

1986

Irwin G. Bunnell v. Industrial Commission of Utah, U.S. Steel Corporation, and Second Injury Fund : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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FILED

IN THE SUPREME COURT OF THE STATE OF UTAH

IRWIN G. BUNNELL

Applicant and
Appellant

vs.

INDUSTRIAL COMMISSION OF UTAH,
U.S. STEEL CORPORATION, and
SECOND INJURY FUND

Defendants and
Respondents

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APPELLANT'S BRIEF

Case Number 860196

Number 6

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FILED

AUG 25 1986

Clerk, Supreme Court, Utah

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I

STATEMENT OF THE ISSUES

1. Was Mr. Bunnell denied his right to a fair and unbiased hearing?

2. Where the only two doctors who commented on the question of causation felt there was a causal relationship, and where no contrary evidence was presented, did the Industrial Commission deny and dismiss Mr. Bunnell's claim contrary to the one inevitable conclusion supported by the law and facts: that his total disability was caused in significant part by his industrial accident?

II

STATEMENT OF THE CASE

This is a workman's compensation claim for total disability benefits. The claim was dismissed after a hearing before an administrative law judge. A timely motion for review was denied by the Industrial Commission with a comment adopting and affirming the findings and conclusions of the administrative law judge. (Record p 150)

A.

FACTS RELATING TO THE INJURY AND THE DISABILITY

1. THE ACCIDENT

On November 13, 1953, Irwin Bunnell, while he was working as a carpenter for U.S. Steel Corporation, fell approximately 18 feet into an empty but still partially heated open hearth furnace. He struck several obstructions in the fall and landed unconscious on the hot (600-700 degree) brick floor of the furnace (Record p 23 lines 24-25) where he lay 30-50 seconds (Record p 30 line 3) until fellow workers could get him out of the furnace. (Record p 20 line 11 ff.)

2. THE INJURIES

Mr. Bunnell was unconscious for five days (Record p 38 lines 22-25) and was in the hospital for 15 days. (Record p 92-94) Injuries consisted of Colle's fracture of the left wrist, three metacarpal fractures of the left hand, Fracture of the right femur at the greater trochanter, fractured ribs 6 through 10 on the right (Record p 92-93), a depressed skull fracture, (Record p 41 lines 7-9, p 73 lines 21-23) and various burns, contusions and other injuries. (Record p 33 lines 12-16 and 21-23, and p 108) While in the hospital, he also developed a severe coughing problem. (Record p 39 line 15 to p 40 line 9)

With time Mr. Bunnell's injuries healed sufficiently for him to return to regular work on July 29, 1954, nine months after the accident (Record p 108), although he apparently did not reach a "fixed state of recovery" until October 21, 1954. (Record p 108

line 5)

3. RESIDUAL PERMANENT IMPAIRMENT

On October 21, 1954, Dr. Boyd J. Larson, the employer's company physician, reported residual permanent impairment of the left hand for ankylosis of the wrist, some shortening of the bone, and loss of muscle power in the left hand. He also reported residual aching in the right hip joint and in the left chest region. Dr. Larson then said, "We recommend that Mr. Bunnell be granted 15 per cent permanent partial disability settlement of the body for the above described residuals which have resulted from the injury suffered at this plant." (Record p 106 top)

On June 20, 1955, Mr. Bunnell was awarded \$866.25 for 15 per cent permanent disability resulting from the accident in accordance with the recommendation of the employer's company doctor. (Record p 134)

4. RESIDUAL CHRONIC COUGHING

Following this award for permanent disability, Mr. Bunnell continued to have lung problems. During the 15 years from the time of the accident until he became totally disabled, Mr. Bunnell suffered from chronic "smokers cough," though he had never smoked. (Record p 67 line 23 through p 68 line 8, p 46 lines 9-21, p 123 paragraph 2, p 26 line 13 through p 27 line 10, p 42 line 22 through p 43 line 3 and p 47 line 11 through p 49)

The residual coughing did sporadically get somewhat better, (Record p 27 lines 5-10, p 41 lines 1-4, p 45 line 14-15 and p 123 paragraph 2) but the coughing fits interfered with his work (Record p 68 line 1-8 and p 28 lines 14-16) and required medical treatment. (Record p 43 lines 8-21 and p 44 lines 19 ff.) The overall pattern of the lung problem was progressive. (Record p 132 latter part of paragraph 1, p 71 lines 14-21)

5. RESIDUAL DECREASED RESISTANCE

In addition to the chronic coughing fits, Mr. Bunnell also suffered with a residual decreased resistance to lung problems resulting from "much lung damage from heat burn." Consequently, he was told to be careful, that he "might have a tendency to obtain pneumonia." (Record p 120 mid paragraph 1, p 123 paragraph 2 line 5, p 54 lines 4-6, see also offer of proof to the Industrial Commission, Record p 145 second full paragraph.)

Because of the increased propensity for lung problems, in 1960 a "minor cold" developed into three days of continuous coughing so severe that hospitalization and oxygen treatment were required. (Record p 111 top and p 120 mid paragraph 1)

6. PROGRESSIVE NATURE OF RESPIRATORY DIFFICULTIES

Mr. Bunnell showed a "progressive pattern of respiratory difficulty throughout the ensuing years from the accident." (Record p 132 latter part of paragraph 1, p 71 lines 14-21)

7. THE NATURE OF THE PULMONARY FAILURE

Mr. Bunnell's "pulmonary failure" was a matter of serious question among the treating medical experts who considered and ruled out:

- a. Congestive heart failure (Record p 127 paragraphs 1, 2 and 5)
- b. Emphysema (Originally admitted for emphysema - Record p 131 paragraph 4 first sentence, but was found to have negative pulmonary function studies - Record p 123 paragraph 2 top, p 117 and 130. Even the most recent studies, in 1985, conclude only that "there are suggestions that emphysema may be present." p 132 paragraph 2)
- c. Asthmatic bronchitis (Dr. Wight's impression on 10-28-68 was "Questionable asthmatic bronchitis" Record p 122, but medicating for allergic asthma and bronchospasm was not effective, Record p 127 paragraph 3 last sentence)
- d. Allergies (Record p 127 paragraph 4 first sentence, p 124 under findings)
- e. Tuberculosis (Record p 121 suggesting tuberculosis but indicating further studies needed to determine activity, but p 131 paragraph 3 penultimate sentence - "No activity found.")
- f. Pulmonary tumor (Record p 127 paragraph 7)
- g. Epilepsy (The uncontrolled spasmodic coughing fits, in combination with the severe head injury and prolonged period

of unconsciousness at the time of the accident, also suggested a form of epilepsy, but epileptiform brain waves were not found by EEG. Record p 126. See also p 41 line 22 through p 42 line 2)

The symptoms, by the time of the first 1968 hospitalization, consisted of severe uncontrollable fits of coughing which would last one or two hours. (Record p 120 paragraph 1 second sentence) This had been a mild, primarily non-productive, chronic cough, off and on since the industrial accident. (Record p 123 paragraph 2) From about spring of 1968 the coughing became progressively more productive until by the time of the second 1968 hospitalization in October of 1968, the cough was producing copious amounts of sputum, bringing up "an entire glassful of material daily." (Record p 127 paragraph 3 and p 124 under Findings) In addition, Mrs. Bunnell reported that the coughing fits became so severe that occasionally they would result in vomiting or nose bleeds. (Record p 46 lines 11-14)

After numerous tests and two hospitalizations (9-18-68, Record p 120 and 10-28-68, Record p 123), a consulting medical expert tenuously decided that Mr. Bunnell's pulmonary failure "strikes me as being an allergic bronchospastic asthma despite the fact that there are many factors that make one wonder here." (Record p 129 paragraph 1)

8. RESULTING PERMANENT TOTAL DISABILITY

Finally, on September 11, 1968, a year before he was eligible for regular retirement, Mr. Bunnell was declared totally disabled by his treating physician. (Record p 135 last paragraph) This document vaguely describes the medical problem as "Congestive failure - ? ... pulmonary failure." (Record p 135. Though the writing is difficult to read on this document, U.S. Steel's answer to the application for hearing confirms this reading - Record p 5 lines 17-19)

That the doctor considered this a "permanent" total disability is shown in the discharge summary for the first 1968 hospitalization where the doctor says, "Probable medical retirement will be necessary." (Record p 131 paragraph 4)

Retirement at that time was not mandatory at age 65 if the worker could pass a physical examination. Mr. Bunnell retired only because he was unable to pass the physical exam. (Record p 54 lines 19-25)

While the nature of the pulmonary failure was a matter of much speculation, the fact that Mr. Bunnell was totally disabled thereby has never been questioned, even by U.S. Steel. Before they put him on retirement benefits, U.S. Steel paid disability benefits for over a year (albeit under a sickness and accident policy) and never challenged, then or since, the medical fact of Mr. Bunnell's total disability. (Record p 5 lines 15-19)

B.

FACTS RELATING TO THE ISSUE OF CAUSATION

The principal question to be answered in this case, that is, what caused Mr. Bunnell's disabling pulmonary failure, is specifically discussed by the medical experts in only two places in the record:

1. MEDICAL OPINION OF CAUSATION: Dr. Richard P. Bigelow during the September 1968 hospitalization indicated a combination of factors led to Mr. Bunnell's respiratory problem which he called at that time a "probable emphysema." The factors identified were:

- a. A "kyphosis" (humpback) deformity
- b. "Childhood bronchitis tendency"
- c. "Maybe aggravated by dust exposure at his job"
- d. "Also, the chest injury in 1951 [1953] didn't help the matter with rib fractures"
- e. "One episode of pneumonia."

"[This] combination of events," says Dr. Bigelow, "has led to his respiratory problem at this time." (Record p 118 under Impression)

It should be noted that the pneumonia episode was also attributed to the industrial accident. (Record p 120 mid first

paragraph. See also p 111 paragraphs 1 and 2) Thus, two of the five mentioned causal factors are linked directly to the industrial accident.

At that time, Dr. Bigelow apparently also considered underlying congestive heart failure as a possible triggering factor contributing to this cough, (Record p 118 last paragraph) but that was later ruled out. (Record p 127 paragraphs 1 and 2)

2. MEDICAL OPINION OF CAUSATION: Dr. Tracy A. Hill, Mr. Bunnell's current treating physician, after reviewing the medical history and the history of the accident, states his opinion as to causation of Mr. Bunnell's progressive respiratory difficulties as follows:

"While it is extremely difficult to say that his accident was the entire cause of his present difficulties, what is clear is that he has had a progressive pattern of respiratory difficulty throughout the ensuing years from the accident. It is reasonable to suggest, in my opinion, that his accident was at least a contributing factor to his progressive respiratory difficulty." (Record p 132 paragraph 1)

3. EVIDENCE OF CAUSATION IN MEDICAL RECORDS AND TESTIMONY:

a. Prior to the 1953 accident, Mr. Bunnell was in excellent health. As a young man he used to ice skate six miles across Utah Lake in the winter. (Record p 50 lines 7-11) He lettered in high school athletics. He participated on baseball, wrestling and track teams. (Record p 50 lines 12-16) As an adult he climbed cliffs and mountains (Record p

51 lines 21-23) and was a guide for hikes up Mt. Timpanogos several times a summer. (Record p 50 lines 16-18 and p 51 lines 10-16)

b. No doctor ever told Mr. Bunnell he had lung problems before the accident. (Record p 66 lines 1-9)

c. Mr. Bunnell worked for Geneva Steel seven years before the accident and had received treatment and examinations, including chest x-rays (Record p 88) at the Geneva dispensary. Yet U.S. Steel never offered any evidence to show any lung problems existed before the accident.

d. Development of the lung problems is documented by the X-ray reports:

1) An X-ray report from Geneva dispensary dated 6-12-52, more than a year before the accident, has no indication of lung problems. (Record p 88)

2) X-rays the day of the accident, 11-13-53, show "No evidence of pneumothorax or of parenchymal hemorrhage. Both lungs are well aerated." (Record p 91)

3) X-rays nine days later, 11-22-53, show "consolidation of right lower lobe due to hemorrhage or pneumonia." Left lung "is not as well aerated as on previous examination." (Record p 95)

4) Follow up X-rays at Geneva dispensary are thereafter consistently positive for "emphysema," or "pulmonary scarring" or "infiltrates." (10-5-54 Record p 102, 3-14 55 Record p 107, 3-15-66 Record p 114, 9-3-68 Record p 116)

e. Mrs. Bunnell testified that she remained with Mr. Bunnell in the hospital (Record p 38 lines 22-24) and that while he was there he developed a severe coughing problem (Record p 39 line 14 to p 40 line 8) for which the doctor prescribed "steari inhalation" therapy (Record p 94 under date 11-21-53) and medications. (Record p 40 lines 4-5)

f. Mrs. Bunnell was not allowed to testify that the doctors informed her that Mr. Bunnell's lungs had been permanently injured (record p 36 lines 2-11 and p 54 lines 2-6; See also offer of proof, Record p 145 second full paragraph) but 1968 medical records were admitted which confirm that Mr. Bunnell "was told he might have a tendency to obtain pneumonia." (Record p 120 mid first paragraph, see also p 123 paragraph 2 line 5)

g. After the accident Mr. Bunnell was never able to participate in strenuous physical activities as he had before and he never regained his full strength. (Record p 51 lines 18-23, p 71 lines 14-21, p 68 lines 14-16) From the

time of the accident he never got rid of the chronic cough.
(Record p 67 line 23 to p 68 line 8. See also references to
Residual Chronic Coughing, above)

4. THE ONLY OPPOSING EVIDENCE ON CAUSATION: To counter the two
medical opinions and the evidence in the testimony and the
medical records, the employer submitted for evidence only an
insurance claim form, (Exhibit D-1, Record p 135) wherein Mr.
Bunnell responded "No" to the questions:

"Do you claim this disability was caused by an
accident: (Answer 'yes' or 'No')"

and,

"Do you claim this disability is related to your work?
(Answer 'Yes' or 'No')."

The finding of the administrative law judge, purportedly
based on this document, was that Mr. Bunnell "at that time
represented that his problem was not industrially related."
(Record p 134 last paragraph first sentence)

The significance of this claim form as "evidence of
causation" and as support for the administrative finding is
extremely questionable and can only be understood when the
document is considered in the factual and historical context in
which the form was signed. Three very important facts must be
considered:

a. This form reflects the tentative belief, on 9-30-68 when the form was signed, that the respiratory difficulties were being aggravated by an underlying congestive heart failure (non industrial) though it was determined later, after the form had been submitted, that there was no underlying heart disease. See Record p 118 last paragraph, dated 9-18-68 (before the claim form was submitted) where Dr. Bigelow speculates about the "contribution to his cough to possible underlying congestive failure," and then see Record p 127 paragraphs 1 and 2, dated 11-16-68 (after the claim form was submitted) ruling out any "background myocardial failure."

It is understandable in the context of his belief at the time that there was underlying congestive heart disease why Dr. Bigelow on 9-30-68 responded on the claim form under "Nature of the sickness (Describe complication, if any)" by writing "Congestive failure - ? com pulmonary failure." (Record p 135)

It is likewise, in that same context, understandable why Mr. Bunnell was not "making a claim" that his problems day he signed the form, he probably had been told that he was suffering from a possible underlying congestive heart failure.

b. The document does not ask whether Mr. Bunnell thought the problem was industrially related as the finding indicates,

but whether he was making a claim. The finding that Mr. Bunnell had represented that his injury was not industrially related appears to be based on representations of counsel. (Record p 79 line 15 to p 80 line 16) The signed claims form, on its face, does not ask for or necessarily indicate Mr. Bunnell's feeling about the cause of his lung problems. (Exhibit D-1 Record p 135)

It is clear from the records that Mr. Bunnell thought his lung problems were related to the accident at the time he went to the doctors. All hospital and medical histories both in 1960 and 1968 refer to the chest or lung injury that occurred in the 1953 industrial accident. This shows that the relationship between the accident and the ongoing respiratory difficulties was taken seriously by both Mr. Bunnell and his doctors at those early times. It was not a causal relationship only contemplated recently. (3-7-60 hospitalization, Record p 111 1/3 from top of page; 9-18-68 hospitalization, Record p 120 mid first paragraph; 10-28-68 hospitalization, Record p 123 paragraph 1; 11-16-68 consultation, Record p 127 paragraph 2)

c. Finally, Mr. Bunnell had no motivation to make a worker's compensation claim in 1968 because of the employer's conscientiously enforced offset provisions. (Record p 5 lines 22-25) He believed that whatever he might gain by

pursuing his claim would only be offset from his medical or retirement benefits. He had no way of anticipating that years later the workers' compensation benefits would be raised by statute to much higher than his \$288.81 a month pension. (Record p 5 line 22)

In this context the "claim form" has very speculative relevance to the issue of causation and lends no support whatsoever to the administrative finding that Mr. Bunnell "at that time represented that his problem was not industrially related." (Record p 134)

C.

