

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G800577

TROY PASKEL, EMPLOYEE

CLAIMANT

GEORGIA-PACIFIC, LLC, EMPLOYER

RESPONDENTS #1

OLD REPUBLIC INS. CO. / ESIS, INC., CARRIER/TPA

RESPONDENTS #1

**DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND**

RESPONDENTS #2

OPINION FILED JULY 20, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in McGehee, Desha County, Arkansas.

Claimant was represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

Respondents #1 were represented by Mr. Rick Behring, Jr., Attorney at Law, Little Rock, Arkansas.

Respondents #2 were represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on April 23, 2021, in McGehee, Arkansas.

A Prehearing Order was previously entered in this case on December 15, 2020. The Prehearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

Stipulations:

During the prehearing telephone conference and/or during the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. An employer-employee relationship existed on January 12, 2018, when Claimant sustained a compensable injury to his face in the form of a laceration.
3. Claimant was earning sufficient wages to entitle him to the maximum temporary total disability (TTD)/permanent partial disability (PPD) compensation rate of \$673.00/\$505.00.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues:

The parties agreed to litigate the following issues, which were modified at the hearing:

1. Compensability for permanent injury of the eye.¹
2. Disfigurement for facial injury in the form of a facial laceration.
3. Temporary total disability benefits (TTD) from February 18, 2018, until September 10, 2018, the date of retirement.²

Contentions:

The following contentions were submitted by the parties:

Claimant contends that on January 12, 2018, he was changing a blade on a machine when the blade popped off and struck him in the face, causing a laceration. Surgery was provided by the employer and temporary total disability benefits paid through February 18, 2018. Plastic surgery was recommended, and Claimant has a permanent disfigurement upon which he is entitled to permanent compensation.

Respondents #1 accepted this claim as compensable and have not controverted any benefits. Respondents #1 continue to authorize and provide all appropriate medical benefits. Respondents #1 delivered a Form AR-N in person to Claimant on or about January 12, 2018. After receiving a copy, Claimant executed and signed the Form AR-N. Respondents #1, therefore, are

¹ The testimony and evidence at the hearing showed that the issue was compensability of Claimant's right eye.

² At the hearing, the parties agreed to remove the last issue of payment of additional medical benefits.

not responsible for any unauthorized medical treatment. No physician has assigned a permanent anatomical impairment rating as a result of the compensable face injury. Thus, Respondents #1 have not accepted or denied permanent partial disability benefits. Respondents #1 do not anticipate any permanent anatomical impairment as a result of the compensable injury but reserve the right to accept/deny a rating if assigned. Respondents #1 have not controverted Claimant's right to disfigurement pending the Commission's assignment of an amount not to exceed \$3,500.00. Respondents #1 contend that Claimant is not entitled to any additional temporary disability benefits as a result of the facial injury on January 12, 2018. The Respondents #1 offered work to Claimant, but Claimant refused to return to work despite work within any restrictions (if any) contemplated by Claimant's treating physician. Claimant voluntarily resigned his position with the respondent-employer despite work being available (and offered) to Claimant.

Respondents #1 deny and controvert that Claimant sustained an eye injury as a result of the specific incident on January 12, 2018. Claimant has failed to establish an objective medical finding supporting an eye injury and, otherwise, failed to meet his burden of proving a compensable injury to his eye.

Respondents #1 reserve the right to supplement and/or amend their contentions to assert any applicable defense. Respondents #1 contend that no benefits have been controverted and, therefore, Claimant's attorney is not entitled to an attorney's fee. In the alternative, if it is determined Claimant is entitled to any additional indemnity benefits, Respondents #1 hereby request a setoff for all benefits paid by Claimant's group health carrier, all short-term disability benefits received by Claimant, all long-term disability benefits received by Claimant and all unemployment benefits received by Claimant. Respondents #1 reserve the right to supplement

and/or amend their contentions prior to the full hearing and otherwise assert any applicable defense to Claimant's request for additional benefits.

The Fund defers to the outcome of litigation.

