

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel.  
Jamey D. Baker

&

Industrial Commission of Ohio, et  
al.

Appellants,

v.

Coast to Coast Manpower LLC

Appellee

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

\* Supreme Court  
\* Case No. 2010-0211

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AMICUS CURIAE OHIO ASSOCIATION OF CLAIMANTS' COUNSEL IN  
SUPPORT OF APPELLANT JAMEY BAKER'S  
MOTION FOR RECONSIDERATION

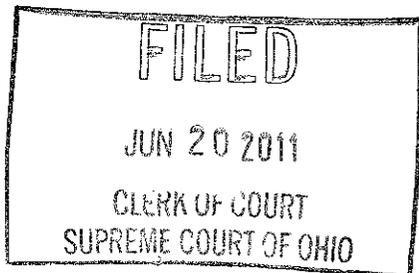
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Theodore A. Bowman #009159  
GALLON, TAKACS, BOISSONEAULT &  
SCHAFER CO. L.P.A.  
3516 Granite Circle  
Toledo, OH 43617-1172  
(419) 843-2001  
(419) 843-6665 – fax  
[tbowman@gallonlaw.com](mailto:tbowman@gallonlaw.com)  
*Attorney for Appellant,  
Jamey D. Baker*

Colleen Erdman #0080765  
ASSISTANT ATTORNEY GENERAL  
150 East Gay Street, 22<sup>nd</sup> Floor  
Columbus, OH 43215-3130  
(614) 466-6696  
(614) 728-9535 – fax  
[colleen.erdman@ohioattorneygeneral.gov](mailto:colleen.erdman@ohioattorneygeneral.gov)  
*Attorney for Appellant,  
Industrial Commission of Ohio*

\* Mick Proxmire #0074032  
\* REMINGER CO., LPA  
\* 65 East State Street, 4th Floor  
\* Columbus OH 43215  
\* 614-232-2627  
\* 614-232-2410  
\* [athomas@reminger.com](mailto:athomas@reminger.com)  
\* [mproxmire@reminger.com](mailto:mproxmire@reminger.com)  
\* *Attorneys for Appellee,  
Coast to Coast Manpower LLC*

\*  
\* Ross R. Fulton #0082852  
\* Philip J. Fulton #0008722  
\* PHILIP J. FULTON LAW OFFICE  
\* 89 E. Nationwide Blvd., Ste. 300  
\* Columbus, OH 43215  
\* (614) 224-2828 FAX: (614) 224-3933  
\* [ross@fultonlaw.com](mailto:ross@fultonlaw.com)  
\* [phil@fultonlaw.com](mailto:phil@fultonlaw.com)  
\* *Counsel for Amicus Curiae  
Ohio Association of Claimants'  
Council  
Ohio Association for Justice*



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## **INTRODUCTION AND INTERESTS OF AMICUS CURIAE**

The National Association of Claimants' Counsel (NACCA), Ohio Chapter, was founded in 1954. It was an organization created with the purpose "to help injured persons, especially in the field of workers' compensation."

In 2008, the Ohio Association of Claimants' Counsel (OACC) was founded to advance the founding ideals of the NACCA and to promote the education of workers' compensation issues. The OACC is a statewide organization of workers' compensation attorneys.

The OACC files this amicus brief to support Appellant Jamey D. Baker's motion for reconsideration.

## MOTION FOR RECONSIDERATION

Pursuant to Rule 11.2(C) of the Supreme Court Rules of Practice, Amicus Curiae Ohio Association of Claimants' Counsel ('OACC'), moves in support of Appellant Jamey D. Baker's motion for this Court to reconsider its decision on the merits issued June 9, 2011. *State ex rel. Baker v. Coast to Coast Manpower, et al.*, Slip Op. No. 2011-Ohio-2721. OACC respectfully submits that this Court failed to give deference to the Industrial Commission's position and longstanding Bureau of Workers' Compensation ('BWC') policy. Instead, this Court issued a sweeping decision that may radically alter Ohio workers' compensation law, preventing *any* compensation for any injury incurred or exacerbated by treatment for their workers' compensation condition. For instance, under this decision, an injured worker who requires an amputation and subsequently develops gangrene from that surgery could allegedly no longer be entitled to compensation. This would make Ohio the *only* state in the nation where treatment cannot be taken into account. This Court should reconsider its decision in light of its sweeping implications.

