MR. MARSHALL:

I don't have any further questions,
Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

Anything else?

MS. HILLMAN:

I don't believe so.

DEPUTY COMMISSIONER ROACH:

Okay. Thank you very much. Is that
the employer's case at this point?

MS. HILLMAN:

Yes, it is.

DEPUTY COMMISSIONER ROACH:

Okay. Are you going to call Ms.
Eggleston?

MR. MARSHALL:

Yes, sir.

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MS. HILLMAN:

Your Honor, if I might, I do have a chart for demonstrative purposes. I don't know if you want to insert that.

DEPUTY COMMISSIONER ROACH:

This is in the brief as well?

MS. HILLMAN:

That is in the brief, the trial brief.

DEPUTY COMMISSIONER ROACH:

She's not subject to being recalled?

MS. HILLMAN:

Just in case, you'd better, yeah.

DEPUTY COMMISSIONER ROACH:

Okay.

WITNESS STOOD ASIDE

DEPUTY COMMISSIONER ROACH:

I don't think I mentioned this, but the last document---let me check.

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The last document...

MR. MARSHALL:

This here?

DEPUTY COMMISSIONER ROACH:

No, it's...

MS. HILLMAN:

The indemnity...

MR. MARSHALL:

Oh, the pay screens.

DEPUTY COMMISSIONER ROACH:

It's the payroll records that ended
in 1999. It's a huge stack right
here. I marked those as Defendant's
Exhibit 6 just for record keeping
purposes.

MR. MARSHALL:

Those are Kemper's payment records?

DEPUTY COMMISSIONER ROACH:

Yes.

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MR. MARSHALL:

You said payroll records.

DEPUTY COMMISSIONER ROACH:

I'm sorry.

MR. MARSHALL:

I just didn't want to get confused.

DEPUTY COMMISSIONER ROACH:

Okay. I'm confused at times, but
yes, that's Kemper's payment
records. I'll mark those as
Defendant's Exhibit 6 in case they
have to be referred to in the
future.

MR. MARSHALL:

No objection.

DEPUTY COMMISSIONER ROACH:

All right, go ahead.

MR. MARSHALL:

Thank you, sir.

BRENDA EGGLESTON, CLAIMANT

BY MR. MARSHALL:

Q. Ma'am, would you state your full name?

A. Brenda Lawrence Eggleston.

Q. And Ms. Eggleston, you were employed with E I Dupont Denemours
& Company?

A. That's correct.

Q. That's Dupont, right?

A. Right.

Q. What did you do for Dupont?

A. Over the years, I did several different jobs. A draw twist
operator, spinning machine operator, textile miscellaneous
operator, (inaudible) reel operator.

Q. And you had various occupational diseases and injuries that
have developed in the course of your employment. That's correct,
isn't it?

A. That's correct.

Q. And you've had a compensable claim for bilateral carpal tunnel
syndrome, a right shoulder injury and game keeper's thumb?

A. That's correct.

Q. Your employment with Dupont ceased in November of 1993?

A. That's correct.

Q. Before that, were they providing you with various light duty jobs?

A. Yes.

Q. And you've had a very brief opportunity to look at what are purported to be some payroll records from Dupont. Do you recall as you sit here whether you worked the days alleged in 1990, '91 and '92?

A. I don't recall. It's been too long for me to remember back that far certain days.

Q. When you stopped your employment with Dupont in November of '93, were you able to perform all of the duties that they were asking you to perform?

A. No, I wasn't.

Q. As a result of that, did you then file a claim with the Worker's Comp Commission and seek an award for the benefits?

A. That's correct.

Q. And that was---you went to a hearing before Deputy Commissioner Gorman and an opinion was issued in August of 1994?

A. Correct.

Q. Since Deputy Commissioner Gorman---well, you didn't do anything to appeal Deputy Commissioner Gorman's opinion?

A. No.

Q. And as far as you know, Kemper and Dupont didn't either?

A. That's correct.

Q. After that, did you start receiving weekly or biweekly benefit checks for your worker's comp?

A. Yes, I did.

Q. And have those continued until the present?

A. Yes, sir.

Q. The amount of the checks changed in February of 1999?

A. That's correct.

Q. As you sit here today, do you believe, just your subjective opinion, do you believe that your disability is because of the carpal tunnel, the shoulder injury, the game keeper's thumb or some combination thereof?

A. A combination.

Q. And does the combination involve all of those conditions?

A. Yes, it does.

Q. Has your condition of bilateral game keeper's thumb, as far as

you are concerned, has that ever completely resolved?

A. No, it hasn't.

Q. How often do you experience problems which you attribute to the game keeper's thumb?

A. Probably on a daily basis that it bothers me.

Q. Okay. When it bothers you, what do you experience?

A. At times it's worse, and sometimes, it's not too bad.

Q. What are the physical symptoms?

A. There is tenderness in the thumb and there are shooting pains from the thumb, from the base of the thumb back towards...

Q. And how---where do those shooting pains go?

A. It seems like there is shooting pains from the base back towards the end of the thumb and...

Q. You're indicating from...

A. And this part of the thumb.

Q. It appears to me you're indicating on the inside---what I would call the inside, the thumb side of your wrist, up towards the end of your thumb, and then also pains on the underside of your thumb?

A. Well, it's---this, when it's hurting here a lot, it's mostly

just confined right in that part, but then it just, shooting pains, and then there is aching, and there is flare up at times, and sometimes it gets better. There is swelling off and on.

Q. Does---how often do you experience swelling in your thumbs?

A. The swelling, it may be swollen bad at times that will last several weeks and then again, it may get better and not bother me much for a few weeks.

Q. Now, how are those symptoms different from the symptoms that you attribute, or you believe, are caused by the carpal tunnel syndrome? Can you differentiate them?

A. Yes.

Q. How do you differentiate them? What's the difference?

A. The carpal tunnel, it hurts more in the wrist and then the right arm hurts about 90 percent of the time, the whole arm aches. And I feel that comes from the right carpal tunnel. The left carpal tunnel, mostly I have numbness in the left hand.

Q. What types of things does the game keeper's thumb condition prevent you from doing around the house? What type of activities have you tried to do or done and experienced problems with?

A. The game keeper's thumb, just thinking of it without the

carpal tunnel, if I press things or try to pick up anything that's heavy and sometimes when it's real flared up I even find myself walking around just trying to protect it.

Q. Are you able to do work in the garden or work in the yard?

A. No, I have tried to work in the garden from time to time and every time I do I find that it worsens my condition and I just can't---I can't do it.

Q. Do you mow your lawn?

A. No.

Q. What about cooking, doing your daily activities around the house, cleaning inside?

A. It hampers all of the daily chores, I mean, cleaning house, peeling---trying to peel vegetables or fruit or lifting pans, frying pans or outside, I can't use a weed eater or even washing cars, I have to get someone else to wash the car. Just about everything I do.

Q. Did you ever have any reason to believe that there had been a mistake or that you had received overpayments following the Commission's 1994 award?

A. No, I didn't.

Q. Were you ever told by anyone at Dupont that you had been overpaid or that someone had made a mistake with regard to your worker's comp payments?

A. No.

Q. Were you ever asked by Dupont or Kemper prior to this February, 1999 application, to pay back any money that had been paid to you for worker's comp?

A. No.

Q. And that occurred---all of that occurred over a period of about five years?

A. Yes.

Q. Did you come to rely upon the employer's continuing payments as evidence that the awards---that had been entered were correct?

A. Yes, I was.

Q. Did you adjust your lifestyle and your spending and your financial obligations based on the amount of worker's compensation benefits that you were receiving?

A. Yes, I did.

Q. What has happened to you with regard to your spending and your financial obligations since your benefits were reduced in February?

MS. HILLMAN:

I object to the relevance of this
line of questioning.

MR. MARSHALL:

I think it goes to imposition and
latches.

DEPUTY COMMISSIONER ROACH:

Since I don't know the extent of
your argument in your brief, I'll go
ahead and allow some leeway on this,
so go ahead.

A. Well, since the deduction of benefits, I've had to try to
adjust my lifestyle back down, and as a matter of fact, I find
myself going into my savings to compensate for that difference.

Q. What conditions has Dr. Silvablat treated you for?

A. The bilateral carpal tunnel syndrome and the bilateral--I
still call it game keeper's thumb. I think in his records it may be
something...

Q. Day care veins, tenosynovitis?

A. Right.

Q. Do you understand that those---and I'm just asking for your understanding as a lay person, not a medical opinion, but do you understand that those two things are the same thing?

A. I thought they were, but I don't know.

Q. You're not being asked as a doctor. Has there been any period of time in the last two or three years that you didn't continue to see Dr. Silvablat?

A. At one time I was going to go back to him and I found out that he had moved to Florida, or he was out of town. I later found out that he had moved to Florida, but now he's back in Roanoke, but he's not a hand surgeon now. He has gone into skin specialist.

Q. When you saw him, was he doing hand surgeon speciality type work?

A. When I started seeing Dr. Silvablat, he did the right carpal tunnel release. He was a hand surgeon.

Q. How long do you believe that he was out of the area or out of practice in the Roanoke and southwest Virginia area?

A. I'm guessing approximately a year. I'm not sure though.

Q. Now, Ms. Eggleston, when---do you recall going back to light duty jobs at Dupont at various times in 1990, '91 and '92?

A. Yes.

Q. What was your procedure when you went back to light duty work? What hoops did you have to jump through before you could actually start working?

A. If I was out of work, I always went back through the medical section.

Q. And what did that involve? What did you have to do when you went through the medical section?

A. I would see a nurse most of the time.

Q. Was she a Dupont employee?

A. Yes. Occasionally I would see the doctor.

Q. Was he a---he or she, the doctor, a Dupont employee?

A. Correct.

Q. And then after you saw the doctor and/or the nurse, what happened then?

A. Then I would go to the medical section and notify my supervisor that I had come back and the medical section had continued to carry me on light duty.

Q. And after that they would find some light duty job and start you back on the regular work and the regular payroll?

A. That's correct.

Q. Could you---there really wasn't any way for you to ever start back to work without talking to your supervisor or somebody in a supervisory capacity, correct?

A. No.

Q. So they knew when you went back to light duty work?

A. Yes.

Q. Who else has diagnosed or treated you for the game keeper's thumb?

A. Dr. Hormel is the...

Q. Where's he located?

A. In Roanoke, Lewis Gale Medical Clinic, or I think the address is really Salem, Virginia.

Q. Did Dr. Silvablat ever tell you in October of 1997 that he thought you had never had game keeper's thumb, or you didn't have it at that point?

A. The issue was raised when a nurse that Kemper had assigned to go with me to the doctor at that time, and at that time, yes, he--- I think he stated in my medical records that he hadn't treated me for game keeper's thumb.

Q. Did he tell you that, or did you have any discussion with him about that?

A. I heard him and the nurse discussing it.

Q. He didn't ask you any questions at that time about how your thumbs were doing or...

A. I told him that particular day that my thumb wasn't painful.

Q. Did you tell him that you had completely recovered?

A. No.

Q. And have you had flare ups since that time with your thumb?

A. Yes, I have.

MR. MARSHALL:

I don't have any further questions,
Deputy Commissioner.

DEPUTY COMMISSIONER ROACH:

Okay. Ms. Hillman.

BY MS. HILLMAN:

Q. Ms. Eggleston, when was the last time that you saw, or that you obtained treatment for your alleged thumb condition?

A. I went to see Dr. Silvablat in June of '99.

Q. Okay. Did you have swelling or numbness in your thumbs on that

93 Statements
Brenda Eggleston, Claimant

day that you saw Dr. Silvablat?

A. No, I didn't. It was tender, but no swelling or numbness.

Q. In fact, you hadn't seen a physician for your alleged thumb condition since October 22, 1997, your last visit with Dr. Silvablat?

A. I talked to Dr. Hormel about it approximately February of '99 and at that time I was still under the impression that Dr. Silvablat was still out of town and I didn't know that he would ever return to Virginia to practice or not.

Q. But you didn't seek out any other physicians specifically for treatment for this alleged thumb condition, since October 22, 1997 until you actually went to see Dr. Silvablat on June 24, 1999. Isn't that correct?

A. Well, I discussed it with Dr. Hormel and...

Q. But he didn't provide you with any treatment on that day?

A. No.

Q. You didn't go to Dr. Hormel on that particular day specifically because of the thumb condition that you alleged?

A. No, I had an appointment already scheduled with him, so the thumb was bothering me at that time and I just discussed it with

him.

Q. Isn't it true that you haven't taken any prescription medications or received any therapy for this alleged thumb condition since October 22, 1997?

A. I'm still on the same prescription medication.

Q. What medication is that?

A. I take Neurotin at night.

Q. Who prescribed that?

A. Dr. Hormel.

Q. Do you know why he prescribed that?

A. To help me sleep and help keep down the pain.

Q. Dr. Hormel has also treated you for carpal tunnel syndrome. Is that correct?

A. That's correct.

Q. Any other---any prescription medication specifically prescribed for your thumb?

A. I take Baclofen which is kind of like a muscle relaxer.

Q. Who prescribed that?

A. Dr. Hormel. And I take another medicine. I can't think of the name of it.

Q. Dr. Silvablat did not prescribe either of those medications for your thumb?

A. He has allowed Dr. Hormel to administer my medications and he has all along.

Q. Did Dr. Hormel ever specifically tell you that he was prescribing a certain medication for your thumb condition?

A. No.

Q. Okay.

A. I mean, wait a minute. Can you ask me that again? I might have...

Q. My question is, did Dr. Hormel ever specifically prescribe a medication for you, and specifically tell you that this is a medication for your thumb condition?

A. He prescribed Zostra creme and I actually was using it for my shoulder and I started using it for my thumb when it would flare up and I told him I was and it seemed to help it a lot, and he told me to continue to use it.

Q. But this was a medication that he prescribed for your shoulder injury?

A. Correct.

him.

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Q. Did Dr. Hormel ever specifically tell you that he was prescribing a certain medication for your thumb condition?

A. No.

Q. Okay.

A. I mean, wait a minute. Can you ask me that again? I might have...

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A. He prescribed Zostira creme and I actually was using it for my shoulder and I started using it for my thumb when it would flare up and I told him I was and it seemed to help it a lot, and he told me to continue to use it.

Q. But this was a medication that he prescribed for your shoulder injury?

A. Correct.

Q. Okay. Did Dr. Silvablat tell you on October 22, 1997 that he doesn't believe you have or ever had game keeper's thumb?

A. I...

MR. MARSHALL:

I object. Well, never mind. I'll withdraw it.

A. I just overheard a conversation between him and Linda Bowls I think was the nurse's name, discussing game keeper's thumb and this other dequinyin pensivitis or whatever.

Q. Do you recall writing a letter to the Commission on December 3, 1997?

A. I sure do.

Q. Do you recall stating in that letter that Dr. Silvablat said that your thumb condition had resolved?

A. Yes, I do.

Q. Do you also recall stating in that letter that you continued to have pain in your hand and arm as a result of carpal tunnel syndrome?

A. Yes, I do.

Q. Do you recall that you also stated in that letter that you

were continuing to have shoulder pain?

A. Yes.

Q. So wouldn't it be fair to say that had you disagreed with Dr. Silvablat's assessment, that your thumb condition had resolved, you would have expressed that in your letter to the Commission when you were telling the Commissioner about the status of your other two conditions?

A. Between the time I seen Dr. Silvablat and the time I wrote that letter, I had not had a big flare up of the thumb at that time, and I stated in the letter that my thumb was not painful at that time.

Q. But you haven't sought any treatment specifically for your thumb since October 22, 1997 until you say you saw Dr. Hormel in February and mentioned, as an aside during a visit for another injury, that you thought you might need to see a doctor for your thumb.

A. I tried to get in touch with Dr. Hormel, or Dr. Silvablat and that's when I found out that he was out of town.

Q. When would you have tried to get in touch with Dr. Silvablat?

A. It was in '98.

Q. But you did not ask Dr. Hormel for referral to another physician specifically for treatment for your thumb?

A. I asked Dr. Hormel if I got to the point that I felt like I needed to have shots or surgery, if it got that bad, if possibly I could see another doctor and he told me, yes, I could get in touch with Dr. Crickenburger.

Q. But that was in February of '99.

A. Right.

Q. So we still don't have any treatment that you received for your thumb condition between October 22, 1997 and this mention in passing, if my thumb is bad enough, in February of '99?

A. No, because in '98 I found out that Dr. Silvablat was out of town.

Q. But there are other doctors.

A. It wasn't bad enough that I felt that I needed shots or surgery and I did everything I could to try to keep it under control to not have to go back to a doctor.

Q. You've stated here today that you have various restrictions that you attribute to this alleged game keeper's thumb. I'm just wondering, Ms. Eggleston, you're not a physician, are you?

A. No, I'm not.

Q. And you're not trained in medicine or any branch of medicine?

A. No.

Q. So there's no way that you can specifically state whether or not the symptoms that you are attributing to this alleged thumb condition might possibly be attributable to the right shoulder or the bilateral carpal tunnel syndrome.

MR. MARSHALL:

I object to the form of the question, and also she just stated that she's not qualified to give a medical opinion. We've offered her subjective complaints for, you know...

MS. HILLMAN:

Well, just to clarify, we don't believe that she's in a position to attribute specific complaints to game keeper's thumb.

MR. MARSHALL:

Commission's case law recognizes that a claimant's history and the claimant's subjective impressions of their symptoms and complaints may be accepted as evidence of disability or the nature of a condition.

DEPUTY COMMISSIONER ROACH:

Well, I always allow a claimant to testify as to his or her actual physical symptoms. I'll draw my own conclusions on causation based on the evidence.

MS. HILLMAN:

Thank you.

Q. Ms. Eggleston, did Dr. Silvablat tell you on June 24, 1999 that your current complaints with your right thumb arise from a totally separate and distinct condition from game keeper's thumb?

A. No, he didn't.

MS. HILLMAN:

I have no other questions.

DEPUTY COMMISSIONER ROACH:

Okay. Is that all from this witness?

MR. MARSHALL:

Yes, sir.

DEPUTY COMMISSIONER ROACH:

Okay. Thank you very much. Are we
going to call Mr. Adams or not?

MR. MARSHALL:

No, sir.

DEPUTY COMMISSIONER ROACH:

Okay. Thank you very much.

CLAIMANT STOOD ASIDE

(Case concluded).

FROM MEMBER CLAIM 934 418 6705 1999-06-22 12:42 #554 P.27/27
PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY 06/22/99
CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G MWED01
D.O.L. 03/09/93

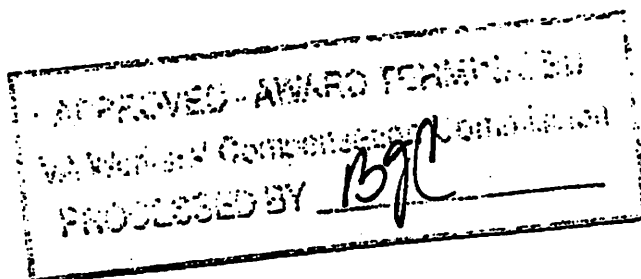
----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	BY	P/A	CD	CD	CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
520	82030	10	1	02			10/03/93	10/09/93	1	18	74.28	ACTIVE
520	81958	10	1	02			09/26/93	10/02/93	1	17	74.28	ACTIVE
520	81918	10	1	02			06/06/93	09/25/93	16	16	1188.48	ACTIVE

TOTAL AMOUNT OF PAYMENTS: 116980.32
NEXT FUNCTION ---

FOC00011A ALL ITEMS HAVE BEEN DISPLAYED

*Payment History
recs., filed
7/29/99*



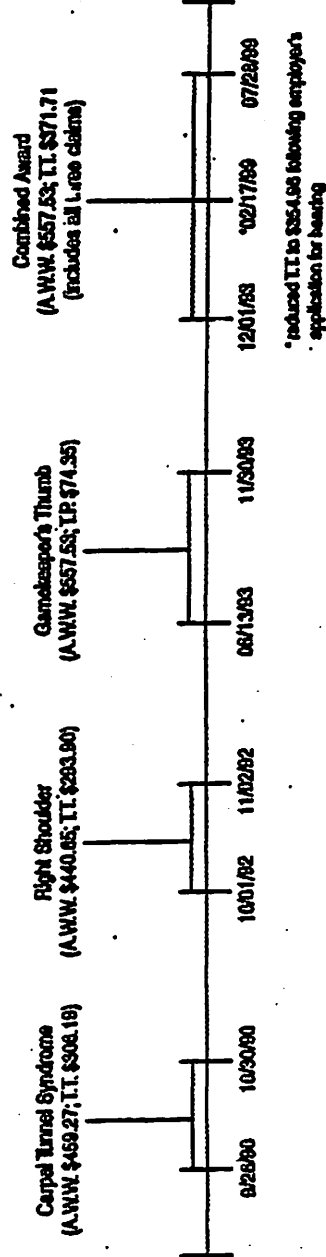
VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHAD

1277

CHARGE #65
JUL 29 1999
VIRGINIA WORKERS'
COMPENSATION COMMISSION



7/29/99

VWC No.	Award/Order	Temporary Total Benefits	Permanent Total Benefits	Compensation Commission Award	Weeks of Compensation
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero	approximately 3.5 weeks	199.5 weeks
		293 weeks (combined award)			
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly, 10/01/92-11/02/92	5 weeks	Zero	approximately 23.48 weeks	178.52 Weeks
		293 weeks (combined award)			
VWC No. 162-62-45 Gamekeeper's Thumb	09/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks	0 weeks	182 weeks
		293 weeks (combined award)			

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1279

MARTINSVILLE PLANT PAY CODE TABLE FOR DAY 1(SUN) THRU DAY 6(FRI)

APR PC	DESC	OLD SAL PC -FSE	NEW SAL PC -FSE	OLD SAL PC -LSE	NEW SAL PC -LSE	COMMENTS
1	REG OT	9	9	9	9	EXCEPTION PAY- PAYS 1.5X
%% 2	6HR CALL	52	52	2	2	EXCEPTION PAY- PAYS 1.0X. TIME OFFICE MUST MONITOR FOR GUARANTEED HRS 8 HOURS IN BASE SALARY-PAYS 1.5
%% 3	HOL WRKD	33	35	2	2	EXCEPTION PAY- PAYS 1.5X
4	MEETING	39	39	3	3	NO PREMIUM PAY ON DAYS 1-6 IN BASE SALARY
6	HOL ALWD	46	46	2	2	IN BASE SALARY
7	DENTIST	44	44	2	2	IN BASE SALARY
%% 8	4HR CALL	52	18	2	2	EXCEPTION PAY- PAYS 1.5X OR GUARANTEE = 4 HOURS
9	REG PAY	3	3	3	3	IN BASE SALARY
%% 10	SU DAY	90	30	2	2	IN BASE SALARY
11	CUR VAC	90	90	2	2	IN BASE SALARY
12	XXXXXXXX					
13	VAC TERM	98	98	2	2	
14	JURYDUTY	43	43	2	2	IN BASE SALARY
15	D.I.F.	42	42	2	2	IN BASE SALARY
16	TARDY	55-1	55-1	2	2	TAKEBACK
17	EXC W/P	53	53	53	2	IN BASE SALARY
18	EXC WO/P	55-1	55-1	2	2	TAKEBACK
19	REG DIS	60	60	2	2	IN BASE SALARY
20	DIS WO/P	55-1	55-1	2	2	TAKEBACK
21	RESTRICT	3	3	2	2	IN BASE SALARY
22	PERS EMEG	44	44	2	2	IN BASE SALARY
23	REST DAY	2	2	2	2	NO PAY
24	MILITARY	2	2	2	2	SP'CL PROCEDURE
25	LOA W/P	70	70	2	2	
26	LOA WO/P	77	77	2	2	
27	AWOL	55-1	55-1	2	2	TAKEBACK
28	TERM.	2	2	2	2	
29	UNEXCUSE	55-1	55-1	2	2	TAKEBACK
30	X WEEK	2	2	2	2	
31	Y WEEK	2	2	2	2	
32	DR.VISIT	44	44	2	2	IN BASE SALAR
33	CHG SCHD	5	5	5	5	EXCEPTION PAY- PAYS .5X
34	HA-DOR	47-1	47-1	2	2	NOT IN BASE SALARY-PAYS 1
35	HROV 40	12-1	12-1	2	2	EXCEPTION PAY PAYS .5X
%% 36	HOLOT 2.5X		35-1	1280		NOT IN BASE SALARY-PAYS 2
%% 37	7TH SCH		3		2	IN BASE SALAR

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

	17.76 days (3.5 weeks)	117 days (23.48 weeks)	134.76 days (26.95 weeks)

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1993

CHARGE #65

1281

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/09/15
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	9	11.100	8.0						
B	2		2	4	9	11.100			3.0				
B	2		2	4	32	11.100			5.0				
B	2		2	4	9	11.100				8.0			
B	2		2	4	23	11.100					0.0		
B	2		2	4	9	11.100						8.0	
B	2		2	4	9	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1282

27-OCT-1998

PAGE 38

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/09/22
 SERVICE CLASS: FULL

SHIFT CODE	SEF HR CD	PAY GROUP	PAY STEP	..APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	2	4	18	11.100	8.0						
B	0	2	4	23	0.000	0.0						
B	0	2	4	23	0.000			0.0				
B	3	2	4	19	11.100				8.0			
B	3	2	4	19	11.100					8.0		
B	3	2	4	19	11.100						8.0	
B	3	2	4	19	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1283
 -454-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 39

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/09/29
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	19	11.100	8.0						
B	3		2	4	19	11.100		8.0					
B	3		2	4	19	11.100			8.0				
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	19	11.100						8.0	
B	1		2	4	19	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1284

-455-

:7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 40

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/10/06
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	19	11.100	8.0						
B	1		2	4	19	11.100		8.0					
B	1		2	4	19	11.100			8.0				
B	1		2	4	19	11.100				8.0			
B	1		2	4	19	11.100					8.0		
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1285

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27-OCT-1998

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WEEKLY PAY RECORD FOR: B.G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/10/13
SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	2	4	23	0.000	0.0						
B	2	2	4	19	11.100	8.0						
B	2	2	4	19	11.100		8.0					
B	2	2	4	19	11.100			8.0				
B	2	2	4	19	11.100				8.0			
B	2	2	4	23	11.100					0.0		
B	2	2	4	19	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

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CHARGE #65

1286

-457-

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/10/20
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	19	11.100	8.0						
B	0		2	4	23	0.000	0.0						
B	0		2	4	23	0.000	0.0						
B	3		2	4	19	11.100			8.0				
B	3		2	4	19	11.100				8.0			
B	3		2	4	19	11.100					8.0		
B	3		2	4	19	11.100						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1287

-458-

OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/10/27
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	19	11.100	8.0						
B	3		2	4	19	11.100		8.0					
B	3		2	4	19	11.100			8.0				
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	19	11.100						8.0	
B	1		2	4	19	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1288

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/11/03
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	19	11.100	8.0						
B	1		2	4	19	11.100	8.0						
B	1		2	4	19	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1289

OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 45

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/11/10
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	9	11.100	8.0						
B	2		2	4	32	11.100			3.0				
B	2		2	4	9	11.100			5.0				
B	2		2	4	23	11.100				0.0			
B	2		2	4	9	11.100					8.0		
B	2		2	4	9	11.100						8.0	
B	2		2	4	9	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1230

-461-

2-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/11/17
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	9	11.100	8.0						
B	0		2	4	23	0.000	0.0						
B	0		2	4	23	0.000			0.0				
B	3		2	4	9	11.100				8.0			
B	3		2	4	9	11.100					8.0		
B	3		2	4	9	11.100						8.0	
B	3		2	4	9	11.100							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1291

-462-

2-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 47

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/11/24
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.100	8.0						
B	3		2	4	9	11.100		8.0					
B	3		2	4	9	11.100			8.0				
B	0		2	4	23	0.000				0.0			
B	2		2	4	6	11.100					8.0		
B	1		2	4	10	11.100						8.0	
B	1		2	4	9	11.100							8.0

TOTAL HRS: 48.0

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/12/01
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	1		2	4	9	11.100	8.0						
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CH

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/12/08
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	21	11.550	8.0						
B	2		2	4	21	11.550		8.0					
B	2		2	4	21	11.550			3.3				
B	2		2	4	32	11.550			4.7				
B	2		2	4	23	11.550				0.0			
B	2		2	4	21	11.550					4.5		
B	2		2	4	32	11.550						3.5	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE

07-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/12/15
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	21	11.550	8.0						
B	0		2	4	23	0.000	0.0						
B	0		2	4	23	0.000		0.0					
B	3		2	4	21	11.550			7.5				
B	3		2	4	21	11.550				8.0			
B	3		2	4	21	11.550					8.0		
B	3		2	4	21	11.550						7.5	

TOTAL HRS: 39.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1990/12/22
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	21	11.550	8.0						
B	3		2	4	21	11.550	8.0						
B	2		2	4	4	11.550			0.6				
B	3		2	4	21	11.550	8.0						
B	0		2	4	23	0.000			0.0				
B	0		2	4	23	0.000				0.0			
B	1		2	4	6	11.550					8.0		
B	1		2	4	6	11.550						8.0	

TOTAL HRS: 40.6

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1990/12/29
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	10	11.550	8.0						
B	1		2	4	10	11.550	8.0						
B	1		2	4	10	11.550	8.0						
B	1		2	4	10	11.550	8.0						
B	1		2	4	18	11.550	8.0						
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1297

-468-

CT-1998

PAGE 1

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/01/05
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	2	4	23	0.000	0.0						
B	2	2	4	21	11.550	8.0						
B	2	2	4	6	11.550	8.0						
B	2	2	4	21	11.550	8.0						
B	2	2	4	21	11.550				7.3			
B	2	2	4	23	11.550						0.0	
B	2	2	4	21	11.550							8.0

TOTAL HRS: 39.3

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1298

-469-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 2

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/01/12
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	21	11.550	8.0						
B	0		2	4	23	0.000		0.0					
B	0		2	4	23	0.000			0.0				
B	3		2	4	4	11.550				1.0			
B	3		2	4	21	11.550				8.0			
B	3		2	4	21	11.550				8.0			
B	3		2	4	19	11.550					8.0		
B	3		2	4	19	11.550						8.0	

TOTAL HRS: 41.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1299

-470-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 3

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/01/19
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	19	11.550	8.0						
B	3		2	4	9	11.550		8.0					
B	3		2	4	9	11.550			8.0				
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65

1300

-471-

'7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/01/26
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550							
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1301

-472-

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 5

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/02/02
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	23	11.550	0.0						
B	2		2	4	9	11.550			8.0				
B	2		2	4	9	11.550				2.0			
B	2		2	4	32	11.550				6.0			
B	2		2	4	9	11.550					8.0		
B	2		2	4	9	11.550						8.0	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #66

1302

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 6

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/02/09
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	2	4	9	11.550	8.0						
B	0	2	4	23	0.000	0.0						
B	0	2	4	23	0.000			0.0				
B	3	2	4	9	11.550				8.0			
B	3	2	4	9	11.550					7.0		
B	3	2	4	9	11.550						8.0	
B	3	2	4	9	11.550							8.0

TOTAL HRS: 39.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1303

-474-

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/02/16
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.550	8.0						
B	3		2	4	9	11.550		8.0					
B	2		2	4	4	11.550			0.6				
B	3		2	4	9	11.550		8.0					
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1304

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 8

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/02/23
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550	8.0						
B	1		2	4	3	11.550		8.0					
B	1		2	4	9	11.550			8.0				
B	1		2	4	9	11.550				8.0			
B	1		2	4	9	11.550					8.0		
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

1305
 -476-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/03/02
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	9	11.550	8.0						
B	2		2	4	1	11.550			7.0				
B	2		2	4	9	11.550				8.0			
B	2		2	4	9	11.550					8.0		
B	2		2	4	9	11.550						8.0	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 47.0

VIRGINIA WORKERS
 COMPENSATION COLLECTION

JUL 29 1999

CHARGE #65

1306

-477-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/03/09
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	..APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	9	11.550	8.0						
B	0		2	4	23	0.000		0.0					
B	0		2	4	23	0.000			0.0				
B	3		2	4	9	11.550				8.0			
B	3		2	4	9	11.550					8.0		
B	3		2	4	9	11.550						8.0	
B	3		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #2-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 1

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/03/16
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.550	8.0						
B	3		2	4	10	11.550	8.0						
B	2		2	4	4	11.550			0.6				
B	3		2	4	9	11.550			8.0				
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/03/23
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550		8.0					
B	1		2	4	21	11.550			8.0				
B	1		2	4	21	11.550				8.0			
B	1		2	4	10	11.550					8.0		
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1309

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/03/30
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	13	11.550	0.0						
B	2		2	4	23	11.550	0.0						
B	2		2	4	6	11.550			8.0				
B	2		2	4	6	11.550			8.0				
B	2		2	4	4	11.550					1.0		
B	2		2	4	21	11.550					8.0		
B	2		2	4	21	11.550						8.0	
B	2		2	4	21	11.550							8.0

TOTAL HRS: 41.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1310

-481-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/04/06
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	21	11.550	8.0						
B	2		2	4	6	11.550	8.0						
B	0		2	4	23	0.000			0.0				
B	3		2	4	21	11.550				8.0			
B	3		2	4	21	11.550					8.0		
B	3		2	4	9	11.550						8.0	
B	3		2	4	9	11.550							8.0

TOTAL HRS: 48.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1311

-482-

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 15

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/04/13
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.550	8.0						
B	3		2	4	9	11.550	8.0						
B	3		2	4	4	11.550			0.6				
B	3		2	4	9	11.550	8.0						
B	0		2	4	23	0.000			0.0				
B	0		2	4	23	0.000				0.0			
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1312

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 1

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/04/20
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY.. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550		8.0					
B	1		2	4	9	11.550			8.0				
B	1		2	4	9	11.550				8.0			
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 17

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/04/27
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	9	11.550	8.0						
B	2		2	4	32	11.550			3.2				
B	2		2	4	9	11.550			4.8				
B	2		2	4	32	11.550				2.2			
B	2		2	4	9	11.550				5.8			
B	2		2	4	23	11.550					0.0		
B	2		2	4	9	11.550						8.0	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1314

-485-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 18

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/05/04
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	2	4	9	11.550	8.0						
B	0	2	4	23	0.000	0.0						
B	0	2	4	23	0.000			0.0				
B	3	2	4	9	11.550				8.0			
B	3	2	4	9	11.550					8.0		
B	3	2	4	9	11.550						8.0	
B	3	2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 19

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/05/11
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.550	8.0						
B	3		2	4	9	11.550		8.0					
B	3		2	4	4	11.550			1.0				
B	3		2	4	9	11.550			8.0				
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 41.0

1316

-487-

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 20

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/05/18
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550			8.0				
B	1		2	4	9	11.550				8.0			
B	1		2	4	9	11.550					8.0		
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 2:

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/05/25
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	9	11.550	8.0						
B	2		2	4	32	11.550			3.0				
B	2		2	4	9	11.550			5.0				
B	2		2	4	9	11.550				8.0			
B	2		2	4	9	11.550					8.0		
B	2		2	4	23	11.550						0.0	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1318

-489-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/06/01
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	1	11.550							
B	2		2	4	9	11.550	8.0						
B	2		2	4	3	11.550	8.3						
B	2		2	4	1	11.550	12.4						
B	3		2	4	1	11.550	4.3						
B	2		2	4	9	11.550	8.0						
B	3		2	4	9	11.550	8.0						
B	3		2	4	1	11.550	0.3						
B	3		2	4	9	11.550	7.7						
B	3		2	4	5	11.550	8.0						

TOTAL HRS: 65.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1319

-490-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 23

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/06/08
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	18	11.550	8.0						
B	3		2	4	9	11.550		5.0					
B	3		2	4	4	11.550			1.0				
B	3		2	4	9	11.550		8.0					
B	0		2	4	23	0.000				0.0			
B	0		2	4	23	0.000					0.0		
B	1		2	4	9	11.550						8.0	
B	1		2	4	9	11.550							8.0

TOTAL HRS: 38.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 24

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/06/15
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	18	11.550	8.0						
B	1		2	4	18	11.550		8.0					
B	1		2	4	10	11.550			8.0				
B	1		2	4	10	11.550				8.0			
B	1		2	4	10	11.550					8.0		
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 2

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/06/22
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	..APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		2	4	23	0.000	0.0						
B	2		2	4	23	11.550	0.0						
B	2		2	4	32	11.550			3.0				
B	2		2	4	9	11.550			5.0				
B	2		2	4	9	11.550				8.0			
B	2		2	4	32	11.550					3.0		
B	2		2	4	9	11.550					5.0		
B	2		2	4	9	11.550						8.0	
B	2		2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1322

-493-

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 26

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/06/29
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY -- STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	2	4	9	11.550	8.0						
B	0	2	4	23	0.000	0.0						
B	0	2	4	23	0.000			0.0				
B	3	2	4	9	11.550				8.0			
B	3	2	4	9	11.550					8.0		
B	3	2	4	9	11.550						8.0	
B	3	2	4	9	11.550							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 27

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/07/06
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		2	4	9	11.550	8.0						
B	3		2	4	9	11.550		5.0					
B	3		2	4	9	11.550			8.0				
B	0		2	4	23	0.000			0.0				
B	2		2	4	6	11.550				8.0			
B	1		2	4	9	11.550					8.0		
B	1		2	4	9	11.550						8.0	

TOTAL HRS: 45.0

VIRGINIA WORKER
 COMPENSATION COMMISSIC
 JUL 29 1999
 CHARGE #65

1324

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 26

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/07/13
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	1		2	4	9	11.550	8.0						
B	0		2	4	23	0.000						0.0	
B	0		2	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1325

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 29

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/07/20
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		2	4	9	11.550							
B	0		2	4	23	0.000	0.0						
B	2		2	4	12	11.550		8.0					
B	0		2	4	23	0.000		0.0					
B	2		2	4	12	11.550			8.0				
B	2		2	4	12	11.550				8.0			
B	2		2	4	12	11.550					8.0		
B	2		2	4	12	11.550						8.0	

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999
 CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 3

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/07/27
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	12.890	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000		0.0					
B	3		3	4	9	12.890			8.0				
B	3		3	4	32	12.890				0.8			
B	3		3	4	9	12.890				7.2			
B	3		3	4	9	12.890					8.0		
B	3		3	4	9	12.890						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE :

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/08/03
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	12.890	8.0						
B	3		3	4	9	12.890		5.0					
B	3		3	4	4	12.890			1.0				
B	3		3	4	9	12.890		8.0					
B	0		3	4	23	0.000			0.0				
B	0		3	4	23	0.000				0.0			
B	1		3	4	9	12.890					8.0		
B	1		3	4	9	12.890						8.0	

TOTAL HRS: 38.0

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-499-

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/08/10
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890		8.0					
B	1		3	4	9	12.890			8.0				
B	1		3	4	9	12.890				8.0			
B	1		3	4	9	12.890					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1329

-500-

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

.7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 33

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/08/17
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	12.890		8.0					
B	2		3	4	9	12.890			8.0				
B	2		3	4	23	12.890				0.0			
B	2		3	4	9	12.890					8.0		
B	2		3	4	9	12.890						8.0	
B	2		3	4	9	12.890							8.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 34

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/08/24
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	12.890	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	12.890				8.0			
B	3		3	4	9	12.890					8.0		
B	3		3	4	9	12.890						8.0	
B	3		3	4	9	12.890							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1331

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 35

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/08/31
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	12.890	8.0						
B	3		3	4	9	12.890		5.0					
B	2		3	4	4	12.890			0.6				
B	3		3	4	9	12.890			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	9	12.890						8.0	
B	1		3	4	9	12.890							8.0

TOTAL HRS: 37.6

1332

-503-

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 36

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/09/07
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	12.890	8.0						
B	1		3	4	3	12.890	8.0						
B	1		3	4	9	12.890			8.0				
B	1		3	4	9	12.890				8.0			
B	1		3	4	9	12.890					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1333

-504-

VIRGINIA WORKERS
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 3

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/09/14
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	12.890	8.0						
B	2		3	4	9	12.890		8.0					
B	2		3	4	23	12.890			0.0				
B	2		3	4	9	12.890				8.0			
B	2		3	4	9	12.890					8.0		
B	2		3	4	10	12.890						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #6

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 38

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/09/21
SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	10	12.890	8.0						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000			0.0				
B	3	3	4	9	12.890				3.4			
B	3	3	4	9	12.890					8.0		
B	3	3	4	9	12.890						8.0	
B	3	3	4	9	12.890							8.0

TOTAL HRS: 35.4

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1335

-506-

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/09/28
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	12.890	8.0						
B	3		3	4	9	12.890		8.0					
B	2		3	4	4	12.890			0.6				
B	3		3	4	9	12.890			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	9	12.890						8.0	
B	1		3	4	9	12.890							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 40

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/10/05
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890			8.0				
B	1		3	4	9	12.890				8.0			
B	1		3	4	9	12.890					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 23 1999

CHARGE #65

1337

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 41

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1991/10/12
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	12.890		8.0					
B	2		3	4	10	12.890			8.0				
B	2		3	4	10	12.890				8.0			
B	2		3	4	23	12.890					0.0		
B	2		3	4	10	12.890						8.0	
B	2		3	4	9	12.890							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 42

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/10/19
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	9	12.890	8.0						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000			0.0				
B	3	3	4	9	12.890				2.6			
B	3	3	4	9	12.890					8.0		
B	3	3	4	9	12.890						7.8	
B	3	3	4	9	12.890							8.0

TOTAL HRS: 34.4

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1339

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/10/26
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	12.890	8.0						
B	3		3	4	9	12.890	8.0						
B	2		3	4	4	12.890			0.6				
B	3		3	4	9	12.890	8.0						
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	9	12.890						8.0	
B	1		3	4	9	12.890							7.0

TOTAL HRS: 39.6

VIRGINIA WORKERS
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 44

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/11/02
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890				8.0			
B	1		3	4	9	12.890					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/11/09
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	3	4	23	0.000	0.0						
B	2	3	4	23	12.890	0.0						
B	2	3	4	9	12.890			8.0				
B	2	3	4	9	12.890				8.0			
B	2	3	4	9	12.890					8.0		
B	2	3	4	9	12.890						8.0	
B	2	3	4	9	12.890							8.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 46

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/11/16
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	12.890	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	12.890				8.0			
B	3		3	4	9	12.890					8.0		
B	3		3	4	9	12.890						8.0	
B	3		3	4	9	12.890							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 4

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/11/23
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	12.890	8.0						
B	3		3	4	9	12.890	8.0						
B	2		3	4	4	12.890			0.6				
B	3		3	4	9	12.890			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	9	12.890						8.0	
B	1		3	4	9	12.890							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1344

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 48

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/11/30
 SERVICE CLASS: FULL

SHIFT CODE	SEF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	12.890	8.0						
B	1		3	4	9	12.890		8.0					
B	1		3	4	9	12.890			8.0				
B	1		3	4	10	12.890				8.0			
B	1		3	4	6	12.890					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1345

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 49

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/12/07
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.320	8.0						
B	2		3	4	23	13.320			0.0				
B	2		3	4	9	13.320				8.0			
B	2		3	4	9	13.320					8.0		
B	2		3	4	9	13.320						8.0	
B	2		3	4	9	13.320							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS;
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

1346

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 50

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/12/14
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.320	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.320				8.0			
B	3		3	4	9	13.320					8.0		
B	3		3	4	9	13.320						8.0	
B	3		3	4	9	13.320							8.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHAD

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 51

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/12/21
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	13.320	8.0						
B	3		3	4	9	13.320	8.0						
B	2		3	4	4	13.320			0.6				
B	3		3	4	9	13.320			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	18	13.320						8.0	
B	1		3	4	6	13.320							8.0

TOTAL HRS: 40.6

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #

1348

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE :

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1991/12/28
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY .. STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	6	13.320	8.0						
B	1		3	4	10	13.320	8.0						
B	1		3	4	10	13.320	8.0						
B	1		3	4	10	13.320	8.0						
B	1		3	4	10	13.320	8.0						
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHAD

1349

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 1

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/01/04
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.370		8.0					
B	2		3	4	9	13.370			8.0				
B	2		3	4	6	13.370				8.0			
B	2		3	4	9	13.370					8.0		
B	2		3	4	9	13.370						8.0	
B	2		3	4	9	13.370							8.0

TOTAL HRS: 48.0

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VIRGINIA WORKER
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE -

-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 2

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/01/11
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.370	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.370				8.0			
B	3		3	4	9	13.370					8.0		
B	3		3	4	9	13.370						8.0	
B	3		3	4	9	13.370							8.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHAD

7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/01/18
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3	3	4	9	13.370	8.0						
B	3	3	4	17	13.370	2.6						
B	3	3	4	9	13.370	5.4						
B	3	3	4	4	13.370	1.0						
B	3	3	4	9	13.370	8.0						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000	0.0						
B	1	3	4	9	13.370	8.0						
B	1	3	4	9	13.370	8.0						

TOTAL HRS: 41.0

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VIRGINIA WORKERS
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 4

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/01/25
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.370	8.0						
B	1		3	4	9	13.370		3.3					
B	1		3	4	17	13.370		4.7					
B	1		3	4	9	13.370			8.0				
B	1		3	4	9	13.370				8.0			
B	1		3	4	9	13.370					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE NO.

