[Cite as *State ex rel. Lay-Z-Boy Furniture Galleries v. Thomas,* 2009-Ohio-4546.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Lay-Z-Boy Furniture Galleries,	:	
Relator,	:	No. 08AP-827
v.	:	(REGULAR CALENDAR)
Millard Thomas and Industrial Commission of Ohio,	:	
Respondents.	:	

D E C I S I O N

Rendered on September 3, 2009

Stefanski & Associates LLC, and *Janice T. O'Halloran*, for relator.

Michael J. Flament, for respondent Millard Thomas.

Richard Cordray, Attorney General, and *Andrew J. Alatis*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶1} Relator, Lay-Z-Boy Furniture Galleries ("relator"), filed this action seeking a writ of mandamus directing respondent, Industrial Commission of Ohio ("commission"), to

vacate its order awarding respondent, Millard Thomas ("claimant"), scheduled loss compensation for a 75 percent permanent loss of sight in the left eye, and to enter an order denying compensation. Claimant filed a cross-claim seeking an order directing the commission to enter an order awarding him compensation for total loss of sight in his left eye.

{¶2} We referred this case to a magistrate of this court pursuant to Loc.R. 12(M) and Civ.R. 53. On March 24, 2009, the magistrate issued a decision denying relator's request for a writ of mandamus, and granting claimant's cross-claim for a writ of mandamus, which is appended to this decision. Relator filed objections to the magistrate's decision, and the commission and claimant each filed responses to those objections.

{¶3} Claimant underwent a left eye corneal transplant in September 2005 to correct a non-industrial condition, keratoconus. Prior to surgery, claimant's left eye visual acuity was 20/200. After the surgery, claimant's left eye visual acuity was 20/50.

{¶4} On May 1, 2006, claimant suffered an industrial injury to his left eye when he was struck by a cardboard box. Claimant was taken to MetroHealth Medical Center for surgery on the eye. A pre-operative report stated that claimant had corneal wound dehiscence, hypopnea with choroidal effusion, lens dislocation, and vitreous prolapse. On June 21, 2006, claimant underwent a vitrectomy and received an intraocular lens implant.

{¶5} On September 18, 2007, claimant filed a motion seeking scheduled loss compensation for total loss of vision in his left eye. Following a hearing, a district hearing

officer ("DHO") issued an order awarding claimant the requested compensation. Relator administratively appealed the DHO's order.

{¶6} On December 3, 2007, claimant was examined by Dr. Edwin H. Eigner. In his report, Dr. Eigner stated that prior to the accident, claimant's best refracted vision was 20/50 in both the right and left eye. Dr. Eigner further stated that on the date of the examination, claimant's vision without glass correction was 20/200 in the right eye and 20/50 in the left eye. Dr. Eigner concluded that, in his opinion to a reasonable degree of medical certainty, claimant did not suffer any vision loss as a result of the industrial injury.

{¶7} On June 16, 2008, a staff hearing officer ("SHO") affirmed the DHO's finding that a loss of vision had occurred, but reduced the percentage of loss to 75 percent. Both relator and claimant appealed the SHO's decision to the commission, and the commission denied both appeals. Relator then filed this action, with claimant filing a cross-claim.

{¶8} In his decision, the magistrate concluded that the proper baseline for determining vision loss in this case was the improved visual acuity of 20/50 claimant enjoyed as a result of the corneal transplant in his left eye. The magistrate further concluded that the SHO abused her discretion in reducing the award for loss of vision from 100 percent to 75 percent. The magistrate thus concluded that relator's request for a writ of mandamus should be denied, and claimant's request should be granted.

{¶9} In reaching his decision, the magistrate considered the applicability of the decision by the Supreme Court of Ohio in *State ex rel. Gen. Elec. Corp. v. Indus. Comm.*, 103 Ohio St.3d 420, 2004-Ohio-5585. That case involved a worker whose vision decreased to 20/200 after an industrial accident, but whose vision was corrected with

surgery and corneal lens implants. The court concluded that the lens implants were a correction to vision rather than a restoration of vision, and therefore could not be used in assessing the amount of vision lost because uncorrected vision prior to the industrial injury was the proper basis for consideration. Id. at ¶12.