Summary of Evidence:

The record consists of the hearing transcript of April 23, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Prehearing Order entered on December 15, 2020, and the parties' prehearing filings; Claimant's Exhibit #1 consisted of twenty-seven (27) pages of medical records; Claimant's Exhibit #2 consisted of three (3) photographs of the right side of Claimant's face depicting the work injury³; Respondents' Exhibit #1 was thirty-one (31) pages in length and consisted of medical records; Respondents Exhibit #2 included three (3) non-medical records, including a Form AR-N, Form AR-C, and an indemnity payment history.

Witnesses:

During the hearing, Troy Paskel (Claimant, used interchangeably herein) was the only witness to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear Claimant's testimony and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

³ These photographs were admitted over the objection of Respondents #1. It was noted that when the evidence was considered, appropriate weight would be given to the photographs.

2. I hereby accept the above-mentioned stipulations as fact.
3. Claimant is entitled to \$2,500.00 for permanent facial disfigurement, pursuant to Ark. Code Ann. § 11-9-524.
4. Claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his right eye as a result of his work incident on January 12, 2018.
5. Claimant's attorney is entitled to a controverted attorney's fee on the indemnity benefits awarded herein.

CASE IN CHIEF

Hearing Testimony:

Claimant was sixty-four (64) years old at the time of the hearing. Claimant was a long-time employee of Respondent-Employer, and he testified that he began working in the paper mill for Respondent-Employer in 1977.

Claimant explained that part of Claimant's duties involved changing a saw blade when it became dull from cutting the rolls of paper tissue. Claimant stated that the blades were extremely sharp. Specifically, Claimant stated that, "It will eat you up. You ain't got - - all you got to do is touch it, and it will cut you." Claimant also testified that the blade was approximately two feet wide and had a solid, sharp edge on the outside.

On January 12, 2018, Claimant suffered a compensable work injury to his face. He described the incident as follows: "Well, I was going in to change out a log saw blade, and I did put the guard on, so I went to take the collar off the middle of it, and it come - - I took it off, and I reached down to get - - I dropped it and I reached down to pick it up and the blade popped off on me."

At the hearing, Claimant used his hand to demonstrate that his face was cut from the area near the corner of his right eye, specifically less than a quarter inch from the end of the outside of

the eye socket (which was the initial point of impact), down his right cheek, to the top of the cleft of his chin. Claimant had a visible brown bump at the top of the scar.

Claimant stated that once he realized what had happened, he went to the restroom to see how badly he was injured and to cover the wound. He noted that the right side of his face was bloody, and his right eye was blurry from blood and debris. Claimant was taken immediately to Ashley County Medical Center where he underwent a procedure to close the laceration with a layering of sutures. As for Claimant's right eye, he explained that after he was released from the hospital, he began experiencing a twitching sensation around the eye area and blurry vision.

As for continued medical treatment, Dr. Wilson removed Claimant's sutures to the facial laceration approximately one week after the accident. Claimant testified that he also saw Dr. Scott Claycomb, an eye specialist, in Monticello on February 5, 2018. He also saw his primary care physician, Dr. Tim Simon, on February 19, 2018, for complaints with his right eye. In March of 2018, Claimant visited the Jones Eye Institute at the University of Arkansas for Medical Sciences (UAMS) for a second opinion regarding his right eye. Claimant testified that he reported to the doctor at UAMS that he was having twitching and tearing on or around his right eye.

Claimant testified that in May of 2018, Dr. Simon wrote a letter stating that Claimant was unable to work at that time. Claimant stated that he gave the letter to Respondent-Employer. He also testified that none of his other treating physicians had given him a letter releasing him to return to work.

Claimant stated that his symptoms of the twitching of the eye area and the watering of the eye were new symptoms that began after the January 12, 2018, incident at work and that he continued to have those symptoms thereafter, especially when he was exercising or doing anything active that caused his heart rate to increase.

As for treating his remaining scar, Claimant testified that he used sunscreen and moisturizer on it but did not attempt to cover the scar. In response to the question of whether he was reminded of the injury daily when he looked in the mirror, Claimant replied, “Every day. Every day I look in the mirror and I can see that scar.”

