BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H006548

KENTON LICONA-LOPEZ, Employee	CLAIMANT
HILBURN BUILDERS, Employer	RESPONDENT
ACCIDENT FUND INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JUNE 24, 2021

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 JAMES A. ARNOLD, II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On March 30, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 9, 2020, and a Pre-hearing Order was filed on that same date. 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. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant's weekly compensation rates are $683.00 for temporary total disability benefits and $512.00 for permanent partial disability benefits.

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

1. Whether claimant sustained a compensable injury to his left eye on or about September 3, 2020.

2. Whether claimant is entitled to medical benefits.

3. Whether claimant is entitled to temporary total disability benefits from September 5, 2020 through October 1, 2020, except for having worked five full days.

4. Attorney's fees.

Claimant's contentions are:

> "Claimant contends he is entitled to medical treatment and to temporary total disability benefits as a result of an injury to his left eye on or about September 3, 2020. The claimant reserves all other issues."

Respondents' contentions are:

> "That the claimant did not sustain a compensable injury to his eye."

The claimant in this matter is a 46-year-old male who was employed by the respondent as a construction worker when he alleges to have sustained a compensable injury to his left eye on or about September 3, 2020. The claimant worked for the respondent constructing buildings and other various structures. At the time the claimant alleges he sustained a compensable left eye injury he was working on a project in Virginia. On direct examination the claimant described how he believes his left eye injury occurred and his reporting of that injury as follows:

> Q And where were you working in early September of 2020?
>
> A In Virginia. I was in Virginia.
>
> Q And was that for Hilburn Builders?
>
> A That is correct.
>
> Q And what happened to your left eye while you were there in Virginia working?
>
> A On the first week, everything was okay. We started working. And then on the second week I started having problems with my eye when we started doing insulation. And then I had to clean a panel when I was - - with some chemical and that got into my face and it started burning.
>
> Q The chemical got into your face?

A Yes.

Q Did it get into your eye?

A Yes, also in my eye. I had to get some water from a bucket that we had there where we were at work because my eye was burning.

Q Now, what exactly were you doing with insulation?

A We were installing it on the roof of the building and you have to cut it so that it would fit into the squares. And then that will fall into my face as well and I had to use my sweaty T-shirt to clean up my face and maybe that affected me as well.

Q Did you have safety glasses?

A Yes, but not when I was cleaning my face because sweat will fall into my eyes.

Q Okay. And when your eye started bothering you, did you report that?

A Yes. I spoke to Chris and he asked me if I wanted to go to the doctor or if I could keep on working and I told him that I was able to keep on working.

Q You said about the insulation and then you said about the chemical. Which time did you report it to Chris?

A Both times.

Q Okay. And after the chemical got into your eye, how much longer did you work in Virginia?

A Two more days. Then the last day we finished the job in the afternoon and then we came back to Arkansas.

The respondent called James Christopher Luttrell, who is a general superintendent for the respondent, to testify. Mr. Luttrell goes by Chris according to his own testimony. Mr. Luttrell, or Chris, testified that the claimant did not report to him about getting insulation or chemical in his eye. However, upon review of the claimant's deposition testimony which was introduced as Joint Exhibit 1, the claimant names a Chris Hobbs and another Chris that he reported his eye problem to in Virginia. Mr. Luttrell

confirmed in cross examination that Mr. Chris Hobbs was employed by the respondent and that the claimant was working directly for him. The testimony on reporting of the insulation and chemical incident in the claimant's left eye is somewhat confused. I also note that Mr. Luttrell stated in direct examination testimony that the claimant was a "very good employee" and that he had never had any trouble with him, going as far as to calling him a "… solid worker. There every day."

The claimant testified that after the chemical got into his eye he worked two more days in Virginia. On direct examination the claimant was asked about his return to Arkansas and his initial medical care as follows:

> Q Okay. And after the chemical got into your eye, how much longer did you work in Virginia?
>
> A Two more days. Then the last day we finished the job in the afternoon and then we came back to Arkansas.
>
> Q And did you have your own car there in Virginia?
>
> A Yes.
>
> Q And did you drive it back home?
>
> A That day in the afternoon I drove until midnight and then I couldn't drive anymore because my eye was bothering me.
>
> Q So who drove?
>
> A Then the next day Tony, a co-worker, helped me drive all the way to Arkansas.
>
> Q Did he drive your car?
>
> A Yes.
>
> Q And when you returned to Arkansas, did you see a doctor?
>
> A Immediately Chris brought me to the clinic.
>
> Q Okay. And during the time from when you left Virginia until the time you first saw the doctor, how was your left eye doing?
>
> A It was bad. There was a lot of pain. And as time went by, it started being covered.

