NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400052

JAMES KUNZELMANN,
EMPLOYEE CLAIMANT

FAYETTEVILLE SCHOOL DISTRICT,
EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER RESPONDENT

OPINION FILED MARCH 15, 2005

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE JASON HATFIELD, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE BETTY DEMORY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed October 6, 2004. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

> 1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
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> 2. On January 7, 2003, the relationship of employee-employer-carrier existed between the parties.
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> 3. The claimant sustained a compensable injury to his eye on January 7, 2003.

4. Medical expenses have been paid to December 15, 2003.

5. The claimant earned an annual salary of $24,500.

6. The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his right eye subsequent to December 5, 2003, as well as reimbursement for his sunglasses.

7. The claimant is entitled to $3,000 for his permanent facial disfigurement pursuant to Ark. Code Ann. §11-9-524.

8. The respondents have controverted this claimant's entitlement to additional benefits.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the October 6, 2004 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the

opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of $500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the Majority opinion finding that the decision of the Administrative Law Judge should be affirmed and adopted. My de novo review of the this claim reveals that the claimant has failed to prove that the additional medical treatment he received after December 15, 2003, was reasonable and necessary in connection with his compensable eye injury. Furthermore, the claimant has failed to prove that he is entitled to permanent disfigurement pursuant to Ark. Code Ann. §11-9-524, in the amount of $3,000.00.

On January 7, 2003, the claimant, an art teacher, reportedly got a mixture of ceramic glaze in his right eye. The claimant reported to the school nurse immediately following this incident who assisted him in flushing the affected eye. The claimant's eye grew more irritated and on the evening of January 7, 2003, the claimant was seen by Dr. Brian Buell. Dr. Buell, who is an optometrist, diagnosed the claimant with iritis or iridocyclitis, which is inflammation inside of the eye. This inflammation caused dangerous pressure to build in the claimant's right eye. Dr. Buell referred the claimant to Dr. Paul Henry, an ophthamologist, who

treated the claimant with multiple medications, including steroids. When the claimant's inflammation failed to permanently resolve, Dr. Henry referred the claimant to Christopher Walton, a uveitis specialist. In his report dated April 17, 2003, Dr. Walton wrote:

> I believe that Mr. Kunzelmann has chronic anterior uveitis affecting the right eye of uncertain etiology. I did discuss with him the possibility of herpes simplex virus associated uveitis due to the iris transillumination defects noted as well as the elevated intraocular pressure.

Dr. Walton sent the claimant back to Dr. Henry with instructions to taper the claimant off of his steroid medications since the claimant's uveitis appeared to "finally be resolving." Subsequently, the claimant developed a right peripheral retinal tear which was treated with a laser surgery. The claimant continues to have recurrent problems with his right eye.

In a letter dated August 22, 2003, Dr. Henry opined that the claimant's condition resulted from the ceramic glaze in his eye. Dr. Buell agrees with Dr. Henry that the claimant' ongoing eye problems resulted from this incident. Dr. Walton, however, disagrees with the opinions of Dr. Henry and Dr. Buell. In a summary letter dated October 20, 2003, Dr. Walton stated that the claimant's condition was probably not caused by

ceramic glaze. Specifically, Dr. Walton stated that although chemical injuries to the eye secondary to alkali burns may result in severe damage to both the exterior and interior structures of the eye, he added that based upon his review of records and his personal consultation and examination of the claimant, the claimant "has none of these findings associated with a severe alkali injury to the eye." Moreover, Dr. Walton stated flatly that he does not believe that the "splash of ceramic glaze is responsible for the development of chronic uveitis with iris atrophy and secondary glaucoma in the [claimant's] right eye." Dr. Walton concluded that the claimant's condition was most likely caused by herpes zoster. The claimant was known to have had chicken pox, which makes him a carrier of this virus. A more remote possibility, according to Dr. Walton, is a rare disorder known as acute primary ischemic iris atrophy. This particular disorder, stated Dr. Walton, has an unknown etiology.

It is well established that although employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries, injured employees have the burden of proving by a preponderance of the evidence that the medical

treatment is reasonably necessary for the treatment of the compensable injury. Ark. Code Ann. § 11-9-508(a)(Repl. 2002); See also, Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). In addition, the respondent is only responsible for medical services which are causally related to the compensable injury. Furthermore, the Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. CDI Contractors v. McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993).

Dr. Buell, an optometrist, referred the claimant to Dr. Henry, an ophthamologist, because, according to Dr. Henry, Dr. Buell had never treated anyone with the claimant's same symptoms, i.e., elevated intraocular pressure and acute inflammatory response.

Although Dr. Buell testified that he referred the claimant to Dr. Henry because he was leaving for vacation and the claimant needed continuing care, Dr. Buell denied ever having completely relinquished the claimant's care to Dr. Henry. With the approval of Dr. Buell, Dr. Henry referred the claimant for consultation to Dr. Walton, a highly qualified uveitis specialist. Dr. Henry admits that he made this referral due to Dr. Walton's unique qualifications and experience. Obviously, both Dr. Buell and Dr. Henry valued Dr. Walton's opinion concerning the claimant's diagnosis and treatment above their own. Therefore, by virtue of the precedent set by the claimant's two treating physicians, Dr. Walton's opinion should be given more weight.

Dr. Walton has stated without equivocation that the claimant's chronic eye condition, including his atrophied pupil, are not the result of a chemical burn from ceramic glaze in his eye. In his deposition of July 29, 2004, after having heard excerpts from the claimant's deposition describing the progression of his injury, Dr. Walton testified as follows:

> Referring back to the previous chemicals we discussed which are the strong alkalis that result in the most severe injuries to the eye, if the injury were to be so severe as to penetrate the eye which is the mechanism for causing the uveitis in such a case, these

> patients are literally writhing in pain, their eye is very red, they are tearing uncontrollably, most of these patients cannot open their eyelids, and they are in exquisite pain within a very few minutes of the event. In most cases even after irrigating their eye for up to 30 minutes they are still in quite a bit of pain following that and most will seek help by going to an emergency room rather quickly at that point.
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> In later questioning, Dr. Walton responded:
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> Overall my final impression was that uveitis and all other findings that were noted in Mr. Kunzelman were not related to this chemical exposure that occurred in January 2003.

The medical records reveal that the average healing time for uveitis caused by a chemical burn is approximately 6 weeks, although severe cases can require as many as 6 months to heal. As discussed above, Dr. Walton saw no evidence of chemical burn to the claimant's right eye. It is noted that the claimant responded to medication for herpes, namely Valtrax, which is consistent with Dr. Walton's theory of causation. Based upon the above and foregoing, the claimant has failed to prove that his chronic eye condition is the result of chemical burns sustained in January of 2003. Therefore, additional medical treatment in this claim in regards to the claimant's chronic and ongoing eye condition should be denied.

Ark. Code Ann. §11-9-524, provides that the Arkansas Worker's Compensation Commission shall award compensation for serious and permanent facial and head disfigurement in a sum not to exceed three thousand five hundred dollars. The only compensable disfigurement is one that affects earning capacity in a similar employment. Long-Bell Lumber Co. v. Mitchell, 206 Ark. 854, 177 S.W.2d 920 (1944). The claimant's supervisor testified that the claimant's dilated pupil has not changed or affected his employment with the Fayetteville School District. Furthermore, the record is devoid of any evidence that the claimant has been refused employment opportunities nor that he would be refused employment opportunities based upon his eye condition. Accordingly, I find that the award of permanent disability was not proper and should be reversed.

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KAREN H. McKINNEY, Commissioner