Claimant testified that he began to consider going back to work about three to four months after the work incident. Claimant testified that during that time, he had not spoken with Respondent-Employer, nor had Respondent-Employer offered him any employment in an area of the mill that could keep his face clean and dry. Based on Claimant’s testimony, it was his understanding that he had not been released by Dr. Wilson or his eye doctors to return to work.

Claimant testified that with regard to his facial scar, there was a period of time that he had to wait before a determination could be made as to whether he was a candidate for plastic surgery to minimize the appearance of the scar. Ultimately, in April of 2019, he underwent scar revision surgery. He indicated that the scar revision surgery was performed only on the bottom portion of the scar (from the top of his cheek down to his chin). Scar revision surgery was not performed on the top portion of the scar (from the upper cheek to the area near the eye socket).

Testimony showed that in September of 2018, Claimant decided to retire from employment with Respondent-Employer. Claimant stated that he chose to retire because he was eligible for retirement benefits at that time; because he did not believe he could go back to his previous position because of the symptoms of twitching and watering of his right eye; and because it was his understanding that Respondent-Employer did not offer work with any accommodations.

During the period of time between the compensable injury in January of 2018 and the date of his retirement in September of 2018, Claimant stated that he received two Temporary Total Disability benefits checks. He had not received any other compensation.

On cross-examination, Claimant was questioned about his deposition testimony. Specifically, Claimant agreed that in his deposition testimony he stated that he received workers' compensation benefits from January 13, 2018, to February 9, 2018. Claimant also agreed with his deposition testimony that Dr. Wilson had released him from his care on February 2, 2018. When asked if any of the workers' compensation doctors had ever taken Claimant off work for his injury, Claimant responded, "No, they didn't."

Claimant testified on cross-examination about his visits to Dr. Claycomb for evaluation of his right eye. Claimant agreed that the medical records indicated that he had 20/20 vision; that he had no tearing, redness, or loss of vision in the right eye; that Dr. Claycomb opined, after examining Claimant, that his eye orbit was clear from any involvement from the accident; and that on February 7, 2018, Dr. Claycomb released Claimant from his care in terms of the work-related accident and referred him to his primary care physician to rule out any other reasons (other than the work-related injury) as to why Claimant would be having problems with his eye.

On cross-examination, Claimant also admitted that he had, in fact, spoken directly with someone named "Ico" from workers' compensation about returning to work. Claimant, however, told Ico that he was not able to return to work. Claimant testified that he ultimately made the decision that he did not want to return to work at that time.

With regard to receiving a second opinion, Claimant stated on cross-examination that he saw Dr. Pemberton at UAMS on March 9, 2018. He agreed that at that visit, his vision was intact, at least with regard to the work-related injury. Claimant agreed that Dr. Pemberton had released him to return to work if he chose to do so.

Furthermore, on cross-examination, Claimant testified that, prior to the work-related injury, he had already made plans to retire in January of 2019. Further, Claimant admitted that at

the time he signed a Form AR-C in March of 2018, he had already made the decision not to go back to work. Moreover, Claimant admitted that when a representative from Respondent-Employer contacted him in July or August of 2018, about returning to work, he had already decided not to return to work. Claimant admitted that a position would have been available to him if he had he returned to work at any time after his injury.

As for benefits, Claimant was eligible for and began receiving retirement benefits at the time he retired in September of 2018, in the amount of \$2,200.00 per month. In addition, he was receiving social security retirement in the amount of \$1,800.00 per month.

As for Dr. Simon's letter stating that Claimant was unable to return to work, Claimant admitted on cross-examination that Dr. Simon was not one of his authorized workers' compensation treating physicians. When asked why Dr. Simons' letter stated that he was unable to work due to facial pain, Claimant agreed that his medical records did not document any complaints of facial pain from his work-related injury. Claimant also admitted that there was no mention of blurry vision or tearing of the right eye in Dr. Simon's letter.

As for his other health conditions, Claimant testified that he had previously been diagnosed with other conditions or illnesses related to his diabetes and the effects of his condition on both of his eyes. Those conditions included: ocular hypertension, diabetic retinopathy, cataracts, open-angle glaucoma, and dry macular degeneration.