Q And when you say it was covered, what do you mean?

A It was like a white film that did not allow me to see. And it was also - - there was some discharge, a white discharge coming from my eye.

Q When you saw the first doctor, when Chris took you to see him, what was the state of your vision in the left eye?

A It was completely shut. I couldn't see anything.

Q And when you say shut, was your eye closed?

A It was so swollen that my eye was closed. I couldn't see. The only thing coming out was that white discharge.

Q And when you would open the eye, could you see from it?

A From when we went to the doctor two days prior, I couldn't see. I couldn't see very well. I couldn't see through that eye two days before we went to the doctor.

Q So when you were driving home from Virginia that first day when you drove, how was your vision that day?

A It was blurry. It was blurry and I couldn't see clearly. I couldn't see clearly.

The claimant was first seen on September 5, 2020 at MedExpress in Springdale, Arkansas. Upon examination the claimant was recommended to immediately go to the nearest emergency department for further evaluation. The claimant eventually went to Northwest Medical Center- Bentonville on that same day. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 5-19:

HISTORY OF PRESENT ILLNESS: The patient is a 45-year-old male who presents to the ER in transfer from NW Springdale. He reports at least 1 week of increasing redness, swelling, mucopurulent discharge, and loss of vision in the left eye. He reports this started approximately 1 week ago in Virginia while working in a job there. He reports he is in construction. He denies any significant trauma. He may have gotten a little bit of insulation in the eye, but does not remember a specific event where something got into the eye, but otherwise, no significant issues. He initially discussed possibly going to the ER with his boss this initially started, but the patient declined in hopes that

this could be taken care of back at home when he arrived back in Arkansas. He arrived back in town on Saturday, yesterday, and began seeking assistance for this problem at that time.

He reports a remote history of an injury to the left eye when he was a child. This occurred when he was 11 years old with a sling shot. He had noted poor vision since that time but was able to still see some letters even as a child. Over the last year, he reports an increasing worsening of the vision in the left eye. Even shadowing, where could not make out letters. He did not seek consultation or evaluation because the vision in the good eye (right eye) remained good and the left eye did not bother him much. He reports over the last week, the vision loss in the left eye has progressed such that he does not even see light in the left eye.

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History of Present Illness
Patient is a 45-year-old male who was sent from Springdale emergency department for evaluation of blindness to his left eye. Patient notes progressive discoloration of the cornea of his left eye over the last week. His vision has become progressively more blurred and currently he states he cannot even see light out of his left eye. The ER physician at Springdale the ER had talked with Dr. Sines who agreed to see the patient in our ER. At that time patient was transferred to our ER.

***

ASSESSMENT: The patient has evidence of a significant complete corneal ulcer with dense diffuse infiltrate. There is evidence of thinning. There may be a superior descemetocele present. There is no evidence of rupture of the globe, but is high risk of perforating. The patient is already No Light Perception and has a history of poor vision in this eye, and has a very poor prognosis for the left eye. He is very likely going to need enucleation associated with this, and we have discussed this with him using an interpreter. We have discussed attempting to control this with medical measures including fortified antibiotic drops in hopes of saving the eye, but I fear he has started treatment to late. We have recommended fortified vancomycin and tobramycin. The severity of the infection would suggest an aggressive infectious process on the left side. The most likely possibility is Pseudomonas. It is also possible that gonococcal in nature.

Because of this, we will give him treatment with IV ceftriaxone in addition to vancomycin 50mg/mL fortified drops every hour and tobramycin 15 mg/mL fortified drops every hour. The patient will be followed

> closely for treatment. We will plan to see him tomorrow in the Eye Clinic. We will make arrangements to do so. Please do not hesitate to call with any questions or concerns.

The claimant was seen by both Dr. Lundy Colvert, the attending physician, and Dr. Daniel Sines, who is a board certified ophthalmologist specializing in ophthalmic plastic and reconstructive surgery at Northwest Medical Center – Bentonville.