FACTS RELATING TO BIAS AND UNFAIRNESS

A certain amount of skepticism is understandable if not justified in a 1985 claim arising out of a 1953 injury. The earliest evidence of the commission's attitude toward Mr. Bunnell's claim is shown in an October 17, 1985 letter to counsel refusing to set Mr. Bunnell's case for early hearing. (Record p 142) Facts showing bias and unfairness in the hearing (February 1986) are exhibited in the conduct of the proceedings and in the commission's findings and interpretations of the evidence as follows:

1. EVIDENCE OF BIAS AND UNFAIRNESS IN THE CONDUCT OF THE PROCEEDINGS:

a. Hearsay evidence was illegally excluded, (Record p 35 lines 1-12) keeping in mind that hearsay is specifically made admissible in Industrial Commission hearings by statute and case law. (See argument below for references) The administrative law judge also decided this information was "not pertinent" (Record p 35 line 13) without ever hearing the testimony.

b. The administrative law judge anticipated hearsay and gave warning about it without objection of opposing counsel (Record p 36 lines 1-11)

c. Hearsay objection was again sustained even though the witness was not asked to give hearsay but to express her own understanding of why she had to remain constantly, day and night, in the hospital with her husband. (Record p 37 lines 5-11)

d. Mr. Bunnell's counsel was not allowed to argue his objection to this exclusion of non hearsay testimony. (Record p 37 lines 12-14)

e. Intimidating threats and warnings were made as to what would happen if Mr. Bunnell attempted to "make his record."
(Record p 37 line 14 through p 38 line 21)

f. The effects of the intimidating threats on the witness were apparent throughout her testimony as she showed repeated concern whether she could say what she wanted.
(Record p 36 lines 16-17 "I don't know whether this is pertinent or not"; Record p 41 lines 18-19 "I don't know whether this would be allowed in the record or not"; p 44 line 2 "If I could be allowed to tell of the injuries..."; p 44 lines 6-18 where she apologizes unnecessarily to the judge several times; p 51 line 23 "That's bad for the record, but it's the truth."; p 54 line 4 "I can't tell you what Dr. Linden said about his lungs?"; p 58 line 11 "Am I out of line?")

g. The administrative law judge interrupted Mr. Bunnell's closing argument and refused to accept written argument on the medical evidence and refused to allow counsel to verbally argue the medical facts supporting Mr. Bunnell's case (Record p 75 line 23 to p 76 line 25)

h. Finally the record shows that the administrative law judge had already made his decision to deny Mr. Bunnell's

claim before he reviewed the medical evidence upon which the decision was purportedly based and before the medical records were even admitted into evidence. Note, the administrative law judge reveals his decision when he says to Mr. Bunnell's counsel, "You can make that argument again, if you want to file a motion for review or something. All right?" (Record p 76 line 13-14) This comment was made before the medical records were reviewed (Record p 76 line 20) and before they were even admitted into evidence. (Record p 77 line 3-9) Nevertheless, the denial was purportedly based on review of the medical evidence. (Record p 139 first paragraph and p 140 first paragraph)

2. EVIDENCE OF BIAS AND UNFAIRNESS IN THE FINDINGS AND INTERPRETATIONS OF EVIDENCE:

a. On the question of why Mr. Bunnell did not dispute his claim earlier, the administrative law judge said:

"Although at the time of the hearing, the Applicant's wife testified that they had no money coming in, and were placed in a position of duress, the record does not bear this allegation out. Rather, the file indicates that the Applicant was paid temporary total disability until he returned to work in January of 1954, and until September of 1968, he worked regularly at U.S. Steel and was paid his regular full salary." (Record p 139)

According to the record the Bunnell's were not happy

with the award they got but did not appeal for two reasons: First, they felt they were too poor, and second, they asked a couple of attorneys and were told:

"Don't try to fight Geneva. You can never win against Geneva." (Record p 58 line 17 through p 59 line 8)

There was considerable discussion to establish the fact that Bunnell's did receive their compensation benefits or wages during that time. (Record p 59 line 9 through p 61 line 2)

But at the time the Bunnells believed they had to pay the attorney up front. (Record p 61 lines 11-17)

The fact still remains that they had talked to a couple of attorneys and , right or wrong, they were advised that Geneva was not beatable and believing they would have to pay the attorney up front to try, the Bunnells believed they were too poor to appeal their case.

The finding of the administrative law judge portrays this as an inconsistency on the part of the Bunnells, but the facts in the record do not support that portrayal.

b. The finding that the catwalk from which Mr. Bunnell fell "was either eighteen feet in the air or forty feet in the air depending on which record or testimony is consulted," (Record p 137 top) appears to be included to make Mr.

Bunnell appear as an unreliable exaggerator. In fact the only reference to 40 feet is in the original hospital admission note (Record p 92 top) which had to come from Dr. Larson, the company doctor, who took Mr. Bunnell to the hospital. Mr. Bunnell was unconscious. Mr. Bunnell's witness, who saw the accident, said the catwalk was about 18 feet high. (Record p 18 lines 12-13)

c. Another finding indicates that the co-worker "testified that the applicant [Mr. Bunnell] was on the floor for approximately 15 seconds." (Record p 137 mid paragraph 1) The testimony was 30 - 50 seconds (Record p 29 line 25 to p 30 line 4)

d. After noting that Mr. Bunnell returned to full duty status in July of 1954, nine months after the accident, the administrative law judge said:

"The applicant apparently had no further problems until 1960, when he had a bout of pneumonia." (Record p 137 paragraph 2).

This finding seems almost cavalier in light of the overwhelming mass of testimonial and medical documentary evidence of continuing lung problems during that period, which is fully cited to the record above under STATEMENT OF THE CASE section A parts 3, 4, 5, and 6.

And again, a related finding says:

"The doctor's history further indicates that other than a case of pneumonia, the Applicant apparently had no further problems with his lungs following his industrial injury of 1953." (record p 137 bottom to 138 top)

The medical history referred to, however, did not say he had no lung problems. The comment is in a consultation report dated 11-16-68 and says:

"Following this [the pneumonia episode] and for the last 16 years up until earlier this year, he has had no chest complaints." (Record p 127 end of paragraph 1)

It must be remembered that these doctors were in the midst of sorting through numerous possible diagnoses. A chief consideration was "congestive heart failure." The comment about "no chest complaints" comes in the last half of one paragraph and follows another whole paragraph all devoted to the question of congestive heart failure. In this context "no chest complaints" probably refers to heart disease. To infer otherwise would require the assumption that the consulting doctor was unaware of the other medical histories which referred to continual chronic coughing all during that period, and that he was unaware of or disbelieved the X-rays which showed evidence of long

standing lung problems.

Taken in context and as it is written, rather than as given in the findings, this medical history certainly cannot support the finding that "The doctor's medical history indicates that ... [Mr. Bunnell] ... had no further problems with his lungs following his industrial injury of 1953."

e. The administrative law judge's findings list some non-industrial looking diagnoses, which appear to support the conclusion that Mr. Bunnell's problems were non-industrial, even though these diagnoses were all later ruled out. They include:

- 1) Emphysema, listed in the findings as a diagnosis (Record p 138 paragraph 1 line 6) was never verified by pulmonary function studies, which were negative. (Record p 123 paragraph 2 top, p 117 and 130. Even the 1985 studies only speculate that emphysema "may be present." p 132 paragraph 2)
- 2) Chronic congestive failure [heart disease] with pulmonary congestion, listed in the findings as a diagnosis (Record p 138 end of paragraph 1) was also ruled out. (Record p paragraphs 1, 2 and 5)
- 3) Tuberculosis, listed in the findings as a possible diagnosis (Record p 138 end of paragraph 1 and again mid paragraph 2) was never diagnosed. It was only suggested by x-ray reports as a possibility to be

confirmed. (Record p 121) The only diagnosis was "old pulmonary scarring compatible with healed granulomatous T.B." (Record p 131 last paragraph) Tuberculosis as an active contributor to Mr. Bunnell's problems was ruled out. (Record p 131 paragraph 3, "No activity found.")

f. The administrative law judge quotes part of Dr Parrish's latest diagnosis saying:

"Mr. Bunnell after observation during bronchoscopy strikes me as being an allergic bronchial spastic asthma" (Record p 138 paragraph 2)

The part left out adds,

"despite the fact that there are many factors that make one wonder here." (Record p 129)

The extent of the doctor's uncertainty about allergic bronchospastic asthma is more clear when you compare Dr. Parish's more complete consultation report where allergy work up and medication for allergic asthma and bronchospasm show negative results. (Record p 127 paragraph 3 last sentence and paragraph 4)

g. The finding of the administrative law judge also says:

"The doctor also indicated his belief that this was an episodic affair and that the applicant would clear with time and medication." (Record p 138 paragraph 2)

However, what the doctor said was:

"I would hope this is an episodic affair and that he will clear with time and medication." (Record p 129)

h. Immediately following this finding that the doctor believed Mr. Bunnell's problems would clear with time and medication, the administrative law judge adds, as if to confirm the doctor's supposed belief, a finding which says:

"Apparently, the applicant had no further treatment until 1984, when he came under the care of Dr. Tracy Hill of the Utah Valley Hospital." (Record p 138 end of paragraph 2)

This finding ignores undisputed statements in the hearing indicating that Mr. Bunnell was hospitalized three more times and remained under active treatment between 1968 and the present (Record p 64 line 19 through p 65 line 3), and ignores Mrs. Bunnell's undisputed testimony in response to the question, "Who was Mr. Bunnell's treating physician after he retired?" when she said: Dr. Mineer, then Dr. Moody who referred him to Dr. Bateman, then to Dr. Arbon, then Dr. Lewis then to Dr. Hill, the current treating doctor. (Record p 55 line 23 to p 56 line 11)

This finding not only dramatically contradicts facts presented at the hearing as shown by the record cited, but belies the tacit understanding at the hearing and the

specific instruction in a letter to counsel from the chief administrative law judge that the medical records after 1968 were not particularly relevant. (Record p 142 paragraph 2)

If the post 1968 records of the three hospitalizations and six consecutive treating physicians were considered relevant either by opposing counsel or by the administrative law judge, their existence was fully disclosed and the records could have been requested. To fail to do so and then to make a finding that Mr. Bunnell "apparently had no treatment" between 1968 and 1984 dramatically displays the commission's bias against Mr. Bunnell's claim.

SUMMARY OF ARGUMENTS

ARGUMENT 1

In an administrative hearing Mr. Bunnell has a right to a fair and unbiased hearing. The question of whether he received this due process right is a matter of law to be determined by the Supreme Court from the record.

Mr. Bunnell did not receive fair and unbiased consideration of his claim as evidenced by the demeanor and action of the administrative law judge during the proceedings, including intimidating threats and unfair refusal to hear justified hearsay evidence. The administrative law judge also showed on the record that his decision was made before the evidence had been admitted or considered. Bias was also evidenced in distorted findings of

fact and interpretations of evidence and in unreasonable ultimate conclusions contrary to basic findings.

ARGUMENT 2

Mr. Bunnell presented substantial, competent and uncontradicted evidence that his 1968 disabling lung failure was directly, if distantly, caused by his industrial accident. His evidence included two medical opinions and abundant other evidence relating the disability directly to the accident.

No contrary medical opinion was even proffered. The supposedly conflicting statement in the proffered insurance claim form is not contradictory at all when read in historical context. Nor, as implied by the administrative law judge's findings are there any conflicting diagnoses, conflicting medical histories, or conflicting medical opinions as to causation of the disabling pulmonary failure.

The commission denial should, therefore, be reversed as being based on an arbitrary and capricious disregard of evidence of unreasonable refusal to believe it.

ARGUMENT 3

The ultimate conclusion and basis of denial was that Mr. Bunnell failed to prove his case by a preponderance of the evidence. Yet, the administrative law judge found specifically that the doctor's opinion favored causation. With no contrary

evidence to the one opinion favoring Mr. Bunnell's position, it is self contradictory for the Commission to say Mr. Bunnell failed to prove his case by a preponderance. The Commission decision should, therefore, be reversed so as not to contradict itself.

ARGUMENT 1

POINT I

MR. BUNNELL HAD A RIGHT TO A FAIR AND UNBIASED HEARING.

It is well established law that Mr. Bunnell has a right to a fair and unbiased hearing. The Utah Supreme Court in Anderson v Industrial Commission 696 P2d 1219 (1985) said:

"One of the fundamental principles of due process is that all parties to a case are entitled to an unbiased, impartial judge. 'A fair trial in a fair tribunal is a basic requirement of due process.' In re Murchisan 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 2d 942 (1955). Fairness requires not only an absence of actual bias, but endeavors to prevent even the possibility of unfairness.

"This principle applies with as much force to administrative proceedings as it does to judicial trials. Gibson v Berryhill, 411 U.S. 564, 579, 93 S.Ct. 1689, 1698, 36 L.Ed. 2d 488 (1973), Vail convalescent and Care Institution v Industrial Commission, Utah 649 P 2d 33, 37 (1982)."

POINT II

THE STANDARD OF REVIEW IN ADMINISTRATIVE CASES WHERE THE QUESTION IS WHETHER THE COMMISSION COMPLIED WITH THE FAIRNESS REQUIREMENTS OF DUE PROCESS IS THE "CORRECTION OF ERROR" STANDARD, WITH NO DEFERENCE GIVEN TO THE EXPERTISE OF THE ADMINISTRATIVE COMMISSION.

As outlined in Utah Department of Administrative Services v Public Service Commission 658 P2d 601, 608, the "correction of error" standard will be applied in determining "whether the commission has complied with the fairness requirements of due process."

In a case somewhat similar to Mr. Bunnell's, the Utah Supreme Court addressed the question of review as follows:

"It is contended that his client was denied a fair and impartial hearing before an unprejudiced tribunal. It is asserted in argument that this claim is the most vital question involved in this review. It is necessary, therefore, that we briefly consider this contention of counsel, notwithstanding there is testimony in the record to support the commission's findings." Ocean Accident & Guaranty Corporation v Industrial Commission, 66 U 600, 245 P 343, 345 (1926)

Likewise, in Mr. Bunnell's case, he contends that this Court should go beyond the question of whether there is substantial reasonable evidence to support the commission findings, to determine whether Mr. Bunnell was denied a fair and unbiased hearing.

POINT III

MR. BUNNELL WAS DENIED A FAIR AND UNBIASED HEARING

The facts showing that Mr. Bunnell was denied a fair and unbiased hearing are listed in detail above under STATEMENT OF

THE CASE Part C (1 & 2) "FACTS RELATING TO BIAS AND UNFAIRNESS" with specific citations to the record. These facts will not be repeated here.

We realize the determination of bias and due process is a factual decision that must be made by this Court based on the record, but by way of argument on this issue, a couple of points should be made: First, on the exclusion of hearsay evidence and then to distinguish the Ocean Accident and Guaranty case.

1. The exclusion of hearsay evidence was improper particularly in Mr. Bunnell's case. In Schmidt v Industrial Commission, 617 P2d 693, 696, this Court said:

"The hearsay rule has no application in a commission proceeding and the commission and its officers may receive and consider any hearsay evidence presented to it. Therefore, the administrative law judge erred in excluding this evidence on the basis of the hearsay rule."

Again, this Court said in Gardner v Gardner Plumbing and Heating, 693 P2d 678 (Utah 1984):

"Our cases have stressed that non technical rules are to apply at such hearings and that fairness is the guiding principle." (Cases omitted)

In Mr. Bunnell's case hearsay evidence was appropriate and fair because Dr. Larson was the defendant's employee, and his records were from Geneva (U.S. Steel) dispensary and were thus

under the control of the defendant employer. Other principal treating doctors were chosen by the employer, and the medical records available for the hearing were obviously skimpy and incomplete and in some cases blatantly inaccurate. (See, for example, Dr. Linden's "Summary of Medical Record to the Industrial Commission of Utah for Permanent Disability Evaluation" [Record p 108] which puts the rib fractures on the wrong side. See also St. Mark's Hospital "progress notes" [Record p 93] covering a 15 day hospital stay with serious multiple injuries in 1/2 page.)

Fairness in these circumstances requires that witnesses be allowed to supplement the medical records with reasonable hearsay testimony. This was particularly so where the witnesses' hearsay evidence was corroborated sufficiently by evidence in the medical records to establish its reliability. (See STATEMENT OF THE CASE Section B 3e-3f above.)

The hearing officer was not required to believe the evidence, but to refuse to hear it was not only an error, as in the Schmidt case, but it showed a spirit of unfairness and arbitrary disinterest in the truth.

2. Though Mr. Bunnell's case is similar, some facts significantly differ from the Ocean Accident & Guaranty case. In that case the appellant failed to prove he had been denied an impartial hearing. The reasons for that failure were that it

appeared on review that the witnesses did give their opinions freely despite the attempts by the hearing officer to bias the outcome, and furthermore, the findings of the commission were supported by substantial competent evidence. See Ocean Accident and Guaranty v Industrial Commission 245 P 343, 346.

However, applying the same standard of review to Mr. Bunnell's case, the evidence is distinguishable in three ways that will show he was indeed denied a fair hearing:

a. In the Ocean Accident case, the hearing officer was unsuccessful in preventing testimony of the witnesses. The opinions were given freely despite the hearing officer.

In Mr. Bunnell's case the administrative law judge successfully, though improperly, prevented the witness from getting significant information before the court.

b. In Mr. Bunnell's case the administrative law judge showed that he had already decided the case before reviewing the medical evidence when he said to Mr. Bunnell's counsel:

"You can make that argument again, if you want to file a motion for review or something. All right?"
(Record p 76 lines 13-14)

This comment was made before the medical records were reviewed (Record p 76 line 20) and before they were even admitted into evidence. (Record p 77 lines 3-9)

Nevertheless, the administrative decision was purportedly based on review of the medical evidence. (Record p 139 paragraph 1 and p 140 paragraph 1)

This fact, that the decision was made before the evidence was considered, is another factor that was not present in the Ocean Accident case.

c. The third factor distinguishing Mr. Bunnell's case is that, unlike the Ocean Accident case, the findings in Mr. Bunnell's case were not supported by substantial or reasonable evidence, as will be shown below.

The conclusion on the issue of bias and a fair hearing, of course, must be drawn, not from argument, but from the facts in the record.

ARGUMENT 2

POINT I

MR. BUNNELL PRESENTED SUBSTANTIAL, COMPETENT AND UNCONTRADICTED EVIDENCE

The facts showing the nature of Mr. Bunnell's disabling lung problems and the causal relationship to the industrial accident are set out in detail above with complete citations to the record. The need not be repeated here. The facts demonstrating the causal relationship consist in showing that: (For details see STATEMENT OF THE CASE Section B 3)

1. Mr. Bunnell had exceptional health before the accident and no indication of ongoing lung problems.
2. The lung problems appeared at the time of the accident.
3. The doctor informed Mr. Bunnell that his lungs had been permanently injured. (Above B 3f)
4. The lung problems never completely cleared after the accident, but got progressively worse. (See also STATEMENT OF THE CASE Section A parts 4,5,6)
5. That the treating doctors in 1968 and at present both expressed opinions that the lung problems were at least partially caused by the industrial accident. (See STATEMENT OF THE CASE Section B part 1 & 2)

It is Mr. Bunnell's contention that there is no substantial contrary evidence to that presented in his favor. Several possible sources of conflicting evidence are considered as follows:

1. No contrary medical opinions were offered in evidence.
2. The employer offered an insurance form as evidence of a

contradictory prior position taken by Mr. Bunnell. (Exhibit D-1, Record p 135). However, as shown above in the presentation of facts, (See STATEMENT OF THE CASE Section B part 4) the historical factual context of this document shows that at the time it was signed, Mr. Bunnell and his doctor believed the lung problems were partially related to congestive heart failure, a diagnosis which was later completely ruled out.

