

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F702906

GEORGE EDWARD MOORE, EMPLOYEE	CLAIMANT
MISSISSIPPI COUNTY, SELF-INSURED EMPLOYER	RESPONDENT NO. 1
ASSOCIATION OF ARKANSAS COUNTIES WORKERS' COMPENSATION TRUST, TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JANUARY 22, 2010

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

Claimant represented by the HONORABLE KRISTOFER E  
RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondent No. 1 represented by the HONORABLE MICHAEL E.  
RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY L.  
KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

OPINION AND ORDER

Respondent No. 1 appeals an opinion and order  
of the Administrative Law Judge filed September 9, 2009.  
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.
2. On March 12, 2007, the employment relationship existed among the parties when the claimant sustained accidental injuries, to included (sic) the loss of vision in his right eye, arising out of and within the course of his employment.
3. On March 12, 2007, the claimant earned wages sufficient to entitlement (sic) him to weekly compensation benefits of \$294.00/\$221.00, for total/permanent partial disability.
4. The claimant reached the end of his healing period on January 14, 2008, relative to his compensable right eye injury of March 12, 2007, which resulted in a total loss of vision in same.
5. Respondent #1 shall pay all reasonable hospital and medical expenses arising out of the injury of March 12, 2007.
6. The claimant sustained a permanent loss of vision in his right eye or 100% impairment relative to same, which pursuant to the *AMA Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition, Table 6, at page 8/218, equates to whole person impairment of 24%.
7. The evidence preponderates that when the claimant's age, education, permanent restrictions, are considered the claimant is unable to earn any meaningful wage in the same or other employment because of the March 12, 2007, compensable injury, and has been rendered permanently and totally disabled, pursuant to Ark. Code Ann. §11-9-519.
8. Respondent #1 has controverted the claimant's entitlement to permanent total disability benefits.

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 September 9, 2009, 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.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that he was permanently and totally disabled. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

The claimant was employed by the respondent employer as a road grader driver. Part of the claimant's responsibilities were the maintenance and upkeep of the road grader he drove. On March 12, 2007, the claimant was changing a tire when the tire exploded.

The claimant suffered numerous injuries to his face and ultimately, lost vision in his right eye as a result of those injuries. The claimant's left eye was not affected by the accident.

The claimant has sustained an admittedly compensable scheduled injury. As such, the claimant is not entitled to any wage loss disability benefits in addition to his permanent anatomical impairment and he can only receive permanent and total disability. § 11-9-521 states that when an eye is enucleated, the claimant is entitled to 105 weeks of benefits. Ark. Code. Ann. § 11-9-521(a)(14). Ark. Code Ann. § 11-9-521(g) states:

Any employee suffering a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment set forth above as otherwise provided in § 11-9-519(b).

§ 11-9-519(b) states:

In the absence of clear and convincing proof to the contrary, the loss of both hands, both arms, both legs, both eyes or any two (2) thereof shall constitute permanent total disability.

There is no doubt that the claimant lost the use of his right eye and the respondents have accepted and are paying 105 weeks of permanent anatomical

impairment. It is also clear that since this is a scheduled injury that there is no need to look at wage loss factors because the claimant is restricted to the scheduled amount. Therefore, the claimant must prove he is permanently and totally disabled. In my opinion, a review of the evidence simply fails to demonstrate that the claimant is permanently and totally disabled.

The claimant has worked in farming or in factories and around heavy equipment most of his working life. The only medical report that restricts the claimant from working again restricts him from working around heavy equipment. The claimant has passed an eye examination and renewed his drivers license. Although the claimant has an eighth-grade education, he can read and write and has held a job for many years. He is receiving social security disability due to the loss of his right eye. The claimant, although he lives alone, does all his own cooking, shopping and cleaning and is able to drive a car. The claimant has no other injuries to any other parts of his body. He is not getting any medical treatment and he takes no medication whatsoever for his eye injury. The claimant testified that he has problems with depth perception and balance. However, it is undocumented via any medical report whether the claimant has any balance problems. The claimant was

questioned regarding whether or not he had been to a physician to be treated for the balance problems. He stated no.

Simply put, the claimant is able to drive a vehicle and take care of his daily needs. He has no physical problems with his backs or legs or his arms or his mind. In my opinion, the claimant simply cannot prove by a preponderance of the evidence that he is permanently and totally disabled.

Therefore, for those reasons set forth above, I must dissent from the majority's opinion finding the claimant permanently and totally disabled.

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KAREN H. MCKINNEY, Commissioner