### **I. The Court Failed to Give the Correct Deference to the Industrial Commission and Bureau of Workers' Compensation in Reaching Its Determination**

"Courts must give due deference to an administrative interpretation formulated by an agency which has accumulated substantial expertise, and to which the legislature has delegated the responsibility of implementing the legislative command." *State ex rel. McLean v. Indus. Comm. of Ohio et al.* (1986) 25 Ohio St.3d 90, 92, 495 N.E.2d 370. In *McLean*, the Court deferred to the 'Claims Examiner's Manual of the Bureau of Workers' Compensation's' interpretation of R.C. 4123.57(C) (now R.C. 41237.57(B)) regarding what constitutes a "loss of foot" and what constitutes a "loss of leg" amputation. *Id.* This Court espoused, "we specifically decline to substitute our judgment for that of the commission by defining what level of

amputation constitutes the loss of a leg or the loss of a foot” under R.C. 4123.57. *Id.* at 93.

This is a well-settled administrative law principle. See *Chevron v. National Resources Defense Council*, 467 U.S. 837 (1984) (courts will defer to an agency’s reasonable interpretation of a statute it is entrusted with administering). This is particularly apt where a statutory provision’s language is ambiguous. *Id.* Here, contrary to the majority’s holding, the dissent correctly observed that the statute is silent as to when the measurement of loss of uncorrected vision is to be made. *Baker* at ¶ 30 (Brown, dissent). Deference to the administrative agencies—here the Commission and BWC—is therefore appropriate.

The Industrial Commission has explicitly interpreted R.C. 4123.57(B) for loss of vision. In 1982, the Commission adopted the “Medical Examination Manual.” (Attachment A). The Manual states that “under Ohio law, when the injury results in a traumatic cataract or removal of the lens, the claimant is *presumed* to have suffered the loss of *uncorrected* vision as a result of the injury and no specialist report is needed.” (*Id.*). The BWC has also adopted this position. (Attachment B).

In the present case, the Industrial Commission *supported* this position as an *Appellant*. Specifically, the Commission argued that once a claimant’s natural lens is surgically removed for a replacement, that claimant has a total loss of vision resulting from their workplace injury, because that individual has no natural lens remaining. Yet the majority failed to provide deference to the Commission’s position, instead holding that “because there was some evidence supporting the commission’s decision to deny loss-of vision benefits, there was no abuse of discretion.” (Majority Op. at 7). But this is simply not the procedural posture in this case. The Commission *did not* support and renounced this order, so as a matter of law the Court should not be deferring to this decision. Instead, the Court should be providing deference to the

Commission's long-standing position, reflected in the Commission's argument taken before this Court.

Further, the Court's purported deference to the Commission's order here was short-sided and failed to account for the Commission decisions *subsequent* to the Baker order. The Commission has several currently operable orders—determined after Baker—that hold that a surgical removal of the natural lens constitutes a total loss of vision because the claimant has a 100% loss of uncorrected vision without the natural cornea. In fact, the *full* Commission ruled in the Injured Worker's favor for a total vision loss based on the surgical removal of the cornea fifteen months *after* the *Baker* decision was rendered. (Ernest J. Fletchers Jr., Claim No. 99-512781, Attachment C). On April 16, 2010, the Commission found that “at the time the Injured Worker's right cataract was removed *during* the 03/02/2009 surgery he was totally blind resulting in the one hundred percent (100%) loss of uncorrected vision as granted by this order.” (Id.) Mr. Fletcher was awarded “total loss of uncorrected vision in his right eye after undergoing a cataract extraction and an implementation of an intraocular lens.” (Id.) The Commission's reasoning was as follows:

This order is based on *State ex rel. General Electric Corp. v. Industrial Comm.*, 103 Ohio St. 3d 420, 2004-Ohio-5585, and *State ex rel. Kroger v. Stover* (1987), 31 Ohio St. 3d 229. These cases hold that an Injured Worker is entitled to receive a total loss of uncorrected vision award even though the Injured Worker had a corneal implant that resulted in an improvement in the Injured Worker's vision. The Ohio Supreme Court ruled in these cases that an Injured Worker's uncorrected vision loss is to be measured at the time the cataract is removed. It emphasized in the aforementioned cases that a corneal lens implant is corrective and not restorative; consequently, the surgical improvement in the Injured Worker's vision is not to be taken into consideration in determining the percentage of vision actually lost according to the scheduled loss in R.C. 4123.57(B).

