

DOCKET NO. 174

NUMBER	TERM	YEAR
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291	September	1961
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Emery Gurbal, Jr.,
Claimant

VERSUS

Sylvan Grove Coal Company,
Defendant

Pennsylvania Threshermen &
Farmers Mutual Insurance Company
Insurance Carrier

Harrisburg, Penna.
September 24, 1962

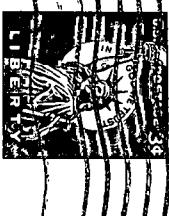
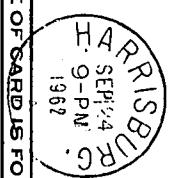
Dear Sir:

A-43,993 Emery Gurbal, Jr. v. Sylvan Grove
Coal Co. No. 291 September Term, 1961

We do have a copy of the opinion of the court
filed on July 6 in the above captioned case. Please
return our complete appeal file to the Workmen's
Compensation Board, 1647 Labor & Industry Building,
Harrisburg, so that we may close our file on the
matter.

Very truly yours,
Kelly D. Bloom

Kelly D. Bloom, Secretary
Workmen's Compensation Board



THIS SIDE OF CARD IS FOR ADDRESS

McCONAUGHEY POSTAL CARD

This postal card is
being used to con-
serve paper and
clerical help.
Mr. Carl E. Walker,
Prothonotary, Clearfield County,
Courthouse,
Clearfield, Penna.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 159 September TERM, 1961

Bureau of Workmen's Compensation
Department of Labor & Industry
Claim Petition No. 159,695

EMERY GURBAL, JR.,
Claimant

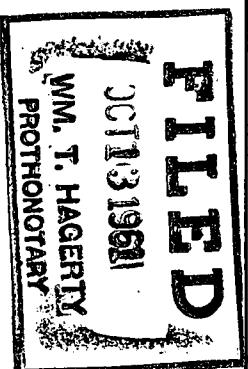
vs.

SYLVAN GROVE COAL COMPANY,
Defendant

And

PENNSYLVANIA THRESHERMEN & FARM-
ERS MUTUAL INSURANCE COMPANY,
Insurance Carrier

E X C E P T I O N S



BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EMERY GURBAL, JR.,
Claimant

Vs.

SYLVAN GROVE COAL COMPANY,
Defendant

And

PENNSYLVANIA THRESHERMEN &
FARMERS MUTUAL INSURANCE
COMPANY,

Insurance Carrier

)
) NO. 291 *Sept* ~~NOVEMBER~~ TERM,
1961
) Bureau of Workmen's Compensation
) Department of Labor & Industry
) Claim Petition No. 159,695

Sylvan Grove Coal Company, the Defendant in the above matter, Appellant, hereby takes exceptions to and appeals from the following Findings of Fact and Conclusions of Law of the Workmen's Compensation Board:

1. The Seventh Finding of Fact - According to the testimony of Dr. Luxenberg it is possible to have a perforated gastric ulcer without any trauma, but in his opinion the claimant had a gastric ulcer which was perforated and the blow might possibly have aggravated the tissue in the stomach and caused the ulcer to perforate later on, but, according to Dr. Luxenberg, that was a slight possibility, but nevertheless it was possible and the claimant should be given the benefit of the doubt.

2. The Second Conclusion of Law - The injuries resulting from the accident were of such violence to the physical structure of the body as is contemplated in Section 301, Article III of the Workmen's Compensation Act and were suffered by the claimant in the course of his employment and while he was actually engaged in furthering the interests or affairs of the defendant.

3. The Fourth Conclusion of Law - Although claimant had previously had a perforated gastric ulcer in 1954, according to

the medical testimony in this case, it is possible that the blow suffered by the claimant while in the course of his employment on January 30, 1960, aggravated the tissue in the stomach and caused the gastric ulcer to perforate, and therefore, there being no question the claimant suffered an accident by being struck in the abdomen with a heavy wrench, and it being possible this blow could have caused the gastric ulcer to perforate, compensation will be awarded the claimant.

4. The Fifth Conclusion of Law - Despite the fact the claimant was suffering from a gastric ulcer, which was in the process of perforating, yet the fact remains it would not have perforated at the time it did on January 30, 1960, if the claimant had not been struck in the abdomen while on the course of his employment and therefore the blow in the abdomen aggravated the pre-existing physical condition of the claimant.

5. The Sixth Conclusion of Law - Claimant having been totally disabled from January 30, 1960, to and including May 8, 1960, and having earned an average weekly wage of \$87.82, is entitled to compensation for total disability at the maximum rate of \$42.50 per week beginning with the first day of disability for the reason he was totally disabled more than six weeks.

The Appellant further appeals from the award of compensation by the Workmen's Compensation Board.

BAIRD & McCAMLEY

By


John J. McCamley
Attorneys for Appellant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
NO. 291, NOVEMBER TERM, 1961

Bureau of Workmen's Compensation
Department of Labor & Industry
Claim Petition No. 159,695

EMERY GURBAL, JR.,
Claimant

vs.

SYLVAN GROVE COAL COMPANY,
Defendant

And

PENNSYLVANIA THRESHERMEN & FARM-
ERS MUTUAL INSURANCE COMPANY,
Insurance Carrier

A P P E A L



BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EMERY GURBAL, JR.,
Claimant

vs.

SYLVAN GROVE COAL COMPANY,
Defendant

And

PENNSYLVANIA THRESHERMEN &
FARMERS MUTUAL INSURANCE
COMPANY,

Insurance Carrier

NO. 291, ^{Sept.} NOVEMBER TERM,
1961

Bureau of Workmen's Compensation,
Department of Labor &
Industry, Claim Petition No.
159,695

Sylvan Grove Coal Company, the Defendant in the above
matter, appeals from the decision of the Workmen's Compensation
Board made September 27, 1961.

SYLVAN GROVE COAL COMPANY

By Carl E. Lundgren
Appellant

Dated: October 12, 1961

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE

SS:

Before me, a Notary Public in and for the above named State and County, personally appeared Carl C. Lundgren, who being duly sworn according to law, deposes and says that he is a Partner of the Defendant in the foregoing matter, and that this Appeal is not taken for the purpose of delay but because he believes that injustice has been done by the decision appealed from.

Carl E. Lundgren

Sworn to and subscribed before me this 12th day of October, 1961.

John J. McCamley
JOHN J. McCAMLEY, Notary Public
PHILIPSBURG, PENNA.
My commission expires Feb. 28, 1965

Affidavit of Service

Emery Gurbal, Jr. Claimant

Slyvan Grove ^{vs.} Coal Co, and
Pa Thresherman and Farmers
Mutual Ins, Co

No. 291 Septem^{ber} Term, 1961

Appeal and Exceptions

Returnable within _____ days
from date of service hereof.

NOW October 16, 1961 at 11:10 o'clock A.M.

served the within Appeals and Exceptions

on Emery Gurbal Jr.,

at Place of residence, Grassflat, Pa.

by handing to him personally

a true and attested copy of the original Appeals and Exceptions

known to him the contents thereof.

Costs. Sheriff Ammerman \$12.70
(Paid by Attys B. & MC.)

Sworn to before me this 17th

day of October A. D. 1961

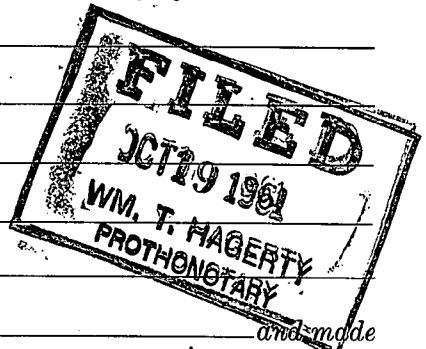
Wm. T. Hagerty

Prothonotary

So answers,

Charles G. Ammerman

Sheriff



BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA
October 9, 1961

DAVID L. BAIRD
JOHN J. McCAMLEY
WILLIAM L. MILLER

TELEPHONE: DICKENS 2-2240

Charles G. Ammerman
Clearfield County Sheriff
Clearfield, Pennsylvania

Dear Buzzy:

Enclosed herewith please find a copy of an Appeal and Exceptions being filed to a compensation case, which I would like you to serve on Emery Gurbal, Jr., who lives in Grassflat, at your earliest opportunity.

If you will send me your bill for services in this matter, we will see that it is taken care of immediately.

Very truly yours,

Baird & McCamley

By *David L. Baird*
David L. Baird

DLB:LK

Enc. 2

FILED

OCT 19 1961

WMA. T. HAGGERTY
RECORDED

Emergency Appeal for

VERSUS

Allegheny Stone Coal Co.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

No. 291 Term Sept 1961

To _____

Prothonotary.

Sir: Enter _____ appearance for Plaintiff & Cross
Defendant on argument date

in above case.

Daniel L. Baird

Attorney for Defendant

No. _____ Term _____ 19 _____

vs.

APPEARANCE

For

(C)

FILED
JAN 3 1962
CARL E. WALKER
PROTHONOTARY

Emery Gurbel, Jr
VERSUS
Sylvania Glass Co
&
Jn. Shaeffer & Farmers Metal Co

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

No. 291 Term Sept 1961

To W B T. Nagy

Prothonotary.

Sir: Enter my appearance for Emery Gurbel, Jr,
claimant & appellee

15

in above case.

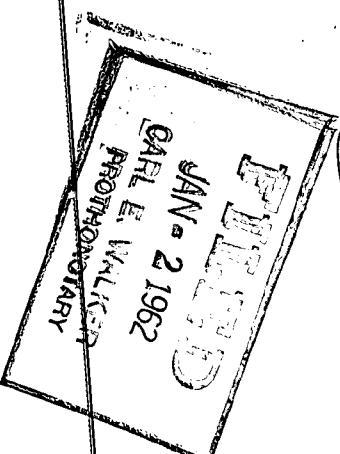
J. Shaeffer
Attorney for Emery Gurbel, Jr

No. _____ Term _____ 19 _____

vs.

APPEARANCE

For _____



Energy Derbey Jr.

VERSUS

Sylvan Grove Coal Co

and

PT&F

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

No. 291 Term Sept. 1961 19

To _____

Prothonotary.

Sir: Enter _____ appearance for _____

Place the above case on the Argument List

in above case.

William C. Miller, Band, McLamb, & Miller

Attorney for

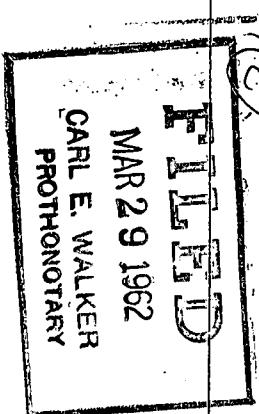
~~Plaintiff Defendant~~

No. _____ Term _____ 19 _____

vs.

APPEARANCE

For _____



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 291 September Term 1961.

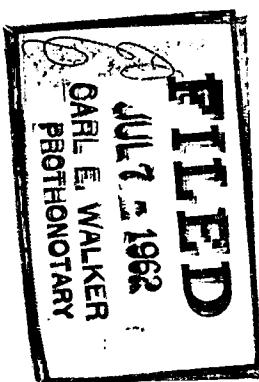
Bureau of Workmen's Compensation,
Dept. of Labor & Industry
Claim Petition No. 159,695.

EMERY GURBAL, JR.

VS

SYLVAN GROVE COAL COMPANY
and
PENNSYLVANIA T. & F. MUTUAL
INSURANCE COMPANY, Insurance
Carrier

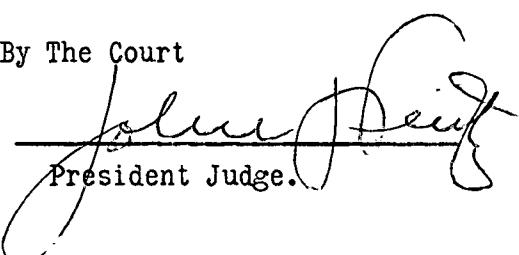
OPINION



NOW, August 12, 1963, Appeal Records are to be mailed to the Workmen's
Compensation Board.

b

By The Court


John J. Pentz
President Judge.

JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

EMERY GURBAL, JR. :
Claimant : No. 291 September Term 1961
VS : Bureau of Workmen's Compensation, Department of Labor &
SYLVAN GROVE COAL COMPANY : Industry, Claim Petition No. 159,695
Defendant :
And :
PENNSYLVANIA T. & F. MUTUAL :
INSURANCE COMPANY, :
Insurance Carrier :
:

O P I N I O N

This is an appeal from ruling of the Workmen's Compensation Board of the Commonwealth of Pennsylvania, affirming the finding of the Referee that Emery Gurbal, Jr., the claimant, suffered a perforated gastric ulcer, from a blow in the stomach, while carrying on his duties as an employe of the defendant corporation; the Referee finding that the claimant suffered as result of an accidental injury, while in the course of his employment.

The second Conclusion of Law of the Referee was that the injuries resulting from the accident, did violence to the physical structure of the body within the contemplation of Section 301, Article III of the Workmen's Compensation Act, while he was in the course of his employment and actually engaged in furthering the interests or affairs of his employer. Accordingly, compensation was awarded. From this Finding of Fact and legal conclusion, the defendant's insurance carrier took an appeal to the Compensation Board, and the Board affirmed the findings of the Referee.

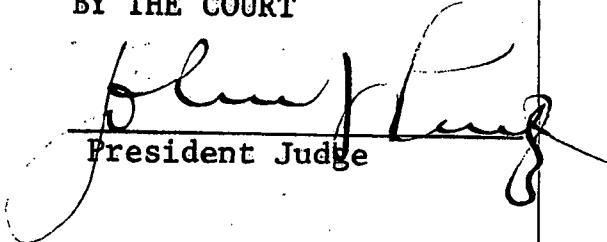
In the discussion of the affirmance of the Referee's finding, the Board, in its Opinion, discussed at some length the testimony of the Doctor who testified in behalf of the claimant, and finally concluded that the instant case was very closely analogous to GASPAROVICH VS. FEDERAL RESERVE BANK OF CLEVELAND, 194 Superior Court 135.

Upon examination of that case and the record in the instant case, it can not be said that the acts of the Compensation Board were without substantive, competent evidence to sustain that finding; nor was there any capricious disregard of the evidence; the inferences from those findings being reasonable and logical.

In accordance with the ruling of ANETAKIS VS. SALVATION ARMY, 191 Pa. Superior 268, and DOWNING VS. LEECHBURG MINING COMPANY, 195 Pa. Superior 171, the appeal from the findings of the Workmen's Compensation Board is dismissed.

Dated: July 6, 1962.

BY THE COURT


President Judge