{¶10} Before the magistrate, relator argued that claimant's uncorrected vision prior to the corneal transplant was 20/200, and that his vision after the injury was also 20/200. Therefore, relator argued that claimant could not be said to have lost anything as a result of the injury. The magistrate concluded that *General Electric* was only the starting point for the analysis, because that case involved correction that occurred post-injury, while in this case the claimant experienced vision improvement as the result of a pre-injury corneal transplant, and then experienced vision loss as a result of the industrial accident. The magistrate concluded that claimant's improved vision resulting from the corneal transplant could be used as the baseline to determine vision loss, because to do otherwise would result in a non-allowed condition, the keratoconus that caused claimant's impaired vision prior to the corneal transplant being used to defeat claimant's claim that he lost vision as a result of the industrial accident. Non-allowed medical conditions may not be used to advance or defeat a claim for compensation. *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452.

{¶11} In its objections, relator repeats its argument that the proper baseline to use was claimant's uncorrected vision prior to his work injury based on the *General Electric* decision.[1] We disagree. As pointed out by the DHO, "[i]t would seem unfair to allow a

[1] Relator's objections do not address the magistrate's conclusion regarding claimant's cross-claim: that the SHO erred when it reduced the vision loss award from 100 percent to 75 percent, and that claimant was therefore entitled to the writ of mandamus sought in the cross-claim.

loss of vision award to an injured worker who had a 'natural' functioning eye prior to [the] date of injury but not to an individual who had a functional eye only as the result of a previous medical procedure which was able to restore functionality to the eye." Upon review of the magistrate's decision and relator's objections, we agree with the magistrate's reasoning and conclusion that the proper baseline for determining claimant's vision loss was claimant's visual acuity after the corneal transplant.

{¶12} Accordingly, relator's objections to the magistrate's decision are overruled. Having reviewed the magistrate's decision, we adopt the decision as our own. Therefore, relator's request for a writ of mandamus is denied, and we grant the writ of mandamus requested by claimant in his cross-claim.

Objections overruled;
relator's requested writ of mandamus denied;
claimant's requested writ of mandamus granted.

KLATT and CONNOR, JJ., concur.

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A P P E N D I X

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M A G I S T R A T E ' S D E C I S I O N

Rendered on March 24, 2009

Stefanski & Associates LLC, and *Janice T. O'Halloran*, for relator.

Michael J. Flament, for respondent Millard Thomas.

Richard Cordray, Attorney General, and *Andrew J. Alatis*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶13} In this original action, relator, Lay-Z-Boy Furniture Galleries, requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order awarding respondent Millard Thomas ("claimant") R.C. 4123.57(B)

scheduled-loss compensation for a 75 percent permanent loss of sight of the left eye, and to enter an order denying compensation.

{¶14} In his cross-claim, claimant requests a writ of mandamus ordering the commission to amend its order so that it awards compensation for total loss of sight of the left eye.

Findings of Fact:

{¶15} 1. In September 2005, claimant underwent a left eye corneal transplant to correct a nonindustrial condition in that eye known as keratoconus. Immediately prior to the surgery, visual acuity was found to be 20/200 in both eyes.

{¶16} 2. In November 2005, left eye visual acuity was found to be 20/50.

{¶17} 3. On May 1, 2006, claimant sustained an industrial injury to his left eye while employed with relator. On that date, a cardboard box struck his left eye while he was at work.

{¶18} 4. On the date of injury, claimant presented to an eye clinic for an examination. Apparently, left eye visual acuity was 20/200 immediately after the injury. Claimant was then taken directly from the eye clinic to surgery. The May 1, 2006 operative report of MetroHealth Medical Center ("MetroHealth") states, in part:

> PREOPERATIVE DIAGNOSIS: Corneal wound dehiscence in a patient with a corneal transplant performed previously in the left eye; hypopnea with choroidal effusion; lens dislocation; vitreous prolapse.
>
> * * *
>
> OPERATION: Repair of corneal wound dehiscence in a patient with a previous corneal transplant; anterior vitrectomy.

> * * *
>
> On examination, the patient had approximately 180 degrees of corneal wound dehiscence. There were multiple broken sutures. There was vitreus that had prolapsed into the anterior chamber and out of the wound. The lens was seen to be dislocated as well.

{¶19} 5. On June 21, 2006, claimant underwent a vitrectomy and intraocular lens implantation procedure to the left eye.

{¶20} 6. On September 18, 2007, claimant moved for an R.C. 4123.57(B) award for total loss of vision of his left eye. In support, claimant submitted the operative reports of May 1 and June 21, 2006.

{¶21} 7. When claimant filed his motion, the industrial claim was allowed for "corneal abrasion left; vitreous prolapse left, ocular lacera with prolapse left, post dislocation of left lens, choroidal detachment left nos."

{¶22} 8. Following a September 18, 2007 hearing, a district hearing officer ("DHO") issued an order awarding R.C. 4123.57(B) compensation for total loss of vision of the left eye. The DHO's order explains:

> The District Hearing Office [sic] finds that prior to the date of injury in this claim, injured worker had previously undergone a left eye corneal transplant as a result of an occular [sic] disease in that eye.
>
> The employer and administrators argument that since injured worker had a total loss of vision in the left eye prior to the date of injury in this claim and therefore is not entitled to loss of vision award is not well taken by the District Hearing Officer. The above argument seems to run counter to the intent of the statute. The purpose of an award of compensation pursuant to 4123.57(B) is to compensate for the loss of a body part or body function resulting from the industrial injury. In this case the injured worker had a functioning left eye prior to the date of injury. The District

> Hearing Officer declines to differentiate between the mechanism of function for purposes of this order. It would seem unfair to allow a loss of vision award to an injured worker who had a "natural" functioning eye prior to date of injury but not to an individual who had a functional eye only as the result of a previous medical procedure which was able to restore functionality to the eye.

{¶23} 9. Relator administratively appealed the DHO's order of September 18, 2007.

{¶24} 10. On December 3, 2007, at relator's request, claimant was examined by ophthalmologist Edwin H. Eigner, M.D., who found left eye visual acuity to be 20/50. Dr. Eigner's report, dated January 24, 2008, states:

> A review of the records shows Mr. Thomas sustained an injury to his left eye on May 1, 2006 when a cardboard box struck his left eye while he was at work. He was seen first that day at Medical Group Service and from there admitted and treated at Metro General Hospital the same day.
>
> Because of the keratoconus in both eyes, Mr. Thomas's left eye had had a cornea transplant done on that eye on September 22, 2005. An episode of actue glaucoma, subsequently required admission and was treated successfully on that eye.
>
> The injury on May 1, 2000 resulted in a 180 degree dehiscence of the graft. The surgery done at that time repaired the dehiscence. The vitreous prolapse and choridial [sic] detachment problems were addressed and the disk located lens removed.
>
> On June 21, 2006 a vitrectomy and intraocular lens implantation procedure was done on the left eye.
>
> The last recorded vision I can find in these records prior to this accident is on November 9, 2005. Vision with best refraction was 20/50 in the right eye and 20/50 in the left eye.

