

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G802123

FRANCINE MURPHY, CLAIMANT
EMPLOYEE

ARKANSAS DEPARTMENT OF CORRECTIONS, RESPONDENT
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT NO. 1
INSURANCE CARRIER/TPA

DEATH & PERMANENT TOTAL RESPONDENT NO. 2
DISABILITY TRUST FUND

OPINION FILED MARCH 17, 2023

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part, reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed August 23, 2022. The administrative law judge awarded compensation for facial disfigurement. The administrative law judge also found that the claimant proved she was permanently and totally disabled. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's award of compensation for facial disfigurement. The Full

Commission reverses the administrative law judge's finding that the claimant proved she was permanently totally disabled.

I. HISTORY

Francine Annette Murphy, now age 59, testified that she was a high school graduate. Ms. Murphy testified that following high school she attended vocational-technical training, for a brief time, learning secretarial skills. The claimant then worked at an Assisted Living facility for 12 years. The claimant described her Assisted Living duties as "Housekeeping, cooking, and taking care of the elder (sic)." The claimant testified that she subsequently became employed with the respondents, Arkansas Department of Corrections. The claimant testified on direct examination:

Q. And how long were you employed at the Arkansas Department of Corrections?

A. It was 15 years.

Q. Okay. What was your job at the Arkansas Department of Corrections?

A. I was a production – Food Production Manager No. 1.

Q. Okay. What does a Food Production Manager do?

A. Supervise inmates, check in and out tools, strip search, bed search, just walkin' the [indiscernible], make sure they're doin' their job.

Q. Okay.

A. Lots of paperwork....

Q. Are you helping with any of the cooking that's being done?

A. Yes. I would go back and, you know, 'cause I love to cook and I would just try to make the food, you know, edible for the inmates and tell 'em what to put in it and just to make it taste good....

Q. Was there computer work to be done?

A. Yes, as far as me havin' to do my classes on computer.

Q. Okay. So you had to take a certain number of classes to continue working at the prison?

A. Yes. It's 40 hours per year.

Q. Okay. And did you then do those classes online while you were at work?

A. Yes.

Q. So these are computers that you would use at work?

A. Yes.

The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times, including March 17, 2018. The claimant testified on direct examination:

Q. Did you trip and fall?

A. Yes.

Q. Okay. So you were on your way to the chow area?

A. Yes....

Q. What happened to you physically when you tripped and fell?

A. I hit the concrete....I went flat face down.

The parties stipulated that the claimant "sustained compensable injuries to her head and left eye" on March 17, 2018. According to the record, the claimant treated at Harris Medical Center on March 17, 2018: "Patient presents for evaluation of fall....fell from standing and hit the left SOR. Now with extreme pain in the left eye with loss of vision." The primary diagnosis was "Left Globe trauma."

An ophthalmologist performed surgery on March 17, 2018: "Globe exploration and repair of open globe left eye." The post-operative diagnosis was "Lens dislocation," "Ruptured globe of left eye, initial encounter," and "Injury of globe of left eye, initial encounter."

Dr. John D. Pemberton performed surgery on April 3, 2018:

“Enucleation with implant and muscles attached, left. Temporary tarsorrhaphy, left.” The pre- and post-operative diagnosis was “Blind, painful phthisical eye.”

Dr. Roger L. Green noted on April 18, 2018, “She fell at work on 3/17/18 and hit her left eye on a cart. She was seen at Harris Hospital ER and transferred to UAMS. She had surgery on April 3rd at UAMS to remove her eye. She is not in pain today. She will need refills on all of her medications.” Dr. Green reported, “Literacy Assessment: Never need to have someone help me when I read instructions, pamphlets, or other written material from my doctor or pharmacy.”

Dr. Pemberton performed additional surgery on October 30, 2018:

“1. Removal of orbital implant on the left. 2. Placement of new implant in the left, size 18 mm Medphor sphere. 3. Permanent lateral tarsorrhaphy on the left. 4. Temporary tarsorrhaphy on the left.” The pre- and post-operative diagnosis was “1. Complications with orbital implant. 2. Poor fitting of prosthesis. 3. Anophthalmia on the left. 4. Lid laxity, left lower eyelid.”

The claimant signed the following note dated April 15, 2019:

I, Francine Murphy – 28960, will be retiring effective June 1, 2019. My last day of employment with the Department of Correction will be May 31, 2019.

The claimant testified on direct examination:

Q. Now, when your doctor released you and said you're as good as your gonna get, what happened with your employment with the State of Arkansas?

A. Well, I lost all my benefits. I was told that I was gonna have to take an early retirement or get terminated unless I turned 55. That's when they offered that to me.

Q. Okay. So you followed the instruction of your employer. Is that correct?

A. Yes.

Dr. Pemberton assessed the following on June 17, 2019:

1. Anophthalmia, left eye.
 - Enucleated after trauma
 - Doing well, has adapted for ADLs
 - Prosthesis fitting better.
2. Graves disease.
 - Has proptosis but no active thyroid eye disease.
 - Recommend lubricating with tears during day and ointment at night to limit exposure
3. Complication of prosthetic orbit of eye, subsequent encounter.
 - Prosthesis fitting better after last revision.
4. Thyroid eye disease -Right Eye
5. Eyelid retraction, unspecified laterality – Right Eye.
6. Hyperopia of both eyes with astigmatism and presbyopia – Right Eye.

Tears both eyes 4 times daily for life.

Tear ointment bedtime to the right eye only for life.

Selenium daily.

Multivitamin daily.

Decrease smoking.

Maximum surgical improvement: will need annual socket exam of the left.

Return in about 6 months (around 12/17/2019) for Comprehensive eye exam....

Driving: Best corrected or uncorrected visual acuity in at least one eye is 20/40 or better: yes.

Discussed with patient. Vision worse than 20/40 (corrected/uncorrected) in better seeing eye was discussed and driving was not recommended and told it did not meet state standards of visual requirement for drivers license. Monocular precautions discussed (yes/no/na: not applicable): Patient with monocular vision [was] advised to wear protective eyewear during all activities, in effort to protect the only seeing eye. Patient has glasses yes. Patient given a prescription for protective eyewear yes.

Dr. Pemberton performed surgery on January 10, 2020: "Permanent Tarsorrhaphy right (6mm)." The pre- and post-operative diagnosis was "eyelid retraction upper due to ted, exposure keratopathy."

Dr. Barry D. Baskin provided an Impairment Rating on August 25, 2020:

Ms. Murphy is a 56-year-old lady from Newport. She works for the Department of Corrections in the food service at the prison in Newport. She was on the job on 03/17/2018 when she tripped and fell on her face. She hit her left eyeball and had a significant injury to the left eye. She lost vision at the time of the fall. She complained of significant eye pain. She had preexisting history of Graves' disease with exophthalmos. She was initially seen up in Newport and ultimately was transferred to UAMS where she was treated by Dr. John Pemberton....She underwent several surgeries on her eye and ultimately had enucleation of the left eye. She has had two prosthetic eyes. She still with the prosthesis feels like her eye does not look normal. She is worried about that a lot and has withdrawn some. She is trying to deal with it but does social isolate herself and frequently she states she wears dark glasses even when it is not bright outside to cover up her eye. She is self-conscious about the eye. She states that her eye does dry out some. She uses a lubricant. She can shut the eye. She has also had a surgery unrelated on the right eye by Dr. Pemberton. She has complete and total visual loss and again enucleation of the left eye.... She is not working currently....

PHYSICAL EXAMINATION: Ms. Murphy is a pleasant 5 feet 7 inches, 210 pound female that is alert and cooperative. She had dark glasses on. She does have a prosthetic eye on the left. She has proptosis bilaterally. She has a fairly natural appearing left eye prosthetic. She does not completely open the left eye compared to the right. She does have fairly good lid closure on the left. She has good vision out of the right eye per her records and her admission today. She gets around fairly well. Her gait is normal. She has trouble with depth perception.

IMPRESSION: Ms. Murphy is a nice lady who presents for an impairment rating today regarding a work fall with the Department of Corrections that resulted in loss of vision in the left eye and complete enucleation and prosthetic left eye. She has had three different prostheses. She has preexisting Graves' disease with hyperthyroidism and exophthalmos. Next, turning to the AMA Guides to the Evaluation of Permanent Impairment 4th Edition using section 8.4 on page 217-218 and table 6 on page 218, Ms. Murphy has a total loss of vision out of her left eye. This would give her a 25% impairment to the visual system which is equal to a 24% impairment of the whole person. Ms. Murphy has some degree of disfigurement associated with anxiety and depression. Turning to page 141-142 of the guides emotional or behavioral disturbances [Ms.] Murphy would have a mild limitation of daily social and interpersonal functioning as a result of her perception of disfigurement with her left eye enucleation and prosthesis. This would give her an additional 10% whole person impairment. Next, turning to the combined values chart on page 322, Ms. Murphy's 24% impairment is combined with her 10% impairment to the whole person to give her a 32% whole person impairment. [Ms.] Murphy will continue to need to see Dr. Pemberton for his skills as an Oculoplastic surgical specialist. The last records I have from Dr. Pemberton were dated back to 01/10/2020 when he performed a Tarsorrhaphy of the right eye. This was unrelated to the patient's left eye injury.

This concludes my impairment rating on Ms. Francine Murphy. I appreciate the opportunity to assist in this nice lady's impairment rating today. If there are any questions

regarding this impairment rating I would be happy to address them. I would note that the impairment rating for emotional and behavioral impairment is directly linked to the section on disfigurement which is section 13.4 on page 279 of the guides. My opinions were given within a reasonable degree of medical probability based upon my training and experience as board certified Psychiatrist as well as my review of Ms. Murphy's records and examination of Ms. Murphy today.

Tanya L. Walker, APRN noted on October 1, 2021 and November 23, 2021, "Francine A. Murphy is disabled due to the loss of her left eye. The injury occurred on 3-17-2018." A physician signed Ms. Walker's November 23, 2021 note.

A pre-hearing order was filed on January 26, 2022. According to the text of the pre-hearing order, the parties agreed to litigate the following issues:

- (1) Whether the Claimant is entitled to benefits for facial disfigurement pursuant to Ark. Code Ann. §11-9-524 in relation to her compensable injuries of March 17, 2018;
- (2) Whether the claimant is entitled to permanent and total disability benefits in relation to her compensable injuries of March 17, 2018; or, in the alternative, wage loss disability benefits; and,
- (3) Attorney's fees associated with controverted indemnity benefits.

Tanya Rutherford Owen, Ph.D., a Rehabilitation Services consultant, corresponded with the claimant's attorney on February 3, 2022:

At your request, we have conducted a labor market survey of Newport, Arkansas in February 2022. Please find below the findings from this survey....
Ms. Murphy's area of residence Newport, Arkansas was reviewed to determine the jobs that exist and their impact on

her potential to return to work. Data reviewed of Jackson County reflect a civilian labor force of 5,585 with 5,391 employed and 194 unemployed and an unemployment rate of 3.5%. This information was obtained from the County Labor Force Statistics, Arkansas Counties (December 2021). On February 2, 2022, a review of the labor market in Mr. Jones' in Newport, Arkansas was made to identify potential return to work occupations....

Ms. Owen wrote that she had located 15 potential jobs for the claimant. These potential employment opportunities included cashier duties, clerical work, retail sales, customer service, housekeeping, fast food employment, manufacturing, teaching, and home health care.

A hearing was held on May 27, 2022. The claimant's attorney examined Tanya Rutherford Owen:

Q. Now, we have what we have marked as Claimant's Exhibit No. 1, which is a list of the jobs that you provided to us. Now, can you tell us how you came about the jobs that you provided to us?

A. Well, first my assignment was to do a Labor Market Survey, so I have to find out where the person is or what area I'm surveying, and I do this, at this point really, all over the country, but in this case I surveyed Newport, Arkansas, and so I need to know the geographic location. And in this case I wasn't looking for any one specific type of work....In this case it's just a Labor Market Survey; it's just saying in this area, on this date, which I think we looked at a couple of days in February, what jobs were open, and then what were their requirements of those jobs....

Q. So the jobs that you provided in the report that we have marked as Exhibit No. 1, it's your February 3, 2022 report, are these all the jobs that you found available in Newport, Arkansas?

A. It's most of what we found on this date....And if you look at this, you start seeing themes of the types of jobs; entry-level types of jobs, you know, sales cashier types of jobs. Those

are the types of jobs that we found available in this area on this date....

The respondents' attorney cross-examined Dr. Owen:

Q. I just wanted to ask you, first of all, what date did you meet the claimant, Ms. Francine Murphy?

A. I've never met Ms. Murphy.

Q. Okay. Have you reviewed medical records from Ms. Murphy?

A. I have not.

Q. All right. What do you know about Ms. Murphy?

A. I don't know anything about Ms. Murphy other than her name, that she's Ms. York's client, and that she resides in or near Newport, Arkansas.

Q. Okay. So if I asked you your opinion about whether Ms. Murphy can do the jobs that you found on February 3rd, you couldn't answer that?

A. No, sir, I don't have enough information to answer that. I'm sorry....

Q. And I noted on this report, these 15 jobs that you found, these were jobs that were open within Newport on that particular date, correct?

A. In or around Newport....

Q. Did Ms. Murphy ever contact you about any of these jobs?

A. I don't think so. I don't think I've ever talked with Ms. Murphy. No, sir.

An administrative law judge filed an opinion on August 23, 2022.

The administrative law judge found that the claimant proved she was entitled to a statutory award for permanent facial disfigurement. The administrative law judge also found that the claimant proved she was permanently and totally disabled. The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Disfigurement

Ark. Code Ann. §11-9-524(Repl. 2012) provides:

- (a) The Workers' Compensation Commission shall award compensation for serious and permanent facial or head disfigurement in a sum not to exceed three thousand five hundred dollars (\$3,500).
- (b) No award for disfigurement shall be entered until twelve (12) months after the injury.

In the present matter, an administrative law judge found that the claimant was "entitled to \$1,500.00 for facial disfigurement pursuant to Ark. Code Ann. §11-9-524." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable injury to her head and left eye on March 17, 2018. The evidence demonstrates that the claimant sustained "Left Globe trauma" resulting from a slip and fall at work on March 17, 2018. The compensable injury led to an "enucleation" of the claimant's left eye, performed by Dr. Pemberton on April 3, 2018. Dr. Pemberton performed additional left eye surgery on October 30, 2018 in part to place a "new implant" in the claimant's left orbit. Dr. Baskin provided an Impairment Rating on August 25, 2020. Dr. Baskin noted that the claimant wore dark glasses and that the claimant was "self-conscious about the eye." Dr. Baskin wrote that the claimant "has some degree of disfigurement" after the claimant's compensable injury and surgery.

The claimant testified on direct examination:

Q. Can you describe to us, in your own words, how the difference – when you look in the mirror, what is the difference between your left eye and your right eye now?

A. Right now this left eye is lower. This eye just don't fit well.

Q. Now, before this accident were your eyes even level?

A. Yes.

Q. After this accident, did –

A. It's a result of all my surgeries. Yes.

The Arkansas Court of Appeals has affirmed the Commission's award of disfigurement when a compensable injury was "noticeable" and "detracted from a claimant's appearance." *See Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). Likewise in the present matter, the evidence demonstrates that the compensable injury has resulted in a "noticeable" disfigurement which the claimant perceives is a detraction to her appearance. The Full Commission therefore affirms the administrative law judge's award of \$1,500.00 for facial disfigurement in accordance with Ark. Code Ann. §11-9-524(Repl. 2012).

B. Permanent Total Disability

An employee who has sustained a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of her permanent physical impairment. *McDonald v. Batesville Poultry Equip.*, 90 Ark. App. 435, 206 S.W.3d 908 (2005). However, an employee who has sustained a scheduled injury may claim entitlement to permanent total disability benefits. *Id.*

Ark. Code Ann. §11-9-519(Repl. 2012) provides, in pertinent part:

(e)(1) "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.

(2) The burden of proof shall be on the employee to prove inability to earn any meaningful wages in the same or other employment.

The Full Commission reviews an administrative law judge's opinion *de novo*, and it is the Full Commission's duty to conduct its own fact-finding independent of that done by the administrative law judge. *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

An administrative law judge found in the present matter, "(2) The Claimant has proven, by a preponderance of the evidence, that she has been rendered permanently and totally disabled as the result of her compensable left eye injury of March 17, 2018[.]" The Full Commission does not affirm this finding. The Full Commission finds that the claimant did not prove she was permanently totally disabled.

The claimant is middle-aged, age 59, and is a high school graduate. The claimant worked for 12 years at an Assisted Living facility before becoming employed as a Food Production Manager for the respondents, Arkansas Department of Corrections. The claimant testified that she was employed with the respondents as a Food Production Manager for 15

years. The claimant's job duties in this capacity included preparation of food and supervision of inmates. The claimant was at least minimally computer proficient according to her testimony. The parties stipulated that the claimant sustained a compensable injury to her left eye on March 17, 2018. As the Commission has recognized from the medical evidence, the compensable injury resulted in an enucleation of the claimant's left eye performed by Dr. Pemberton.

The claimant has not attempted to return to appropriate gainful employment since her compensable injury. The Full Commission again notes that the claimant is at least minimally proficient in use of a computer according to her testimony. Following enucleation surgery by Dr. Pemberton, Dr. Green reported on April 18, 2018 was able to read "instructions, pamphlets, or other written material." The claimant is literate even after surgery. The claimant informed the respondents on April 15, 2019 that she would be voluntarily retiring effective June 1, 2019. There is no evidence corroborating the claimant's testimony that the respondents forced or encouraged the claimant to retire from gainful employment. Dr. Pemberton reported on June 17, 2019 that the claimant was doing well, and had "adapted for ADLs," that is, Activities of Daily Living. Dr. Baskin assigned the claimant only a 32% whole-person impairment rating on August 25, 2020. Dr. Baskin opined that the claimant had only "a mild

limitation of daily social and interpersonal functioning as a result of her perception of disfigurement with her left eye enucleation and prosthesis.” Dr. Baskin did not opine that the claimant was permanently totally disabled, nor did he restrict the claimant’s driving activities. The Full Commission therefore places minimal evidentiary weight on APRN Tanya Walker’s subsequent opinion that the claimant was “disabled due to the loss of her left eye.”

The claimant’s attorney arranged for Rehabilitation Services with Tanya Rutherford Owen, Ph.D. beginning in February 2022. As the Full Commission has discussed, Dr. Owen identified at least 15 potential job openings for the claimant near the claimant’s home in Newport, Arkansas. The evidence demonstrates that the claimant did not attempt to follow up on any of the jobs identified by Tanya Rutherford Owen. Dr. Owen’s testimony demonstrates that neither the claimant never contacted her following the consultation report of February 3, 2022. The Full Commission recognizes the claimant’s testimony the she is greatly restricted in her ability to drive a motor vehicle as a result of the compensable injury, surgery, and resulting 32% anatomical impairment. However, the claimant also testified that she is physically able to drive at least some distances in the area of Newport, Arkansas where the claimant resides. The claimant’s demonstrated lack of interest in returning to work is an impediment to a full assessment of the

claimant's contention that she is permanently and totally disabled. *Oller v. Champion Parts Rebuilders*, 5 Ark. App. 307, 635 S.W.2d 276 (1982). The Full Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Johnson v. Hux*, 28 Ark. App. 187, 772 S.W.2d 362 (1989). In the present matter, with regard to her contention that she is permanently totally disabled as a result of her compensable scheduled injury, the Full Commission finds that the claimant was not a credible witness.

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's award for facial disfigurement in accordance with Ark. Code Ann. §11-9-524(Repl. 2012). We reiterate that the claimant also sustained permanent anatomical impairment in the amount of 32%, as assessed by Dr. Baskin. The evidence demonstrates that the 32% anatomical impairment rating is supported by objective medical findings, comports with the 4th Edition of the *Guides*, and that the compensable injury was the major cause of 32% permanent anatomical impairment. The respondents shall be liable for 32% permanent anatomical impairment in addition to the award for facial disfigurement. The Full Commission reverses the administrative law judge's finding that the claimant proved she was permanently totally disabled. The claimant did not

prove that she was unable to earn “any meaningful wages in the same or other employment” in accordance with Ark. Code Ann. §11-9-519(e)(Repl. 2012). The Full Commission denies the respondents’ motion to introduce “rebuttal evidence,” that is, evidence purporting to illustrate contentions made by the claimant during her deposition testimony. Said “rebuttal evidence” is not necessary or probative with regard to the Full Commission’s *de novo* review in the present matter.

The claimant’s attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing in part on appeal, the claimant’s attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton concurs and dissents.

CONCURRING AND DISSENTING OPINION

The Majority has correctly determined that the claimant has not satisfied her burden of proof that she is permanently and totally disabled;

however, I cannot agree that she is entitled to benefits for facial disfigurement, nor do I agree that the Majority is correct in applying the claimant's permanent impairment to the body as a whole.

The claimant was injured while employed with Arkansas Department of Corrections on March 17, 2018 when she fell and struck the left side of her face on the floor, resulting in damage to her left eye, which ultimately required its removal. (Tr., Pp. 33-34). The respondent employer accepted the 100% loss of the claimant's eye. (Tr., Pp. 36-37).

The claimant was first treated at the Harris County Hospital on March 17, 2018 with findings that were "indicative [of] rupture of the left globe," and her eye was surgically removed on April 3, 2018. (Cl. Med. Ex., Pp. 10, 19, 37). On August 25, 2020, Dr. Barry Baskin examined the claimant and assessed an impairment rating of 32% to the body as a whole, as a result of the scheduled injury to her left eye. Dr. Baskin incorrectly translated the loss of the left eye, a scheduled injury, to the body as a whole and assigned a whole body rating of 24% and based the remainder of the rating on the subjective complaints of the claimant which does not comply with the Act. (Cl. Med. Ex., P. 81). Dr. Baskin stated that the claimant has "mild social and interpersonal functioning as a result of **her perception** of disfigurement with her left eye enucleation and prosthesis," thereby basing his rating on the claimant's subjective complaints rather than objective medical findings

Id. (emphasis added). Dr. Baskin did not address any facial disfigurement.

See Id.

As noted above, the claimant suffered a 100% loss of her left eye, for which the respondents have accepted compensability. “Any employee suffering a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment” Ark. Code Ann. § 11-9-521(g). It is well settled in this State that absent a finding of total disability, a scheduled injury cannot be apportioned to the body as a whole. *Hill v. White-Rodgers*, 10 Ark. App. 402, 665 S.W.2d 292 (1984). The applicable statute, Arkansas Code Annotated § 11-9-521(a)(14), states that an enucleated eye, in which there was useful vision, is a scheduled injury for which an employee shall receive weekly benefits in the amount of the permanent partial-disability rate attributable to the injury for 105 weeks. Compensation for the permanent loss of 80 percent or more of the vision of an eye shall be the same as for the loss of an eye. Ark. Code Ann. § 11-9-521(c)(1). *Multi-Craft Contrs., Inc. v. Yousey*, 2018 Ark. 107, 542 S.W.3d 155 (2018). Therefore, the claimant’s eye injury must be limited to the scheduled benefits.

There is no medical proof of disfigurement. Ark. Code Ann. § 11-9-524 requires serious and permanent facial disfigurement. The fact that the claimant has a perception of disfigurement as pointed out by Dr. Baskin,

which is subjective, does not meet her burden of proof and as such benefits for disfigurement should be denied.

The statute and case law are clear that when a claimant sustains an injury to a scheduled member, the claimant is limited to the anatomical rating assigned for the scheduled member under the Act unless the claimant is permanently and totally disabled. Since the claimant is not permanently and totally disabled, she is limited to 105 weeks of disability benefits for the loss of her eye.

For the reasons stated above, I concur that the claimant is not permanently and totally disabled and dissent from the findings of the Majority that the claimant is entitled to a permanent anatomical impairment in the amount of 32% to the body as a whole and benefits for facial disfigurement.

MICHAEL R. MAYTON, Commissioner