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 5

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/02/01
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	23	13.370	0.0						
B	2		3	4	9	13.370			8.0				
B	2		3	4	9	13.370				5.7			
B	2		3	4	32	13.370					1.2		
B	2		3	4	9	13.370					6.8		
B	2		3	4	9	13.370						8.0	
B	2		3	4	9	13.370							8.0

TOTAL HRS: 37.7

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHAD

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 6

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/02/08
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.370	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.370				8.0			
B	3		3	4	9	13.370					8.0		
B	3		3	4	10	13.370						8.0	
B	3		3	4	18	0.000							0.1
B	3		3	4	9	13.370							7.9

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1355

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 7

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/02/15
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	13.370	8.0						
B	3		3	4	9	13.370		8.0					
B	3		3	4	9	13.370			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	10	13.370						8.0	
B	1		3	4	9	13.370							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1356

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 8

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/02/22
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.370	8.0						
B	1		3	4	3	13.370	8.0						
B	1		3	4	9	13.370		8.0					
B	1		3	4	9	13.370			8.0				
B	1		3	4	9	13.370				8.0			
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1357

7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/02/29
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	18	0.000	2.6						
B	2		3	4	9	13.370	5.4						
B	2		3	4	9	13.370	8.0						
B	2		3	4	23	13.370	0.0						
B	2		3	4	9	13.370	8.0						
B	2		3	4	9	13.370	8.0						
B	2		3	4	9	13.370	8.0						

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1358

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 10

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/03/07
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	9	13.370	8.0						
B	2	3	4	4	13.370	5.9						
B	0	3	4	23	0.000	0.0						
B	3	3	4	9	13.370	8.0						
B	3	3	4	18	0.000	0.2						
B	3	3	4	9	13.370	7.8						
B	3	3	4	9	13.370	8.0						
B	3	3	4	9	13.370	8.0						

TOTAL HRS: 45.9

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1359

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7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/03/14
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	18	0.000	2.7						
B	3		3	4	9	13.370	5.3						
B	3		3	4	9	13.370	8.0						
B	3		3	4	9	13.370	8.0						
B	0		3	4	23	0.000	0.0						
B	3		3	4	4	13.370	1.0						
B	1		3	4	9	13.370	8.0						
B	1		3	4	9	13.370	8.0						

TOTAL HRS: 41.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1993

CHARGE #65

1360

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/03/21
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.370	8.0						
B	1		3	4	9	13.370		8.0					
B	1		3	4	9	13.370			8.0				
B	1		3	4	9	13.370				8.0			
B	1		3	4	9	13.370					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/03/28
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	17	13.370	8.0						
B	2		3	4	18	0.000			0.1				
B	2		3	4	9	13.370			7.9				
B	2		3	4	23	13.370			0.0				
B	2		3	4	7	13.370				1.2			
B	2		3	4	9	13.370				6.8			
B	2		3	4	9	13.370					8.0		
B	2		3	4	9	13.370						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKER
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/04/04
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	18	0.000	0.4						
B	2		3	4	9	13.370	7.6						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000		0.0					
B	3		3	4	9	13.370			8.0				
B	3		3	4	21	13.370				8.0			
B	3		3	4	21	13.370					8.0		
B	3		3	4	18	0.000						0.4	
B	3		3	4	21	13.370							7.6

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/04/11
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	21	13.370	8.0						
B	3		3	4	21	13.370	8.0						
B	3		3	4	4	13.370			0.9				
B	3		3	4	21	13.370	8.0						
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	10	13.370						8.0	
B	1		3	4	21	13.370							8.0

TOTAL HRS: 40.9

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/04/18
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.370	8.0						
B	1		3	4	21	13.370		3.4					
B	1		3	4	17	13.370		4.6					
B	1		3	4	21	13.370			8.0				
B	1		3	4	21	13.370				8.0			
B	1		3	4	21	13.370					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/04/25
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	3	13.370		8.0					
B	2		3	4	21	13.370			8.0				
B	2		3	4	23	13.370				0.0			
B	2		3	4	10	13.370					8.0		
B	2		3	4	21	13.370						8.0	
B	2		3	4	21	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/05/02
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	21	13.370	1.0						
B	2		3	4	18	0.000	7.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000	0.0						
B	3		3	4	21	13.370				8.0			
B	3		3	4	21	13.370				8.0			
B	3		3	4	21	13.370					8.0		
B	3		3	4	21	13.370						8.0	

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/05/09
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	..APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3	3	4	21	13.370	8.0						
B	3	3	4	18	0.000		2.4					
B	3	3	4	21	13.370		5.6					
B	2	3	4	4	13.370			1.0				
B	3	3	4	21	13.370			8.0				
B	0	3	4	23	0.000				0.0			
B	0	3	4	23	0.000					0.0		
B	1	3	4	10	13.370						8.0	
B	1	3	4	17	13.370							8.0

TOTAL HRS: 41.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/05/16
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	10	13.370	8.0						
B	1		3	4	10	13.370	8.0						
B	1		3	4	10	13.370	8.0						
B	1		3	4	21	13.370	8.0						
B	1		3	4	21	13.370	8.0						
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/05/23
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	21	13.370	8.0						
B	2		3	4	23	13.370			0.0				
B	2		3	4	21	13.370				8.0			
B	2		3	4	21	13.370					8.0		
B	2		3	4	21	13.370						8.0	
B	2		3	4	21	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/05/30
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	21	13.370	8.0						
B	2		3	4	34	13.370	8.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	18	13.370				8.0			
B	3		3	4	10	13.370					8.0		
B	3		3	4	21	13.370						8.0	
B	3		3	4	17	13.370							1.9
B	3		3	4	21	13.370							6.1

TOTAL HRS: 48.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/06/06
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	21	13.370	8.0						
B	3		3	4	21	13.370	8.0						
B	2		3	4	4	13.370			1.0				
B	3		3	4	21	13.370	8.0						
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	17	13.370						8.0	
B	1		3	4	17	13.370							8.0

TOTAL HRS: 41.0

VIRGINIA WORKERS'
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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/06/13
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	17	13.370	8.0						
B	1		3	4	10	13.370	8.0						
B	1		3	4	10	13.370			8.0				
B	1		3	4	10	13.370				8.0			
B	1		3	4	10	13.370					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/06/20
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	21	13.370	8.0						
B	2		3	4	21	13.370		8.0					
B	2		3	4	21	13.370			1.3				
B	2		3	4	32	13.370			6.7				
B	2		3	4	23	13.370				0.0			
B	2		3	4	21	13.370					8.0		
B	2		3	4	18	0.000						0.7	
B	2		3	4	21	13.370							7.3

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/06/27
SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	21	13.370	8.0						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000			0.0				
B	3	3	4	21	13.370				8.0			
B	3	3	4	21	13.370					8.0		
B	3	3	4	21	13.370						8.0	
B	3	3	4	17	13.370							0.5
B	3	3	4	21	13.370							7.5

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/07/04
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	21	13.370	8.0						
B	3		3	4	10	13.370	8.0						
B	3		3	4	21	13.370			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	21	13.370						8.0	
B	1		3	4	3	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850

PERIOD END DATE: 1992/07/11

SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	21	13.370	8.0						
B	1		3	4	21	13.370		8.0					
B	1		3	4	21	13.370			8.0				
B	1		3	4	7	13.370				0.3			
B	1		3	4	21	13.370				7.7			
B	1		3	4	18	0.000					0.2		
B	1		3	4	22	13.370					2.0		
B	1		3	4	21	13.370					5.8		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/07/18
SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	3	4	23	0.000	0.0						
B	2	3	4	11	13.370		8.0					
B	2	3	4	11	13.370			8.0				
B	2	3	4	11	13.370				8.0			
B	2	3	4	11	13.370					8.0		
B	2		0	23	0.000						0.0	
B	2	3	4	11	13.370							8.0

TOTAL HRS: 40.0

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COMPENSATION COMMISSION

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/07/25
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	11	13.370	8.0						
B	0			0	23	0.000	0.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	11	13.370			8.0				
B	3		3	4	11	13.370				8.0			
B	3		3	4	11	13.370					8.0		
B	3		3	4	11	13.370						8.0	

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/08/01
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	21	13.370	8.0						
B	2		3	4	4	13.370	2.0						
B	3		3	4	21	13.370	8.0						
B	3		3	4	18	13.370		8.0					
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	21	13.370						8.0	
B	1		3	4	21	13.370							8.0

TOTAL HRS: 42.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/08/08
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	19	13.370	8.0						
B	1		3	4	21	13.370	8.0						
B	1		3	4	21	13.370	8.0						
B	1		3	4	22	13.370				1.0			
B	1		3	4	21	13.370				7.0			
B	1		3	4	21	13.370				8.0			
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/08/15
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	21	13.370	8.0						
B	0		3	4	23	13.370			0.0				
B	2		3	4	21	13.370				8.0			
B	2		3	4	21	13.370					3.3		
B	2		3	4	32	13.370					4.7		
B	2		3	4	21	13.370						8.0	
B	2		3	4	21	13.370							8.0

TOTAL HRS: 40.0

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 COMPENSATION COMMISSION
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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/08/22
SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	21	13.370	8.0						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000			0.0				
B	3	3	4	18	0.000				0.2			
B	3	3	4	21	13.370				7.8			
B	3	3	4	17	13.370					1.0		
B	3	3	4	21	13.370					7.0		
B	3	3	4	17	13.370						0.4	
B	3	3	4	18	0.000						0.6	
B	3	3	4	21	13.370						7.0	
B	3	3	4	21	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/08/29
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	19	13.370	8.0						
B	3		3	4	17	13.370		8.0					
B	3		3	4	18	0.000			1.5				
B	3		3	4	21	13.370			6.5				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	21	13.370						8.0	
B	1		3	4	21	13.370							8.0

TOTAL HRS: 40.0

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 COMPELATION COMMISSION
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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/09/05
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	21	13.370	8.0						
B	1		3	4	19	13.370	8.0						
B	1		3	4	21	13.370		8.0					
B	1		3	4	21	13.370			8.0				
B	1		3	4	18	0.000					2.0		
B	1		3	4	21	13.370				6.0			
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/09/12
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	3	4	23	0.000	0.0						
B	2	3	4	10	13.370	8.0						
B	2	3	4	23	13.370			0.0				
B	2	3	4	6	13.370				8.0			
B	2	3	4	6	13.370					8.0		
B	2	3	4	18	13.370						8.0	
B	2	3	4	18	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/09/19
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	18	13.370	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	21	13.370				8.0			
B	3		3	4	21	13.370					8.0		
B	3		3	4	21	13.370						8.0	
B	3		3	4	21	13.370							8.0

TOTAL HRS: 40.0

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WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/09/26
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3	3	4	21	13.370	8.0						
B	3	3	4	6	13.370		8.0					
B	3	3	4	21	13.370			8.0				
B	0	3	4	23	0.000				0.0			
B	0	3	4	23	0.000					0.0		
B	1	3	4	21	13.370						8.0	
B	1	3	4	9	13.370							8.0

TOTAL HRS: 40.0

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 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 40

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/10/03
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	19	13.370	8.0						
B	1		3	4	19	13.370	8.0						
B	1		3	4	19	13.370			8.0				
B	1		3	4	19	13.370			8.0				
B	1		3	4	19	13.370				8.0			
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1389

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 41

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/10/10
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0	3	4	23	0.000	0.0						
B	2	3	4	19	13.370		8.0					
B	2	3	4	19	13.370			8.0				
B	2	3	4	23	13.370				0.0			
B	2	3	4	19	13.370					8.0		
B	2	3	4	19	13.370						8.0	
B	2	3	4	19	13.370							8.0

TOTAL HRS: 40.0

1390

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VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 42

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/10/17
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	19	13.370	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000	0.0						
B	3		3	4	19	13.370				8.0			
B	3		3	4	19	13.370				8.0			
B	3		3	4	19	13.370					8.0		
B	3		3	4	19	13.370						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1391

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 4

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/10/24
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	19	13.370	8.0						
B	3		3	4	19	13.370		8.0					
B	3		3	4	19	13.370			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	19	13.370						8.0	
B	1		3	4	19	13.370							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65

1392

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7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 44

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/10/31
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	19	13.370	8.0						
B	1		3	4	19	13.370	8.0						
B	1		3	4	19	13.370			8.0				
B	1		3	4	19	13.370				8.0			
B	1		3	4	19	13.370					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1998

CHARGE #65

1392

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/11/07
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.370	8.0						
B	2		3	4	7	13.370			1.5				
B	2		3	4	9	13.370			6.5				
B	2		3	4	32	13.370				2.5			
B	2		3	4	9	13.370				5.5			
B	2		3	4	23	13.370					0.0		
B	2		3	4	9	13.370						8.0	
B	2		3	4	9	13.370							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1394

17-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 46

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/11/14
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2	3	4	9	13.370	8.0						
B	0	3	4	23	0.000	0.0						
B	2	3	4	4	13.370	2.7						
B	0	3	4	23	0.000	0.0						
B	3	3	4	9	13.370				8.0			
B	3	3	4	9	13.370					8.0		
B	3	3	4	9	13.370						8.0	
B	3	3	4	9	13.370							8.0

TOTAL HRS: 42.7

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #6

7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/11/21
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	18	13.370	0.7						
B	3		3	4	9	13.370	7.3						
B	3		3	4	9	13.370		8.0					
B	3		3	4	32	13.370			2.0				
B	3		3	4	9	13.370			6.0				
B	0		3	4	23	0.000			0.0				
B	0		3	4	23	0.000				0.0			
B	1		3	4	9	13.370					8.0		
B	1		3	4	9	13.370						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1993

CHARGE #65

1396

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 48

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/11/28
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.370	8.0						
B	1		3	4	9	13.370		8.0					
B	1		3	4	9	13.370			8.0				
B	1		3	4	9	13.370				8.0			
B	1		3	4	3	13.370					8.0		
B	2		3	4	1	13.370						8.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 48.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1397

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/12/05
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.370	8.0						
B	2		3	4	9	13.790			8.0				
B	2		3	4	32	13.790				3.8			
B	2		3	4	9	13.790				4.2			
B	2		3	4	1	13.790					8.0		
B	2		3	4	9	13.790						2.4	
B	2		3	4	32	13.790						5.6	
B	2		3	4	9	13.790							8.0

TOTAL HRS: 48.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1398

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7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 50

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1992/12/12
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.790	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790					8.0		
B	3		3	4	9	13.790						8.0	
B	3		3	4	9	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1399

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/12/19
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	17	13.790	0.2						
B	3		3	4	9	13.790	7.8						
B	3		3	4	9	13.790	8.0						
B	3		3	4	4	13.790			2.0				
B	3		3	4	9	13.790			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	32	13.790						2.0	
B	1		3	4	9	13.790						6.0	
B	1		3	4	9	13.790							8.0

TOTAL HRS: 42.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1400

7-OCT-1998

WEEKLY PAY RECORD FOR:

B G EGGLESTON

PAGE 52

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1992/12/26
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.790	8.0						
B	1		3	4	9	13.790		8.0					
B	1		3	4	9	13.790			8.0				
B	1		3	4	18	13.790				8.0			
B	1		3	4	6	13.790					8.0		
B	2		3	4	34	13.790						8.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 48.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 20 1993
 CHARGE #65

1401

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CT-1998

PAGE 1

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/01/09
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.790	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000	0.0						
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790					8.0		
B	3		3	4	9	13.790						8.0	

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1993

CHARGE #65

1402

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 2

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/01/16
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	13.790	8.0						
B	3		3	4	9	13.790	8.0						
B	3		3	4	4	13.790			1.0				
B	3		3	4	9	13.790			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	9	13.790						8.0	
B	1		3	4	9	13.790							8.0

TOTAL HRS: 41.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1403

7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/01/23
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1	3	4	18	13.790	0.5						
B	1	3	4	9	13.790	7.5						
B	1	3	4	9	13.790		8.0					
B	1	3	4	9	13.790			8.0				
B	1	3	4	9	13.790				8.0			
B	1	3	4	9	13.790					8.0		
B	0	3	4	23	0.000						0.0	
B	0	3	4	23	0.000							0.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

1404

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7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 4

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/01/30
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.790	8.0						
B	2		3	4	23	13.790			0.0				
B	2		3	4	9	13.790				4.0			
B	2		3	4	32	13.790				4.0			
B	2		3	4	9	13.790					8.0		
B	2		3	4	9	13.790						8.0	
B	2		3	4	9	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

1405

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27-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/02/06
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.790	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790					8.0		
B	3		3	4	17	13.790						1.5	
B	3		3	4	9	13.790						6.5	
B	3		3	4	9	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1406

-577-

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/02/13
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP.	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	9	13.790	8.0						
B	3		3	4	17	13.790	0.8						
B	3		3	4	9	13.790	7.2						
B	3		3	4	4	13.790			1.0				
B	3		3	4	9	13.790			8.0				
B	0		3	4	23	0.000				0.0			
B	0		3	4	23	0.000					0.0		
B	1		3	4	19	13.790						8.0	
B	1		3	4	17	13.790							4.0
B	1		3	4	21	13.790							4.0

TOTAL HRS: 41.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1407

7-OCT-1998

PAGE

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/02/20
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	9	13.790	8.0						
B	1		3	4	3	13.790	8.0						
B	1		3	4	9	13.790			8.0				
B	1		3	4	9	13.790				8.0			
B	1		3	4	9	13.790					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1408

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VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/02/27
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	9	13.790	8.0						
B	2		3	4	32	13.790			3.0				
B	2		3	4	9	13.790			5.0				
B	2		3	4	23	13.790				0.0			
B	2		3	4	9	13.790					8.0		
B	2		3	4	9	13.790						8.0	
B	2		3	4	9	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

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7-OCT-1998

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/03/06
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	9	13.790	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000		0.0					
B	3		3	4	9	13.790			8.0				
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790					8.0		
B	3		3	4	18	13.790						0.2	
B	3		3	4	9	13.790							7.8

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1410

27-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 1C

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/03/13
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3	3	4	9	13.790	8.0						
B	3	3	4	18	13.790	2.7						
B	3	3	4	9	13.790	6.3						
B	3	3	4	17	13.790	0.8						
B	2	3	4	4	13.790	1.0						
B	3	3	4	9	13.790	7.2						
B	0	3	4	23	0.000	0.0						
B	0	3	4	23	0.000	0.0						
B	1	3	4	21	13.790	8.0						
B	1	3	4	21	13.790	0.8						
B	1	3	4	17	13.790	7.2						

TOTAL HRS: 42.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999
 CHARGE #65

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/03/20
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	18	13.790	8.0						
B	1		3	4	18	13.790		8.0					
B	1		3	4	19	13.790			8.0				
B	1		3	4	21	13.790				8.0			
B	1		3	4	21	13.790					8.0		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

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VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

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EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/03/27
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	11	13.790	8.0						
B	2		3	4	11	13.790	8.0						
B	2		3	4	11	13.790	8.0						
B	2		3	4	23	13.790	0.0						
B	2		3	4	11	13.790	8.0						
B	2		3	4	11	13.790	8.0						

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #65

1413

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WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/04/03
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	21	13.790	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000			0.0				
B	3		3	4	9	13.790				8.0			
B	3		3	4	9	13.790					8.0		
B	3		3	4	9	13.790						8.0	
B	3		3	4	9	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1993
CHARGE

7-OCT-1998

PAGE 14

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/04/10
 SERVICE CLASS: FULL

SHIFT CODE	SHF HR CD	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3	3	4	21	13.790	8.0						
B	3	3	4	21	13.790	8.0						
B	3	3	4	10	13.790			8.0				
B	0	3	4	23	0.000				0.0			
B	0	3	4	23	0.000					0.0		
B	1	3	4	21	13.790						8.0	
B	1	3	4	21	13.790							8.0

TOTAL HRS: 40.0

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE #0-

1415

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7-OCT-1998

PAGE 15

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/04/17
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	21	13.790	8.0						
B	1		3	4	3	13.790	8.0						
B	1		3	4	18	13.790			1.0				
B	1		3	4	21	13.790			7.0				
B	1		3	4	21	13.790				8.0			
B	1		3	4	17	13.790					3.5		
B	1		3	4	21	13.790					4.5		
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1416

-587-

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

7-OCT-1998

PAGE 16

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/04/24
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	23	13.790	0.0						
B	2		3	4	19	13.790			8.0				
B	2		3	4	19	13.790			8.0				
B	2		3	4	19	13.790				8.0			
B	2		3	4	19	13.790					8.0		
B	2		3	4	21	13.790						8.0	

TOTAL HRS: 40.0

1417

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1999
 CHARGE -

17-OCT-1998

PAGE 17

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/05/01
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	21	13.790	8.0						
B	0		3	4	23	0.000		0.0					
B	0		3	4	23	0.000			0.0				
B	3		3	4	10	13.790				8.0			
B	3		3	4	21	13.790					8.0		
B	3		3	4	21	13.790						8.0	
B	3		3	4	18	13.790							1.5
B	3		3	4	21	13.790							6.5

TOTAL HRS: 40.0

1418

-589-

VIRGINIA WORKERS'
 COMPENSATION COMMISSION
 JUL 29 1993
 CHARGE

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 18

EMPLOYEE NUMBER: 850
 PERIOD END DATE: 1993/05/08
 SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	3		3	4	10	13.790	8.0						
B	3		3	4	17	13.790		1.2					
B	3		3	4	21	13.790		6.8					
B	3		3	4	21	13.790		8.0					
B	0		3	4	23	0.000			0.0				
B	0		3	4	23	0.000				0.0			
B	1		3	4	17	13.790						8.0	
B	1		3	4	17	13.790							8.0

TOTAL HRS: 40.0

1419

-590-

VIRGINIA WORKERS'
 COMPENSATION COMMISSION

JUL 29 1993
 CHAT

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 19

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/05/15
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	1		3	4	17	13.790	8.0						
B	1		3	4	21	13.790	8.0						
B	1		3	4	21	13.790		8.0					
B	1		3	4	21	13.790			8.0				
B	1		3	4	21	13.790				8.0			
B	0		3	4	23	0.000						0.0	
B	0		3	4	23	0.000							0.0

TOTAL HRS: 40.0

1420

-591-

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHAP

7-OCT-1998

WEEKLY PAY RECORD FOR: B G EGGLESTON

PAGE 20

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/05/22
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	0		3	4	23	0.000	0.0						
B	2		3	4	23	13.790	0.0						
B	2		3	4	21	13.790			8.0				
B	2		3	4	21	13.790				8.0			
B	2		3	4	21	13.790					8.0		
B	2		3	4	21	13.790						8.0	
B	2		3	4	21	13.790							8.0
B	2		3	4	21	13.790							8.0

TOTAL HRS: 40.0

1421

-592-

VIRGINIA WORKERS
COMPENSATION COMMISSION
JUL 29 1999
CHARGE

7-OCT-1998

PAGE 21

WEEKLY PAY RECORD FOR: B G EGGLESTON

EMPLOYEE NUMBER: 850
PERIOD END DATE: 1993/05/29
SERVICE CLASS: FULL

SHIFT CODE	SHF CD	HR	PAY GROUP	PAY STEP	APR PAY CODE	PAY RATE	DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 6	DAY 7
B	2		3	4	21	13.790	8.0						
B	0		3	4	23	0.000	0.0						
B	0		3	4	23	0.000	0.0						
B	3		3	4	21	13.790				8.0			
B	3		1	3	10	11.150					8.0		
B	3		1	3	21	11.150						8.0	
B	3		1	3	21	11.150							8.0

TOTAL HRS: 40.0

1422

-593-

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHARGE #65



Lumbermens Mutual Casualty Company • American Motorists Insurance Company
American Manufacturers Mutual Insurance Company • American Protection Insurance Company
6701 Peters Creek Rd., NW (24019-9984), Post Office Box 7637, Roanoke, VA 24019-0637 • 703/362-1224 •
FAX 703/563-4915

INDUSTRIAL COMMISSION OF VA
P. O. BOX 1794
RICHMOND VA 23214

05/13/91

CLAIM #: 225 CN 014480 W 225 JRS
INSURED: E I DU PONT DE NEMOURS & CO

DATE OF LOSS: 09/28/89
OTHER: IC FILE #143-94-79

CLAIMANT: BRENDA L EGGLESTON

DEAR MR ATKINS,

I AM WRITING IN REFERENCE TO THE ABOVE NAMED CLAIMANT AND YOUR REQUEST OF MAY 4, 1991 ABOUT AN UNDER PAYMENT.

IN REVIEWING THE AGREED STATEMENT OF FACT IT APPEARS A CLERICAL ERROR WAS MADE IN STATING THE TOTAL COMPENSATION PAID. THE AGREED STATEMENT OF FACT REFLECTS \$218.70 WAS PAID, THE ACTUAL FIGURE SHOULD BE \$1530.95. WE WILL CORRECT OUR FORM AND REQUEST THAT YOU DO THE SAME.

-full wage
PLEASE ALSO NOTE THAT THE EMPLOYER HAD A SALARY CONTINUATION PROGRAM AND DID NOT SEEK REIMBURSEMENT.

IF ADDITIONAL INFORMATION IS NECESSARY PLEASE CONTACT OUR OFFICE.

VERY TRULY YOURS,

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1991

CHARGE #65

[Signature]
KEMPER GROUP, ON BEHALF OF NATIONAL LOSS CONTROL SERVICE CORPORATION
JAMES R STAFFORD
CLAIM DEPARTMENT
703/362-1224

CC: 1) GARY KENDALL (V512)

COMMONWEALTH OF VIRGINIA
VIRGINIA WORKERS' COMPENSATION COMMISSION
1000 DMV DRIVE, RICHMOND VA 23220

VWC File No: 149-63-96
Claimant Name: EGGLESTON, BRENDA LAWRENCE
Accident Date: NOV-28-1990

SUMMARY OF PERIODS OF COMPENSATION BEING TERMINATED

Comp Type	Comp Rate	Begin Date	End Date	Weeks Due	Comp Due	Comp Paid	COLA Due	COLA Paid
FW	\$293.90	JAN-12-91	JAN-14-91	.43	\$125.97	\$0.00		
FW	\$293.90	SEP-27-92	SEP-30-92	.57	\$167.93	\$0.00		
TT	\$293.90	OCT-01-92	NOV-01-92	4.57	\$1,343.53	\$1,637.46		

VERIFICATION OF COMPENSATION PAID	DUE	PAID	DIFFERENCE
Total Compensation	\$1,637.43	\$1,637.46	\$0.03
Cost-of-living Benefits			
TOTAL	\$1,637.43	\$1,637.46	\$0.03
FILE TOTAL	\$1,637.43		\$0.03

Claims Processing Department -- Awards Unit
Form VWC-4D (rev. 10/1/91)

Processed Date: APR 29 1993
Processed By: AMS
CHARGE #

FROM KEMPER CLAIM

804 418 6785

1999.06-22

12:35

#554 P.03/27

CCW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWH01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BS 210146	10	1	01	06/16/99	06/22/99	1	245 3	354.96	ACTIVE
BS 204604	10	1	01	06/09/99	06/15/99	1	244 3	354.96	ACTIVE
BS 198761	10	1	01	06/02/99	06/08/99	1	243 3	354.96	ACTIVE
BS 193952	10	1	01	05/26/99	06/01/99	1	242 3	354.96	ACTIVE
BS 187534	10	1	01	05/19/99	05/25/99	1	241 3	354.96	ACTIVE
BS 181495	10	1	01	05/12/99	05/18/99	1	240 3	354.96	ACTIVE
BS 175649	10	1	01	05/05/99	05/11/99	1	239 3	354.96	ACTIVE
BS 169998	10	1	01	04/28/99	05/04/99	1	238 3	354.96	ACTIVE
BS 167067	10	1	01	04/21/99	04/27/99	1	237 3	354.96	ACTIVE
BS 158084	10	1	01	04/14/99	04/20/99	1	236 3	354.96	ACTIVE
BS 152182	10	1	01	04/07/99	04/13/99	1	235 3	354.96	ACTIVE
BS 146504	10	1	01	03/31/99	04/06/99	1	234 3	354.96	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1425

-596-

FROM KEMPER CLAIM

804 418 6705

1999.06-22

12:35

#354 P.04/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWH001

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

***** DISABILITY PAYMENT INFORMATION *****

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BS 140485	10	1	01	03/24/99	03/30/99	1	233 3	354.96	ACTIVE
BS 134507	10	1	01	03/17/99	03/23/99	1	232 3	354.96	ACTIVE
BS 128348	10	1	01	03/10/99	03/16/99	1	231 3	354.96	ACTIVE
BS 122207	10	1	01	03/03/99	03/09/99	1	230 3	354.96	ACTIVE
BS 116437	10	1	01	02/24/99	03/02/99	1	229 3	354.96	ACTIVE
BS 113267	10	1	01	02/17/99	02/23/99	1	228 3	354.96	ACTIVE
BS 106027	10	1	01	02/10/99	02/16/99	1	227 3	433.57	ACTIVE
BS 99828	10	1	01	02/03/99	02/09/99	1	226 3	433.57	ACTIVE
BS 93839	10	1	01	01/27/99	02/02/99	1	225 3	433.57	ACTIVE
BS 88758	10	1	01	01/20/99	01/26/99	1	224 3	433.57	ACTIVE
BS 80929	10	1	01	01/13/99	01/19/99	1	223 3	433.57	ACTIVE
BS 75325	10	1	01	01/06/99	01/12/99	1	222 3	433.57	ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1426

FROM KEMPER CLAIM

924 418 6725

1999.05-22

12:36

#554 P.05/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWH01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BS	69476	10	1	01	12/30/98	01/05/99	1	221 3	433.57 ACTIVE
BS	64164	10	1	01	12/23/98	12/29/98	1	220 3	433.57 ACTIVE
BS	61924	10	1	01	12/16/98	12/22/98	1	219 3	513.51 ACTIVE
					10/01/98	12/15/98	10 6		
BS	54663	10	1	01	12/09/98	12/15/98	1	218 3	426.74 ACTIVE
BS	49445	10	1	01	12/02/98	12/08/98	1	217 3	426.74 ACTIVE
BS	44511	10	1	01	11/25/98	12/01/98	1	216 3	426.74 ACTIVE
BS	41287	10	1	01	11/18/98	11/24/98	1	215 3	426.74 ACTIVE
BS	36073	10	1	01	11/11/98	11/17/98	1	214 3	426.74 ACTIVE
BS	31418	10	1	01	11/04/98	11/10/98	1	213 3	426.74 ACTIVE
BS	26865	10	1	01	10/28/98	11/03/98	1	212 3	426.74 ACTIVE
BS	22100	10	1	01	10/21/98	10/27/98	1	211 3	426.74 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1427

FROM KEMPER CLAIM

884 419 5705

1999.05-22

12:35

#654 P.06/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

***** DISABILITY PAYMENT INFORMATION *****

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BS 17814	10	1	01	10/14/98	10/20/98	1	210 3	426.74	ACTIVE
BS 12606	10	1	01	10/07/98	10/13/98	1	209 3	426.74	ACTIVE
BS 8283	10	1	01	09/30/98	10/06/98	1	208 3	426.74	ACTIVE
BS 5067	10	1	01	09/23/98	09/29/98	1	207 3	426.74	ACTIVE
BN 72787	10	1	01	09/16/98	09/22/98	1	206 3	426.74	ACTIVE
BN 131679	10	1	01	09/09/98	09/15/98	1	205 3	426.74	ACTIVE
BN 131568	10	1	01	09/02/98	09/08/98	1	204 3	426.74	ACTIVE
BN 131467	10	1	01	08/26/98	09/01/98	1	203 3	426.74	ACTIVE
BN 94614	10	1	01	08/19/98	08/25/98	1	202 3	426.74	ACTIVE
BN 94550	10	1	01	08/12/98	08/18/98	1	201 3	426.74	ACTIVE
BN 94455	10	1	01	08/05/98	08/11/98	1	200 3	426.74	ACTIVE
BN 94386	10	1	01	07/29/98	08/04/98	1	199 3	426.74	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1428

FROM KEMPER CLAIM

924 418 5705

1999.06-22

12:36

#554 P.07/27

CCW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

***** DISABILITY PAYMENT INFORMATION *****

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BN 94302	10	1	01	07/22/98	07/28/98	1	198 3	426.74	ACTIVE
BN 94191	10	1	01	07/15/98	07/21/98	1	197 3	426.74	ACTIVE
BN 94115	10	1	01	07/08/98	07/14/98	1	196 3	426.74	ACTIVE
BN 94036	10	1	01	07/01/98	07/07/98	1	195 3	426.74	ACTIVE
BN 93964	10	1	01	06/24/98	06/30/98	1	194 3	426.74	ACTIVE
BN 93900	10	1	01	06/17/98	06/23/98	1	193 3	426.74	ACTIVE
BN 55072	10	1	01	06/10/98	06/16/98	1	192 3	426.74	ACTIVE
BN 55002	10	1	01	06/03/98	06/09/98	1	191 3	426.74	ACTIVE
BN 54918	10	1	01	05/27/98	06/02/98	1	190 3	426.74	ACTIVE
BN 54817	10	1	01	05/20/98	05/26/98	1	189 3	426.74	ACTIVE
BN 54637	10	1	01	05/13/98	05/19/98	1	188 3	426.74	ACTIVE
BN 54549	10	1	01	05/06/98	05/12/98	1	187 3	426.74	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

1429

-600-

FROM KEMPER CLAIM

934 418 6705

1999.06-22

12:35

#554 P.08/27

CCW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWH001

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	FY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
BN 54468	10	1	01	04/29/98	05/05/98	1	166 3	426.74	ACTIVE
BN 54377	10	1	01	04/22/98	04/28/98	1	185 3	426.74	ACTIVE
BN 14553	10	1	01	04/15/98	04/21/98	1	184 3	426.74	ACTIVE
BN 14483	10	1	01	04/08/98	04/14/98	1	183 3	426.74	ACTIVE
BN 14414	10	1	01	04/01/98	04/07/98	1	182 3	426.74	ACTIVE
BN 14322	10	1	01	03/25/98	03/31/98	1	181 3	426.74	ACTIVE
BN 14190	10	1	01	03/18/98	03/24/98	1	180 3	426.74	ACTIVE
BN 14110	10	1	01	03/11/98	03/17/98	1	179 3	426.74	ACTIVE
BN 14024	10	1	01	03/04/98	03/10/98	1	178 3	426.74	ACTIVE
BN 13861	10	1	01	12/25/97	03/03/98	9 6	177 3	4023.55	ACTIVE
570 929777	10	1	01	10/01/97	12/24/97	12 1	167 4	165.51	ACTIVE
570 929703	10	1	01	11/02/97	12/24/97	7 4	167 4	3588.17	ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1430

FROM : KEMPER CLAIM
CLW

024 413 5705

1999.06-22

12:35

#564 P.09/27

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570	894130	10	1	01	10/26/97	11/01/97	1	160	413.11 ACTIVE
570	894033	10	1	01	10/19/97	10/25/97	1	159	413.11 ACTIVE
570	893905	10	1	01	10/12/97	10/18/97	1	158	413.11 ACTIVE
570	830902	10	1	01	10/05/97	10/11/97	1	157	413.11 ACTIVE
570	830820	10	1	01	09/28/97	10/04/97	1	156	413.11 ACTIVE
570	830716	10	1	01	09/21/97	09/27/97	1	155	413.11 ACTIVE
570	830564	10	1	01	09/14/97	09/20/97	1	154	413.11 ACTIVE
570	830328	10	1	01	09/07/97	09/13/97	1	153	413.11 ACTIVE
570	830201	10	1	01	08/31/97	09/06/97	1	152	413.11 ACTIVE
570	830100	10	1	01	08/24/97	08/30/97	1	151	413.11 ACTIVE
570	829938	10	1	01	08/17/97	08/23/97	1	150	413.11 ACTIVE
570	829843	10	1	01	08/10/97	08/16/97	1	149	413.11 ACTIVE

NEXT FUNCTION _

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570	829710	10	1	01	08/03/97	08/09/97	1	148	413.11 ACTIVE
570	829597	10	1	01	07/27/97	08/02/97	1	147	413.11 ACTIVE
570	829509	10	1	01	07/13/97	07/19/97	1	146	826.22 ACTIVE
					07/20/97	07/26/97	1		
570	807859	10	1	01	07/06/97	07/12/97	1	144	413.11 ACTIVE
570	807744	10	1	01	06/29/97	07/05/97	1	143	413.11 ACTIVE
570	807616	10	1	01	06/22/97	06/28/97	1	142	413.11 ACTIVE
570	807501	10	1	01	06/15/97	06/21/97	1	142	413.11 CANCELED
570	751584	10	1	01	06/08/97	06/14/97	1	141	413.11 ACTIVE
570	751461	10	1	01	06/01/97	06/07/97	1	140	413.11 ACTIVE
570	751357	10	1	01	05/25/97	05/31/97	1	139	413.11 ACTIVE
570	751220	10	1	01	05/18/97	05/24/97	1	138	413.11 ACTIVE

VIRGINIA WORKERS
COMPENSATION COMMISSION
NEXT FUNCTION COMMISSION

JUL 29 1999

CHAD

1431

FROM :KEMPER CLAIM
CUM

824 418 6705
FOLLOWS

1999.05-22 12:35 #584 P.11/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99
MWHID01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570 751133	10	1	01	05/11/97	05/17/97	1	137	413.11	ACTIVE
570 751017	10	1	01	05/04/97	05/10/97	1	136	413.11	ACTIVE
570 750863	10	1	01	04/27/97	05/03/97	1	135	413.11	ACTIVE
570 750744	10	1	01	04/20/97	04/26/97	1	134	413.11	ACTIVE
570 750610	10	1	01	04/13/97	04/19/97	1	133	413.11	ACTIVE
570 716699	10	1	01	04/06/97	04/12/97	1	132	413.11	ACTIVE
570 716602	10	1	01	03/30/97	04/05/97	1	131	413.11	ACTIVE
570 716507	10	1	01	03/23/97	03/29/97	1	130	413.11	ACTIVE
570 716363	10	1	01	03/16/97	03/22/97	1	129	413.11	ACTIVE
570 644575	10	1	01	03/09/97	03/15/97	1	128	413.11	ACTIVE
570 644471	10	1	01	03/02/97	03/08/97	1	127	413.11	ACTIVE
570 644320	10	1	01	02/23/97	03/01/97	1	126	413.11	ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

1432

FROM MEMBER CLAIM

824 418 6706

1999.06-22

12:37

#554 P.12/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWH01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570	693581	10	1	01	02/16/97	02/22/97	1	125	413.11 ACTIVE
570	693504	10	1	01	02/09/97	02/15/97	1	124	413.11 ACTIVE
570	533555	10	1	01	02/02/97	02/08/97	1	123	413.11 ACTIVE
570	533471	10	1	01	01/26/97	02/01/97	1	122	413.11 ACTIVE
570	533385	10	1	01	01/19/97	01/25/97	1	121	413.11 ACTIVE
570	533294	10	1	01	01/12/97	01/18/97	1	120	413.11 ACTIVE
570	533231	10	1	01	01/05/97	01/11/97	1	119	413.11 ACTIVE
570	533155	10	1	01	12/29/96	01/04/97	1	118	413.11 ACTIVE
570	532951	10	1	01	12/22/96	12/28/96	1	117	413.11 ACTIVE
570	532848	10	1	01	12/15/96	12/21/96	1	116	413.11 ACTIVE
570	532781	10	1	01	12/08/96	12/14/96	1	115	413.11 ACTIVE
570	532697	10	1	01	12/01/96	12/07/96	1	114	413.11 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1433

-604-

FROM KEMPER CLAIM

804 418 6705

1999.06-22

12:37

#554 P.13/27

CCW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWH01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570	532617	10	1	01	11/24/96	11/30/96	1	113	413.11 ACTIVE
570	532560	10	1	01	11/17/96	11/23/96	1	112	413.11 ACTIVE
570	532494	10	1	01	10/01/96	11/16/96	1	111	67.68 ACTIVE
570	532481	10	1	01	11/10/96	11/16/96	1	111 1	391.66 ACTIVE
570	532378	10	1	01	11/03/96	11/09/96	1	110 1	391.66 ACTIVE
570	532323	10	1	01	10/27/96	11/02/96	1	109 1	391.66 ACTIVE
570	532241	10	1	01	10/20/96	10/26/96	1	108 1	391.66 ACTIVE
570	532138	10	1	01	10/13/96	10/19/96	1	107 1	391.66 ACTIVE
570	532070	10	1	01	10/06/96	10/12/96	1	106 1	391.66 ACTIVE
570	532018	10	1	01	09/29/96	10/05/96	1	105 1	391.66 ACTIVE
570	531952	10	1	01	09/22/96	09/28/96	1	104 1	391.66 ACTIVE
570	531851	10	1	01	09/15/96	09/21/96	1	103 1	391.66 ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1434

-605-

FROM : KEMPER CLAIM

824 418 6705

1999.06-22

12:37

#554 P.14/27

LLW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWH01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
570	531786	10	1	01	09/08/96	09/14/96	1	102 1	391.66 ACTIVE
570	531730	10	1	01	09/01/96	09/07/96	1	101 1	391.66 ACTIVE
570	531677	10	1	01	08/25/96	08/31/96	1	100 1	391.66 ACTIVE
570	392546	10	1	01	08/18/96	08/24/96	1	99 1	391.66 ACTIVE
570	392463	10	1	01	08/11/96	08/17/96	1	98 1	391.66 ACTIVE
570	392388	10	1	01	08/04/96	08/10/96	1	97 1	391.66 ACTIVE
570	392318	10	1	01	07/28/96	08/03/96	1	96 1	391.66 ACTIVE
570	392254	10	1	01	07/21/96	07/27/96	1	95 1	391.66 ACTIVE
570	392127	10	1	01	07/14/96	07/20/96	1	94 1	391.66 ACTIVE
570	392050	10	1	01	07/07/96	07/13/96	1	93 1	391.66 ACTIVE
570	391960	10	1	01	06/30/96	07/06/96	1	92 1	391.66 ACTIVE
570	391845	10	1	01	06/23/96	06/29/96	1	91 1	391.66 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

1435

-606-

FROM MEMBER CLAIM

824 418 6785

1999.06-22

12:37

#554 P.15/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MF 11

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
570	391786	10	1	01	06/16/96	06/22/96	1	90 1	391.66 ACTIVE
570	391703	10	1	01	06/09/96	06/15/96	1	89 1	391.66 ACTIVE
570	391630	10	1	01	06/02/96	06/08/96	1	88 1	391.66 ACTIVE
570	391559	10	1	01	05/26/96	06/01/96	1	87 1	391.66 ACTIVE
570	391473	10	1	01	05/19/96	05/25/96	1	86 1	391.66 ACTIVE
570	391365	10	1	01	05/12/96	05/18/96	1	85 1	391.66 ACTIVE
570	391314	10	1	01	05/05/96	05/11/96	1	84 1	391.66 ACTIVE
570	391258	10	1	01	04/28/96	05/04/96	1	83 1	391.66 ACTIVE
570	391150	10	1	01	04/21/96	04/27/96	1	82 1	391.66 ACTIVE
570	391057	10	1	01	04/14/96	04/20/96	1	81 1	391.66 ACTIVE
570	390978	10	1	01	04/07/96	04/13/96	1	80 1	391.66 ACTIVE
570	390943	10	1	01	03/31/96	04/06/96	1	79 1	391.66 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

1436

FROM MEMBER CLAIM

824 418 6705

1999.06-22

12:37

#554 P.16/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MWHD01

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	PY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
570	390850	10	1	01	03/24/96	03/30/96	1	78 1	391.66 ACTIVE
570	390728	10	1	01	03/17/96	03/23/96	1	77 1	391.66 ACTIVE
570	390663	10	1	01	03/10/96	03/16/96	1	76 1	391.66 ACTIVE
570	248398	10	1	01	03/03/96	03/09/96	1	75 1	391.66 ACTIVE
570	248294	10	1	01	02/25/96	03/02/96	1	74 1	391.66 ACTIVE
570	248180	10	1	01	02/18/96	02/24/96	1	73 1	391.66 ACTIVE
570	248064	10	1	01	02/11/96	02/17/96	1	72 1	391.66 ACTIVE
570	247996	10	1	01	02/04/96	02/10/96	1	71 1	391.66 ACTIVE
570	247931	10	1	01	01/28/96	02/03/96	1	70 1	391.66 ACTIVE
570	247835	10	1	01	01/21/96	01/27/96	1	69 1	391.66 ACTIVE
570	247741	10	1	01	01/14/96	01/20/96	1	68 1	391.66 ACTIVE
570	247650	10	1	01	01/07/96	01/13/96	1	67 1	391.66 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

1437

FROM: KEMPER CLAIM

824 418 5705

1999.06-22 12:38 #554 P.17/27

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWHDO1

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A		FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD							
570	247634	10	1	01	12/31/95	01/06/96	1	66 1	391.66	ACTIVE
570	247530	10	1	01	12/24/95	12/30/95	1	65 1	391.66	ACTIVE
570	247406	10	1	01	12/17/95	12/23/95	1	64 1	391.66	ACTIVE
570	247320	10	1	01	12/10/95	12/16/95	1	63 1	391.66	ACTIVE
570	247234	10	1	01	12/03/95	12/09/95	1	62 1	391.66	ACTIVE
570	247177	10	1	01	11/26/95	12/02/95	1	61 1	391.66	ACTIVE
570	247105	10	1	01	11/19/95	11/25/95	1	60 1	391.66	ACTIVE
570	247018	10	1	01	11/12/95	11/18/95	1	59 1	391.66	ACTIVE
570	246909	10	1	01	11/05/95	11/11/95	1	58 1	391.66	ACTIVE
570	246849	10	1	01	10/29/95	11/04/95	1	57 1	391.66	ACTIVE
570	246778	10	1	01	10/22/95	10/28/95	1	56 1	391.66	ACTIVE
570	246670	10	1	01	10/15/95	10/21/95	1	55 1	391.66	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE --

1438

FROM MEMBER CLAIM

824 418 6705

1999.06-22

12:38

#664 P.18/27

CCW

FOCUS

06/22/99

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	FY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
570	246598	10	1	01	10/08/95	10/14/95	1	54 1	391.66 ACTIVE
570	246555	10	1	01	10/01/95	10/07/95	1	53 1	10.29 ACTIVE
570	246534	10	1	01	10/01/95	10/07/95	1	53 1	381.37 ACTIVE
570	246442	10	1	01	09/24/95	09/30/95	1	52 1	381.37 ACTIVE
570	52632	10	1	01	09/17/95	09/23/95	1	51 1	381.37 ACTIVE
570	52556	10	1	01	09/10/95	09/16/95	1	50 1	381.37 ACTIVE
570	52482	10	1	01	09/03/95	09/09/95	1	49 1	381.37 ACTIVE
570	52417	10	1	01	08/27/95	09/02/95	1	48 1	381.37 ACTIVE
570	52326	10	1	01	08/20/95	08/26/95	1	47 1	381.37 ACTIVE
570	52236	10	1	01	08/13/95	08/19/95	1	46 1	381.37 ACTIVE
570	52176	10	1	01	08/06/95	08/12/95	1	45 1	381.37 ACTIVE
570	52116	10	1	01	07/30/95	08/05/95	1	44 1	381.37 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #0-

1439

FROM MEMBER CLAIM

824 418 6706

1999.06-22

12:38

#654 P.19/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MWHD01

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	FY	P/A		FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD							
570	52058	10	1	01	07/23/95	07/29/95	1	43 1	381.37	ACTIVE
570	51954	10	1	01	07/16/95	07/22/95	1	42 1	381.37	ACTIVE
570	51873	10	1	01	07/09/95	07/15/95	1	41 1	381.37	ACTIVE
570	51782	10	1	01	07/02/95	07/08/95	1	40 1	381.37	ACTIVE
570	51724	10	1	01	06/25/95	07/01/95	1	39 1	381.37	ACTIVE
570	51565	10	1	01	06/18/95	06/24/95	1	38 1	381.37	ACTIVE
570	51505	10	1	01	06/11/95	06/17/95	1	37 1	381.37	ACTIVE
570	51454	10	1	01	06/04/95	06/10/95	1	36 1	381.37	ACTIVE
570	51359	10	1	01	05/28/95	06/03/95	1	35 1	381.37	ACTIVE
570	51308	10	1	01	05/21/95	05/27/95	1	34 1	381.37	ACTIVE
570	51216	10	1	01	05/14/95	05/20/95	1	33 1	381.37	ACTIVE
570	51154	10	1	01	05/07/95	05/13/95	1	32 1	381.37	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE

1440

FROM MEMBER CLAIM

924 418 6785

1999.06-22

12:38

#554 P.20/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
570	51045	10	1 01	04/30/95	05/06/95	1	31 1	381.37	ACTIVE
570	50943	10	1 01	04/23/95	04/29/95	1	30 1	381.37	ACTIVE
570	50869	10	1 01	04/16/95	04/22/95	1	29 1	381.37	ACTIVE
570	50800	10	1 01	04/09/95	04/15/95	1	28 1	381.37	ACTIVE
570	50757	10	1 01	04/02/95	04/08/95	1	27 1	381.37	ACTIVE
520	765890	10	1 01	03/26/95	04/01/95	1	26 1	381.37	ACTIVE
520	765811	10	1 01	03/19/95	03/25/95	1	25 1	381.37	ACTIVE
520	765709	10	1 01	03/12/95	03/18/95	1	24 1	381.37	ACTIVE
520	765662	10	1 01	03/05/95	03/11/95	1	23 1	381.37	ACTIVE
520	765596	10	1 01	02/26/95	03/04/95	1	22 1	381.37	ACTIVE
520	765509	10	1 01	02/19/95	02/25/95	1	21 1	381.37	ACTIVE
520	765423	10	1 01	02/12/95	02/18/95	1	20 1	381.37	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #

1441

FROM KEMPER CLAIM

924 418 6705

1999.06-22

12:39

#554 P.21/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MWHD01

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	FY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
520	765369	10	1	01	02/05/95	02/11/95	1	19 1	381.37 ACTIVE
520	765292	10	1	01	01/29/95	02/04/95	1	18 1	381.37 ACTIVE
520	765205	10	1	01	01/22/95	01/28/95	1	17 1	381.37 ACTIVE
520	765125	10	1	01	01/15/95	01/21/95	1	16 1	381.37 ACTIVE
520	765091	10	1	01	01/08/95	01/14/95	1	15 1	381.37 ACTIVE
520	764904	10	1	01	01/01/95	01/07/95	1	14 1	381.37 ACTIVE
520	764875	10	1	01	12/25/94	12/31/94	1	13 1	381.37 ACTIVE
520	764797	10	1	01	12/18/94	12/24/94	1	12 1	381.37 ACTIVE
520	764583	10	1	01	12/11/94	12/17/94	1	11 1	381.37 ACTIVE
520	764493	10	1	01	12/04/94	12/10/94	1	10 1	381.37 ACTIVE
520	764405	10	1	01	11/27/94	12/03/94	1	9 1	381.37 ACTIVE
520	764162	10	1	01	11/20/94	11/26/94	1	8 1	381.37 ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHAD

1442

FROM KEMPER CLAIM

904 418 6705

1999.05-22

12:39

#554 P.22/27.