On September 8, 2020 the claimant was seen at Boozman-Hof Regional Eye Clinic by Dr. Michael Waggoner. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 20 – 21:

> **HISTORY:** The patient is a 45 year-old male who returns to the clinic for follow-up of corneal ulcer, left eye. The patient was last seen in the clinic today. This problem first began about a week ago. Today the patient has blurred vision, pain, redness and tearing in the affected left eye. Since the last visit these symptoms seem to be steadily improving. He describes his vision as "very poor". Pt denies any cls use w/OS.. Pt reports possible happened at work. Pt did wear safety goggles, but would take off because would sweat and blur out va. Pt says possible chemical that describes as glue to remove mold on aluminum might insert OS . . Pt states OD seems fine no pain or discomfort W/od.. He has no other complaints today.
>
> ***
>
> **General**:
> Severe psudomonas ulcer with total corneal necrosis and intra-ocular extension.
>
> Aggressive infection worsening over the past two weeks
> On topical and systemic (IV Ceftriaxone in ER) treatment x 48 hours now
> Suspect occult perforation of intraocular contents
> The globe is firm to touch
> I personally confired NLP vision
> Historically, he has had a prior corneal injury as a child but
> Reports blurry but functional vision prior to the corneal ulcer Onset.
>
> We discussed options here – heroic surgery vs topical meds vs enuc/evisc

On September 9, 2020 the claimant was again seen at Boozman-Hof Regional Eye Clinic by Dr. Waggoner. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 22 – 23:

> **HISTORY**: The patient is a 45 year-old male who returns to the clinic for follow-up of corneal ulcer, left eye. I last saw the patient one day ago. This problem first began 10-12 days ago. Today the patient has blurred vision, distorted vision, foreign body sensation, headache, pain, redness and tearing in the affected left eye. Since the last visit these symptoms seem to be steadily improving. He describes his vision as "poor". He has been treating this with antibiotic drops and steroid drops, has question on the pain pills. Pt states was told could use every 6 hrs, but wondering if he needs to continue to use or not. Pt has questions about work of absence like how long will it be until can go to work.
>
> ***
>
> **PLAN:**
>
> **GENERAL:**
>
> Severe pseudomonas ulcer with total corneal necrosis and intra-ocular extension.
> Suspect there has been perforation in the past – with high IOP and firm center to cornea
>
> Aggressive infection worsening over the past two weeks
> On topical and systemic (IV Ceftriaxone in ER) treatment x 48 hrs now
> There is no obvious extrusion of intraocular contents
> The globe is firm to touch; Tp up today in 50s
>
> I personally confirmed NLP vision
> Historically, he has had a prior corneal injury as a child but reports blurry but functional vision prior to the corneal ulcer onset.
>
> I discussed the case yesterday with Dr. Warner who felt that this eye with NLP vision in this condition is not currently operable for TPK. Could consider ProKera here – suspect this may be difficult to tolerate with globe contour and ?perforation (size?)
>
> I have explained the dire circumstances to the patient and
> That given the extensive necrosis the eye is unlikely to recover.
>
> RV: 2 days with me; he understands to call with sudden worsening in pain/gush of fluid/etc.
>
> Will tentatively plan for eval next week with Dr. Sines for second opinion on Enuc/Evisc.

On September 11, 2020 the claimant was again seen at Boozman-Hof Regional Eye Clinic by Dr. Waggoner. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 25-26:

> HISTORY: The patient is a 45 year-old male who returns to the clinic for follow-up of corneal ulcer, left eye. I last saw the patient 2 days ago. There is still no vision in the eye. There is less pain in the eye and less discomfort when the eye moves.
>
> EYE HISTORY: Corneal ulcer; OS; No history of CTL use or injury
> Remote prior injury here as child
> No other prior eye surgery
> Culture ++Pseudomonas
>
> EYE SURGERY: No previous surgeries
>
> PLAN:
>
> General:
>
> Severe pseudomonas ulcer with near total corneal necrosis and suspected intraocular extension.
> The eye is much more comfortable (2/10 pain scale) – there are signs of peripheral corneal neovascularization and early scar/healing
>
> On topical and systemic (IV Ceftriaxone in ER) treatment x 48hrs now
> I personally Re-confirmed NLP vision
>
> I have explained the dire circumstances to the patient and that given the extensive necrosis the eye is unlikely to recover.
>
> He is very interested in enucleation to be done with it instead of waiting and hoping for the eye to scar/stabilize with medication, especially if there is little to no hope for vision in the future.
>
> RV: 3 days with Dr. Sines; he understands to call with sudden worsening in pain/gush of fluid/etc.

