

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H104701

JACK HARRISON, Employee	CLAIMANT
NWA FOOD BANK, Employer	RESPONDENT
SUMMIT CONSULTING, LLC, Carrier	RESPONDENT

OPINION FILED JULY 18, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 23, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 26, 2024, and a Pre-hearing Order was filed on February 27, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on May 20, 2021.
3. The claimant sustained a compensable injury to his right eye on or about May 20, 2021.
4. The respondents have accepted and paid a 4% PPD rating for the claimant's right eye injury.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to additional permanent partial disability benefits up to and including total vision loss in right eye.

2. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“The claimant contends he is entitled to compensation for the total loss of vision in his right eye. Claimant reserves all other issues.”

The respondents' contentions are as follows:

“Respondents contend that they have accepted the claim as compensable and have timely paid applicable benefits. No part of this claim has been controverted.”

The claimant in this matter is a 52-year-old male who sustained a compensable injury to his right eye on or about May 20, 2021. At the time of his compensable right eye injury, the claimant's job duties for the respondent included driving large trucks and distributing food from those trucks. The claimant's right eye injury occurred when he was loading food into a truck for a customer. That truck had a camper shell on its bed. When the claimant shut the lid on the camper shell debris, including bird feces, went into the claimant's eye. The claimant's eye swelled shut and he went to see David Hurd, OD, at Vold Vision the next day. The claimant treated with OD Hurd until May 28, 2021, when he was seen at Boozman-Hof Regional Eye Clinic in Rogers, Arkansas, by Michael Waggoner, DO. The claimant primarily treated with DO Waggoner until August 7, 2022, when DO Waggoner found the claimant to be at maximum medical improvement. As a result of the claimant's compensable right eye injury, he sustained decreased vision in his right eye, an ulcer of the right eye that resolved, and two stromal scars in his right eye.

The central issue in this matter is the claimant's entitlement to additional permanent partial disability benefits up to and including total vision loss in the claimant's right eye. The respondents have accepted and paid a 4% permanent partial disability rating for the claimant's right eye injury as stipulated by the parties.

In the present matter, the following statute should be considered in determining the amount of anatomical or permanent disability the claimant is entitled to in conjunction with the American Medical Association Guides to the Evaluation of Permanent Impairment 4th Edition, herein after referred as AMA Guides 4th.

ACA §11-9-521 (a)(14) states:

Eye enucleated, in which there was useful vision, one hundred five (105) weeks.

ACA §11-9-521 (c)(1)(2) states:

Compensation for the permanent loss of eighty percent (80%) or more of the vision of an eye shall be the same as for the loss of an eye.

In all cases of permanent loss of vision, the use of corrective lenses may be taken into consideration in evaluating the extent of loss of vision.

On September 8, 2022, an impairment evaluation summary was offered by Rick Byrd of Functional Testing Centers, Inc., regarding the claimant's compensable right eye injury.

Following is a portion of that report:

1. Mr. Harrison has Loss of Central Vision of the right eye as follows:

Visual Acuity Testing Results using Corrected vision:

Snellen Result – For Distance

20/40 Right Eye – DVA with corrective contact lens. (Documented in 8/17/2022 note, Dr. Waggoner.) 20/20 Left Eye

Snellen Result – For Near

No documentation of loss of near sight – Right eye

No documentation of loss of near sight – Left eye

This result is an 8% loss of central vision using Table 3: Loss of Central Vision in a Single Eye – Right. Mr. Harrison records are consistent with the Snellen result and he does have glasses and contacts indicating this level of distance vision loss.

2. Table 5: Loss of Monocular Visual Field

Testing for loss of monocular field is a subjective test that is completely within the control of the subject and therefore not utilized for purpose of establishing impairment in this case.

3. Using Figure 3: Percentage Loss of Ocular Motility of one eye

Mr. Harrison was documented as having full ocular motility (Dr. Waggoner note 6-13-2022) with no objective results for binocular diplopia (double vision). This result is a 0% loss for loss of motility.

Summary – Conclusion using 8.4 of the Guides in Determining Impairment of the Visual System and of the Whole Person (p. 217):

Right Eye

Loss of Central Vision (Near and far) = 8%

Loss of Visual Field = 0%

Loss of Ocular Motility = 0%

Other: The Guides do allow for an additional 10% visual impairment of the involved eye in the case of abnormalities, which in this case do exist. Mr. Harrison has objective findings of “ulcer resolved with residual 2 stromal scars,” documented on 8-17-2022 note from Dr. Waggoner) associated with his work related injury to his right eye. This 10% will be combined with the 8% visual impairment for loss of central vision using the combined values chart (p. 322).

Using Combined values chart (p. 322) this is an impairment of the right eye of: 17%

Mr. Harrison does not have an impairment of the Left Eye with an impairment of 0% of the left eye.

The Guides instruct to then determine a Visual System Impairment using Table 7.

This table indicates the Visual System Impairment of Both Eyes (17% Right, 0% Left) results in a 4% Visual System Impairment of Both Eyes.

The Guides then instruct to then determine the Impairment of the Whole Person using Table 6 (p. 218).

In this case, Mr. Harrison has a 4% Whole Person Impairment for his eye related injury.

Impairment as a result of this work related injury.

On August 7, 2023, DO Waggoner authored a letter regarding the claimant's compensable right eye injury, addressing his ability to use a corrective lens as follows:

To whom it may concern. I am writing this letter on behalf of Jack Harrison. This letter is to make those aware that Jack is considered legally blind with this his right eye. He has tried wearing a specialty contact lens and with this lens his vision is correctable to the 20/40 range. With the scleral lens Jack does struggle with his depth perception and he has a hard time driving due to this. I do want to make you aware the scleral lens is a very difficult lens for some patients to wear or even tolerate given their size. They are also very costly. The main reason for us fitting him with the scleral lens was to see if his vision could even be improved. The scleral lens is not a good long-term option for him unfortunately. At his last exam we did talk about the future possibility doing a corneal transplant.

At this time patient has reached maximum medical improvement.

Expected follow up would include contact lens evaluations about every 6 months with re-fit every 1-2 years. Yearly exams to check pressures and overall scar/eye health while on steroid drops PRN. May have occasional flares requiring unplanned follow up exams and eye drops (steroid and pressure drops).

At the hearing in this matter the claimant gave direct examination testimony about his current right eye difficulties as follows:

Q And what kind of symptoms do you have in your right eye now?

A I have poor depth perception and I see shadows. I see tracers. When something moves, it leaves a trace. Other than that, it's useless.

Q The vision that you actually have in that eye, can you describe what you can see with your eye?

A It looks like a kaleidoscope. When you look through a kaleidoscope, if I look at anything, it's everywhere.

Q Okay. So if you close your left eye and use only your right eye, are you able to recognize people?

A No.

Q Are you able to drive just using your right eye?

A No. No, I can't even see the road.

Q Well, what can you do with just your right eye?

A Nothing.

Q If you have both of your eyes open, what is your vision like then?

A It's no dept perception. It's – my left eye is fighting with my right eye trying to focus and I'll be exhausted by the end of the day.

Q And why does it exhaust you?

A Just from the strain from my right eye trying to work.

Q Do you have any pain anymore from your eye?

A If it's too bright, like these lights right now, my eye's just twitching from the fluorescent lights in the room.

The claimant also gave direct examination testimony about the use of the corrective or scleral lens as follows:

Q And once the infection was gone from your eye, Dr. Wagner recommended a scleral lens, is that correct?

A Correct.

Q Can you tell us, what is a scleral lens?

A It's a lens about the size of a quarter, and it has to be specifically made for the contour and the scarring in my eye. You have to have a suction cup to place it on. You have to fill it completely full of saline solution, and you have to lean completely level over with the floor so you don't spill it, try to open your eye as wide as you can and stick that thing in your eye. If you touch an eyelid or if it gets a bubble in it, you have to pull it out and start all over again.

Q And are you able to put that scleral lens in your eye yourself?

A No.

Q And why not?

A My eye's been closed up for over a year because of the injury, and anything I try to force my eye open, by the time I get about six inches away from my face with my left eye that I can see, I can't seem to put it in.

Q So the closer the scleral lens gets to your eye you can't see it; is that what you are saying?

A Correct.

Q And what do you mean your eye's been closed up for a year?

A From any light. I couldn't go outside for over a year because of it – I couldn't even hardly watch TV because the glare from the TV would just drive me insane.

Q So you have had the scleral lens in your eye?

A Yes.

Q And how did you get it there?

A The technician from Boozman-Hof, she was the only one that could get it in for me, and it would actually take her ten to twelve tries before she could actually get it in.

Q And why was that? What made her have to try so many times?

A Because it was so difficult to get my eye open enough to get that big lens in because it's – a normal contact lens is about the size of your big finger and this thing was over the size of a quarter.

Q So when you had the scleral lens in, about how long did you keep it in?

A A couple of hours.

Q And why only a couple of hours?

A It would start to hurt.

Q When you had it in for those couple of hours, what was your vision like then?

A I could tell who you are but if you had anything written on your shirt or if there was any – any messages or anything on the walls or anything, I can't see them. I can't tell you what they say. The clock, I couldn't tell you what the clock said.

Q Did the scleral lens improve your depth perception?

A No.

Q What about the peripheral vision? Did that help on the peripheral vision?

A A little but the lens was so thick that was just – I know like if it's about 45 degrees, I could tell you're there.

Q So do you feel like you're going to be able to use the scleral lens?

A No.

Q And I guess for the reasons you said but can you just summarize why you feel like you can't use that?

A I don't have an hour to try to get it in every day and then try to take it out or whatever because you have to have that suction

cup again to stick to it and then slide it out of your eye. And then what's the purpose of that?

Q Have you ever been successful at getting it in yourself?

A No.

The claimant's impairment evaluation summary by Mr. Byrd determined the claimant to have impairment of 8% to his right eye based upon 20/40 central vision in the claimant's right eye. I agree that the AMA Guides 4th would provide 8% of impairment to the right eye using a corrective lens. However, ACA 11-9-521(c)(2) states:

In all cases of permanent loss of vision, the use of corrective lenses **may** be taken into consideration in evaluating the extent of loss of vision. (Emphasis added)

I find the claimant's testimony to be credible regarding his inability to wear a scleral lens, in part due to its large size and the lens being extraordinarily difficult to put into one's eye. That testimony is clearly supported in DO Waggoner's August 7, 2023, letter about the scleral lens.

I do not believe the claimant's vision should be considered with a corrective lens that he is unable to wear. In a March 2, 2022, clinic encounter note by DO Waggoner it was found that the claimant's vision was 20/200. This appears to be the claimant's last visit with DO Waggoner before his May 9, 2022, visit, when he was first fitted with the scleral lens. I find, using AMA Guides 4th, Chapter 8, The Visual System, Table 3: Loss of Central Vision in a Single Eye, the claimant's impairment to the right eye to be 40%.

I do agree with Mr. Byrd's additional assessment of 10% impairment to the right eye due to impairment for orbital scar and deformity, which is found in the AMA Guides 4th, Chapter 8, The Visual System, page 222, under a section called "Other Conditions." Taking both the

claimant's 40% and 10% impairment to the right eye and applying them to the AMA Guides 4th combined values chart at pages 322-324, the claimant's total impairment to the right eye is 46%.

In Mr. Byrd's impairment report he uses AMA Guides 4th, Chapter 8, Table 6 to convert the claimant's right eye impairment to a whole person impairment. While the AMA Guides 4th does allow for this, the Arkansas Workers' Compensation Act does not. In *Multi-Craft Contractors, Inc. v. Yousey*, 2018, Ark. App. 107, 542, S.W.3rd, 155 (2018) the Arkansas Supreme Court stated:

We agree with the parties and hold that Yousey's left eye injury is a scheduled injury. Our court of appeals has explained that the test of whether an injury falls within the scheduled-injury category is primarily a question of law. *Fed. Compress & Warehouse Co. v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996). The court further explained that partial permanent impairments to the eyes come within the scheduled-injury category as set forth in Arkansas Code Annotated section 11-9-521 and that claimants are limited to the scheduled benefits. *Id.* A claimant who sustains a scheduled injury is limited to the applicable allowances set forth in section 11-9-521. *Id.*

As such, the claimant is entitled to a total of 46% impairment to the right eye less any amount already paid by the respondent. I note that the claimant's right eye impairment does not meet the 80% threshold for total loss of an eye described in ACA 11-9-521 (c)(1).

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 26, 2024, and contained in a Pre-hearing Order filed February 27, 2024, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he is entitled to permanent disability benefits to his right eye in the amount of 46%.

3. The claimant has proven by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

The respondent shall pay the claimant an amount equal to 46% impairment to the right eye, less any monies already paid in impairment regarding the right eye.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**