After that error was corrected, leaving the accident as the principal cause of the lung problems as Mr. Bunnell had believed all along, the disability claim form was not changed. Mr. Bunnell had no motivation to change it since he was already receiving benefits and at that time the disability benefits and the workers compensation benefits were equal and offsetting in any case (See STATEMENT OF THE CASE Section B part 4 for details and citation to the record)

The form itself was merely signed by Mr. Bunnell. The part the employer proffered as evidence that Mr. Bunnell took a prior contradictory position was typed in. If that document does constitute evidence that Mr. Bunnell did intend to make such a contradictory representation, that is, even if it represented his belief at the time that he had heart disease, that belief is understandable in the context, but it certainly cannot have any substantial weight as proof of causation of the lung problems, since heart disease was later ruled out.

It is , therefore, Mr. Bunnell's argument that no

substantial evidence contradicting the medical opinions of the doctors as to causation was ever presented.

3. In two ways the administrative law judge suggested there were internal conflicts in the medical record.

a. First, he listed several apparently non industrial causes or diagnoses suggested in the record including: childhood bronchitis, kyphosis (humpback) deformity from a fall as a child, pneumonia, emphysema, chronic congestive failure (heart disease) with pulmonary congestion and tuberculosis. (Record p 138)

The first three were medical history and were listed by Dr. Bigelow as also contributing to the 1968 respiratory problems. (Record p 118 bottom) But Mr. Bunnell was 50 when the accident occurred and there was no evidence that either problem had affected his lungs since childhood. (See STATEMENT OF THE CASE Section B 3a-3d for details and citation to the record)

The pneumonia came after the accident and was also attributed to the accident. (Record p 120 mid first paragraph. See also p 111 paragraph 1 and 2)

The last three: emphysema, congestive failure, and tuberculosis were all considered and ruled out as active

contributors to Mr. Bunnell's problems. (See STATEMENT OF THE CASE Section C 2e)

b. A second suggested source of internal conflict in the record was brought in by the administrative law judge finding that one of the medical histories indicated that Mr. Bunnell had no lung problems after the accident other than one case of pneumonia. As was shown above, (under STATEMENT OF THE CASE Section C 2d) the medical history referred to did not say "no lung problems" but "no chest complaints" and in its context was shown to be referring to heart problems, not lung problems.

c. The administrative law judge seems to find internal contradicting medical opinion in the letter of Dr. Tracy Hill because Dr. Hill says it is reasonable to "speculate" that the pulmonary difficulties began with the accident, instead of meeting the "case law" requirement that "findings" be in terms of "reasonable medical probability." (Record p 138 last paragraph)

Dr. Hill, of course, was giving his medical opinion not making a finding. He says elsewhere in his letter:

"While it is extremely difficult to say that his accident was the entire cause of his present difficulties, what is clear is that he has had a progressive pattern of respiratory difficulty throughout the ensuing years from the accident. It is reasonable to suggest, in my opinion, that his accident was at least a contributing factor to his progressive respiratory difficulty." (Record p 132)

Dr. Hill does not attribute all of Mr. Bunnell's problems to the accident, but he clearly does give it as his opinion that the progressive respiratory difficulties were caused at least in part by the accident. That opinion agrees exactly with that of Dr. Bigelow in 1968. (Record p 118 last paragraph)

The fact that Dr. Hill does not use satisfactory legal jargon does not constitute evidence that his opinion is opposite of what he clearly says it is.

In short, Mr. Bunnell presented substantial, competent and uncontradicted evidence that his 1968 disabling lung failure was directly, if distantly, caused by his industrial accident.

No contrary expert medical opinion was offered. The supposedly conflicting statement in the proffered insurance claim form is not contradictory at all when read in historical context, and there are no conflicting diagnoses, no conflicting medical histories and no conflicting medical opinions as to causation of the disabling pulmonary failure.

POINT II

THE DENIAL OF COMPENSATION SHOULD BE REVERSED BECAUSE THE INDUSTRIAL COMMISSION ARBITRARILY AND CAPRICIOUSLY DISREGARDED THE EVIDENCE OR UNREASONABLY REFUSED TO BELIEVE SUCH EVIDENCE.

The normal rule of review in administrative cases denying compensation is stated in Kent v Industrial Commission 57 P2d 724 which says:

"In the case of denial of compensation, the record must disclose that there is material, substantial, competent, uncontradicted evidence sufficient to make a disregard of it justify the conclusion, as a matter of law, that the Industrial Commission arbitrarily and capriciously disregarded the evidence or unreasonably refused to believe such evidence."

See also Baker v Industrial Commission 17 U2d 141, 405 P2d 613 which says:

"As a matter of law the Industrial Commission may not without any reason or cause, arbitrarily or capriciously refuse to believe and act upon substantial, competent and credible evidence which is uncontradicted."

ARGUMENT 3

THE INDUSTRIAL COMMISSION MADE ULTIMATE CONCLUSIONS CONTRARY TO ITS OWN KEY FINDINGS

The only finding truly pertinent to the ultimate outcome of this case is whether the medical evidence showed that Mr. Bunnell's respiratory problems were caused at least in part by the industrial accident.

The administrative law judge made a finding related to evidence from Dr. Bigelow about causation. After listing kyphosis, emphysema and childhood bronchitis and the doctors speculation about dust ("may have been aggravated by dust exposure"), the administrative law judge says:

"The doctor also felt that the chest injury did not help the matter with the rib fractures. The doctor then concluded that a combination of these events plus the pneumonia had led to his respiratory problem." (Record p 138)

This finding cannot be interpreted to mean other than that the respiratory problem was caused by the accident and pneumonia in combination with the other listed factors.

The finding could have been a lot stronger considering the pneumonia was also attributed to the accident by the doctors, the emphysema was ruled out, and the childhood bronchitis and kyphosis were followed by 30 years without lung problems.

Nevertheless, as it stands it constitutes a finding that the medical opinion of Dr. Bigelow was that the respiratory problems were caused in part by the accident.

Contrary to this, the administrative law judge found:

"Having reviewed all of the medical evidence contained in the record, the Administrative Law Judge finds that the preponderance of the medical evidence does not support the Applicant's theory of the case, that his industrial injury of November 13, 1953 resulted in his present chronic obstructive pulmonary disease and his chronic bronchitis. Rather, the file indicates that the Applicant had a tendency

to bronchitis as a child, and it would further appear that the obstructive pulmonary disease did not result as a residual of the industrial accident of November 13, 1953." (Record p 139)

And ultimately the Commission found:

"The Applicant has not met his burden showing by a preponderance of the medical evidence that his present complaints of pulmonary problems are a result of the industrial accident of November 13, 1953." (Record p 140)

Since a finding was made that Dr Bigelow's medical opinion showed a causal relationship between the accident and the respiratory failure, and since no contrary medical evidence was offered or extant in the record, it is not reasonable to conclude that there was no preponderance of evidence. A preponderance exists by definition if evidence is found on one side of the scale and no contrary evidence is presented on the other.

In Utah Department of Administrative Services v Public Services Commission 658 P2d 601,611, this Court says:

"When the decision being reviewed represents the agency's ... application of its findings of fact to a finding or conclusion on the ultimate facts in the case, judicial review necessarily involves an independent judgment of the reasonableness of the agency decision."

On this basis the Commission's denial should be reversed on the question of causation in order to reasonably conform to its own findings of fact on this critical issue.

CONCLUSION

Mr. Bunnell was not afforded a fair and unbiased consideration of his claim. Abundant evidence of bias and unfairness shows in the record of the proceedings and in the interpretation of evidence and in the findings of the commission.

Nevertheless, the effect of that bias was manifested ultimately in the commissions denial of Mr. Bunnell's claim, and only to a lesser degree in the record.

Mr. Bunnell, therefore, contends that the evidence in the record justifies reversal of the commission's denial for several reasons:

1. Mr. Bunnell presented substantial, competent and uncontradicted evidence showing that his disability was caused by the industrial accident. No contrary evidence was offered, and nothing in the evidence presented was self contradictory or inherently unreasonable. Thus the commission finding that Mr. Bunnell failed to prove his case by a preponderance of the evidence is an arbitrary and capricious refusal to believe and act upon the evidence.

2. The Commission's ultimate conclusion that Mr. Bunnell failed to prove causation by a preponderance of the evidence contradicts its own finding that the doctor opined

causation. Without contradictory evidence even being offered, it is unreasonable to so conclude.

The Supreme Court should, therefore, reverse the Commission's denial and remand with instruction to enter an order in accordance with the only conclusion supported by the evidence.

Signed this 22nd day of Aug, 1986.

A handwritten signature in cursive script, reading "Bruce Wilson", written over a horizontal line.

Bruce Wilson

Attorney for Appellant

APPENDIX

Pages from the Record Cited in the Brief

1 neck, and chin. The accident occurred when the employee was
2 knocked from a catwalk on top of the Open Hearth while guiding
3 an arch support being lowered into the Open Hearth by an
4 overhead crane. He fell a distance of approximately 15 feet.
5 The injury occurred November 13, 1953, at 6:45 a.m. Mr.
6 Bunnell was off work until January 13, 1954.

7
8 3. This produced 60 days of temporary total disability
9 which was paid at a total amount of \$246.32. Based upon the
10 residuals of injury, Mr. Bunnell was also paid 15% loss of
11 bodily function per Industrial Commission Order dated 5-9-55 at
12 a rate of \$28.875 per week for 30 weeks totalling \$866.25 in
13 permanent partial disability. Mr. Bunnell continued working
14 until 1966 when he had surgery for varicose veins. He
15 apparently returned to work after the surgery and then went on
16 Sickness and Accident coverage (non-industrial) on September
17 11, 1968. He collected those benefits for one year. The
18 Sickness and Accident form enclosed is almost illegible but
19 does contain the words "pulmonary" and "failure." Mr. Bunnell
20 retired on a normal longevity retirement on September 30, 1969,
21 one month prior to his 66th birthday. At that time his monthly
22 pension was \$143.52. At the present time his current monthly
23 pension is \$288.81. Under the terms of the pension agreement
24 with the union, a dollar-for-dollar offset exists against any
25 workers' compensation benefits awarded to Mr. Bunnell.
26 Therefore, his pension payments will be reduced by the amount
27 of any workers' compensation award. By this Answer, he is so
28 notified.

1 on the front part of the furnace, where the windows were.
2 On the front of it. And I was on the back scaffold, helping
3 to assist to pull the arches in after they were lifted up
4 and brought over with the overhead crane. After he got them
5 started down, threaded into the top of the furnace, it was
6 our duty to get ahold of a rope that was provided and help
7 to pull them in, to get them in, and set them down on top of
8 the purlins.

9 Q Where was Mr. Bunnell at this time? What was he
10 doing?

11 A He was the signalman that particular day. He was
12 the signalman. He was up on the furnace, and the furnace
13 was approximately 18 feet high I would say, to the top of the
14 furnace. And there was a large pipe, about a 24-inch water
15 pipe, and behind that there was a walkway that was probably
16 two feet wide. And he was up on the walkway, and had the
17 pipe for you might say a handrail for one side, but the
18 other side was open.

19 Q Okay.

20 What happened to cause the accident?

21 A Well, he was the signalman. And, getting the
22 arches in, they bring three of them in at a time. They were
23 probably, I would say, $3\frac{1}{2}$ to four feet tall and 23 or 24
24 feet long. Well, they would lift three of them at a time.
25 They would put a choker--a choker is a long cable, with a

1 And the first thing I did, when I got to where he was, I
2 reached my hand under his neck and under his head. He was
3 lying on his left side, and his face was within inches of
4 the almost red-hot furnace floor. And the first thing I did
5 was slip my arm under his neck, to raise his head up a little
6 bit, and under his shoulders, to get him raised up of it.

7 And Ken Hutchings--another carpenter, that was near me
8 on the back scaffold--was right behind me. Just seconds
9 behind me. He put his hand under his hips, to support his
10 hips, and the other one under his legs. And I noticed as we--

11 Well, excuse me. We lifted him up, the two of us just
12 literally lifted him up off the floor. And it was about 10
13 or 12 feet to the first opening into the furnace. So we
14 took him out, and handed him to several guys that were out
15 on the main floor, and they took him from us.

16 I noticed when I--

17 Well, excuse me. Maybe you want to ask questions. Or
18 do you want me to go ahead?

19 THE COURT: No.

20 A question would be nice.

21 MR. WILSON: Q Did you notice any injuries at
22 that time?

23 A I noticed that he had a broken arm. His arm was
24 broken.

25 THE COURT: Q Which arm?

1 and move him out. Get him out of there.

2 Q All right.

3 Then did you go with him to the dispensary?

4 A No. When the ambulance came, and they loaded him
5 in the ambulance, the one guy who was directing--the head
6 man of the ambulance--asked where he fell, or where the
7 accident happened. So we told him it was over inside the
8 furnace. And he said, "Didn't you know that it was against
9 the law to move him?" I said, "You bet I knew it was
10 against the law. But otherwise you have got to save his life.
11 So I took him over to show him where it was, and I stepped
12 up into the door of the furnace, and I said, "Come on, and
13 I'll show you." And he said, "No. I don't want to. It's
14 too damn hot." Those were the words he used.

15 Q Do you have an idea as to how hot it was in that
16 furnace at that time?

17 A Oh, golly. No. The melting point of steel, where
18 they need to get it to before they tap the furnace and drain
19 it out, has to be around 1100 degrees, as I remember now.
20 Now I'm not an engineer. I couldn't tell you exactly.

21 Q It wasn't 1100 degrees then, was it?

22 A Beg pardon?

23 Q It was not that hot then?

24 A No. It had cooled a little. It was probably down
25 600 or 700 degrees.

1 Q When he did, did he do his full share of the work?

2 A No. We kind of babied him a little bit. If there
3 was any heavy work to do, the bigger larger guys would baby
4 him a little bit. We'd take the heavy part of it, and leave
5 him the other. He did his fair share, there is no doubt
6 about that, but there is a difference between the heavy
7 lifting and the lighter work.

8 Q How long did you baby him, as you said?

9 A Oh, I would say it was five or six months before
10 he got back to doing his regular work. Maybe longer than
11 that.

12 Q Okay.

13 After he returned to work, did you notice him having
14 problems coughing?

15 Q That was one of the laughing things among the
16 crowd of us. He had never coughed anymore than just
17 occasionally once in awhile. But, after he was injured, we
18 noticed all the time that he was coughing. Quite often he
19 would reach in his pocket and get his handkerchief, and
20 cough in his handkerchief, then show you the evidence of it.
21 We laughed about it for years after that. For three or four
22 years or more after that. We'd ask him when he was going to
23 get over his cigarette cough, just jokingly.

24 Q Did he smoke?

25 A Beg pardon?

1 Q Did he smoke cigarettes?

2 A Never. That's the fun part of it.

3 Q Now did you continue to work with him for the next
4 few years?

5 A That happened in '56, and I worked with him until
6 '67. Then I retired.

7 Q During that time did his cough get better?

8 A I would say maybe a little better, but he
9 continued to cough all the time. That's why we joked with
10 him about his cigarette cough.

11 MR. WILSON: That's all I have of this witness.

12 THE COURT: Cross?

13 MR. WALKER: I have just a few questions.

14 BY MR. WALKER:

15 Q Mr. Williams, you just finished telling us about
16 the cough that Mr. Bunnell had. Did that cough prevent him
17 from doing his work as a carpenter, or was he able to do it
18 despite the cough?

19 A He was fairly healthy. We babied him a little,
20 but he was fairly healthy. But he coughed all the time.

21 Q Okay.

22 In your opinion, did he miss an unusual amount of work
23 as a carpenter, or was he there fairly regularly?

24 A Pretty regular.

25 Q You testified that he had been injured, and then

1 was on light duty for a period of time, and then you babied
2 him for awhile?

3 A After that.

4 Q Then after that he got to the point where you
5 didn't have to baby him as much, I assume; is that correct?

6 A No. His injury was quite severe. And, when he
7 got better, so he was more active, he could do more work.

8 Q When he got more active, what type of work was he
9 doing at the plant?

10 A Oh, golly. We did everything from installing
11 doors and-- Well, repairing doors, repairing roofs, and
12 doing cement work. Anything. It was a maintenance job, and
13 we did everything.

14 Q Would he ever have to stop working because he was
15 having a coughing spell?

16 A Yes. Occasionally.

17 Q Did he ever have to go home because he was having
18 a coughing spell, that you can recall?

19 A Not that I'm aware of, no.

20 Q Okay.

21 A He didn't never go home. He'd cough, and--

22 MR. WALKER: I don't have any further questions.

23 THE COURT: Mr. Boorman?

24 MR. BOORMAN: How are you, Mr. Williams?

25

1 BY MR. BOORMAN:

2 Q Would it surprise you to know that I was there at
3 that time?

4 A I thought you looked familiar when you came in.

5 (Discussion off the record.)

6 MR. BOORMAN: Q You did mention that you visited
7 him quite often. Actually you lived fairly close to the
8 Bunnells, didn't you?

9 A Yes. It was within two or three blocks at first.
10 Then I moved up on the hill, and I'd either see him or visit
11 him every week or two anyway. And we still do it. He lives
12 neighbors to me now, and we still visit.

13 Q How far is that from Carl Bunnell's place?

14 A Oh, Irwin's house was probably five or six blocks
15 to the south of Carl Bunnell's. My house was straight back
16 up on the hill, up on Grand View Hill, above Carl Bunnell's.
17 Almost direct straight east.

18 Q You mentioned also that this occurred at about
19 6:00 in the morning; is that correct? 6:00 a.m.?

20 A Yes.

21 Q And you testified that you actually literally saw
22 him fall, and that you were at his side in no time at all;
23 is that correct?

24 A Yes.

25 Q And that you and Mr. Hutchings lifted him, and had

1 him out of that furnace area in a matter of almost seconds,
2 didn't you?

3 A Well, 30 or 40 or 50 seconds. We had to, or his
4 clothes would have been on fire.

5 Q And that the ambulance came immediately, did it
6 not?

7 A Within three or four minutes, or five.

8 Q And that that type work goes on quite regularly
9 from time to time?

10 A Yes. Whenever they have a furnace rebuilt.

11 Q When they have a furnace rebuilt?

12 A Yes. Every week or two or three we had another
13 roof to put in.

14 Q And you had a crew that did the rebuild, did you
15 not?

16 A Yes. That's what our business was there for.

17 Q And you had safety instructions of all kinds
18 before you ever went in the place, did you not?

19 A Nearly every morning we-- Well, once a week
20 regularly we had safety meetings. We had that regularly
21 once a week. Probably on Monday morning usually. As soon
22 as we'd get there and the whistle would blow, we'd have our
23 safety meeting for 30 minutes or 45. We were given
24 instructions about how to do this and how to do that, and
25 things to be careful for.

1 A The ambulance was at the dispensary. The engine
2 was going. Irwin was in the dispensary, and so was Dr.
3 Larsen. They took me into the ambulance, and we took off.

4 Q When you first saw your husband, what did you
5 observe?

6 A When I first saw my husband, I nearly died.
7 Because I thought he was dead. They had him-- Well, he was
8 stretched out in the ambulance.

9 Do you want me to tell what I saw?

10 Q Yes.

11 What did you see? What did he look like?

12 A As I saw him, his head was bandaged. He had a
13 strip of bandage up over his left eye. The left eye was out
14 to just about right here. (Indicating) The eye was out.
15 The lid was up, and the eye just sit right there.
16 (Indicating) The right eye was closed.

17 Q What else? Besides the bandage on his head and
18 his eye,--

19 A He had a cast on his left arm. They had a blanket
20 over the rest of him. He had a great big burn on, oh, I
21 guess it was the left side of his head. It was a big burn
22 there. Plus numerous other places on his face that were
23 burned.

24 Q All right.

25 Do you know why they didn't call you until 9:00 o'clock?

1 Here three hours have passed by, and why wasn't I called
2 to be there?" And he said--

3 MR. BOORMAN: Your Honor, I would move to strike
4 that. It's hearsay.

5 MR. WILSON: Your Honor, this is--

6 MR. BOORMAN: I don't believe it's pertinent.

7 MR. WILSON: This is hearsay. I admit that. But
8 it's also very pertinent. Because it shows the state of
9 understanding of the doctor, and gives an indication of what
10 his opinion was at the time.

11 If you'll let her answer, you will see that.

12 THE COURT: The motion is granted. The testimony
13 is stricken. It's hearsay. It's not pertinent either.

14 MR. WILSON: Q When you got to the hospital,
15 what happened then?

16 A When we got to the hospital, they stopped at the
17 door. We went to the ambulance entrance. And they said,
18 "You go in and enter him, register him, and we will take him
19 on in." So I went in and registered him in. They told me
20 there to go to the waiting room, and that the doctors would
21 get in touch with me later.

22 Q Okay.

23 You waited in the waiting room then?

24 A I waited in the waiting room for the doctors to
25 come and give me word of his condition.

1 Q Okay.

2 Did they come out and discuss his case with you after-
3 wards?

4 A Dr. Linden--

5 THE COURT: Yes or no, ma'am. That's a question
6 that requires a yes or a no answer.

7 MR. WILSON: Q Did he come out and tell you
8 what happened?

9 A Yes.

10 THE COURT: Now don't get her into a hearsay area.
11 (Discussion off the record.)

12 MR. WILSON: Q Did they take you to where he
13 was at that time?

14 A Not at that time, no. At a later time they did,
15 but not at that time.

16 Q
17 Did you remain with him in the hospital during his stay?

18 A The whole day--I don't know whether this is
19 pertinent or not--but the doctors would come out at different
20 times, Dr. Linden came three times, to give me his
21 condition.

22 Q What I'm asking is did you stay with him in the
23 hospital?

24 A Yes.

25 Q Why did you stay with him?

A Because Dr. Linden told me that I had to.

1 Q Did he tell you why you had to stay?
2 A Yes.
3 MR. BOORMAN: The same objection.
4 THE COURT: Sustained.
5 MR. WILSON: Q What is your understanding of
6 why you stayed in the hospital?
7 A He was unconscious. And, one of his last words,
8 Dr. Linden said that he--
9 MR. BOORMAN: I'm going to object.
10 THE COURT: Sustained.
11 The records speak for themselves, Counsel.
12 MR. WILSON: Your Honor, one of our--
13 THE COURT: Don't persist in this.
14 Off the record.
15 (Discussion off the record.)
16 THE COURT: I'll let you make a record on it,
17 Counsel. You go right ahead. But you have been warned.
18 But if you want to waste the Court's time with it, go right
19 ahead.
20 MR. WALKER: Your Honor, I assume then that the
21 objection that has been stated will stand through the entire
22 period?
23 THE COURT: Yes.
24 MR. WALKER: It doesn't need to be repeated?
25 THE COURT: Yes. You're entitled to a continuing

1 objection.

2 MR. WILSON: Is she going to be allowed to testify
3 to what she saw?

4 THE COURT: I told you to make a record, Counsel.
5 How much clearer do I have to put it?

6 This is what she saw now.

7 Back off the record.

8 (Discussion off the record.)

9 THE COURT: I'm willing to accommodate you on this.
10 But let's shorten it, and let's get to what she saw--that
11 you're alleging that she saw--that is not contained in the
12 medical records.

13 Okay?

14 MR. WILSON: All right.

15 THE COURT: Are we clear on that?

16 MR. WILSON: I'm clear, Your Honor.

17 THE COURT: Okay.

18 Because if you can't comply with that, then we'll just
19 strike the whole line of questioning, and we'll move on.

20 Okay?

21 MR. WILSON: All right.

22 Q You stayed with your husband for five days, in the
23 same room with him, in the hospital; is that correct?

24 A Yes.

25 Q During that time, he was unconscious; is that

1 correct?

2 A All the time.

3 Q Can you describe what he was doing or what he was
4 like, after he woke up, after the five days? What you
5 observed?

6 A After the five days he was still unable to move.
7 He had, as Dr. Larsen and Dr. Linden told me,--

8 Q Now you can't testify as to what Dr. Linden and
9 Dr. Larsen told you. All you can tell us is what you saw.

10 A Oh.

11 I saw that he still had his head bandaged. He had the
12 broken leg. He had the broken back. The eye had been put
13 back in place.

14 Q Was he able to talk?

15 A He wasn't able to talk good, because he kept
16 coughing. He would cough, but he could talk. They had
17 many tubes in him, and--

18 Q When did they take the tubes out, approximately?

19 A About the seventh or eighth day they took some of
20 the tubes out.

21 Q Would you describe the coughing he had then?

22 A At that time, after they had taken the tubes out,
23 he started in coughing. He coughed for three days, and Dr.
24 Linden worked on him. He tried to get him to cough. And we
25 asked him why Dr. Linden said he wanted him to--

1 Q Now you can't testify what Dr. Linden said.

2 Did you observe him coughing for three days?

3 A Yes.

4 Q Did they give him medication for the coughing?

5 A Yes.

6 Q Did it get better?

7 A I can't say that there was a lot, no.

8 Q Was he coughing anything up at that time?

9 A Yes.

10 Q Okay.

11 Before he got out of the hospital, did the cough clear
12 up?

13 A Well, maybe a little, yes.

14 Q Okay.

15 A He was in the hospital for 10 days.

16 Q Okay.

17 Then he was taken home?

18 A Yes.

19 Q And he convalesced at home for the next couple of
20 months; is that correct?

21 A Yes. The Geneva ambulance came up and brought him
22 back down to our place.

23 Q Okay.

24 And, during the time that he stayed with you in your
25 home, did he get better?

1 A Well, he got a little stronger in time. But he
2 continued to cough, and he still continues to cough.

3 Q Was he coughing anything up at that time?

4 A Yes.

5 Q Did you observe what his injury was to his head,
6 that they had bandaged?

7 A Yes. (Indicating) He had a hole that I could put
8 these three fingers in. Right here in his head. It was a
9 large hole in his head. And that's why they had it bandaged.

10 Q Okay.

11 Can you describe to me what his symptoms were between
12 the time he came home and the time he went back to work in
13 January?

14 A He was very weak. Very weak. And, when they called
15 for him to come back to work, he was still coughing I felt
16 way too much to go back to work. He was still coughing, still
17 bringing back stuff.

18 I don't know whether this would be allowed in the record
19 or not, but you can strike it if you want.

20 Q You go ahead and testify what you noticed, and let
21 them tell you.

22 A During the five days that I was in the room was--
23 Well, the reason that I was there was I was told to watch
24 him, and told not to leave--not one minute--because they
25 wanted to know what would happen when he woke up. Because of

1 the injury in his head, they were afraid that there could be
2 brain damage.

3 Q Let's go back to when he went back to work. What
4 happened on the day that he went back to work?

5 A The day he went back to work--the fellows that he
6 rode with came and got him, picked him up and took him to
7 work--I had to dress him, or almost dress him, as I had been
8 doing for the past--

9 Q Now why was it you had to dress him?

10 A Because he was too weak to completely dress himself.

11 Q They took him to work?

12 A They took him to work, yes. I carried his lunch
13 bucket out for him, and I guess they carried it from there.
14 I didn't see that.

15 Q Okay.

16 Now he continued to work?

17 A Yes, he continued to work.

18 Q During the time that he was working, was he getting
19 better?

20 A He was getting stronger, a little stronger, each
21 time.

22 Q Did he continue to have symptoms--

23 A Always.

24 Q --after he went to work?

25 A Always.

1 Q What symptoms did he continue to have after he went
2 to work?

3 A (Indicating) He had coughing, and then he had a
4 headache that would go right around here, and a dizziness.
5 He said it just felt as though it was a band around here.
6 (Indicating) He continued to have that, and still does.

7 Q Okay.

8 Now after he returned to work, did you seek medical
9 attention for his symptoms?

10 A Yes.

11 Q Where did you go?

12 A We went to Geneva for awhile.

13 Q To the dispensary?

14 A To the dispensary.

15 Q Did you see Dr. Larsen there?

16 A Not very often. It was the nurses that would
17 usually give us a cough syrup or pills.

18 Q Okay.

19 What symptoms did you go into the dispensary for? Why
20 did you go there?

21 A To see if we could get something done for his cough
22 and something for the headache that he had. It wasn't a--
23 Well, it was just a dizzy headache that seemed--

24 Q Okay.

25 Did he have any trouble with fractured bones?

1 A Yes. He had a lot of trouble.

2 If I could be allowed to tell of the injuries that he
3 received there, the bone injuries, and what Dr. Linden told
4 me at the time.

5 MR. BOORMAN: I think the records will show--

6 MRS. BUNNELL: You don't want that then?

7 THE COURT: The part we don't want, ma'am, is just
8 the part the doctor told you.

9 MRS. BUNNELL: All right. I'm sorry.

10 THE COURT: You can tell us what you observed.

11 MRS. BUNNELL: I'm sorry.

12 THE COURT: We're not trying to keep you from
13 giving your testimony.

14 See, we have the medical records, and the medical
15 records speak for themselves.

16 MRS. BUNNELL: I'm sorry, Judge.

17 THE COURT: All right. That's what we're getting
18 to. Nobody is trying to muzzle you.

19 MR. WILSON: Q Did you seek attention from other
20 doctors?

21 A Yes.

22 Q Who else?

23 A After we didn't seem to be getting anywhere, his
24 cough continued, we went then to Dr. Mineer. Dr. Wayne
25 Mineer.

1 Q Was he your family doctor?

2 A At that time Dr. Mineer was our family doctor.

3 Q Did you go to him for the same problems you went
4 to the dispensary for?

5 A Yes.

6 Q The headaches--

7 A Yes.

8 Q --and the coughing?

9 A Yes.

10 Q Did Dr. Mineer treat those problems?

11 A Using probably a different cough syrup, I'm sure
12 it was, and other pills. What it consisted of was more--

13 Q Okay.

14 Did these treatments help?

15 A Some, yes. But he still--

16 Q That's fine.

17 Was he ever hospitalized, for those problems or any
18 problems, after that?

19 A Yes.

20 Q When was that?

21 A I have forgotten the year, I just don't remember
22 the year, but he was hospitalized. He would cough and cough.
23 He got pneumonia because of that.

24 Q Would that have been at Utah Valley Hospital?

25 A He was put in the Utah Valley Hospital, yes.

1 Q Would that have been in 1960?

2 A It could have been.

3 Q I believe the record will show that.

4 Does that sound about right?

5 A It could have been. I have forgotten the year.

6 Q After he got out of the hospital, did he go back to
7 work again?

8 A Yes.

9 Q After he got out of the hospital, did he continue
10 to have problems?

11 A He continued with the same problems of coughing.
12 And, when he would cough a lot, then he would vomit. He had
13 nosebleeds from coughing. He would cough so hard that he
14 would vomit, and sometimes get the nosebleed too.

15 Q I assume this didn't happen all the time?

16 A No. But he continued to cough.

17 Q Okay.

18 Did the problem seem to get better, worse, or did it
19 just stay the same?

20 A It has never ever healed. It had continued as of
21 today.

22 Q But back in the 1960s, after he got out of the Utah
23 Valley Hospital, did he get better, or did he get worse?

24 A He got better for awhile. They gave him oxygen and
25 treatments there, and he got some better. So that he was

1 able to come home, and then go back--

2 Q Did his headaches go away?

3 A No. Well, they went away for a period of time. It
4 isn't a constant headache with him all the time. But at
5 least once a week, or sometimes more.

6 Q How about the weakness problem? I assume that
7 cleared up some?

8 A Well, he was a strong man before. And after that
9 he continued to get more weak all the time. He never ever
10 regained his strength.

11 Q After he got out of the Utah Valley Hospital, was
12 he ever hospitalized again?

13 A Yes.

14 Q Would you tell us how that came about?

15 A Well, it would be for the same cause. His coughing
16 He would cough and cough. Then I don't recall whether he
17 took pneumonia then or not.

18 Q When did he finally go to Salt Lake? To the doctor
19 there?

20 A He continued on coughing, and I said, "Why don't we
21 go back out to the plant?"

22 Q To the dispensary?

23 A To the dispensary.

24 Q Okay.

25 A So we went out to the dispensary. And they looked

1 at him and gave him a pill, and said--

2 Q Who looked at him this time? Was that the doctor,
3 or the nurse?

4 A I recall it as being the nurse. But-- Well, I
5 think it was Dr. Larsen.

6 Q All right.

7 A I know it was Dr. Larsen.

8 Q And he gave him a pill?

9 A He gave him a pill, and he said, "Take this pill,
10 go home, and come back in a week." And he says, "Irwin, you
11 have emphysema."

12 Q Now did you do what he said?

13 A We took--

14 MR. BOORMAN: Your Honor, I move to strike that.

15 A --the pill.

16 MR. BOORMAN: What the doctor said on that
17 occasion.

18 THE COURT: The motion is granted.

19 A We took the pill, and went home. And at that time,
20 because of what Dr. Larsen had told us, we called a niece in
21 Salt Lake--who was a nurse at the Holy Cross Hospital--and
22 asked her what doctor we could get. Because we had been told
23 that Irwin had emphysema, and that we would like to get the
24 best doctor we could.

25 MR. WILSON: Q Okay.

1 Is she the one who--

2 A She said, "We have one here. Dr. Earl A. Wight.

3 Q Dr. Wight?

4 A Yes. W-i-g-h-t.

5 Q All right.

6 A And she said, "I will make an appointment with him

7 for you."

8 Q Was in approximately September of '68?

9 A Yes. I think it was about then.

10 Q And Dr. Wight was the one who put him in the

11 hospital?

12 A Dr. Wight put him in the Holy Cross Hospital in

13 Salt Lake, when he saw him.

14 Q Okay.

15 At that time, or approximately that time, did he quit

16 working?

17 A He quit in-- Oh, let's see.

18 Q The records show September 11th, 1968.

19 A That would be about right.

20 Q Okay.

21 And why did he quit working then?

22 A Because he was just too weak to work any longer.

23 He just couldn't-- He was just coughing almost--

24 Q Well, did he ever go back to work after that?

25 A Not at any time. He never took another job after

1 Geneva.

2 Q Before the accident was he in good physical
3 condition?

4 A He was in excellent condition.

5 Q Did he do anything particularly that would show
6 that?

7 A Yes. As a young boy they lived on the farm, not
8 far from the lake. And each winter, as the lake froze, they
9 would go down and skate on the lake. The bunch of brothers.
10 They would see who could skate across the lake for a distance
11 of six miles. Then each summer--

12 Well, then in high school he lettered in basketball.
13 Baseball. He didn't letter in wrestling, but he was on the
14 wrestling team. Then they would have school competition days,
15 and he threw the shotput at that time. Our school won the
16 shotput that Irwin threw that day. Then during the summer he
17 would take different groups on hikes up at the top of
18 Timpanogos. He took several trips each summer.

19 Q Did he continue to do these kind of things after
20 he was grown up?

21 A No.

22 Q After he was grown up?

23 A Oh. After he was hurt, I mean. Then he didn't do
24 it. He did these things while he was--

25 Q You're saying that he did these things in high

1 school. Did he do them afterwards? Did he still continue to
2 climb Timpanogos?

3 A I don't think he ever climbed Timpanogos, no. Not
4 after he was hurt.

5 Q Not after he was hurt?

6 A Not after he was hurt.

7 Q Before he was hurt, did he?

8 A Yes.

9 Q After he was a grown man, did he?

10 A After he was a grown man, he took our sons up
11 Timpanogos.

12 Q How old were they at the time? Just to get an idea
13 of when this occurred.

14 A I think our son Dale was approximately fourteen.
15 Maybe younger than that. Then our other boy was four years
16 older than Dale. He took the boys up, and--

17 Q That's fine.

18 After the accident, did he continue to participate in
19 sports and outdoor activities?

20 A Not much, no. He was unable to ever climb. He
21 didn't climb Mount Timp after that. Before that I don't
22 think there is a cliff or a high mountain along the range
23 there that he didn't climb. That's bad for the record, but
24 it's the truth.

25 MR. WILSON: Okay.

1 MRS. BUNNELL: All right.

2 MR. WALKER: You can't tell us what Dr. Linden told
3 you.

4 MRS. BUNNELL: I can't tell you then what Dr.
5 Linden told me about his lungs?

6 MR. WALKER: No. That is correct.

7 MRS. BUNNELL: That's all right.

8 MR. WALKER: I have no further questions.

9 THE COURT: Mr. Boorman?

10 BY MR. BOORMAN:

11 Q Your husband was almost sixty-five when he retired;
12 is that not correct?

13 A Yes.

14 Q He was sixty-five?

15 A He was sixty-five.

16 Q And he was approximately fifty when he had the
17 injury? When he had the fall?

18 A Well, I imagine it was in there, yes.

19 Q And wasn't it the normal thing to do, for Mr.
20 Bunnell, Mr. Williams, and the others--to retire at sixty-
21 five at Geneva?

22 A It wasn't necessary, if they could pass an exami-
23 nation.

24 Q But he retired in 1968 in any event, did he not?

25 A He did, because he was unable--

1 MR. BOORMAN: Well, never mind.

2 Q Did he see any doctors, other than Dr. Larsen, Dr.
3 Linden, Dr. Mineer and Dr. Wight?

4 A Then Dr. Parrish. Dr. Wight took us to Dr. Parrish.
5 Dr. Parrish performed an operation on him, where he-- Do you
6 want me to go on with this?

7 MR. BOORMAN: No. That's fine.

8 Q I just wanted to get the names of the doctors who
9 treated him.

10 A I don't recall Dr. Parrish's first name, but it was
11 Dr. Parrish.

12 Q Where was he? In Salt Lake City?

13 A In Salt Lake, yes. Working at the Holy Cross
14 Hospital.

15 Q Who was his treating physician when you came back
16 down to-- Well, you have always lived--

17 A In Provo.

18 Q In the lower Provo area?

19 A Yes.

20 Q Out on the lower road, or near the lower road; is
21 that correct?

22 A Yes.

23 Q And who was his treating physician following his
24 retirement?

25 A Well, Dr. Mineer after his retirement. We went to

1 Dr. Mineer, and Dr. Mineer said that--

2 Q Well, did you see anybody other than Dr. Mineer?

3 A Yes. Dr. Moody.

4 Q Doctor who?

5 A Dr. Moody. Dr. Moody just immediately turned us
6 to Dr. Bateman. Then to Dr. Arbon(?).

7 Q The Utah County area?

8 A Yes.

9 Q All right.

10 A From Dr. Arbon to Dr. Lewis. And then from Dr.
11 Lewis to Dr. Hill.

12 Q Now were those before he went up to the Holy Cross?

13 A He was treated by Dr. Wight and Dr. Parrish while
14 he was at the Holy Cross. There were other doctors probably
15 in with them, but during the operation I didn't get the names
16 of those that helped operate. But I'm sure there were others
17 in. But they were the ones we had in Salt Lake. And we made
18 several trips up to Dr. Wight several times after-- Well, we
19 had been to Dr. Mineer, because he was our doctor. And then
20 we went to Dr. Wight because of the emphysema condition.

21 Q Did he continue to go to Salt Lake from time to
22 time after that?

23 A Yes.

24 Q Did he have any doctors treating him for that in
25 Utah County?

1 \$500.00, and we were unhappy at the time with it. So we came
2 to the Industrial Commission with our claim. Irwin and I and
3 Dr. Larsen came up, and we got to the door, and Dr. Larsen
4 let Irwin come in and would not let me come in. So I said to
5 Dr. Larsen, "Please let me go in." And he said, "No. You
6 know nothing of the case." And he wouldn't let me come in
7 with Irwin. Irwin came in to the Industrial Commission alone.
8 But he-- Well, like I say, if Dr. Larsen would have let me
9 come in, where I could have told what had happened at that
10 time, when everything was still fresh and new,--

11 Am I out of line?

12 THE COURT: No. Go right ahead, ma'am.

13 MR. WILSON: Q You did get an award from the
14 Commission?

15 A We got \$400.00.

16 Q Okay.

17 Were you happy with the award you got?

18 A No.

19 Q Why did you not appeal it?

20 A At that time he was out of work. All the time
21 while he was sick, he had no wages coming in. I was unable
22 to work, and we had three children. We were poor, if you
23 want to know the truth.

24 Q Did you have an attorney during that time?

25 A We asked a couple of attorneys--I do not know their

1 names--and they said, "Don't try to fight Geneva. You can
2 never win against Geneva."

3 MR. WALKER: I'm going to ask that that be stricken
4 from the record, Your Honor, as inflammatory.

5 MRS. BUNNELL: I knew that you would say that, and
6 I feel sorry that I made that statement.

7 A But that's the reason though that we did not fight
8 the case. We were unable to financially fight the case.

9 THE COURT: Q I thought your husband was paid
10 benefits while he was off work?

11 A He was paid benefits for one year.

12 MR. WILSON: We're talking about 1965, when this
13 hearing occurred. The benefits for disability were in 1968,
14 when he became disabled medically.

15 THE COURT: Well, I'm not talking about that. The
16 record I have indicates that the Defendant paid some temporary
17 total disability.

18 MR. BOORMAN: He had all his benefits during the
19 time he was off immediately after his accident. All the time
20 in the hospital he certainly did.

21 MR. WALKER: Our records indicate that TTD was paid
22 in a total of \$246.32, that permanent partial was paid
23 totaling \$866.25, and that all of the medical was paid.

24 MR. WILSON: Q Does that refresh your memory?
25 Did you actually receive that money at the time he was

1 anything in the file that indicates that there is any
2 evidence to support that.

3 MR. BOORMAN: I guess the time frame got mixed up
4 somewhat. Because he went back to work in a few months, and
5 continued to work at his regular rate for 15 years.

6 THE COURT: Right.

7 MR. BOORMAN: So I don't know that they filed a
8 claim. I am in the dark as to that.

9 MRS. BUNNELL: We never filed a claim with any
10 attorney. We never filed a claim with any other attorney.

11 MR. WILSON: Q You did talk to an attorney though?

12 A We did talk with an attorney about it, yes. But we
13 did not file a claim.

14 MR. BOORMAN: Your Honor, we all know that the
15 attorneys couldn't charge unless they won.

16 THE COURT: Yes. That's true.

17 MRS. BUNNELL: We were not told that.

18 MR. BOORMAN: They may have gone to Salt Lake for a
19 meeting with the Disability Rating Board, that handled those
20 things at that time, and they wouldn't permit other people to
21 attend ordinarily.

22 THE COURT: That's correct.

23 (To Mrs. Bunnell.) So that would have been proper,
24 ma'am. You wouldn't have been able to attend that meeting.
25 That would have been the Disability Rating Board. That would

1 or so and I was out.

2 Q All right.

3 How long was it before you could go back to your full
4 duty? Until you got your strength back?

5 A Well, I don't remember. But I wasn't able to carry
6 on my regular work until at least two or three months after-
7 wards.

8 Q Okay.

9 The medical records indicate it was July of '54. That
10 would have been nine months after the accident. Does that
11 sound about right?

12 A Oh, that's about right, yes. I'd say.

13 Q At that time did you go back to doing your full
14 duties in every respect?

15 A I went back to full duty, and they also sent me
16 right back to the open hearth to work, where all the dust
17 was, which did me more harm.

18 Q Okay.

19 After you retired, how did you pay for your medical
20 expenses when you went to the doctor?

21 A Out of our savings, and we borrowed.

22 Q You paid it yourselves basically?

23 A We did it ourselves.

24 THE COURT: What kind of medical expenses are you
25 talking about?

1 MR. WILSON: Hospital visits. He was hospitalized
2 three times I think for pneumonia afterwards. And doctor
3 visits. He's still undergoing treatment.

4 That's all the questions I have of Mr. Bunnell.

5 THE COURT: Cross?

6 CROSS EXAMINATION

7 BY MR. WALKER:

8 Q Mr. Bunnell, I just have a few questions.

9 Did U. S. Steel, as a party to your pension, provide
10 medical benefits to you after you retired?

11 A Would you repeat that, please?

12 Q As part of your pension, did you also get medical
13 benefits from U. S. Steel?

14 A For six months. I was on medical leave for six
15 months.

16 Q I know about that.

17 How about after you retired? Did U. S. Steel pay for
18 hospital bills for you?

19 A No.

20 Q All right.

21 Did Blue Cross pay for medical bills for you after you
22 retired?

23 A It paid some of it, yes.

24 THE COURT: Was that a company plan?

25 MR. WALKER: Yes, Your Honor.

1 Q Did any doctor tell you that you had emphysema,
2 before the injury at U. S. Steel?

3 A Before I went to U. S. Steel?

4 Q No. Before you hurt yourself at U. S. Steel?

5 A No.

6 Q Before you hurt yourself at U. S. Steel, did the
7 company doctor there ever show you emphysema on an X-ray
8 taken at the plant?

9 A He never did.

10 Q All right.

11 A My wife insisted I go down and see the doctor, the
12 company doctor, so I did. Then the very next day he told me
13 I had emphysema.

14 MR. BOORMAN: Objection.

15 THE COURT: Sustained.

16 MR. WILSON: Q When are we talking about?

17 A Well,--

18 THE COURT: That's non-responsive, anyway.

19 MR. WALKER: Yes.

20 I have no further questions.

21 THE COURT: Mr. Boorman?

22 BY MR. BOORMAN:

23 Q You stated, Mr. Bunnell, that when you first went
24 back to very light duties you were unable to use your hands;
25 is that correct? You said that was one of the reasons you

1 couldn't go back to your regular work?

2 A (Nodding head in the affirmative.)

3 Q Is that right?

4 A That's right.

5 Q Then later, around July, you then went back to your

6 regular work, and you worked everywhere, including the open

7 hearth, that your associates worked?

8 A Well, I think it was about that time, yes. I can't

9 be sure exactly.

10 Q But you went back and worked regularly then until

11 you retired?

12 A Until I retired. Until the doctor told me I had

13 emphysema.

14 MR. BOORMAN: Off the record.

15 (Discussion off the record.)

16 MR. BOORMAN: Q Some of your bills were paid

17 through Blue Cross, were they not?

18 A That's true.

19 MR. BOORMAN: I have nothing further.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. WILSON:

23 Q When you went back to work full duty, did you

24 continue to have problems with coughing?

25 A Yes.

1 Q Did it interfere with your work?

2 A Quite considerably. Especially at the open hearth.
3 I had to take a minute off, or two or three minutes, to--
4 Well, it came in spasms, and I'd have to get over the
5 coughing spell before I could go back to work.

6 Q Did you continue to have those spells occasionally
7 up until the time you retired?

8 A Yes.

9 Q Did your weakness that you had, that kept you from
10 going to work in the first few months, did that ever
11 completely resolve so that you got your full strength back?

12 A I don't know. I don't remember of ever getting
13 any benefits back.

14 Q What I'm asking you is did your strength ever come
15 back to your full strength, like it was before the accident?

16 A No, I never did get my full strength.

17 MR. WILSON: That's all.

18 RECROSS EXAMINATION

19 BY MR. WALKER:

20 Q Mr. Bunnell, do you still have the coughing spells?

21 A Yes.

22 MR. WALKER: Nothing further.

23 THE COURT: Mr. Boorman?

24 MR. BOORMAN: Nothing.

25 THE COURT: Q You filed a sickness and accident

1 didn't, but I was not aware of it.

2 Q Did you associate with him before then?

3 A Not especially, no. Mr. Bunnell married my sister,
4 and that was the association I had with him.

5 Q Okay.

6 But did you know him well enough to personally know
7 about his athletic abilities?

8 A Yes. He and I went to the same school together.

9 Q Did you go hunting or fishing with him, or any
10 other activities, that would show what kind of physical shape
11 he was in?

12 A On occasion we ^{go}/fishing. Never hunting, no.

13 Q Okay.

14 After the accident, were you aware of his physical
15 condition then?

16 A Well, I knew that Mr. Bunnell's condition
17 gradually deteriorated from the time of his accident.

18 Q In what way?

19 A Well, he could not do the things that he did before

20 Q For example what?

21 A Well, we used to go fishing, and Mr. Bunnell was
22 unable to do a lot of things that-- Now you're talking back
23 50 years, so it's hard for me to recall those things.

24 MR. WILSON: I don't have any more questions.

25 THE COURT: Cross?

1 side. He does not mention the head injury, he does not
2 mention the problems with the lungs, even though the records
3 of Geneva--which are in the materials I submitted--show that
4 he had been X-rayed as early as within three days of the
5 date this record was written, showing that he had severe
6 problems with his lungs.

7 The fact that those records are in there substantiate
8 the testimony of Mrs. Bunnell that Mr. Bunnell sought medical
9 attention for his lung problems at the Geneva dispensary, so
10 they were aware of those problems back at that time, even
11 though the records may not indicate it.

12 We are not allowed to testify on the comments that the
13 doctors made to Mrs. Bunnell. But, even without evidence of
14 what they said to her, it is evident--from the records
15 themselves, and from the testimony of the witnesses--that
16 there are significant factors about the injury left off.
17 For example I could not find any reference in the St. Mark's
18 records indicating that he was unconscious for five days,
19 which you would think would be significant. There is also
20 no mention of the head injury, although it was bandaged and
21 observable. In fact today, if you'd like to observe his
22 head, you can see where there is a growth of bone that has
23 filled the area that was depressed at the time.

24 It's also I think medically a fact that the coughing
25 started almost immediately after he became conscious in the

1 that he was given inhalation therapy of some kind, indica-
2 ting there was something going on with the lungs. Then of
3 course his discharge indicated there were problems with the
4 lungs, that showed on the X-rays of the 22nd of November,
5 1953. So the lung problems were there--they were identified
6 in the record, although there is no explanation of them, and
7 the details of how the coughing problems started is not in
8 the record.

9 But I believe the evidence is clear that the coughing
10 did start with the accident. It is referred to later on in
11 years by some other doctors as being related to the burning
12 of his lungs, with the hot air and hot gases at the time he
13 fell in the furnace causing the problem.

14 I believe the evidence is clear that there is a
15 connection between the falling in the furnace, the burning
16 lungs, and the chronic coughing problem, which progressed
17 until he was forced with medical retirement in 1968, and a
18 year later went on to regular retirement, but never was able
19 to go back to work. This is confirmed by Dr. Tracy Hill--
20 who is his current treating doctor--who says he believes that
21 at least partially the accident caused the problems that he
22 has with his lungs.

23 I have submitted with the medical record a summary of
24 the medicals, which I think points out the arguments that
25 we have in relation to the medical record demonstrating--

1 THE COURT: That's argument, Counsel. That's not
2 evidence, so I'm not making that part of the record.

3 MR. WILSON: Well, I would like to submit that as
4 argument. It does refer, and it's for your convenience, and
5 in examining the records carefully you will see that--

6 THE COURT: Counsel, that is your editorial
7 comment of the records. What you feel they demonstrate.
8 It's up to me to make my own determination as to what I feel
9 the records demonstrate. So, while I appreciate your effort,
10 I'll forego that pleasure.

11 All right?

12 MR. WILSON: Well, I made that available so that--

13 THE COURT: You can make that argument again, if
14 you want to file a motion for review or something. All right?

15 I'm just saying that I don't need it, and so I'm not
16 making it a part of the file. Okay?

17 There is nothing personal intended. I don't entertain
18 Counsels' statements of the issues, because I know that's a
19 part of some documents.

20 I'll review the medical records, and give them the
21 interpretation and the weight I feel they deserve. That's
22 my job.

23 Okay?

24 MR. WILSON: All right.

25 THE COURT: Off the record.

1 (Discussion off the record.)

2 (Exhibit No. A-1 marked for
3 identification.)

4 THE COURT: I have marked the medical records that
5 you submitted as Exhibit A-1.

6 And, if there is no objection to those, they will be
7 admitted into evidence.

8 MR. WALKER: None, Your Honor.

9 MR. BOORMAN: No objection.

10 THE COURT: A-1 will be received.

11 (Thereupon, Exhibit No. A-1
12 was received in evidence.)

13 (Exhibit No. A-2 marked for
14 identification.)

15 THE COURT: I have marked as Exhibit A-2 Form 130,
16 which has to do with the Statement of Losses.

17 Is there any objection to that?

18 MR. WALKER: No, Your Honor. We submitted it.

19 (Discussion off the record.)

20 THE COURT: Exhibit A-2 will be received.

21 (Thereupon, Exhibit No. A-2
22 was received in evidence.)

23 (Discussion off the record.)

24 THE COURT: Is that it?

25 MR. WILSON: That's all I have.

THE COURT: Mr. Walker?

MR. WALKER: I have just one or two comments, Your

1 MR. WALKER: Well, the date of hire was 1947. 22
2 years.

3 THE COURT: He was age what?

4 MR. WALKER: He was sixty-five. It's a combination
5 of age and years of service.

6 MR. WILSON: Can we get a clarification of that?

7 You're saying that he was on medical disability for a
8 year, between September 11th of '68 and September 30th of
9 '69?

10 MR. WALKER: That was exactly what I was trying to
11 address. He wasn't on whatever that terms means, medical
12 disability. He applied for sickness and accident benefits,
13 alleging that he was unable to work. He received them from
14 the company under basically the plan that we provide to them,
15 and then went out on a pension thereafter.

16 MR. BOORMAN: That plan is mutually exclusive of
17 any industrial implication. In fact you so sign, in making
18 application, that it has no industrial implication.

19 THE COURT: In other words it's an election or
20 remedy type of situation?

21 MR. WALKER: Essentially.

22 THE COURT: So in other words, when you make that
23 claim, you're making some certification that this is not a
24 work-related problem?

25 MR. WALKER: Yes.

1 MR. BOORMAN: That's like Kennecott feels that
2 they have.

3 THE COURT: Do you have--

4 MR. WALKER: I have the form that makes the
5 election.

6 THE COURT: Let me see that.
7 The one I have is kind of fuzzy.
8 Off the record.
9 (Discussion off the record.)

10 MR. WILSON: I don't object to its being admitted.
11 But I think it is beyond the personal knowledge of these
12 people to decide whether the reason he was unable to work
13 was because of the accident or because of other causes.

14 THE COURT: We'll mark this as Exhibit D-1.
15 (Exhibit No. D-1 marked for
16 identification.)

17 THE COURT: D-1 will be received.
18 (Thereupon, Exhibit No. D-1
19 was received in evidence.)

20 THE COURT: (Referring to Exhibit No. D-1.) I'll
21 make copies.

22 MR. WALKER: Thank you.

23 THE COURT: Mr. Boorman?

24 MR. BOORMAN: Your Honor, it's obvious--and I do
25 recall the injury--that was a serious injury that Mr. Bunnell
had. But the testimony, even of his own witnesses, shows

GENEVA DISPENSARY
GENEVA, UTAH
X-RAY LABORATORY

Badge No.

X-Ray No. *C-864**8-12-55* 19

Request X-Ray Examination of

R. ribs

(Part of Body)

*Bennett, Devin*Age *49*

(Patient's Name)

Struck & piece of lumber R - 8th rib.

(Tentative Diagnosis)

Boyd J. Hansen M. I

Part of Body Examined.....

X-Ray Finding and Treatment:

No fracture or any other bony pathologic change
is demonstrated.

H. J. Brown, M.D.
Radiologist

Diagnosis

(Roentgenologist)

DEPARTMENT OF RADIOLOGY

ST. MARK'S HOSPITAL
SALT LAKE CITY 2, UTAH

HENRY P. PLENK, M.D.

NAME: Burnell, Irwin G. (50) ADM. NO.: X-RAY NO.: 51704
CLASS: ROOM NO. 369 REFERRING PHYSICIAN: Dr. Linden

X-RAY REPORT:

DATE: 11-13-53

LUMBAR & DORSAL SPINE, CHEST, PELVIS:

Right Wrist: Outside films taken 11-13-53 reveal a severely comminuted fracture of the distal end of the radius with striking dorsal displacement of the carpal bones together with the distal radial fragment. A spiral fracture of the third metacarpal shaft has produced only slight displacement of the fragments. The carpal bones appear to be intact.

Following the application of a plaster cast, the dorsal displacement has been corrected and the articular surface assumes an angle of slightly greater than 90 degrees with the long axis of the shaft.

Some lateral spread of the radial fragments is still present. The articular cortex is severely damaged.

Pelvis: A fracture of the greater trochanter of the right femur has produced slight upward displacement of the fracture fragments. I cannot detect any evidence of a fracture of the neck or of the intertrochanteric region. It may be advisable to examine the remaining femur.

The bony structures of the pelvis are otherwise normal except for a dense bone island in the wing of the left ilium.

Chest: Fractures of the right 6th to 10th ribs in post-anterior and mid axillary line have not produced any striking displacement of any of the fragments. We find no evidence of a pneumothorax or of parenchymal hemorrhage. Both lungs are well aerated.

Dorsal and Lumbar Spine: Definite anterior wedging of the bodies of D-7 to D-11 is the result of compression fracture. I am unable to determine whether or not any of these are the result of this recent trauma. Since the bodies of D-9, D-10 and D-11 display appreciable hypertrophic scars, I would think that the compression is of considerable duration.

The bony structures of the lumbar spine are found to be normal. A mild scoliosis of the lower dorsal spine with the curvature towards the left is present.

IMPRESSION: Comminuted Colles' fracture. Fracture of third metacarpal. Fracture of right ribs, 6 to 10. Fracture of right greater trochanter. Compression fracture of dorsal vertebrae, 7 to 11, recent?

Henry P. Plenk, M.D.

NAME Bennett, Mrs. Edwin ROOM NO 369 ADM NO 340-439

DATE	Note progress of case, complications, change in diagnosis, change in treatment, final instructions to patient with date in each case.
11-14-53	There is a fracture of the greater trochanter of the rt femur, fracture of ribs 6 thru 10 rt., compression fracture of D 7-D 11 probably old, scoliosis of dorsal spine by X-ray's taken here. It is doing well. JL Euker
11-26-53	is sitting up in bed feeling much better. TPR normal. JL E.
11-28-53	Has been up in wheel chair. TPR normal may go home according to Dr. Lincoln. JL E.
	CONDITION ON DISCHARGE Improved

ST. MARK'S HOSPITAL
SALT LAKE CITY, UTAH

Doctor's Order Sheet

HOSPITAL NO. 300-4

DATE Nov 16

NAME Mr. Brian Russell

ROOM OR
WARD NO. 969

BED

DOCTOR M. C. Liss

DATE	HOUR	ORDERS
11-16-53	7:30 PM	M.S. 9/16 (H) 93.4h PRN. P.O. 1h Jeff / M. McKern
11-17-53		Remove board from bed - 2 May sleep here if bed 3 May lie on either side if it is not too painful. U.O. Dr. Lindem may dangle feet over edge of bed May sit on a chair at bedside Verbal order Dr. Lindem / Dr. Drollger
11-20-53		Bedside for 12 AM per chart Dr. Lindem / Dr. Drollger
11-20-53	11:30 PM	Wash 12:00 AM PRN for even pain P.O. 1h Paulson, Fryberg
11-21-53		Chest film - Demand 20 mg prn pain Steam Inhalation 2h 1h Dexamethasone 10.0, 10.0, 10.0 J.H. Erickson
11-22-53		2-4-6 enema Today J.H. Erickson
11-28-53		May be discharged U.O. Dr. Lindem Moster

DEPARTMENT OF RADIOLOGY

ST. MARK'S HOSPITAL
SALT LAKE CITY 2, UTAH

HENRY P. PLENK, M.D.

NAME: Bunnell, Erwin

(50)

ADM. NO

X-RAY NO 51834

CLASS: ROOM NO 369 REFERRING PHYSICIAN Dr. Linden

X-RAY REPORT:

DATE 11-22-53

CHEST:

A patchy area of consolidation has developed in the basal portion of the right lower lobe since the previous examination of 9 days ago.

No displacement of the fragments of the rib fractures has occurred. A minimal amount of fluid obliterates the right costophrenic angle.

The left lung is not as well aerated as on the previous examination but no definite consolidation is present.

IMPRESSION: Consolidation of right lower lobe due to pneumonia or pneumonia.

DD

up
Henry P. Plenk, M.D.

X-RAY LABORATORY

1209

Badge No. _____
X-Ray No. C-5301

10-5-57 1957

1st X-Ray Examination of Chest _____
(Part of Body)

Brissell _____ Age _____
(Patient's Name)

Respiratory _____
(Tentative Diagnosis)

Boyd J. Lawrence M.D.

2nd Body Examined _____

3rd Finding and Treatment _____

CHEST

C-3301

Old healed fractured ribs are narrowed bilaterally. The heart is normal. Considerable emphysema is present in both lung and this has produced a barrel chest deformity. In addition hypertrophic changes are seen throughout the dorsal spine.

E. J. Brown, M.D.
Radiologist

(Roentgenologist)

SUBSEQUENT MONTHLY MEDICAL REPORT OF CASUALTY CASES

53-Geneva-C-29

BUNNELL, IRWIN G.

11/13/53

10/21/54

(CASE NO.)

(EMPLOYEE'S NAME)

(DATE INJURED)

(DATE OF THIS REPORT)

The above-named employee was examined by me this date regarding the injury suffered by him on the above-listed date and my findings are as follows:

On 11/13/53 this 49 year old man fell from a scaffold into one of the Open Hearth furnaces. He suffered a fracture of the greater trochanter of the right hip. He also suffered comminuted Colles' fracture of the left wrist with some shortening of the bone. This fracture extended into the wrist joint. There was also a comminuted fracture of the third metacarpal bone of the left hand. There were fractures of the 6th, 7th, 8th, 9th, and 10th ribs on the right side. Mr. Bunnell has recovered from these injuries. He has a partial ankylosis of the left wrist and has weakness of muscle power in the left hand. He experiences some aching in the right hip joint and in the left chest region. Mr. Bunnell has recovered sufficiently to return to former type of employment and is presently actively engaged in this work. Dr. Lind and myself have examined this man and recent x-rays have been taken of the fracture bones. We recommend that Mr. Bunnell be granted 15 per cent permanent partial disability settlement of the body for the above described residuals which have resulted from the injuries suffered at this plant.

M.D.

Boyd J. Larson, M.D.

SUBSEQUENT MONTHLY MEDICAL REPORT OF CASUALTY CASES

53-Geneva-C-29

Bunnell, Irwin G.

11-18-53

9/21/54

(CASE NO.)

(EMPLOYEE'S NAME)

(DATE INJURED)

(DATE OF THIS REPORT)

The above-named employee was examined by me this date regarding the injury suffered by him on the above-listed date and my findings are as follows:

See previous reports.

This man can be returned to the Geneva Steel Plant Dispensary on a date when Dr. Linden is in attendance at the Dispensary and I believe that his condition is now fixed and permanent. He can be examined by Dr. Linden for possible residual disability and released.

M.D.

Boyd J. Larson, M.D.

106

X-RAY LABORATORY

Badge No. _____

X-Ray No. C-425

3-14-55 1955

Request X-Ray Examination of P. Pelvis, Chest, L. wrist
(Part of Body)

Burnell Age _____
(Patient's Name)

Broken
(Tentative Diagnosis)

B. J. Brown M.

Part of Body Examined _____

X-Ray Finding and Treatment:

3-14-55 C-4255

LEFT WRIST - The fracture of the distal radius is now well healed. Slight irregularity of the articular surface of the radius with the carpal bone is seen, and arthritic changes could develop at a later date. The fracture of the metacarpal bone is also well healed.

PELVIS - The pelvis is now normal.

CHEST - Considerable emphysema is present in the lungs. The lungs are otherwise normal. The heart is normal.

Incidentally, hypertrophic changes are seen throughout the dorsal spine and this patient also has a kyphos deformity as a result of wedging of several of the dorsal vertebral bodies.

Incidentally, old healed fractured ribs are seen on the right and also, old healed fractured ribs on the left. These should be of no clinical significance at this time.

H. J. BROWN, M. D.
Radiologist

Diagnosis

(Roentgenologist)

C

SUMMARY OF MEDICAL RECORD OF Irvin G. Dummell Age
(Name of injured workman)
RFD #1, Box 316, Provo, Utah
(Address)

TO INDUSTRIAL COMMISSION OF UTAH for permanent disability evaluation.

Employer: COLUMBIA-GENEVA STEEL DIVISION Date of Injury: 11-13-53 Nature of Injury: See reverse side

Insurance Carrier: Self Insured

Periods of disability 11-14-53 to 1-13-54

Returned to light work 1-13-, 19 54. Returned to usual work 7-29-

Date injured reached fixed state of recovery 10-21-, 19 54.

In space below give complete narrative report, in chronological order, of type of injury, manner of injury, treatment including services rendered by other physicians or surgeons, description of subjective and objective findings, and estimate of permanent disability.

This man fell to the bottom of an Open Hearth furnace while a ladder was under repair. He was brought in an ambulance to St. Mark's Hospital after first aid at the Geneva Dispensary. X-rays and primary care were given him at the Geneva Dispensary by Dr. B. J. Larsen.

There was a comminuted Colles fracture of the left radius, also a subluxation of the distal radio-ulnar joint. Excellent reduction and plaster casting was done by Dr. Larsen. There was a fracture line with no displacement at the base of the greater trochanter, right femur, and fractures without displacement of the 3rd, 4th and 5th left ribs, and possibly of the 8th right rib. There were contusions of the soft tissues over the dorsal and lumbar regions of the spine, and punctate burns, none larger than the area of a ten-cent piece, on the forehead, left side of the face, neck and chin.

Convalescence was entirely uneventful in the hospital and at his home. He returned to light work on January 13, 1954, and his regular work on July 29, 1954.

X-rays representing initial injury and final convalescence accompany this report.

Dated at Geneva, Utah, this 17th day of March, 19 55
(City) (State)
Graduate of Bumh Medical College
Year 1920 (Signed) Martin C. Linden M
(Typed) Martin C. Linden M

Live Journal

C. C. Full. live, gained all that needed
continuous nourishment for 3-4 days
Pneumonia began 3 days with slight
cough & gradually developed as severe
acute pneumonia.

Feb 21 - 1935
C. C. not recovered

neck - no swelling
chest - no pain or tenderness
lungs - clear & no crackles
about 2 years ago - fractured ribs
lungs - normal
abdomen - no tenderness or swelling
small intestine - no tenderness or swelling
large intestine - no tenderness or swelling
urinary tract - no tenderness or swelling

Feb 22 - 1935
Full & healthy, no tenderness or swelling
lungs - clear & no crackles
abdomen - no tenderness or swelling
urinary tract - no tenderness or swelling

D. H. Manual Chestnut & Lungs
appears healthy 1935
lungs - clear & no crackles
abdomen - no tenderness or swelling

Physical
1. Neck - no swelling
2. Head - no tenderness
3. Lungs - clear & no crackles
4. Abdomen - no tenderness or swelling
5. Urinary tract - no tenderness or swelling
6. Small intestine - no tenderness or swelling
7. Large intestine - no tenderness or swelling
8. Rectum - no tenderness or swelling
9. Prostate - no tenderness or swelling
10. Testes - no tenderness or swelling
11. Penis - no tenderness or swelling
12. Scrotum - no tenderness or swelling
13. Vagina - no tenderness or swelling
14. Uterus - no tenderness or swelling
15. Ovaries - no tenderness or swelling
16. Fallopian tubes - no tenderness or swelling
17. Cervix - no tenderness or swelling
18. Vaginal opening - no tenderness or swelling
19. Perineum - no tenderness or swelling
20. Anus - no tenderness or swelling

TION
Chest

- 5'9" 175 #

TO BE EXAMINED

stare & ray

DATE OF ACCIDENT, IF AN

AL IMPRESSION

REQUESTED BY

Ray J. Lawrence M.D.

DATE

M.D.

3-15-6

OF FINDINGS

X-RAY NO.

5-9201

PA CHEST:

Trachea lies in the midline. Heart and great vessels are within normal limits. There is a slight to moderate degree of pulmonary emphysema and pulmonary scarring. The appearance of the chest is very similar to that seen in 1952. There are multiple tiny pulmonary infiltrations. This is most likely associated with a pneumoconiosis.

James R. Matheson, M. D.

JRM:be

2-2-68

...mal Chest

FEB 5 1968

221

Harry G. Lockard, M. D.

FINDINGS BY

DATE

M.D.

(USS)

X-RAY REPORT 114

Dunnell, L. W.

107 1/17 12/06 2

ION.

Carpenter
TO BE EXAMINED
Chest

Cough for about a month

DATE OF ACCIDENT, IF ANY

IMPRESSION

RECEIVED BY *R. J. Lawrence* DATE *12-8-68*
5-30-68 M.D.

OF FINDINGS

X-RAY NO.

2829

now are essentially unchanged from previous film. The increased markings throughout
lung fields are about the same. There is evidence of moderate emphysema and marked
in both bases suggestive of bronchiectasis.

H. G. Lockard, Jr., M.D. N

9-3-68

FINDINGS BY

DATE

M.D.

16

X-RAY REPORT

1 (1/65)

HOLY CROSS HOSPITAL
SALT LAKE CITY, UTAH

unnell. Irwin

Date 9/18/68

Age 64

Yrs.

ry Function No. #2

Ht. 5.8

Inches 173 cm

ng Physician Bigelow

Wt. 156

Lbs.

Bell Temperature 24⁰Body Surface Area 1.84 M²

TEST	PREDICTED NORMAL	PATIENT	PERCENT OF NORMAL
------	------------------	---------	-------------------

LUNG VOLUMES

tory Capacity		3197	
ory Capacity		2176	
apacity	3510	5373	153%
Vital Capacity		4973	
l Volume			
piratory Flow Rate	6.4 \pm 1.9 L/s.	10.6 L/s.	166%
1 Washout Index			

MECHANICS OF BREATHING

TEST	PREDICTED NORMAL	PATIENT	PERCENT OF NORMAL
athing Cap.	120	132.32	110%
Cap. 1 sec.	83	<u>3508</u>	71%
Cap. 2 sec.	94	4263	86%
Cap. 3 sec.	97	4574	92%

*After Broncodilator

	ARTERIAL BLOOD		
Blood pH			
Blood pCO ₂			
Blood pO ₂ (Air)			<u>1</u>
Blood pO ₂ (O ₂)			117

GENERAL:

reveals an elderly but not significantly ill appearing gentleman of stated age, vigorous and outgoing.

EENT:

Now normal fundusoscopic. Pupillary reaction are intact. Tympanic membranes are negative. The Pharynx is benign. Tonsils are atrophic. He has multiple stubs of teeth which will be extracted at an early date, he states.

ECK:

Supple. I find no venous distention.

LUNGS:

Fields are not congested. I hear no rales. Occasional rhonchi. No expiratory prolongation. There is increase in PA diameter of the chest, largely owing to rather prominent dorsal kyphosis of very gentle if any scoliotic curve to this. Chest expansion is very limited, again primarily because of the latter deformity.

HEART:

tones reveal bigeminal rhythm for the most part. Frequent premature contractions. No runs of tachycardia are noted. He has no murmur as I can discern. No cardiac enlargement, though the examination is limited again by the depth of his chest. S₂ is not accentuated.

ABDOMEN:

Unremarkable. I find no visceromegaly and no tenderness.

GENITALIA:

Negative. No hernia and has never had any. There is an appendectomy scar, right lower quadrant, well healed.

RECTAL:

Small smooth prostate. No rectal abnormalities. No prostatic enlargement or masses.

EXTREMITIES:

Show a number of superficial varicosities, widely scattered. Old left varicose veins stripping operative scars. Peripheral pulses are readily palpable. No edema is found. NO trophic ulcer, scars, and other signs noted and there is no calf tenderness. Homan's negative.

NEUROLOGICAL:

Symmetrically rather hyporesponsive reflexes, but symmetrical and no abnormal response is found.

IMPRESSION:

1. The patient is a kyphosis from old deformity.
2. Probably emphysema on the basis of this, together with his childhood bronchitis tendency, and maybe aggravated by dust exposure at his job.
3. Also, the chest injury in 1951 didn't help the matter with rib fractures.
4. One episode of pneumonia.

The combination of events has lead to his respiratory problem at this time. In addition one wonders about the contribution to his cough to possible underlying congestive failure and the only manifestation at this time would be the bigeminal rhythm, but work-up may disclose some more information in this regard. Otherwise, his health background has been excellent. He needs dental extractions. He has a history of bursitis, both shoulder, right more than left. Old left leg vein

(over)

September 18, 1968

This is a 64 year old man who comes in for investigation of a cough which has been going on for over a year, but last 6 weeks, much worse. The cough occurs in spells, lasting an hour or two, particularly at night and may even awaken him during the night. He works at Geneva Steel where is a carpenter doing dusty work often, especially in the open hearth furnace area and exposure of this kind aggravated this tendency markedly. He had an allergy test three weeks ago with a routine examination and was also given some pills of an allergy-preventing type without improvement. He was noted to be allergic to dust and was diagnosed as emphysema at that time and it was suggested that he have a work-up. That is the reason that he is here now. The patient has never smoked. He has occasional wheezing with his cough, but no knowledge of asthma. In 1951, he had an accident where he crushed the chest and 8 ribs were fractured, some piercing the lungs. He was told to be careful. He recovered uneventfully at that time. He was told that he might have a tendency to obtain pneumonia. And in 1953, sure enough, he had pneumonia, some 2 years after this accident. He was in oxygen at the Utah Valley Hospital. Dr. Georges took care of him at that time. He is a little short of breath, especially the last couple of months he has noted this. He doesn't limit his activities significantly but over exertion tells on him and he does get somewhat overtired. His cough is nonproductive, dry, and has a harshness to it and he has never had any hemoptysis. The sputum color he is unable to discolor to me and it is scanty in amount never having had any blood as far as he knows. He has headaches occasionally with stomach upset again which occurs with the coughing spell. He never has had dependent edema. No nausea or vomiting with his stomach upset. The patient has no knowledge of heart disease. He doesn't get any flutter, palpitations, or chest pain outside of discomfort after a coughing spell and is transient. He did have bronchitis frequently as a child. He denies pertussis. The past history shows childhood diseases, otherwise shows measles, mumps, and varicella.

Operations: Appendectomy only. Adult diseases: No knowledge of hypertension; no T.B. or contacts known; negative chest x-rays in the past. Operations also include a left leg vein stripping 5 years ago, Dr. Georges. The patient was having discomfort in his veins, but no swelling in the left lower extremity area, leg region. Allergies are none. Medications: None, really. There is an occasional sleeping pill or if he gets over nervous.

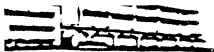
FAMILY HISTORY:

Father died at age 80, cancer of the prostate. Mother died age 78, cancer, question of which kind. Two sisters and four brothers, all living and well. One brother died age 67, of cancer in the spleen.

REVIEW OF SYSTEMS:

This shows absolutely no GU symptoms. His teeth need to be taken out. They are ground down. He gets occasional bursitis, right shoulder more than the left. At age 14, he sustained a fall with vertebral fractures apparently and resulted in deformity, a hyphoscoliotic, primarily kyphotic dorsal deformity.

R. P. BIGELOW, M.D.



BUNNELL, Irwin

8090219 AGE 64

DATE 9-19-68

556

PHYSICIAN Dr. R. Bigelow

X-RAY NO. 48-56-04

INFORMATION

CHEST:

PA and lateral views. Minimal nodular and linear infiltrate involves the apical and subapical portions of both lungs down to the 2nd rib circle. Heart, great vessels and hilar shadows are within normal limits. Diaphragms are normal in contour and position. The normal dorsal kyphosis is exaggerated, is associated with minimal anterior wedging of several of the mid thoracic bodies. Some hypertrophic change is seen in the region.

IMPRESSION:

Fibrotic consolidation both upper lungs consistent with old tuberculosis. Activity could not be determined without comparison with previous films and laboratory study for tubercle bacilli.

lg

RM

R. MEYER, M.D.

G. P. STEVENSON, M.D.

D. F. GOWANS, M.D.

21

121

1. Questionable asthmatic bronchitis.

DISPOSITION:

Please see order sheets.

BAW/vs

E.A. WIGHT, M. D.

.0-28-68

This is the 2nd Holy Cross Hospitalization of a 64 year old retired steel worker who is admitted with the chief complaint of "having recurrent cough, shortness of breath and sputum production" of approximately 2 weeks duration.

PRESENT ILLNESS:

This patient was recently in this hospital under the care of Dr. R. P. Bigelow for the above mentioned symptomatology. At that time he was found to have a fairly negative pulmonary function studies, chest x-ray revealing some old fibrocalcific disease however he had a mine injury and smelter injury approximately 20 years ago when he fell into an open hearth furnace causing much lung damage from heat burn. The patient states that he recovered without incident after that however had mild chronic cough off and on since then, primarily non-productive. This patient is a non-smoker.

When his symptoms became increasingly more severe associated with shortness of breath he was subsequently admitted for care. At that time he was found to have a prolonged circulation time of 21 seconds with a good end point. His venous pressure was not elevated. With these evidences on hand patient was felt to have mild congestive failure and was given Digitalis preparation, diuretics, placed on low salt diet. He was subsequently discharged being quite a bit improved. However over the following week or two had progressive cough associated with sputum production of clear mucoid foamy sputum some mild left lateral chest pain primarily anteriorly and was seen in the office the day of admission where he had a clear chest however was quite short of breath and slightly cyanotic. He had an occasional wheezing noted by his wife. The patient subsequently has felt that further diagnostic and therapeutic evaluation was indicated and was subsequently admitted. Patient has tried Benedryl and Tetracycline medications prior to admission however this did not alleviate his difficulty with cough and sputum production.

PAST MEDICAL HISTORY:

The past medical history, social history, review of systems, etc., is unchanged from his previous admission.

PHYSICAL EXAMINATION:

VITAL SIGNS:

Temperature 99 orally, pulse 88 regular, BP - 140/90, respirations 16 and quiet.

GENERAL:

A pleasant, alert, middle-aged gentleman in no acute distress.

HEENT:

Patient is normocephalic. TM's normal, external meati clear, hearing intact. Pupils are round, equal, react to light and accommodation, bilateral arcus senilis. Fundi benign. Teeth are in poor repair and probably should be extracted. Nasopharynx benign otherwise.

CHEST:

Clear except for some minimal rales at the bases posteriorly which clear upon cough. Breath sounds are somewhat coarse and the period of expiration is somewhat prolonged. Heart is normal with no murmurs.

ABDOMEN:

Negative to examination. There is no hernia.

RECTAL:

Examination is negative.

EXTREMITIES:

No edema. Peripheral pulses are good.

NEURO:

Trace:

Bronchoscopy with biopsy of the left main bronchus and a poor bronchogram in the presence of severe bronchospastic change.

DR. C. M. Parrish

Topical

Slawson

O.R.No. 1

Larson

Question of bronchospastic asthma of a highly productive nature vs. endobronchial lesion or preripheral muoid producing tumor.

Probably the first of the latter choices.

FINDINGS: This man has recently had progressive cough of a productive nature in association with some shortness of breath and really brings up an entire glassfull of material daily. It was felt that the congestive failure was ruled out and the allergist could not fit this into a alleggic asthma and thus we wanted to look for any anatomical or neoplastic change.

Under topical cocaine anesthesia this man was bronchoscoped and his cords and trachea were clear. The bronchial tree started showing the typical bronchospastic changes as we progressed and with a small amount of dye later on this was rather serious situation with cyanosis that required oxygen and we sucked him out well and left him on oxygen for some time. On the other hand, although there was an acute diffuse endobronchitis, left greater than the right, I saw no other lesion and I think this is probably still a bronchospastic type of asthma.

This was relatively well tolerated and we sent a biopsy and material for all studies including acid fast, fungus, cytology, and routine cultures and smears.

C. M. Parrish, M.D.

CMF:iba

12
124
75

HOLY CROSS HOSPITAL

SALT LAKE CITY, UTAH

REPORT OF ELECTROENCEPHALOGRAM

DATE	November 15, 1968	ROOM	239	HOSP. NO.	8422040
NAME	Bunnell, Mr. Irwin	AGE	64	Dr. E. A. Wight	
				Dr. L. Hyland	
EEG NO.	800-002-652				

TECHNIQUE: International 10-20 Electrode Placement System was used with disc electrodes run on eight channels.

DESCRIPTION: This is a technically satisfactory tracing in the alert and spontaneous sleep states lasting approximately 25 minutes.

The background activity in the resting state with eyes closed consisted of moderate to moderately high voltage well formed alpha spindles at $10\frac{1}{2}$ cycles per second over the posterior head regions bilaterally.

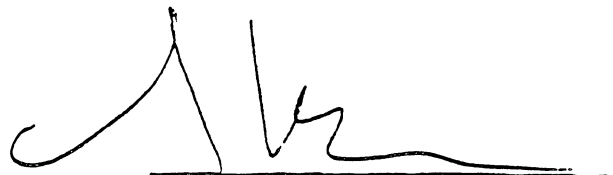
Hyperventilation was not performed.

Photic stimulation produced a normal driving response and no abnormalities.

No epileptiform activity nor gross amplitude asymmetries are seen.

During spontaneous sleep some sharper central activity as well as slowing of the background activity was seen.

INTERPRETATION: Normal EEG.



Gerald L. Moress, M.D.

GRM/dt

Name	First Name	Middle Name	Room No.	Hosp. No.
IRVIN BUNNELL			239	8422040
Attending Physician	To: Consulting Physician			Date
Dr. E. A. Wight	Dr. C. M. Parrish			11-16-68

report in regard to:

Doctor in Charge

This man of some 64 years is admitted by Dr. Wight relative to a very unusual story that seemed initially rather clear cut picture of congestive heart failure.

Since then various observations and testing have seemed to rule out any evidence of background myocardial failure and he has not responded at all to measures for this situation. His story from a chest standpoint goes back 16 years to a rather severe blunt chest injury with apparently a hemopneumothorax and hospitalization for some time relative to this. He had one subsequent pneumonia but following this and for the last 16 years up until earlier this year he has had no chest complaints.

In approximately 5 months ago he developed a cough which has been progressively more productive and amounts to a full cup per day, is white, mucoid and foamy in situ never contains blood. With this situation he has had some orthopnea and has developed a wheeze which was thought to be emphysematous and bronchospastic by previous doctors. He was placed on medication for allergic asthma and bronchospasm and this apparently caused very little help.

He has been seen by Dr. Hyland, allergist, who has done a very complete work-up that we see in the chart and he is puzzled and does not feel that this fits into an allergic background. In this regard he has had no childhood or prior problems and the only thing going along this line is an elevated eosinophilic count. He has been treated with Cortisone and Aminophylline intravenously and while on this as well as intermittent positive pressure breathing he has had some significant improvement. Without this he begins to wheeze once again and despite this he continues to be productively coughing.

Physical examination really shows very little here on a man who has no clubbing or cyanosis and there is no evidence of congestive failure from a peripheral or central standpoint and indeed has a very clear lung field to auscultation. The clinical cardiac examination is not revealing and I find no evidence of myocardial failure. In addition to this there is no evidence of metastatic disease.

Chest x-ray which I have not seen is reported as showing bilateral pulmonary fibrosis with nodular and infiltrative bilateral changes mainly in the upper lung fields and the probability of an old tuberculosis is raised. In addition to this he has a kyphosis which is of a mild to moderate nature.

One's first impression of this if you didn't listen to him or see his films would bring up the possibility of a mucous producing pulmonary tumor but surely his physical examination and chest x-ray do not really go along with this. In addition to this the wheezing that is relieved by Cortisone does not sound like an endobronchial mechanical affair but I would agree that a simple bronchoscopy and possible bronchograms should be done. In addition to this if this is not revealing and since this man does have bilateral pulmonary changes which I will review one should still consider a peripheral pulmonary multicentric neoplasm such as an alveolar cell tumor and I do not see any cytologic reports in this regard on the chart.

We shall proceed with simple bronchoscopy and get some good washings but in the meantime will await further cytologic studies from this voluminous sputum and if there is some suspicion here we might consider proceeding on to a lung biopsy as well.

December 3, 1968

Earl A. Wight, M.D.
1060 East First South
Salt Lake City, Utah

Re: Bunnell, Mr. Irwin
Route 1, Box 316
Provo, Utah 84601

Dear Earl:

Mr. Bunnell after observation during bronchoscopy strikes me as being an allergic bronchospastic asthma despite the fact that there are many factors that make one wonder here. We find nothing of a mechanical standpoint in the tracheobronchial tree and he tolerated a bronchoscopy and a limited bronchogram rather poorly.

I would hope this is an episodic affair and that he will clear with time and medication and was interested in helping along these diagnostic lines.

Sincerely,

Charles M. Farrish, M.D.

c.c: Lowell J. Hyland, M.D.

Illness Onset	
ness Onset	
mplaint	
on (s)	
al Comments	
in Regards ulmonary Test	

S COOPERATION: ☒ Put forth full effort. ☐ Very Good
☐ Put forth average effort. ☒ Good
☐ Put forth little effort. ☐ Satisfactory
☐ Unsatisfactory

	Average	Labored	Extreme S.O.B.
Before testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
During testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
After testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PHYSICIAN'S COMMENT:

Normal Pulmonary Function.

H. W. Marshall
H.W. MARSHALL, M.D.
130 - 55

oly Cross Hospital
alt Lake City, Utah

DISCHARGE SUMMARY

UNNELL, IRWIN

R. BIGELOW, M.D.

556

#8090219

mission Date: 9-18-68

ischarge Date: 9-21-68

his is a 64 year old man, nocturnal cough for 6 weeks, progressive.

Physical examination showed clear lung fields with an increase in diameter (PA) to the chest and a regular rhythm at first on heart exam. No murmur.

Laboratory Data: Hematocrit 49.5, Hgb. 16.8, WBC 5,500, differential, eosins. 1, segs. 70, lymphs. 19, monos. 10. Sed. rate 10. Urinalysis showed specific gravity of 1.020, no cellular elements, no albumin and normal throughout. VDRL negative. 12 Channel Glucose 95, BUN 15.5, Cholesterol 274, Uric Acid 5.4, Calcium 9.5, Phosphorus 4.5, SGOT 29, LDH 133, Alk. Phos. 45, Total Bilirubin 1.0, Total Protein 7.0, Albumin 3.9, Globulin 3.1. PPD 1st strength was negative at time of discharge. The sputum cytology was moderate atypism, Inflammation, Curschmann's spirals and the pulmonary function test showed normal findings. Maximum breathing capacity 110% and mid expiratory flow rate 166% of predicted normal for him. His timed vital capacity is dropped down slightly with the first second 71%, second second 86%. Chest X-ray showed fibrotic consolidation both upper lungs consistent with old T.B. No evidence for activity found. An electrocardiogram showed occasional premature ventricular contractions, rather frequent actually, but no ST-T changes.

Course in Hospital; The patient was admitted with the probable diagnosis of emphysema to explain his symptoms. Venous pressure was 5 cm. with a circulation time prolonged at 21 seconds. It was my feeling that this represents a cardiac congestion that he gets, and primarily his symptoms are those of nocturnal dyspnea proxysmal orthopnea. The irregular heart action may contribute to this, at any rate he was digitalized and placed on Procainamide. Probable medical retirement will be necessary, follow as an out-patient.

DISCHARGE DIAGNOSIS:

Chronic Congestive Failure with pulmonary congestion.

Old pulmonary scarring compatible with healed granulomatous T.B.

No Calcium, but is bilateral and apical.

Has some very minor pulmonary disease, chronic and obstructive, very likely has an underlying arteriosclerotic disease, but this could not be proved with present evidence.

R.P. BIGELOW, M.D.

UTAH VALLEY
REGIONAL MEDICAL CENTER

1034 North 500 West / P.O. Box 390 / Provo, Utah 84603
(801) 373-7850
Mark J. Howard, Administrator

January 20, 1986

Mr. Bruce Wilson
290 East 4000 North
Provo, UT 84604

Dear Mr. Wilson,

I am writing in regard to Mr. Irwin Bunnell, who is an 81-year-old male who I have followed now for the last two years. As you know, he now carries the diagnosis of chronic bronchitis and severe obstructive pulmonary disease. He has been a non-smoker and does not have a history of asthma. This leaves the exact etiology of his obstructive lung disease to be uncertain inasmuch as these two factors are certainly the most common contributing factors to patients with severe obstructive lung disease. I have reviewed carefully the medical records provided by you over the last 30 years and am aware of the significant accident Mr. Bunnell was involved with in 1953. While it is extremely difficult to say that his accident was the entire cause of his present difficulties, what is clear is that he has had a progressive pattern of respiratory difficulty throughout the ensuing years from the accident. It is reasonable to suggest, in my opinion, that his accident was at least a contributing factor to his progressive respiratory difficulty.

Currently, as you know, he is extremely limited with breathlessness and chronic coughing. The most recent pulmonary function testing on November 7, 1985 showed an FEV1 of 1.78 and FVC of 3.435 liters for a ratio of 51%. His diffusing capacity was 14.91 with a DSB/VA of 3.57. From a pulmonary physician perspective, this is compatible with severe obstructive lung disease and there are suggestions that emphysema may be present. His PO2 at that time was 54 on room air which is low for our altitude. Chest x-rays have shown changes compatible with COPD and some interstitial changes as well as suggesting the possibility of a coexisting interstitial process.

In conclusion, Mr. Bunnell has severe obstructive pulmonary disease with hypoxemia without a clear precipitating cause. It is reasonable to speculate in my opinion that his pulmonary problems began with his severe injuries suffered in the 1950's at Geneva Steel.

Please contact me if there are further questions or I can be of further assistance.

Sincerely,



Tracy A. Hill, M.D.
Pulmonary Medicine

~~22-60000-1-67~~

Insurance Company's and Self Insurer's Final Report of Injury

AND

Statement of Total Losses

TO

THE INDUSTRIAL COMMISSION OF UTAH

STATE CAPITOL

SALT LAKE CITY, UTAH

1208

INSTRUCTIONS: This final report blank MUST BE FILED as soon as possible but not later than thirty days after final settlement has been made in all cases of personal injury arising out of or in the course of the employment.

Employer's name Geneva Works
 main office Columbia-Geneva Steel Division, United States Steel Corporation
P. O. Box 310, Provo, Utah

Insurance carrier Self-insured

Employee's name Irvin S. Darnell Date of injury 11-13-53

When was injured employee physically able to return to work? 1-13-54

Actual number of days injured was absent from work?

Any permanent injury? Describe fully: fifteen per cent loss of bodily function as per
Industrial Commission Order dated 3-9-55.

PAYMENTS

Compensation	{	Temporary total	wks. at \$	\$ 244.32
		Temporary partial	wks. at \$	\$ nil
		Permanent award	wks. at \$ 24.575 per week	\$ 966.25
Total medical and other expense				\$ 376.01
GRAND TOTAL (Final settlement)				\$ 1,486.58

Date of this report June 20, 1955

Signature Carl F. Rusey
 (Official position) Staff Assistant, Casualty
INDUST

EXHIBIT NO. A-2 12.

STATEMENT OF CLAIM
 FOR
 GROUP ACCIDENT AND SICKNESS INSURANCE

(All Questions Must be Answered)

EMPLOYEE'S
 STATEMENT

I hereby apply for benefits on account of total disability.
 1. Date total disability commenced? Sept. 11, 1968 Date total disability ceased?
 2. Do you claim this disability was caused by an accident: (Answer "Yes" or "No")
 (a) On what date did the accident occur? 19.....
 (b) Where did the accident occur?
 (c) Explain how the accident occurred
 3. Do you claim this disability is related to your work? (Answer "Yes" or "No")
 If "Yes," explain
 4. Are you now receiving Unemployment Insurance?
 5. Social Security Account No. 520-10-6874 Age. 64 Sex. M Marital status. Married
 6. Name of Employer. F. S. S. Payroll Location. Geneva, Ohio
 Dated. 10-1-68 Signature of Employee. William J. Bannell
 Mailing Address Box 316 Geneva Ohio
 Number Street City State

ENDING
 SICKNESS
 STATEMENT

1. Patient's name Bannell, William J. Age. 64
 2. Nature of sickness or injury (Describe complications, if any) C.O.D. / Congestive heart failure
 3. Did this sickness or injury arise out of patient's employment? Yes..... No.....
 If "Yes," explain
 4. Is disability due to pregnancy? Yes..... No.....
 If "Yes," what was approximate date of commencement of pregnancy? 19.....
 5. Nature of surgical or obstetrical procedure, if any (Describe fully)
 Date performed 19.....
 6. Give dates of treatments:
 Office. 9-18-68 and 9-30-68 W. J. Bannell
 Home
 Hospital. 9-18-68 to 9-21-68
 7. The patient has been continuously disabled (unable to work) from 11 Sep 68 1968 through Present 19.....
 If still disabled, when should patient be able to return to work? undetermined 19.....
 Date. 30 Sep 68 1968 Signed Richard P. Dwyer, M.D.
 Phone. 358-1001 Address. Suite 401 1060 E. 1st St. Geneva, Ohio
 Number Street City State

FOR INSURANCE COMPANY USE ONLY

Draft No. Dated

INDUSTRIAL COMMISSION OF UTAH

EXHIBIT NO. D-1

IRWIN G. BUNNELL
ORDER
PAGE TWO

standing on a catwalk which was either eighteen feet in the air or forty feet in the air depending on which record or testimony is consulted. Needless to say, the Applicant was on the catwalk or scaffold, when the load being carried by the crane accidentally bumped him. As a result, the Applicant was knocked from the catwalk and fell to the floor of the furnace below. A co-worker of the Applicant saw the Applicant fall and rushed immediately to his aid, and testified that the Applicant was on the floor for approximately fifteen seconds. Mr. Williams then grabbed the Applicant and lifted his face up, which had previously been a few inches from the furnace floor. A co-worker then helped Mr. Williams remove the Applicant through the first available opening in the furnace. The Applicant was then taken to the Geneva Dispensary and later transferred to St. Mark's Hospital unconscious for treatment. The Applicant was unconscious for approximately five days, and his wife testified that when he came to, he started coughing after his tubes were removed. The Applicant also coughed after his return to his home from the hospital.

The Applicant subsequently returned to light duty on or about January 14, 1954, and continued in that status until he resumed his full duties in July of 1954. The Applicant testified that when he first returned to work on light duty, he would help his helper when he could, and at other times, he would lie on a cot that his employer had provided for him. He further indicated that by July of 1954, he was able to go back to full duty, and that he also returned to the furnace area, which was very dusty and aggravated his cough. The Applicant apparently had no further problems until 1960, when he had a bout of pneumonia. As a result of that illness, the Applicant was treated at the Utah Valley Hospital. The Applicant's medical records indicate that he had no further problems until September of 1968.

Prior to his admission to the Utah Valley Hospital of 1960, the testimonial evidence was that the Applicant reported to the Geneva dispensary and was given cough syrup and pills for his cough. Following the hospital admission, it would appear that the Applicant next sought medical treatment in March of 1966, when he reported to the Geneva Clinic and received a chest x-ray, which was read as indicating emphysema. The next medical record is dated August 30, 1968, and is from the Geneva Dispensary, and indicates that the Applicant had moderate emphysema. It is also interesting to note that under the history portion of the medical record, it indicates "cough for about a month". It should also be indicated that under the history for March 1, 1966, it states that the Applicant was there for a routine x-ray.

Following his visit of August 30, 1968, the Applicant was apparently referred to Dr. Bigelow, who examined the Applicant on September 18, 1968. In his history of 1968, Dr. Bigelow indicates that the Applicant was in "for investigation of a cough which has been going on for over a year, but last six weeks, much worse." That report further reveals that the Applicant had a routine examination with an allergy test, and it was noted that the Applicant was allergic to dust. Dr. Bigelow also indicated that the Applicant had bronchitis frequently as a child. The doctor's history further indicates that

IRWIN G. BUNNELL
ORDER
PAGE THREE

other than a case of pneumonia, the Applicant apparently had no further problems with his lungs following his industrial injury of 1953, wherein some of his ribs were fractured and some of the fragments pierced his lung. Dr. Bigelow concluded that the Applicant had a kyphosis, which he sustained as a result of an injury from falling out of a tree at the age of fourteen. He also found that the Applicant probably had emphysema, and that he also had a childhood bronchitis tendency, and that this may have been aggravated by the dust exposure of his job. The doctor also felt that the chest injury did not help the matter with the rib fractures. The doctor then concluded that a combination of these events plus the pneumonia had led to his respiratory problem. Thereafter, on September 30, 1968, Dr. Bigelow signed a sickness and accident benefit claim for the Applicant indicating that the Applicant was suffering from chronic obstructive pulmonary disease. It should be noted that the doctor when asked if the sickness or injury arose out of the Applicant's employment left this inquiry blank. By the same token, on October 8, 1968, the Applicant signed his portion of the form, and in response to the same query, the Applicant indicated that he was not claiming that this disability was related to his work. In his discharge summary of September 21, 1968, Dr. Bigelow indicates that the Applicant was complaining of a nocturnal cough for six weeks, and he concluded that the Applicant had chronic congestive failure with pulmonary congestion, and old pulmonary scarring compatible with healed granulomatos T.B. (Tuberculosis). An x-ray report dated September 19, 1968, the film was read as showing "fibrotic consolidation both upper lungs consistent with old Tuberculosis."

Thereafter, the Applicant was rehospitalized at St. Mark's Hospital on or about October 28, 1968. At that time, the Applicant was seen by Dr. Wight. Dr. Wight felt that the Applicant might have asthmatic bronchitis. Thereafter, the Applicant was given a bronchoscopy with a biopsy and the doctor concluded that the Applicant had a bronchospastic type of asthma. The x-ray taken at Holy Cross Hospital on November 13, 1968, indicated that the Applicant had "Bilateral pulmonary fibrosis, unchanged. Because of the location again tuberculosis would be a prime consideration." On November 19, 1968, a lung biopsy was taken, and the diagnosis was made that the Applicant had "moderate, chronic bronchitis, benign". On December 3, 1968, Dr. Parrish caused a letter to be written to Dr. Wight, indicating that "Mr. Bunnell after observation during bronchoscopy strikes me as being an allergic bronchial spasmic asthma...". The doctor also indicated his belief that this was an episodic affair and that the Applicant would clear with time and medication. Apparently, the Applicant had no further treatment until 1984, when he came under the care of Dr. Tracy Hill of the Utah Valley Hospital.

Dr. Hill concluded that "It is reasonable to speculate in my opinion that his pulmonary problems began with his severe injuries suffered during the 1950's at Geneva Steel." (Emphasis supplied) While the Doctor may feel it is reasonable to speculate - the case law requires findings in terms of reasonable medical probability.

IRWIN G. BUNNELL
ORDER
PAGE FOUR

The issue before the Administrative Law Judge requiring resolution is whether or not the Applicant's present complaints are due to the industrial injury of November 13, 1953. Having reviewed all of the medical evidence contained in the record, the Administrative Law Judge finds that the preponderance of the medical evidence does not support the Applicant's theory of the case, that his industrial injury of November 13, 1953, resulted in his present chronic obstructive pulmonary disease and his chronic bronchitis. Rather, the file indicates that the Applicant had a tendency to bronchitis as a child, and it would further appear that the obstructive pulmonary disease did not result as a residual of the industrial accident of November 13, 1953. From the Applicant's description of the work area in the vicinity of the open hearth furnace, the Administrative Law Judge assumes that that area contained quite a bit of smoke and dust incident to the fabrication of steel. Accordingly, the Administrative Law Judge concludes that the facts of the case support an industrial relationship between the Applicant's present pulmonary problems and his employment at U. S. Steel. However, that relationship is clearly an occupational disease as a result of his employment at the Geneva works of U. S. Steel, rather than Applicant's theory that traumatic injury to his chest resulted in pulmonary disease.

Unfortunately, a claim for an Occupational Disease resulting from the Applicant's work at the Geneva works would be barred by the applicable statute of limitation requirements contained in the Occupational Disease Act. Recognizing that eventuality, does not perforce entitle the Applicant to file his claim as a continuing sequelae of the original industrial accident. It should also be noted for the record that the Applicant accepted a 15% permanent partial impairment award from the Disability Rating Board of the Industrial Commission for his industrial injury. It would seem only reasonable to the Administrative Law Judge that if in 1955, the Applicant was claiming that his chest was also giving him problems, he should have also made some mention of that fact. Although at the time of the hearing, the Applicant's wife testified that they had no money coming in, and were placed in a position of duress, the record does not bear this allegation out. Rather, the file indicates that the Applicant was paid temporary total disability until he returned to work in January of 1954, and until September of 1968, he worked regularly at U. S. Steel and was paid his regular full salary.

In 1968, the Applicant then filed a Sickness and Accident Claim for Benefits, and at that time represented that his problem was not industrially related. While it is true that the Applicant did not have counsel when making this election, there is nothing on the file which would indicate that the Defendant, U. S. Steel, had any influence in preventing the Applicant from seeking competent legal advice. Rather, the record indicates that the Applicant took his Sickness and Accidents benefits and also applied for a regular retirement from U. S. Steel, based on his 22 years of service and the fact that he was 65 years of age. Thereafter, the Applicant collected his benefits from his pension plan, and nothing further was done on the industrial claim whatsoever.

IRWIN G. BUNNELL
ORDER
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CONCLUSIONS OF LAW:

The Applicant has not met his burden showing by a preponderance of the medical evidence that his present complaints of pulmonary problems are a result of the industrial accident of November 13, 1953.

ORDER:

IT IS THEREFORE ORDERED that the claim of Irwin G. Bunnell alleging permanent and total disability from the industrial injury of November 13, 1953, should be, and the same is hereby, dismissed with prejudice.

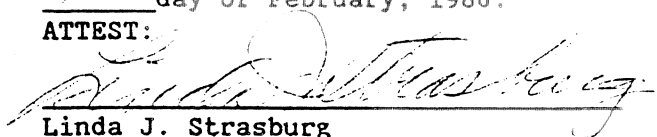
IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within fifteen (15) days of the date hereof specifying in detail the particular errors and objections, and unless so filed, this Order shall be final and not subject to review or appeal.


Timothy C. Allen
Administrative Law Judge

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this

25th day of February, 1986.

ATTEST:


Linda J. Strasburg
Commission Secretary

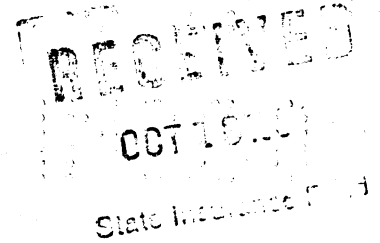


INDUSTRIAL COMMISSION OF UTAH

NORMAN H. BANGERTER, GOVERNOR

STEPHEN M. HADLEY, CHAIRMAN
WALTER T. AXELGARD, COMMISSIONER
L. L. NIELSEN, COMMISSIONER

October 17, 1985



Bruce Wilson
Attorney at Law
290 East 4000 North
Provo, Utah 84604

Re: Irwin G. Bunnell
Inj: 11/8/53
Emp: U.S. Steel

Dear Mr. Wilson:

Marge Mele indicated you had called regarding Mr. Bunnell's claim to see if there was some way to obtain an expedited hearing date. I can appreciate your concern in light of Mr. Bunnell's advanced age but at this point in time there is simply no justification for setting the claim at all. Admittedly, I am having to read between the lines but it would appear from the information in the application that Mr. Bunnell returned to work for fifteen (15) years following his industrial accident and then retired at the normal retirement age of 65. It further appears that he was off work for only two months originally and that he received a 15% permanent partial impairment rating. These are not the kind of facts that would ground an award for permanent total disability.

I do not believe this matter should be set for hearing until medical records have been introduced showing the progression of Mr. Bunnell's impairment from 1953 to 1968. The progression of his impairment after 1968 may be relevant but I doubt such to be the case at this time.

I will leave it to your best judgement as to whether the claim of Mr. Bunnell is worth pursuing. Obviously, there are major difficulties with his claim both factually and legally.

BY DIRECTION:
INDUSTRIAL COMMISSION OF UTAH

Richard G. Sumsion
Administrative Law Judge

RGS:sj

in both lungs. Emphysema is reported again in the 1955 recheck and consistently thereafter.

These medical records are supported by the testimony of an independent witness who worked with Mr. Bunnell at the same bench for 14 years after the accident and said Mr. Bunnell had a chronic coughing problem the whole time after but not before the accident.

Dr. Bigelow's record confirms that Mr. Bunnell was told at the time of his accident to be careful that he might have a tendency to obtain pneumonia which, sure enough, he did. This confirms what Mrs. Bunnell would have testified to (had she not been improperly prevented by application of the hearsay rule) that Dr. Larsen and Linden told her that Mr. Bunnell's lungs had been permanently damaged by the accident. (See Gardner v Gardner Plumbing 693 P 2d 678 at 681 where the Supreme Court found the administrative law judge abused his discretion, saying the technical rules of evidence and procedure do not apply to such hearings and that "fairness is the guiding principle.")

Dr. Wight's history of 10-28-68 refers to the fall saying "he fell into an open hearth furnace causing much lung damage from heat burn" and that he "had a mild chronic cough off and on since then." He was admitted when "his symptoms became increasingly more severe associated with shortness of breath."

Dr. Tracy Hill concluded after reviewing Mr. Bunnell's records, "It is clear that he has had a progressive pattern of respiratory difficulty throughout the ensuing years from the accident."

The administrative law judge apparently felt all of this evidence was outweighed by the single remark in Dr. Parrish's history when he says on 11-16-68, "He had one subsequent pneumonia but following this and for the last 16 years up until earlier this year, he has had no chest complaints." Aside from the fact that this comment, if taken to mean Mr. Bunnell had 16 years of no lung problems, contradicts all other records and testimony, the statement on its face does not indicate there were no respiratory problems. It says only that there were no complaints which is consistent with Mr. Bunnell's uncomplaining nature. If in taking his history Dr. Parrish asked something like "Have you had these problems in the past since your fall?" (referring to the two hour convulsive coughing spells he had been having.) It would be perfectly natural for Mr. Bunnell to reply "None to complain of." (Meaning all he had had before was a chronic smoker's type cough but nothing like what it had developed into.) The doctor's resulting note would very easily say - no chest complaints.

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 85000818

IRWIN G. BUNNELL,

Applicant,

vs.

UNITES STATES STEEL
(SELF-INSURED) and
SECOND INJURY FUND,

Defendants.

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DENIAL OF

MOTION FOR REVIEW

On or about February 25, 1986, an Order was entered by an Administrative Law Judge of the Commission wherein benefits were denied in the above entitled case.

On or about March 12, 1986, the Commission received a Motion for Review from the Applicant by and through his attorney.


Thereafter, the matter was referred to the entire Commission for review pursuant to Section 35-1-82.53, Utah Code Annotated. The Commission has reviewed the file in the above entitled case and we are of the opinion that the Motion for Review should be denied and the Order of the Administrative Law Judge affirmed. In affirming, the Commission adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

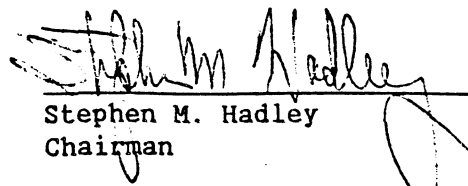
IT IS THEREFORE ORDERED that the Order of the Administrative Law Judge of February 25, 1986, shall be, and the same is hereby, affirmed and the Motion for Review shall be, and the same is hereby, denied.

Passed by the Industrial Commission
of Utah, Salt Lake City, Utah, this

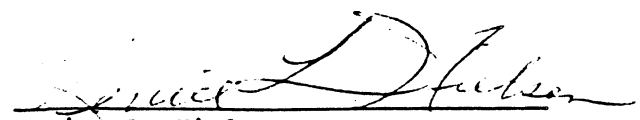
20th day of March, 1986.

ATTEST:


Linda J. Strassburg
Commission Secretary


Stephen M. Hadley
Chairman


Walter T. Axelgard
Commissioner


Lenice L. Nielsen
Commissioner

CERTIFICATE OF MAILING

I certify that on 25 August, 1986, a copies of the attached Appellant's Brief were mailed first class mail or hand delivered to the following:

Phil N Walker, Attorney, 120 Montgomery Street, Suite 2550
San Francisco, CA 94104 Counsel for U.S. Steel

Ralph Finlayson, Attorney General's Office, State Capitol,
Salt Lake City, Utah. Attorney for the Industrial
Commission of Utah and the Second Injury Fund

Lana F. Jensen, U.S. Steel/Geneva, P.O. Box 510, Mail
Station 3-A, Provo, Utah 84603. Co-counsel for U.S. Steel
Corporation