On September 14, 2020 the claimant was again seen at Boozman-Hof Regional Eye Clinic, this time by Dr. Daniel Sines. Following is a portion of that medical record found at Claimant's Exhibit 1, pages 27 – 28:

HISTORY: The patient is a 45 year-old male who returns to the clinic for a problem with his vision. He does not currently wear glasses or contact lenses. Pt states he was at work in Virginia. He felt that insulation went inside his left eye. Pt states OS was red and it was burning. Pt states 4 days later he was cleaning a laminate with chemicals. Pt states a drop of that chemical went into his left eye. Pt states that night he woke up in the middle of the night he woke up with severe pain. Pt state OS was completely shut and was having white discharge. Pt states he told his employer about the discomfort OS. Pt states when he arrived in Arkansas two days later after the chemical got into his left eye. Pt states that night he went MedExpress then he was sent to Northwest Hospital. He is concerned about an episode of vision loss involving the left eye. The episode of vision loss involved the entire visual field. This episode was virtually incapacitating for him. The pain is a little better. He still has quite a bit of redness. He can see no light out of the eye. He has consulted with cornea who is concerned that the eye may have ruptured and is very thinned. He is not a good candidate for PKP, and they had discussed this possibility with UAMS. He is ready to have the eye removed and has come to terms with this.

PLAN:

General:

Enucleation/Evisceration: The patient has a history of a blind painful eye. This has failed medical therapy for treatment. This continues to cause significant symptoms. He has tried significant medical measures to save the eye, but it continues to worsen. Suspect rupture. Suspect endophthalmitis.

This is believed to more like than not be a work related injury as noted.

We discussed the differences between enucleation and evisceration. Enucleation requires removal of the sclera and muscles, which may result in some issues. Evisceration has a very low risk of continued pain or sympathetic ophthalmia, but likely has better movement and an extra layer of sclera to prevent extrusion or exposure.

We discussed implant sizing, volume loss, lid malposition (ptosis, ectropion), conjunctival of forniceal shortening, possible need for other surgeries, need for a prosthetic maintenance, exposure or extrusion of implant (including infection).

> Discussed either secondary implant placement vs dermis fat graft. There can still be infection that occurs in these cases. He would like to proceed with enucleation with dermis fat graft implant on the left side at NW.
>
> We are able to answer questions following this discussion. There is low likelihood of improvement of symptoms given failure of previous treatments.

On September 17, 2020 Dr. Sines performed surgery to remove the claimant's left eye. Following is a portion of that operative report found at Claimant's Exhibit 1, page 30:

> PROCEDURE PERFORMED: Enucleation of left eye with nuscles attached with implant, dermis fat graft from the left side.
>
> PREOPERATIVE DIAGNOSIS: Pseudomonal corneal ulcer nearing rupture with elevated pressure, blind painful eye, left side.
>
> POSTOPERATIVE DIAGNOSIS: Pseudomonal corneal ulcer nearing rupture with elevated pressure, blind painful eye, left side.

John Hopkins Reference Laboratories in Baltimore, Maryland received the claimant's specimen and Dr. Charles George Eberhart performed a pathology consult on the claimant's eye. That report is found at Claimant's Exhibit 1, page 35. The claimant also received follow-up care for his post-surgical needs.

The claimant has asked the Commission to determine if he sustained a compensable injury to his left eye on or about September 3, 2020. Without doubt, there is objective medical evidence of derangement in the claimant's left eye which was eventually removed due to the amount of and inability to stop the infection of pseudomonas in his left eye. However, the claimant must also prove a causal connection between the objective medical findings related to his left eye and the incident where he alleges insulation and chemical got into his eye while working for the respondent in Virginia.

Mr. Luttrell testified on direct examination as follows:

> Q Prior to this job in Virginia - - number one, you are

familiar with the job in Virginia in early September of 2020, the time period we are talking about here; correct?

A Yes, sir.

Q Prior to September of 2020, can you tell me what you had observed about Mr. Lopez and his left eye?

A At several of our morning safety talks, I have seen Mr. Lopez come with one eye swollen and red.

Q Which eye?

A It was always the same eye. I didn't really pay attention if it was the left or the right eye. Each time I saw him and noticed it I asked him, "Are you good? Are you okay to work?" "Yes, si, I am good to work."

Q Didn't have any problems with him working; correct?

A No, sir.

This testimony does not carry much weight as Mr. Luttrell could not identify which eye of the claimant he saw as swollen and red. Mr. Luttrell also failed in knowing a reason for the swelling and redness. Mr. Luttrell also testified about offering employees health, vision and dental insurance through the respondent as follows:

Q Now, as part of your job, did you discuss with Mr. Lopez and other members of his crew the availability of insurance through the company?

A Yes, sir.

Q And when was that?

A Actually, the week before the injury that Mr. Lopez claims he got at work.

Q Like August of 2020; correct?

A Yes, sir.

Q Okay. Did you personally discuss that with Mr. Lopez?

A Yes, sir. I brought the forms to the job site and consulted with every employee individually about what insurance they

> wanted.
>
> Q Okay. And tell the Judge, tell us here today what Discussion you had with Mr. Lopez about the availability of insurance coverage.
>
> A Well, just like all of the other employees, I had a form that each employee had to put their name and Social Security number on, which insurance they wanted, what coverage they wanted and which ones they rejected. Mr. Lopez had questions about what insurance covered what and then we both agreed on vision. He said he did not want dental and he did not want the health insurance. And through our limited communication, we both agreed that it was because of his eye problems that I had noticed him having before that day.

Medical evidence and the claimant's testimony show that the claimant had poor vision in his left eye due to a childhood injury. It is reasonable that a person such as the claimant, who had never been to an eye doctor in his life, would have interest in obtaining insurance for eye care. I also note that the claimant did not approach Mr. Luttrell out of the blue and ask for eye insurance; instead, Mr. Luttrell offered the various insurances to the entire group of workers.

Dr. Sines' deposition was taken on March 11, 2021, and was introduced into evidence as Respondent's Exhibit 2. Following are portions are Dr. Sines' deposition under questioning from the respondent's attorney:

> Q And I guess let me just jump right to it. By history, his allegations are that he got insulation in his eye and some days later got a chemical - - a drop of some chemical in his eye, and I think you have that in your history. Are either of those events consistent with pseudomonas?
>
> A So both of those events could create a break in the corneal surface that would allow for an opportunistic bacteria like pseudomonas to get into the eye.
>
> We have flora and various bacteria that live around the eye that lead to these sort of infections. So in the cornea, again, you have multiple layers and the epithelium is the most superficial layer. It's kind of like the skin of the eye. So if you were to get a scratch on that, whether it's through a chemical burn or through a mechanical injury, just like you get an infection in a cut on your skin, even though what you may have been cut with was completely sterile, which, you know, a foreign chemical

like insulation probably has some dirt or debris on it, I doubt pseudomonas was actually on the dirt or debris, but may have created a mechanical injury to the eye where bacteria could have entered that wound.

Okay. For instance, in a contact lens wearer, we have normal bacterial flora that live on the conjunctiva and cornea. We see infections more in people that wear contacts even though there wasn't a trauma, if you will. And so flora that typically would live on the eyelid or the eyelashes can cause more corneal ulcers because there is a little bit of disruption in those surfaces by contact. So those flora that don't typically live on the eye like pseudomonas can be on the eyelid or the eyelash and find its way into an open wound like that.

It sounds like he had a compromised cornea already, maybe from this injury. Maybe he had a scar or something like that, but all it takes is something like a trauma to allow - - you break down the barrier to entry.

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THE WITNESS: This is believed to be more likely than not to be a work-related.

Q [BY MR. ZUERKER]: So you believed it to be work-related?

A Correct.

Q Okay. And what did you base that opinion on?

A If he had had - - let's say he came in and he was a contact lens wearer; right? And he said, hey, I had - - you know, I had a little something that got into my eye, you know, maybe - - some people will say when they had an event happen, like this was the time that I had this stick hit me in the eye; right? I mean in this case insulation is not like a hard object. It is kind of going to get in there, get underneath the lid, and it is going to kind of irritate and scratch and you kind of blink it out, and a lot of times people would probably not think a lot about that.

You know, occasionally somebody will say, well, I had a little, you know, dust or something blow in my eye. You don't tend to think as much about that. And if you - - for instance, with a contact lens wearer, you go, well, maybe that was just because you have the risk factor of being a contact lens wearer and so that is probably your risk factor for pseudomonas in that case and a little less likely to be some sort of an injury. But he didn't really have risk factors for pseudomonas other than having a, you know, piece of insulation in the eye and maybe a chemical injury that could have set up the source for that.

So I kind of talked about with Dr. - - you know, initially, obviously, in the hospital he was in a lot of pain and it was a little harder to get a great story out of him at that time. And Dr. Waggoner saw him and said, hey, we have got a little more information along the way about how this might have happened as well. So we talked about that some as far as, you know, where you are trying to figure out the nature of sort of this problem.

So I don't have a great explanation for how he would have gotten this infection. Pseudomonas, you don't typically see this happen on its own without an event. Like probably 90 plus percent of them are contact lens related infections. It is just less likely to see that without having some sort of a process.

***

Q Okay. And I understood you to say that was consistent with this kind of two-week time frame we are talking about?

A Yeah, yeah. I mean when you look at things like endophthalmitis; right? So when we first did the ultrasound in him, the vitreous was clear. And you are looking, so you are looking at an infection that is primarily in the front, but as you kind of get in through this, this inflammation is spreading around the eye. It is becoming to involve the whole eye. And it kind of looks more like an endophthalmitis than just a corneal ulcer.

And those are some of the reasons why you decide to take an eye out because it is not - - he has no light perception. He is in a lot of pain. The likelihood of saving the eye is low. And even if you were to save the cornea, he may still have an infection that goes deeper in that eye because it is perforated and kind of had the insides coming out.

So, you know, it's a tough decision for a young guy like this to make, but I think given how bad this was, I think it's probably - - you know, I feel like it was the right decision. We really gave him - - we did everything we could to save the eye. We used compounded four to five antibiotic drops from the very start. We used doxycycline. We did like all the things to try to get this thing under control to try to save that eye and the eye was just so far into the infection when he presented, just we were kind of - - it was kind of tough to get that back. He is one of those guys you wished you would have seen him to days into it. I think you would have had a different outcome.

After review of the testimony and medical evidence, I believe the claimant to be a credible witness. I believe that he had both insulation and chemical contact in his left eye which caused some

form of damage that allowed for a pseudomonas infection to set in that eventually resulted in the loss of his left eye. Dr. Sines states that he believes the claimant's left eye difficulties to be work related as well. Dr. Sines stated that "pseudomonas, you don't typically see this happen on its own without an event. Like probably 90 plus percent of them are contact lens related infections. It just is less likely to see that without having some sort of a process." The claimant does not wear contact lenses or glasses and I find that his testimony about left eye contact with insulation and chemical to be credible. The claimant is able to prove a causal connection between the objective findings in his left eye and the incident on or about September 3, 2020 he alleges. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left eye on or about September 3, 2020.

As the claimant has proven a compensable left eye injury on or about September 3, 2020, he is also entitled to reasonable and necessary medical treatment. The medical evidence introduced into evidence which I have reviewed is reasonable and necessary medical treatment for his compensable left eye injury.

The claimant has asked the Commission to determine his entitlement to temporary total disability benefits from September 5, 2020 through October 1, 2020, except for a period of five full days at which time he worked for the respondent. On February 1, 2021, Dr. Sines authored a letter regarding the claimant's condition and work status found at Claimant's Exhibit 1, page 52, as follows:

> I have had the opportunity to take care of Mr. Licona since I was initially consulted in the ER on September 6, 2020. He initially presented with a severe infection of the left eye. Ultimately he failed medical treatment due to the severity of the infection and required enucleation of the left eye which was performed on September 17, 2020.
>
> Because of the frequency of the drops and treatment he required, he was unable to work from the time of the evaluation until 2 weeks after surgery. This has placed him in a capacity of not being able to work from September 5, 2020 until October 1, 2020. We would certainly be happy to provide any documentation to support this further. This period of time postoperatively was to allow for appropriate recovery from the surgery and to allow the wounds to heal. He would have had limited lifting,

> bending, straining and other postoperative precautions. He has fortunately done very nicely postoperatively and the eye socket has healed well and the prosthetic appearance of that left side is excellent. Please let me know if I can provide further documentation to you for Mr. Kenton Licona.

The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from September 5, 2020 to October 1, 2020, excluding the five full days he worked for the respondent.

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 witnesses and to observe their 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 December 9, 2020, and contained in a Pre-hearing Order filed that same date, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left eye on or about September 3, 2020.

3. The claimant has proven by a preponderance of the evidence that he is entitled to medical benefits regarding his compensable left eye injury.

4. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from September 5, 2020 through October 1, 2020, excluding five full days that he worked for respondent during that time period.

5. 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 be responsible for reasonable and necessary medical treatment, including aftercare for the claimant's compensable left eye injury which resulted in surgical removal of the claimant's left eye. The respondent shall pay the claimant temporary total disability benefits from September 5, 2020 through October 1, 2020, excluding five full days at which time the claimant worked for the respondent, at the temporary total disability rate of $683.00.

Respondent 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 respondent in addition to such benefits and one-half of said attorney's fee to be withheld by the respondent from such benefits pursuant to A.C.A. §11-9-715.

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

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

IT IS SO ORDERED.

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ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE