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SUPREME COURT OF OHIO

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IN THE SUPREME COURT OF THE STATE OF OHIO

10-0211

State of Ohio ex rel.
Jamey D. Baker,

Relator,

v.

Coast to Coast Manpower
LLC

&

Industrial Commission of
Ohio, et al.

Appellees

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ON APPEAL FROM THE
FRANKLIN COUNTY
COURT OF APPEALS,
TENTH APPELLATE
DISTRICT

Court of Appeals
Case No. 09 APD03 0287

NOTICE OF APPEAL OF RIGHT OF APPELLANT, JAMEY D. BAKER

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CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF RIGHT OF APPELLANT, JAMEY D. BAKER

Now comes Appellant, Jamey D. Baker, by and through counsel, and, pursuant to Rule II of the Supreme Court Practice Rules, hereby gives notice of appeal to the Supreme Court of Ohio from the Judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals case number 09 APD03 0287 on December 22, 2009, in accordance with its Decision filed on December 17, 2009. Copies of both the Judgment Entry and the Decision are attached.

This case originated in the Franklin County Court of Appeals, Tenth Appellate District, thus making this an appeal of right pursuant to Rule II, Section 1(A)(1) of the Supreme Court Practice Rules.

Respectfully submitted



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CERTIFICATION

This is to certify that the foregoing was served upon Attorney for Appellee, Industrial Commission of Ohio, Colleen C. Erdman, Assistant Attorney General, 150 East Gay Street, 22nd Floor, Columbus, Ohio 43215-3130 and upon Attorney for Respondent, Coast to Coast Manpower LLC, Amy S. Thomas, Mick Proxmire, Reminger Co., LPA, 65 East State Street, 4th Floor Columbus OH 43215 by regular U.S. Mail this 17th day of February, 2010.



Theodore A. Bowman

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COURT OF APPEALS
FRANKLIN CO., OHIO

2009 DEC 22 PM 3:13

CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Jamey D. Baker, :
Relator, :
v. :
Coast to Coast Manpower LLC and :
Industrial Commission of Ohio, :
Respondents. :

No. 09AP-287

(REGULAR CALENDAR)

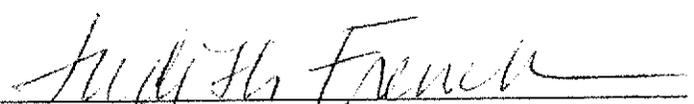
JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 17, 2009, the objections to the decision of the magistrate are overruled. As discussed in our decision, we adopt, in part, the decision of the magistrate with regard to the findings of fact and conclusions of law, and it is the judgment and order of this court that the requested writ of mandamus is denied. Costs shall be assessed against relator.

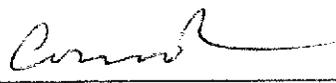
Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge Susan Brown



Judge Judith L. French, P.J.



Judge John A. Connor

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN COUNTY
2009 DEC 17 PM 12:03
CLERK OF COURTS

State of Ohio ex rel. Jamey D. Baker, :
Relator, :
v. : No. 09AP-287
Coast to Coast Manpower LLC and : (REGULAR CALENDAR)
Industrial Commission of Ohio, :
Respondents. :

D E C I S I O N

Rendered on December 17, 2009

Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A., and Theodore A. Bowman, for relator.

Reminger Co., L.P.A., Amy S. Thomas, and Mick Proxmire, for respondent Coast to Coast Manpower LLC.

Richard Cordray, Attorney General, and Colleen C. Erdman, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶1} Relator, Jamey D. Baker, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate its order that denied relator's loss of vision award for an injury

he sustained to his right eye, and ordering the commission to grant him a 100 percent loss of vision award pursuant to R.C. 4123.57(B).

{¶2} This matter was referred to a court-appointed magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law, which is appended to this decision, and recommended that this court deny relator's request for a writ of mandamus. Relator and the commission have filed objections to the magistrate's decision.