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MWHD01

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	FY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
520	764087	10	1 01	11/13/94	11/19/94	1	7 1	381.37	ACTIVE
520	763991	10	1 01	11/06/94	11/12/94	1	6 1	381.37	ACTIVE
520	763933	10	1 01	10/30/94	11/05/94	1	5 1	381.37	ACTIVE
520	763827	10	1 01	10/23/94	10/29/94	1	4 1	381.37	ACTIVE
520	763760	10	1 01	10/16/94	10/22/94	1	3 1	381.37	ACTIVE
520	763690	10	1 01	10/09/94	10/15/94	1	2 1	381.37	ACTIVE
520	763637	10	1 01	10/02/94	10/08/94	1	1 1	381.37	ACTIVE
520	763572	10	1 01	10/01/94	10/01/94	1	1	1.38	ACTIVE
520	763557	10	1 01	09/25/94	10/01/94	1		371.71	ACTIVE
520	763462	10	1 01	09/18/94	09/24/94	1		371.71	ACTIVE
520	763407	10	1 01	09/11/94	09/17/94	1		371.71	ACTIVE
520	763351	10	1 01	09/04/94	09/10/94	1		371.71	ACTIVE

NEXT FUNCTION —

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

CHARGE #65

1443.

FROM KEMPER CLAIM

804 418 6705

1999.06-22

12:39

#554 P.23/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWHED01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV	PY	P/A	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD						
520	763301	10	1	01	12/01/93	08/27/94	1	11472.30	ACTIVE
520	763306	10	1	01	08/28/94	09/03/94	1	371.71	ACTIVE
520	763252	10	1	02	08/21/94	08/27/94	1	64	74.28 ACTIVE
520	763138	10	1	02	08/14/94	08/20/94	1	63	74.28 ACTIVE
520	763072	10	1	02	08/07/94	08/13/94	1	62	74.28 ACTIVE
520	762995	10	1	02	07/31/94	08/06/94	1	61	74.28 ACTIVE
520	762918	10	1	02	07/24/94	07/30/94	1	60	74.28 ACTIVE
520	440633	10	1	02	07/17/94	07/23/94	1	59	74.28 ACTIVE
520	440537	10	1	02	07/10/94	07/16/94	1	58	74.28 ACTIVE
520	440464	10	1	02	07/03/94	07/09/94	1	57	74.28 ACTIVE
520	440352	10	1	02	06/26/94	07/02/94	1	56	74.28 ACTIVE
520	440256	10	1	02	06/19/94	06/25/94	1	55	74.28 ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

1444

FROM MEMBER CLAIM

824 418 5785

1999.06-22

12:39

#554 P.24/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

MWH01

D.O.L. 03/09/93

-----DISABILITY PAYMENT INFORMATION-----

CHECK #	COV	PY	P/A		FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
	CD	CD	CD							
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520	440126	10	1	02	06/05/94	06/11/94	1	53	74.28	ACTIVE
520	440042	10	1	02	05/29/94	06/04/94	1	52	74.28	ACTIVE
520	439999	10	1	02	05/22/94	05/28/94	1	51	74.28	ACTIVE
520	439884	10	1	02	05/15/94	05/21/94	1	50	74.28	ACTIVE
520	439845	10	1	02	05/08/94	05/14/94	1	49	74.28	ACTIVE
520	439770	10	1	02	05/01/94	05/07/94	1	48	74.28	ACTIVE
520	439698	10	1	02	04/24/94	04/30/94	1	47	74.28	ACTIVE
520	439618	10	1	02	04/17/94	04/23/94	1	46	74.28	ACTIVE
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520	439428	10	1	02	03/27/94	04/02/94	1	43	74.28	ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

1445

FROM :KEMPER CLAIM

924 418 6705

1999.06-22

12:39

#554 P.28/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

CHECK #	COV CD	FY CD	P/A CD	FROM	TO	WEEKS/ DAYS	TOTAL WKS/DYS	PAYMENT AMOUNT	STATUS
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520	439115	10	1	02	02/20/94	02/26/94	1	38	74.28 ACTIVE
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NEXT FUNCTION _

VIRGINIA WORKERS'
COMPENSATION COMMISSION

JUL 29 1999

FROM MEMBER CLAIM

824 418 6705

1999.06-22

12:40

#354 P.25/27

PAYMENT HISTORY - DISABILITY PAYMENT INQUIRY

06/22/99

MWHD01

CLAIM# 225 CN 030763 W 226 NAME EGGLESTON*BRENDA*G

D.O.L. 03/09/93

----- DISABILITY PAYMENT INFORMATION -----

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	CD	CD	CD						
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520	438316	10	1	02	12/05/93	12/11/93	1	27	74.28 ACTIVE
520	438256	10	1	02	11/28/93	12/04/93	1	26	74.28 ACTIVE
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520	82097	10	1	02	10/10/93	10/16/93	1	19	74.28 ACTIVE

NEXT FUNCTION _

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999

1447

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA EGGLESTON

Claimant,

v.

V.W.C. No. 143-94-79

149-63-96

162-62-45

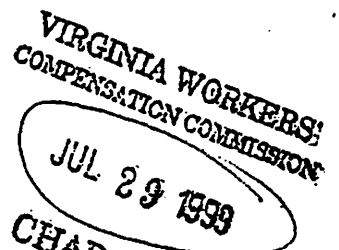
E. I. DU PONT DE NEMOURS & COMPANY

Employer and Self-Insured.

**EMPLOYER'S DESIGNATION OF
MEDICAL REPORTS TO BE RECEIVED INTO EVIDENCE**

Pursuant to Rule 2.2(3) of the Rules of the Workers' Compensation Commission, the employer and self-insurer, by counsel, designate the following medical records to be received into evidence at the hearing of this claim:

1. Medical Report of Enrique Silberblatt, M.D., F.A.C.S. dated October 22, 1997,
attached.
2. Medical Report of Murray E. Joiner, Jr., M.D., P.C. dated December 10, 1997,
attached.
3. Medical Report of Enrique Silberblatt, M.D., F.A.C.S. dated June 24, 1999,
attached.



4. Medical Report of Enrique Silberblatt, M.D., F.A.C.S. dated July 26, 1999,
attached.

Respectfully submitted,

E. I. DU PONT DE NEMOURS & COMPANY

BY COUNSEL

Counsel:

Joy C. Fuhr, Esquire
Kimberly R. Hillman, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1127

Kimberly R. Hillman
Counsel for the Employer and Self-Insured

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
CHAD

10/31/95 Fup Rt. Wrist

Date: 10/31/95

Patient: Brenda L. Eggleston

Mrs. Eggleston continues to have pain in the first dorsal compartment. She had an injection of Celestone on June 27th, and this apparently gave her several months relief.

Another 3 cc. of a combination of 1/2% plain Marcaine and Celestone 6 mg./cc. was given. We can see her in the future on an as needed basis.

ENRIQUE A. SILBERBLATT, MD, FACS

EAS/dm

D. 10/31/95

T. 11/01/95

10/22/97 Fup wrist

Date: 10/22/97

Patient: Brenda L. Eggleston

Ms. Eggleston is stable as far as the right hand is concerned. She still has things that she cannot do with it because of residual from her carpal tunnel syndrome, but the deQuervain tenosynovitis seems to have subsided. She is now having trouble with her left hand. She has had night numbness and pain and this has been helped somewhat by splinting. She has been using her hand more to compensate for and protect the right hand.

She has seen Dr. Hormel who ordered nerve conduction studies on the left hand. It will be interesting to see what they show. If she does have slowing of the nerve across the wrist, then she maybe a candidate for a carpal tunnel release on that side as well.

ENRIQUE A. SILBERBLATT, MD, FACS

EAS/mha

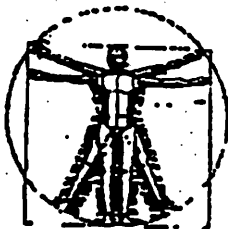
D. 10/22/97

T. 10/23/97

CC: LINDA BOWLES, 125 DRUMMER'S LANE, SUITE 104, WAYNE
PENNSYLVANIA 19087

ADDENDUM: There is some question as to whether Ms. Eggleston ever had a gamekeeper's thumb. She never gave a history suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and nonpainful.

VIRGINIA WORKERS'
COMPENSATION COMMISSION
29 1999
CHA



MURRAY E. JOINER JR., M.D., P.C.
PHYSICAL MEDICINE AND REHABILITATION

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225-014480
55837366
2-2-98

INDEPENDENT MEDICAL EVALUATION

PATIENT NAME EGGLESTON, BRENDA L.
DATE December 10, 1997
REFERRAL SOURCE Katherine West, Claims Adjuster, Kemper Insurance Co.
CHIEF COMPLAINT Arm Pain

HISTORY

The patient is a 39 year old white female presenting giving the following history of three work related accidents:

1. September 28, 1989. She was using her hands repetitively in spinning and textile area with onset of hand pain and numbness diagnosed with bilateral carpal tunnel syndrome after nerve conduction study. Treated with splints, nonsteroidal anti-inflammatories, and light duty. Ultimately she underwent right carpal tunnel release 7/90 with decreased pain and numbness with persistent general right upper extremity numbness especially in the axilla. She reports arm pain which increased with use. She ultimately returned to work at full duty.
2. November 28, 1990. She was changing an industrial battery and as she pulled a winch into place the winch stopped abruptly jerking her right shoulder (patient points to her joint) with acute anterior/superior shoulder joint pain (points to the area) which gradually spread over the entire shoulder with increased chronic right arm pain. She was seen by an orthopedist who performed a MRI of the shoulder and diagnosed her with soft tissue injury. She was given right shoulder injection and right trapezius trigger point injection by history. She was referred to physical therapy without significant long term improvement. She was referred to a local Pain Center with improvement in coping skills without improvement in pain per the patient. She returned to work at full duty.
3. March 9, 1993. She had increase in right hand pain especially around the thumb. She followed up with her neurologist who felt she had a trigger thumb by history secondary to pushing down on spring-loaded hitches with her thumb. She was seen by a plastic surgeon and diagnosed with

Eggleston, Brenda L.

1

December 10, 1997

VIRGINIA WORKERS' COMPENSATION COMMISSION

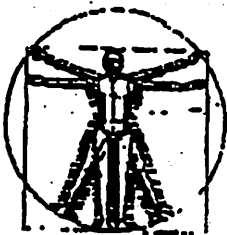
JUL 29 1999

19 Brambleton Ave., SW
Rm 302
Norfolk, VA 24018
540-772-4448

1009 East High St
Charlottesville, VA 22902
804-923-9718

2137 Lakeside Drive
Suite 100
Lynchburg, VA 24501
804-385-7873

530 W. Ridge Road
Richmond, VA 24382
804-777-1111



MURRAY E. JOINER JR., M.D., P.C.
 PHYSICAL MEDICINE AND REHABILITATION

deQuervain's syndrome by history. She was treated with injection of the right abductor pollicis longus tendon by history and given Zostrix with decreased pain to point where the pain became intermittent. The patient reports: "In fact, it doesn't hurt that much".

The patient reports over the years the neurologist has maintained her pharmacologically. She reports due to her injuries her employer "forced her" onto medical retirement 11/93 which she reportedly fought.

The patient presents today complaining of the following:

1. **Neck** - She reports when she has severe pain she gets right trapezius and inferior neck achy pain with associated trapezius spasms.
2. **Right shoulder** - She complains of intermittent waxing and waning, aching pain in the posterior shoulder with aching anterior shoulder joint. Pain with popping at times in the joint with burning over the pectoralis major insertion on the shoulder. She reports increased pain with using her right arm much, leaning on her right arm, sleeping on her right side, holding her arm raised, rapidly raising the right arm, lifting, pushing, pulling, cold and rain. She reports decreased pain with ice and massage.
3. **Right arm** - She complains of intermittent, more often than not, waxing and waning, aching posterior arm and ventral forearm pain with occasional numbness in the right hand "not much" with associated palmar cramping. She reports increased pain with using her right arm; decreased pain with propping her arm up on a pillow and ice sometimes.
4. **Left hand** - She complains of numbness in the left first through third digits with occasional shooting dorsal wrist pain. She reports pain and numbness may awaken her at night. She reports using her left hand makes it cramp.
5. She denies other complaints when specifically asked.

Eggleston, Brenda L.

2

December 10, 1997

VIRGINIA WORKER
 COMPENSATION COMMISSION

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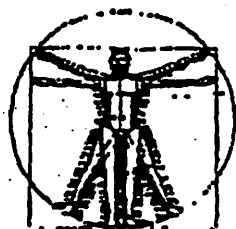
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 Rm 302
 Roanoke, VA 24010
 804-772-4448

1009 East High St.
 Charlottesville, VA 22902
 804-922-8715

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 804-383-7673

550 W. Ridge Road
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 800-737-0245

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MURRAY E. JOINER JR., M.D., P.C.
PHYSICAL MEDICINE AND REHABILITATION

PAST MEDICAL HISTORY

1. Left knee pain 7/97 which ultimately required arthrocentesis.
2. Right migraine headaches.

PAST SURGICAL HISTORY

1. Tubal ligation.
2. D & C.
3. Carpal tunnel release.

ALLERGIES

None. The patient reports that nonsteroidal anti-inflammatories upset her stomach. Strong pain medications make her nauseated.

MEDICATIONS

1. Baclofen 10 mgm b.i.d.
2. Neurontin 30 mgm q.i.d.
3. Verapamil 240 mgm 1 ½ per day
Addendum When asked by she was taking Verapamil the patient reports it was for "Migraines". She was very specific.
4. Prilosec 10 mgm q.d.

FAMILY HISTORY

1. Hypertension.

SOCIAL HISTORY

Tobacco use - negative.

Ethanol use - negative.

Education - 12 years

Occupation - medically retired from DuPont

REVIEW OF SYSTEMS

1. Positive for problems with eyes, ears.
2. Positive for problems neck
3. Positive for GI upset.

Eggleson, Brenda L.

3

December 10, 1997

VIRGINIA WORKERS
COMPENSATION COMMISSION

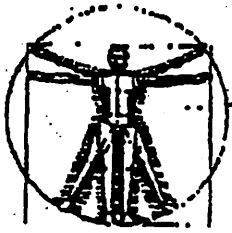
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Roanoke, VA 24018
804-779-1140

1009 East High St.
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804-923-8715

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804-385-7873

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580 W. Edge Road
Suite K
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804-923-0217



MURRAY E. JOINER JR., M.D., P.C.

PHYSICAL MEDICINE AND REHABILITATION

4. Positive for insomnia
5. Positive for headaches
6. Positive for chest pain

PHYSICAL EXAMINATION

General - This is an obese, alert and oriented white female in no acute distress

HEENT - Normocephalic, atraumatic. Pupils equal, round and reactive to light. Extraocular muscles intact. Nose and throat atraumatic.

Neck - There is mild tenderness in the right trapezius and parascapular region without trigger point areas. There is good cervical range of motion throughout. No thyromegaly, lymphadenopathy or carotid bruits are noted.

Cardiovascular - Regular rate and rhythm without murmurs or gallops.

Respiratory - Clear.

Chest wall - There is right pectoralis tenderness without trigger points at the insertion on the shoulder. Otherwise, no other abnormalities are noted. Breast exam was deferred.

Abdomen - Positive bowel sounds, soft, nontender.

GU - Deferred.

Extremity Exam - Right shoulder - There is full active range of motion throughout. There is tenderness with palpation over the supraspinatus tendon insertion. No bicipital groove tenderness is noted. No deltoid area tenderness is noted. No anterior/posterior joint line tenderness is noted. No AC joint tenderness is noted. There is good range of motion throughout.

Right arm - There is diffuse tenderness over the forearm extensors. No trigger points are noted. No isolated extensor carpi radialis brevis insertion tenderness is noted. There is full active range of motion at the elbow.

Eggleston, Brenda L.

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December 10, 1997

VIRGINIA WORKERS
COMPENSATION COMMISSION

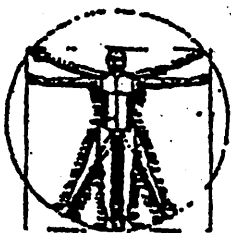
550 W. Ridge Road
Suite 200
Weymouth, VA 22822
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4519 Brambleton Ave., SW
1302
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MURRAY E. JOINER JR., M.D., P.C.
PHYSICAL MEDICINE AND REHABILITATION

Right wrist and hand There is a healed right carpal tunnel incision. Tinel's and Phellan's are negative over the right carpal tunnel and Guyon's canal. There is full range of motion in the wrist. No crepitus is noted. No tenderness is noted to palpation. Finkelstein's testing is negative. Addendum: Of particular interest are the large soiled calluses on patient's hands bilaterally suggesting she has been doing some heavy work activity for a prolonged period.

Left Wrist - Positive Phellan's. Tinel's is negative over the carpal tunnel and Guyon's canal.

Other than the above no signs of acute or chronic trauma are noted.

Spinal Exam - No visual or palpable bony abnormalities are noted. No pathologic curves are noted.

Neurologic Exam - Cranial nerves II through XII are grossly intact. Deep tendon reflexes 2/4. Sensory exam is intact. Strength is 5/5 throughout.

IMPRESSION

1. Chronic right cervical/thoracic myalgia.
2. Chronic right supraspinatus tendinitis.
3. Right lateral pectoralis major myalgia.
4. Right forearm extensor myalgia.
5. Left carpal tunnel syndrome (mild) which should not interfere with any of the patient's activities especially in the presence of normal nerve conduction studies. According to Dr. Hormel's report of 10/30/97 he performed a nerve conduction study on the left side and found "her median sensory, though, a normal amplitude is delayed. An ulnar sensory done at exactly the same distance demonstrates a difference between the two of 0.7 Msec which is roughly 33%." Utilizing the Guidelines as outlined by the American Academy of Electrodiagnostic Medicine, also noted in textbook "Practical Electromyography", 2nd Edition by Ernest W. Johnson, and "Electrodiagnosis in Diseases of Nerve and Muscle, Principles and Practices", 2nd Edition by Jun Kimura, this is well within normal limits. Please refer to Table 6-2 page 108 in the text "Electrodiagnosis in Diseases

Eggleston, Brenda L.

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December 10, 1997

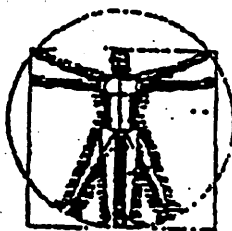
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VIRGINIA WORKERS
COMPENSATION COMMISSION
JUL 28 1999
CHARGE

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MURRAY E. JOINER JR., M.D., P.C.

PHYSICAL MEDICINE AND REHABILITATION

of Nerve and Muscle, Principles and Practices". In that Table it is noted that a median to ulnar difference of 0.79 ± 0.31 is indeed within normal limits. Therefore, the patient's nerve conduction study is well within normal limits.

6. The patient's prior medical records, testing, and her physical examination today are inconsistent with a diagnosis of Reflex Sympathetic Dystrophy which as a diagnosis especially this late stage would have required multiple objective findings which are not and have not been present. Please refer to the textbook by Samuel L. Turek "Orthopedics Principles and Practices", 4th Edition, page 795 through 797. There it is clearly outlined the objective findings which are present with Reflex Sympathetic Dystrophy. Specifically at this late date one would expect to see "characteristic spotty decalcification", pain, edema, tenderness, cyanosis, coldness, sweating, stiffness, evidence of vaso-spasms, cyanotic glossy skin, limitation in range of motion of the digits, persistent "burning" pain aggravated by heat, emotion, palpation and in long term cases fibrotic contractures - all of which are not and have not been present. Indeed, Verapamil would be appropriate with Reflex Sympathetic Dystrophy, but this is not the case with Ms. Eggleston. Examiner suspects that the Verapamil is actually being used "migraines" as reported by the patient. Also, in the absence of Reflex Sympathetic Dystrophy or neuropathic pain, the examiner cannot find an indication for the use of Neurontin. This has at least been the case since 8/18/95 where according to the note "arm strength is good, shoulder range of motion is better. She is going to teach one or two courses and participate in one to two courses this fall. We will try to work with her with this."
7. The patient's ongoing treatment for gastritis including Prilosec is not related to her work related injury. She has not taken nonsteroidal anti-inflammatories since they were discontinued by Dr. Horndel 5/15/95 and therefore the use of nonsteroidal anti-inflammatories could not explain any ongoing gastrointestinal distress two years after discontinuation of these medications. The actual cause of the patient's GI problems were "Helicobacter pylori" demonstrated on biopsy from her 7/14/95 endoscopy performed by Dr. Robert Moylan. This condition responds well to short term treatment as instituted by Dr. Moylan on 8/18/95 where he instituted the following program: "The patient will abstain from nonsteroidal medications. She will be given triple antibiotic therapy form of Tetracycline, Flaggl and Pepto-Bismol. She will continue Prilosec for an additional two months. If the patient has any problems with epigastric pain she will return to the clinic for further evaluation. At the end of two months I suspect she will discontinue Prilosec altogether".

Eggleston, Brenda L.

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December 10, 1997

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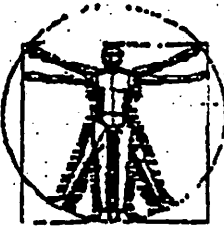
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VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 2 1998
590 W. ROBERTSON
Suite K
Charlottesville, VA 22902
804-710-6217



MURRAY E. JOINER JR., M.D., P.C.
PHYSICAL MEDICINE AND REHABILITATION

8. Based on review of the patient's extensive medical records and her history and physical examination today, the examiner can find no objective reason to continue Neurontin, Verapamil, or Prilosec for her work related injuries. It is unlikely that the patient requires ongoing Baclofen use which she admits to taking as needed only. There are several other non-addictive, less sedating muscle relaxers with a lower risk profile which require less intensive monitoring (i.e.- liver function tests, etc).

RECOMMENDATIONS

1. As it relates to the patient's work related injury, she is indeed at maximum medical improvement. No further interventions or testing is recommended. For reasons previously mentioned, there is not medical reason for regular follow up for any work related problems.


Murray E. Joiner, Jr., M.D.

MEJ/jrt

Original to: Ms. Katherine West, Claims Adjuster, Kemper Insurance Co., P. O. 7637
Roanoke, Va 24019

cc: Ms. Linda Bowles, RN, Kemper Insurance Co., P. O. Box 7637, Roanoke, VA 24019

Eggleston, Brenda L.

7

December 10, 1997

VIRGINIA WORKERS
COMPENSATION COMMISSION

JUL 29 1999
5801 Olden Road
Suite K
Roanoke, VA 24019
540-732-0217
CHARGE #65

4518 Brambleton Ave., SW
7302
Roanoke, VA 24018
540-772-4448

1009 East High St.
Charlottesville, VA 22902
804-923-8715

2137 Lakeside Drive
Suite 100
Lynchburg, VA 24501
804-385-7873

0124199

FUP Hand Inj.

155 / 94 84-20

DATE: 06/24/99

PATIENT: Brenda Eggleston

Ms. Eggleston reports continued problems with her left and right hand. In her left hand she says that the hand becomes numb, such as recently, when she was trying to ride a four-wheeler. In her right hand she said that she gets aches in the thumb and this appears to be a continuation of her DeQuervain tenosynovitis.

Today on examination neither hand is swollen and she has no numbness. Her Finkelstein's test is negative on the right. I do not have equipment at this point to measure grip strength nor have I seen her recently to be able to see a trend one way or another.

I have told Ms. Eggleston that I no longer am active in doing hand surgery and that I am not in a good position at this point to do a complete evaluation of her hands. She has had a nerve conduction study done by Dr. Hormel more recently than the last one that I have which is from 4/23/98. In that study there was prolonged left median mixed nerve SNAP with a left median CMAP latency prolonged as well. Ulnar, sensory and motor latencies were normal.

Ms. Eggleston would prefer not to have surgery if possible. I will refer her back to Dr. Hormel as her primary physician and if he feels that she needs a complete evaluation by a hand surgeon he may refer her to the appropriate person.

ENRIQUE A. SILBERBLATT, MD, FACS

EAS/dam

D.06/24/99

T.06/29/99

cc: Brenda Eggleston, 60 Old Mill Road, Ridgeway, Virginia 24148

VIRGINIA WORKERS'
COMPENSATION COMMISSION
JUL 29 1999
(12)

Enrique A. Silberblatt, M.D.
Advanced Medical Skin Care
3505 Brambleton Avenue
Roanoke, VA 24018

July 26, 1999

Kimberly R. Hillman, Esquire
McGuire, Woods, Battle & Boothe LLP
One James Center
901 E. Cary Street
Richmond, VA 23219

Patient: Brenda Eggleston

Dear Ms. Hillman:

I am writing to clarify my office note of June 24, 1999 pertaining to the care and treatment of Brenda Eggleston. Specifically, I am writing to clarify that DeQuervain Tenosynovitis is not the same condition as Gamekeeper's thumb. At the time of Ms. Eggleston's presentation at my office on June 24, 1999, Ms. Eggleston complained of an ache in her right thumb which may be a continuation of her DeQuervain Tenosynovitis. Ms. Eggleston did not have any swelling or numbness at the time of her presentation on June 24, 1999.

As I indicated in the addendum to my office note dated October 22, 1997, I do not believe that Ms. Eggleston has or ever had a diagnosis of Gamekeeper's Thumb. At the time of her appointment at my office on June 24, 1999, Ms. Eggleston did not present with any symptoms consistent with a diagnosis of Gamekeeper's Thumb, nor did my objective findings support such a diagnosis. It continues to be my opinion, to a reasonable degree of medical certainty, that Ms. Eggleston does not have, nor ever had, Bilateral Gamekeeper's thumb.

Very truly yours,



Enrique A. Silberblatt, M.D., FACS

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

BRENDA G. EGGLESTON, Claimant

Opinion by ROACH
Deputy Commissioner

v. VWC File Nos. 143-94-79, 149-63-96, and 162-62-45

FEB 28 2000

E I DUPONT DENEMOURS & CO, Employer
Self - Insured

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401
for the Claimant.

Kimberly R. Hillman, Esquire
901 East Cary Street
One James Center
Richmond, Virginia 23219
for the Defendant.

Hearing before Deputy Commissioner Roach in Martinsville, Virginia, on July 28, 1999.

PROCEDURAL HISTORY

In VWC File No. 143-94-79, the claimant was diagnosed with bilateral carpal tunnel syndrome on September 28, 1989, as causally related to her employment, and the Commission awarded temporary total disability benefits from September 19, 1990 through October 30, 1990, and permanent partial disability benefits from January 30, 1992 through July 29, 1992, at a rate of \$306.18 per week, based upon a pre-injury average weekly wage of \$459.29.

In VWC File No. 149-63-96, the claimant injured her right shoulder on November 28, 1990, while working for the employer, and the Commission awarded temporary total disability benefits from October 1, 1992 through November 1, 1992, at a rate of \$293.90 per week, based

upon a pre-injury average weekly wage of \$440.85.

In VWC File No. 162-62-45, the claimant was diagnosed with gamekeeper's thumb on March 9, 1993, as causally related to her employment, and the Commission awarded temporary partial disability benefits from June 13, 1993 through November 30, 1993, at a rate of \$74.35 per week, based upon a pre-injury average weekly wage of \$557.53.

On December 8, 1993, the claimant filed change in condition claims in all three files, seeking a resumption of temporary total disability benefits beginning December 1, 1993. A hearing was conducted before Deputy Commissioner Gorman on July 13, 1994, who, in a decision of August 25, 1994, ordered a resumption of temporary total disability benefits beginning December 1, 1993 in the amount of \$371.71, apparently based upon the average weekly wage in VWC File No. 162-62-45 of \$557.53. In the opinion, Deputy Commissioner Gorman stated, in part:

From the evidence we find that the claimant continues to have marked physical restrictions as revealed by the medical records and her own testimony at hearing. Claimant's physical limitations are the result of bilateral gamekeeper[']s thumb, bilateral carpal tunnel syndrome and right shoulder problems. As a result of her physical limitations she was provided some light duty work with the employer but this did not prove to be consistent with her abilities and accordingly she was terminated from employment for physical reasons. Given this circumstance, we find ample justification for finding that the claimant, although certainly capable of performing limited work, is not able to perform her pre-injury or even light duty work provided by her employer.

He also found that the claimant had adequately marketed her remaining work capacity, prompting the award for temporary total disability benefits.

PRESENT PROCEEDINGS

This case is before the Commission on the employer's February 3, 1999 application, filed in the above-named cases, seeking (1) a change in the temporary total disability award rate from \$371.71 per week to \$306.18 per week (plus any applicable cost of living increase), alleging that the claimant's bilateral gamekeeper's thumb resolved by October 22, 1997 or December 3, 1997, and an award based upon the average weekly wage in VWC file No. 162-62-45 is not justified, (2) that the claimant's entitlement to benefits in each file should be reduced by the number of weeks she has been receiving the combined awards, (3) that the employer should be provided a credit for the wages paid the claimant at pre-injury level while she was actually performing light duty, and (4) that if the Commission reduces the temporary total disability award from \$371.71 per week to \$306.18 per week (plus any applicable cost of living adjustment), the employer should receive a credit for the overpayment since October 22, 1997, the date the claimant's gamekeeper's thumb allegedly resolved.

STIPULATIONS

The parties agreed that the claimant was paid pursuant to Deputy Commissioner Gorman's opinion through February 16, 1999, and was paid at a rate of \$354.96 per week beginning February 17, 1999 (the award rate applicable to VWC File No. 143-94-79, the bilateral carpal tunnel syndrome disease, which includes the applicable cost of living adjustments).

DEFENSES

The claimant argues, in summary, that (1) the employer has not established either factually or

legally that it is entitled to a reduction of the temporary total disability award rate from that amount awarded in the August 25, 1994 decision, (2) the employer is not entitled to a weekly credit in each case while paying only one week of compensation, because the claimant is not receiving a payment equal to the combined weekly temporary total disability rates in each file, (3) the employer is not entitled to a credit for wages paid the claimant at her pre-injury level while she was working light duty, and (4) (a) if the Commission finds the claimant's gamekeeper's thumb resolved as of October 22, 1997 or December 3, 1997, the employer is not entitled to a credit for benefits paid through the date of the application, and (b) that the employer should be prohibited from asserting this issue because it was not raised in the initial February 3, 1999 application, having only been raised in the employer's July 12, 1999 trial brief received shortly before the hearing.¹

PRE-HEARING AND POST-HEARING EVIDENCE

Both parties filed a designation of medical records, pursuant to Rule 2.2(B)(3), to be admitted into evidence for the Commission's consideration. The record was held open to allow claimant's counsel to file a responsive brief to the employer's trial briefs. The record closed on August 26, 1999.

SUMMARY OF THE EVIDENCE

Lucinda D. Gravely, the manger of records for the employer for over twenty-five years, testified that the pay each employee receives is coded pursuant to a standard formula, depending on

¹ The specific details of the claimant's defenses are outlined in the responsive brief submitted after the hearing.

whether the claimant is working full duty, light duty, or is in another work status. Defendant's Exhibit 1. According to the employer's pay records, Code 21 is used to designate that a worker is earning regular wages while performing selective employment. The pay records for the claimant were admitted at Defendant's Exhibit 2, showing payment from September 15, 1990 through January 12, 1991. The claimant's pay records from January 19, 1991 through May 29, 1993 were admitted as Defendant's Exhibit 3. According to the employer's calculations, the claimant received 3.5 weeks of Code 21 pay during the period listed in Defendant's Exhibit 2, and 23.48 weeks as Code 21 pay in the period reflected in Defendant's Exhibit 3.

On cross-examination, Gravely noted that the employer does not have a specific payroll department, but she obtained the copy of the claimant's records from the human resources department. Gravely did not otherwise verify the accuracy of the payroll record, but she performed her own calculations to confirm the light duty wages received by the claimant. Gravely noted that she was familiar with the restricted work policy of the employer, and that an employee must be cleared through the medical department before returning to work. She also noted that an employee's supervisor would sign the pay cards of that employee on light duty, and the supervisor would be aware of such restricted duty.

Catherine West, of Kemper Insurance, testified that Defendant's Exhibits 4, 5, and 6 reflect payments made to the claimant in each file. The carrier considers the payments made since December 1, 1993 to be a combined award for each file. She testified as to the amount of weeks

remaining to be paid the claimant from the 500 week maximum which an injured worker may receive pursuant to Code § 65.2-518. She also noted that, by the time the carrier determined that the claimant's thumb condition had resolved, and adjusted the rate of payment upon the filing of the February 1999 application, the claimant had been overpaid almost \$5,000.00, according to her carrier's estimate.

On cross-examination, West acknowledged that, since the Commission's last award, the carrier has not issued three separate checks for each week the claimant received benefits. In addition, the carrier did not file an application seeking a credit of overpayment of benefits for the period from October 22, 1997, the date of the claimant's alleged recovery, through February 1999. She also conceded that the claimant would not necessarily have known that the carrier was challenging the award until it filed the February 3, 1999 application. She also admitted that she is not aware of any period the claimant may have returned to work, during which time Kemper was not aware of such return to work. She also confirmed that the carrier is seeking a credit for wages paid for the claimant's light duty back to 1990 through 1992. West took over the file in 1997 and found it peculiar that no credit had ever been sought up until that point. She also conceded that as far as she knew, the claimant did not do anything to cause the carrier to overpay benefits.

The claimant testified that while working for DuPont, she has been diagnosed with carpal tunnel syndrome, gamekeeper's thumb, and suffered a right shoulder injury. She was on a light duty work restriction from 1990 through 1993, but she returned to work for the employer after being

cleared by medical personnel at the plant. The claimant asserted that the employer knew she was on light duty, and she was receiving her regular wages. Her employment ended with DuPont in December 1993. Although she reviewed the wage records submitted at the hearing, she could not attest to their complete accuracy. The Commission's August 25, 1994 opinion, awarding temporary total disability benefits, resulted from a claim filed on her behalf. That decision was not appealed and she has received temporary total disability benefits since that date, although they were modified in February 1999, upon the filing of the employer's current application. The claimant asserted that she still suffers from tenderness and pain in her thumb on a daily basis, and she believes she is currently disabled as a result of a combination of all three compensable conditions. The claimant asserted that she had no reason to believe that she was being overpaid disability benefits, and that until the February 3, 1999 application was filed, no one at Kemper or DuPont implied she was being overpaid. Although she denied telling her physician on October 22, 1997 that her gamekeeper's thumb had resolved, she did acknowledge that she was not suffering from pain on the date of the examination. She later heard her physician discussing her condition with a nurse.

On cross-examination, the claimant conceded that, before she saw Dr. Silverblatt in June 1999 for her thumb condition, she last treated with him in October 1997. However, she asserted that he moved to Florida for approximately one year before returning to the Roanoke area. She also spoke to Dr. Timothy L. Hornel in February 1999, about her condition, but no specific treatment was prescribed. The claimant admitted that she wrote the Commission a letter on December 3, 1997,

stating that her thumb condition had resolved, and that she had not suffered any flare-ups of pain from October 22, 1997 through the date of her letter. She did not receive any treatment for her thumb between October 1997 and February 1999 because she asserted that the pain was not severe.

ISSUE ONE

Whether the employer should receive credit for those weeks the claimant received her pre-injury average weekly wage, from 1990 through 1992, while on a light duty restriction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"In an application for review of any award on the ground of change in condition, the burden is on the party alleging such change to prove his allegations by a preponderance of the evidence."

Rossello v. K-Mart Corp., 15 Va. App. 333, 335, 423 S.E.2d 214, 216 (1992)(quoting Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App. 435, 438-39, 339 S.E.2d 570, 572 (1986)).

Code § 65.2-708(C) states:

All wages paid, for a period not exceeding twenty-four consecutive months, to an employee (i) who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is provided work within his capacity at a wage equal to or greater than his pre-injury wage, shall be considered compensation.

The full Commission has previously held that the General Assembly enacted this section to provide an extended limitation period to an injured worker who returns to work at a wage rate equal to or greater than his pre-injury wage, when the disability renders the injured worker unable to return to pre-injury work. The section was designed to prevent possible abuse by employers of the two-year limitation period set forth in Code § 65.2-708(A), by allowing the

employers to otherwise lull partially disabled workers into a false sense of security during this two-year period by providing employees light duty work at their pre-injury wage for two years and then terminating the employee without liability for future disability benefits. Phelps v. Safeway Stores, Inc., 77 O.W.C. 138 (1998).

However, if an employee has some restrictions, but essentially returns to pre-injury work, the requirements of Code § 65.2-708(A) and (C) have not been established. Burton v. Fairfax County School Bd., 71 O.W.C. 138 (1992).

Although the employer did not present any direct evidence of the nature of the job the claimant returned to in 1990, she conceded at the hearing that she returned to light duty employment during that time. However, as noted above, Code § 65.2-708(C) was designed to be a shield for employees against the unscrupulous acts of an employer, who may provide the claimant with a light duty job and pay full wages, in the hopes that the statute of limitations would expire and the claimant would be prevented from filing a claim. It was not designed to allow the employer to receive credit against the maximum 500 of benefits due a claimant, especially when those payments were made without benefit of an award.

Notwithstanding that argument, the Commission finds that the controlling law in this matter is found in those circumstances under which an employer has been provided a credit. As claimant's counsel correctly points out, Code § 65.2-712 provides for a credit when benefits have been procured by a claimant through fraud, misrepresentation, or failure to report an

increase in earnings, incarceration, or change in status as a full time student. In addition, the Commission has provided a credit when there has been a mistake of fact, either unilaterally or mutually made, that produces a miscalculation in the amount of benefits paid to the claimant. Such is not the case here. The claimant merely returned to work in a light duty capacity and received her pre-injury average weekly wage. The employer was aware of the return to work and payment of wages, and there is no evidence that such wages were procured by fraud or misrepresentation.

Therefore, the employer's request to be provided a credit for wages paid the claimant while on light duty when she returned to work in 1990 is DENIED. Given this finding, the claimant's other defenses to this issue need not be addressed.

ISSUE TWO

Whether the claimant's gamekeeper's thumb condition has resolved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As noted above, the employer bears the burden of proving that the claimant's gamekeeper's thumb condition resolved as of October 22 1997, as alleged.² The employer relies, in part, upon Dr. Silverblatt's addendum to his October 22, 1997 report, which states:

There is some question as to whether Ms. Eggleston has or ever had a gamekeeper's thumb. She never gave a history to me suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and

² The relief requested in an application for change of condition is limited to that which is in the application. Washington Metro Trans. Auth. v. Pender, 14 Va. App. 100, 415 S.E.2d 230 (1992).

nonpainful.

However, the claimant had already received an award of benefits by that time, establishing that she suffers from the condition of gamekeeper's thumb, and it is now the law of the case. Dr. Silverblatt's assertion that the claimant never suffered from that condition cannot alter that finding. He does note, however, that the claimant's thumb joints were stable and nonpainful as of October 22, 1997, and he did not place any restrictions on her at that time as a result of her thumb condition. The employer also relies upon the claimant's December 3, 1997 letter to the Commission, acknowledging that she was aware that Dr. Silverblatt diagnosed her thumb condition as resolved, as of October 22, 1997. Dr. Murray Joiner performed an independent medical examination on December 10, 1997, and noted that the claimant stated that her thumb "doesn't hurt that much." The claimant did not thereafter seek treatment for the gamekeeper's thumb until February 15, 1999, after the employer filed its application for hearing.

Given this evidence, the Commission finds that the employer has established by a preponderance of the evidence that the claimant's gamekeeper's thumb had resolved by October 22, 1997. Although she alleged that she did not receive treatment because her physician had relocated, she also did not request that her care be transferred to another physician. Any evidence presented in 1999 as to whether she still suffered from pain in her thumb is not relevant to the claimant's condition in October, 1997, at which time her condition is found to have resolved.

ISSUE THREE

Whether the claimant's temporary total disability rate should be lowered and whether the employer should be provided a credit for benefits paid the claimant at the gamekeeper's thumb rate between October 1997 and February 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The claimant asserts, in part, that the Commission's August 25, 1994 award was final, not appealed, and established the temporary total disability rate to be \$371.71, and the employer is estopped for challenging that finding after the time for filing a request for review has lapsed. However, that argument is misplaced.

"Where ... causal connection between an industrial accident and disability has been established by the entry of an award, an employer has a right to apply for termination of benefits upon an allegation that the effects of the injury have fully dissipated and the disability is the result of another cause." Suite v. Clinchfield Coal Co., 8 Va. App. 554, 555, 383 S.E.2d 21, 22 (1989)(quoting Celanese Fibers Co. v. Johnson, 229 Va. 117, 120, 326 S.E.2d 687, 690 (1985)), aff'd on reh'g en banc, 9 Va. App. 492, 389 S.E.2d 187 (1990); see also Rossello v. K-Mart Corp., 15 Va. App. 333, 335, 423 S.E.2d 214, 216 (1992). No time limit has been placed on the employer for the filing of the application, and this issue is deemed to be properly before the Commission in the current matter.³

³ Whether the award can be modified retroactively, back to the date of the alleged recovery, is discussed below.

Since the Commission has noted that the claimant's gamekeeper's thumb condition has resolved, the employer has the right to have that award terminated. Because the Commission's August 25, 1994 award is based upon a finding that the claimant was disabled in part from all three compensable conditions, the employer has now established that the claimant's disability is due only to her two remaining conditions: bilateral carpal tunnel syndrome and the right shoulder injury. The highest average weekly wage for which previous awards have been based on those two conditions arise from her earnings at the time she was diagnosed with the bilateral carpal tunnel syndrome, or \$459.27 per week, producing a temporary total disability rate of \$306.18. Therefore, the claimant's current award is modified to a rate of \$306.18 per week, plus any applicable cost of living increase the claimant is due.

The next question to decide is whether the award should be modified back to October 22, 1997 and the employer provided a credit for benefits paid to the claimant between that date and the filing of the application.

Rule 1.4(C) states:

Compensation shall be paid through the date the application was filed, unless:

1. The application alleges the employee returned to work, in which case payment shall be made to the date of the return.
2. The application alleges a refusal of selective employment or medical attention or examination, in which case payment shall be made to the date of the refusal or 14 days before filing, whichever is later.
3. The application alleges a failure to cooperate with vocational rehabilitation, in which case payment must be made through the date the

application is filed.

4. An employer files successive applications, in which case compensation shall be paid through the date required by the first application. If the first application is rejected, payment shall be made through the date required by the second application.

5. The same application asserts multiple allegations, in which case payment is determined by the allegation that allows the earliest termination date.

According to the Commission's rules, when the employer alleges that a claimant's condition has resolved, benefits must be paid through the date of the application. There is no exception provided that allows an employer to make payments only through the date of the claimant's recovery. In addition, as previously noted, the reasons for providing a credit to the employer have been clearly established by the Commission and the Courts of Virginia, and the Commission does not find that a credit is due the employer for benefits paid at the higher rate from October 22, 1997 through February 3, 1999, the date the employer filed the application. Therefore, the claimant's benefits are modified to reflect a temporary total disability award at a rate of \$306.18 per week, plus any applicable cost of living increase the claimant is due, beginning February 4, 1999.

