

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F113872**

<b>SANDRA L. GASKIN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MCCRORY SCHOOL DISTRICT, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ARKANSAS SCHOOL BOARDS ADMINISTRATION (RISK MANAGEMENT RESOURCES, TPA), CARRIER</b>	<b>RESPONDENT</b>

**OPINION AND ORDER FILED APRIL 19, 2006**

Hearing before Administrative Law Judge Barbara Webb in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James McLarty, III, Attorney at Law, Newport, Arkansas.

Respondents represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on January 19, 2006. A Prehearing Order was entered in this case on November 21, 2005. This Prehearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Prehearing Order was made Commission Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the Prehearing Order and are hereby accepted:

1. That claimant sustained a compensable injury on December 5, 2001.
2. That the claimant earned wages sufficient to entitle her to a compensation rate of \$410.00 for temporary total disability and \$308.00 for permanent partial disability.
3. That all temporary total disability benefits have been paid, all medical has been paid, and a twenty percent (20%) impairment rating to the right eye has been paid.

By agreement of the parties, the issues to be litigated were limited to the following:

1. The correct permanent partial disability rating.
2. Claimant's entitlement to attorneys fees.

The record consists of a one volume transcript of the January 19, 2006 hearing, consisting of the testimony of the claimant and all documentary evidence, including the Claimant's Exhibit 1 (medical records) and Exhibit 2 (Deposition of James McNair, M.D. taken December 21, 2005).

**DISCUSSION**

The claimant is a 56 year-old former elementary school teacher. She taught school for 36 years and primarily taught fifth and sixth grades. On December 5, 2001, while employed by the McCrory Elementary School, the claimant suffered an admittedly compensable injury to her right eye. She was hit in the eye with a soccer ball kicked by a student on the playground when she walked over to attempt to break up a fight over a kickball game which was escalating. She explained, "He didn't intentionally hit me, but he kicked it just from a very short distance and very hard and it just hit me right in the eye." She did not immediately seek medical attention because the pain eased. Later in the week, she began experiencing vision problems and sought treatment from her ophthalmologist, Dr. McNair. Following an examination, Dr. McNair referred her immediately to Dr. Landers in Little Rock. Dr. Landers diagnosed the injury to her eye as a detached retina and operated on the eye the same day. The claimant was off work for approximately four weeks and received temporary total disability benefits from the respondents. She returned to full duty as a teacher for the McCrory school system in January of 2002 when the school year resumed. Claimant testified that the only change in her duties was that she remained off playground duty for six weeks and then resumed full duties. She retired at the end of the school year in 2002. She explained that eye injury was a

“great factor” in her decision to retire and that she developed an ulcer from nerves after she returned to work. Since her retirement, she has helped her husband out with the paperwork and other clerical duties with his business. She testified that she received \$1,000 from a private insurance policy and received a total of 21 weeks of compensation based on a \$308 rate per week, for a total of \$6,468 in September 2005.

Claimant testified that she had cataract surgery and lens implants in October of 2005, shortly before the injury on the playground to her right eye. She explained that the cataract surgery had good results and that she could see beautifully with her right eye. She explained that the results were not as dramatic for her left eye but that she did not have to wear glasses for the first time in years. She explained that since the accident and subsequent surgery, she had depth perception problems and limited peripheral vision that make it difficult for her to drive and play ball with her daughter. She explained that she was also light sensitive at night or in dark rooms and experiences blurred vision when trying to perform close-up reading or handling paperwork for her husband. She continues to have discomfort and pain from dry eye syndrome, irritation, itchiness from the scar tissue, and headaches and sporadic sharp pains behind the right eye. She continues to have annual visits with her ophthalmologist and her glasses checked and replaced regularly. She testified that she began seeing an

optometrist at the request of the respondent and to help hold down costs. She testified she currently uses Dr. Love, an optometrist in Newport, in order to replace her glasses. On cross-examination, the claimant testified that she had worn glasses for years to correct nearsightedness. She had laser surgery on her left eye in 1999 and that her left eye did not respond as well to the cataract and implant surgery. Following the cataract surgery to her right eye, she did not wear glasses and her right eye compensated for her weaker left eye. She admitted that in tests performed by Dr. McNair, her vision wearing glasses after the playground accident tested 20/20. She explained that her current glasses correct for farsightedness, which is age related, but that she experiences a problem with muscle elasticity from the surgery which makes it difficult to switch from close to distance vision.