(Id.) Therefore, once the “right cataract was removed during the 03/02/09 surgery he was totally blind.” (Id.).

Similarly, *State ex rel. Simpson v. Dolgencorp*, Case No. 2010-0124, currently pending before this Court, also involves an Industrial Commission order finding in the claimant’s favor for a total loss of vision, where the claimant had a total loss of uncorrected vision following surgery because, absent the cornea replacement, she was rendered blind. (Attachment D). That is why the Commission in *Baker*, recognizing that its *Baker* order was an outlier from its long-standing position and subsequent orders, joined Ms. Baker and asserted its long-standing rule that a surgical loss of the lens resulted in a total loss of vision. The Court completely ignored this, however, and failed to give deference to the Commission’s position, instead purporting to defer to this outlying order. But in taking this myopic view, the Court failed to account for the Commission’s position and to address the clear Commission decisions to the contrary. In so doing, the Court has introduced considerable uncertainty into law. Will it similarly defer to the Commission’s *Simpson* order and come out in the claimant’s favor in that case? The purported deference to the Commission’s order here indicates that *Simpson* should come out in Ms. Simpson and the Commission’s favor for the point that the lens’ removal constituted a total loss. If so, what is the state of the law? By failing to give deference to the Commission’s uniform position, the Court has not only ignored a basic legal principle, but mistakenly failed to account for the overall state of the law in this area and ignore standing Commission orders. This Court should therefore grant reconsideration to fully consider the state of law in this area and the Commission’s adopted position.

**II. The Court’s Decision Creates a Far-reaching New Standard that Surgery Cannot Be Accounted For, Making Ohio the Only State that does not Account for Treatment**

Even more concerning, the majority's decision appears to inadvertently create a sweeping new position that treatment *cannot* be considered in determining workers' compensation benefits. Such a holding is not only directly contrary to well-established law; it would also render Ohio the *only state* that *does not* recognize a worsening of an industrial injury by treatment as compensable. The Court must reconsider its decision to consider the far-reaching nature of its holding.

It has long been accepted that a worsening of an injured workers' condition by medical or surgical treatment is compensable under Ohio law. Ohio Rev. Code. 4123.01(C) defines a compensable injury as one that is received in the course of and arising out of the claimant's employment. A claimant's need for treatment because of their industrial injury is a direct and proximate result of their workplace injury. As such, any harm resulting from that treatment is also naturally a direct and proximate cause of that injury. *Woodrum v. Premier Autoglass Co.* (5th App. 1995), 103 App.3d 530, 660 N.E.2d 491. For instance, in *Woodrum*, the Fifth Appellate District held that injuries incurred while traveling from an independent medical exam ordered by the BWC were compensable. *Id.* at 533. The Fifth District held this compensable because the injuries "were directly and proximately caused by circumstances that arose out of his employment." *Id.* This position is adopted by *every* jurisdiction in the United States. 2 Larson, WORKMEN'S COMPENSATION LAW § 10.09(1) (1991). As one learned treatise states, "it is now uniformly held that aggravation of the primary injury by medical or surgical treatment is compensable." *Id.*

Yet with one decision, the majority has moved this Court away from *every other jurisdiction* in the country and prevented a claimant from receiving compensation for injuries enhanced or incurred through treatment, by holding that "loss of vision is determined by the

measurement of uncorrected vision following the injury, *but prior to any corrective surgery.*” *Baker*, at ¶ 20. This has implications far beyond the realm of vision, but its impact with loss of vision is obvious. If a claimant in Ms. Baker’s position has a corrective surgery and it *fails*, then she is left with a total loss of vision in that eye, but is ineligible for a total loss of vision because it was not “prior to any corrective surgery.” *Id.* This uncertainty was the entire basis of the *Kroger* line of cases focusing on *uncorrected vision*—because restorative vision’s helpfulness is uncertain and without that restorative effort a claimant lacks any uncorrected vision. See *State ex rel. La-Z-Boy Furniture Galleries v. Thomas*, 126 Ohio St.3d 134, 2010-Ohio-3215, 931 N.E.2d 545 (summarizing case law in this area finding that “implants and transplants . . . do not completely replicated the extraordinary capabilities of one’s own lens or cornea . . . transplants are susceptible to rejection [and] cannot change focus or filter light.”).<sup>1</sup>