As a result of this finding, the claimant's other defenses to that issue need not be addressed.

ISSUE FOUR

Whether the employer should be provided a weekly credit for payments made to the

claimant under the combined award, as it applies to the 500 week maximum amount for each file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The employer does not cite any law in support of its proposition that the claimant's "entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks that she has been receiving the combined award." (Employer's July 12, 1999 trial brief, p. 7).

The Commission notes, however, that "[t]he right to compensation under the workmen's compensation law is granted by statute, and in giving the right the legislature had full power to prescribe the time and manner of its exercise. When the legislature has spoken plainly it is not the function of courts to change or amend its enactments under the guise of construing them. The province of construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation." Dan River, Inc. v. Adkins, 3 Va. App. 320, 328, 349 S.E.2d 667, 671 (1986)(quoting Winston v. City of Richmond, 196 Va. 403, 407-08, 83 S.E.2d 728, 731 (1954)).

In addition, "the Workers' Compensation Law should be construed liberally in favor of the worker, ... but it is the law that should be construed liberally, not the facts." Board of Supervisors v. Martin, 3 Va. App. 139, 146, 348 S.E.2d 540, 543 (1986).

Code § 65.2-518 provides:

The total compensation payable under this title shall in no case be greater than 500 weeks nor shall it exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined in § 65.2-500 for the applicable

year by 500, except in cases of permanent and total incapacity as defined in § 65.2-503 C and in cases of permanent disability under subdivision A 4 of § 65.2-504 and death from coal worker's pneumoconiosis under § 65.2-513.

Code § 65.2-503(E)(2) states, "Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two weeks against the total maximum allowable period of 500 weeks."

The Act does not otherwise provide for counting simultaneous payments, resulting from separate injuries, as more than one week of disability benefits against the maximum allowable period of 500 weeks. The Commission must presume that the General Assembly's failure to allow a credit to the employer under the facts of this case represents its intent to prohibit a credit under these circumstances. Given that (1) the workers' compensation system in Virginia is a creature of statute, (2) the absence of law allowing an employer to receive credit by reducing by the number of weeks that a claimant may receive benefits as the result of separate injuries while receiving a combined award, and (3) the interpretation of the Act in favor of the claimant, the Commission finds that the employer has failed to establish that it is due a credit in each file for the number of weeks the claimant has received the combined award.

As a result of this ruling, the employer is only entitled to a credit in VWC File No. 162-62-45 (gamekeeper's thumb) for the weeks of benefits paid from December 1, 1993 through February 3, 1999, and is only entitled to a credit in VWC File No. 143-94-79 (bilateral carpal tunnel syndrome) for the weeks of benefits paid from February 4, 1999 to the present and

VWC File Nos. 143-94-79
149-63-96
162-62-45

continuing.

Therefore, the employer's application is GRANTED IN PART and DENIED IN PART.

The temporary total disability award in VWC File No. 162-62-45, in the amount of \$371.71 per week, is terminated effective February 3, 1999. An award is hereby entered in favor of Brenda G. Eggleston, claimant, against E I DuPont De Nemour & Co., self-insured employer, for payment of temporary total disability benefits in the amount of \$306.18 per week, plus the applicable cost of living increase, beginning February 4, 1999 and continuing. ^{143,147?}

Medical benefits pursuant to Code § 65.2-603 shall be awarded for as long as necessary.

An attorney's fee in the amount of \$600.00 may be charged the claimant by Wesley Marshall, Esquire for legal services rendered the claimant.

This case is hereby Ordered removed from the hearing docket.

REVIEW

Any party may appeal this decision by filing a request for review with the Commission within twenty days from receipt of this opinion.

cc: Brenda G. Eggleston
60 Old Mill Road
Ridgeway, VA 24148

E I DuPont Denemours & Co.
1 Du Pont Road
Martinsville, VA 24112

VWC File Nos. 143-94-79
149-63-96
162-62-45

E I DuPont Denemours & Company
National Loss Control Serv. Corp.
P.O. Box 5550
Glen Allen, VA 23058

MAY 12 '00

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

CHARGE # 15

BRENDA L. EGGLESTON,

Claimant,

v.

DUPONT DE NEMOURS & COMPANY,

Self-Insured Employer.

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V.W.C. File No: 143-94-79

(D/Accident: 09/28/89)

V.W.C. File No: 149-63-96

(D/Accident: 11/28/90)

V.W.C. File No: 162-62-45

(D/Accident: 03/09/93)

**CLAIMANT'S RULE 3.2 WRITTEN STATEMENT
IN SUPPORT OF REQUEST FOR REVIEW**

COMES NOW the Claimant, BRENDA L. EGGLESTON, by counsel, pursuant to the Rule 3.2 of the Rules of the Virginia Workers' Compensation Commission and for her Written Statement In Support Of Request For Review of the February 28, 2000 Opinion of the Deputy Commissioner in this matter, states as follows:

I. PROCEDURAL HISTORY AND STATEMENT OF FACTS

This matter came before the Commission at an evidentiary hearing on July 27, 1999 in Martinsville, Virginia on the Employer's Application For Hearing filed on or about February 17, 1999. The Claimant received an award for bilateral carpal tunnel syndrome, an occupational disease, pursuant to the January 9, 1991 Opinion of Deputy Commissioner Costa in V.W.C. File No. 143-94-79. The Claimant also received an award for benefits arising from a right shoulder injury of November 28, 1990 in V.W.C. File No. 149-63-96. The Claimant's entitlement to benefits for this injury was premised upon the agreement of the parties. Finally, the Claimant was deemed to

Wesley G. Marshall
Attorney At Law
600 Westwood Office Park
Fredericksburg, VA 22401
540-371-4444

CM
5/5/00

have sustained a compensable occupational disease of bilateral Gamekeeper's thumb in V.W.C. File No. 162-62-45. This led to an award for temporary partial disability benefits beginning June 13, 1993 and continuing through at least November 30, 1993.

On December 8, 1993, the Claimant filed a change in condition application seeking an additional period of temporary total disability benefits on all three claims. She alleged she was temporarily totally disabled from December 1, 1993 and continuing thereafter. The Employer disputed a claim and the matter proceeded to an evidentiary hearing before Deputy Commissioner Gorman. The Employer defended the Application on the ground that the Claimant was not totally disabled; that she had not marketed her residual work capacity; and that the assessment of attorney's fees was not warranted. (Opinion of Deputy Commissioner Gorman, 08/25/94, at 1).

On August 25, 1994, Deputy Commissioner Gorman issued an Opinion awarding additional relief to the Claimant. Deputy Commissioner found the Claimant was disabled and continued to have physical limitations as a result of her bilateral gamekeeper's thumb; her bilateral carpal tunnel syndrome; and her right shoulder problems. (Opinion of Deputy Commissioner Gorman, 08/25/94, at 3). The Deputy Commissioner awarded temporary total disability benefits in the weekly amount of \$371.71 from December 1, 1993 and continuing. The temporary total disability rate presumably was based upon the Claimant's highest average weekly wage of the three claims, V.W.C. File No. 162-62-45, which was for bilateral Gamekeeper's thumb.

The Employer did not request review of the Deputy Commissioner's August 25, 1994 Opinion. The award became final and was not appealed. The Employer continued to pay benefits in accordance with the

Commission's award until February 17, 1999, after filing the instant application for hearing on or about February 3, 1999. Thus, benefits were paid without protest following the Commission's award for approximately 272.14 weeks or 5.23 years.

On or about February 3, 1999, the Employer filed the instant application for hearing. The Application form merely referred to an attached Memorandum as to the nature of the relief requested. The supporting Memorandum sought specified relief, including: (1) downward adjustment of the average weekly wage and temporary total disability rate effective the date of filing, based upon supporting documentation; (2) credit against the remaining weeks of available compensation for payments made under the combined award; and (3) a credit against future compensation for time worked by the Claimant in light duty employment between September 19, 1990 and December 4, 1993.

The Employer filed a pre-hearing trial memorandum which was mailed to the Claimant's counsel on July 12, 1999, approximately two weeks prior to the scheduled hearing. In its Trial Memorandum, the Employer asserted alternative theories of relief not previously identified in its February 1999 application for hearing. In the Trial Memorandum, the Employer sought different relief from that previously requested. This included a specific request for a credit against future compensation for an alleged overpayment of temporary total disability benefits from October 22, 1997 through February 17, 1999, the date through which the Employer had reduced Claimant's temporary total disability compensation.

In an Opinion dated February 28, 2000, the Deputy Commissioner reached various conclusions regarding the Employer's Application For hearing. The Claimant thereafter filed a timely Request For Review.

II. ARGUMENT AND AUTHORITY

At the July 27, 1999 hearing in this matter, Claimant's counsel objected to the claims for additional relief set forth in the Employer's Trial Memorandum. The Deputy Commissioner advised he would take this matter under advisement and would afford the Claimant the opportunity to note exception to consideration of this issue. Claimant, through her counsel, submitted on August 11, 1999 a Memorandum of Law In Opposition to the Employer's Application For Hearing. A copy of Claimant's August 11, 1999 Memorandum of Law is enclosed with this Written Statement and is incorporated by reference. Claimant relies upon all of the argument and authority set forth therein in support of her Request For Review.

The Claimant specifically notes exception to the Deputy Commissioner's findings related to her compensable condition of gamekeeper's thumb. The Deputy Commissioner reached the following findings of fact and conclusions of law:

1. That the Employer established by a preponderance of the evidence that Claimant's condition of gamekeeper's thumb had resolved by October 22, 1997 (Opinion at 11);
2. That any evidence presented in 1999 as to whether she still suffered from pain in her thumb is not relevant to the claimant's condition in October 1997, at which time her condition was found to have resolved (Opinion at 11);
3. That since the Commission noted the Claimant's gamekeeper's thumb condition had resolved, the Employer had the right to have that award terminated (Opinion at 13);
4. That the Employer had established that Claimant's disability was due only to her two remaining conditions:

bilateral carpal tunnel syndrome and the right shoulder injury;

5. That Claimant's current award should be modified to a temporary total disability rate of \$306.18 per week, effective February 4, 1999 (Opinion at 13); and
6. That as a result of the above findings, the Claimant's "other defenses" need not be addressed (Opinion at 14).

The Claimant respectfully notes exception to each of the findings set forth above and requests reversal of them. Claimant relies upon the argument set forth herein and in the Memorandum of Law filed on August 11, 1999.

A. The Deputy Commissioner Erred In Concluding That Claimant's Condition Of Gamekeeper's Thumb Had Resolved In October 1997.

The Deputy Commissioner, in what amounted to a retroactive opinion, concluded the Claimant's condition of gamekeeper's thumb had resolved by October 1997. This was in error both on the facts and the law. The Claimant testified at the hearing in this matter. She believed that her current disability was causally related to all three of her compensable injuries: the right shoulder, bilateral carpal tunnel syndrome, and gamekeeper's thumb. (T. at 84). Her condition of gamekeeper's thumb had never completely resolved. (T. at 84-5).

The Claimant testified that she suffers problems she attributed to gamekeeper's thumb on a daily basis. (T. at 85). She suffers tenderness in the thumb and shooting pains from the base of the thumb towards the end of the thumb. (T. at 85). She noted these symptoms "flared" occasionally and sometimes got better. (T. at 86). She also continues to experience swelling in her thumb. (T. at 86).

The Claimant honestly differentiated the symptoms she attributed to gamekeeper's thumb from those attributable to her carpal tunnel syndrome. She noted her carpal tunnel syndrome affected her wrists and whole arm, causing pain and numbness. (T. at 86). Her gamekeeper's thumb limits her daily activity, including pressing on things or picking things up. She finds herself "walking around just trying to protect it." (T. at 87).

Ms. Eggleston reported Dr. Enrique Silberblatt treated her for both her conditions of gamekeeper's thumb and bilateral carpal tunnel syndrome. (T. at 89). She noted Dr. Silberblatt had referred to her thumb condition as something else, namely, "tenosynovitis." (T. at 89). The Claimant admitted that for some time, she did not continue to follow up with Dr. Silberblatt. She found out that he had moved to Florida for approximately one year. He later returned to practice in the Roanoke, Virginia area. She advised "he's not a hand surgeon now. He has gone into skin specialist." (T. at 90). In addition, she had treated with Dr. Hormel for her condition of gamekeeper's thumb. (T. at 92).

The Claimant recalled overhearing Dr. Silberblatt discuss her condition with a Kemper Insurance nurse in 1997. Dr. Silberblatt questioned whether the Claimant ever had suffered from gamekeeper's thumb, and that perhaps she had DeQuervain's tenosynovitis. (T. at 93; 97). She did not tell him at that time that her thumb condition had completely resolved. She has continued to suffer thumb problems from 1997 through the date of the hearing. (T. at 93). The Claimant testified she still was on medication, Neurontin and Baclofen and one other drug, for her thumb condition prescribed by Dr. Hormel. (T. at 95). He also had prescribed Zostra creme for the Claimant's shoulder

and she tried using this on her thumb. It improved her pain and when she advised Dr. Hormel of this, he recommended that she continue with this treatment. (T. at 96).

In an office note dated October 22, 1997, Dr. Silberblatt questioned whether Ms. Eggleston had ever suffered from gamekeeper's thumb. He noted, "at present, both joints are stable and nonpainful." (Office Note, Enrique Silberblatt, M.D., 10/22/97).

On June 24, 1999, Ms. Eggleston returned to Dr. Silberblatt after he relocated to the area. He noted she "gets aches in the thumb and this appears to be a continuation of her DeQuervain's tenosynovitis." He did not perform grip strength testing and noted he had not seen her recently enough to identify a trend. He advised he no longer was active in hand surgery and that he was "not in a good position at this point to do a complete evaluation of her hands." (Office Note, Enrique Silberblatt, M.D., 06/24/99).

In a Disability Attending Physician's Statement dated October 14, 1998, Dr. Silberblatt noted the Claimant's diagnoses included carpal tunnel syndrome and DeQuervain's tenosynovitis. He recorded subjective symptoms of "pain in hand and thumb (right)." He recorded clinical findings of "tenderness of the right thumb." He indicated the Claimant was not under care for this condition and indicated his care had ended on "10-31-95," although he admitted he had last examined the Claimant for this condition on "10-22-97."

In his October 14, 1998 Attending Physician's Statement, Dr. Silberblatt noted the Claimant's condition was due to injury or sickness arising out of the patient's employment. He opined that as a result of these conditions, the Claimant's disability was "Class

4 - Moderate limitation of functional capacity; capable of clerical/administrative (sedentary) activity [60-70%]." He noted Ms. Eggleston's prognosis was poor and that she had "permanent partial impairment." He confirmed, as the Claimant alleged, "I am no longer practicing in Virginia - please address these forms to Dr. Hormel." (Attending Physician's Statement, Enrique Silberblatt, M.D., 10/14/98).

An April 7, 1998 Functional Capacity Evaluation confirmed Ms. Eggleston was capable of performing work in the light physical demand level as a result of conditions of bilateral carpal tunnel syndrome, DeQuervain's right, bilateral shoulder soft tissue injury, right worse than left. (Functional Capacity Evaluation, Ruth Galle, O.T.R., 04/07/98).

On February 15, 1999, Ms. Eggleston was examined by Timothy L. Hormel, M.D., one of her treating physicians. He noted "she has had some difficulties in the hand, particularly on the right hand side at the base of the thumb. She used to see Dr. Silberblatt for that, but he has moved out of town." He recommended that she maintain her prescription medicine usage. (Office Note, Timothy L. Hormel, M.D., 02/15/99) (emphasis added).

From this record, the Deputy Commissioner concluded the Employer met its burden of proving the Claimant's condition of gamekeeper's thumb resolved in October 1997. He concluded this despite the fact that after the October 1997 office visit, Dr. Silberblatt prepared an Attending Physician's Statement confirming (1) the Claimant continued to suffer right thumb problems; (2) which were caused by a work related injury or sickness; and (3) which left her with a "Class 4" disability. (Attending Physician's Statement, Enrique

Silberblatt, M.D., 10/14/98). Dr. Silberblatt's own records expressly contradict the Deputy Commissioner's findings.

Obviously, the Deputy Commissioner was faced with a confusing medical and legal record. The Commission held that the Claimant suffered from gamekeeper's thumb. In 1997, Dr. Silberblatt denied that the Claimant suffered from gamekeeper's thumb. Nonetheless, he opined the Claimant had suffered a chronic, longstanding pathology with regard to her right thumb which resulted from her work and was disabling. Regardless of the name given to the condition (gamekeeper's thumb or DeQuervain's tenosynovitis), it is clear the Claimant suffered from a work related condition affecting her right thumb. The record is uncontradicted that Dr. Silberblatt found this condition was disabling after October 1997.

As recently as June 1999, Dr. Silberblatt recorded that Ms. Eggleston "gets aches in the thumb," which he attributed to a "continuation," of Claimant's DeQuervain tenosynovitis. Dr. Silberblatt candidly commented that he was not in an optimal position to assess Ms. Eggleston's ongoing symptomology or make recommendations for treatment. He referred her back to Dr. Hormel, who had treated her in the past, for further treatment and possible referral to a hand specialist. Dr. Silberblatt did not opine that Claimant's condition had resolved and he did not opine the Claimant was not disabled.

Taken as a whole, the record reveals that after the fact, Dr. Silberblatt had queried whether the Claimant ever carried a diagnosis of bilateral gamekeeper's thumb. This retroactive opinion is not sufficient for the Employer to meet its burden of proof.

On a change in condition application, the Employer has the burden of proving a change in condition. A change in a medical expert's opinion is insufficient to meet this burden of proof. J. A. Jones Constr. Co. v. Martin, 198 Va. 370, 94 S.E.2d 202 (1956); Boxley v. Onorato, 218 Va. 931, 243 S.E.2d 201 (1978).

On an application to modify an award based upon change in condition, it cannot be shown that the fact were really different from what was found as of the date of the original award. Allen v. Mottley Constr. Co., 160 Va. 875, 170 S.E.412 (1933). A retroactive award in derogation of the spirit and intent of section 65.2-708. See Bristol Door & Lumber Co. v. Hinkle, 157 Va. 474, 161 S.E.2d 902.

At best, the evidence presented by the Employer suggests that Dr. Silberblatt questions whether the Claimant ever had Gamekeeper's thumb. The Employer cannot, by way of a change in condition application, allege that because the Claimant never had Gamekeeper's thumb, she is not presently disabled as a result of that condition. To permit the Employer the relief requested on the medical evidence in the record would be to enter a retroactive award and to undo the prior award of the Commission. This would be in direct contravention of the long established precedent of Virginia courts. The Employer's allegations are "tantamount to a collateral attack upon the award entered upon the former record," Allen v. Mottley Constr. Co., 160 Va. 875, 170 S.E. 412, which is impermissible.

Because the Commission previously found the Claimant suffered from bilateral Gamekeeper's thumb, it would be error to modify the award based upon a medical opinion questioning whether the Claimant "has or ever had," that condition. Because the Employer cannot retroactively challenge the basis for the Commission's prior award,

and because it has failed to establish that Claimant is not disabled as a result of her compensable bilateral Gamekeeper's thumb, the Employer's Application For hearing should be rejected.

Contrary to the Deputy Commissioner's findings, the preponderating evidence did not establish that Claimant's condition of gamekeeper's thumb had resolved in October 1997. The Deputy Commissioner's finding in this regard seeks to retroactively undo the Commission's prior award, presumably because Dr. Silberblatt later altered his diagnosis. Dr. Silberblatt's opinions were internally inconsistent. After his October 1997 office note, he still confirmed the Claimant had ongoing right thumb symptomology which was disabling. The Employer did not present preponderating evidence that Claimant's condition had resolved and the Deputy Commissioner's finding to this effect was in error. Specifically, the erroneous (1) interpretation of the medical evidence; (2) application of fact to law; and (3) interpretation of the burden of proof directly led to the following incorrect findings of fact and conclusions of law:

1. That the Employer established by a preponderance of the evidence that Claimant's condition of gamekeeper's thumb had resolved by October 22, 1997 (Opinion at 11);
2. That since the Commission noted the Claimant's gamekeeper's thumb condition had resolved, the Employer had the right to have that award terminated (Opinion at 13);
3. That the Employer had established that Claimant's disability was due only to her two remaining conditions: bilateral carpal tunnel syndrome and the right shoulder injury; and

4. That Claimant's current award should be modified to a temporary total disability rate of \$306.18 per week, effective February 4, 1999 (Opinion at 13).

Because each of these findings of fact and conclusions of law were based upon an improper interpretation of the medical record and an arbitrary disregard of the Claimant's undisputed testimony, they should be reversed.

B. The Deputy Commissioner Erred In Failing To Consider All Of The Evidence Concerning Claimant's Right Thumb Condition And In Arbitrarily Refusing To Consider Evidence After October 1997.

Employing creative but circular reasoning, the Deputy Commissioner refused to consider evidence regarding Claimant's right thumb condition after October 1997. He concluded, "[a]ny evidence presented in 1999 as to whether she [claimant] still suffered from pain in her thumb is not relevant to the claimant's condition in October 1997, at which time her condition is found to have resolved." (Opinion at 11).

The logic employed by the Deputy Commissioner is completely circular. It does not comport with the facts or the law. This reasoning, if regularly relied upon, would completely obviate a Claimant's ability to pursue a change in condition application, as provided by Va. Code §65.2-708. It would act as a complete bar to reinstatement of benefits. The Commission historically has not made conclusory findings which would forever prevent a Claimant from alleging that a condition, resolved for some time, had re-occurred. This is not now the law, nor has it ever been.

If a Claimant may pursue a change in condition application, then she similarly should be able to defend an application alleging the cessation of disability by claiming the disability has returned. The facts of this case prove, at a minimum, that this has happened to Ms. Eggleston. In his October 14, 1998 Attending Physician's Report, Dr. Silberblatt confirmed the Claimant was disabled as a result of her right thumb condition. The Claimant's testimony as to her present condition confirmed continuing problems. These also are documented by Doctor Hormel. The Deputy Commissioner's attempt to retroactively end the Claimant's claim for her right thumb condition is not supported by the medical records, her testimony, or applicable law. Accordingly, this finding should be reversed. The preponderating evidence established that Claimant's compensable disability continued and the Employer failed to meet its burden of proving this condition had resolved. The Deputy Commissioner's arbitrary rejection of competent testimony and medical evidence was in error.

C. The Deputy Commissioner Erred In Arbitrarily Refusing To Consider Other Defenses Raised By The Claimant.

Once he had concluded that Claimant's gamekeeper's thumb condition resolved in October 1997, he refused to consider the other defenses to the Employer's Application set forth by Claimant. (Opinion at 14). This was in error.


The Claimant raised additional defenses in her Memorandum of Law to the Employer's Application, including (1) collateral estoppel and res judicata, given that the Commission's August 25, 1994 Opinion became final (Claimant's Memorandum of Law, at 11-13); (2) waiver (Claimant's Memorandum of Law, at 13-14); (3) estoppel and imposition (Claimant's Memorandum of Law, at 14-16); and (4) laches (Claimant's Memorandum of Law, at 16-17).

The Deputy Commissioner erred in concluding that Claimant's condition of gamekeeper's thumb resolved in October 1997. But he additionally erred in failing to consider or address the additional defenses raised by the Claimant. Each of these presented a reasonable and well grounded basis for failing to permit adjustment of the Claimant's temporary total disability entitlement. The refusal to consider these defenses was in error.

III. CONCLUSION

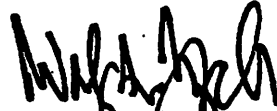
For the foregoing reasons, the Claimant, Brenda Eggleston, by counsel, respectfully requests that the February 28, 2000 Opinion of Deputy Commissioner Roach be reversed in part, that she be awarded her costs herein, and that the Commission afford such other relief as is reasonable in the circumstances.

BRENDA EGGLESTON, Claimant
By Counsel


WESLEY G. MARSHALL, ESQUIRE
600 Westwood Office Park
Fredericksburg, Virginia 22401
(540) 371-4444
Counsel for Claimant

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing Claimant's Rule 3.2 Written Statement In Support Of Request For Review was mailed, certified mail, return receipt requested, to: Lou-Ann Joyner, Clerk, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220 and mailed, postage prepaid, to: KIMBERLY R. HILLMAN, ESQUIRE, counsel for the Employer and Insurer, at her address: McGuire, Woods, Battle & Boothe, LLP, 901 East Cary Street, Richmond, Virginia 23219-4030, this the 5th day of May, 2000.



Wesley G. Marshall

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**McGUIRE WOODS
BATTLE & BOOTHE LLP**

One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
Telephone/TDD (804) 775-1000 • Fax (804) 775-1061

Kimberly R. Hillman
krhillma@mwbb.com

Direct Dial: 804-775-1127
Direct Fax: 804-698-2153

May 9, 2000

Via Hand Delivery

Lou-Ann Joyner, Clerk
Virginia Workers' Compensation Commission
1000 DMV Drive
Richmond, Virginia 23220

Brenda Eggleston v. E.I. DuPont de Nemours & Co.
VWC File Nos.: 149-63-96; 143-94-79; 162-62-45

Dear Ms. Joyner:

I enclose the Written Statement in Support of Employer's Request for Review for filing with the other papers in this case. DuPont would like to reiterate its request to present oral argument before the Full Commission on the issues contained within its Written Statement.

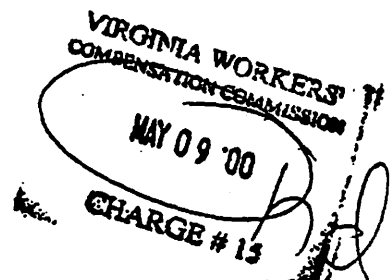
Thank you for your assistance.

Very truly yours,

Kimberly R Hillman
Kimberly R. Hillman

ers atty

KRH:tjp
Enclosure
c.c.: Wesley G. Marshall, Esquire



VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA EGGLESTON,

Claimant

v.

V.W.C. File Nos.: 143-94-79

149-63-96

162-62-45

E. I. DU PONT DE NEMOURS & COMPANY,

Employer and Self-Insured.

WRITTEN STATEMENT IN SUPPORT OF EMPLOYER'S REQUEST FOR REVIEW

The employer and self insurer, E.I. du Pont de Nemours & Company ("DuPont"), by counsel, pursuant to Rule 3.2 of the Rules of the Workers' Compensation Commission and the Schedule for Written Statements dated April 10, 2000¹, hereby files its Written Statement in Support of its Request for Review of Deputy Commissioner Roach's February 28, 2000 Opinion, related to the above referenced claims as follows.²

I. INTRODUCTION AND PROCEDURAL HISTORY

Prior to Deputy Commissioner Roach's February 28, 2000 decision terminating Claimant's award for bilateral gamekeeper's thumb³, Claimant was receiving Workers' Compensation benefits based upon a combination of three separate work related injuries and/or conditions. Specifically, Ms. Eggleston was receiving temporary total disability benefits arising

¹ On April 20, 2000, Claimant's counsel requested an extension of time for the filing of written statements until May 9, 2000. As there was no objection by DuPont, this extension was granted.

² DuPont only seeks review of Deputy Commissioner Roach's opinion as to issue four as identified in Employer's request for review.

³ This portion of Deputy Commissioner Roach's decision is not being contested in Employer's Request for Review.

WORKERS' COMPENSATION COMMISSION

from the combined disabling effect of bilateral carpal tunnel syndrome, a right shoulder injury and bilateral gamekeeper's thumb. The relevant award information is summarized below.

A. Bilateral Carpal Tunnel Syndrome (VWC No. 143-94-79)

Claimant first received an award for bilateral carpal tunnel syndrome pursuant to the Order of Deputy Commissioner Costa dated January 9, 1991. Deputy Commissioner Costa ordered the payment of temporary total disability benefits in the amount of \$306.19 weekly for the period of September 26, 1990 through October 30, 1990, based upon an average weekly wage of \$459.27. Thus, Claimant received approximately 4 weeks of temporary total disability benefits as a result of her claim for bilateral carpal tunnel syndrome.

Bilateral Carpal Tunnel Syndrome (A.W.W. \$459.27; T.T. \$306.19)

I-----I
09/26/90 (4 weeks) 10/30/90

B. Right Shoulder (VWC No. 149-63-96)

Claimant also received temporary total disability benefits arising from an injury to her right shoulder that was sustained on November 28, 1990. A Memorandum of Agreement dated February 18, 1993 provided for the payment of temporary total disability benefits in the amount of \$293.90 for the period of October 1, 1992 through November 2, 1992 based upon an average weekly wage of \$440.85.

Therefore, Claimant received approximately 5 weeks of temporary total disability benefits as a result of her claim for her right shoulder injury.

Right Shoulder (A.W.W. \$440.85; T.T. \$293.90)

I-----I
10/01/92 (5 weeks) 11/02/92

C. Gamekeeper's Thumb (VWC No. 162-62-45)

Claimant also received temporary partial disability benefits arising from a diagnosis of gamekeeper's thumb. Claimant was awarded temporary partial disability benefits in the amount

of \$74.35 weekly beginning June 13, 1993 and continuing, based upon an average weekly wage of \$446.00 and a pre-injury average week wage of \$557.53. Claimant received temporary partial disability benefits through November 30, 1993, a total of 25 weeks.

Gamekeeper's Thumb

(A.W.W. \$557.53; T.P. \$74.35)

I-----I
06/13/93 (25 weeks) 11/30/93

D. Combined Award (VWC 143-94-79; VWC 149-63-96; VWC 162-62-45)

While on an open award for temporary partial disability benefits for bilateral gamekeeper's thumb, Claimant filed a change in condition application on December 8, 1993 seeking an additional period of temporary total disability benefits arising from her bilateral gamekeeper's thumb beginning December 1, 1993 and continuing. See Claimant's Claim for Benefits dated December 8, 1993 attached as Exhibit 1. This application was amended by subsequent correspondence from Claimant's counsel, including a letter dated May 31, 1994 which requested that "all three claims [gamekeeper's thumb, carpal tunnel syndrome and shoulder injury] be referenced in the hearing pending for July 7, 1994." See Letter dated May 31, 1994 attached as Exhibit 2.

The hearing on Claimant's combined award was held on July 13, 1994 before Deputy Commissioner Gorman in Martinsville, Virginia.⁴ By Order dated August 25, 1994, Deputy Commissioner Gorman entered an award in favor of Claimant providing that temporary total disability benefits in the amount of \$371.71 be paid to Ms. Eggleston beginning December 1, 1993. A copy of Deputy Commissioner Gorman's Opinion is attached as Exhibit 4.

In support of his Order, Deputy Commissioner Gorman cited the following medical evidence:

⁴ It also appears that on the day of the hearing, July 13, 1994, Claimant filed a claim for temporary total disability benefits clearly referencing her right shoulder injury, gamekeeper's thumb and carpal tunnel syndrome. A copy of this Claim for Benefits Form is attached as Exhibit 3.

The medical record reveals an analysis by Dr. Enrique Silberblatt. It was his conclusion that the claimant being a right-handed person had an impairment of her right thumb of five percent and an impairment of the right hand of two percent (2%). Additionally claimant has mild entrapment neuropathy of the right median nerve and an extra-digital nerve injury resulting in a total impairment of the right arm of twelve percent (12%). Likewise, he diagnosed a left thumb impairment of two percent (2%). Additionally claimant is experiencing mild entrapment neuropathy of the left median nerve at the wrist and extra-digital nerve injury resulting in a total impairment of the left arm of eleven percent (11%). A note from Dr. Dallas P. Crickenberger addressed claimant's right shoulder difficulties. He noted that her range of motion in the shoulder exceeds that of a mild loss of motion. In his opinion the whole symptom complex regarding the symptoms of the right shoulder "would rate her as 4% permanent physical impairment."

See Opinion of Deputy Commissioner Gorman dated August 25, 1994, pp. 3 - 4.

Deputy Commissioner Gorman awarded temporary total disability benefits holding "Claimant's physical limitations are the result of bilateral gamekeeper's thumb, bilateral carpal tunnel syndrome and right shoulder problems ... the claimant, although certainly capable of performing limited work, is not able to perform her pre-injury or even light duty work provided by her employer." Id. at 4 (emphasis added). Based upon this finding, Deputy Commissioner Gorman awarded payment of temporary total disability benefits in the weekly amount of \$371.71, beginning December 1, 1993 and continuing.

Deputy Commissioner Gorman's order does not expressly indicate the average weekly wage that was used to compute the temporary total disability amount. However, it appears that Commissioner Gorman based the award for temporary total disability benefits upon the highest average weekly wage of the three awards, that being \$557.53 for gamekeeper's thumb. Claimant continued to receive temporary total disability benefits pursuant to this award and also received yearly cost of living increases until DuPont's Change in Condition application was filed on February 3, 1999.

E. DuPont's Change in Condition Application of February 3, 1999

DuPont's Change in Condition application, asserted, among other things, that Claimant was no longer disabled as the result of gamekeeper's thumb. Accordingly, DuPont requested the modification of the combined award such that future temporary total disability benefits would not be based upon the average weekly wage for the award for gamekeeper's thumb.⁵ Deputy Commissioner Roach agreed that Claimant is no longer disabled as a result of gamekeeper's thumb and agreed that the reduction in temporary total disability benefits based upon the resolution of that condition was appropriate. DuPont does not contest this ruling of Deputy Commissioner Roach upon review.

However, DuPont's Change in Condition application further asserted that because Claimant's disability and entitlement to temporary total disability benefits arose from the combined effect of her gamekeeper's thumb, bilateral carpal tunnel syndrome and her right shoulder injury, her entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks during which she has received the combined award. See Employer's July 12, 1999 Trial Brief, p. 7. Deputy Commissioner Roach disagreed with DuPont's position, and it is this ruling that DuPont contests in its Request for Review.

II. ARGUMENT

A. The Deputy Commissioner erred in concluding Claimant's entitlement to temporary total disability benefits based upon each individual injury should not be reduced by the number of weeks that Claimant has been receiving the combined award.

Virginia Code § 65.2-518 states that "total compensation under this title shall in no case be greater than 500 weeks nor shall it exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined in § 65.2-500 for the applicable year by 500 ..."

⁵ At the time of the filing of its Change in Condition Application, DuPont decreased the amount of Claimant's temporary total disability benefits from \$433.57 to \$354.96 to reflect the lower average weekly wage for bilateral carpal tunnel syndrome.

Va. Code. § 65.2-518. Citing this statute, DuPont submits that Claimant is entitled to receive a maximum of 500 weeks for her total disability arising from the combined effect of her work related impairments, none of which is totally disabling. Thus, Claimant's entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks during which Claimant has received the combined award. See Employer's July 12, 1999 Trial Brief, p. 7.

As Claimant's entitlement to temporary total disability benefits resulted from the combined disabling effect of her work related conditions and not any one condition standing alone, it is appropriate to count each week that Claimant received the combined award against the 500 week maximum for each individual work related condition. To count the number of weeks during which Claimant received the combined award against only one individual impairment would result in an illogical and unfair "windfall" whereby Claimant might recover temporary total disability benefits far exceeding the statutory cap of 500 weeks for her disability arising from the combination of her impairments. Such a result clearly conflicts with Va. Code § 65.2-518 which provides that "total compensation under this title shall in no case be greater than 500 weeks..."

Despite this potential double or greater recovery, Deputy Commissioner Roach held that DuPont is only entitled to credit the number of weeks during which Claimant received the combined award against the 500 week maximum in VWC File No. 162-62-45 for the gamekeeper's thumb award, and not against the 500 week maximum for each individual claim.⁶ See Opinion of Deputy Commissioner Roach dated February 28, 2000, p. 16.

⁶ The credit of 268 weeks allowed against the gamekeeper's thumb award covered the period of December 1, 1993, the date the combined award was entered, through February 3, 1999, the date of DuPont's change in condition application.

In support of his finding, Deputy Commissioner Roach stated that Va. Code § 65.2-503(E)(2), involving the contemporaneous payment of permanency and temporary partial disability benefits, is the only provision of the Virginia Workers' Compensation Act that provides for "counting simultaneous payments, resulting from separate injuries, as more than one week of disability benefits against the maximum allowable period of 500 weeks."

Deputy Commissioner Roach concluded by stating:

Given that (1) the workers' compensation system in Virginia is a creature of statute, (2) the absence of law allowing an employer to receive a credit by reducing by the number of weeks that a claimant may receive benefits as the result of separate injuries while receiving a combined award, and (3) the interpretation of the Act in favor of the claimant, the Commission finds that the employer has failed to establish that it is due a credit in each file for the number of weeks the claimant has received the combined award.

See Opinion of Deputy Commissioner Roach dated February 28, 2000, p. 16.

DuPont disagrees with Deputy Commissioner Roach's analysis. Although it is true that the Virginia General Assembly has never addressed the precise issue currently before the Commission, it is clear that the Workers' Compensation Act is not intended to provide a claimant with a windfall at the expense of the employer.

1. **No provision of the Virginia Workers' Compensation Act would allow Claimant to obtain 500 weeks of compensation per injury for a combination of injuries causing one total disability, where neither injury, standing alone, is totally disabling.**

DuPont does not dispute Deputy Commissioner Roach's assertion that the Virginia Workers' Compensation Act is a creature of statute. The second premise for Deputy Commissioner Roach's decision is that there is an "absence of law allowing an employer to

⁷ Va. Code § 65.2-503(E)(2) states "[c]ompensation pursuant to this section [permanent and total loss] may be paid simultaneously with payments for partial incapacity pursuant to § 65.2-502. Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two weeks against the maximum allowable period of 500 weeks.

receive a credit by reducing the number of weeks that a claimant may receive benefits as the result of separate injuries while receiving a combined award." See Opinion of Deputy Commissioner Roach dated February 28, 2000, p. 16. However, it is equally true that there is no statutory or legal authority for Deputy Commissioner Roach's decision either to credit the gamekeeper's thumb award only, and not to credit each of the three awards even though none of the three conditions is totally disabling. Deputy Commissioner Roach held:

[t]he employer is only entitled to a credit in VWC File No. 162-62-45 (gamekeeper's thumb) for the weeks of benefits paid from December 1, 1993 through February 3, 1999 [the date of DuPont's Change in Condition Application], and is only entitled to a credit in VWC File Number 143-94-79 (bilateral carpal tunnel syndrome) for the weeks of benefits paid from February 4, 1999 to the present and continuing.

See Opinion of Deputy Commissioner Roach dated February 28, 2000, pp. 16 - 17. Thus, the first 268 weeks during which the Claimant received the combined award was arbitrarily charged to Claimant's award for gamekeeper's thumb alone, despite the fact that this condition, standing alone, was not totally disabling. Only after the Deputy Commissioner's determination that Claimant's gamekeeper's thumb condition resolved did Deputy Commissioner Roach allow the combined award to be credited prospectively against Claimant's award for carpal tunnel syndrome, but not against the right shoulder award. To date, no period of time during which Claimant has received the combined award has been charged to her right shoulder injury. DuPont contends that Deputy Commissioner Roach's failure to credit the period of time Claimant received the combined award against all three claims is clear error.

Because no credit for the combined award was charged to the award for bilateral carpal tunnel syndrome until February 3, 1999, Claimant had a total of 496 weeks of temporary total remaining on this award at that time (500 weeks less the 4 weeks of temporary total disability

benefits she had previously received based upon this award alone). This illogical result obtains even though the combined award included the carpal tunnel syndrome claim and award.

The unfairness of this result is further demonstrated by considering the impact of this decision on the statute of limitations for change in condition on Claimant's award for her right shoulder injury. Given that the current combined award from Deputy Commissioner Roach is for Claimant's carpal tunnel syndrome and her right shoulder injury, after receiving the 496 weeks for the new combined award that is now being credited against her award for carpal tunnel syndrome, Claimant could potentially receive an additional 495 weeks in temporary total disability benefits arising from her right shoulder injury (500 weeks less the 5 weeks of temporary total disability previously received based upon this award alone). This type of multiple recovery for conditions not independently disabling could not possibly have been intended by the Virginia General Assembly at the time of drafting the Virginia Workers' Compensation Act. Certainly, a close look at the statute providing for the payment of temporary total disability benefits does not support such a result.

Virginia Code § 65.2-500 governs the payment of compensation for total incapacity. This section provides that "[w]hen the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, ... to the injured employee during such total incapacity, a weekly compensation ..." (emphasis added). This statute does not specifically provide for the payment of weekly compensation for a "combination of injuries." Further, this statute only provides for compensation where an injury is totally disabling. Certainly, this statute does not support a finding that a claimant is entitled to 500 weeks per injury, for a combination of injuries, where neither injury standing alone is totally disabling.

2. Claimants are not entitled to a "double recovery" or "windfall" award under the Virginia Workers' Compensation Act.

Although Deputy Commissioner Roach correctly states that the Workers' compensation Act is typically construed in favor of the Claimant, the Act has never been construed to allow a Claimant a double recovery. For example, in Virginia Int'l Terminals, Inc. v. Moore, 22 Va. App. 396, 470 S.E.2d 574, aff'd, 254 Va. 46, 486 S.E.2d 528 (1997)(attached), the Virginia Court of Appeals emphasized its belief that the General Assembly did not intend a double recovery for a compensable injury.⁸ The Moore court stated:

A view of the Virginia Act clearly discloses the General Assembly's intent that an injured employee not be awarded a double recovery for a compensable injury; equally evident in the Virginia Act is the General Assembly's intent that an employer not be required to pay twice for an employee's injury.

Id. 403, 470 S.E.2d at 578. See also, Dodson v. Newport News Shipbuilding & Dry Dock Co., 1998 Va. Wrk. Comp. LEXIS 4025, *5 - 6 (1998)(citing Moore and the overriding principle of preventing a double recovery)(attached).

Moore was decided in the context of an employer's entitlement to a credit for benefits paid to a claimant under the Longshoreman and Harbor Workers' Act. However, the prohibition against a "double recovery" has also been applied in other contexts. See, e.g., Hepp v. Philip Morris USA, 1999 Va. Wrk. Comp. LEXIS 350, *10 (1999)(citing Moore and allowing the employer an offset for voluntary disability payments made to avoid Claimant's double recovery)(attached); Sprouse v. Hardee's, 1998 Va. Wrk. Comp. LEXIS 4927, *5 (1998)(allowing the employer a credit for wages paid in lieu of compensation to avoid the claimant's receipt of a double recovery)(attached); Johnson v. Paramount Builders, Inc., 1999 Va. Wrk. Comp. LEXIS 305, *3 (1999)(allowing the employer a credit for voluntary payments

⁸ For the Commission's convenience, all cases cited herein are attached at Tab 5.

for "failure to grant a credit for such payments would constitute a double recovery and unjust enrichment")(attached); Chitwood v E. I. DuPont de Nemours and Co., Inc., 1998 Va. Wrk. Comp. LEXIS 3869, *5 (1998)(attached), aff'd, 29 Va. App. 611, 513 S.E.2d 890 (1999)(allowing the employer a credit against award of Stage I asbestosis against award for Stage II asbestosis in furtherance of policy of Act to avoid double recovery).

As stated in Shaw v. Merchant's Tire & Auto, 1998 Va. Wrk. Comp. LEXIS 4473, *17 - 18 (1998)(attached) "[t]he purpose of the Workers' Compensation Act is to compensate injured workers for lost wages, not to enrich them unjustly." Although DuPont acknowledges that neither the Virginia General Assembly, the Virginia Workers' Compensation Commission and the Virginia courts have considered the exact issue presented in this claim, it is clear that affirming Deputy Commissioner's Roach's decision would be inconsistent with the well-established policy to prevent a double recovery, windfall or unjust enrichment by the claimant to the detriment of the employer.

Claimant voluntarily combined her three work related claims in one application for temporary total disability which was awarded by Deputy Commissioner Gorman on August 25, 1994. In his opinion, Deputy Commissioner Gorman specifically referenced medical evidence supporting each of Claimant's three work related injuries and did not limit his award of temporary total disability benefits to any one claim. In fact, the medical evidence for the individual claims was insufficient, standing alone, to support a finding of temporary total disability benefits and only by combining the three claims was Claimant able to establish that she was entitled to and award of temporary total disability benefits. Additionally, at the hearing held on July 28, 1999, "the claimant asserted that ... she believes that she is currently disabled as a result of a

combination of all three compensable conditions." See Opinion of Deputy Commissioner Roach dated February 28, 2000, p. 7.⁹

It is clear Deputy Commissioner Gorman did not find, and Claimant has not contended, that any one of her medical conditions independently has rendered her totally disabled since she filed her change in condition application in December of 1993. Claimant's entitlement to temporary total disability benefits has been, and continues to be, the result of the disabling affect of the combination of her compensable injuries.¹⁰

Therefore, despite Deputy Commissioner Roach's assertion that there is no statutory provision providing for a "credit" against all three claims in the present situation, it is DuPont's contention that Claimant's entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks that she has been receiving the combined award. Such a result would be consistent with the policy underlying the rule that if a claimant is disabled as a result of the combination of two medical conditions, one of which is compensable and the other of which is not, then there is no right to compensation.

A worker who sustains three injuries successively and who receives a single award for temporary total disability benefits due to the combination of the effects of the three injuries would only be allowed to receive 500 weeks of temporary total disability benefits pursuant to Va. Code Ann. § 65.2-518. There is no reason why Claimant, who was found to be disabled commencing December 1, 1993 as the result of the combination of the effects of three compensable injuries, should be treated any differently, and not be limited to a maximum of 500

⁹ At the hearing held on July 28, 1999, the Claimant was asked: Q: "As you sit here today, do you believe ... that your disability is because of the carpal tunnel, the shoulder injury, the gamekeeper's thumb or some combination thereof? A: "A combination." See July 28, 1999 Hearing Transcript, p. 84.

¹⁰ Previously, the combination of the disabling effects of Claimant's shoulder injury, bilateral carpal tunnel syndrome and bilateral gamekeeper's thumb entitled her to temporary total disability benefits. Pursuant to Deputy Commissioner Roach's Opinion dated February 28, 2000, Claimant's current entitlement to temporary total disability benefits arises from the combined disabling effect of her right shoulder injury and bilateral carpal tunnel syndrome.

of weeks of temporary total disability benefits. Deputy Commissioner Roach's holding would entitle a claimant under a combined award producing one total disability to receive 500 weeks per injury, despite the fact that no one injury is totally disabling, and only the combination of the injuries is disabling. This result is contrary to the purpose behind Virginia Workers' Compensation Act and, specifically, Va. Code § 65.2-518.