{¶3} Relator asserts the following two objections:

1. The Magistrate committed a mistake of law when she determined that Relator is not entitled to 100% loss of vision award despite the fact Relator[] lost the natural vision of his right eye.
2. The Magistrate committed a mistake of law when she distinguished this matter from [*State ex rel. Parsec, Inc. v. Agin*, 155 Ohio App.3d 303, 2003-Ohio-6186].

{¶4} The commission asserts the following two objections:

1. The magistrate erred in finding that the commission had some evidence that Baker did not sustain greater than 25% loss of vision.
2. The magistrate erred in not applying case law which supports Baker's contention that the loss of his natural lens due to the trauma of repair to his eye following a work injury constitutes a total loss.

{¶5} We recently issued a decision that determined the issues under consideration herein in *State ex rel. Dolgencorp, Inc. v. Indus. Comm.*, 10th Dist. No. 08AP-1014, 2009-Ohio-6565. In *Dolgencorp*, a case dealing with a corneal transplant surgery, which is considered a "corrective" surgery like the artificial lens implantation in the present case, we concluded that R.C. 4123.57(B) and *State ex rel. Kroger Co. v.*

Stover (1987), 31 Ohio St.3d 229, require any calculation of vision loss be made prior to corrective surgery, without regard to any vision improvement achieved as a result of such surgery. Thus, applying this principle to the present case, as did the magistrate, because relator's vision following the injury, but before surgery was 20/30, resulting in an eight-percent impairment, relator was not entitled to a loss of vision award because relator did not establish a minimum of 25 percent loss of vision, as required by R.C. 4123.57(B).

{¶6} Furthermore, here, as in *Dolgenercorp*, the magistrate discussed the differences between corneal transplant surgery and intraocular lens implantation surgery. Under our analysis, this discussion becomes unnecessary, and we decline to adopt that portion of the magistrate's decision.

{¶7} Accordingly, after an examination of the magistrate's decision, an independent review of the evidence, pursuant to Civ.R. 53, and due consideration of relator's and the commission's objections, we overrule the objections. Accordingly, we adopt, in part, the magistrate's decision with regard to the findings of fact and conclusions of law, and we deny relator's request for a writ of mandamus.

Objections overruled; writ of mandamus denied.

FRENCH, P.J., and CONNOR, J., concur.

APPENDIX A

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Jamey D. Baker,	:	
	:	
Relator,	:	
	:	
v.	:	No. 09AP-287
	:	
Coast to Coast Manpower LLC and	:	(REGULAR CALENDAR)
Industrial Commission of Ohio,	:	
	:	
Respondents.	:	
	:	

MAGISTRATE'S DECISION

Rendered on August 31, 2009

Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A., and Theodore A. Bowman, for relator.

Reminger Co., L.P.A., Amy S. Thomas and Mick Proxmire, for respondent Manpower Coast to Coast LLC.

Richard Cordray, Attorney General, and Colleen C. Erdman, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶8} Relator, Jamey D. Baker, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio

("commission") to vacate its order which denied him a loss of vision award for an injury he sustained to his right eye and ordering the commission to grant him a 100 percent loss of vision award pursuant to R.C. 4123.57(B).

Findings of Fact:

{¶9} 1. Relator sustained a work-related injury on November 3, 2007 when a metal cable he was cutting snapped and struck him in the right eye.

{¶10} 2. Relator was examined by ophthalmologist Jack Hendershot, M.D. on the date of his injury. Upon examination, Dr. Hendershot found that relator's visual acuity in his right eye was 20/50.

{¶11} 3. On that same day, November 3, 2007, Thomas F. Mauger, M.D., performed surgery to remove the foreign body from relator's cornea and to repair a corneal laceration. According to the operative report, once the metallic foreign body was removed, a single suture was placed through relator's cornea to repair the laceration left by the foreign body.

{¶12} 4. Relator's workers' compensation claim was originally allowed for "right corneal foreign body, right laceration of eye."

{¶13} 5. Following surgery, relator developed a traumatic cataract in his right eye. Thereafter, his claim was allowed for "right traumatic cataract."

{¶14} 6. Relator saw Dr. Hendershot again on February 1, 2008. At that time, Dr. Hendershot measured relator's visual acuity in his right eye at 20/30. Dr. Hendershot recommended that relator undergo surgery to remove the damaged lens and replace it with an intraocular lens.

{¶15} 7. On February 18, 2008, Dr. Hendershot performed surgery to remove the lens of relator's right eye which had sustained a traumatic cataract. As part of the procedure, Dr. Hendershot replaced that lens with an intraocular lens, serial number 107662670.065. It was relator's lens which was replaced and not his cornea.

{¶16} 8. On March 14, 2008, following surgery, Dr. Hendershot measured the visual acuity of relator's right eye at 20/25.

{¶17} 9. In March 2008, relator filed a request for total loss of vision of his right eye pursuant to R.C. 4123.57(B).

{¶18} 10. The Ohio Bureau of Workers' Compensation ("BWC") requested an examination by Richard Tam, M.D.

{¶19} 11. Following his examination, Dr. Tam authored a report dated April 22, 2008. After noting the history of relator's injury and taking visual measurements, Dr. Tam opined that relator's vision loss was a direct and proximate result of his injury and concluded that relator's acuity impairment, accounting for both distance and near acuity, was three percent, and his visual field impairment was six percent. Because the loss of visual acuity and visual field were independent, Dr. Tam opined that relator's visual system impairment was eight percent.

{¶20} 12. Dr. Tam offered a second report dated May 18, 2008. In that report, Dr. Tam explained why he was asked to author a second report:

I have been asked to clarify if my evaluation was based on post-injury or post-surgical vision, according to the policy that "The loss of vision for traumatic cataract is based on the injured worker's post injury vision prior to correction by glasses, contact, or surgical intervention." I accept the allowed conditions in this claim.

This policy is in contrast to the original request for me to determine percentage of loss of vision per the AMA guidelines, which states that "The individual should be tested with the best available refractive correction." The AMA guidelines are consistent with basic ophthalmologic principles of testing vision. Current BWC policy for traumatic cataract is not consistent with AMA guidelines.

Thereafter, Dr. Tam opined as follows:

Regardless of this conflict, my original conclusion above was based on my evaluation of the claimant, which occurred after his cataract removal. Therefore, to address his vision after the injury, after the surgery for foreign body removal, and before cataract removal, I can only refer to his medical record, which indicates visual acuity of 20/30 OD at distance and near on 2/1/08. Visual field was not tested, so I must assume that my visual field evaluation is similar to his visual field prior to cataract surgery. Pre-injury information is not available and therefore is assumed to be normal. The visual impairment prior to cataract surgery then is 2% for visual acuity and 6% for visual field, which still results in 8% impairment.

{¶21} 13. Relator's motion was heard before a district hearing officer ("DHO") on June 19, 2008. The DHO found that the medical evidence supported a finding of an eight percent impairment as follows:

The District Hearing Officer finds that the injured worker's request for lost [sic] of vision right eye is determined in accordance with State of Ohio, Industrial Commission Policy Statement and Guidelines, Memo F1 and the case of Spangler Candy Company v. Industrial Commission (1988), 36 Ohio State 3d 231.

Memo F1 states "the computation of a permanent partial loss of sight of an eye shall be made on the basis of vision actually lost by the particular individual and not based on a percentage computed on a hypothetical scale of normalcy." The District Hearing Officer also relies on the case of Kroger Company v. Stover (1987), 31 Ohio St. 3d 229.

Based on the reports of Richard Tam, dated 04/22/2008 and 05/18/2008, the District Hearing Officer finds that the injured

worker has suffered an 8% Permanent Partial Impairment due to the allowed physical conditions in this claim.

Relator had argued that the removal of the lens, in and of itself, automatically justified a finding of total loss of vision; however, the DHO concluded that relator's rationale constituted a misreading of *State ex rel. Kroger Co. v. Stover* (1987), 31 Ohio St.3d 229.

{¶22} 14. Relator appealed and the matter was heard before a staff hearing officer ("SHO") on August 25, 2008. The SHO vacated the prior DHO's order and granted relator's request for a total loss of vision of the right eye. The SHO applied this court's decision in *State ex rel. Parsec, Inc. v. Agin*, 155 Ohio App.3d 303, 2003-Ohio-6186, to support the award. The SHO stated:

The Staff Hearing Officer finds the facts here, mirror those of *Parsec v. Industrial Commission of Ohio*, 155 Ohio App. 3d 303. In this case, as in *Parsec*: "the medical evidence in the record clearly establishes that the work-related injury caused a traumatic cataract to occur in claimant's eye and there is no dispute that, in order to treat claimant's work's [sic] related injury, the now opaque lens had to be removed and an artificial lens had to be implanted... As such, the evidence is clear, due to the injury, the doctors necessarily had to remove the injured worker's cornea and implant a new one. As such, the evidence docs [sic] show that injured worker sustained a total loss of vision in his left eye." (*Parsec* at 308).

The Staff Hearing Officer also finds the case *State ex rel. Auto Zone, Inc. v. Industrial Commission*, [10th Dist. No. 05AP-634,] 2006-Ohio-2959, supports the contention that "the Commission can conclude that the loss of the natural lens due to an industrial injury produces a total loss of uncorrected vision of the eye".

The Staff Hearing Officer finds that the loss of vision award is granted based upon injured worker's uncorrected vision post-injury and not simply because his lens was removed from his eye during the surgical procedure. The Staff Hearing Officer does not find any case law that supports an award of loss of use due to the removal of a lens during surgery.

This finding of total loss of vision is supported by the medical evidence in file that indicates that injured worker's allowed condition of traumatic cataract necessitated a cataract extraction with an implant. Therefore, the Staff Hearing Officer concludes that the injured worker suffered a loss of vision of 100% which required that his lens be replaced with an artificial lens.

{¶23} 15. Manpower Coast to Coast LLC ("employer") appealed and the matter was heard before the commission on November 25, 2008. The commission vacated the prior SHO's order and denied relator's request for a total loss of vision award after finding that relator had not met his burden of proving that he sustained at least a 25 percent loss of vision when his pre-injury vision was compared to his post-injury vision. Specifically, the commission stated:

It is the finding of the Commission that the C-86 motion filed by the Injured Worker on 03/24/2008, is denied. The Injured Worker has failed to file medical evidence to substantiate a minimum of twenty-five percent (25%) loss of uncorrected vision that would be necessary to qualify for a loss of vision award under R.C. 4123.57(B).

Historically, the Injured Worker sustained severe right eye trauma which required surgical removal of an embedded metal fragment. The right eye subsequently developed a traumatically induced cataract that was progressive in nature. The pre-cataract surgery demonstrated an uncorrected visual impairment of eight percent (8%), as evidenced in the report from Richard Tam, M.D., dated 05/18/2008. Therefore the Commission finds that the pre-surgical threshold of twenty-five percent (25%) loss of uncorrected vision was not met by the Injured Worker, as required in R.C. 4123.57(B).

The Commission relies on the case of State ex rel. Kroger Company v. Stover (1987), 31 Ohio St.3d 229, Hearing Officer Manual Memo F2, and R.C. 4123.57(B) in support of this decision. In the Kroger case, the Supreme Court determined that a subsequent surgical correction by implantation of artificial lens is not to be considered in

determining the percentage of visual loss. The visual loss prior to the surgery is the determining factor for the award.

{¶24} 16. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶25} In order for this court to issue a writ of mandamus as a remedy from a determination of the commission, relator must show a clear legal right to the relief sought and that the commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm.* (1967), 11 Ohio St.2d 141. A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.* (1986), 26 Ohio St.3d 76. On the other hand, where the record contains some evidence to support the commission's findings, there has been no abuse of discretion and mandamus is not appropriate. *State ex rel. Lewis v. Diamond Foundry Co.* (1987), 29 Ohio St.3d 56. Furthermore, questions of credibility and the weight to be given evidence are clearly within the discretion of the commission as fact finder. *State ex rel. Teece v. Indus. Comm.* (1981), 68 Ohio St.2d 165.

{¶26} For the reasons that follow, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

{¶27} As a preliminary matter, there are two different surgical procedures which have been discussed in the various cases involving loss of vision awards. Some of the cases have involved the removal of the cornea and a corneal transplant. The other cases involve the removal of the lens and its replacement. "Cornea" is defined in Taber's Cyclopedic Medical Dictionary (20th ed. 2005):

The transparent anterior portion of the sclera (the fibrous outer layer of the eyeball), about one sixth of its surface. * * * [T]he cornea is the first part of the eye that refracts light. It is composed of five layers[.] * * *

Corneal transplants involve "the most common organ transplantation procedure in the U.S." When it is necessary to remove the cornea, the patient's cornea is replaced with a cornea from a healthy human donor eye.

{¶28} The other procedure involves the replacement of the lens. "Lens" is defined in Taber's as follow: "The crystalline lens of the eye."

{¶29} When doctors discuss the formation of cataracts, they are referring to damage to the lens and not the cornea. "Cataract" is defined in Taber's as follows:

An opacity of the lens of the eye, usually occurring as a result of aging, trauma, endocrine or metabolic disease, intraocular disease, or as a side effect of the use of tobacco or certain medications[.] * * * Cataracts are the most common cause of blindness in adults. * * *

{¶30} When a patient has developed a cataract, "[s]urgical removal of the lens is the only effective treatment." Further, "[i]n the U.S. about a million cataract surgeries are performed annually." When the lens of the eye is replaced, it is replaced with an "intraocular lens" ("IOL"). An IOL is "[a]n artificial lens usually placed inside the capsule of the lens to replace the one that has been removed. A lens is removed because of abnormalities such as cataracts." As above indicated, an IOL is made of an artificial substance and is not living tissue.

{¶31} The magistrate felt it necessary to identify both procedures here in large part because many of the cases discussing loss of vision awards have used the terms interchangeably. Because corneal transplants involve living donor tissue while IOLs

involve artificial lens, it is conceivable that the Supreme Court of Ohio may ultimately determine that the two procedures should be treated differently.

{¶32} The present case involves the removal of the lens of relator's right eye and the insertion of an IOL.

{¶33} R.C. 4123.57(B) provides, in pertinent part:

Partial disability compensation shall be paid as follows.

* * *

For the loss of the sight of an eye, one hundred twenty-five weeks.

For the permanent partial loss of sight of an eye, the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

{¶34} In *Kroger Co.*, the claimant had sustained severe corneal burns to both eyes and ultimately required a corneal transplant to his right eye. The claimant filed an application for additional compensation for the loss of uncorrected vision in both eyes pursuant to R.C. 4123.57(C), now 4123.57(B). The employer had argued that the claimant's loss of vision had been surgically repaired and, as such, did not represent an actual loss. The court disagreed and ultimately held as follows:

The improvement of vision resulting from a corneal transplant is a correction to vision and thus, shall not, on the current state of the medical art, be taken into consideration in determining the percentage of vision actually lost pursuant to R.C. 4123.57(C).

Id. at ¶2 of the syllabus.

{¶35} Although the *Kroger Co.* case involved a corneal transplant, the court has applied this same standard whether the claimant has undergone a corneal transplant or the implantation of an IOL. Both are considered corrections to vision. Further, regardless of the procedure involved, the court has continually required claimants to meet the same burden of proof: the percentage of uncorrected vision actually lost as a result of the injury.

{¶36} In the present case, relator contends that this court's decision in *Parsec* should be applied and warrants a finding of total loss of vision. This magistrate disagrees.

{¶37} In *Parsec*, the claimant sustained a very serious injury to his eye which penetrated and caused immediate and severe damage to the lens of his eye. Claimant underwent surgery and an IOL was implanted.

{¶38} The commission granted the claimant a total loss of vision award. The employer argued that the claimant had failed to meet his burden of proof because he did not present evidence of his visual acuity prior to the injury. However, this court noted that the claimant was 28 years of age at the time of the injury and that, according to the medical evidence, the claimant had no eye problems prior to the injury. Further, the evidence indicated that the claimant's vision in his uninjured eye was 20/20. Essentially, the assumption was made that the claimant's injured left eye was also 20/20 prior to the date of injury and, because it was established that the injury caused significant damage to his lens necessitating the removal of the lens and the insertion of an IOL, this court upheld the total loss of vision award.

{¶39} That same year, this court considered the case of *State ex rel. Pethe v. Indus. Comm.*, 10th Dist. No. 02AP-1202, 2003-Ohio-6832. In that case, the claimant

sustained an injury to his cornea and later developed a cataract of the lens. Ultimately, the claimant had the lens removed and an IOL implanted. The commission denied the claimant's request for total loss of vision after finding that the claimant did not meet his burden of proof.

{¶40} In the *Pethe* case, the claimant had long-standing glaucoma which had already significantly impacted his vision. In fact, Dr. Smith had stated in his report that the claimant's permanent loss of corrected vision was due both to the injury and glaucoma. Because the claimant was unable to establish the percentage of vision lost as a result of the injury, the commission denied his request for total loss of vision.

{¶41} The claimant filed a mandamus action in this court. One of the arguments the claimant made was that the removal of his lens, in and of itself, yielded a total loss of vision before his lens was replaced with an IOL. This court disagreed and reiterated that the claimant is required to demonstrate the amount of pre-injury vision that was lost due to the injury. In the claimant's situation, it was clear from the medical evidence that he had lost some vision in his right eye as a result of the injury; however, the commission found that there was insufficient evidence to establish what percentage of vision was lost, either 100 percent or otherwise, post-injury. Because in *Kroger Co.*, the court stated that a lens implant is corrective (similar to glasses and contact lenses), it is the loss of uncorrected vision which the claimant must demonstrate.

{¶42} Approximately one year after this court's decision in *Pethe*, the Supreme Court of Ohio issued its decision in *State ex rel. Gen. Elec. Corp. v. Indus. Comm.*, 103 Ohio St.3d 420, 2004-Ohio-5585. That case also involved the removal of the claimant's lens and the implantation of an IOL because the claimant developed a cataract. In

General Electric, the claimant presented medical evidence that his vision had decreased to 20/200 following the injury and before surgery. Although the claimant did not have evidence of his actual visual acuity prior to the injury, the commission considered that it had been essentially normal. The commission granted the claimant a total loss of vision award for both eyes.

{¶43} The employer filed a mandamus action in this court. This court concluded that medical technology had advanced to such an extent that the removal of a lens and the implantation of an IOL was no longer merely corrective but that it, in fact, was restorative. This court noted that, post-surgery the claimant's vision was restored to 20/20.

{¶44} On appeal, the Supreme Court of Ohio reiterated that R.C. 4123.57(B) clearly makes uncorrected vision the applicable standard. Further, the court refused to come to the conclusion that the implantation of an IOL restored a claimant's sight. Instead, the court continued to hold that the implantation of an artificial lens was corrective and not restorative. As such, the court upheld the total loss of vision award.

{¶45} Two years later, this court again addressed loss of vision issues in *State ex rel. Autozone, Inc. v. Indus. Comm.*, 10th Dist. No. 05AP-634, 2006-Ohio-2959. In *Autozone*, the claimant sustained a severe injury to his left eye that required the removal of his lens and the implantation of an IOL. There was medical evidence in the record indicating that the claimant's visual acuity before the injury was 20/20 and that following the injury, and prior to surgery, his vision was 20/200. Dr. Mah explained that, at 20/200 the claimant was legally blind. This court framed the issue as follows: "[T]he issue in this

appeal is whether the loss of a natural lens qualifies as 'the loss of the sight of an eye' for purposes of R.C. 4123.57(B)."