Medical records reflect that the claimant was seen by Dr. McNair and Dr. James Landers two days following the accident, and on December 7, 2001 underwent urgent microscopic vitrectomy with scleral buckle, membrane peeling, and endolaser for retinal detachment to her right eye. On December 13, 2001, she returned for a post-operative examination and reported no significant ocular pain. On December 17, 2001, Dr. Landers examined the claimant and reported that she was “doing beautifully, although her distance vision without correction is 20/200 and pin hole vision of 20/50 J3.” He released her back to work on

January 6, 2002 and scheduled her next post-op visit for three months later. On March 25, 2002, the claimant returned for a follow-up visit with Dr. Landers. He reported that her vision was back to 20/20 and that she looked wonderful: "Extended Ophthalmoscopy of the right eye showed the retina to be flat and attached with excellent laser photocoagulation. The large retinal tear superiorly was completely closed with no evidence of proliferative vitreo-retinopathy." At that time, he requested re-evaluation at 12 months. On July 31, 2002, Dr. Landers re-evaluated the claimant. He reported that her vision with glasses measured 20/20 in both eyes at a distance. Her near vision measured J2 right eye and J1 left eye. He reported that from a retina standpoint, the claimant was stable. He observed that she has bilateral preretinal macular fibrosis, which could worsen and cause visual loss. He noted that the buckling procedure produced a change in her refractive status and that although she "does have 20/20 vision" with glasses, it does require glasses to see this visual level. At that time, he recommended re-evaluation in 18 months.

On January 30, 2003, Dr. McNair examined the claimant for the purpose of providing a disability rating. He observed that she had visual acuity of 10/0 and 20/20 in both eyes. He noted that without reference to the AMA Guides, he would suggest that she had a permanent partial disability of 10-15% in her right eye based on his 31 years of training and experience in the field of ophthalmology.

On February 27, 2003, Dr. McNair reported that he conducted an examination of the claimant for glasses. He noted that he studied her muscle balance, which showed a significant 14 prism diopters of exophoria/exotropia and two prism diopters of right hyperphoria. He noted that she has a tendency for her eyes to drift out and for the right eye to be slightly higher than the left eye. He observed that this is compensated for by prisms in her glasses. Noting that this muscle balance was due to the retinal surgery performed by Dr. Landers, he observed that the presence of disability of at least the 15% was a conservative amount. On May 24, 2005, Dr. McNair reported that he had reviewed the criteria for disability and observed that based on her central vision loss and loss with contrast and glare sensitivity, he estimated claimant's loss to be 20% in her damaged eye. He found that under Section 8.1, there are no universally accepted standards for contrast and glare sensitivity testing, and the test proved to be 20/100 in her injured eye. Without glare, he reported 20/25 vision, but with the glare, 20/100. In addition, he noted the presence of muscle imbalance. He noted that although she had not had a literal diplopia, that the induced hyperphoria and exophoria could cause diplopia and had caused depth perception and blurred vision, necessitating prisms in her glasses to partially correct these problems. He observed that:

According to the AMA guidelines, this kind of problem inside the central 20 degrees of vision (and her problem) there is a 100%

impairment of ocular motility and therefore is “equivalent to the total loss of vision in one eye,” or 25% of the visual system and 24% whole person impairment (table 6, page 218). Therefore, her central visual impairment is 25% and the 100% ocular motility should give her this overall disability as stated above.

Subsequent to his report of May 24, 2005, Dr. McNair was deposed. In his deposition, Dr. McNair explained that he had treated the claimant for 15 years. He attributed the difference between his disability rating of 20% and his revised rating to his failure to consider 100% impairment of ocular motility caused by muscle imbalance resulting from the surgery. He agreed that the claimant did not have diplopia and that the results of the test used for glare sensitivity and contrast sensitivity was dependent on the patient’s subjective responses. He further agreed that the claimant did not have a total loss of vision in her right eye and that her left eye had not been injured in the accident in December of 2001.

Claimant contends that under the AMA guidelines, she has a 100 percent impairment which is the equivalent to the total loss of vision in one eye, and therefore she is entitled to the full 105 weeks scheduled rating for the loss of an eye. Respondents contend that claimant’s eyesight is corrected to 20/20 by corrective lenses, and therefore claimant is not entitled to a total loss of use of an eye.

Claimant suffered a compensable injury to her right eye. This is a scheduled injury pursuant to Ark. Code Ann. § 11-9-521(a)(14) which provides in pertinent part:

An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits . . . weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule: 14 Eye enucleated, in which there was useful vision, one hundred five (105) weeks.

This is not a disability apportioned to the body as a whole pursuant to Ark. Code Ann. § 11-9-522 as suggested by claimant's analysis and interpretation of the AMA Guides. Ark. Code Ann. § 11-9-521(c)(1) further provides that compensation for the permanent loss of eighty percent (80%) or more of the vision of an eye shall be the same as for the loss of an eye. The use of corrective lenses may be taken into consideration in evaluating the extent of loss of vision in cases of permanent loss of vision. Ark. Code Ann. § 11-9-521(c)(2); *Barnard v. B & M Construction*, 52 Ark. App. 61, 915 S.W.2d 296 (1996).

Claimant has not lost the use of her right eye. In fact, the preponderance of the evidence clearly demonstrates that with corrective lenses, claimant has 20/20 vision in both eyes. At worst, the evidence would suggest that claimant's vision is corrected to 20/100 in her right eye.

Table 5 of the AMA Guides to the Evaluation of Permanent Impairment (4<sup>th</sup> ed.) reflects that a loss of monocular visual field to 20/100, as indicated by the medical evidence presented in this case, results in a disability rating of 20%. Moreover, there are no objective findings to support a loss of vision of 80% or more as required by Arkansas law to equate to a total loss of an eye. Dr. McNair testified that the tests relating to glare and contrast were based on subjective responses from the claimant. He further testified that the claimant did not currently have diplopia, a necessary prerequisite under 8.3 of the Guides to estimate the 100% impairment of ocular motility referenced by Dr. McNair in his revised impairment rating.

The claimant has testified that she can see and read, perform clerical duties for her husband's business, drive, and generally function with corrective lenses. Based on the preponderance of the evidence, I find that the medical and other credible evidence in the case supports the rating of 20% as originally assessed by Dr. McNair and accepted and paid by respondents and that said rating conforms with the AMA Guides (4<sup>th</sup> ed.).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. That claimant sustained a compensable injury on December 5, 2001.
2. That the claimant earned wages sufficient to entitle her to a compensation rate of \$410.00 for temporary total disability and \$308.00 for permanent partial disability.
3. That all temporary total disability benefits have been paid, all medical has been paid, and a twenty percent (20%) impairment rating to the right eye has been paid to the claimant by respondents.
4. That the preponderance of the evidence demonstrates that claimant is entitled to a twenty percent (20%) permanent partial disability rating for loss of vision to her right eye and is not entitled to compensation for a total loss of vision to her right eye.
5. The claimant's attorney is not entitled to statutory attorney's fees herein.

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**ORDER**

For the reasons discussed herein, this claim for additional permanent partial disability benefits and attorneys fees is respectfully denied.

**IT IS SO ORDERED.**

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**HONORABLE BARBARA WEBB**  
Administrative Law Judge