After his scar revision surgery, Claimant was happy with the results he had received, and he had not scheduled any additional appointments for the facial laceration or the eye after his surgery. Claimant admitted that none of his physicians had assigned a permanent anatomical impairment rating as a result of his facial laceration or any problems with his right eye. Claimant also admitted that the medical records did not reflect a specific occasion where any of his medical

providers had actually observed Claimant's eye watering, observed any twitching around the eye, or made any findings as to vision loss or blurred vision.

On redirect-examination, Claimant confirmed that any pain he was having or any twitching he was experiencing was located only at the top portion of the scar near the eye area (where there was no scar revision surgery). Claimant also confirmed that when he went to UAMS, he reported his symptoms to Dr. Pemberton.

On redirect-examination, Claimant testified that he was instructed by the doctors that he would have to wait approximately one (1) year before he could pursue any scar revision surgery. In the meantime, after he last saw Dr. Simon, Claimant said he was left without any instructions as to next steps with his medical care. Ultimately, Claimant saw Dr. Prince, a plastic surgeon, who performed scar revision surgery in April of 2019, and provided follow up care. Claimant last saw Dr. Prince for follow-up appointment on July 13, 2020.

On recross-examination, Claimant reiterated that he had continued to have a twitching sensation near his eye after the work-related injury.

When questioned by the Commission, Claimant explained that he experienced the twitching sensation and watery eye approximately two to three times per week, primarily when he was overly active (exercising or walking briskly).

As for the photos of Claimant's facial injury, Claimant explained to the Commission that the photo depicting the injury and the sutures was taken between January 12, 2018, and January 19, 2018. Claimant further explained that the second and third photos were taken on the same day, which Claimant testified was before his scar revision surgery in April of 2019. However, Claimant ultimately admitted that he was unable to testify to the exact date of any of the photos.

Medical Exhibits:

The relevant medical records showed that Claimant was treated at Ashley County Medical Center on January 12, 2018, for a facial laceration from the area near the corner of his right eye, down the right cheek, to the lower chin area after he was struck in the face with a saw blade. The records reflected that Claimant was wearing safety glasses when the injury occurred. Claimant denied any tingling or numbness to his face, but he had some pain on the right side where the laceration was located. There were no ocular deficits noted. The incision was greater than ten centimeters in length and was repaired with sutures in a layered closure performed by Dr. Alan Wilson.

Claimant returned to Dr. Wilson on January 19, 2018, for a follow-up after his hospital visit for the work injury to his face. Claimant did not make any complaints of symptoms that day. Dr. Wilson reported that Claimant was healing well and had no signs of infection. Dr. Wilson removed Claimant's sutures.

Claimant saw Dr. Wilson again on February 2, 2018. Due to Claimant's complaints of a watery right eye, Dr. Wilson referred Claimant to an ophthalmologist (Dr. Scott Claycomb). Claimant was discharged from Dr. Wilson's care that day.

Claimant saw Dr. Claycomb on February 5, 2018. Claimant was already an existing patient of Dr. Claycomb's, and the clinic notes indicated that Claimant was present for a diabetic retinopathy check-up. During the appointment, they also discussed Claimant's report of his work injury and the resulting symptoms of mild blurry vision episodes on the right, possibly moderate, which would last for a few minutes. He also complained of occasional mucous in this right eye. With regard to his diabetes, Claimant reported that his blood sugar had been under fair control. Dr. Claycomb assessed Claimant with Type II diabetes with ophthalmic manifestations, age-

related cataract, glaucoma suspect (ocular hypertension), laceration without foreign body of other part of head. Dr. Claycomb noted the following with regard to the laceration: “Orbit appears clear of involvement. Normal ductions and versions. Normal orbital cosmesis. Globe appears uninvolved.” Lastly, Dr. Claycomb assessed Claimant with subjective visual disturbance, with questionable etiology, for which he suggested follow-up with Dr. Simon, Claimant’s primary care physician. Dr. Claycomb summarized his findings in a letter dated February 7, 2018, wherein he opined that Claimant’s laceration is likely not involving the orbit on the right side. He stated that Claimant had normal eye movements; visual acuity of 20/20; normal confrontational visual fields; and normal optic nerves. Dr. Claycomb also checked an automated 24-2 visual field that had reduced reliability, but no neurologic defects were seen.

On February 19, 2018, Claimant saw Dr. Tim Simon, his primary care physician, where Claimant reported blurry vision in the right eye. Dr. Simon noted Dr. Claycomb’s suggestion to obtain x-ray imaging around the laceration area, and Dr. Simon ordered a CT scan of Claimant’s face.⁴

On March 9, 2018, Claimant saw ophthalmology specialist and professor, Dr. John D. Pemberton, at the University of Arkansas for Medical Sciences (UAMS). That day, Claimant reported occasional blurred vision and facial spasms on the right side. Claimant’s eye examination yielded normal results. Dr. Pemberton noted Claimant’s diagnosis of diabetes mellitus type 2 without retinopathy. Dr. Pemberton also opined that the blurry vision episodes and facial spasm were most likely secondary to his recent facial trauma; that Claimant’s diabetes was very well controlled; and that Claimant had no retinopathy. He instructed Claimant to be patient and let the

⁴ Medical records introduced at the hearing did not include results of a CT scan of Claimant’s face.

scar heal over the next six to twelve months, and he suggested that Claimant see a plastic surgeon for possible scar revision surgery.

On May 3, 2018, Dr. Simon authored a letter indicating that because of Claimant's symptoms of pain in his face and loss of sensation, he was unable to work at that time.

Claimant returned to Dr. Claycomb on June 11, 2018. Dr. Claycomb noted Claimant's complaints of ocular hypertension and possible diabetes. Medical notes showed that Claimant complained of episodes with his right eye twitching, causing blurred vision. Claimant reported that the symptoms were sporadic and more in the right eye. Upon examination, Claimant was assessed with ocular hypertension in both eyes; cataracts; diabetes mellitus; facial laceration (with no episodes of eyelid spasm present at clinical examination that day); type II diabetes with ophthalmic manifestations; and blepharospasm of the right eye.

Claimant saw plastic surgeon, Dr. Melanie Prince, on September 26, 2018, for further evaluation of the appearance of his facial scar related to his work injury. Claimant reported that he had received a second opinion at UAMS regarding his right eye symptoms and that his vision was intact. He also reported that he had previously had some blurred vision but that it had improved. Dr. Prince described Claimant's scar as being eleven and one-half (11.5) centimeters in length, extending from the right check lateral canthus down below the chin. She opined that the superior (upper) aspect of the scar was approximately seven (7) centimeters long and appeared to be well-healed. The inferior portion was approximately four and one-half (4.5) centimeters long and was hypertrophic, with a raised appearance that day. Nevertheless, before any surgical treatment could be done for the scar, Dr. Prince informed Claimant that he would need to wait until the scar had healed for one year. Claimant was instructed to use sunscreen on the scar at all times.

Claimant returned to Dr. Claycomb on December 21, 2018, where Dr. Claycomb noted Claimant's epiphora of the right eye. He noted no lid malposition; no increased or decreased tear meniscus; and no treatment, only observation, at that time. He also noted Claimant's mild primary open angle glaucoma. Dr. Claycomb further assessed Claimant's mild dry macular degeneration, type II diabetes with ophthalmic manifestations with minimal retinopathy noted in both eyes and cataracts in both eyes.

Claimant returned to Dr. Prince on January 21, 2019. Dr. Prince described Claimant's scar as severe in the areas of thickening and discoloration. Claimant reported that he felt as if the scar had improved somewhat, but he remained unhappy with the appearance. Claimant was concerned with the raised texture, the discoloration, and the length of the scar. After discussing surgical options, Claimant elected to proceed with scar revision surgery.

Dr. Claycomb examined Claimant again on February 1, 2019. At that time, Dr. Claycomb noted the following: mild stage open angle glaucoma and early stages of cataracts on both eyes. There was no mention of epiphora of the right eye.