But this decision goes far beyond loss of vision awards to impact *any* injured worker who receives treatment, preventing a claimant from receiving additional compensation no matter whether the treatment was unsuccessful or, even more troubling, exacerbated the claimant’s condition. For instance, suppose an injured worker needed amputation as a result of the injury, and that amputation led to the injured worker developing gangrene. Under the majority’s opinion, the injured worker is no longer eligible for relief for that gangrene because it was subsequent to corrective surgery. Likewise, suppose a claimant undergoes surgery to alleviate a disc herniation but a surgical complication leads to paralysis. The majority’s opinion would preclude that claimant from receiving compensation for that injury.

Should the majority doubt the reach of their holding, the BWC’s interpretation of *Baker* leaves little doubt of this decision’s reach. Subsequent to this Court’s holding the BWC has

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<sup>1</sup> *La-Z-Boy* does not support the majority’s opinion. *La-Z-Boy* dealt with how to measure *preinjury* vision because the claimant had previous unrelated corrective eye surgery. *Id.* at ¶ 17.

instructed examining physicians that the “awards are for loss of or loss of use of a *body part prior to treatment and not the result of the injured worker’s condition after treatment.*” (Attachment E). This is a new instruction the BWC has provided subsequent to this Court’s *Baker* decision. As such, this Court’s determination has in fact been taken for the proposition that loss of use can only be determined pre-treatment, leading to the unfortunate scenarios described above. As the dissent correctly indicates, this will lead to injured workers having to make the Faustian choice as to whether to delay treatment so as to continue to receive compensation, or accept treatment and end their rightfully entitled compensation. *Baker* at ¶ 35 (Brown, dissent).

In sum, R.C. 4123.57 provides for compensation when a workplace injury causes a loss of uncorrected vision. This Court has long held that corrective surgery is not taken into consideration. When a claimant has a procedure that removes their cornea and substitutes a replacement lens, that claimant has a total loss of vision because, without the replacement lens, the claimant cannot see. This has long been the position of the agencies entrusted with applying R.C. 4123.57, was the position taken by the Industrial Commission before this Court, and was the position adopted by the full Commission in orders subsequent to the one at issue in *Baker*. Yet this Court failed to give deference to the Commission and instead created sweeping new law holding that an Injured Worker *cannot* receive compensation for any condition resulting from treatment. In so doing, this Court just made Ohio the only state in the country taking such a position. This Court should therefore grant Appellant’s motion for reconsideration. At the least, this Court should simply admit it is overturning long-standing precedent by adopting Justice Cupp’s concurrence. More fruitfully, this Court should re-consider the sweeping step it has taken with this decision and re-consider its holding in light of the Industrial Commission’s

position.

**CONCLUSION**

For these reasons, Amici Curiae respectfully request this Court to grant Appellant Jamey Baker's motion for reconsideration.

Respectfully Submitted,



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Ross R. Fulton (0082852)

Philip J. Fulton (0008722)

[Ross@fultonlaw.com](mailto:Ross@fultonlaw.com)

[Phil@fultonlaw.com](mailto:Phil@fultonlaw.com)