> On examination by me on December 3, 2007 vision without glass correction was 20/200 in the right eye and 20/50- in the left eye. Vision was the same with and without glass correction in both eyes. The left corneal transplant was clear and sutured [sic] 360 degrees around the transplant were in proper position. The right eye showed a marked keratoconus and visualization of the anterior segment and retina was not possible at this examination. The left retina could be visualized centrally and appeared normal. The anterior segment of the eye was normal and the intraocular lens could be visualized in good position.
>
> At that time, the previously injured left eye had the better acuity. The uninjured right eye at 20/200 best corrected vision is defined as legally blind and even with the contact lens (as noted in the medical record), he still had only 20/200 vision at that time. The sutures in penetrating keratoplasty (transplant) may remain for an indefinite period of time. You asked me to respond to the following questions.
>
> [One] Did the claimant sustain a total loss of vision in his left eye as a result of the accident on May 1, 2006 industrial accident?
>
> He sustained a vision loss to 20/200 which is considered legally blind, but that was true until the surgical and post operative course ensued. At this time vision is 20/50- and is the better of the two eyes.
>
> [Two] He did have a functioning left eye prior to the accident. And the functioning level was at the 20/5 [sic] range as described above.
>
> [Three] If the claimant did not sustain the total loss, can it be determined from the examination and a review of the records a percentage of the vision loss directly attributable to the industrial incident?
>
> With a reasonable degree of medical certainty, I believe since the best correct [sic] vision in his record was 20/50 prior to this injury I do not feel there has been any vision loss as a result of this injury subsequent to the recovery after the repair of the trauma sustained during that injury.

{¶25} 11. Following a June 16, 2008 hearing, a staff hearing officer ("SHO") issued an order stating that the DHO's order is being "modified":

> The Staff Hearing Officer grants a 75% loss of uncorrected vision, of the left eye, pursuant to Revised Code Section 4123.57(B). This award is made based on past medical records demonstrating that, just prior to the date of injury, the claimant's vision in his left eye was 20/50. This award is made based on operative reports, from Metro Hospital, dated 05/01/2006 and 06/21/2006, and is based, in part, on the 01/24/2008 report and opinions of Dr. Eigner. The Staff Hearing Officer rejects the employer's argument that, as the claimant had already had a September, 2005, corneal transplant, he was not entitled to the within award. The Staff Hearing Officer found persuasive the claimant's argument that, the employer takes his employee, in toto, as he is on the date of hire.

{¶26} 12. Apparently, both relator and claimant administratively appealed the SHO's order of June 16, 2008. Thereafter, the commission refused the administrative appeals.

{¶27} 13. On September 23, 2008, relator, Lay-Z-Boy Furniture Galleries, filed this mandamus action. Thereafter, respondent Millard Thomas filed a cross-claim.

Conclusions of Law:

{¶28} Two main questions are presented: (1) whether the improved left eye visual acuity resulting from the September 2005 nonindustrial corneal transplant may be used as the baseline for determining subsequent industrial vision loss under R.C. 4123.57(B) even though it has been held by the Supreme Court of Ohio that corneal transplant surgery is corrective rather than restorative, and (2) if the answer to the first question is in the affirmative, whether the SHO abused her discretion by reducing the award to 75 percent loss of uncorrected vision.

{¶29} The magistrate finds: (1) the improved left eye visual acuity resulting from the nonindustrial corneal transplant may be used as the baseline for determining subsequent vision loss due to the industrial injury, and (2) the SHO abused her discretion by reducing the award to 75 percent loss of uncorrected vision.

{¶30} Accordingly, it is the magistrate's decision that this court deny relator's request for a writ of mandamus but grant respondent's request for a writ of mandamus on the cross-claim, as more fully explained below.

Relator's Claim for a Writ of Mandamus

{¶31} R.C. 4123.57(B) provides a schedule for compensation for enumerated losses. The statute states:

> 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.

{¶32} In *State ex rel. Gen. Elec. Corp. v. Indus. Comm.*, 103 Ohio St.3d 420, 2004-Ohio-5585, the claimant, Randall D. Ross, received an electrical shock at work that caused cataracts. His vision decreased to 20/200 from what was presumed to have been 20/20. He eventually required bilateral surgery and corneal lens implants which corrected his vision.

{¶33} Finding that the improvement in eyesight following the surgeries was no more than a "correction" to vision, the commission held that the vision improvement resulting from the surgeries was not to be considered in determining the percentage of vision actually lost. Citing *State ex rel. Kroger Co. v. Stover* (1987), 31 Ohio St.3d 229, the commission awarded the claimant compensation for total loss of vision.

{¶34} The employer, General Electric Corporation, brought a mandamus action in this court challenging the commission's award. In this court, General Electric challenged the continued viability of *Kroger*'s holding, found at paragraph two of *Kroger*'s syllabus:

> 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) [now R.C 4123.57(B)].

{¶35} In the *General Electric* case, this court held that the medical procedure had evolved in the 16 years since *Kroger* to the point where the surgery could be considered restorative rather than corrective, and therefore foreclosed the award. The claimant appealed as of right to the Supreme Court of Ohio.

{¶36} In *General Electric*, the Supreme Court reversed this court's judgment explaining, in pertinent part:

> Ohio, like most states, makes uncorrected vision the standard for evaluation. This standard may have arisen when, in many trades, glasses could not be accommodated[.]
>
> * * *
>
> The statute bars the commission from considering a correction to vision either in making an award or in

> assessing an amount. This law continually vexes employers who cannot reconcile the concept of loss with a claimant whose postinjury vision has been improved to 20/20. Most jurisdictions, however, have recognized this view as short-sighted, with the utility of glasses and contact lenses best refuting what may seem, at first glance, to be unassailable logic:
>
> "[L]oss having occurred, it continues unless there is recovery. The condition will not improve; it is permanent. Correction by artificial appliance does not effect a recovery. Recovery and correction are not the same. The lenses and glasses are not instruments to improve or cure. They are beneficial only when in place and are subject to being lost, broken or becoming ill-fitted or ineffective. On the happening of any such event, the loss returns, if it can be said that it ever went away. Corrective lenses are just that, corrective." *Natl. Union Fire Ins. Co. of Pittsburgh, Pennsylvania v. Lucio* (Tex.App.1984), 674 S.W.2d 487, 488.
> The difficult distinction between recovery/restoration and correction remains the cornerstone of scheduled-loss-of-vision litigation.
>
> * * *
>
> In this case, R.C. 4123.57(B) clearly makes uncorrected vision the applicable standard. Case law, in turn, distinguishes between correction and restoration/recovery for purposes of making an award and has presumably left the terms deliberately undefined in order to accommodate advances in medical procedure. The court of appeals in this case felt that the time had arrived to reclassify corneal lens implants as restorative. We do not agree and accordingly reverse its judgment.

Id. at ¶12, 16-18, 51.

{¶37} Here, relator argues that using as a baseline claimant's improved left eye visual acuity resulting from the September 2005 nonindustrial corneal transplant violates *General Electric*'s holding.

{¶38} According to relator, *General Electric* requires that all surgical corrections to vision be eliminated from consideration in the determination of uncorrected vision loss under R.C. 4123.57(B). Under this theory, the pre-injury baseline from which to determine vision loss due to the industrial injury is the left eye visual acuity of 20/200 which meets the legal definition of blindness. Thus, relator concludes that the industrial injury could not have caused any uncorrected vision loss. As relator puts it, "the baseline * * * begins with the claimant's uncorrected vision of 20/200 and ends with his uncorrected vision of 20/200 after the work injury." (Relator's brief, at 4.) Put another way, claimant "cannot lose what he never had." (Relator's brief on the cross-claim, at 4.)

{¶39} Notwithstanding its position here, relator concedes that *General Electric* did not address "the precise question presented in the instant case." (Relator's reply brief, at 2.) Nevertheless, relator argues that the *General Electric* court failed "to limit consideration of the correction to vision solely to post injury analysis." Id.

{¶40} While the *General Electric* case serves as a starting point for analysis of the issue before this court, it cannot be dispositive because the *General Electric* court was not faced with the issue of whether vision improvement due to a pre-injury corneal transplant can be used as the baseline for determining uncorrected vision loss under R.C. 4123.57(B).

{¶41} Undisputedly, a corneal transplant is, in fact, a correction to vision regardless of whether it is performed before or after an industrial injury. However, contrary to what relator seems to suggest, that observation is not dispositive here.

{¶42} The commission counters relator's position by emphasizing the words "as a result of the injury" found at R.C. 4123.57(B). According to the commission, that language compels the conclusion that improved vision due to a pre-injury surgical correction to vision can be used as the baseline for a determination of industrial vision loss. According to the commission, because the September 2005 corneal transplant was not occasioned "as a result of a work injury," its corrective effect on vision need not be eliminated from the baseline. The commission also invokes R.C. 4123.95 which mandates that the workers' compensation statutes be liberally construed in favor of injured workers.

{¶43} In the magistrate's view, the debate over the proper determination of the pre-injury baseline can be resolved by applying the principle set forth in the seminal case of *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452. Nonallowed medical conditions cannot be used to advance or defeat a claim for compensation. Id. at 454.

{¶44} Speaking in the context of a permanent total disability determination, the *Waddle* court states that the claimant "should not be penalized * * * simply because he or she is unfortunate enough to have other health problems" unrelated to an industrial injury. Id. at 457-458.

{¶45} The mere presence of a nonallowed condition in a claim does not itself destroy the compensability of the claim. *State ex rel. Bradley v. Indus. Comm.* (1997), 77 Ohio St.3d 239.

{¶46} Claimant's keratoconus is the nonallowed condition that cannot be used to defeat a claim for compensation. Keratoconus cannot be used to destroy the compensability of the claim.

{¶47} Relator argues for the application of the *General Electric* decision in a way that permits a nonallowed condition to defeat the claim for vision loss. Claimant should not be penalized simply because he was unfortunate enough to suffer a serious nonallowed condition yet fortunate to have that nonallowed condition corrected. Relator's position, in effect, would preclude all persons who have had the misfortune of having suffered blindness as a result of a nonallowed condition prior to an industrial injury from ever obtaining a vision loss award under R.C. 4123.57(B).

{¶48} Under relator's position, having the good fortune that medical science can correct a serious nonallowed vision problem is translated into a misfortune if application for a vision loss award is ever warranted in an industrial claim.

{¶49} In the magistrate's view, the *General Electric* court did not intend such a result as relator advocates here. Accordingly, this magistrate concludes that the *General Electric* case does not support relator's challenge to the vision loss award.

Respondent Thomas' Cross-Claim

{¶50} As previously noted, the DHO awarded compensation for total loss of vision. The DHO explained that claimant had a "functioning" left eye prior to the industrial injury. While unstated in the order, the DHO apparently based the total loss of vision award upon a finding that the industrial injury produced 20/200 vision acuity in the left eye prior to the surgeries necessitated by the industrial injury. As indicated in the report from Dr. Eigner, 20/200 vision acuity is "considered legally blind." There is no

dispute here among the parties that 20/200 vision is equatable to blindness. Apparently, the DHO reasoned that the industrial injury caused the total loss of the "functioning" left eye absent consideration of the post-injury surgical corrections.

{¶51} It should be noted that claimant did not lose his natural cornea as a result of the industrial injury, nor did he permanently lose his corneal transplant as a result of the industrial injury. Hypothetically, if claimant's industrial injury had only necessitated a repair of the corneal transplant, to obtain compensation for vision loss claimant would have to show that his visual acuity had been permanently reduced by the injury to his corneal transplant and its subsequent repair following a healing period. In that scenario, if visual acuity were found to be the same following the corneal repair, claimant would have no compensable vision loss under R.C. 4123.57(B) in the absence of any other eye injury.

{¶52} However, claimant not only sustained injury to his corneal transplant, he also sustained injury to the lens of his left eye. Because the lens injury necessitated an intraocular lens implant, case law compels the conclusion that claimant did sustain a total loss of vision due to the loss of his natural lens. *State ex rel. Autozone, Inc. v. Indus. Comm.*, 10th Dist. No. 05AP-634, 2006-Ohio-2959 (loss of the natural lens necessitating an intraocular implant constitutes total loss of vision because one cannot see without a functioning lens).

{¶53} Given the above analysis, the DHO's award for total loss of vision is supported by the record and is supported by the undisputed facts.

{¶54} The SHO modified the DHO's award by reducing the vision loss to 75 percent. While the SHO's order states reliance upon the operative reports and Dr.

Eigner's report, those reports do not explain how the SHO determined that a 75 percent uncorrected vision loss should be entered rather than a 100 percent uncorrected vision loss.

{¶55} None of the parties to this action have attempted to explain how the SHO determined a 75 percent vision loss. In his brief in support of his cross-claim, claimant astutely observes that the SHO "did not indicate how she arrived at that percentage, and the method of computation is not clear." (Respondent Thomas' cross-claim brief, at 5-6.)

{¶56} Perhaps Memo F1 contained in the commission's hearing officer manual explains the error in the SHO's 75 percent award:

> 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.
>
> **Example:**
>
> Assume a claimant had, pre-injury, 20% uncorrected vision and, post injury, 5% uncorrected vision. The proper method of calculation would be based on the percentage of remaining vision of the individual compared to the actual vision before the injury. Here, the claimant had lost 75% of the uncorrected vision the claimant had before the injury. Hence, the claimant would be entitled to an award of 75% for loss of partial vision.

{¶57} The example set forth in Memo F1 is premised upon *State ex rel. Spangler Candy Co. v. Indus. Comm.* (1988), 36 Ohio St.3d 231, which is cited by Memo F1.

{¶58} Perhaps the SHO's 75 percent award is premised upon claimant's 20/50 pre-injury visual acuity and his post-injury 20/200 visual acuity. Arbitrarily, if one

subtracts the 50 in 20/50 from the 200 in the 20/200, the difference of 150 is 75% of 200. However, that would not be a proper way to calculate the percent of vision loss. See, *Spangler Candy*.

{¶59} The visual acuity measurements contained in the medical records are results of distance eye testing on the Snellen eye chart, where the standard test distance is 20 feet. A person who tests 20/50 sees the letters on the chart at 20 feet the same as a person with normal vision sees the chart at 50 feet. A person who tests 20/200 sees the letters on the chart at 20 feet the same as a person with normal vision sees the chart at 200 feet. 6A Lawyers' Medical Cyclopedia (5th Ed., LexisNexis 2006), Section 39.7a. Central visual acuity for distance as noted by a Snellen fraction can be easily converted to a percent loss of central vision by reference to tables. Id. at Section 39.21.

{¶60} Here, it is undisputed that claimant's best pre-injury visual acuity was 20/50 and his post-injury visual acuity was 20/200 before the surgeries. Clearly, those undisputed facts do not produce a 75 percent vision loss as the SHO's order seems to suggest. Accordingly, the SHO's determination of a 75 percent vision loss constitutes an abuse of discretion.[2] The SHO should have affirmed the DHO's finding of a total vision loss.

{¶61} Based upon the above analysis, the magistrate concludes that the commission was required to enter an order that compensates claimant for a total vision loss under R.C. 4123.57(B).

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[2] See the Ohio Industrial Commission Medical Examination Manual (2004) The Visual System, reproduced in Anderson's Ohio Annotated Workers' Compensation Law Handbook (2008-2009 Ed. LexisNexis) 89, 177.

{¶62} Accordingly, it is the magistrate's decision that this court deny relator's request for a writ of mandamus. However, on the cross-claim, it is the magistrate's decision that this court issue a writ of mandamus ordering the commission to vacate its SHO's order of June 16, 2008 and, in a manner consistent with this magistrate's decision, enter a new order that awards R.C. 4123.57(B) compensation for the total loss of vision of the left eye.

/S/ *Kenneth W. Macke*
KENNETH W. MACKE
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).