3. "Full and complete justice" requires that Claimant be prohibited from receiving a double recovery under the facts of this case.

The Commission has jurisdiction to do full and complete justice in each case. "Justice is not obtained by failing to correct obvious mistakes or declining to place the parties in positions which are in accordance with the Act." Lenart v. Leggett of Virginia, 1998 Va. Wrk. Comp. LEXIS 4161, *9 (1998)(citations omitted)(attached). See also, Collins v. Dept. of Alcoholic Beverage Control, 21 Va. App. 671, 678 - 681, 467 S.E.2d. 279, 282 - 284 (1996)(holding that even where the Virginia Workers' Compensation Act contained no express provision authorizing the Commission to grant specific relief, the Commission has certain implied powers to do "full and complete justice" since "the purpose of the Workers' Compensation Act is to compensate injured workers for lost wages, not to enrich them unjustly")(attached), aff'd, 22 Va. App. 625, 472 S.E.2d 287 (1996).

Deputy Commissioner Roach's contention that there is an "absence of law allowing an employer to receive a credit by reducing by the number of weeks that a claimant may receive benefits as the result of separate injuries while receiving a combined award", is incorrect given the recognition in Lenart and Collins that the Commission has inherent authority to do justice in accordance with the Act. Therefore, the Commission has the authority to find that the Claimant's entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks that she has received the combined award in order to

prevent claimants in the context of combined awards from receiving double, triple or even greater recoveries.

III. CONCLUSION

Claimant has received the following benefits, not including benefits received pursuant to her combined awards:

VWC No.	Order of Deputy Commissioner	Weeks	Zero
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly, 10/01/92-11/02/92	5 weeks	Zero
VWC No. 162-62-45 Gamekeeper's Thumb	9/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks

Taking into consideration the amounts paid pursuant to the combined award, and taking into consideration Deputy Commissioner Roach's finding that Claimant's gamekeeper's thumb condition has resolved and DuPont was justified in reducing the temporary total disability benefits effective February 3, 1999, the date of its Change in Condition, Ms. Eggleston's remaining entitlement to temporary total disability benefits should be awarded as follows:

Award	Award/Award	Time Paid to Date	Time Paid	Weeks of Compensation Remaining
VWC No. 143-94-79 Carpal Tunnel Syndrome	January 9, 1991 Order of Deputy Commissioner Costa provides for Temporary Total Benefits of \$309.19 weekly, 9/26/90 through 10/30/90	4 weeks	Zero	203 weeks at time of 07/28/99 hearing (less 41 weeks passed from July 27, 1999 through May 9, 2000) = 162 weeks remaining
		293 weeks (combined award through 07/28/99)		
		334 weeks (combined award through 05/09/00)		
VWC No. 149-63-96 Right Shoulder	February 18, 1993 Memorandum of Agreement provides for Temporary Total Benefits of \$293.90 weekly,	5 weeks	Zero	202 weeks at time of 07/28/99 hearing (less 41 weeks passed from July 27, 1999 through May 9, 2000) 161 weeks remaining
		293 weeks (combined award through 07/28/99)		
		334 weeks (combined award through 05/09/00)		
VWC No. 162-62-45 Gamekeeper's Thumb	09/13/93 Memorandum of Agreement provides for \$74.35 weekly, 06/13/93-11/30/93	Zero	25 weeks	207 weeks remaining
		268 weeks (combined award through 02/03/99)		

For the reasons set forth above, Deputy Commissioner Roach should have charged each week during which Claimant has received the combined award against the 500 weeks of recovery for each separate claim, VWC File Numbers 143-94-79, 149-63-96 and 162-62-45.

WHEREFORE, the employer and self-insurer, by counsel, respectfully request the Commission to enter an order reversing the February 28, 2000 Opinion of Deputy Commissioner Roach as it pertains to his ruling on Issue Four, and find that Claimant's entitlement to temporary total disability benefits based upon each individual injury should be reduced by the number of weeks during which Claimant has been receiving the combined award.

Respectfully submitted,

E.I. Du PONT De NEMOURS AND COMPANY

BY COUNSEL

Counsel:

Stephen D. Busch, Esquire
Joy C. Fuhr, Esquire
Kimberly R. Hillman, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE LLP
One James Center
Richmond, Virginia 23219
(804) 775-1127

Kimberly R Hill
Counsel for the Employer and Self-Insurer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Written Statement in Support of
Employer's Request For Review was sent by first class mail, postage prepaid, to:

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401

on this 9th day of May, 2000.

Kimberly R Hill
Counsel for the Employer and Self-Insurer

1000 DMV Drive, Richmond, VA 23220

VNC File No. 762-52-45

CLAIM FOR BENEFITS

Carrier No.

Employee BRENDA L. FOLESTON Soc. Sec. # 22912-9430

Address RT#1 Box 440 Phone # (707) 956-2352

RIDEWAY 71A 24NS
 Zip Code
 Employer: E-I DuPont Phone # (704) 666-5100

Address: 1 DuPont Rd, Martinsville VA 24112

Carrier: Kerosip Zip Code: 21205

Address: PO Box 7637 - Roshare 1/4 24019

My claim is for: Injury by Accident / Occupational Disease

1. INJURY BY ACCIDENT- If you are seeking benefits for an injury by accident answer (a), (b), (c), (d) and (3):

(a) Date of accident: 12/19/54

(b) Place where accident occurred: _____

שפיטלה (c):

(d) How accident occurred:

2. OCCUPATIONAL DISEASE-If you are seeking benefits for an occupational disease please answer (a), (b), (c), (d), (e) and (f):

(a) Nature of occupational disease: *Pulmonary Emphysema & TB*

(2) Date doctor first told you disease was work related: 3/6/13

(c) Name of doctor: T. Hornel and E. Silbert

(4) Dates you worked for this employer: 2/22/73 thru 11/20/73

(e) If the employer where you were last exposed to what caused the disease is different from employer listed above, provide the name and address of that employer:

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EXHIBIT

17/11/1949

3. GENERAL INFORMATION-Please complete all questions:

(a) Have you ever received an award for compensation benefits for this accident or occupational disease. (Circle) Yes No

If yes, give the date for which compensation was last paid 12/10/93

(b) My average weekly wage at time of accident or diagnosis of disease was: \$ 557.53

(c) I am now seeking the following benefits:

☒ Compensation for wage loss and medical benefits. Dates of disability: 12/1/93 thru present
(List all periods of disability)

☐ Compensation for partial wage loss and medical benefits. (Attach a separate sheet showing each week's wages for which temporary partial compensation are claimed)

☐ Permanent disability benefits. (Attach the medical report which states the permanency rating)

☐ Payment of lifetime medical benefits only.

☐ Payment of medical bill(s). (Attach copies of bills)

☐ Death benefits:

☐ Funeral and dependent benefits. (Attach: (1) copies of birth certificates for each dependent child for whom benefits are sought, (2) a copy of marriage license if spouse's benefits are sought, (3) a copy of the death certificate, and (4) funeral bill).

☐ Funeral expenses only. (Attach a copy of funeral bill)

☒ Other: Change of Condition - Terminated
from E.I. Du Pont on 11/30/93 for
Work related Condition

4. Do you request a hearing? (Circle) Yes No

Signature of Claimant Lorenda P. Egan Date 12/4/93

Address Rt 1 Box 445 Martinsville, VA Telephone (703) 956-2352
28/48

DO NOT COMPLETE BELOW THIS LINE-OFFICE USE ONLY
Date Claim filed 12/5/93 Date compensation last paid 12/10/93

Docket for Martinsville Date referred to Docket 2/10/94 by (S)

1. E. 13 2. _____

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MICHIE, HAMLETT, LOWRY, RASMUSSEN & TWEEL P. C.

THOMAS J. MICHIE
LEROY R. HAMLETT, JR.
EDWARD S. LOWRY
EDWIN D. RASMUSSEN
RONALD S. TWEEL
CARY W. KENDALL
JOHN W. LITTLE
KEVIN W. KIDWELL
ELIZABETH A. COUCHTER
JAMES R. COX II
ROBERT W. JACKSON

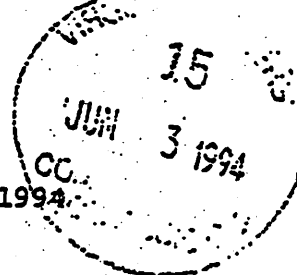
ATTORNEYS AT LAW
500 COURT SQUARE, SUITE 300
P. O. BOX 298

CHARLOTTESVILLE, VIRGINIA 22902-0298

TELEPHONE (804) 977-3390
FACSIMILE (804) 295-0681
DIRECT DIAL

PETER MCINTOSH
EDMUND S. MICHIE
DENISE Y. LINSFORD
DAVID S. RANDELL
S. STEPHANIE COMMANDER
CARLETT M. SMITH
APRIL A. FLETCHER

May 31, 1994



Lou-Ann Joyner, Clerk
Workers' Compensation Commission
1000 DMV Drive
Richmond, VA 23220

RE: Brenda Eggleston v. E. I. DuPont de Nemours & Co., Inc.
WVC File Nos.: 162-62-45; 149-94-79 and 149-63-96

Dear Sirs:

I enclose the Claimant's Answers to Interrogatories propounded by the Employer, E. I. DuPont de Nemours & Co., Inc. In addition, I respectfully request the following:

1. The Change in Condition Notice sent to the Commission on March 4, 1994 included only the WVC File No. 162-62-45. The Claimant, however, has three outstanding awards pending in the Commission WVC File No. 162-62-45 is for GameKeepers Thumb; WVC File No. 143-94-79 is for her carpal tunnel syndrome and WVC File No. 149-63-96 is for her shoulder injury. An award has been entered in all three cases. E. I. DuPont has now terminated the Claimant's employment. Her dismissal results from all three injuries and not only from the thumb injury for which the Notice of Hearing was set. This was reported to the Commission in another letter dated March 21, 1994, however, no specific claim numbers were given to the Commission. Accordingly, we would ask that all three claims be referenced in the hearing presently pending for July 7, 1994.

2. Claimant further amends its Request for a Hearing to include a request for attorney fees and costs in having to pursue this claim. Claimant believes that the defense of the carrier is frivolous. Attached to the Claimant's Answers to Interrogatories is the evaluation and recommendation of DuPont's physician, Dr. Layton, (a separate copy of this report has been attached to this letter.) As you can see from this report filed by the DuPont company physician, he also agrees that Mrs. Eggleston is disabled and unable to perform any job at the DuPont plant as a result of her injuries. The cost to the Claimant to prosecute this claim,

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-683-2667



Lou-Ann Joyner
May 31, 1994
Page Two

to engage in extensive discovery, and to prepare for and attend a hearing is unreasonable and unnecessary. In addition, the Employer is acting in bad faith in its failure and/or refusal to pay this claim. Accordingly, Claimant requests that the Hearing Notice also be amended to include a request that attorney fees, costs, sanctions, penalties and interest be awarded against E. I. DuPont as a result of DuPont's failure to pay benefits from the date Mrs. Eggleston was terminated from employment with DuPont, November 30, 1994

Thank you for your consideration in these matters.

Yours very truly,


Gary W. Kendall

GWK/evf
Enclosure

cc: Wood Lay, Esquire
Hunton and Williams
951 Easy Byrd Street
Richmond, VA 23219

Brenda Eggleston
Route 1, Box 440
Ridgeway, VA 24148

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VIRGINIA WORKERS' COMPENSATION COMMISSION

1000 DMV Drive, Richmond, VA 23230

VWC File No.

CLAIM FOR BENEFITS

Carrier No.

INSTRUCTIONS: You must file this form with the Virginia Workers' Compensation Commission as soon as possible. Complete as many of the questions as you can. If you don't know an answer, write "unknown". If your claim has been denied, enclose a copy of the denial letter.

Employee BRENDA EGGLESTON Soc. Sec. # 239-62-9430

Address Rt 1 Box 440 Phone # (703) 956-2352

REDGEWAY VA 24148

Employer: E.I. DUPONT DEVELOPMENTS & CO Phone # (703) 666-5000 Zip Code

Address: 40 NATIONAL LOSS CONTROL SERVICE CORP

Carrier: P.O. Box 7637 Zip Code

Address: BRANCKE VA 24619

My claim is for: ☒ Injury by Accident ☐ Occupational Disease

1. INJURY BY ACCIDENT- If you are seeking benefits for an injury by accident answer (a), (b), (c), (d) and (3):

(a) Date of accident: 11-23, 1990

(b) Place where accident occurred: MATTHEWS VA (City or County) (State)

(c) Injuries: Right Shoulder

(d) How accident occurred:

2. OCCUPATIONAL DISEASE- If you are seeking benefits for an occupational disease please answer (a), (b), (c), (d), (e) and (3):

(a) Nature of occupational disease: CARPAL TUNNEL - CARPALS

(b) Date doctor first told you disease was work related: 19 9/23

(c) Name of doctor: DR. S. M. GIBSON 31

(d) Dates you worked for this employer: 5/93 - 11/93

(e) If the employer where you were last exposed to what caused the disease is different from employer listed above, provide the name and address of that employer:

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EXH 13 134

if yes, give the date for which compensation was last paid

(b) My average weekly wage at time of accident or diagnosis of disease was: \$

(c) - we are now seeking the following benefits:

— Compensation for wage loss and medical benefits. Degree of disability:

THE UNIVERSITY OF CHICAGO

— Compensation for partial wage loss and medical benefits.
(Attach a separate sheet showing each week's wages for which temporary partial compensation are claimed)

Permanent disability benefits. (Attach the medical report which states the permanency rating)

RECEIVED

Number of pages: 1111. (Attach copies of this)

ဝိဇယသံ ခဏ္ဍကဏ္ဍိက :

funeral and dependent benefits. (Attach: (1) copies of birth certificates for each dependent child for whom benefits are sought, (2) a copy of marriage license if spouse's benefits are sought, (3) a copy of the death certificate, and (4) funeral bill).

Funeral expenses only: (Attach a copy of funeral bill)

சுருள்:

4. Do you request a hearing? (Circle) Yes No

Signature of Claimant

Date _____

Address

Telephone _____

DO NOT COMPLETE BELOW THIS LINE-OFFICE USE ONLY

Date Claim filed	Date compensation last paid
------------------	-----------------------------

Docket for	Date referred to Docket	By

1.

2.



**VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION**

BRENDA G. ECCLESTON, Claimant

**Opinion by GORMAN
Deputy Commissioner**

**v. VWC File No. 162-62-43
143-94-79
149-61-96**

AUG 25 1994

**E. I. DU PONT DE NEMOURS & COMPANY, Employer
E. I. DU PONT DE NEMOURS & COMPANY
NATIONAL LOSS CONTROL SERVICE CORP., Insurer**

**Gary W. Kandall, Esquire
P. O. Box 298
Charlottesville, Virginia 22902-0298
for the Claimant.**

**James P. Naughton, Esquire
951 E. Byrd Street
Richmond, Virginia 23219-4074
for the Defendants.**

**Hearing before Deputy Commissioner Gorman in Martinsville,
Virginia, on July 13, 1994.**

PRESENT PROCEEDING

By application filed December 3, 1993 the claimant alleges a change in condition in the above-captioned cases and seeks an additional period of temporary total disability benefits beginning December 1, 1993 through the present and continuing.

DEFENSES

The matter is defended on the ground that the claimant is not totally disabled, has not marketed her residual capacity and an assessment of attorney's fees is not warranted.

NOV 24 '97 15:28

VWC File Nos. 162-62-45
143-94-79
149-43-96

STIPULATIONS

By agreement, the interrogatory answers are made part of the record.

EVIDENTIARY SUMMARY

The claimant testified that she sustained several work related problems in 1988 and as a result of these problems, consisting of bilateral carpal tunnel syndrome and right shoulder problems, she was given different jobs by her employer, some of which involved lower pay. On one of these jobs she was required to hitch hampers of waste and yarn to a jeep and this led to gangbusters thumb as a result.

On November 30, 1993 she was terminated for medical reasons when she was determined not able to do the job driving the jeep seven days per week in accordance with the recommendations of her doctor. Claimant testified she began looking for work within her limitations of no heavy or repetitive lifting with limited grasping and no overhead work. She registered with the Virginia Department of Rehabilitative Services as well as the Virginia Employment Commission, reviewed newspapers in order to obtain job leads and met with a rehabilitation specialist. Claimant's job search records beginning December through July are set forth as Claimant's Exhibit No. 1 and reveal approximately three to four contacts each week. These contacts have produced approximately four interviews for jobs as well as a number of face-to-face contacts. When

VWC File Nos. 162-62-45

143-94-79

149-63-96

approaching prospective employers claimant testified she would not tell them about her disability unless they asked questions about it and tried to look for a variety of jobs within her limitations. Additionally the Virginia Employment Commission records, set forth as Claimant's Exhibit No. 2, detail eleven contacts in two days in July. In addition she has sent approximately thirty resumes to various employers in the first five months of her job search without any response. It was her testimony that she frequented the Virginia Employment Commission several times a month in order to check for leads.

The medical record reveals an analysis by Dr. Enrique A. Silberblatt. It was his conclusion that the claimant being a right-handed person had an impairment of her right thumb of five percent and an impairment of the right hand of two percent (2%). Additionally claimant has mild entrapment neuropathy of the right median nerve and an extra-digital nerve injury resulting in a total impairment of the right arm of twelve percent (12%). Likewise, he diagnosed a left thumb impairment of two percent (2%). Additionally, claimant is experiencing mild entrapment neuropathy of the left median nerve at the wrist and extra-digital nerve injury resulting in a total impairment of the left arm of eleven percent (11%). A note from Dr. Dallas P. Crickenberger addressed claimant's right shoulder difficulties. He noted that her range of motion in the shoulder exceeds that of a mild loss of motion. In

VWC File Nos. 162-62-45
141-94-79
149-63-96

his opinion the whole symptom complex regarding the symptoms of the right should "would-rate her as 43 permanent physical impairment."

ISSUES

Whether the claimant is entitled to temporary total disability benefits beginning December 1, 1991 through the present and continuing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From the evidence we find that the claimant continues to have marked physical restrictions as revealed by the medical records and her own testimony at hearing. Claimant's physical limitations are the result of bilateral gaskeepers thumb, bilateral carpal tunnel syndrome and right shoulder problems. As a result of her physical limitations she was provided some light duty work with the employer but this did not prove to be consistent with her abilities and accordingly she was terminated from employment for physical reasons. Given this circumstance, we find ample justification for finding that the claimant, although certainly capable of performing limited work, is not able to perform her pre-injury or even light duty work provided by her employer.

We turn then to the question of marketing. In this regard we find ample evidence both from the claimant's own records as well as her testimony of excellent efforts to secure alternative employment after her discharge from Du Pont. While some objection may be raised that her efforts were not as intensive or as well thought

VWC File Nos. 162-61-45
141-94-79
149-61-94

out as one might have hoped, viewed as a whole her efforts to secure employment by routinely using the Virginia Employment Commission as a resource as well as other agencies amply complies with the requirements of law and the standards set forth in National Linen Service v. McGuinn, 8 Va. App. 267, 380 S.E.2d 31 (1989).

On the question of sanctions, given the representations of counsel we are not inclined to impose sanctions in this instance. Nevertheless, we note that the evidence of marketing clearly predominates in claimant's favor and that this defense appears plainly unavailing in light of the information available even prior to the hearing. Nevertheless, no sanctions will be imposed in this case.

Accordingly, the following award shall enter.

AWARD

An award is hereby entered in behalf of Branda Eggleston versus E. I. Du Pont De Nemours & Company, Inc. for the payment of temporary total disability benefits in the weekly amount of \$371.71 beginning December 1, 1993 through the present and continuing.

In addition to the compensation awarded, the employer shall continue to be responsible for the reasonable cost of medical care causally related to the claimant's compensable conditions.

This matter is hereby REMOVED from the Hearing Docket.

3 of 5 DOCUMENTS

VIRGINIA INTERNATIONAL TERMINALS, INC. v. MELVIN C. MOORE, JR.

Record No. 2573-94-1

COURT OF APPEALS OF VIRGINIA

22 Va. App. 396; 470 S.E.2d 574; 1996 Va. App. LEXIS 368

May 14, 1996, Decided

PRIOR HISTORY:

***1] FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION.

DISPOSITION:

Affirmed in part, reversed in part, and remanded.

COUNSEL:

F. Nash Bilisoly (Susan B. Potter; Vandeventer, Black, Meredith & Martin, on brief), for appellant.

John H. Klein (Rutter & Montagna, on brief), for appellee.

JUDGES:

Present: Judges Baker, Willis and Bray. OPINION BY JUDGE JOSEPH E. BAKER.

OPINIONBY:

JOSEPH E. BAKER

OPINION:

[*398] **575] OPINION BY JUDGE JOSEPH E. BAKER

Virginia International Terminals, Inc. (employer) appeals from the decision of the Workers' Compensation Commission [*399] (commission) that affirmed the deputy commissioner's award of benefits to Melvin C. Moore, Jr. (claimant). Employer presents three questions: (1) whether there was sufficient evidence for the commission to find that claimant was disabled as of September 1, 1990, and that he made reasonable efforts to market his remaining work capacity; (2) whether claimant's claim is barred by the statutes of limitations embodied in Code §§ 65.1-56 and 65.1-99; and (3) whether employer is entitled to a credit for the total dollar amount paid under the Federal Longshore and Harbor Workers' Compensation Act (LHWCA).

Claimant sustained a compensable injury on November 10, 1986 while ***2] working as a [*576] hustler driver for employer. A "hustler" is a vehicle

which moves cargo containers. Claimant fractured both wrists as the result of a fall from a hustler vehicle. Claimant made several unsuccessful attempts to return to his pre-injury job and became a patient of Dr. Lawrence Morales, an orthopedic surgeon, on May 4, 1987. Dr. Morales concluded that claimant could not return to his job as a hustler driver but could do work of a lighter nature. On May 5, 1988, claimant filed a claim with the commission for the injury suffered in 1986. n1

n1 No hearing was held on this claim until February 10, 1994.

On June 1, 1988, surgery was performed on claimant's right wrist. On July 28, 1988, claimant was discharged from the care of his surgeon, Dr. Theodore DuPuy, having received from him a thirty-five percent permanent disability rating to his upper extremity. From that date through August 31, 1990, claimant received permanent partial disability benefits under the LHWCA, as well as periods of temporary total ***3] disability (during surgery in 1988 and 1993) under the LHWCA. Employer asserts it paid a total of \$128,578.60 under that act.

Sometime during 1991, claimant began looking for work. Claimant could remember only that his search commenced during warm weather. Vocational counselor Michael Hulen [*400] attempted to assist claimant in job placement beginning July 31, 1991, and did so unsuccessfully for three months, though claimant was cooperative. Claimant offered into evidence a list of sixty-nine employers with their respective phone numbers from which he sought employment. Claimant's application was dismissed without prejudice by order entered May 8, 1992.

On June 7, 1993, surgery was performed on claimant's left hand. Prior to this surgery, claimant was capable of performing light-duty work with his right hand but not his left. Dr. Morales, claimant's surgeon and treating physician, released claimant, on September 21, 1993, to perform light and medium duty work. He lim-

22 Va. App. 396, *400; 470 S.E.2d 574, **576;
1996 Va. App. LEXIS 368, ***3

ited claimant from work "requiring repetitive motions of both hands or both wrists such as assembly-type work, heavy lifting, pushing, pulling, repetitive grasping, turning of wrenches with different tools or instruments [***4]"

I. Claimant's Disability and Efforts to Market Work Capacity

Employer contends that there was insufficient evidence for the commission to find that claimant was disabled as of September 1, 1990, when his benefits under the LHWCA were exhausted, and that claimant failed to make reasonable efforts to market his remaining capacity for work.

In reviewing the commission's decision, we are guided by well-settled principles. A finding of fact made by the commission which is supported by credible evidence is conclusive and binding upon this Court. *Fairfax Hosp. v. DeLaFleur*, 221 Va. 406, 410, 270 S.E.2d 720, 722 (1980). "A question raised by conflicting medical opinion is a question of fact." *Commonwealth v. Powell*, 2 Va. App. 712, 714, 347 S.E.2d 532, 533 (1986). "The fact that there is contrary evidence in the record is of no consequence if there is credible evidence to support the commission's finding." *Wagner Enters., Inc. v. Brooks*, 12 Va. App. 890, 894, 407 S.E.2d 32, 35 (1991).

While Dr. DuPuy opined on several occasions that claimant was capable of returning to his pre-injury employment, the [*401] commission discounted his opinion, noting that it was [***5] not apparent that Dr. DuPuy knew of the actual duties of a hustler driver. The commission, instead, placed greater weight on the opinion of claimant's treating physician, Dr. Morales, who, in reaching his conclusion that claimant could not return to his pre-injury employment, had visited claimant's work site and handled a hustler vehicle. Dr. Curtis Spear, also an orthopedic surgeon, who examined claimant at the request of claimant's union, concurred in Dr. Morales's opinion. In addition, claimant made several attempts to return to his former job but was unable to continue because of pain in his hands and arm. See *Sky Chefs, Inc. v. Rogers*, 222 Va. 800, 284 S.E.2d 605 (1981) (unsuccessful attempts to return to pre-injury employment may be considered in determining [**577] the extent of a claimant's disability). The opinions of Drs. Morales and Spear and claimant's unsuccessful efforts at returning to work provide credible evidence to support the commission's finding that claimant's occupational injury kept him from resuming his pre-injury work.

In order to receive continued benefits, a disabled employee must prove that he made reasonable efforts to market his residual wage earning capacity. [***6]

National Linen Serv. v. McGuinn, 8 Va. App. 267, 269, 380 S.E.2d 31, 34 (1989). "In determining whether a claimant has made a reasonable effort to market his remaining work capacity, we view the evidence in the light most favorable to ... the prevailing party before the commission." *Id.* at 270, 380 S.E.2d at 33.

In reviewing the commission's determination concerning claimant's efforts to market his work capacity, we note, as did the commission, that claimant was cooperative with Mr. Hulen, the rehabilitative counselor supplied by employer. However, Mr. Hulen could not secure employment for claimant. Also, Dr. Morales found claimant motivated to return to work. Though claimant's list of employers from whom he sought employment is not an extensive record for marketing efforts generally, the commission observed that claimant can [*402] read and write at only a second or third grade level. Given this record, credible evidence supports the commission's finding that claimant's marketing efforts were reasonable.

II. Statutes of Limitations

Employer argues that the statute of limitations under former Code § 65.1-56, now Code § 65.2-501, bars claimant's claim. Code § 65.2-501, [***7] in pertinent part, reads as follows:

After compensation has been paid as provided in § 65.2-503 [compensation for permanent loss], the employee may, within one year from the date compensation was last due under this section, file an application for incapacity to work

(Emphasis added). Employer, noting that the commission affirmed the deputy commissioner's April 1, 1994 award of seventy weeks of permanent partial disability benefits, running from July 28, 1988 to November 29, 1989, reasons that November 29, 1990, one year from the last date compensation was allowed, was the last day on which claimant could seek compensation due to an incapacity to work. The statute of limitations in Code § 65.2-501, however, does not begin to run until compensation for permanent loss was "last due" under Code § 65.2-503. Because compensation for claimant's permanent loss did not become due under that code section until his award was entered by the deputy commissioner on April 1, 1994, claimant's claim was not time barred. The fact that under the LHWCA compensation was last due on November 29, 1989 is of no import; only an award made under Code § 65.2-503 can trigger Code § 65.2-501. [***8]

Employer also raises the statute of limitations of former Code § 65.1-99, now Code § 65.2-708. Code § 65.2-708(A) reads, in pertinent part, as follows:

185.2

A. Upon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded No such review shall [*403] be made after twenty-four months from the last day for which compensation was paid, pursuant to an award under this title

(Emphasis added). This code section is inapplicable. Claimant's March 25, 1993 application by letter of counsel did not allege a change in condition but was an initial request for temporary total disability benefits. Under Code § 65.2-708, the commission is empowered to "end[], diminish[] or increase the compensation previously awarded." (Emphasis added). Prior to April 1, 1994, no award had been entered by the commission on claimant's behalf. The award provided under the LHWCA is of no benefit to employer: the two-year limitation on review provided for in Code § 65.2-708 applies only to awards made [***9] "under this title," with "this title" referring to Title 65.2 — the Virginia Workers' Compensation Act (Virginia Act).

[**578] III. Credits for Benefits Paid Under the Longshore and Harbor Workers' Compensation Act

A review of the Virginia Act clearly discloses the General Assembly's intent that an injured employee not be awarded a double recovery for a compensable injury; equally evident in the Virginia Act is the General Assembly's intent that an employer not be required to pay twice for an employee's injury. The question presented here is whether under the facts of this case the award made by the commission requires employer to pay twice for claimant's compensable injury. We believe that it does.

Depending upon the circumstances, employees who are injured while working as longshoremen may elect whether to first seek workers' compensation benefits under the LHWCA or the Virginia Act. Both the LHWCA and the Virginia Act provide compensation for permanent injuries by ordering weekly payments for a stated number of weeks, depending upon the extent of the permanent injury. We were advised at oral argument that this claimant elected to pursue his claim for benefits under the [***10] LHWCA because that act provides larger weekly payments for wages lost due to injury, albeit for [*404] a lesser number of weeks. Thus, a longshoreman has a choice between higher payments for a lesser number of weeks under the LHWCA or lower payments for a greater number of weeks under the Virginia Act.

Employer asserts that pursuant to the provisions of the LHWCA, claimant was paid a total of \$128,578 which

includes weekly wage-loss payments and payments for a 35% permanent partial disability.

When claimant could no longer recover compensation payments under the LHWCA, he requested a hearing pursuant to the provisions of the Virginia Act. At the hearing before the deputy commissioner, employer contended that it was entitled to a dollar-for-dollar set off for amounts paid under the LHWCA against any award made by the commission pursuant to the provisions of the Virginia Act. The commission held that "the employer is entitled to set off the number of weeks that benefits were paid under LHWCA rather than the total amount ... of compensation paid under LHWCA." n2 Any weekly amounts employer paid under the LHWCA which exceeded what was due under the Virginia Act were not credited against [***11] employer's liability under the Virginia Act.

n2 The deputy commissioner found that the total compensation claimant was entitled to under the Virginia Act was \$112,516.54. Employer asserted before the commission that since it had paid claimant more than that sum, any award to be made by the commission had been satisfied, and it was due a credit of the overage paid.

When enacting the Virginia Act, the General Assembly anticipated that compensation benefits might be paid to injured employees other than those ordered by an award. Among the provisions of the act addressing payments made other than by the terms of the Virginia Act is Code § 65.2-520, entitled "Voluntary payments by employer," which provides:

Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made, may, subject to the approval of the [*405] Commission, be deducted from the amount to be paid as compensation provided that, [***12] in the case of disability, such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

(Emphasis added). Subject to the approval of the commission, an employer is entitled to a credit for any "voluntary payment" it may have made to the employee. As defined by the statute, a payment is "voluntary" if it was not "due and payable" by "the terms of this title" when made. Thus, the disability payments employer paid claimant under the LHWCA were "voluntary" because when paid they were not "due and payable" under "the terms of" the Virginia Act. Therefore, the amounts paid

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under the LHWCA should have been deducted from employer's liability as determined by the commission. The statute makes no exception to its command, and its language directing that a credit be provided for "any" voluntary payments indicates an [**579] intent to provide a credit for all payments that fall within its classification of "voluntary."

Both employer and the deputy commissioner cite *Tiller v. Long Homes, Inc.*, 228 Va. 343, 323 S.E.2d 71 (1984), as authority for their respective positions. In *Tiller*, the Supreme [***13] Court affirmed the commission's decision allowing the employer a credit against the award. The facts in *Tiller* are not the same as in the matter before us. The employer's overpayment in *Tiller* arose from its own mistake; employer's overpayment in this case resulted from payments made under the mandate of federal law. In both cases, however, the overpayments were "voluntary" as defined in the Virginia Act. A case more closely analogous to the one before us is *Evans v. AT&T Technologies, Inc.*, 332 N.C. 78, 418 S.E.2d 503 (1992). In *Evans*, the North Carolina Supreme Court held that an employer is entitled to a full dollar-for-dollar credit toward its workers' compensa-

tion liability for amounts paid prior to an award pursuant to the employer's disability plan.

We hold that the commission erred in concluding that employer was not entitled to credit for the amount employer [*406] paid under the LHWCA that exceeded its obligation under the Virginia Act.

Except as to the issue of credit, the decision of the commission is affirmed. On the issue of credit for payments made by employer under the LHWCA, the commission is reversed and the case remanded. Upon remand, the commission shall [***14] determine the amount paid by employer as compensation under the LHWCA, which amount shall be set off against employer's liability under the Virginia Act and credit shall be given to employer for the excess amount paid against any future liability it may have to claimant for the injury received.

Affirmed in part,

reversed in part,

and remanded.

1 of 4 DOCUMENTS

JERRY GILBERT DODSON, Claimant
v.
NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY, Employer;
Self-Insured

VWC FILE NO. 165-42-26

Virginia Workers' Compensation Commission

1998 VA Wrk. Comp. LEXIS 4025

December 17, 1998

COUNSEL:

Richardson B. Donaldson, Jr., Esquire, Kevin W. Grierson, Esquire, Newport News, VA 23612-2888, for the Claimant; Benjamin M. Mason, Esquire, Suite 260, 11742 Jefferson Avenue, Newport News, VA 23606, for the Defendants.

JUDGES: COMMISSIONER TARR, COMMISSIONER DUDLEY, AND DEPUTY COMMISSIONER C. E. MERCER.

OPINIONBY: Full Commission

OPINION:

[*1] Jerry G. Dodson, the employee, requests review of the September 11, 1998, Opinion of a Deputy Commissioner, which denied his claim seeking a penalty for late payment of compensation. The dispositive issue on review is the proper method for the employer to offset payments made under the Longshore and Harborworkers' Compensation Act (LHWCA) against its liability under the Virginia Workers' Compensation Act (VWCA).

Dodson sustained a compensable injury to his left knee on August 11, 1993. The employer accepted the claim under the LHWCA, and made payments for temporary total and temporary partial disability for various periods ending October 29, 1996.

On May 3, 1995, the claimant was rated with a 50% permanent loss of use of the left leg. That rating entitled the claimant to 144 weeks of compensation under the LHWCA, but only 87.5 weeks under the VWCA, a difference of 56.5 weeks. The employer paid this 144 weeks of permanent partial disability benefits pursuant to the LHWCA beginning May 3, 1995, and ending January 19, 1998 n1 .

-----Begin Footnote-----

n1 According to our calculations, the actual ending date would have been February 3, [*2] 1998

-----End Footnote-----

By Opinion dated July 9, 1997, affirmed by the Commission on January 15, 1998, the claimant was awarded temporary total disability benefits under the state Act beginning April 1, 1997. That award provided that the "employer shall

receive a credit for payments of compensation made under the LHWCA." The employer made no payments on this award until May 2, 1998, the date that its 56.5 week overpayment was exhausted n2 .

-----Begin Footnote-----

n2 The first payment was actually made on May 13, 1998, for the period beginning May 2, 1998. Thus, the payment was made within 14 days of the due date, assuming the employer was entitled to the payment holiday

-----End Footnote-----

Both parties agree that the employer is entitled to a dollar for dollar credit for all sums paid pursuant to the LHWCA. The claimant contends, however, that the employer should have made payments pursuant to the state award beginning April 1, 1997. The claimant argues that the 56.5 week overpayment can only be recovered by shortening the [*3] period of compensation, that is, taking the credit at the end of the potential 500 weeks of benefits.

In support of his position, the claimant relies on the pre-1998 language of 65.2-520, which states: Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made, may, subject to the approval of the Commission, be deducted from the amount to be paid as compensation provided that, in the case of disability, such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment. n3 x

-----Begin Footnote-----

n3 In 1998, this section was amended to provide that "such deductions shall be made by reducing the amount of the weekly payment in an amount not to exceed one-fourth of the amount of the weekly payment for as long as is necessary for the employer to recover his voluntary payment." Neither party has suggested that this amendment applies to the current controversy, and we specifically do not decide whether this amendment should be applied [*4] retroactively. We observe, however, that applying the language of the amended statute would not ameliorate our concerns regarding simultaneous payment under the two acts. Depending on the amount of the overpayment under the LHWCA compared to the length of any subsequent award under the VWCA, the employer in many instances would never recover its full overpayment

-----End Footnote-----

We note that if we were to adopt the claimant's position, an employer, in most cases, would never realize a credit for the excess payments made under the LHWCA. Only if total payments approach the 500 week limit would the employer be able to take its credit at the end of that period.

We acknowledge that in some circumstances, we have interpreted 65.2-520 as controlling the method by which an employer can take a credit, and have required the employer to take the credit either against an award of permanent partial

disability benefits, or at the end of the 500 week period. The claimant accurately asserts that we reached such a result in the case of *Cline v. Dana Corporation*, VWC 181-38-99 (November 24, 1997). In that case, before an award was entered, [*5] the employer mistakenly paid inflated benefits based upon an assumption that the average weekly wage was \$333, instead of \$170. We did not allow the employer to take an immediate credit for the overpayment against current benefits.

We find that *Cline* does not control the current controversy. First of all, the overpayment in that case resulted from the employer's unilateral mistake. From an equitable standpoint, we have consistently held that under such circumstances, the claimant should not be required to forgo current payment of wage loss benefits. Moreover, the employer did receive an immediate credit for the portion of its voluntary payment which represented the correct compensation rate.

The payments made to *Dodson* pursuant to the LHWCA were not voluntary in the same sense as the employer's overpayments in *Cline*. *Dodson* made a claim and requested payments under the LHWCA. The employer was required by law to make those payments. The claimant controlled whether he received payments under the LHWCA which would exceed those benefits payable pursuant to the VWCA, and thereby give rise to an overpayment.

Even more compelling, however, is the strong underlying policy to prevent a double [*6] recovery when claims are made under the laws of more than one jurisdiction. In the recent case of *Virginia Intern. Terminals v. Moore*, 22 Va. App. 396, 470 S.E.2d 574 (1996) aff'd sub nom. *Moore v. Virginia Intern. Terminals, Inc.*, 254 Va. 46, 486 S.E.2d 528 (1997), the Court of Appeals stated: A review of the Virginia Act clearly discloses the General Assembly's intent that an injured employee not be awarded a double recovery for a compensable injury; equally evident in the Virginia Act is the General Assembly's intent that an employer not be required to pay twice for an employee's injury.... The Court of Appeals, after carefully considering applicable law including 65.2-520, concluded that the employer was entitled to a dollar for dollar credit for payments made under the LHWCA. In its remand order, the Court of Appeals directed the Commission to determine the amount paid by the employer as compensation under the LHWCA, which amount shall be set off against employer's liability under the Virginia Act and credit shall be given to employer for the excess amount paid against any future liability it may [*7] have to claimant for the injury received. (Emphasis added.) From this remand language, we find that the Court of Appeals intended the employer to receive a "set off," that is, an immediate credit, against any future liability, as opposed to liability that might exist at the end of 500 weeks. Such a result is required in order to prevent a potential double recovery, a result which the Court of Appeals and Supreme Court of Virginia have strictly forbidden.

Based in large part on the decision in *Moore*, we reached the same conclusion in *Cash v. Food Lion #179*, VWC 175-37-60 (December 15, 1997.) In that case, the claimant received permanent partial disability payments under a Texas award, n4 during which time he was under a Virginia award for temporary total disability. We held that the employer was entitled to a credit for permanent partial disability payments being made pursuant to Texas law against temporary total disability benefits payable pursuant to Virginia law, stating "Until that credit is exhausted no disability compensation is due pursuant to the Virginia Award."

-----Begin Footnote-----

n4 The claimant was not entitled to a permanent [*8] partial disability award under the VWCA, because the Texas award was based upon a 10% "whole body" disability rating, a rating not recognized under the VWCA.

-----End Footnote-----

We find that Cash controls the present controversy. Dodson is not entitled to payment of temporary total disability benefits under the VWCA while receiving permanent partial disability payments under the LHWCA. Nor is the employer required to wait until the claimant's benefits approach the 500 week limit before receiving its credit. To hold otherwise would potentially and realistically grant the claimant a double recovery, constituting an imposition on the employer and the Commission. See Brackett v. Chesapeake Public Schools, Record No. 0466-98-1 (Va. Ct. App., August 25, 1998) (unpublished).

Based upon the overriding principle of preventing a double recovery when claims are made under the laws of more than one jurisdiction, we find that 65.2-520 does not dictate the manner in which the employer can set off its liability under the LHWCA against its liability under the VWCA. Until the dollar amount payable under the VWCA equals the dollar amount paid [*9] under the LHWCA, the employer shall have a holiday from paying further benefits under the VWCA.

For these reasons, the opinion of the Deputy Commissioner is AFFIRMED.

This matter is hereby removed from the Review docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days of receipt of this Opinion.

2 of 2 DOCUMENTS

RONALD L. HEPP, Claimant

v.

PHILIP MORRIS USA, Employer;
LUMBERMENS MUTUAL CASUALTY COMPANY, Insurer

VWC FILE NO. 187-72-11

Virginia Workers' Compensation Commission

1999 VA Wrk. Comp. LEXIS 350

January 11, 1999

COUNSEL:

Thomas J. Schilling, Esquire, Richmond, Virginia 23228-0176, For the Claimant;
Thomas J. Mitchell, Esquire, Hunton & Williams, 951 East Byrd Street, Richmond,
Virginia 23219-4074, For the Defendants.

JUDGES: COMMISSIONER DIAMOND, COMMISSIONER TARR, AND DEPUTY COMMISSIONER
COLVILLE.

OPINIONBY: FULL COMMISSION

OPINION:

[*1] The claimant, by counsel, seeks review of the Deputy Commissioner's July 21, 1998 Opinion denying his claim. The Deputy Commissioner found that what occurred on September 12, 1996 constituted a new injury rather than a change in condition, but was not caused by a risk of the employment. He further found that had the claimant been awarded compensation, the employer would be entitled to a dollar for dollar credit against compensation payments due.

The record reveals that the claimant was employed by Philip Morris USA for a period of twenty-four years prior to the June 17, 1998 hearing. His job title was that of a senior mechanical instructor at a stipulated average weekly wage of \$1,069.00. In this work he trained people to work on machinery and also how to safely operate the machinery.

The claimant confirmed that he had an on the job injury in 1980 which resulted in the necessity for two surgical procedures, the exact nature of which is unknown other than that they were lumbar discectomies. The specialists' reports have not been received except for what appears to be a work restriction form dated November 1984 from a Dr. Singer placing restrictions on the claimant's activities. According [*2] to the claimant, he had a flare up of his back in 1984. Thereafter the Commission has received numerous office notes from Dr. L. Michael Breeden, the claimant's family physician.

Dr. Breeden's office records refer to numerous conditions for which the claimant sought treatment including treatment for his back. In particular, Dr. Breeden noted recurrent back pain on February 14, 1985; discomfort in the lower back on June 28, 1985; recurrent back pain on December 17, 1985; a lumbar back strain on February 16, 1987 after basketball maneuvers; a flare-up of the back on October 26, 1989; a flare-up of the back on December 3, 1990; and a lumbar

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strain on May 30, 1995 after lugging some gas tanks and working on a boat. On the latter date the pain extended down the right leg. None of these instances was accompanied by a disability slip. On May 30, 1995 the claimant was told to return to work on June 1, 1995. The claimant continued to receive treatment from Dr. Breeden but his office records reference no further complaints of back difficulties until September 18, 1996.

It is the claimant's testimony that on September 12, 1996 he was in the manufacturing facility examining machinery in order [*3] to familiarize himself with changes made in that part of the building. To accomplish this, he had to climb a fifteen to sixteen step stationary ladder beside a conditioning machine. At around 2:35 to 2:40 p.m., he climbed the ladder. The rungs are approximately eighteen to twenty-four inches apart. He described that he had to pull himself in almost a squatting type position, a maneuver that put a lot of stress on the arms and back. He further described that he always felt uncomfortable climbing the ladder but was not sure whether it was because he had to pull so much or because of his height and size. He was half way up when he felt a tear in the lower back which caused him to immediately stop and descend the ladder. He admitted that he reported no injury before leaving at shift's end, 3:00 p.m. Thereupon he went home and to bed. The next day he spoke to his supervisor and reported the injury.

The claimant returned to Dr. Breeden on September 18, 1996. Dr. Breeden noted a history of a flare-up of the leg and back once again which began on September 12. He described discomfort in the low back, which by then was down the right leg, accompanied by a cramping discomfort in the lateral [*4] aspect of the right leg. Dr. Breeden conducted an examination and diagnosed right lumbar pain with radiculopathy. He prescribed conservative treatment including rest.

An examination followed on September 24, 1996, when Dr. Breeden noted that the claimant was a little better and further noted that the claimant had a known lumbar disc disease with radiculopathy. By October 8, 1996, Dr. Breeden noted that about 90% of the pain was down the leg accompanied by achiness. He diagnosed a lumbar disc disease with a flare up. On October 22, 1996, Dr. Breeden reported continued back pain. On November 12, 1996, he released the claimant to return to permanent limited duty effective November 18, 1996.

An examination followed on December 12, 1996, when the claimant was deemed to be much better. Dr. Breeden diagnosed chronic degenerative joint disease of the lumbar spine.

On August 8, 1997 Dr. Mark C. Barr, an associate of Dr. Breeden, authored an office note apparently in response to an unemployment claim. At that time he reported a September 12, 1996 injury to the back when the claimant was on a ladder at work, at which time the claimant had a strain that developed. He then incorrectly indicated [*5] that since then the claimant had been unable to work. He referenced a long history of back troubles including two lumbar discectomies in the 1980s, and stated that the claimant had noted that his back was basically unchanged. He diagnosed chronic back discomfort with two disc surgeries in the 1980s.

The claimant continued to seek treatment from Dr. Breeden, who authored the following March 3, 1998, "To Whom It May Concern" letter:

Mr. Ronald Hepp has been followed in this office since 1985 for a multitude of problems. He has a long term history of hypertension that has been well controlled, and then previously has had problems with back pain and lumbar disk disease as well. In fact, Mr. Hepp has undergone lumbar discectomy times two in the past with good resolution of his symptoms. Mr. Hepp had been in his normal state of health when he noted on September 12, 1996 at work some discomfort in the back and right leg area. The irritation in the right leg continued into a cramping discomfort, and at that time his examination was consistent with a lumbar discectomy with a radiculopathy. He was requested to go to bed at that time, use analgesics and anti-spasmodics, and was followed up [*6] in one week's time where indeed the back pain was better and the radiculopathy was better in his leg as well. Mr. Hepp continued with limited activity at home, was okayed to return to work on November 18, 1996, but limited to a position that would not require him to do a lot of lifting and carrying.

Indeed, this injury on September 12, 1996 that occurred while climbing a stationary ladder was a new injury and resulted in a two month hiatus from work.

At the time of the hearing the claimant alleged a period of total work incapacity from September 12, 1996, through September 22, 1997, and then continuing partial work incapacity from September 23, 1997, based on a return to work average weekly wage of \$500 with AMF Reece.

As part of a short-term disability plan totally maintained by Philip Morris for its salaried employees, the claimant was paid his full salary from September 13, 1996, through June 12, 1997.

The defendants contested the existence of a compensable accidental injury, and maintained that there was a change in condition from an earlier injury and a non-compensable aggravation of an ordinary disease of life.

In his Opinion, the Deputy Commissioner found that the event that [*7] occurred on September 12, 1996, constituted a new injury rather than a change in condition. The Deputy Commissioner also concluded that the claimant did not prove that the injury arose out of and the employment, since there was no evidence of a defect in the ladder, no evidence that the height of the steps was an added risk of the employment, no evidence that the claimant was doing anything awkward, and no evidence that the claimant was distracted while ascending the ladder.

We disagree with this analysis, and find that the claimant sustained an injury by accident arising out of and in the course of his employment. In making this determination we find that the case law pertaining to ordinary steps and stairways is inapplicable to climbing a ladder, since the work risks are greatly increased with a ladder. Clearly the claimant described that the maneuver put a lot of stress on the back and arms when he pulled himself up. While he did not use the word awkward, that is clearly implied in his testimony. He described that he always felt uncomfortable climbing the ladder either because of his height or because of necessity to pull so much. Lastly, he described the rungs as eighteen to [*8] twenty-four inches apart which required him to climb in almost a squatting type position. All of these constitute risks of the employment. We agree with the claimant that the correct standard is contained in the case of *Grove v. Allied Signal, Inc.*, 15 Va. App. 17, 421 S.E.2d 32 (1992), wherein the Virginia Court of Appeals affirmed the prior holding that for an

injury to arise out of the employment the employee must prove that the conditions of the work or that a work-related exertion caused the injury. The Court held that the exertion need not be significant. Clearly, the effort described by the claimant is sufficient to constitute a work related exertion in climbing the ladder with the standard established in Grove.

Moreover, the claimant's testimony when accompanied by Dr. Barr's August 8, 1997, statement, and Dr. Breeden's March 3, 1998, statement concerning the climbing of a stationary ladder at work, are sufficient to establish that there was an identifiable incident causing a structural change in the body. This strain caused a period of total work incapacity from September 13, 1996, the actual first date of disability, through November [*9] 17, 1996. Certainly the fact that the claimant initially perceived that this was a flare up is not surprising in view of the earlier flare-ups with physical activities that had required earlier visits to the doctor. That it was not the same as before is evident from the extended period of total work incapacity which did not earlier occur.

However, it is equally clear that the claimant had a pre-existing lumbar disc disease. We cannot find that this strain continued beyond the release to return to work. Dr. Breeden expressed language on March 3, 1998, that the September 12, 1996, injury resulted in a "two month hiatus from work." We note that on December 12, 1996, Dr. Breeden referenced that the claimant was then seeking a desk job and "stated as long as he has had his back problems his neurosurgeons pushed him to get a more sedentary job." This would indicate a return to a pre-injury state, and we cannot find that the evidence thereafter establishes that the work restrictions were caused by the injury.

The last area of controversy concerns the Deputy Commissioner's finding that if this case was awarded, the defendants would be entitled to a credit for the short-term disability payments [*10] made to him during the above period. Clearly the employer paid the entire cost of the plan for its salaried employees, which included the claimant, and the plan specifically provided for payment based on salary continuation in case of on-the-job-injuries. We agree with the employer that Section 65.2-520, Code of Virginia, contains an offset provision for payments voluntarily made by an employer to an injured employee. Key to our determination is that the employer fully funded the plan which provided the claimant with wage continuation. We also note the language of Virginia International Terminals, Inc. v. Moore, 22 Va. App. 396, 470 S.E.2d 574 (1996), affirmed 254 Va. 46, 486 S.E.2d 528 (1997), wherein the Virginia Court of Appeals emphasized its belief that the General Assembly did not intend a double recovery for a compensable injury.

For the above reasons the July 21, 1998, Opinion is AFFIRMED in part, and REVERSED in part. The following award shall enter.

AWARD

An award is entered in favor of Ronald L. Hepp, employee, against Philip Morris, USA, employer, and Lumbermens Mutual Casualty Company, [*11] insurer, providing compensation for total work incapacity at the weekly rate of \$496.00 beginning September 13, 1996, through November 17, 1996, inclusive, based on a pre-injury average weekly wage of \$1,069.00. Credit against this award shall be allowed for full wage continuation.

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In addition to the compensation awarded, the employer shall be responsible for the reasonable cost of medical care related to the claimant's September 22, 1996, compensable back injury, pursuant to Section 65.2-603, Code of Virginia.

The Commission authorizes a fee in the amount of \$800.00 which shall be paid by the claimant to Thomas J. Schilling, Esquire, for legal services rendered.

This matter is hereby removed from the Review Docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days from receipt of this Opinion.

2 of 4 DOCUMENTS

DEAN E. SPROUSE, Claimant

v.

HARDEE'S, Employer;
SELF-INSURED

VWC FILE NO. 185-95-34

Virginia Workers' Compensation Commission

1998 VA Wrk. Comp. LEXIS 4927

August 25, 1998

COUNSEL:

Dean E. Sprouse, 9245 Hickory Road, Petersburg, Virginia 23803, Pro Se; Michael C. Lonchar, Esquire, Gentry, Locke, Rakes & Moore, Roanoke, Virginia 24038-0013, for the Defendants.

JUDGES: COMMISSIONER DIAMOND, COMMISSIONER TARR, AND CHIEF DEPUTY COMMISSIONER LINK.

OPINIONBY: LINK, Chief Deputy Commissioner

OPINION:

[*1] This matter is before the Commission on the employer's petition for review of a deputy commissioner's award of benefits to the claimant, who alleged that his carpal tunnel syndrome was aggravated by an accidental injury to his right wrist on April 21, 1997.

Alternatively, the claimant had alleged that his condition, carpal tunnel syndrome, was an occupational disease, communicated on June 3, 1997, by Dr. Mark deBlois. The deputy commissioner denied the claimant's claim for an occupational disease in reliance on *The Stenrich Group, et al. v. Jemmott*, 251 Va. 186, 467 S.E.2d 795 (1996). In *Jemmott*, the Court held that "job-related impairments caused by repetitive motion, however labeled or however defined, are, as a matter of law, not compensable under the present provisions of the Act." *Id.* Additionally, the claimant in this matter received his diagnosis of carpal tunnel syndrome on June 3, 1997, prior to the effective date of the amendment to Virginia Code Ann. 65.2-400 that made carpal tunnel syndrome conditions compensable as ordinary diseases of life. Neither party petitioned for review of this aspect of the deputy's decision.

The employer [*2] asserts that the deputy erred in finding that the claimant's condition is compensable as an accidental injury which materially aggravated a pre-existing wrist condition.

The facts surrounding the incident alleged are essentially undisputed. The deputy commissioner has thoroughly summarized the claimant's testimony in regard to his work on the day of the accident. The claimant was engaged in removing screws from a fry vat from approximately 8:00 a.m. until 9:30 or 10:00 a.m. on April 21, 1997. Although there was nothing unusual about any of the screws or any of the claimant's movements, while he was turning the screwdriver to remove

a screw, the claimant experienced a sharp pain through his hand, and his hand went numb. He was unable to use his hand for over an hour.

The claimant testified that on April 21, 1997, he made an appointment with Dr. Min. On the third visit to that office, he was treated by Dr. Des Moore, who referred him to Dr. Mark deBlois. In his April 28, 1997, office note, Dr. Min diagnosed possible carpal tunnel syndrome. The tests which he conducted show that the claimant had a positive Phalen sign and a negative Tinel's sign. The doctor prescribed a splint. The May [*3] 22, 1997, office notes, which may be those of Dr. Moore, relates a specific diagnosis of right carpal tunnel syndrome and a referral to Dr. Mark deBlois.

In his carefully analyzed Opinion, the deputy commissioner thoroughly explained Dr. deBlois's descriptive analysis of how carpal tunnel syndrome may have developed over a period of time, but was more likely to have been the result of a traumatic event. In his July 7, 1997, letter, Dr. deBlois states: The claimant has symptoms of a carpal tunnel that appeared to have developed subsequent to working with a screwdriver at work. That incident appears at the very least to have aggravated the carpal tunnel, and possibly have caused it. At this point he is scheduled for surgical decompression. It is my opinion that his carpal tunnel syndrome is related to his work.

When asked during his February 2, 1998, deposition whether it was more likely that the claimant's condition arose because of the repetitive use of hand tools or that the condition became symptomatic while the claimant was using a screwdriver, Dr. deBlois stated: Well, the question would be that he had a sudden pain, and that sudden pain is not a classic part of carpal tunnel. But [*4] if he tore something, and secondary to that has swelling, there's not much room in a carpal tunnel for much swelling. That's why I injected him with cortisone, to try to settle that swelling down. In that scenario, you can make a case for a traumatic event. It is not the classic textbook way to do it. But anything that causes significant swelling, a cyst in the joint, anything that makes the tunnel not as big as it's supposed to be.

We have briefly summarized all of the medical records which are part of our file. Based upon these records, the deputy commissioner concluded that the claimant had incurred a traumatic injury to his wrist which, at least, aggravated a pre-existing condition. The transcript of the hearing reflects that the claimant described a specific incident and acknowledged a pre-existing condition. The medical records show that the claimant also told his treating physicians about his pre-existing condition. We concur with the analysis of the deputy commissioner.

The transcript of the hearing shows that the claimant testified that he had been paid his regular salary during his period of disability, but that he was charged sick leave. On review, the employer asserts that [*5] the claimant should not receive both his full wages and workers' compensation benefits. The transcript of the hearing does not reflect that the employer requested from the deputy commissioner at the hearing a credit for wages paid against any award of benefits. However, since this issue has been raised on review, and since the deputy commissioner awarded wage loss indemnity benefits, we reiterate a long-standing holding of the Commission that the claimant is not entitled to a double recovery. However, because we have found that the claimant's condition is compensable, his employer should not charge him with sick leave for the period

of his disability, even though he was paid his full wages. We believe that the employer is entitled to a credit for wages paid in lieu of compensation if the employer agrees to restore the claimant's 14 days of sick leave benefits.

This matter is ORDERED removed from the review docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days.

1 of 2 DOCUMENTS

LORENZO JOHNSON, Claimant

v.

PARAMOUNT BUILDERS, INC., Employer;
NATIONWIDE MUTUAL INSURANCE COMPANY, Insurer

VWC FILE NO. 184-72-13

Virginia Workers' Compensation Commission

1999 VA Wrk. Comp. LEXIS 305

January 11, 1999

COUNSEL:

Polly Chung, Esquire, 11747 Jefferson Avenue, Suite 3-E, Newport News, Virginia 23606, For the Claimant; Robyn L. Neal, Esquire, Spence & Whitlow, 1630 Dominion Tower, 999 Waterside Drive, Norfolk, Virginia 23510, For the Defendants.

JUDGES: COMMISSIONER DIAMOND, COMMISSIONER TARR, AND DEPUTY COMMISSIONER COLVILLE.

OPINIONBY: FULL COMMISSION

OPINION:

[*1] The defendants seek review of the Deputy Commissioner's July 23, 1998 Opinion, which awarded temporary total disability benefits for the period of disability from January 24, 1997, through March 16, 1997, but declined to give a credit for voluntary payments made by the insurer from February 12, 1997, through March 16, 1997.

The record in this case is not in dispute and reveals that the claimant filed a claim for benefits on March 21, 1997, alleging a compensable accidental injury on January 24, 1997, resulting in a period of total work incapacity from January 24 through March 17, 1997. At the May 8, 1998, hearing the defendants stipulated to the compensability of the accident, and to the period of work incapacity from February 12 through March 16, 1997, during which time benefits were voluntarily paid. The period in dispute was from January 24 through February 11, 1997, during which time the claimant was released to return to light duty by the emergency room. The defendants raised a marketing defense.

Testimony was abbreviated and revealed that at the time of his accident the claimant worked full time for Marine Builders and worked part-time with the defendant employer, Paramount [*2] Builders, Inc. Following the receipt of the light duty slip from the emergency room, the claimant took the slip to Marine Builders which provided him with light duty. No evidence was offered that he solicited such work with Paramount Builders, but testimony was offered that he did not seek work elsewhere. He then came under the care of Dr. David A. Felder, Jr. on February 12, 1997. Dr. Felder diagnosed a mild whiplash injury, and referred the claimant for physical therapy to be scheduled after his day job. The insurer voluntarily paid benefits from February 12 through March 16, 1997.

The Deputy Commissioner found that while awaiting his appointment with Dr.

Felder, the claimant was not obligated to engage in a course of finding appropriate employment. In awarding benefits for total work incapacity from January 24, 1997, through March 16, 1997, he denied the request for a credit without explanation. We agree with the Deputy Commissioner's finding concerning marketing, but agree with the defendants that there is no reason why they should not be granted the credit for the voluntary payments.

With reference to the issue of marketing, the period at issue is very short, three weeks, during [*3] which time the claimant was awaiting arrangements for treatment. Case law has long established that no marketing effort is required during brief periods of disability. See Georgia-Pacific Corporation v. Hicks, Record No. 0858-97-2 Unpublished Court of Appeals, August 26, 1997; Stevens v. Anheuser Busch Company, Inc., 74 O.W.C. 142; Holly Farms Foods, Inc. v. Carter, 15 Va. App. 29, 422 S.E.2d 165 (1992). Here the period was very short, and while there is no indication that the claimant sought light duty with the defendant employer, this appears to be irrelevant since no evidence was offered by the employer that such work was available had it been solicited.

With reference to the issue of credit, the Commission encourages employers to make voluntary payments of compensation while investigating a claim. Our failure to grant a credit for such payments would constitute a double recovery and unjust enrichment. Accordingly, the credit shall be allowed.

For the above reasons the July 23, 1998, Opinion is AFFIRMED, but MODIFIED insofar as it denied the credit for the workers' compensation voluntarily paid from February 12 through March 16, 1997. [*4]

Interest is payable for the period from January 24 through February 11, 1997, pursuant to Section 65.2-707, Code of Virginia.

The case is removed from the review docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days from receipt of this Opinion.

LEXSEE 1998 va wrk. comp. lexis 3869

ROSCOE CHITWOOD; Claimant

v.

E. I. DU PONT DE NEMOURS AND COMPANY, INC., Employer;
SELF-INSURED

VWC FILE NO. 127-16-04

Virginia Workers' Compensation Commission

1998 VA Wrk. Comp. LEXIS 3869

June 30, 1998

COUNSEL:

Gary W. Kendall, Esquire, Michie, Hamlett, Lowry, RasmussenTweel, P.C., Charlottesville, VA 22902-0298, for the Claimant; Stephen D. Busch, Esquire, McGuire, Woods, BattleBoothe, One James Center, 901 East Cary Street, Richmond, VA 23219-4030, for the Defendants.

JUDGES: COMMISSIONER TARR, COMMISSIONER DUDLEY, AND CHIEF DEPUTY COMMISSIONER LINK.

OPINIONBY: DUDLEY, Commissioner

OPINION:

[*1] This matter is before the Commission on the claimant's June 30, 1997, request for Review of the June 25, 1997, decision to grant the employer credit for payments made for stage I asbestosis against an award for stage II asbestosis.

The facts of this case are undisputed. The claimant retired from Du Pont in 1973 and received a diagnosis of stage I asbestosis in 1986. On December 12, 1986, he was awarded 50 weeks of compensation, paid by the defendants, for stage I asbestosis under former Virginia Code 65.1-56 (now Code 65.2-503).

On April 27, 1995, the claimant filed an application for stage II asbestosis in VWC File No. 174-45-59. An award was entered on March 29, 1996. This award was approved on Review by the Full Commission by Opinion dated August 30, 1996.

The employer paid an additional 50 weeks of compensation pursuant to the Commission's Opinion and took a credit for the 50 weeks previously paid pursuant to the December 12, 1986, award for stage I asbestosis. On March 10, 1997, the claimant filed an application seeking a penalty for late payment of compensation. On June 25, 1997, the Deputy Commissioner denied the application and held that the employer was entitled to a credit [*2] for the 50 weeks previously paid for stage I asbestosis. It is from this Opinion that the claimant seeks Review.

The claimant asserts that the plain language of 65.2-503 mandates that the staged losses shall be compensated for the period specified. He asserts that the stages shall be compensated separately and that no language in that Section permits an offset or credit for compensation paid for a previous stage. The claimant also asserts that the Deputy Commissioner erred in relying on Virginia Code 65.2-504 in granting the credit.

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The employer asserts that, although employers are not entitled to receive credit for payment of compensatory benefits, credit should be awarded for prior payment of scheduled benefits for the same injury. The employer believes that this rule eliminates double indemnification for the same injury and asserts that the Deputy Commissioner correctly relied on the rule against double recovery in coal worker's pneumoconiosis cases found in Code 65.2-504(B).

The employer relies on *Porter v. Top Notch Coal Company, Inc.*, 56 OIC 246 (1975), reversed on other grounds, 217 Va. 19, 225 S.E.2d 357 (1976), for the proposition [*3] that the Commission has long adhered to a rule against double recovery of scheduled benefits. In *Porter*, the employer received a 50-week credit for an award for silicosis made in West Virginia against a 200-week award for stage III pneumoconiosis in Virginia. The employer asserts that the rationale of the credit is not to benefit employers but to prevent a double recovery by the claimant.

The Virginia Supreme Court has recently considered the issue of credit in *Moore v. Virginia International Terminals, Inc.*, 254 Va. 46, 486 S.E.2d 528 (1997). The Court held that an employer shall receive a dollar-for-dollar credit against a new award for compensation for any amount paid pursuant to the Longshore and Harbor Workers' Compensation Act (Longshore Act) for the same injury. The Commission recognizes that jurisdiction is concurrent between the Virginia Workers' Compensation Act and the Longshore Act and that the injured employee may make claims under both, but cannot make a double recovery. *Mingo v. Norfolk Shipbuilding and Dry Dock Company*, 60 OIC 311 (1981). However, in the case sub judice we are not concerned with concurrent jurisdiction or [*4] voluntary payments.

The employer asserts that 65.2-503 includes an explicit clarification of the rule against double recovery. The employer demonstrates that the Act indemnifies a particular body member only once in recognizing that the amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand. Thus, the employer argues that an employee may not recover for stage I asbestosis more than once. The employer asserts that every person diagnosed with stage II pneumoconiosis necessarily has had stage I and that an award for stage II asbestosis at 100 weeks of compensation includes the 50 weeks for stage I. The employer asserts that to find otherwise would deprive claimants first diagnosed with stage II of the 50 weeks of compensation for stage I manifestly present in their lungs.

After careful review of the arguments by both parties, we find that the employer is entitled to a credit for payments made for the stage I asbestosis, although we agree with the claimant that the provisions in Virginia Code 65.2-504 do not apply.

The analysis necessarily requires the interpretation of Code 65.2-503(B). Pneumoconiosis, including asbestosis, is [*5] compensated in three stages, first, second, and third. A person with compensable stage I asbestosis is entitled to 50 weeks of compensation. Stage II is compensated at 100 weeks and stage III at 300 weeks.

The policy of the Act is to avoid double recovery. As noted by the employer, *Porter* allowed a credit for payments for stage I pneumoconiosis against an award for stage III pneumoconiosis, even though the stage I payments were made pursuant the West Virginia Act. Stage III asbestosis necessarily encompasses stage I. It is unlikely that the legislature intended a double payment for stage I which would occur where an employee is paid compensation for stage I and then

is paid compensation for stage II without a credit for the stage I payment. Also, it seems unlikely that the legislature would have intended for an employee who is diagnosed with stage I asbestosis, followed by a later diagnosis of stage II, to receive 150 weeks of compensation, while an employee whose condition advances more rapidly resulting in an initial diagnosis of stage II asbestosis would receive 100 weeks of compensation. Both employees would have stage II asbestosis which encompasses stage I asbestosis with the [*6] only difference being the chronology of diagnosis.

Our decision is consistent with the Commission's longstanding interpretation of Code 65.2-503 that claimants who have an increase in their permanent loss of use to a scheduled member receive additional benefits for only the increase. *Rife v. Garden Creek Pocahontas Company*, VWC File No. 140-11-39 (August 11, 1992); *Shank v. Rockingham Poultry Marketing Cooperative, Inc.*, VWC File No. 132-36-51 (September 6, 1994); *Mabe v. Lightning Transportation, Inc.*, VWC File No. 155-89-02 (July 3, 1996). See also *Owen v. The Chesapeake Corporation*, 198 Va. 440, 94 S.E.2d 462 (1956).

For the foregoing reasons, the Opinion of June 25, 1997, is AFFIRMED.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within 30 days.

3 of 4 DOCUMENTS

SHELBY GUTHRIE SHAW, Claimant
v.
MERCHANT'S TIRE & AUTO, Employer;
SAFECO INSURANCE COMPANY OF AMERICA, Insurer

VWC FILE NO. 181-67-45

Virginia Workers' Compensation Commission

1998 VA Wrk. Comp. LEXIS 4473

March 24, 1998

COUNSEL:

Karen M. Rye, Esquire, 431 Granby Streets, Norfolk, Virginia 23510, for the Claimant; Lisa C. Healy, Esquire, 10521 Judicial Drive, Suite 300, Fairfax, Virginia 22030, for the defendants.

JUDGES: COMMISSIONER TARR, COMMISSIONER DIAMOND, AND COMMISSIONER DUDLEY.

OPINIONBY: TARR, Commissioner

OPINION:

[*1] This case is before the Commission on the requests for Review by both parties of the Deputy Commissioner's May 13, 1997, decision. The claimant disputes the Deputy Commissioner's decision not to award temporary total disability benefits from August 1, 1996. The employer's Cross-Review challenges the Deputy Commissioner's decisions that the claimant's disability is causally related to her industrial accident, that the claimant did not unjustifiably refuse selective employment, and that the employer is not entitled to a credit for payments made to the claimant under short and long-term disability plans. We AFFIRM the Deputy Commissioner's finding but MODIFY his award to allow a credit.

Shelby Guthrie Shaw was employed as a retail sales manager for this employer. On February 6, 1996, the claimant slipped on ice at home while getting into her car and pulled a muscle in her left buttock. The claimant testified that she did not fall. She was treated at Chesapeake General Hospital's ("Chesapeake") emergency room, where x-rays of her lumbar spine were taken. The emergency room notes say the claimant "fell few wks ago and injured same area." She was diagnosed with acute lumbar strain and [*2] given pain medication and a muscle relaxer. The claimant said she was kept out of work for four days before returning to her full duty job.

On February 16, 1996, the claimant was attempting to exit the employer's store after setting the alarm when she slipped on the wet tile floor, causing her to fall. She landed on her right arm and hit her head on the floor. She drove home and then notified her supervisor, Bruce Nelson, of the accident.

The next day, the claimant's son took her to Chesapeake's emergency room, where she complained of pain in her back, neck, and head, and soreness in her right shoulder and arm. She was diagnosed with a closed head injury and a right shoulder contusion and instructed to follow up with her family physician, Dr.

Alfredo P. Soriano. February 22, 1996, lumbar spine x-rays ordered by Dr. Soriano showed changes at L5-S1 secondary to bilateral spondylolisthesis of L5, but no appreciable change from the claimant's February 6, 1996, x-rays. Dr. Soriano referred the claimant to Dr. Edward D. Habeeb, an orthopedic surgeon, who examined her on March 14, 1996.

After reviewing the claimant's x-rays, Dr. Habeeb diagnosed back strain secondary to her fall and impingement [*3] syndrome of the right shoulder exacerbated by her fall. He prescribed medications and referred the claimant to physical therapy for her shoulder and lower back. On April 4, 1996, Dr. Habeeb noted that although the claimant's shoulder had improved, she had persistent back pain, especially when standing for any length of time. His April 25, 1996, report shows the claimant was still having difficulty with her back. She also had pain radiating into her left hip and upper thigh and some left leg weakness. Dr. Habeeb discontinued the claimant's physical therapy.

At the claimant's May 16, 1996, appointment, Dr. Habeeb diagnosed S1 radiculopathy on the left. He recommended a lumbar epidural steroid injection and held the claimant out of work until May 21, 1996. When two trials of injections failed to alleviate the claimant's pain, Dr. Habeeb ordered a lumbar myelogram, a post-myelogram CT scan, and a lumbar EMG. Dr. Habeeb excused the claimant from work from June 11, 1996, through June 16, 1996, in order to perform the myelogram on June 14, 1996.

The myelogram and CT scan did not show definite nerve root impingement at the level of the spondylolysis, but Dr. Habeeb noted on June 20, 1996, [*4] that from a clinical standpoint the claimant continued to have what appeared to be a lumbar radiculopathy. Dr. Habeeb's July 8, 1996, note said the claimant's EMG was consistent with a radiculopathy on the left that "appears all to be secondary to the recent injury." In order to pinpoint the level of the problem, Dr. Habeeb ordered a lumbar MRI, which showed bilateral pars defects at the L5 level with associated grade I anterior listhesis of L5 on S1. This was associated with a mild cephalocaudad narrowing of the exiting neural foramina at this level. After reviewing these results, Dr. Habeeb referred the claimant to Dr. Nasrollah Fatehi, a neurosurgeon, and excused the claimant from work for her July 22, 1996, appointment with Dr. Fatehi.

Dr. Fatehi's notes show the claimant complained of constant moderate low back pain and severe left leg pain localized in the anterolateral aspect of the left thigh and occasional pain of the left knee and shin areas. The claimant reported that, since the work accident, her leg pain had gradually worsened. Dr. Fatehi's diagnosis included chronic low back pain and a possible left S1 radiculopathy with grade I spondylolisthesis of L5 over S1, peripheral [*5] diabetic neuropathy, and probable left L4 radiculopathy. Dr. Fatehi reported that he explained spondylolysis and listhesis to the claimant, and that he made a special effort to ensure that she understands that her left lower extremity symptoms are most likely caused by a diabetic neuropathy and, in view of the results of the MRI, myelogram and CT scan of the lumbar spine, it is extremely unlikely that her left thigh pain, sensory loss and weakness are compressive in nature. Therefore, she...has two completely different, but overlapping problems, and treatment of each should be considered separately.

On July 25, 1996, Dr. Habeeb reported that he had spoken with Dr. Fatehi, who felt that some of the claimant's symptoms were "coming from the

spondylolisthesis aggravated by the fall but she might have a component of a diabetic neuropathy causing some of the leg symptoms." At the claimant's request, Dr. Habeeb referred her to a neurologist, Dr. Richard I. Wertheimer, for an opinion on the cause of her left leg numbness and pain.

When Dr. Wertheimer examined the claimant on July 26, 1996, and reviewed her x-rays, she told him her back and leg pain began after her fall and she had no such [*6] problem before her injury. Dr. Wertheimer found evidence of a peripheral polyneuropathy and a lumbosacral polyradiculopathy. He noted that he was unable to locate the claimant's myelogram and would withhold judgment regarding her complaints until he could examine it.

The claimant continued to work for the employer after her accident. She testified that in the middle of July 1996, she accepted the employer's proposal that she transfer to another store location, and she chose a store closer to her home. The claimant said she phoned Mark Hale, the new store's manager, and they verbally agreed that she would begin work there on August 5, 1996, after her vacation, starting July 29, 1996, ended.

After speaking with Dr. Wertheimer, Dr. Habeeb reported on August 1, 1996, that the claimant's "leg component is probably made up of a combination of diabetic neuropathy and mild lumbar radiculopathy." Dr. Habeeb did not think back surgery would cure all of the claimant's symptoms and said that, "at this point I think she should consider retirement for her disability. I would place her out of work for retirement consideration."

According to the claimant, she took Dr. Habeeb's recommendation to [*7] the employer's new district manager, "Derrick," on August 1, 1996. She did not inform Hale that she would not be working at his store because she assumed the secretary at her old store would do it.

The claimant testified that Dr. Habeeb did not want her to be on her feet all day or to do any lifting or bending. The claimant's job description required her to tolerate "standing on a non-padded concrete floor for extended durations." She claimed that her job required her to stand for seven to eight hours a day, and although she sat at a desk at the beginning of her work shift to complete paperwork, she denied Bruce Nelson's assertion that she could sit for three hours a day. The claimant said she was required to lift light tires, and Nelson acknowledged that the claimant had to bend over while checking the tread on customer's tires.

On August 26, 1996, Dr. Habeeb wrote a letter saying that "at this point, the claimant needs to be on permanent disability from her current job, and placed out of work on permanent disability from her current job." On September 19, 1996, Dr. Habeeb rated the claimant as having a ten percent impairment of each of three nerve roots or a total of thirty percent [*8] partial impairment of the left leg.

On September 3, 1996, Dr. Wertheimer noted that he had reviewed the claimant's myelogram and found no evidence of nerve root impingement which would explain her symptoms. Dr. Wertheimer said that other causes of her leg pain, diabetes and disease of the hip or sacroiliac joint, should be considered. Dr. Wertheimer recommended a bone scan and pelvic x-ray.

The claimant returned to Dr. Fatehi on September 17, 1996. Dr. Fatehi clarified that he believed her low back and left leg pain were caused by "two different but overlapping problems consisting of 1) trauma which made her preexisting spondylolisthesis symptomatic and caused her radiculopathy, and 2) the peripheral diabetic neuropathy." (Emphasis added.)

On October 25, 1996, Dr. Habeeb responded to an October 3, 1996, questionnaire from the claimant's attorney in which he confirmed that the February 16, 1996, work accident caused the claimant's right shoulder impingement syndrome, low back strain, and lumbar radiculopathy. He also checked a box that said the claimant's L5-S1 spondylolisthesis was "IN PART caused by the work accident of 02/16/96; a pre-existing condition aggravated, exacerbated [*9] or accelerated by the work-related accident of 02/16/96?" Dr. Habeeb said the claimant was totally disabled from all work activities, including her duties as a retail sales manager, beginning August 5, 1996. He wrote "n/a" next to a question about whether the claimant was partially disabled and was able to return to light-duty work. Dr. Habeeb also said he "completely released" the claimant from his work.

Dr. Habeeb also completed an "Attending Physician's Statement" for the insurer in which he listed the claimant's "physical impairment" as "Moderate limitation of functional capacity; capable of clerical/administrative (sedentary) activity (60-70%)." Under the "Prognosis" section, Dr. Habeeb wrote that the claimant was incapable of performing "all" of her job duties, that he did not expect a fundamental or marked change in the future regarding her job or "any other work," and that the claimant would "never" recover sufficiently to perform duties of her job or any other work. Dr. Habeeb said the claimant was not a suitable candidate for further rehabilitation services and that her present job could not be modified to allow her to work with her impairment. Dr. Habeeb concluded the form [*10] by recommending "permanent retirement" for the claimant.

The date on the Commission's copies of this form is not clear but the claimant testified that she believed Dr. Habeeb filled it out in December 1996. She testified that although she picked up the form from Dr. Habeeb and sent it to the carrier, she did not read it and she did not know until the hearing that Dr. Habeeb indicated in the form that she was capable of clerical and administrative activities.

At the hearing, the following exchange took place: Q. (By employer's counsel) When you had Dr. Habeeb fill out this form for CNA, was it your understanding that after he did that, that it was his opinion that you could do some kind of work? A. (Claimant) Yes. What he stated there, that I don't know what it is. Q. Okay. But it says on here (the claimant) is capable of clerical/administrative sedentary activity. Was that your understanding?

A. (Affirmative response).

Dr. Frank G. Burns, Jr., an orthopedic surgeon, performed an independent medical evaluation for the employer on January 27, 1997. After examining the claimant and reviewing her medical records, Dr. Burns concluded that most of the claimant's leg pain was related to her [*11] diabetic peripheral neuropathy and

that any radiculopathy from the fall "would be minimal." He believed the claimant's acute lumbar strain "superimposed on this" was not the "major cause of her problems...." Emphasizing that Dr. Habeeb had followed the claimant more closely, Dr. Burns was unable to determine how much of the claimant's disability was related to her work accident. Dr. Burns thought the "major disability that is preventing her from work is her diabetic peripheral neuropathy, and that the fall, and acute lumbar strain superimposed on her spondylolisthesis, does have a component in this." Dr. Burns said Dr. Habeeb and Dr. Wertheimer were in a better position to determine the percentage of her disability. Nevertheless, Dr. Burns concluded that "from an orthopedic standpoint, and amount of pain she is complaining of now, I do not think she can work."

On August 16, 1996, the claimant filed a claim seeking temporary total disability benefits from May 16, 1996, until May 21, 1996, from June 11, 1996, until June 16, 1996, for July 22, 1996, and from August 1, 1996, and continuing.

The claimant also applied for and received \$5241.89 in short-term disability benefits from the [*12] employer's plan, which requires no contribution from the employees. The plan provides that no disability income will be paid for "any disability compensable under Workers' Compensation or occupational disease law or similar federal or state law." The claimant has also applied for long-term disability benefits from the employer. On an application for disability benefits, the claimant answered "no" to questions asking whether she expected to return to her previous occupation or to any other line of work.

Relying on Dr. Habeeb's opinion that the claimant's disability resulted from a combination of her diabetic neuropathy and the neuropathy caused by her February 16, 1996, fall, and that the February 6, 1996, fall was not the cause of her disability, the Deputy Commissioner held that the claimant proved she was disabled as a result of her February 16, 1996, work accident. The Deputy Commissioner did not find the opinions of Drs. Fatehi, Wertheimer, and Burns inconsistent with Dr. Habeeb's opinion, and held that the "two causes" rule was applicable.

The Deputy Commissioner awarded the claimant temporary total disability benefits from May 16, 1996, until May 21, 1996, from June 11, 1996, [*13] until June 16, 1996, and on July 22, 1996. The Deputy Commissioner concluded that because the claimant was physically unable to perform her pre-injury employment, she did not unjustifiably refuse selective employment offered by the employer on August 5, 1996. However, based on his determination that the claimant was capable of performing sedentary work and failed to reasonably market her residual work capacity, the Deputy Commissioner did not award the claimant temporary total disability benefits from August 1, 1996. The Deputy Commissioner also held that the employer was not entitled to a credit against the Commission's award for payments the employer made to the claimant under its short and long-term disability plans.

We agree with the Deputy Commissioner's decision on causation. The majority of medical evidence does not, as argued by the employer, establish that the claimant's disability is causally related to her diabetic peripheral neuropathy rather than the work injury. Dr. Habeeb believed the claimant's leg pain was caused by "a combination" of her diabetic neuropathy and lumbar radiculopathy. Dr. Fatehi explained that the claimant had "overlapping" problems, one of which [*14] was trauma from the accident that "made her preexisting spondylolisthesis

symptomatic and caused her radiculopathy..." Dr. Wertheimer said that he found no evidence of nerve root impingement and thought other causes of her pain should be considered. Dr. Burns agreed that the claimant's fall and the acute lumbar strain superimposed on her spondylolisthesis were "components" of her disability.

Thus, the evidence shows that the claimant's disability arose from both compensable and non-compensable causes. The "two causes" rule states that when a disability has two causes, one related and one unrelated to the employment, the disability is compensable if the employment-related cause is a contributing factor to the disability. *Bergmann v. L & W Drywall*, 222 Va. 30, 278 S.E.2d 801 (1981). We AFFIRM the Deputy Commissioner's decision that the claimant proved she was disabled as a result of the February 16, 1996, work accident.

We also agree with the Deputy Commissioner's decision that the claimant's award is limited because she did not market her residual skills. The documentary evidence on whether her treating physician, Dr. Habeeb, considered the [*15] claimant totally disabled is inconsistent. While he wrote on October 25, 1996, that the claimant was excused from all work including her preinjury job, he wrote in December that the claimant was "capable of clerical/administrative (sedentary) activity" but also wrote the claimant would never recover sufficiently to perform her pre-injury duties or "any other work." While these inconsistencies are problematic, the claimant testified she knew Dr. Habeeb restricted her from work that required her being on her feet or moving around a lot. The claimant's testimony about her restrictions is consistent with the December form that said she could do clerical or administrative work.

We disagree with the Deputy Commissioner as to when the duty to market arose. At the hearing, the Deputy Commissioner said the duty to market began "at this point," when the claimant obtained the December report from Dr. Habeeb. In his Opinion, the Deputy Commissioner held the duty began on August 2. While there is support in the record for the Deputy Commissioner's decision, in view of Dr. Habeeb's inconsistent responses, we find the duty arose when the claimant received Dr. Habeeb's report in December, 1996.

The [*16] date of this report on the Commission's copy is illegible. the "12" for December can be read but the date can not. The claimant testified she got this report in the "first part of December." For the purposes of this Opinion, we shall use December 13 as the date of the reports. We ask counsel to notify the Commission if this is the incorrect date so that we may amend the award.

We AFFIRM the Deputy Commissioner's opinion that the claimant was justified in refusing to accept the August 5, 1996, offer of selective employment. The claimant did not report to work after she was transferred to another store. This job appears to be the claimant's pre-injury position but at a different store. Dr. Habeeb, in our view, had not released the claimant to do this work and his restrictions are consistent with the duties of the position. The Deputy Commissioner correctly held the claimant did not refuse appropriate selective work.

As to the credit, the evidence showed the claimant received \$5,214.89 in benefits under the employer's short-term disability benefit plan. The Deputy Commissioner denied a credit, relying on two cases more than twenty years old,

Parsons v. Auerbach Assoc., 57 OIC 286 (1976) [*17] and Definbaugh v. Wood, 57 OIC 103 (1977).

The disability plans in Parsons and Definbaugh are different from the short term disability plan here. The disability plans in Parsons and Definbaugh involved plans wherein the employer paid a premium. Definbaugh at 104, Parsons at 289. The plan in Definbaugh did not contain a worker's compensation exclusion. Thus, the payments in Definbaugh and Parsons were considered insurance benefits, not voluntary payments.

Here, this short-term disability plan is entirely paid by the employer and contains an exclusion for "disability compensable under workers' compensation." We find these payments are voluntary payments for which the employer receives a credit under 65.2-520.

The purpose of the Workers' Compensation Act is to compensate injured workers for lost wages, not to enrich them unjustly. Harris v. Diamond Constr. Co., 184 Va. 711, 717, 36, S.E.2d 573, 576 (1946). A review of the Virginia Act clearly discloses the General Assembly's intent that an injured employee not be awarded a double recovery for a compensable injury; equally evident in the Virginia Act is the General Assembly's intent that an employer not be [*18] required to pay twice for an employee's injury. Virginia Int'l Terminals, Inc. v. Moore, 22 Va. App. 396, 470 S.E.2d. 574 (1996), aff'd, ___ Va. ___, 486 S.E.2d. 528 (1997). Section 65.2-520 encourages employers to provide benefits for injured workers by ensuring that: any payments made by the employer to the injured employee during the period of his disability...which by the terms of this title were not due and payable when made, may, subject to the approval of the Commission, be deducted from the amount to be paid as compensation...

The employer is entitled to a credit against its workers' compensation liability in the amount of \$5,214.09. There is no evidence that the employer has paid the claimant long-term disability benefits.

For these reasons, the Deputy Commissioner's Opinion is AFFIRMED in part and MODIFIED in part.

The claimant's June 2, 1997, claim for temporary total disability benefits from May 8, 1997, shall be referred to the hearing docket for an expedited hearing. A W A R D

The Deputy Commissioner's award is AMENDED to provide for payment for temporary total disability in the amount of \$389.68 per [*19] week from August 1, 1996, through December 14, 1996. The employer shall be entitled to a credit for the short-term disability plan payments, as provided above.

From the compensation due, a total fee of \$700.00 shall be deducted and paid to Attorney Karen Rye for legal services rendered the claimant.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days.

4 of 4 DOCUMENTS

SANDRA LENART, Claimant

v.

LEGGETT OF VIRGINIA, Employer;
LUMBERMEN'S MUTUAL CASUALTY COMPANY, Insurer

VWC FILE NO. 173-50-33

Virginia Workers' Compensation Commission

1998 VA Wrk. Comp. LEXIS 4161

January 13, 1998

COUNSEL:

Wesley G. Marshall, Esquire, 604 Westwood Office Park, Fredericksburg, Virginia 22401, for the Claimant; Charles F. Midkiff, Esquire, Chesterman Place, 100 West Franklin Street, Suite 300, Richmond, Virginia 23220, for the Defendants.

JUDGES: COMMISSIONER TARR, COMMISSIONER DIAMOND, AND COMMISSIONER DUDLEY.

OPINIONBY: TARR, Commissioner

OPINION:

[*1] This case is before the Commission on the claimant's request for Review of the Deputy Commissioner's April 10, 1997, decision. The Deputy Commissioner held that the claimant was required to repay overpayments paid by the carrier during the period the claimant received temporary total disability benefits and salary continuation. The Deputy Commissioner set up a repayment schedule and also awarded interest to the carrier. We AFFIRM the Deputy Commissioner's Opinion as to the carrier's right to recoup overpayments but REVERSE his decisions mandating a repayment schedule and awarding interest. Sandra Lenart was employed as an area sales manager for Leggett, having been a manager for about fourteen years. On February 13, 1995, she fractured her leg when she missed the last step while descending a ladder. The claimant was totally disabled through June 4, 1995, after which she returned to work earning at least her pre-injury wage.

From February 14, 1995, through June 4, 1995, the claimant received her full salary from Leggett and temporary total disability benefits from the carrier. The claimant, by counsel, filed a claim on September 27, 1995, in which she left blank the part of the form [*2] that asked whether compensation was paid and wrote "not applicable" to the question when she returned to work. On February 8, 1996, the Commission entered an award Order after an endorsed Memorandum of Agreement and Agreed Statement of Fact were submitted. On March 5, 1997, the employer filed the present Application for Hearing seeking suspension of benefits for "Failure to notify of change in earnings - claimant received salary continuation while also receiving temporary total disability benefits." The employer and carrier also sought a determination that the claimant failed to report earnings while under an award and that they are entitled to a credit. On September 18, 1996, the employer and carrier also asked for a determination whether it was entitled to reimbursement from the claimant.

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After several continuances, the case was heard on January 22, 1997. The claimant and Anthony Spence, the carrier's claims representative, testified. The Deputy Commissioner concluded the hearing after Spence's cross examination and determined from the bench that the claimant was obligated to make repayment. Claimant's counsel objected because he wanted to call the claimant's friend, Joan Russell, [*3] and the claimant's husband. The Deputy Commissioner granted both sides fourteen days to submit proffers. Neither party did so. The record closed and the Deputy Commissioner issued his written Opinion on April 10, 1997.

The evidence established that the claimant continued to receive her regular salary from Leggett's after her injury. On or about February 27, 1995, the carrier voluntarily issued claimant's first compensation check. In March 1995, the claimant phoned Shelly Sullivan, Leggett's Human Resources Manager, and told her she had received two or three checks from workers' compensation. The claimant testified she told Sullivan she knew she was not supposed to receive double payment. Sullivan did not know what to tell the claimant and told her she would call her back.

The claimant testified that about one week later, Sullivan returned her call and told the claimant to "just bring the checks in." Claimant told Sullivan that the claimant's husband would bring the checks to Leggett in a day or so. Neither the claimant nor her husband ever returned the checks, nor did they tell Sullivan that they would not be returning the checks.

The claimant also testified that she had three conversations [*4] with Anthony Spence, the carrier's claims representative. Spence testified that he only had one conversation with the claimant. According to the claimant, the first conversation occurred a few days after the claimant was released from the hospital when Spence wanted to take her recorded statement. Spence testified that he learned on February 16, 1995, that the claimant was still hospitalized and never spoke with her that day.

Spence and the claimant agree that on February 24, 1995, Spence took the claimant's recorded statement. The claimant testified that she had a third conversation with Spence on the same day that Sullivan told her to bring the workers' compensation checks to Leggett. According to the claimant, she called Spence and told him that she was receiving disability checks and her salary. The claimant testified that Spence told her this was not a problem and that she could do whatever she wanted with the checks. The claimant did not have any notes from her conversation with Spence. She said Joan Russell, her friend, was in the room with her when she spoke with Spence and overheard the claimant's part of the conversation.

Spence testified that he did not learn of the claimant's [*5] double payment until August 12, 1995, and denied ever telling the claimant that she could keep her salary and disability checks.

On cross examination, Spence said that he documents every phone conversation, noting the date, person with whom he spoke and a brief description of the conversation. These notes are then transferred to a computerized file. Spence's computerized note dated February 27, 1995, said: "clmt contact was established 2/24/95. . ." His March 6, 1995, note summarized the claimant's account of her accident that was given to him on February 24, 1995. Spence's testimony that he did not learn until August 9, 1995, that the claimant received salary and

disability benefits was supported by the carrier's August 9, 1995, computer notes, and by his August 16, 1995, notes that show he called the claimant on August 16, 1995, to request reimbursement.

In his April 10, 1997, Opinion, the Deputy Commissioner found that the claimant's receipt of salary when she also received disability benefits was an "increase in earnings" under Code 65.2-712 by which she was obligated by that statute to inform the carrier. The Deputy Commissioner rejected the claimant's arguments that the employer [*6] and the carrier were not entitled to relief because the overpayment was caused by a unilateral mistake of fact or that the defendants waived any right to recoupment by agreeing to the Commission's February 8, 1996, award. Relying on *Collins v. Department of Alcoholic Beverage Control*, 21 Va. App. 671, 467 S.E.2d. 279 (1996), *aff'd* 22 Va. App. 625, 472 S.E.2d. 287 (1996), *en banc*, the Deputy Commissioner held that the Commission had authority to do full and complete justice and ordered the claimant to repay the overpayment of \$6888.66 over a thirty-six month period.

The Deputy Commissioner also held the claimant was required to pay \$372.93 in interest. The interest was added for the following periods: June 5, 1995 (the day after the last payment was made) through August 12, 1995 (the date the Spence became aware of the double recovery; March 5, 1996 (the date the employer's application was filed) through June 12, 1996 (when the case was continued at the employer's request); July 2, 1996 (when a hearing was set) through August 13, 1996 (when the Commission continued the case because of a discovery [*7] dispute); September 9, 1996 (when a hearing was again set) through November 20, 1996 (when the case was continued for a third time at the defendants' request); and December 5, 1996 (when a hearing was again set) through February 6, 1997 (when the record closed).

We do not decide whether the claimant's receipt of salary constituted an increase in earnings, triggering the disclosure requirement in Code 65.2-712 because we find the claimant is obligated to make recoupment for a more fundamental reason.

In *Moore v. Prince William County Circuit Court*, Record No. 3113-96-4, April 22, 1997, (unpublished), the Court of Appeals restated the basic principle: 'The purpose of the Workers' Compensation Act is to compensate injured workers for lost wages, not to enrich them unjustly.' The General Assembly has granted 'the Commission the power and authority not only to make and enforce its awards, but protect itself and its awards from fraud, imposition and mistake. Citing *Collins v. Dept. of Alcoholic Bev. Con.*, 21 Va. App. 673, 678, 467 S.E.2d. 279, 282 (1996).'

In *Moore*, the claimant received full wages and temporary partial disability benefits. The [*8] Commission held that "the receipt of benefits while receiving full salary was a mutual mistake resulting in a double recovery and unjust enrichment" and awarded the employer credit for the overpayments. The Court of Appeals, one member dissenting, affirmed the Commission. The Court held: In this case, the record established that the parties made a significant mutual mistake of fact in paying compensation benefits to Moore pursuant to their executed agreements. Although we find that the record supports the Commission's finding of a mutual mistake of fact, we point out that in *Collins* we recognized that 'it is immaterial whether a mistake of fact is mutual or unilateral;' *Harris v. Diamond Constr. Co.*, 184 Va. 711, 720, 36 S.E.2d. 573,

577, (1946), holds that the commission has the implied power to 'do full and complete justice in each case' including the power to vacate awards entered by mistake. To determine whether a mutual mistake occurred, we inquire 'whether each party held the same mistake and belief with respect to material of fact at the time . . . the payments were made and received.'

The Court went on to hold: In this case, employer [*9] and Trigon acted under the mistaken belief that Moore was receiving payment from only one source, and Moore acted under the mistake and belief that she was entitled to receive her full wage and temporary partial disability benefits simultaneously during the time period from March 9, 1995 through June 21, 1995. The mistake was mutual. As we stated in Collins, 'within the principles established by statutes and the Supreme Court's decisions, the Commission has jurisdiction to do full and complete justice in each case.' Justice is not obtained by failing to correct obvious mistakes or declining to place the parties in positions which are in accordance with the Act. Citations omitted.

In a more recent case, the Court restated this principle: A review of the Virginia Act clearly discloses the General Assembly's intent that an injured employee not be awarded a double recovery for a compensable injury; equally evident in the Virginia Act is the General Assembly's intent that an employer not be required to pay twice for an employee's injury." Virginia Intern. Terminals, Inc. v. Moore, 22 Va. App. 396, 470 S.E.2d 574 (1996), rev'd on other grounds Moore [*10] v. Virginia Intern. Terminals, Inc. ____ Va. ____, 486 S.E.2d. (528) 1997.

Here, the claimant received double payment for her injury, knew that the payments were improper, told the employer she was returning the compensation payments and failed to do so. We disagree with the claimant's argument that the Commission is powerless to prevent such unjust enrichment.

The Commission may order repayment, through incremental deductions, of an overpayment against ongoing payments. Such authority is inherent in our ability to do "full and complete justice." Collins v. Department of Alcoholic Beverage Control, 21 Va. App. at 677-81, 467 S.E.2d at 282-83. We do not believe the Commission has the authority to order repayment of the overpayment through a Commission-imposed repayment plan when, as here, the claimant is not receiving benefits under an award. Indeed, the statute relied on by the employer in arguing that the claimant had an increase in earnings, 65.2-712, does not authorize a repayment plan.

We as did the Deputy Commissioner find that the claimant was overpaid \$6,688.66. While we are not aware of any authority that [*11] authorizes the Commission to establish a repayment plan, certainly the parties voluntarily can agree to one. If not, since 65.2-710 provides that orders or awards of the Commission may be recorded, enforced and satisfied, as orders or decrees of the Civil Court, the employer may enforce the overpayment by a civil action in the event the parties can not voluntarily agree to a method for repayment.

We also do not agree with the Deputy Commissioner's decision that the employer and carrier are entitled to interest. The employer is correct that the claimant would have to pay judgment interest, and possibly prejudgment interest, if this matter was adjudicated in a Circuit Court. Notwithstanding this, absent clear statutory authority, the Commission does not have the authority to award

interest. For example, the Commission could not award interest on its awards until 65.2-707 was enacted. Even the code section that the employer argues controls, 65.2-712, does not provide for interest.

Finally, we find the Deputy Commissioner did not commit reversible error when he stopped the hearing after Spence's cross examination. While a Deputy Commissioner is obligated to accept all relevant and [*12] material evidence, he corrected his mistake by permitting the parties to submit proffers.

The evidence that the claimant now seeks to introduce is of questionable materiality. Although the claimant argues on Review that Russell "was in a key position to either affirm or deny the contents of Spence's advise to the claimant," any testimony by Russell would have been inadmissible hearsay. The claimant admitted at the hearing that witness Russell did not hear Spence's comments.

According to the claimant, her husband would have been expected to testify about the Lenarts' detrimental reliance upon Spence's representations. The claimant had the opportunity to testify on this issue. The husband's alleged detrimental reliance is irrelevant. More importantly, the Deputy Commissioner permitted the claimant to submit a written proffer of this testimony. She elected not to make the proffer and has offered no explanation for her failure to do so. There is no merit to the claimant's argument that she was not permitted to present "relevant and material evidence." For these reasons, the Deputy Commissioner's Opinion is AFFIRMED in part and REVERSED in part.

On May 20, 1997, the claimant filed a claim [*13] for permanent and partial disability benefits for the 20 percent permanent loss to her right leg. That claim shall be referred to the Commission claims examination department for processing.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days.

2 of 2 DOCUMENTS

DONALD F. COLLINS v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
et al.

Record No. 1053-94-1

COURT OF APPEALS OF VIRGINIA

21 Va. App. 671; 467 S.E.2d 279; 1996 Va. App. LEXIS 128

February 20, 1996, Decided

SUBSEQUENT HISTORY:

Petition for Rehearing En Banc Granted March 22, 1996, Reported at: 1996 Va. App. LEXIS 239. Upon Rehearing En Banc June 25, 1996, Reported at: 1996 Va. App. LEXIS 442.

PRIOR HISTORY:

[**1] FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION.

DISPOSITION:

Affirmed.

COUNSEL:

Karen M. Rye for appellant.

W. Mark Dunn, Assistant Attorney General (James S. Gilmore, III, Attorney General; Gregory E. Lucyk, Senior Assistant Attorney General, on brief), for appellees.

JUDGES:

Present: Judges Baker, Benton and Senior Judge Hodges. OPINION BY JUDGE JOSEPH E. BAKER. BENTON, J., dissenting.

OPINION BY:

JOSEPH E. BAKER

OPINION:

[*673] [**280] OPINION BY JUDGE JOSEPH E. BAKER

In this appeal from a decision of the Workers' Compensation Commission (commission), Donald F. Collins (claimant) contends that the commission erroneously permitted the Department of Alcohol Beverage Control and its insurance carrier (jointly referred to herein as employer) to recoup the overpayment of compensation benefits paid to claimant pursuant to an award. The commission found that because the calculation of

claimant's average weekly wage had been based upon inaccurate information resulting in an erroneous award, "there has been a mutual mistake that entitled the employer to recoup the overpayment." Claimant asserts that the evidence does not support a finding of mutual mistake of fact and that Code §§ 65.2-708 and -712 prohibit retrospective [**2] recoupment of monies paid under an open award. For the reasons that follow, we affirm.

The material facts are not in dispute. Claimant sustained a compensable injury by accident on August 5, 1992, at which time his disability was accepted by employer as compensable. Initially, employer's insurance adjuster had difficulty obtaining a wage chart from employer. She requested that claimant [*674] provide her with his last eight pay stubs to enable her to calculate his average weekly wage. The adjuster took this action in order to alleviate claimant's concerns that he would have no money to buy Christmas gifts or pay his bills.

Using the eight pay stubs as a basis, the adjuster calculated claimant's average weekly wage to be \$534.24. If that sum were accurate, claimant would have been entitled to an award of \$356.17 weekly benefits. The adjuster prepared a memorandum of agreement that was executed by the parties and presented to the commission for approval. The agreement certified that claimant's pre-injury average weekly wage was \$534.24. On January 11, 1993, the commission entered an award approving the agreement. The award was not in accord with Code § 65.2-101 because it was based [**3] upon sums in excess of claimant's average weekly wage.

On February 23, 1993, employer forwarded to the adjuster a wage earning chart covering the period from July 1, 1991 to July 30, 1992. That chart disclosed that claimant's average weekly wage was \$210.64 instead of \$534.24, which had been calculated from the eight pay stubs. Based upon an average weekly wage of \$210, claimant's weekly compensation benefits should have been \$140.43 instead of \$356.17. Compensation has been paid through August 1, 1993 in an amount

equal to the award.

n1 That is the period beginning one week prior to claimant's injury, as required by Code § 65.2-101.

Employer filed a form entitled "Application for Hearing" and requested that the award be vacated. Employer also sought permission to recoup its overpayments by off-setting credits against future benefits it would be required to pay claimant.

The foregoing evidence was presented to a deputy commissioner, who found as follows:

A review of the evidence leads us to conclude [***4] that the significant difference between the average weekly wage reflected on the Memorandum of Agreement and the actual [*675] average weekly wage constitutes imposition. Furthermore, we find under these circumstances that the employer is entitled to a credit for overpayment made for excess compensation benefits and penalties in the amount of \$8,629.60. There is no dispute concerning the claimant's average weekly wage at the time of the injury but rather only as to whether or not the Award should be adjusted [**281] and the credit granted. We find they should.

The commission affirmed the finding that employer was entitled to credit for the overpayment but based its conclusion on mutual mistake of fact, not imposition, and said:

The Commission clearly has authority to amend an average weekly wage which results from fraud, imposition or mutual mistake. In this case, there has been a mutual mistake as to the claimant's average weekly wage, and the employer is entitled to recoup the overpayment. The Opinion appealed from is AFFIRMED with the MODIFICATION that \$60.00 per week shall be deducted until the overpayment is recovered.

As applicable to the case before us, "average weekly wage" means [***5] the total earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two. *John Driggs Co. v. Somers*, 228 Va. 729, 732, 324 S.E.2d 694, 696 (1985); Code § 65.2-101(1)(a). If the average weekly wage is miscalculated and the employer voluntarily has paid the claimant sums that were not due, the employer may recoup the sums by credits or a shortened period of time for which compensation must be paid, subject to the approval of the commission. Code § 65.2-520. n2 Here, the claim had advanced to a stage beyond the [*676] provisions of

that code section. An award based upon an agreed memorandum had been made by the commission, and the overpayment was made pursuant to that award, not voluntarily.

n2 Code § 65.2-520. Voluntary payment by employer.—Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made, may, subject to the approval of the Commission, be deducted from the amount to be paid as compensation provided that, in the case of disability, such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

See *National Linen Serv. v. McGuinn*, 5 Va. App. 265, 362 S.E.2d 187 (1987).

[***6]

Claimant argues that if employer's application for a hearing was based upon a change in condition pursuant to the provisions of Code § 65.2-708, he cannot recoup the overpayment made prior to filing his application, as relief granted pursuant to a change in condition may be prospective only. See *Bristol Door & Lumber Co. v. Hinkle*, 157 Va. 474, 161 S.E. 902 (1932). Employer contends that its application for a hearing was not premised upon Code § 65.2-708, but, instead, was based upon the doctrine of imposition established not by statute but rather by the courts. See *Somers*, 228 Va. at 735, 324 S.E.2d at 697; *Harris v. Diamond Constr. Co.*, 184 Va. 711, 36 S.E.2d 573 (1946); *Avon Prods, Inc. v. Ross*, 14 Va. App. 1, 415 S.E.2d 225 (1992).

Claimant concedes that, in appropriate cases, the doctrine of imposition may be applied. Claimant argues, however, that the commission did not base its decision upon the doctrine of imposition but, instead, erroneously ordered recoupment based upon mutual mistake of fact. Claimant argues that the record does not support a finding of mutual mistake of fact and that the provisions of Code §§ 65.2-500, -707, and -712 do not permit retrospective [***7] credits for overpayment made pursuant to an award.

Employer asserts that these code sections do not bar recoupment. Employer concedes that if its application for a hearing were premised upon change in condition provided for by Code § 65.2-708, it could only recover prospectively. See *Hinkle*, 157 Va. 474, 161 S.E. 902. Employer argues, however, that it requested that the January 11, 1992 award be vacated upon principles of imposition. In support thereof, [*677] employer con-

21 Va. App. 671, *677; 467 S.E.2d 279, **281;
1996 Va. App. LEXIS 128, ***7

tends that the deputy commissioner was correct in applying the doctrine of imposition and that neither Code §§ 65.2-500, -708, nor -712 bar its request. Employer also contends that nothing in Code §§ 65.2-500 or -712 prohibits an employer from recouping by credits or prohibits the use of the imposition principle.

Claimant concedes that employer is entitled to relief but contends that credits should be allowed only on overpayments made after employer's application for a hearing was filed; that is, prospectively. Claimant bases [**282] this contention upon the prohibitions contained in Code §§ 65.2-520, n3-708, and -712.

n3 Code § 65.2-520 concerns only payments made voluntarily and is not involved in this case.

[***8]

Nothing in this record shows that employer's application for a hearing was based upon the change in condition provisions contained in Code § 65.2-708. That code section is not controlling. Of the statutes relied upon by claimant to limit the payments, only Code § 65.2-712 contains language that arguably is relevant. In pertinent part, that code section provides:

Any payment to a claimant by an employer or insurer which is later determined by the Commission to have been procured by the employee by fraud, misrepresentation, or failure to report any incarceration, return to employment or increase in earnings may be recovered from the claimant by the employer or insurer either by way of credit against future compensation payments due the claimant, or by action at law against the claimant.

We now turn to claimant's substantive argument that the commission is not authorized to order recoupment by credits against future payments for overpayment made pursuant to an award and prior to employer filing its application for hearing, whether by applying either Code § 65.2-712 or the doctrine of imposition.

"The general principle that statutes should be given a prospective rather than [***9] a retrospective construction has been [*678] given statutory approval in Code § 1-16." *Brushy Ridge Coal Co. v. Blevins*, 6 Va. App. 73, 79, 367 S.E.2d 204, 207 (1988).

Retrospective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest; but the legislature may, in its discretion, pass retrospective and curative laws provided they do not partake of the nature of what are technically called *ex post facto* laws, and do not impair the obligation of contracts, or disturb vested rights; and provided, further, they are of such nature as the legislature might

have passed in the first instance to act prospectively.

Id.

We have been cited no authority, and have found none, that permits the commission to use the imposition doctrine to override the clear provisions of a workers' compensation statute. Claimant argues that except as provided in Code §§ 65.2-500, -708, -712, -1105, and -1205, the commission has no authority to "deprive the claimant of compensation already paid pursuant to an award."

We have examined the workers' compensation code sections that provide relief to claimants and employers alike [***10] and find no specific statute that authorizes the commission to grant retrospective relief to an employer when it files a motion to vacate the commission's order that has been entered pursuant to the memorandum of agreement submitted jointly by claimant and employer.

In *Harris v. Diamond Constr. Co.*, 184 Va. 711, 717, 36 S.E.2d 573, 576 (1946), the Supreme Court asked: "Has [the commission] the implied authority to do so?" In answering that question in the affirmative, the commission noted that "the purpose of the Workers' Compensation Act is to compensate injured workers for lost wages, not to enrich them unjustly." We agree with that principle. Harris teaches us that the commission's power to act upon a motion to vacate an award mistakenly entered is not limited to specific code provisions:

[*679] The Virginia Workmen's Compensation Act contains no express provision authorizing the Commission to entertain such a petition. Has it the implied authority to do so?

Some courts take the view that the judicial functions of tribunals of this character are limited by the express terms of the act, and that they have no implied powers beyond those expressly granted them by the legislature. [***11] Consequently, these courts hold that an award procured through fraud or mistake can not be vacated in a proceeding before the commission, but that the parties must resort to a court of equity in an independent suit for relief.

On the other hand, the highest court of Indiana, whose opinions in workmen's compensation [**283] cases are "peculiarly persuasive" with us, holds that the Industrial Board has the implied power, upon an application seasonably made, to vacate an award procured through fraud or mistake even after the lapse of the period for an application for review. n4 [See *Homan v. Belleville Lumber & Supply Co.*, 104 Ind. App. 96, 8 N.E.2d 127 (1937)]. n5

n4 "The holding of the Indiana court is peculiarly persuasive with us because the Virginia act is based upon that of Indiana." *Basham v. Lowe, Inc.*, 176 Va. 485, 494, 11 S.E.2d 638, 642, 131 A.L.R. 761, and cases there cited."

n5 See also *Butts v. Montague Bros.*, 208 N.C. 186, 188, 179 S.E. 799, 801 (1935); *In re Crawford*, 205 S.C. 72, 30 S.E.2d 841, 850 (1944).

[***12]

We agree with the reasoning of the Indiana court which strikes us as the more liberal view and the one more nearly in harmony with the purposes of the Workmen's Compensation Law of our State.

It seems to us that when the General Assembly established the Industrial Commission for the summary disposition of cases arising out of industrial accidents, it intended that that tribunal should have jurisdiction to do full and complete justice in each case. It granted to the Commission the power and authority not only to make and enforce [*680] its awards, but protect itself and its awards from fraud, imposition and mistake.

It does not appeal to us as being either logical, reasonable, or within the spirit of the Act to say that the Commission has the jurisdiction and authority to hear summarily claims for compensation, to make awards thereon, to enforce them, and yet when it develops that an award has been procured through fraud or mistake the aggrieved party, in order to get relief, must resort to an independent suit in equity—with its possible problems of venue and jurisdiction of the parties, incidental expense, delays, and right of appeal—and then, if successful in [***13] that proceeding, he must return to the Commission for a hearing of his claim on the merits.

On the contrary, it seems far more consonant with the spirit and purposes of the Act to say that the General Assembly intended that the same tribunal which was empowered to hear in a summary manner claims for compensation, was likewise authorized and empowered to determine in a similar manner whether one of its awards should be vacated and set aside on the ground that it had been procured through fraud or mistake.

Accordingly, we hold that the Industrial Commission has the implied power, incidental to those expressly granted, to entertain and hear an application, seasonably presented, to vacate and set aside an award procured through fraud or mistake.

Id. at 717-18, 720-21, 36 S.E.2d at 576, 577-78 (emphasis added) (citations omitted).

phasis added) (citations omitted).

In the case before this Court, employer advances no claim of fraud or collusion. The parties simply made a substantial mistake in computing claimant's average weekly wage necessary to determine claimant's award. It is immaterial whether the mistake of fact is mutual or unilateral; Harris holds that the commission has the implied power to [***14] "do full and complete justice in each case," including the power to vacate awards entered by mistake.

[*681] Nonetheless, the facts show that a mutual mistake of fact was made in this case. In determining whether a mutual mistake of fact existed at the time of the agreement, the inquiry is not, as the dissent suggests, who initially made the mistake, but rather, whether each party held the same mistaken belief with respect to a material fact at the time the agreement was executed. See *Seaboard Ice Co. v. Lee*, 199 Va. 243, 99 S.E.2d 721 (1957). In this case, each party went forward under the mistaken belief that the average weekly wage set forth in the agreement was correct, when, in fact, it was not. The mistake was mutual.

Within the principles established by statutes and the Supreme Court decisions, the commission has "jurisdiction to do full and complete justice in each case." *Avon Prods, Inc.*, 14 Va. App. at 7, 415 S.E.2d at 228 (quoting *Harris*, 184 Va. at 720, 36 S.E.2d at 577). Justice is not attained by failing to correct obvious mistakes or declining to place the parties in positions which are [***284] in accord with the Act. Because the Act empowers the commission with [***15] "jurisdiction to do full and complete justice in each case," *Somers*, 228 Va. at 734, 324 S.E.2d at 697, we affirm the decision of the commission.

Accordingly, we affirm the commission's action vacating its prior order and directing recoupment of the benefits erroneously paid to claimant.

Affirmed.

DISSENTBY:
BENTON

DISSENT:
BENTON, J., dissenting.

I agree with the commission's statement that it "clearly has authority to amend an average weekly wage which results from fraud, imposition or mutual mistake." I disagree with the majority's holding that "it is immaterial whether the mistake of fact is classified as mutual or unilateral." In holding that the commission

21 Va. App. 671, *681; 467 S.E.2d 279, **284;
1996 Va. App. LEXIS 128, ***15

had implied authority to protect itself and its awards by setting aside an award based upon evidence of fraud, mistake, or imposition, the Supreme Court in *Harris v. Diamond Construction Co.*, 184 Va. 711, 720-21, 36 S.E.2d 573, 577 (1946), had no reason to elaborate upon the [*682] type of mistake required to invoke that remedy. That decision turned upon an analysis of whether imposition existed. See *id.* at 722, 36 S.E.2d at 578. However, in several later cases, the Court has discussed the type of mistakes necessary [***16] to obtain relief.

Specifically referring to its decision in *Harris*, the Supreme Court stated as follows:

The decision in *Harris v. Diamond Const. Co.*, ... is a holding to the effect that the Industrial Commission is clothed with the same power to annul and vacate an award formerly entered that a court of equity has to annul and vacate a judgment or to annul and cancel a deed when the attack is based on fraud, imposition or mistake. The rules of pleading in the two forums are different but are appropriate to the historical background of each. The dominant purpose of all pleading is to inform the other parties to the cause of the precise nature of the charge in order that they may prepare and present their defense. However, when questions of fraud or mistake are involved in either forum, the burden of proof and the character of evidence required to establish the charge should be, and are, the same in each forum, except that hearsay testimony may be admitted and considered by the Industrial Commission.

Ashby v. Red Jacket Coal Corp., 185 Va. 202, 206-07, 38 S.E.2d 436, 438 (1946). Any doubt that this rule requires the mistake be a mutual mistake of fact [***17] is dispelled by *J & D Masonry v. Kornegay*, 224 Va. 292, 295 S.E.2d 887 (1982). The Court ruled in that case as follows:

In the exercise of its power to set aside a final award upon the ground of fraud or mistake, the Commission applies the same rules applicable to a proceeding in equity to annul a final judgment at law. In order to prevail, the moving party must prove the allegations upon which he seeks relief by positive and direct evidence which is clear and convincing.

The central question here is whether the Commission erred in finding that the carrier failed to carry the requisite [*683] burden and to prove fraud or mutual mistake of fact. We think the Commission was correct.

At the most, the evidence proves merely a unilateral mistake of fact by the carrier unaccompanied by any fraud attributable to the claimant. Under such circumstances, relief will not be granted.

Id. at 295, 295 S.E.2d at 889 (emphasis added) (citations omitted). See also *Foreman v. Clement*, 139 Va. 70, 80-81, 123 S.E. 336, 339 (1924) (in the absence of fraud, to obtain relief in equity the evidence must establish that the mistake of fact was mutual); *Hartford Fire [***18] Ins. Co. v. Tucker*, 3 Va. App. 116, 121, 348 S.E.2d 416, 419 (1986) (citing *Harris* for the proposition that a mutual mistake of fact is required to vacate an award). Thus, the commission correctly determined that its power to amend the award for mistake required a showing of a mutual mistake of fact.

As stated in the majority opinion, the material facts in this case are not in dispute. However, this appeal comes to this Court for review of the commission's finding that a mutual mistake occurred. That finding is not supported by the record. Indeed, the employer does not argue on this appeal that the facts support the commission's finding of a mutual mistake. The employer asserts on brief that "the focus [of this appeal] is more appropriately directed to the imposition involved as noted by the deputy commissioner" and that "the analysis should center on the [**285] actual imposition." In view of the employer's tacit concession and the undisputed material facts, an exhaustive analysis is not necessary to demonstrate that the evidence failed to establish that a mutual mistake of fact occurred.

The record establishes that the employer's insurance adjuster requested that Collins provide [***19] his pay stubs and made the calculation without relying on any representation by Collins. The adjuster admitted that her miscalculation formed the basis of the award. She testified as follows:

I asked [Collins] if he saved his pay stubs, and requested copies of such. In order to issue payment for Mr. Collins, I [*684] then took the hours from each of the 8 weeks and averaged them to get a basis from which to issue his checks. In order to provide Mr. Collins with money as quickly as possible, I determined his average weekly wage to be \$534.24, with a compensation rate of \$356.17 In hindsight, I realize that I should not have turned in that original Memorandum of Agreement as the compensation rate was based on incomplete information.

The facts do not prove, and the employer does not allege, that Collins committed fraud. In computing Collins' average weekly wage, the adjuster did not use the employer's data and made a unilateral mistake.

The principle is well established that whenever "there is mistake on the part of [only] one party" ... the mistake is unilateral." *Ward v. Ward*, 239 Va. 1, 5, 387 S.E.2d 460, 462 (1990) (citation omitted). The

record is clear [***20] that the mistake was made by the employer's adjuster, not by Collins. Thus, the mistake was unilateral. *Id.* See also *Fox-Sadler Co. v. Earl E. Norris Roofing Co.*, 229 Va. 106, 110, 327 S.E.2d 95, 97 (1985). Collins did nothing to aid or induce that mistake. "This is simply a case of inadequate, incomplete, and deficient investigation by the carrier." *Kornegay*, 224 Va. at 296, 295 S.E.2d at 889.

A mutual mistake is one that is common to both parties to a transaction. *Seaboard Ice Co. v. Lee*, 199 Va. 243, 252, 99 S.E.2d 721, 727 (1957). "A mistake by one party coupled with ignorance thereof by the other party does not constitute a mutual mistake." 76 C.J.S. *Reformation of Instruments* § 29, at 382 (1994). Because the record does not prove a mutual mistake of fact, I would reverse the commission's decision.

The commission failed to address the deputy commissioner's ruling "that the significant difference between the average weekly wage reflected on the Memorandum of Agreement and the actual weekly wage constitutes imposition." However, the evidence does not prove that Collins' actions caused an imposition upon the employer or the commission. Although our equity case [***21] law has long addressed the concept of "imposition," [*685] see, e.g., *Fitzgerald v. Frankel*, 109 Va. 603, 610, 64 S.E. 941, 943-44 (1909), the Virginia cases do not explicitly define this term. The dictionary defines "imposition" as "an excessive, unwarranted, or uncalled-for requirement or burden." *Webster's Third New International Dictionary* 1136 (1981). *Accord Frankini v. Bank of America Nat. Trust & Savings Ass'n*, 31 Cal. App. 2d 666, 88 P.2d 790, 795 (Cal. Dist. Ct. App. 1939).

The Supreme Court acknowledged the lack of an explicit definition when it observed as follows:

Heretofore, we have said very little about the meaning of the word "imposition" as a basis for setting aside or amending an award or agreement. Nevertheless, in *Harris* we acknowledged the existence of this concept. In considering the meaning of "imposition," we must do so against the backdrop of *Harris*, where the term was used, and where we also stated that the Act grants the Commission "jurisdiction to do full and complete justice in each case."

John Driggs Co. v. Somers, 228 Va. 729, 734, 324 S.E.2d 694, 697 (1985)(citation omitted). Without giving the term a definition, the *Somers* Court held [***22] that impositions occurred under the following particular facts:

In our view, the carrier's deviation from the requirements of Code § 65.1-6 worked an imposition upon

Somers. The carrier, which works frequently with claims under the Act, undoubtedly had knowledge of the Act superior to that possessed by *Somers*. At the time the agreement was handed to him, *Somers* was injured, out of work, and receiving no compensation. The agreement [***286] presented him with an apparently simple means of getting a flow of money at a time he needed it. The carrier had the upper hand. It had superior knowledge, and it had the power either to turn over money immediately to an injured man or to "fight" with him about the proper amount and thereby delay the first compensation check. The carrier did not tell *Somers* how the average weekly wage figure was to be computed nor did it consult with him about the possible methods of calculation. Finally, of the several possible methods of [*686] calculation, the carrier settled upon one which resulted in a lower compensation award to *Somers* than he would have received had other methods been used. Under these facts, we conclude that the carrier's conduct constituted an imposition [***23] upon the claimant.

Moreover, we also conclude that the carrier's failure to abide by Code § 65.1-6 constituted an imposition upon the Commission. The Workers' Compensation Act is in the nature of a compromise between employers and employees; each surrenders certain rights to gain certain rights. An essential element of this compromise is the employer's obligation to pay for compensable injuries at a rate contemplated by the Act. When the average weekly wage embodied in a memorandum of agreement substantially deviates from the statutory guidelines, the balance struck by the Act's compromises is disrupted. The Commission has the power and authority to right this imbalance and thereby protect itself and its award from such imposition.

Id. at 734-35, 324 S.E.2d at 697-98 (citations omitted).

Although the deputy commissioner found that an imposition occurred in this case, the commission did not affirm that finding. Instead, it found, erroneously, that a mutual mistake of fact occurred. In light of the Court's discussion of imposition in *Somers*, the adjuster's unilateral mistake does not constitute an imposition. The mistake did not harm Collins or the commission; [***24] it worked a detriment only upon the entity that made the mistake — the insurer.

Moreover, even if this unilateral mistake is deemed to be an imposition on the commission, the commission's implied power to set aside an award does not necessarily include the power to order the recoupment of any overpayment by the employer. The Court in *Somers* held that the commission had the power to amend the award; however, nothing in *Somers* suggests that the employer has the right to recoup overpayments. Likewise, the holding

21 Va. App. 671, *686; 467 S.E.2d 279, **286;
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in Harris does not suggest that the [*687] commission has the power to award a recoupment. Indeed, several statutes suggest that the power to order recoupment must be specifically granted. See, e.g., Code §§ 65.2-712 and 65.2-1105. n6

n6 Code § 65.2-712 provides: "So long as an employee receives payment of compensation under this title, such employee shall have a duty immediately to disclose to the employer, when the employer is self-insured, or insurer in all other cases; any incarceration, return to employment or increase in his earnings. Any payment to a claimant by an employer or insurer which is later determined by the Commission to have been procured by the employee by fraud, misrepresentation, or failure to report any incarceration, return to employment or increase in earnings may be recovered from the claimant by the employer or insurer either by way of credit against future compensation payments due the claimant, or by action at law against the claimant."

Code § 65.2-1105 provides: "Any payment

to the employer or carrier pursuant to this chapter which is later determined by the Commission to have been procured through fraud, mistake or the improper processing of the claim by the carrier shall be recovered from the employer or carrier and credited to the Second Injury Fund. Any subrogation recoveries or other recoveries from a third party or other source shall be shared by the employer or carrier and the Second Injury Fund on a pro rata basis after deducting all reasonable expenses in obtaining the recovery."

[***25]

Under the Act, an employer's obligation to pay compensation benefits may be suspended or terminated by the commission upon a proper application. See, e.g., Code § 65.2-708. However, unless otherwise provided by statute, the employer's relief is prospective only. See *Specialty Auto Body v. Cook*, 14 Va. App. 327, 416 S.E.2d 233 (1992).

For these reasons, I would reverse the commission's award.

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA EGGLESTON,

Claimant

v.

V.W.C. File Nos. 143-94-79
149-63-96
162-62-45

VIRGINIA WORKERS
COMPENSATION COMMISSION

MAY 19 '00

CHARGE # 15

E. I. DU PONT DE NEMOURS & COMPANY,

Employer and Self-Insured.

EMPLOYER'S REPLY TO CLAIMANT'S RULE 3.2
WRITTEN STATEMENT IN SUPPORT OF REQUEST FOR REVIEW

The employer and self insurer, E.I. du Pont de Nemours & Company ("DuPont"), by counsel, pursuant to Rule 3.2 of the Rules of the Workers' Compensation Commission and the Schedule for Written Statements dated April 10, 2000¹, hereby files its Reply to Claimant's Rule 3.2 Written Statement in Support of Request for Review of Deputy Commissioner Roach's February 28, 2000 Opinion as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to DuPont's change in condition application filed on February 3, 1999, an evidentiary hearing was held on July 28, 1999 in Martinsville, Virginia. On February 28, 2000, Deputy Commissioner Roach issued an opinion, holding, among other things, that Claimant is no longer disabled as the result of her bilateral gamekeeper's thumb condition. See Opinion of Deputy Commissioner Roach dated February 28, 2000 (Opinion) p. 11.

¹ On April 20, 2000, Claimant's counsel requested an extension of time until May 9, 2000 for the filing of written statements. As there was no objection by DuPont, this extension was granted. Accordingly, reply briefs are due to be filed no later than May 19, 2000.

In Claimant's Rule 3.2 Written Statement in Support of Request for Review, she alleges that she remains disabled as the result of her bilateral gamekeeper's thumb condition and specifically takes exception to the Deputy Commissioner's findings related to bilateral gamekeeper's thumb as follows:

1. That the Employer established by a preponderance of the evidence that Claimant's condition of gamekeeper's thumb had resolved by October 22, 1997;
2. That any evidence presented in 1999 as to whether she still suffered from pain in her thumb is not relevant to the claimant's condition in October 1997, at which time her condition was found to have resolved;
3. That since the Commission noted the Claimant's gamekeeper's thumb condition had resolved, the Employer had the right to have that award terminated;
4. That the Employer had established that Claimant's disability was due only to her two remaining conditions, bilateral carpal tunnel syndrome and the right shoulder injury;
5. That Claimant's current award should be modified to a temporary total disability rate of \$306.18 per week, effective February 4, 1999; and
6. That as a result of the above findings, the Claimant's "other defenses" need not be addressed.

See Claimant's Rule 3.2 Written Statement in Support of Request for Review pp. 4 - 5.

For the reasons set forth below and in Employer's Reply to Claimant's Memorandum of Law in Opposition to Employer's Application for Hearing dated August 25, 1999, incorporated by reference and attached hereto as Exhibit 1, DuPont respectfully requests that Deputy Commissioner Roach's above stated findings of fact and conclusions of law be affirmed by the Commission.

II. ARGUMENT

- A. The Deputy Commissioner correctly concluded that DuPont met its burden of proof in establishing that Claimant's gamekeeper's thumb resolved in October of 1997.

DuPont filed a change in condition application on February 3, 1999 asserting, among other things, that Claimant is no longer disabled as the result of gamekeeper's thumb and her temporary total disability benefits should be adjusted downward to reflect the average weekly wage for her bilateral carpal tunnel syndrome condition. See Employer's Memorandum in Support of its Application for Change in Condition pp. 4 - 6. Contemporaneous with the filing of DuPont's change in condition application, DuPont decreased Claimant's temporary total disability benefits from \$433.57 per week to \$354.96 per week to reflect the temporary total disability rate for Claimant's bilateral carpal tunnel syndrome.

In support of DuPont's assertion that Claimant had experienced a change in condition regarding her gamekeeper's thumb condition, i.e., the condition had resolved and her temporary total benefits should be reduced accordingly, DuPont cited persuasive medical evidence from Claimant's treating physician, Enrique Silberblatt, M.D., F.A.C.S. Dr. Silberblatt examined Ms. Eggleston on October 22, 1997. At that time, Dr. Silberblatt noted that Ms. Eggleston "never gave a history ... suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and nonpainful." Dr. Silberblatt also questioned whether Claimant "has or ever had a gamekeeper's thumb." See Report of Enrique Silberblatt, M.D., F.A.C.S. dated October 22, 1997. By letter to the Commission dated December 3, 1997, Claimant acknowledged Dr. Silberblatt's assessment that her thumb condition had "resolved" and did not dispute this assessment. See Letter from Brenda Eggleston dated December 3, 1997.

Further support for the change in condition application is found in the report of Murray E. Joiner, Jr., M.D., P.C. dated December 10, 1997. Dr. Joiner performed an Independent Medical Examination on December 10, 1997. Dr. Joiner noted that Claimant reported that she had been

treated in the past with injections and given Zostrix for her thumb condition "with decreased pain to point where pain became intermittent." According to Dr. Joiner, Claimant reported that her thumbs did not hurt "that much."² Dr. Joiner's impressions did not include a diagnosis of, or even a reference to, bilateral gamekeeper's thumb or any other thumb condition. See Report of Murray E. Joiner, Jr., M.D., P.C. dated December 10, 1997. Significantly, as of the time DuPont filed its change in condition application on February 3, 1999, Claimant had not received any medical treatment for her thumb condition since Dr. Joiner's evaluation of December 10, 1997, which took place at the request of DuPont.

On June 24, 1999, in an apparent effort to create evidence to oppose the change in condition application, Claimant was examined at her request by Dr. Silberblatt, at which time she alleged "continued problems with her left and right hand." See Report of Enrique Silberblatt, M.D., F.A.C.S. dated June 24, 1999. However, upon examination, Dr. Silberblatt noted that "neither hand is swollen and [Claimant] has no numbness." Dr. Silberblatt also noted that "[i]n her right hand she said that she gets aches in the thumb and this appears to be a continuation of her DeQuervain tenosynovitis." However, Dr. Silberblatt did not note any complaints relating to Claimant's left thumb, nor did Dr. Silberblatt reference bilateral gamekeeper's thumb, the condition for which Claimant was initially awarded temporary partial disability benefits. Although Claimant cites Dr. Silberblatt's June 24, 1999 office note in support of her allegation that the record reflects that she "continued to suffer right thumb problems" after her October 22, 1997 office visit with Dr. Silberblatt, it is significant to note that the injury at issue in this case and the injury for which compensation was awarded was bilateral gamekeeper's thumb, not right

² Dr. Joyner noted on page 5 of his December 10, 1997 report: "Of particular interest are the large soiled calluses on patient's hands bilaterally suggesting that she has been doing some heavy work activity for a prolonged period."

gamekeeper's thumb. Claimant does not cite any medical documentation of problems with her left thumb such as to constitute continuing problems with bilateral gamekeeper's thumb. Thus, Claimant's argument that she remains entitled to compensation as the result of bilateral gamekeeper's thumb is completely without merit. See Claimant's Rule 3.2 Written Statement in Support in of Request for Review pp. 8 - 9.

On June 26, 1999, Dr. Silberblatt wrote a letter clarifying that "DeQuervain Tesosynovitis is not the same condition as Gamekeeper's thumb." Dr. Silberblatt stated

I do not believe that Ms. Eggleston has or ever had a diagnosis of Gamekeeper's Thumb. At the time of her appointment at my office on June 24, 1999, Ms. Eggleston did not present with any symptoms consistent with a diagnosis of Gamekeeper's Thumb, nor did my objective findings support such a diagnosis. It continues to be my opinion, to a reasonable degree of medical certainty, that Ms. Eggleston does not have, nor ever had, Bilateral Gamekeeper's thumb.

See Letter of Enrique Silberblatt, M.D., F.A.C.S. dated June 26, 1999.

In addition to the medical reports cited by DuPont, Claimant conceded during the hearing held on July 28, 1999, that she had not seen Dr. Silberblatt for her alleged thumb condition between October 22, 1997 and June 24, 1999. See Tr. pp. 93 - 94. In fact, Claimant testified that she wrote a letter to the Commission on December 3, 1997 in which she reported that Dr. Silberblatt indicated that her thumb condition had resolved. See Tr. p. 97. Although Claimant indicated in this letter that she continued to have pain in her arm and hand as the result of carpal tunnel syndrome and her right shoulder, she admitted that her thumb "was not painful". See Tr. p. 97 - 98.

Although Claimant states that she "talked to Dr. Hormel" about her alleged thumb condition in February of 1999, she conceded that she did not seek treatment from Dr. Hormel specifically for her thumb condition, nor did he provide her with any treatment for her alleged

thumb condition during that visit. See Tr. p. 94. Claimant merely asked Dr. Hormel if she could see a doctor for her alleged thumb condition "if it got that bad." See Tr. at 99.³ However, it is significant to note that the subject of possible treatment was not discussed with Dr. Hormel until after DuPont filed its change in condition application on February 4, 1999, a copy of which was provided to Claimant. Thereafter, Claimant did not seek treatment specifically for her alleged thumb condition until approximately one month prior to the hearing scheduled on DuPont's change in condition application, at which time Dr. Silberblatt noted no swelling or numbness of either hand. See Report of Enrique Silberblatt, M.D., F.A.C.S. dated June 24, 1999.

Upon considering the evidence outlined above, Deputy Commissioner Roach held that

the employer has established by a preponderance of the evidence that the claimant's gamekeeper's thumb had resolved by October 22, 1997.

See Opinion p. 11.

Claimant's brief asserts that Employer has failed to meet its burden of proof that Claimant is no longer disabled as a result of gamekeeper's thumb and that "the Deputy Commissioner's finding in this regard seeks to retroactively undo the Commission's prior award, presumably because Dr. Silberblatt later altered his diagnosis". See Claimant's Rule 3.2 Written Statement in Support of Request for Review p. 11. However, Deputy Commissioner Roach did not base his findings on Dr. Silberblatt's alleged change in diagnosis as he acknowledged that "the claimant had already received an award . . . establishing that she suffers from the condition of gamekeeper's thumb, and it is now the law of the case. Dr. Silberblatt's assertion that the claimant never suffered from this condition cannot alter that finding". See Opinion at 11.

³ Claimant states on page 6 of her Rule 3.2 Written Statement in Support for Request for Review that Dr. Hormel prescribed various medications for her thumb condition. However, she conceded at the hearing that Dr.

Deputy Commissioner Roach relied upon other evidence in the record in concluding that Claimant's bilateral gamekeeper's thumb condition resolved on October 22, 1997.

Clearly, Deputy Commissioner Roach's ruling as to the resolution of Claimant's bilateral gamekeeper's thumb in October of 1997 is supported by credible evidence and should not be ignored or arbitrarily disregarded by the Commission. As Claimant's gamekeeper's thumb condition resolved in October of 1997, Deputy Commissioner Roach correctly concluded that DuPont had the right to have that award terminated and to reduce Claimant's temporary total disability benefits to reflect the average weekly wage based upon the higher of her two remaining conditions, bilateral carpal tunnel syndrome and her right shoulder injury. Claimant's effort to characterize DuPont's change in condition as an effort to re-litigate Claimant's application for an award for gamekeeper's thumb is untenable. To the contrary, the evidence demonstrates that regardless of whether Claimant ever had the condition, she is no longer disabled as a consequence. No request was, or possibly could be made to set aside the finding that Claimant had this condition.

B. The Deputy Commissioner did not arbitrarily fail to consider all the evidence concerning Claimant's thumb condition or arbitrarily refuse to consider evidence after October 1997.

Deputy Commissioner Roach concluded that "[a]ny evidence presented in 1999 as to whether [Claimant] still suffered from pain in her thumb is not relevant to the claimant's condition in October 1997, at which time her condition is found to have resolved." See Opinion p. 11.

Va. Code § 65.2-708 governing a review of award on change in condition provides

Hormel never told her that the medications were specifically prescribed for her alleged thumb condition. See Tr. at 96. Nor did Dr. Silberblatt prescribe any medications for Claimant's thumb condition. See Tr. at 96.

[u]pon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded....

Va. Code § 65.2-708.

Based upon § 65.2-708, DuPont was fully entitled to file a change in condition application alleging that Claimant's bilateral gamekeeper's thumb condition had resolved as of October 22, 1997. The evidence presented by DuPont and considered by Deputy Commissioner Roach, as discussed above, was sufficient for the Deputy Commissioner to conclude that DuPont had met its burden of proof in establishing that Claimant's thumb condition resolved in October of 1997. The fact that Claimant sought treatment for her thumb condition in June of 1999, one month prior to the hearing on DuPont's change in condition application, does not persuasively rebut the fact that DuPont met its burden of establishing that Claimant's gamekeeper's thumb condition had resolved on October 22, 1997 and that she was no longer disabled as a result of this condition.⁴

Claimant also asserts that Deputy Commissioner Roach failed to give appropriate weight to Dr. Silberblatt's October 14, 1998 Attending Physician's Report in which Dr. Silberblatt "confirmed that Claimant was disabled as a result of her right thumb condition." See Claimant's Rule 3.2 Written Statement in Support of Request for Review p. 13. However, Dr. Silberblatt noted in this report that Claimant had not been under his care for her thumb condition since October 31, 1995. Dr. Silberblatt further indicated that the date of his last examination of

⁴ Despite Claimant's assertions to the contrary, nothing in Deputy Commissioner Roach's opinion would "forever prevent a claimant from alleging that a condition, resolved for some time, had re-occurred" as asserted by Claimant. See Claimant's Rule 3.7 Written Statement in Support of Request for Review p. 12. Once it is determined that a compensable condition has resolved, a claimant has an absolute right to file a change in condition application pursuant § 65.2-708, within the statutory period, and nothing in Deputy Commissioner Roach's opinion would preclude this right.

Claimant was October 22, 1997. See Attending Physician's Statement dated October 14, 1998. Thus, it would appear that Dr. Silberblatt completed this report without an in-person, re-evaluation of Claimant's thumb condition. Certainly, Dr. Silberblatt's personal observation on October 22, 1997 that both thumb joints were "stable and nonpainful" is more persuasive than his report completed approximately one year later without a personal re-evaluation of Claimant's condition. In addition, the Attending Physician's Statement completed by Dr. Silberblatt on September 14, 1998 referenced tenderness of Claimant's right thumb only, not bilateral gamekeeper's thumb, the condition for which compensation was actually awarded.

Accordingly, Claimant's allegation that Deputy Commissioner Roach failed to consider all the evidence concerning Claimant's thumb condition and arbitrarily failed to consider evidence after October 1997 is unpersuasive as to the issue of whether Claimant's gamekeeper's thumb condition resolved in October of 1997. For the reasons previously discussed, Deputy Commissioner Roach's determination that Claimant's gamekeeper's thumb condition resolved on October 22, 1997 is fully supported by credible evidence and should be affirmed by the Commission.

C. The Deputy Commissioner did not arbitrarily refuse to consider "other defenses" raised by Claimant.

Claimant asserts that Deputy Commissioner Roach improperly refused to consider defenses raised in her Memorandum in Opposition to DuPont's change in condition application. These defenses included (1) collateral estoppel and res judicata, (2) waiver, (3) estoppel and imposition and (4) laches. Claimant contends and that each of these defenses presented a "well grounded basis" for failing to permit adjustment to Claimant's temporary total disability entitlement. Claimant's argument is wholly without merit.

Although the above defenses may arguably have been relevant to whether DuPont was entitled to certain credits previously sought and which are not at issue upon review, these defenses have absolutely no bearing on DuPont's right to file a change in condition application and to obtain a corresponding adjustment in the amount of temporary total disability benefits to be paid to Claimant.

As stated previously, Virginia Code § 65.2-708 provides that "the Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded." With limited exceptions set forth in § 65.2-708 (which are not at issue upon review) a review of an award on a change of condition may not be "affect awards as regards any moneys paid." Va. Code § 65.2-708.

Deputy Commissioner Roach correctly noted, "[w]here ... causal connection between an industrial accident and disability has been established by the entry of an award, an employer has a right to apply for termination of benefits upon an allegation that the effects of the injury have fully dissipated and the disability is the result of another cause." Opinion p. 12 (citations omitted). Further "[n]o time limit has been placed on the employer for the filing of the application." Opinion at 12. Thus, DuPont clearly had the right to file its change in condition application pursuant to § 65.2-708 alleging the resolution of Claimant's gamekeeper's thumb condition, and the defenses of collateral estoppel, res judicata, waiver, estoppel, imposition and laches would not preclude this right.

Virginia Code § 65.2-708 clearly provides that upon a review of a change in condition application, the Commission may end or diminish an award, so long as the review does not "affect an award as regards moneys paid." In this case, Deputy Commissioner Roach's decision to (1) end the gamekeeper's thumb award and (2) diminish the amount of temporary total

disability benefits to be paid on a prospective basis dating from the date of DuPont's change in condition application is entirely within the boundaries set forth by § 65.2-708.

Deputy Commissioner Roach correctly concluded:

Since the Commission has noted that the claimant's gamekeeper's thumb condition has resolved, the employer has the right to have that award terminated. Because the Commission's August 25, 1994 award is based upon a finding that the claimant was disabled in part from all three compensable conditions, the employer has now established that the Claimant's disability is due only to her two remaining conditions: bilateral carpal tunnel syndrome and the right shoulder injury. The highest average weekly wage for which previous awards have been based on those two conditions arise from her earnings at the time she was diagnosed with the bilateral carpal tunnel syndrome or \$459.27 per week, producing a temporary total disability rate of \$306.18. Therefore, the claimant's current award is modified to a rate of \$306.18 per week, plus any applicable cost of living increase the claimant is due.

For the reasons set forth above and in Employer's Reply to Claimant's Memorandum of Law in Opposition to Employer's Application for Hearing dated August 25, 1999, DuPont submits that the defenses of collateral estoppel, res judicata, waiver, estoppel, imposition and laches would not preclude the termination of Claimant's gamekeeper's thumb award nor the downward adjustment of Claimant's temporary total disability benefits. Accordingly, Deputy Commissioner's Roach's ruling, as set forth above, should be affirmed by the Commission.

III. CONCLUSION

The employer and self-insurer, by counsel, respectfully request that the Commission affirm the February 28, 2000 Opinion of Deputy Commissioner Roach, in part, as it pertains to the issues addressed, and that the Commission afford such other relief as is reasonable under the circumstances.

Respectfully submitted,

E.I. Du PONT De NEMOURS AND COMPANY

BY COUNSEL

Counsel:

Stephen D. Busch, Esquire
Joy C. Fuhr, Esquire
Kimberly R. Hillman, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE LLP
One James Center
Richmond, Virginia 23219
(804) 775-1127

Kimberly R Hill
Counsel for the Employer and Self-Insurer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Employer's Reply to Claimant's Rule
3.2 Written Statement in Support of Request for Review was sent by first class mail, postage
prepaid, to:

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401

on this 19th day of May, 2000.

Kimberly R Hill
Counsel for the Employer and Self-Insurer

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA EGGLESTON,

Claimant,

v.

V.W.C. File Nos.: 143-94-79

149-63-96

162-62-45

E. I. DU PONT DE NEMOURS & COMPANY,

Employer and Self-Insured.

**EMPLOYER'S REPLY TO CLAIMANT'S MEMORANDUM
OF LAW IN OPPOSITION TO EMPLOYER'S APPLICATION FOR HEARING**

The employer and self insurer, E.I. du Pont de Nemours & Company ("DuPont"), by counsel, pursuant to the scheduling order entered by the Commission, hereby files its reply to Claimant's Memorandum of Law in Opposition to Employer's Application for Hearing and respectfully requests that the Commission: (a) terminate Claimant's award for Bilateral Gamekeeper's Thumb; (b) reduce the amount of temporary total disability benefits being paid to Claimant based upon the resolution of her Bilateral Gamekeeper's Thumb injury; (c) award the employer a credit against future temporary total disability benefits paid to Claimant arising from the overpayment in temporary total disability benefits for the period between October 22, 1997, the date her gamekeeper's thumb resolved and February 17, 1999, the date the employer reduced the amount of temporary total disability benefits pursuant to its application for change of condition; and (d) award Employer a credit against future temporary total disability benefits to be paid to Claimant based upon the time worked by Claimant at light duty at her normal pre-injury wages.

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I. ARGUMENT

A. DuPont has met its burden of proof that claimant is no longer disabled as the result of Gamekeeper's Thumb.

Claimant was initially awarded Temporary Partial Disability Benefits (T.P. Benefits) for Bilateral Gamekeeper's Thumb on June 13, 1993 based upon an average weekly wage of \$557.53. Following a change in condition application filed by Claimant, Deputy Commissioner Gorman awarded Claimant an additional period of Temporary Total Disability Benefits (T.T. Benefits) on August 25, 1994, wherein he combined Claimant's claims for Bilateral Carpal Tunnel Syndrome, Bilateral Gamekeeper's Thumb and a right shoulder injury.¹

DuPont filed its Application for a Hearing on February 3, 1999 alleging a change in Claimant's condition pursuant to Virginia Code § 65.2-708. Specifically, DuPont alleges that Claimant has not been impaired as a result of Bilateral Gamekeeper's Thumb since Enrique Silberblatt, M.D.'s assessment of October 22, 1997. At that time, Dr. Silberblatt noted that Ms. Eggleston "never gave a history ... suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and nonpainful." In fact, Dr. Silberblatt questioned whether Ms. Eggleston "has or ever had a gamekeeper's thumb." By letter dated December 3, 1997, Claimant acknowledged Dr. Silberblatt's assessment that her thumb condition had "resolved" and did not dispute this assessment.

In addition to Dr. Silberblatt's record of October 22, 1997, Claimant's medical records do not support her contention that she continues to be disabled as the result of Bilateral Gamekeeper's Thumb. Claimant simply has not been receiving medical treatment as a result of this alleged condition. Claimant did not see Dr. Silberblatt for her thumb condition from October 22, 1997 until her visit on June 24, 1999, nor does it appear from the medical records that Claimant sought medical attention for this

¹ Contrary to Claimant's assertions, it is clear from the record that Deputy Commissioner Gorman based Claimant's T.T. Benefits for the combined award on her average weekly wage for her Bilateral Gamekeeper's Thumb.

condition from any other source. Claimant's lack of medical treatment for her alleged thumb condition supports DuPont's contention that Claimant has not been impaired by this condition since October 22, 1997 and thus, termination of this award is appropriate based upon the medical change in Claimant's condition.²

B. DuPont is entitled to a credit arising from an overpayment of compensation for the period of October 22, 1997 through February 17, 1999.

It is clear that Claimant has not been impaired as the result of Bilateral Gamekeeper's Thumb since October 22, 1997. Thus, DuPont is entitled to a credit for the overpayment of compensation for the period of October 22, 1997 through February 17, 1999, despite Claimant's assertion that this request for relief is untimely and should not be allowed.

Claimant asserts that DuPont's request for credit was not made at the time of its application for hearing and this request for relief is not properly before the Commission. However, DuPont's Application for Hearing and Memorandum of Law in Support of its Application filed on February 3, 1999 clearly put Claimant on notice of DuPont's claims for relief arising from the resolution of her Gamekeeper's Thumb. Even should the Commission determine that this relief was not formally requested until DuPont filed its Trial Brief on July 12, 1999, Claimant cannot claim unfair surprise resulting in a violation of due process.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Eames v.

² Dr. Silberblatt indicated in a letter dated July 26, 1999 that Claimant's complaints at presentment were likely a continuation of DeQuervain Tenosynovitis. Claimant has never applied for or been awarded Workers' Compensation Benefits for this condition and there has been no determination that this condition is causally related to her employment at DuPont. Continuation of Claimant's T.T. Benefits for Gamekeeper's Thumb as a result of complaints associated with a separate and distinct thumb condition is not appropriate.

Williamsburg Soap & Candle Co., 97 O.I.C. 174-79-24 (1997)(citations omitted). DuPont filed its Trial Brief on July 12, 1999, approximately two weeks prior to the hearing of this matter held on July 28, 1999. At the time DuPont filed its Trial Brief, DuPont also asked Claimant to accept this document as supplementation to its previous discovery responses. Even assuming that Claimant was not on notice that a credit was being sought prior to the filing of the Trial Brief on July 12, 1999, Claimant had sufficient time prior to the hearing to voice her objections to the relief being requested by DuPont. Claimant failed to object to this request for relief and cannot now complain that this issue is not properly before the Commission.

Claimant also objects to consideration of the issue as to whether DuPont is entitled to a credit on the ground that she had "insufficient" time to develop evidence to rebut this request for relief. It is undisputed that Claimant received her full T.T. Benefits payable for the period of October 22, 1997 through February 17, 1999. As the credit issue before the Commission is a legal issue, not a factual issue, Claimant's assertion of insufficient time to develop facts to rebut this request for relief is without merit. Thus, the issue of whether DuPont is entitled to a credit by virtue of the overpayment of T.T. Benefits for the period of October 22, 1997 to February 17, 1997 is properly before the Commission.

Claimant also alleges that DuPont is not entitled to a credit for the overpayment of compensation for the period of October 22, 1997 though February 17, 1997 because Virginia Code § 65.2-708 bars the relief requested. Specifically, Claimant alleges that this statute provides "[n]o such review shall affect such award as regards any moneys paid" except pursuant to §§ 65.2-712, 65.2-1105 and 65.2-1205 which are inapplicable in this case. Although § 65.2-708 would prevent DuPont from seeking reimbursement for the amount of the actual overpayment, this section should not be construed to prevent DuPont from seeking a credit against future T.T Benefits in an amount equivalent to the amount of the overpayment.

C. DuPont is entitled to a downward adjustment of the Temporary Total Disability Rate.

Virginia Code § 65.2-101 provides that the average weekly wage is "[t]he earnings of the injured employee in the employment in which he was working at the time of the injury during the period of the fifty-two weeks immediately preceding the date of injury, divided by fifty-two..." Prior to DuPont's application for hearing filed in February of 1999, Claimant's T.T. Benefits for her combined award was clearly based upon her average weekly wage at the time of her award for Bilateral Gamekeeper's Thumb. It naturally follows that if the condition upon which the average weekly wage is based ceases to be disabling, it is no longer appropriate to use this calculation as the basis for ongoing T.T. benefits related to different disabling conditions with different average weekly wages.

Claimant asserts that DuPont should not be allowed to seek modification of the amount of Claimant's T.T. Benefits or be allowed to contest whether Claimant is disabled as a result of Bilateral Gamekeeper's Thumb because Deputy Commissioner Gorman's August 25, 1994 award is final and review is barred by the doctrines of collateral estoppel and res judicata. Claimant asserts that DuPont should have filed a request for review of Deputy Commissioner Gorman's August 25, 1994 order had it disagreed with his findings as to the appropriate T.T. Benefit rate or whether Claimant was disabled as a result of Bilateral Gamekeeper's Thumb.

However, Claimant overlooks the fact that DuPont does not contest that the T.T. Benefit rate was correct at the time of the combined award through October 22, 1997. Thus, DuPont had no reason to request a review of this award at the time that it was entered. Only upon receipt and review of Dr. Silberblatt's record dated October 22, 1997 did DuPont have reason to believe that there had been a change in Claimant's condition. After researching this issue, DuPont requested an application for hearing pursuant to Virginia Code § 65.2-708. This section specifically provides that "upon the

application of any party in interest, on the ground of a change in condition, the Commission may review any award and on such review may make an award ending, diminishing or increasing compensation previously awarded..." DuPont is clearly within its statutory right in requesting a decrease in the amount of compensation being paid to Claimant based upon her change in condition.

Claimant also asserts that the doctrines of waiver, estoppel and imposition all bar DuPont from challenging the basis for calculating Claimants T.T. Benefit rate. However, as noted above, DuPont has made a timely change in condition application seeking a reduction in the amount of compensation pursuant to § 65.2-708 and the doctrines of waiver, estoppel, imposition and laches do not prevent DuPont from exercising its statutory rights. Furthermore, contrary to Claimant's assertion, her inability to meet her financial obligations is irrelevant in determining whether DuPont is entitled to obtain a reduction in the amount of compensation pursuant to § 65.2-708. Therefore, Claimant's financial status cannot be considered by the Commission in determining whether a reduction in T.T. Benefits is appropriate.

D. DuPont is entitled to a credit for time worked by claimant at light duty for her normal wages.

Virginia Code § 65.2-518 states that "total compensation under this title shall in no case be greater than 500 weeks..." Va. Code Ann. § 65.2-518. Virginia Code Section § 65.2-708(C) further states:

All wages paid, for a period not exceeding twenty-four consecutive months, to an employee who (i) who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is provided work within his capacity at a wage equal to or greater than his pre-injury wage, shall be considered compensation.

Va. Code Ann. § 65.2-708.

Ms. Eggleston's DuPont employment records dated September 26, 1990 through January 12, 1991 reflect that Ms. Eggleston worked approximately 142.1 hours (17.76 days) (3.5 weeks) at light duty

at her regular pre-injury wages following her award for carpal tunnel syndrome. Ms. Eggleston worked approximately 939.5 hours (117 days) (23.48 weeks) at light duty at her regular pre-injury wages from the period of January 12, 1991 through June 13, 1993, following the injury to her right shoulder. Based upon § 65.2-708, DuPont asserts that Ms. Eggleston's remaining entitlement to temporary total disability benefits should be reduced by the total number of weeks that DuPont provided Ms. Eggleston with light duty employment at her regular pre-injury wages, notwithstanding Claimant's assertion that such a credit is barred by the doctrines of waiver, res judicata, estoppel, imposition and laches. Although Claimant asserts that this request for relief is not timely, the request is being made within the applicable statute of limitations set forth in Virginia Code § 65.2-708 and is therefore, properly before the Commission for consideration.

II. CONCLUSION

WHEREFORE, the employer and self-insurer, by counsel, respectfully request the Commission to enter an order (a) terminating Claimant's award for Bilateral Gamekeeper's Thumb; (b) reducing the amount of temporary total disability benefits being paid to Claimant based upon the resolution of her Bilateral Gamekeeper's Thumb; (c) award DuPont a credit against future temporary total disability benefits paid to Claimant arising from the overpayment in temporary total disability benefits for the period between October 22, 1997, the date her gamekeeper's thumb resolved and February 17, 1999, the date DuPont reduced Claimant's temporary total disability benefits pursuant to its application for change in condition; and (d) award DuPont a credit against future temporary total disability payments to be paid to Claimant based upon the time worked by Claimant at light duty at her normal pre-injury wages.

Respectfully submitted,

E.I. Du PONT De NEMOURS AND COMPANY

BY COUNSEL

Counsel:
Joy C. Fuhr, Esquire
Kimberly R. Hillman, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE LLP
One James Center
Richmond, Virginia 23219
(804) 775-1127

Kimberly R. Hillman
Counsel for the Employer and Self-Insurer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Employer's Reply to Claimant's Memorandum of Law in Opposition to Employer's Application for Hearing was sent by first class mail, postage prepaid, to:

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401

on this 25th day of August, 1999.

Kimberly R. Hillman

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

BRENDA G. EGGLESTON, Claimant

Opinion by TARR
Commissioner

VWC File Nos. 143-94-79 ✓

149-63-96

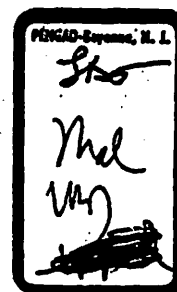
v.

162-62-45

DUPONT DENEMOURS & CO., Employer
SELF INSURED

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401
for the claimant

Kimberly R. Hillman, Esquire
McGuire, Woods Battle & Boothe
901 East Cary Street
One James Center
Richmond, Virginia 23219
for the defendants



OCT 6 2000

REVIEW on the record before Commissioner Tarr, Commissioner Diamond and Chief Deputy Commissioner Link at Richmond, Virginia.

Both parties request Review of the Deputy Commissioner's February 28, 2000, Opinion finding that the claimant is no longer disabled as the result of her gamekeeper's thumb, modifying her rate of compensation, and refusing to grant a credit. We AFFIRM.

The claimant sustained three separate injuries at work and received three Awards. In VWC 143-04-79, the claimant was awarded benefits for bilateral carpal tunnel syndrome with a communication date of September 28, 1989. Temporary total benefits were paid at the rate of \$306.18 for September 19, 1990, through October 30, 1990. Permanent partial benefits were paid from January 30, 1992, through July 29, 1992.

The claimant's second injury was a right shoulder injury sustained on November 28, 1990, in VWC 149-63-96. She received temporary total benefits at the rate of \$293.90 from January 12, 1991, through January 14, 1991, and from September 27, 1991, through November 2, 1992.

The third award was for the claimant's disease of bilateral gamekeeper's thumb with a communication date of March 9, 1993. She received temporary partial benefits at the rate of \$74.35 from June 13, 1993, to November 30, 1993.

Shortly after benefits ended for the third award, the claimant filed a change in condition application on December 8, 1993. Her claim for temporary total benefits alleged she was fired while doing light duty work. The Deputy Commissioner found that the claimant was disabled from all three conditions and entered into an award for ongoing benefits beginning August 25, 1994, using only the compensation rate from the thumb disease of March 9, 1993.

The employer filed a change in condition application on December 24, 1997, seeking to terminate or suspend the outstanding award "as we have information indicating Ms. Eggleston's current disability is unrelated to her industrial accident of March 9, 1993." By letter dated March 3, 1998, the employer voluntarily moved to dismiss its application. The application was dismissed by Order dated March 4, 1998.

On February 3, 1999, the employer filed the present change in condition application, with an attached memorandum, seeking "to reduce the amount of temporary total disability benefits being paid to the claimant and to award the employer a credit against future payments." In its memorandum, the employer requested several items of relief. First, the employer contended that the claimant's weekly temporary total disability benefits should be adjusted downward to reduce the compensation rate to \$354.96, based on her average weekly wage for carpal tunnel syndrome, \$459.27. Second, the employer contended that it was entitled to a credit for time worked by the

claimant doing light duty work at her regular wages for various periods in 1990 through 1993. Lastly, the employer maintained that the claimant's remaining entitlement to temporary total disability benefits should be reduced by the total number of weeks that the employer provided the claimant with light duty employment at her regular pre-injury wages.

On July 13, 1999, the employer submitted a "Trial Brief" to the Deputy Commissioner clarifying the relief that it wanted. The employer stated that it filed the application to (1) terminate the claimant's award for bilateral gamekeeper's thumb; (2) reduce the amount of temporary total disability benefits based upon the resolution of the gamekeeper's thumb; (3) award a credit against future temporary total disability benefits paid the claimant arising from overpayment of benefits from October 22, 1997, the date the gamekeeper's thumb resolved, to February 17, 1999, the date the employer reduced the amount of benefits pursuant to its application; and (4) award a credit against future temporary total disability benefits paid the claimant based upon time worked by the claimant at light duty at her normal pre-injury wages. The employer also contended that the claimant's maximum entitlement to benefits for each individual injury should be reduced by the number of weeks that she received benefits under the August 25, 1994, award.

At the July 27, 1999, hearing, the Deputy Commissioner granted leave for claimant's counsel to file a memorandum. On August 16, 1999, claimant's counsel submitted a Memorandum of Law in Opposition to Employer's Application for Hearing.

In his February 28, 2000, Opinion, the Deputy Commissioner held that: (1) the employer was not entitled to a credit for those weeks the claimant received her pre-injury average weekly wage, from 1990 to 1992, while on a light duty restriction; (2) the claimant's gamekeeper's thumb condition had resolved by October 22, 1997, and any evidence from 1999 concerning this condition was not relevant; (3) the claimant's temporary total disability rate should be lowered to \$306.18

beginning February 4, 1999; (4) the employer was not entitled to a credit for benefits paid at the higher rate from October 22, 1997, through February 3, 1999; (5) the employer was entitled to a credit in VWC File No. 162-62-45 (gamekeeper's thumb) for the weeks of benefits paid from December 1, 1993, through February 3, 1999, in VWC File No. 143-94-79 (bilateral CTS) for the weeks of benefits paid from February 4, 1999, to the present, and continuing and that the maximum entitlements were not affected by payments under the 1994 award.

On Review, the claimant challenges the findings that her gamekeeper's thumb had resolved by October 22, 1997, and the evidentiary ruling that evidence from 1999 was not relevant. The employer challenges the Deputy Commissioner's holding that the total compensation allowable for each injury should not be reduced by the number of weeks the claimant received, what it calls, the "combined award."

The medical evidence reveals the claimant treated with Dr. Enrique Silberblatt for her thumb condition and carpal tunnel syndrome. She treated with Dr. Timothy Hormel for her thumb and hand condition. She treated with Dr. Dallas P. Crickenberger for her shoulder.

On March 9, 1993, the claimant treated with Dr. Hormel for a problem with pain in the base of her thumbs and wrists associated with the replacement at work of the hampers. He wrote, "I think that the forced flexion has given her the early onset of a gamekeeper's thumb" and recommended "adjustment of the switching or locking mechanism on the hampers."

Dr. Silberblatt examined the claimant on March 16, 1993, and noted that "Dr. Hormel feels that the extensive strain on the metacarpophalangeal joint of the thumb is what is responsible for her pain. Her pain is localized in that area." He noted her job with hamper springs put a great amount of pressure in the area and recommended she stop. On April 15, 1993, Dr. Silberblatt noted that the claimant's left thumb had gotten better and that her right thumb still bothered her but had improved.

X-rays showed no arthritis in either joint. He wrote: "It is my impression that the spring loaded hitches that she works with her right hand are probably to blame for her discomfort. If she goes back to using those, then the pain will probably return." He recommended she be excused permanently from that aspect of her job.

On April 29, 1993, Dr. Hormel noted that "her gamekeeper's thumbs are both clearly better." He noted the "clear relationship" between the spring loaded hitches and the gamekeeper's thumb and recommended she stop using the hitches. He also stated that the gamekeeper's thumb condition was separate from her carpal tunnel syndrome and had nothing to do with it.

On June 9, 1993, the claimant showed Dr. Silberblatt a sample of the mechanism that was causing her thumb discomfort and a suggested modification. He recommended that the claimant could attempt the job with the new equipment but should rotate jobs and get periodic rests. Dr. Hormel's June 28, 1993, office note reflects that the claimant was still experiencing pain in her thumb. He concurred with Dr. Silberblatt's recommendation that she rotate jobs to limit hand irritation.

On August 23, 1993, Dr. Hormel noted the claimant had major problems with discomfort in her thumb. In a September 20, 1993, letter to the employer's medical supervisor, Dr. Hormel stated that the claimant's diagnosis included de Quervain's type tenosynovitis of the hand. He also noted problems with the thumbs.

In a November 5, 1993, letter to Dr. Silberblatt, Dr. Hormel noted that the claimant was still having significant difficulties with her right thumb. He asked Dr. Silberblatt to examine the claimant to see if he could do anything for her.

Dr. Silberblatt referred the claimant to Dr. Malcolm W. Marks at The Hand and Microsurgery Center, Bowman Gray School of Medicine in Winston-Salem. Dr. March evaluated

the claimant on November 12, 1993, noting problems in the thumbs for several months and a diagnosis of bilateral gamekeeper's thumb. He found full range of motion in all joints with the limitation on thumb abduction and flexion at the MP joint but found no evidence of a nerve compression syndrome. His impression was "right tenosynovitis with trigger phenomenon."

On January 11, 1994, Dr. Silberblatt gave the claimant a five percent impairment of the right thumb and a two percent impairment of the left thumb. On June 27, 1995, Dr. Silberblatt noted that the claimant was having pain at the base of her thumb, had a markedly positive Finkelstein's test and was tender over the first dorsal compartment. The doctor's assessment was de Quervain's tenosynovitis. On June 27, 1995, he wrote that he would see the claimant on an as-needed basis.

In his October 22, 1997, report, Dr. Silberblatt wrote:

Ms. Eggleston is stable as far as the right hand is concerned. She still has things that she cannot do with it because of residual from her carpal tunnel syndrome, but the deQuervain tenosynovitis seems to have subsided.

In an addendum to this report, Dr. Silberblatt wrote:

There is some question as to whether Ms. Eggleston has or ever had a gamekeeper's thumb. She never gave a history to me suggestive of subluxation of the MP joint of either thumb and at present both joints are stable and non-painful.

Dr. Murray Joiner examined the claimant at the request of the employer on December 10, 1997. Dr. Joiner noted that on March 9, 1993, the claimant noticed an increase in her right hand pain especially around her thumb, that a neurologist felt she had trigger thumb secondary to pushing down on spring-loaded hitches with her thumb and a plastic surgeon diagnosed deQuervain's syndrome. The claimant told Dr. Joiner, "In fact, it doesn't hurt that much."

In his October 14, 1998, Attending Physician's Statement, Dr. Silberblatt diagnosed carpal tunnel syndrome and deQuervain's tenosynovitis. He recorded subjective symptoms of "pain in hand & thumb (right) and clinical findings of "tenderness of [right] thumb."

Dr. Silberblatt wrote that the claimant had been under his care for these conditions from July 13, 1990, to October 31, 1995, and that he last examined the claimant for this condition on October 22, 1997. He opined that the condition was work related, that she had moderate limitation of functional capacity and was capable of sedentary activity, that her prognosis was poor, that she had reached maximum medical improvement, and that she had permanent partial impairment. He also wrote: "I am no longer practicing in Virginia - please address these forms to Dr. Hormel."

Dr. Hormel continued to follow the claimant for problems relating to her hands and shoulders. On February 15, 1999, he noted:

She has had some difficulties in the hand, particularly on the right hand side at the base of the thumb. She used to see Dr. Silberblatt for that, but he has moved out of town. She sees Dr. Crickenberger for the shoulder. She has not had to see him for some time, but notes that if the thumb was bad, she would like to see him. I think that is quite reasonable to do.

Dr. Hormel's plan was to "[m]aintain medicines as identified and follow-up with treatment as identified."

On June 24, 1999, Dr. Silberblatt noted that the claimant "gets aches in the [right] thumb and this appears to be a continuation of her DeQuervain tenosynovitis." On examination, he noted no swelling or numbness and that she had a negative Finkelstein's test on the right. He had no equipment to measure grip strength and noted that he had not seen her recently to be able to see a trend one way or the other. He noted that he was not in a good position to do a complete evaluation

of her hands. He referred her back to Dr. Hornel for further treatment and possible referral to a hand surgeon.

In a July 26, 1999, letter to the employer's attorney, Dr. Silberblatt wrote to clarify his June 24, 1999, office note. He wrote:

I am writing to clarify that DeQuervain Tenosynovitis is not the same condition as Gamekeeper's thumb. At the time of Ms. Eggleston's presentment at my office on June 24, 1999, Ms. Eggleston complained of an ache in her right thumb which may be a continuation of her DeQuervain Tenosynovitis. Ms. Eggleston did not have any swelling or numbness at the time of her presentment on June 24, 1999.

As I indicated in the addendum to my office note dated October 22, 1997, I do not believe that Ms. Eggleston has or ever had a diagnosis of Gamekeeper's Thumb. At the time of her appointment at my office on June 24, 1999, Ms. Eggleston did not present with any symptoms consistent with a diagnosis of Gamekeeper's Thumb, nor did my objective findings support such a diagnosis. It continues to be my opinion, to a reasonable degree of medical certainty, that Ms. Eggleston does not have, nor ever had, Bilateral Gamekeeper's thumb.

We shall first discuss the Deputy Commissioner's decision not to consider evidence presented in 1999 relating to the claimant's thumb condition. The Deputy Commissioner held such evidence was not relevant. The specific evidence deemed irrelevant was the claimant's testimony about her thumb pain and Dr. Silberblatt's June 24, 1999, medical report.

The employer notes that the application before the Deputy Commissioner was the employer's application of February 4, 1999, alleging that the claimant's bilateral gamekeeper's thumb had resolved as of October 22, 1997. It reasons that evidence after October 1997 is not material to whether the claimant's condition resolved in October of 1997. It points out that the claimant could file her own change in condition application if she believed her condition regressed.

While this is correct, we find the Deputy Commissioner erred by not considering the post-application evidence. In the case of Turner v. Wilson, 69 OIC 73 (1990), the Commission held that

where an employer files an application alleging that the claimant was able to return to regular work, medical evidence is not limited to reports available at the time of the application but includes all reports available prior to the hearing. This has been followed in later cases. Spicer v. Mary Washington Hospital, VWC File No. 181-51-90 (September 30, 1999), Owens v. Copper Mill Mining Co., VWC File No. 171-19-41, (January 12, 1998). The claimant's condition from October 22, 1997, through the time of the hearing was material to the employer's application and the Deputy Commissioner should have considered the evidence relating to the claimant's thumb condition in 1999.

Although the Deputy Commissioner should have considered the 1999 evidence, we find the record supports his finding because the evidence shows the claimant's thumb condition, whether diagnosed as gamekeeper's thumb or deQuervain's tenosynovitis had resolved by October 22, 1997. The claimant's treating doctor, Dr. Enrique Silberblatt reported the claimant's thumb condition had "resolved" by the October 22, 1997, examination. Dr. Murray Joiner, Jr., who examined the claimant one and one half months later, also did not find the condition disabling. The claimant did not receive treatment for her thumb condition for almost two years. When Dr. Silberblatt examined her one month before the hearing, his report from that examination did not state the claimant was disabled.

The Deputy Commissioner properly did not give decisional weight to Dr. Silberblatt's October 14, 1998, report in which he said the claimant was disabled because Dr. Silberblatt had not recently examined the claimant before he wrote that report. His last examination was the October 22, 1997, examination during which he opined the condition had resolved.

We also agree with the Deputy Commissioner that the employer is not permitted to credit the number of weeks the claimant received benefits under the August 25, 1994, award against the 500 week maximum limit of the carpal tunnel syndrome award and the right shoulder injury award.

The employer argues for the credit, noting that the Opinion listed all three VWC file numbers and that the August 25, 1994, award was entered against all three awards. It further stresses that the Deputy Commissioner held that no one injury was disabling but that the claimant's disability was caused by the combination of all three conditions.

While there is no case or statute directly on point, we find the statutory scheme established under Va. Code § 65.2-503 (E) (2) to be instructive. There, the Act provides that a "combined payment shall count as two weeks against the total maximum allowable period of 500 weeks." Thus, an employer is allowed to count more than one week against the maximum limit only when it makes payment under more than one award.

Here, the employee sustained three separate accidents for which she received three separate awards. Absent simultaneous or multiple payments, the claimant is entitled to receive up to 500 weeks of benefits for each award.

For these reasons, the Opinion below is AFFIRMED.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days from receipt of this Opinion.

c: Brenda G. Eggleston
60 Old Mill Road
Ridgeway, Virginia 24148

DuPont DeNemours. & Co.
1 DuPont Road

Martinsville, Virginia 24112

E. I. DuPont DeNemours & Co.
National Loss Control Serv Corp.
P. O. Box 5550
Glen Allen, Virginia 23058

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA G. EGGLESTON,

Claimant,

v.

E.I. Du PONT De NEMOURS & COMPANY)
Employer and self-insured,)

) VWC File Nos.: 143-94-79, 149-63-96,
) 162-62-45
)
)
)

NOTICE OF APPEAL

COMES NOW the employer and self-insured, E.I. DuPONT de NEMOURS & COMPANY, by counsel, pursuant to Rule 5A:11 of the Rules of the Supreme Court of Virginia and gives notice of the filing of an appeal to the Court of Appeals of Virginia from the Final Order of the Full Commission of the Virginia Worker's Compensation Commission dated October 6, 2000.

The Appellant in this matter is E.I. DuPont de Nemours & Company, 1 DuPont Road, Martinsville, Virginia 24112, and it is represented by Joy C. Fuhr, Esquire and Kimberly R. Hillman, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030, (804) 775-4341.

The Appellee is Brenda G. Eggleston, 60 Old Mill Road, Ridgeway, Virginia, and is represented by Wesley G. Marshall, Esquire, 600 Westwood Office Park, Fredericksburg, Virginia 22401, (540) 371-4444.

The Opinion of the Worker's Compensation Commission appealed from was issued by Commissioner Lawrence D. Tarr on October 6, 2000, and received by counsel for the

VIRGINIA WORKERS'
COMPENSATION COMMISSION

NOV 06 '00

hand-delivered

employer on October 11, 2000. This appeal is noted within thirty (30) days of those dates and is therefore timely.

The appellant challenges the sufficiency of the evidence to support the findings of the Commission.

E. I. Du PONT De NEMOURS & COMPANY

By Counsel

Counsel:

Joy C. Fuhr, Esquire

Virginia State Bar No. 34359

Kimberly R. Hillman, Esquire

Virginia State Bar No. 41540

McGuireWoods LLP

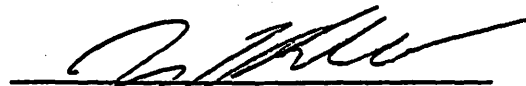
One James Center

901 East Cary Street

Richmond, Virginia 23219-4030

Tel: (804) 775-4341

Fax: (804) 698-2056



Counsel for the employer

VIRGINIA WORKERS'
COMPENSATION COMMISSION

NOV 06 '00

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed, postage prepaid, on this the 6th day of November, 2000 to, Wesley G. Marshall 600 Westwood Office Park, Fredericksburg, Virginia 22401 and Cynthia L. McCoy, Clerk, Court of Appeals of Virginia, 109 North Eighth Street, Richmond, Virginia 23219.


Joy C. Fuhr

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

BRENDA G. EGGLESTON,

Claimant.

v.

VWC File Nos.: 143-94-79, 149-63-96,
162-62-45

E.I. Du PONT De NEMOURS & COMPANY)

Employer and self-insured ,

APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS, That E.I. Du Pont de Nemours & Company, principal, and The Fidelity and Deposit Company of Maryland, surety, are held and firmly bound unto Brenda G. Eggleston in the sum of FIVE HUNDRED DOLLARS (\$500.00) to the payment of which we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

WHEREAS, a decision was entered by the Full Commission of the Virginia Workers' Compensation Commission of Virginia on the 6th day of October, 2000, in the case of Brenda G. Eggleston v. E.I. Du Pont de Nemours & Company:

AND WHEREAS, it is the intention of E.I. Du Pont de Nemours & Company to appeal said decision to the Court of Appeals of Virginia;

NOW, THEREFORE, if E.I. Du Pont de Nemours & Company shall pay all damages and costs which may be awarded against them in the Court of Appeals and Supreme Court if it takes cognizance of the claim, then this obligation shall be void, otherwise to remain in full force and virtue.


VIRGINIA WORKERS'
COMPENSATION COMMISSION

NOV 06 '00

hand-delivered
CHARGE # 12

IN WITNESS WHEREOF, the said E.I. Du Pont de Nemours & Company, principal,
and The Fidelity and Deposit Company of Maryland, surety, have hereunto set their hands and
seals this the 6th day of November 2000.

E.I. Du Pont de Nemours & Company



Joy C. Fuhr
Attorney for E.I. Du Pont de Nemours & Company

STATE OF VIRGINIA:


CITY OF RICHMOND, to-wit:

The foregoing instrument was acknowledged before me on this the 6th day of
November, 2000, by Joy C. Fuhr.

My commission expires: February 29, 2004


Notary Public

THE FIDELITY AND DEPOSIT COMPANY
OF MARYLAND

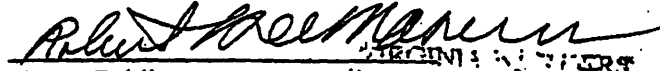

Authorized Agent

STATE OF VIRGINIA:

CITY OF RICHMOND, to-wit:

The foregoing instrument was acknowledged before me on this the 6th day of
November, 2000, by Benjamin T. Tompkins, for The Fidelity and Deposit
Company of Maryland.

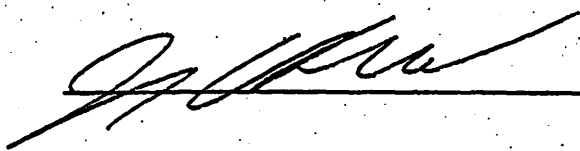
My commission expires: September 30, 2001


Notary Public Rabe

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appeal Bond was mailed, postage prepaid, on this the 6th day of November, 2000 to:

Wesley G. Marshall, Esquire
600 Westwood Office Park
Fredericksburg, Virginia 22401
(Counsel for Brenda G. Eggleston)



VIRGINIA WORKERS
COMPENSATION - CLEARED

NOV 06 '00

CHARGE # 13

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE, BALTIMORE, MD

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Robert Dee Mason, Jr., Benjamin T. Tompkins and R. David Priest, all of Richmond, Virginia, EACH.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of J. Morris Saunders, Jr., et al, dated, September 6, 1984.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 8th day of August, A.D. 1990

ATTEST:



FIDELITY AND DEPOSIT COMPANY OF MARYLAND

CW Robbins
Assistant Secretary

By

CM Pecot Jr
Vice-President

STATE OF MARYLAND
CITY OF BALTIMORE

ss:

FOR YOUR PROTECTION LOOK FOR THE F&D WATERMARK

On this 8th day of August, A.D. 1990, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.



Barry J. Fisher
Notary Public Commission Expires August 1, 1992

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, whenever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 6TH day of NOVEMBER, 1990

176-0272

J. Gregory Hamilton
WORKERS
COMMISSIONER
NOTARY PUBLIC
Assistant Secretary

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Bumgardner

Argued at Richmond, Virginia

E.I. DuPONT De NEMOURS AND COMPANY

MEMORANDUM OPINION* BY

v. Record No. 2648-00-2 JUDGE JERE M. H. WILLIS, JR.

JULY 3, 2001

BRENDA G. EGGLESTON

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

Joy C. Fuhr (Stephen D. Busch; Kimberly R. Hillman; McGuireWoods, LLP, on briefs), for appellant.

Wesley G. Marshall for appellee.

On appeal from a decision of the Virginia Workers' Compensation Commission, E.I. DuPont De Nemours and Company (DuPont) contends that the commission erred in refusing to charge against the 500 week maximum limits of her carpal tunnel syndrome and right shoulder injury awards the number of weeks that Brenda G. Eggleston received benefits under her August 25, 1994 award for disability resulting from gamekeeper's thumb. On

cross-appeal, Eggleston contends that the commission erred in terminating her gamekeeper's thumb award, thereby reducing her temporary total disability compensation rate. We affirm the commission's decision.

I. BACKGROUND

Eggleston sustained three separate injuries while working for DuPont and received three awards. She was awarded benefits for bilateral carpal tunnel syndrome with a communication date of September 28, 1989. Temporary total benefits were paid her at the rate of \$306.18 for September 19, 1990 through October 30, 1990. Permanent partial benefits were paid from January 30, 1992 through July 29, 1992.

Eggleston's second injury, sustained on November 28, 1990, was to her right shoulder. She received temporary total benefits at the rate of \$293.90 from January 12, 1991 through January 14, 1991, and from September 27, 1991 through November 2, 1992.

Eggleston's third award was for bilateral gamekeeper's thumb with a communication date of March 9, 1993. She received temporary partial benefits at the rate of \$74.35 from June 13, 1993 to November 30, 1993, based upon an average weekly wage of \$557.53.

On December 8, 1993, shortly after benefits ended for the third award, Eggleston filed a change-in-condition application. She alleged that she was fired while doing light duty work. The deputy commissioner found that she was disabled from all three conditions and entered an award for ongoing temporary total disability benefits beginning August 25, 1994, using the average weekly wage from the gamekeeper's thumb disability of March 9, 1993.

On February 3, 1999, DuPont filed a change-in-condition application, with an attached memorandum, seeking "to reduce the amount of temporary total disability benefits being paid to [Eggleston] and to award [DuPont] a credit against future payments." DuPont stated that it filed the application (1) to terminate Eggleston's award for bilateral gamekeeper's thumb, (2) to reduce the amount of temporary total disability benefits based upon the resolution of the gamekeeper's thumb, (3) to receive credit against future temporary total disability benefits paid Eggleston based on overpayment of benefits from October 22, 1997, the date the gamekeeper's thumb resolved, to February 17, 1999, the date DuPont reduced the amount of benefits pursuant to its application, and (4) to receive credit against future temporary total disability benefits paid Eggleston based upon time worked by her at light duty at her normal pre-injury wages. DuPont also contended that Eggleston's maximum entitlement to benefits for each individual injury should be reduced by the number of weeks that she received benefits under the August 25, 1994 award.

The deputy commissioner held that DuPont was entitled to a reduction of the temporary total disability award due to resolution of Eggleston's gamekeeper's thumb. He further held that DuPont's payments under the August 25, 1994 award did not entitle it to a reduction in Eggleston's potential terms of compensation relating to her remaining disabilities. Finding that the August 25, 1994 award, though reciting disability from all three conditions, was tied to the gamekeeper's thumb disability, he noted that the Workers' Compensation Act "does not provide for counting simultaneous payments, resulting from separate injuries, as more than one week of disability benefits

against the maximum allowable period of 500 weeks."

The full commission affirmed.

II. CREDIT AGAINST 500 WEEK MAXIMUM

DuPont contends that it is entitled to credit the number of weeks that Eggleston received benefits under her August 25, 1994 award against the 500 week maximum compensation terms relating to the carpal tunnel syndrome award and the right shoulder injury award. We disagree.

"[T]he right to compensation under the workmen's compensation law is granted by statute, and in giving the right the legislature had full power to prescribe the time and manner of its exercise. When the legislature has spoken plainly it is not the function of courts to change or amend its enactments under the guise of construing them. The province of construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation."

Dan River, Inc. v. Adkins, 3 Va. App. 320, 328, 349 S.E.2d 667, 671 (1986) (quoting Winston v. City of Richmond, 196 Va. 403, 407-08, 83 S.E.2d 728, 731 (1954)).

Code 65.2-518 provides:

The total compensation payable under this title shall in no case exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined in

65.2-500 for the applicable year by 500, except in cases of total permanent

incapacity as defined in 65.2-503 and in cases of permanent disability under subdivision A 4 of 65.2-504 and death from coal worker's pneumoconiosis under 65.2-513.

Code 65.2-503(E) (2) states:

Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to 65.2-502, each combined payment shall count as two weeks against the total maximum allowable period of 500 weeks.

The Act makes no other provision for counting single payments, resulting from separate disabling injuries, against more than one term of eligibility. Furthermore, the Act "should be construed liberally in favor of the worker." Bd. of Supervisors v. Martin, 3 Va. App. 139, 146, 348 S.E.2d 540, 543 (1986) (citation omitted). Therefore, we agree with the commission and hold that DuPont is not entitled to credit the number of weeks that Eggleston received benefits under her August 25, 1994 award against the 500 week maximum term limits relating to the carpal tunnel syndrome award and the right shoulder injury award. Eggleston sustained three separate accidents for which she received three separate awards. She is entitled to receive up to 500 weeks of benefits for each award. The August 25, 1994 award was based on her gamekeeper's thumb. Accordingly, the commission properly concluded that a credit against the terms of her other two awards was not due.

III. CHANGE IN CONDITION/GAMEKEEPER'S THUMB AWARD

"General principles of workman's compensation law provide

that '[i]n an application for review of any award on the ground of change in condition, the burden is on the party alleging such change to prove his allegations by a preponderance of the evidence.'" Great Atl. & Pac. Tea Co. v. Bateman, 4 Va. App. 459, 464, 359 S.E.2d 98, 101 (1987) (quoting Pilot Freight Carriers, Inc. v. Reeves, 1 Va. App. 435, 438-39, 339 S.E.2d 570, 572 (1986)). Factual findings made by the commission will be upheld on appeal if supported by credible evidence. See James v. Capitol Steel Constr. Co., 8 Va. App. 512, 515, 382 S.E.2d 487, 488 (1989).

In holding that DuPont proved that Eggleston's gamekeeper's thumb had resolved by October 22, 1997, the commission found as follows:

[Eggleston's] treating doctor, Dr. Enrique Silberblatt reported [her] thumb condition had "resolved" by the October 22, 1997, examination. Dr. Murray Joiner, Jr., who examined [Eggleston] one and one half months later, also did not find the condition disabling. [Eggleston] did not receive treatment for her thumb condition for almost two years. When Dr. Silberblatt examined her one month before the hearing, his report from that examination did not state [she] was disabled.

The [deputy c]ommissioner properly did not give decisional weight to Dr. Silberblatt's October 14, 1998, report in which he said [Eggleston] was disabled because Dr. Silberblatt had not recently

examined [her] before he wrote that report.
His last examination was the October 22,
1997, examination during which he opined the
condition had resolved.

As fact finder, the commission was entitled to weigh the
medical evidence and to accept the reports and opinion of Dr.
Silberblatt, Eggleston's treating physician. These support the
commission's finding that Eggleston's gamekeeper's thumb had
resolved. Accordingly, that finding is conclusive and binding
upon us on appeal. See id.

We affirm the commission's decision.

* Pursuant to Code 17.1-413, this opinion is not
designated for publication.

ASSIGNMENT OF ERROR

1. Did the Court of Appeals err in this case of first impression in concluding that the statutory 500-week benefit limit applies separately to each injury where the effects of multiple injuries are combined to support a finding of temporary total disability?