**PHILIP J. FULTON LAW OFFICE**

89 E. Nationwide Blvd, Suite 300

Columbus, OH 43215-2554

(614) 224-3838 FAX (614) 224-3933

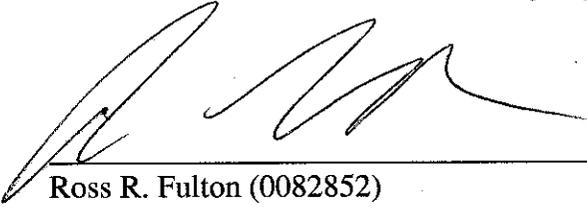
Counsel for *Amicus Curiae*,

Ohio Association of Claimants' Council

Ohio Association for Justice

**CERTIFICATION**

This is to certify that the foregoing was served upon Attorney for Appellant, Industrial Commission of Ohio, Colleen C. Erdman, Assistant Attorney General, 150 East Gay Street, 22<sup>nd</sup> Floor, Columbus, Ohio 43215-3130; and upon Attorney for Respondent, Coast to Coast Manpower LLC, Mick Proxmire, Reminger Co., LPA, 65 East State Street, 4th Floor Columbus OH 43215; and upon Attorney for Appellant, Theodore A. Bowman, Gallon, Takacs, Boissoneault & Schaffer Co., LPA, 3516 Granite Circle, Toledo, OH 43617 by regular U.S. mail this 20th day of June, 2011.

  
\_\_\_\_\_  
Ross R. Fulton (0082852)  
Philip J. Fulton (0008722)

**MEDICAL EXAMINATION MANUAL**

**Issued by**

**The State of Ohio**

**Honorable James A. Rhodes, Governor**

**The Industrial Commission of Ohio**

**W. Craig Zimpher, Chairman  
Steven A. Hatten, Vice-Chairman  
Leonard T. Lancaster, Member**

**246 North High Street  
Columbus, Ohio 43215  
(Revised) September 10, 1982**

exceeds normal handicap or disability resulting from such loss of fingers, or loss of use of fingers, the Commission may take that fact into consideration and increase the award of compensation accordingly, but the award made in such case shall not exceed the amount of compensation for loss of a hand. (Emphasis added.)

Under Ohio case law, a permanent and total loss of use of a member without severance (i.e., loss of use of one or both legs) entitles the injured employee to an award. The examining physician must state whether there is a total or partial loss of use and whether such loss is permanent.

In addition to compensation for loss of member, Schedule C also provides for 125 weeks of compensation for loss of the sight of an eye. For the permanent partial loss of sight of an eye, the 125 weeks will be apportioned by the Commission, based on the percentage of vision actually lost as a result of the injury or occupational disease, but no award of compensation can be made for less than 25 per cent loss of uncorrected vision. The examining physician must state the percentage of vision in each eye actually lost as the result of the injury or occupational disease. Under Ohio law, when the injury results in a traumatic cataract or removal of the lens, the claimant is presumed to have suffered the loss of uncorrected vision as a result of the injury and no specialist report is needed.

Where the injury or occupational disease results in loss of hearing, the examining physician must state the exact amount of hearing loss. No award of compensation can be made for less than permanent and total loss of hearing. A partial loss of hearing is not compensable.

If the injury or occupational disease results in serious facial or head disfigurement which either impairs, or may in the future impair, the opportunities of the claimant to secure or retain employment, the physician

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## Loss of Vision

BWC determines loss of vision awards according to [RC 4123.57\(B\)](#) the minimum award for each eye is vision 25% loss of uncorrected vision. Although at least a 25% loss of uncorrected vision is required to receive a loss of vision scheduled loss award, the injured worker may have loss of vision of less than 25% granted as an allowed condition in the claim.

- The percentage needed for loss of vision is the percent of vision loss, not the percentage of whole person impairment (WPI). WPI is used solely for determination of Percentage of Permanent Partial (%PP) and %PP is not payable for loss of vision.

Loss of uncorrected vision means the percentage of vision actually lost as a result of the injury or occupational disease. **A loss of vision award is based on the injured workers post injury vision prior to correction by glasses, contacts, or surgical intervention.** Surgical intervention refers to a procedure (s) (e.g. elective surgery), that will improve and/or correct pre-injury vision.

***Example:** If an injured worker has an eye injury that will heal without surgery, the scheduled loss award will not be determined until the healing process is completed. However, if the injured worker requires surgery as a result of the injury, the scheduled loss award is determined based on the condition prior to surgical correction and healing is based on Supreme Court Case Kroger v Stover.*

When the injured worker has an eye removed (enucleation) he/she is entitled to total loss of vision for that eye.

The loss of vision for **traumatic cataract** is based on the injured worker's **post injury vision** prior to correction by glasses, contacts, or surgical intervention.

Cataracts that develop due to prolonged usage of medications, advancing age or other conditions are not considered traumatic. Cataracts that develop due to prolonged usage of medication may be considered for additional allowance as a flow through condition as a known side effect of treatment for another condition. It is important that the treatment for the other condition must be generally accepted as causing or associated with the development of cataracts. The evidence illustrating that the alleged treatment associated with the development of the cataract must be supported and the treatment must be for the allowed condition in the claim.

Improvement of vision resulting from a corneal transplant is a correction of vision and will not be taken into consideration in determining the percentage of vision actually lost according to the scheduled loss in RC 4123.57(B). Corneal transplants are considered corrective, not restorative according to Supreme Court case General Electric Corp. v. Industrial Commission.

Enucleation or traumatic cataract should also be reviewed for possible facial disfigurement awards.

In most cases, a loss of vision award requires a medical report by an Ophthalmologist. However, in cases where it is alleged that the loss is based on neurological or psychiatric factors, the CSS will staff with the MSS to determine what specialty should appropriately address the issue.

The medical report is to include the injured worker's pre-injury uncorrected vision, in addition to post-injury uncorrected vision. The report may be submitted by the injured worker or obtained through a BWC specialist exam. If the report is submitted by the injured worker, a file review is scheduled.

Correction of vision by way of glasses or surgery and surgical healing **does not** affect the amount of the award.

The beginning date of the loss of vision award is the date of the loss as determined by the medical evidence from the POR/treating physician or the BWC specialist exam. If the medical evidence from the POR/treating physician or the BWC specialist exam does not provide a date of loss, the beginning date for the loss of vision award will be the date of injury. The rate of payment is based on the date of injury.

To assist with determining loss of vision awards, the following is available in COR under both Loss of Vision or Scheduled Loss Compensation/Permanent Partial (PP) Exam and Physician Review Correspondence:

- Loss of Vision Exam Questions
- Loss of Vision Injured Worker Exam Notice
- Physician Notice for Loss of Vision Examination

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an Industrial Commission of Ohio

# RECORD OF PROCEEDINGS

Claim Number: 99-512781                      Claims Heard: 99-512781  
                    LT-ACC-OSIP-COV  
PCN: 2092451 Ernest J. Fletchers JR

STANLEY R STEIN  
89 E NATIONWIDE BLVD FL 2  
COLUMBUS OH 43215-2554

Date of Injury: 2/17/1999                      Risk Number: 745825-0

This claim has been previously allowed for: BILATERAL POSTERIOR SUBCAPSULAR CATARACT; AFTER-CATARACT OBSCURE VISION, LEFT; 100% LOSS OF VISION OF LEFT EYE; 50% LOSS OF UNCORRECTED VISION OF THE RIGHT EYE.

This matter was heard on 03/18/2010, before the Industrial Commission pursuant to the provisions of R.C. Sections 4121.03, 4123.511 and 4123.52 on the following:

APPEAL filed by BWC on 12/11/2009.  
Issue: 1) Scheduled Loss/Loss Of Use - VISION OF RIGHT EYE

Notices were mailed to the Injured Worker, the Employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than fourteen (14) days prior to this date, and the following were present at the hearing:

APPEARANCE FOR THE INJURED WORKER:	Mr. Stein, Mr. Fletchers
APPEARANCE FOR THE EMPLOYER:	No Appearance
APPEARANCE FOR THE ADMINISTRATOR:	Ms. Shannon

HEARD BY: Mr. DiCeglio, Mr. Abrams, Ms. Taylor

03/18/2010 - It is the decision of the Industrial Commission that the Administrator's appeal, filed 12/11/2009, is taken under advisement for further review and discussion and that an order be issued without further hearing.

03/18/2010 - After further review and discussion, it is the finding of the Industrial Commission that the Administrator's appeal, filed 12/11/2009, is denied and the Staff Hearing Officer order, issued 12/08/2009, is affirmed with additional reasoning.

The Commission finds that the Injured Worker's C-86 motion filed 05/15/2009 is granted. The Injured Worker is granted a total loss of uncorrected vision of the right eye. The Injured Worker is therefore awarded 125 weeks of compensation pursuant to R.C. 4123.57(B) payable at the statewide average weekly wage from the start date of 03/02/2009 forward. The start date of 03/02/2009 is utilized because this date is the date of the Injured Worker's surgery for cataract extraction with intraocular lens implantation in the right eye.

This claim has been allowed for bilateral posterior subcapsular cataract. The Injured Worker was granted a one hundred percent (100%) loss of uncorrected vision for his left eye per District Hearing Officer order issued 09/07/2000. This total loss of uncorrected vision award was issued after the Injured Worker underwent cataract extraction with intraocular lens implantation in his left eye. Similarly, the Injured Worker is now requesting an award for total loss of uncorrected vision in his right eye after undergoing a cataract extraction and an implantation of an intraocular lens on 03/02/2009.

Industrial Commission of Ohio  
**RECORD OF PROCEEDINGS**

Claim Number: 99-512781

This order is based on State ex rel. General Electric Corp. v. Indus. Comm., 103 Ohio St.3d 420, 2004-Ohio-5585, and State ex rel. Kroger v. Stover (1987), 31 Ohio St.3d 229. These cases hold that an Injured Worker is entitled to receive a total loss of uncorrected vision award even though the Injured Worker had a corneal implant that resulted in an improvement in the Injured Worker's vision. The Ohio Supreme Court ruled in these cases that an Injured Worker's uncorrected vision loss is to be measured at the time the cataract is removed. It emphasized in the aforementioned cases that a corneal lens implant is corrective and not restorative; consequently, the surgical improvement in the Injured Worker's vision is not to be taken into consideration in determining the percentage of vision actually lost according to the scheduled loss in R.C. 4123.57(B).

Therefore, utilizing the loss of uncorrected vision standard as explained above, at the time the Injured Worker's right cataract was removed during the 03/02/2009 surgery he was totally blind resulting in the one hundred percent (100%) loss of uncorrected vision as granted by this order. This order is based on the Grant Medical Center operative report dated 03/02/2009 and the 09/15/2009 report of Richard L. Lockwood, D.O.

ANY PARTY MAY APPEAL AN ORDER OF THE COMMISSION, OTHER THAN A DECISION AS TO EXTENT OF DISABILITY, TO THE COURT OF COMMON PLEAS WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THE ORDER, SUBJECT TO THE LIMITATIONS CONTAINED IN R.C. 4123.512.

Typed By: RP/df  
Date Typed: 04/13/2010

The action is based upon the motion made by Mr. DiCeglio, seconded by Ms. Taylor and voted on as follows:

Gary M. DiCeglio Chairperson	YES	Jodie M. Taylor Commissioner	YES
Kevin R. Abrams Commissioner	NO		

ATTESTED TO BY:

\_\_\_\_\_  
Executive Director

Findings Mailed: 04/16/2010

**Signed copy contained in claim file.**

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

Industrial Commission of Ohio  
**RECORD OF PROCEEDINGS**

Claim Number: 99-512781

99-512781  
Ernest J. Fletchers JR  
1548 Rozelle Creek Rd  
Chillicothe OH 45601-8942

ID No: 10554-90  
Stanley R Stein  
89 E Nationwide Blvd Fl 2  
Columbus OH 43215-2554

Risk No: 745825-0  
Clyde H Keirns  
Keirns Welding  
15553 Turney Caldwell Rd  
Circleville OH 43113-9548

ID No: 9994-05  
\*\*\*BWC, Law - Columbus\*\*\*  
Attn: Director Of Legal Operations  
30 W Spring St # L-26  
Columbus OH 43215-2216

BWC, LAW DIRECTOR

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NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT [www.ohioic.com](http://www.ohioic.com). ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

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The Industrial Commission of Ohio  
**RECORD OF PROCEEDINGS**

Claim Number: 04-850817  
MO-ACC-SI-COV  
PCN: 2081401 Joanne R. Simpson

Claims Heard: 04-850817

JOANNE R. SIMPSON  
348 N GARFIELD AVE  
COLUMBUS OH 43203-1317

Date of Injury: 5/07/2004

Risk Number: 20004277-0

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This claim has been previously allowed for: LEFT EYE; INTERSTITIAL KERATITIS; CORNEAL OPACITY AND CORNEAL NEOVASCULARIZATION OF THE LEFT EYE.

This matter was heard on 07/29/2008 before Staff Hearing Officer Michael Scholl pursuant to the provisions of Ohio Revised Code Section 4121.35(B) and 4123.511(D) on the following:

APPEAL of DHO order from the hearing dated 06/20/2008, filed by Injured Worker on 07/02/2008.

Issue: 1) Request For Temporary Total  
2) Scheduled Loss/Loss Of Use - LOSS OF VISION OF THE LEFT EYE

Notices were mailed to the injured worker, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Injured Worker; Dusseau  
APPEARANCE FOR THE EMPLOYER: Proxmire  
APPEARANCE FOR THE ADMINISTRATOR: N/A

The order of the District Hearing Officer, from the hearing dated 06/20/2008, is vacated.

It is the order of the Staff Hearing Officer that the C-86 motion, filed 02/28/2008, is granted to the extent of this order.

The Staff Hearing Officer has reviewed and considered the evidence contained in the record.

It is the finding of the Staff Hearing Officer that the injured worker sustained a total loss of vision of the left eye as the result of her industrial injury. Therefore, it is the order of the Staff Hearing Officer that the injured worker is awarded 125 weeks consistent with ORC 4123.57(B). The start date of the award is 08/28/2007.

The Staff Hearing Officer finds the injured worker sustained an injury to her left eye as the result of a chemical splash in her eye. Following treatment, it was determined that the injured worker needed a lens transplant. The lens was surgically removed on 08/28/2007. The surgical removal of the lens resulted in a total loss of use of the left eye. Therefore, a total loss of use is awarded consistent with ORC 4123.57(B).

This decision is based on the records of Dr. Erdey from 08/09/2008 to the present, as well as the surgery of 08/28/2008.

The Staff Hearing Officer notes the doctors concur the injured worker's loss of vision prior to the surgery was less than 25%. However, the injured worker is requesting a total loss of vision, not a partial loss of vision.

The Industrial Commission of Ohio  
**RECORD OF PROCEEDINGS**

Claim Number: 04-850817

The Self-Insured employer is hereby ordered to comply with the above findings.

An Appeal from this order may be filed within 14 days of the receipt of the order. The Appeal may be filed online at [www.ohioic.com](http://www.ohioic.com) or the Appeal (IC-12) may be sent to the Industrial Commission of Ohio, Claims Management Section, 30 W. Spring St., 5th Floor, Columbus OH 43215-2233.

Typed By: srp  
Date Typed: 08/18/2008

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Michael Scholl  
Staff Hearing Officer

Findings Mailed: 08/22/2008

Electronically signed by  
Michael Scholl

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The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

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04-850817  
Joanne R. Simpson  
348 N Garfield Ave  
Columbus OH 43203-1317

ID No: 15275-90  
\*\*\*Philip J. Fulton & Associates\*\*\*  
89 E Nationwide Blvd Ste 300  
Columbus OH 43215-2554

Risk No: 20004277-0  
Dolgencorp Inc  
Dollar General  
100 Mission Rdg  
Goodlettsville TN 37072-2171

ID No: 20469-91  
Reminger & Reminger  
101 W Prospect Ave Ste 1400  
Cleveland OH 44115-1074

ID No: 21846-91  
Reminger & Reminger Co., LPA  
525 Vine St Ste 1700  
Cincinnati OH 45202-3150

ID No: 21353-91  
\*\*\*Reminger & Reminger\*\*\*  
65 E State St Ste 400  
Columbus OH 43215-4227

BWC, LAW DIRECTOR

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*Special Instructions/Additional Exam Questions/Other (Type any additional questions here)*

**Loss of use**

**"Loss of use" evaluations are the result of scheduled loss awards to the injured worker as provided in the Ohio Revised Code 4123.57(B). The awards are for loss of or loss of use of a body part prior to treatment and not the result of the injured worker's condition after treatment. Ankylosis may be considered if the ankylosis is total stiffness or contractures due to scars or injuries which make any of the fingers, thumbs, or parts of either useless.**