{¶46} This court held that the loss of the natural lens was sufficient to qualify as a total loss of vision pursuant to R.C. 4123.57(B). This court applied *Parsec* and upheld the award because, as a result of the injury, the claimant no longer had a functioning lens.

{¶47} The employer appealed the matter to the Supreme Court of Ohio. In *State ex rel. Autozone, Inc. v. Indus. Comm.*, 117 Oho St.3d 186, 2008-Ohio-541, ¶18, the court affirmed the judgment of this court, but on different grounds. The court set forth the question before it and its holding as follows:

The question under R.C. 4123.57(B) is whether a claimant has suffered loss of sight or partial loss of sight. The answer to that question determines whether the claimant receives 125 weeks of compensation or some percentage thereof. Today, we make the unremarkable holding that pursuant to R.C. 4123.57(B), when a doctor determines that a claimant is rendered "legally blind" due to the loss of a lens in an industrial accident, that determination constitutes "some evidence" that the claimant has suffered "the loss of the sight of an eye" pursuant to R.C. 4123.57(B).

(Emphasis added.) The court also went on to note that the measurement 20/200 is a significant standard in the definition of blindness and concluded that the opinions of two doctors that the claimant was rendered legally blind in his left eye due to the workplace injury constitutes "some evidence" to support the commission's decision that the claimant had suffered the loss of sight of the eye under R.C. 4123.57(B).

{¶48} The foregoing analysis of case law involving loss of vision results in the following principles: (1) R.C. 4123.57(B) clearly makes uncorrected vision the applicable standard; (2) claimants have the burden of presenting evidence so that the commission

can determine the amount of a claimant's pre-injury vision that was lost due to the injury; (3) the improvement of vision resulting from either a corneal transplant or the implantation of an IOL is a correction to vision and is not taken into consideration in determining the percentage of vision actually lost; and (4) when a doctor determines that a claimant is rendered "legally blind" (visual acuity 20/200) due to the injury to the eye in an industrial accident, that determination constitutes "some evidence" that the claimant has suffered the loss of sight of an eye.

{¶49} Turning back to the facts of this case, the medical evidence establishes that, immediately following the injury, relator's vision had decreased to 20/50. Before relator underwent surgery to remove his lens and implant an IOL, his visual acuity had improved. Specifically, on February 1, 2008, his visual acuity was 20/30. In his report, Dr. Tam was asked to assume that relator's vision was 100 percent prior to the injury. Dr. Tam opined that the decrease in relator's visual acuity from 20/20 to 20/30 represented an eight percent impairment. The commission relied on the report of Dr. Tam and concluded that relator was not entitled to a loss of vision award because relator did not establish a minimum of 25 percent loss of vision.

{¶50} With regard to relator's specific argument that his case is analogous to *Parsec*, this magistrate disagrees. Again, in *Parsec*, the injury the claimant sustained caused immediate and severe damage to the lens of his eye and resulted in a **total** traumatic cataract. The claimant's lens was opaque and useless. The claimant was only 28 years old and his vision in his uninjured eye was 20/20. This court agreed with the commission's determination that the claimant had presented some evidence of a total loss of vision.

{¶51} By comparison, in the present case, the immediate damage to relator's eye was to his cornea. Subsequently, relator developed a cataract of his lens. The medical evidence establishes that relator's visual acuity immediately following the injury was 20/50 but that one month later, prior to surgery, his vision had improved and his visual acuity was 20/30. Relator's lens was still functional. Dr. Tam opined that this constituted an eight percent impairment.

{¶52} The present case is not analogous to the facts in *Parsec*.

{¶53} Based on the foregoing, it is this magistrate's conclusion that relator has not demonstrated that the commission abused its discretion by finding that he was not entitled to any loss of vision award under R.C. 4123.57(B) because he failed to present medical evidence to substantiate a minimum of 25 percent loss of uncorrected vision. As such, this court should deny relator's request for a writ of mandamus.

s/s Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).