Claimant underwent scar revision surgery in April of 2019. He saw Dr. Prince on April 17, 2019, for a post-op appointment. Claimant reported doing well with no concerns. He stated that he was happy with his surgical results. Claimant was released to return to work with activity restrictions of no heavy lifting, bending, or repetitive movements. Dr. Prince removed Claimant's stitches and instructed him on continued care for the surgical wound.

On May 1, 2019, Claimant returned to Dr. Prince for a three-week post-op visit. Claimant reported that he was doing well and had no complaints. He was "happy" with his surgical results. Dr. Prince informed Claimant that he could resume normal activities, but that he needed to ease

into exercise as tolerated. He was instructed to massage the scar daily for five minutes and to protect it from UV exposure.

Claimant returned to Dr. Prince on June 3, 2019, for an additional post-op visit. Dr. Prince's clinic notes indicated that Claimant was healing well with no hypertrophy, no scar contracture or limitation, and good contour. Clinic notes also indicated that Claimant was happy with his surgical results and was doing well.

At his July 15, 2019, visit with Dr. Prince, her records indicated that Claimant was well healed and that he was "very happy with his scar revision results." Dr. Prince noted that Claimant was not under any activity restrictions at that time. When Claimant returned for two additional post-operative appointments with Dr. Prince in October of 2019 and January of 2020, she noted that Claimant had no complaints and was pleased with the surgical results.

Documentary Exhibits:

Claimant submitted a photograph of his face depicting the sutures that were placed at the emergency room immediately after the work injury. A handwritten notation was included on the photo indicating that the photo was taken "before surgery."

Claimant submitted a second photograph of his face depicting removal of the sutures and some healing of the wound, and a handwritten notation was included on the photo indicating that the photo was taken "after surgery."

Claimant submitted a third photograph of his face depicting his healing wound. A handwritten notation was included on the photograph indicating that the photo was taken "after surgery."

Respondents submitted a document containing a history of indemnity payments. The document reflected three payments to Claimant, including one payment of \$1,346.00 on February

12, 2018; one payment of \$946.00 on January 29, 2018; and one payment of \$400.00 on January 26, 2018.

ADJUDICATION

A. Permanent Facial Disfigurement/Scarring:

Claimant has asserted a claim for compensation due to permanent facial disfigurement/scarring pursuant to Ark. Code Ann. § 11-9-524.

Here, Claimant's compensable injury was in the form of a facial laceration while performing employment duties for the Respondent-Employer on January 12, 2018. At the time of his compensable event, Claimant was changing a saw blade when it popped off and hit him on the right side of his face. Claimant received emergency treatment from Dr. Wilson right after work injury. Claimant's laceration was eleven and one-half (11.5) centimeters long and was surgically closed with two layers of sutures. Claimant was discharged home with instructions to care for the wound. Dr. Wilson removed the sutures one week later.

Since that time, Claimant's facial laceration has continued to heal. However, Claimant was unhappy with the appearance of the scar. Claimant ultimately underwent scar revision surgery by Dr. Prince; however, the revision surgery was only on the lower portion of the scar (the portion from the cheek to the chin). Based on my own personal observation of Claimant's face during the hearing, the revision surgery left the lower portion of the scar with a less significant appearance. However, a more visible, permanent scar with a small, raised portion at the top point lingers on the upper portion of the Claimant's face from the cheek to the area near the corner of Claimant's eye.

At the time of the hearing, it had been over three (3) years since Claimant's compensable incident of January 12, 2018. Claimant credibly testified as to the presence of the lingering scar.

Specifically, Claimant explained that the scar is most noticeable from the cheek to the area near the corner of Claimant's right eye, where the dark brown raised portion is located. Claimant also demonstrated where the lower portion was still visible, but was improved with scar revision surgery.⁵

Although the laceration has healed over time, as Claimant demonstrated, it remains visible on casual observation of his face. The scar is more than eleven (11) centimeters long. To some degree, the scar distracts from Claimant's overall well-groomed appearance. This observation was corroborated by way of demonstration during my own personal observation of Claimant's face during the hearing.

Considering that Claimant's compensable injury resulted in the above-referenced permanent facial scar, I find that the effects of this compensable scar have resulted in permanent facial disfigurement/scarring within the meaning of Ark. Code Ann. § 11-9-524. As a result, I find that the claimant is entitled to \$2,500 for his facial disfigurement/scar.

B. Compensability of Claimant's right eye injury:

Claimant contends that he not only sustained a compensable injury to his face in the form of a laceration, but he also sustained a compensable injury to his right eye while engaged in his employment duties for Respondent-Employer on January 12, 2018. Respondents #1 accepted the claim for the laceration on the right side of Claimant's face; however, Respondents #1 controvert that Claimant sustained a compensable injury to his right eye as a result of the January 12th incident at work. Specifically, Respondents #1 contend that Claimant failed to establish an

⁵ Claimant also submitted three (3) photographs of face that depicted his injury. However, I give these photographs little weight as Claimant was unable to testify as to the date the photos were taken. Most importantly, I had the opportunity to observe the right side of Claimant's face while he testified at the hearing.

objective medical finding supporting an eye injury and, otherwise, failed to meet his burden of proving a compensable injury to his right eye.

Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947).

Here, Claimant testified that since his January 12, 2018, work injury, he experienced a twitching sensation in the upper portion of his scar (around the cheek/eye area), which resulted in excessive watering of his right eye. Medical records demonstrated that although Claimant complained of the tingling/twitching sensation and watery eye to his treating physicians, including Dr. Wilson, Dr. Claycomb, Dr. Prince, and Dr. Pemberton, none of his treating physicians actually observed the twitching or watering of Claimant's right eye.

Specifically, when Claimant saw Dr. Wilson for his last follow-up appointment, Dr. Wilson's clinic notes did not demonstrate any observation of Claimant's complaints of twitching or watering of his eye. Similarly, when Claimant saw Dr. Claycomb, Claimant's eye examination yielded normal results. Hence, there is no documentation that Dr. Claycomb observed any of those

symptoms. Subsequently on March 9, 2018, when Claimant saw Dr. Pemberton at UAMS for a second opinion with regard to his right eye symptoms, his eye examination also yielded normal results. There was nothing in Dr. Pemberton’s office notes indicating that he observed any twitching or watering of Claimant’s right eye. While Dr. Pemberton opined that Claimant’s “[b]lur and facial spasm [we]re most likely secondary to his recent facial trauma,” Dr. Pemberton’s opinion was based on Claimant’s subjective report of symptoms to his right eye, rather than Dr. Pemberton’s observation of Claimant’s symptoms. Furthermore, Claimant admitted during cross-examination that none of his treating physicians observed any of the problems he was having with his right eye, including twitching, blurry vision, or watering of the right eye.

In light of the foregoing, I find that the claimant has failed to provide medical evidence supported by measurable objective findings establishing an injury to his right eye as a result of the work incident on January 12, 2018.

Accordingly, under these circumstances, the claimant cannot meet his burden of proving all of the statutory elements of compensability for a compensable injury to his right eye as a result of a work incident on January 12, 2018. Hence, this claim for an eye injury must be, and is hereby respectfully denied and dismissed in its entirety.

Because the Claimant failed to prove he sustained a compensable injury to his right eye on January 12, 2018, the issue of additional temporary total disability benefits has been rendered moot and is not discussed in this Opinion.

C. Attorney’s Fee:

Respondents have controverted the claim for facial disfigurement. Therefore, Claimant’s attorney is entitled to a controverted attorney’s fee on all indemnity benefits awarded herein to the claimant, pursuant to Ark. Code Ann. § 11-9-715.

AWARD

Claimant proved his entitlement to facial disfigurement in the amount of \$2,500.00. Respondents are directed to pay Claimant's attorney the maximum attorney's fee on his award pursuant to Ark. Code Ann. § 11-9-715. All accrued sums shall be paid in lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Arkansas Code Ann. § 11-9-809.

The claim for a right eye injury is hereby respectfully denied.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE