

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 06-132542

Employee: Ray Taylor

Employer: Labor Pros

Insurer: Continental Western Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 10, 2011. The award and decision of Administrative Law Judge Emily S. Fowler, issued November 10, 2011, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 30th day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Ray Taylor

Injury No: 06-132542

Dependents: N/A

Employer: Labor Pros

Additional Party: N/A

Insurer: Continental Western Insurance Company

Hearing Date: September 21, 2011

Checked by: ESF/pd

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: On or about November 3, 2006
5. State location where accident occurred or occupational disease was contracted: Independence, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was struck in the left eye by a piece of wood that broke off a wooden block he was striking with a sledge hammer.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left eye
14. Nature and extent of any permanent disability: Thirty percent (30%) of left eye
15. Compensation paid to-date for temporary disability: None

- 16. Value necessary medical aid paid to date by employer/insurer? N/A
- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$320.00
- 19. Weekly compensation rate: \$213.33
- 20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Benefits Currently Due:

Medical Expenses

None claimed for past

Temporary Disability

None claimed for past

Permanent Partial Disability

Permanent Partial Disability 30% of left eye @ 140-week level.....\$8,959.86

Total Benefits Due: \$8,959.86

22. Ongoing Benefits

Medical Care Needed to Cure & Relieve Effects of Injury.....Indeterminate

Total Ongoing Benefits Indeterminate

Total Award..... **Indeterminate**

Said payments are due and owing as of date of this award and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a twenty-five percent (25%) lien totaling \$2,239.96 in favor of David Bony, Attorney, for necessary legal services plus expenses.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ray Taylor Injury No: 06-132542
Dependents: N/A
Employer: Labor Pros
Additional Party: N/A
Insurer: Continental Western Insurance Company
Hearing Date: September 21, 2011
Briefs Filed: October 12, 2011

On September 21, 2011, the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Mr. Ray Taylor, appeared in person and with counsel, David Bony. The employer appeared through Steven J. Quinn. The Second Injury Fund was not a party to the case. The primary issue the parties requested the Division to determine was whether Mr. Taylor sustained any disability, whether there was an ongoing need for medical treatment related to the injury, whether the employee should have to reimburse the employer for a medical cancellation fee, and whether the employee was entitled to a 15% enhancement of his award under 287.120.4. For the reasons noted below, I find that Mr. Taylor sustained a compensable accident on or about November 3, 2006, and that his disability is thirty percent (30%) of the left eye.

STIPULATIONS

The parties stipulated that:

1. On or about November 3, 2006 (“the injury date”), Labor Pros was an employer working subject to Missouri’s Workers’ Compensation law with its liability fully insured by Western Continental Insurance Co.;
2. Mr. Taylor was its employee working subject to the law in Independence, Jackson County, Missouri; and
3. Mr. Taylor notified Labor Pros of his alleged injury and filed his claim within the time allowed by law.

ISSUES

The parties requested the Division to determine:

1. What is the nature and extent of Mr. Taylor's disability arising from the November 3, 2006 work accident?
2. Is Mr. Taylor entitled to future medical treatment?
3. Should Mr. Taylor be required to reimburse the respondent for a cancellation fee of \$550 for a medical examination?
4. Is Mr. Taylor entitled to a 15% enhancement of any award under 287.120.4?

FINDINGS

Mr. Taylor testified on his own behalf and presented the following exhibits, all of which were admitted into evidence:

- Exhibit A – Claim for Compensation
- Exhibit B – Letter from Division of Workers' Compensation – June 13, 2007
- Exhibit C – Letter from Division of Workers' Compensation – July 20, 2007
- Exhibit D – Dr. Becker report, redacted for percentage of disability (admitted over objection of respondent that evidence was tampered, i.e. redaction)
- Exhibit E – Report of Injury
- Exhibit F - Certified Medical record of Truman Medical Center – Hospital Hill

Although the employer did not call any witnesses, it did present the following exhibits, all of which were admitted into evidence:

- Exhibit 1 – Rating Report, Dr. Rolfe Becker, with Physician's Report on Eye Injuries, January 31, 2011
- Exhibit 2 – Certified Medical record of Truman Medical Center – Hospital Hill
- Exhibit 3 – 60-day Submission of Dr. Becker's Medical Report from David Bony with cover letter of June 6, 2011
- Exhibit 4 – 60-day Submission of Dr. Becker's Medical Report from Steven J. Quinn with cover letter dated April 25, 2011

Based on the above exhibits and the testimony of Mr. Taylor, I make the following findings.

Mr. Taylor is a 48-year old male, born on February 21, 1963.

On or about November 3, 2006, Mr. Taylor was working in Independence, Jackson County, Missouri for Labor Pros. In the course and scope of his employment, Mr. Taylor was

using a sledge hammer on wood, and a piece of wood broke off and struck him in the left eye. He did not sustain injury to any part of his body other than the left eye in this work accident.

The injury was timely reported to Labor Pros. The claimant was having problems with his left eye, and on November 3, 2006, he presented to the emergency room of Truman Medical Center with complaints of left eye pain and watering. He was transferred to the ophthalmology department, where an eye examination was performed. The exam notes from that visit describe subjective complaints of photophobia, swelling, pain and tearing, with some vision blurriness. Upon completion of the eye exam, the Truman doctor prescribed Mr. Taylor medication.

The next medical visit recorded in the Truman records occurred on July 9, 2007. At that time, Mr. Taylor presented with complaints of pain/ache, redness, tearing, and flashes but no floaters in the left eye. He was diagnosed at that time with vitreous prolapse and pigment present in the vitreous. He was recommended for follow up in one year and advised to use eye protection when working.

Nearly four years after the original injury, Mr. Taylor was seen for the first of two examinations by Dr. Rolfe Becker, the only medical opinion in the case regarding Mr. Taylor's degree of disability. Doctor Becker examined Mr. Taylor on August 31, 2010 and November 22, 2010. He completed the Physician's Report on Eye Injuries as outlined in 8 CSR 50-5.020, the regulation promulgated by Division of Workers' Compensation to govern the medical evaluation of eye injuries.

Dr. Becker opined in his report of January 31, 2011 that Mr. Taylor had a 30% disability based upon a loss of visual efficiency. He noted that disability is based on 1) central visual acuity, 2) field of vision, and 3) muscle function. The doctor noted the claimant's left eye had 20/40 uncorrected vision but corrected to 20/20 with minimal myopic correction, within a normal physiologic variation not due to trauma. He noted the field of vision and muscle function were normal. The doctor did find abnormal functioning of the left pupil and a painful photophobic eye, the basis of the 30% loss of visual efficiency.

Mr. Taylor testified that pain comes and goes in his left eye. He stated that he has trouble reading and the condition is not improving. He testified that his vision went from 20/20 to 20/40 in the left eye. The eye exams from Truman Medical Center note initial eye examinations of 20/20 in the right and 20/50 in the left on November 3, 2006. The July 2007 exam showed 20/25 in right eye and 20/30 in left. Doctor Becker's uncorrected exam showed 20/30 on right eye and 20/40 on left. I do note that Dr. Becker's report indicates correction to 20/20 vision "with correction only for natural presbyopia and other conditions clearly not the result of injury."

Mr. Taylor testified that he does not wear contacts or eyeglasses. He testified that he does not wear sunglasses on a regular basis, and he was not wearing sunglasses or otherwise demonstrating or testifying to any photophobia during the hearing. Mr. Taylor testified he is not using eye drops.

RULINGS

I will begin with questions three and four, regarding the cancellation fee and the alleged failure to provide safety glasses, as these issues require little explication. First, I find that Mr. Taylor is not required to reimburse the respondent for the medical exam cancellation fee. No evidence was presented regarding the cost of that cancellation fee, and, as such, the inquiry need not go further.

I find that the claimant is not entitled to an increase of 15% due to the employer's alleged failure to provide safety glasses. Mr. Taylor did not plead or assert any statutory violation in the initial claim for compensation and did not amend the pleading to ever make this assertion, which was introduced for the first time on the date of final hearing. Over the respondent's objection, I did allow Mr. Taylor's attorney to present testimony on this new issue. The only evidence adduced was Mr. Taylor's own testimony that the employer did not provide him with safety glasses on the date of injury.

Missouri workers' compensation law provides that "[w]here the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation...provided for under this chapter shall be increased by fifteen percent." RSMO 287.120.4.

"To be entitled to the fifteen percent increase under section 287.120.4, a claimant must demonstrate the existence of the statute or order, its violation, and a causal connection between the violation and the compensated injury." *Akers v. Warson Garden Apts.*, 961 S.W.2d 50, 53 (Mo. Banc 1998).

The analysis need not progress past the first prong of the three-pronged test that must be satisfied to result in an award enhancement under 287.120.4. There was not a scintilla of evidence demonstrating the existence of any statute relating to the provision of safety glasses. As such, Mr. Taylor fails in his burden of proof related to this issue.

That brings us to the inquiry of what disability resulted from Mr. Taylor's November 3, 2006 work injury. The claimant argues that because he asserted a 75% disability of the left eye in the claim for compensation, which was not timely answered, he should be awarded 75% disability. With regard to the assessment of disability, I find that nature and extent of disability should not be treated as an admission and that the claimant has suffered a 30% disability to the left eye as a result of this work injury.

The regulations which govern the filing of a claim and answer are located in the Rules of the Department of Labor and Industrial Relations, Division 50-Division of Workers' Compensation, Chapter 2-Procedure. 8 C.S.R. 50-2.010(8) provides that upon receipt of a claim for compensation, the division shall forward a copy to the employer and/or insurer and within 30 days of the date of the division's acknowledgment of the claim, the employer and/or insurer shall file an answer to the claim for compensation. 8 CSR 50-2.010(8) states:

B) Unless the Answer to Claim for Compensation is filed within thirty (30) days from the date the division acknowledges receipt of the claim or any extension previously granted, *the statements of fact* in the Claim for Compensation shall be deemed admitted for any further proceedings. [Emphasis added.]

The Missouri Court of Appeals, Western District has addressed in part what constitutes a statement of fact in *Lumbard-Bock v. Winchell's Donut Shop*, 939 S.W.2d 456 (Mo.App. W.D. 1996). In *Lumbard-Bock*, the claimant filed a claim alleging that she injured her back while replacing a cola dispenser at Winchell's. In the portion of the claim asking how the injury occurred, she indicated "While employee was lifting a coke container at work, she felt something pop in her back necessitating disc surgery." *Lumbard-Bock*, 939 S.W.2d at 457. The claim was filed but Winchell's did not file an answer until almost three years later. At the final hearing, Winchell's raised the defense that the claimant did not provide timely notice of her injury. A main factual issue in *Lumbard-Bock* was whether the claimant was injured at home when lifting her purse, or whether she was injured at work.

The ALJ in *Lumbard-Bock* ruled that although the Answer was not timely filed, he was free to determine legal issues, including whether the claimant's injury arose out of and in the course of her employment. After reviewing the evidence, he found that claimant was not injured on the job and he denied compensation. The Commission affirmed and the case was appealed. The Court of Appeals ruled that if the employer failed to timely file an answer, it was deemed to have admitted the *facts* stated in Lombard-Bock's claim, including her statement of fact regarding how the injury occurred – that she felt something pop in her back while lifting a cola container at work – and her statement of fact, that this pop necessitated the disc surgery. *Lumbard-Bock* 939 S.W.2d at 458. The Court ruled that in light of these admissions, the Commission was bound by law to assume that the claimed work accident occurred and was *at least partially* responsible for her back injury. *Lumbard-Bock*, 939 S.W.2d at 458, 459. Thus, the case was remanded to the Commission for a determination as to what percentage of her disability was attributable to the admitted work accident taking into account evidence of her prior injury at home. Note that despite the allegation that all of claimant's back condition arose from the on the job injury, the Court of Appeals did not accept or assign a percentage of disability, but rather remanded for evaluation of the disability arising from the on the job injury.

It is important to note that the court in *Lumbard-Bock* held that the failure to file a timely answer cannot result in the admission of legal conclusions contained in the pleading.

Where, as here, an employer fails to timely file an answer to a claim, the Division's regulations specifically provide that "the statements in the claim for compensation shall be taken as admitted." {Citation omitted.} Prior cases have applied this regulation and held the statements of fact in the claim, such as statements concerning the fact of injury, will be deemed admitted where no timely answer has been filed. {Citation omitted} Of course, failure to file a timely answer cannot result in admission of legal conclusions contained in the pleading.

Lumbard-Bock, 939 S.W.2d at 457 – 58.

The Eastern District addressed a similar issue in *Jackson v. Midwest Youngstown Industries*, 849 S.W. 2d 709 (Mo.App.E.D. 1993) In *Jackson* the claimant was a salesperson who was injured while at the post office picking up a personal package and mailing a sympathy card to a prospective customer. As she was returning to her car, she fell and injured her right knee. A claim was filed, but the employer filed a late answer. The Commission denied benefits to the claimant on the grounds that her injuries did not arise out of and in the course of employment. On appeal, the claimant argued that the Commission acted in excess of its authority by adjudicating the issue whether the claimant's injuries arose out of and in the course of her employment because the employer's answer was not timely filed. The claimant argued that her allegation that her injuries arose out of and in the course of her employment must be taken as admitted pursuant to 8 C.S.R. 50-2.010(12) and (13).

The court in *Jackson* cited *Hendricks v. Motor Freight Corp.*, 570 S.W.2d 702 (Mo.App. 1978) which held that an employer's failure to file an answer within the time permitted resulted in the admission of "facts of the accident" pursuant to 8 C.S.R. 50-2.012(13). *Hendricks*, 570 S.W.2d at 707. The court also noted that whether an injury arises out of and in the course of employment is ultimately a question of law. *Jackson*, 849 S.W.2d at 711; *McClain v. Welsh Co.*, 748 S.W.2d 720, 724 (Mo.App. 1988). The court in *Jackson* held that the provision in 8 C.S.R. 50-2.010(13) which says "statements" in a claim shall be admitted for failure to timely file an answer does not include an admission of the legal question whether claimant's injury arose out of or in the course of claimant's employment. *Jackson*, 849 S.W.2d at 711. As such, even though the employer failed to timely file its answer, the Commission should still determine whether claimant's injuries arose out of or in the course of employment. *Jackson*, 849 S.W.2d at 711.

Both the Eastern and Western Districts agree that a late answer does not preclude an employer from contesting legal conclusions. "Whether an accident and the consequent injury arose out of and in the course of employment is ultimately a question of law." *Garrett v. Industrial Commission*, 600 S.W.2d 516, 519 (Mo.App.1980).

Mr. Taylor contends that because Labor Pros filed its Answer late, the employer is bound by the allegation that claimant has sustained 75% permanent partial disability ("PPD") to his eye. This assertion is incorrect. In the form WC-21 Claim for Compensation, claimant stated that the injury occurred as follows:

While in the course and scope of his employment, claimant was struck in the left eye by a piece of wood that broke off of a wooden block he was striking with a sledge hammer.

Claimant alleged that the accident occurred on November 4, 2006 in Independence, Jackson County, Missouri. In Box 7, the Claim for Compensation form requests that an employee list the body part(s) injured. The claimant alleged as follows: "left eye and seventy-five percent (75%) permanent partial disability to the left eye." These allegations are insufficient to mandate a finding of 75% PPD of the eye as a result of the work injury.

Such an allegation by claimant is really no different than an allegation of damages in a civil pleading. If the defendant fails to timely file an answer, liability is admitted but plaintiff

must still prove up damages. The mere allegation of damage in a petition is not enough to support a judgment.

In *Ward v. Mid-America Fittings and State Treasurer*, 974 S.W.2d 586 (Mo. W.D. 1998), the claimant averred in her claim for compensation "Claimant is temporarily totally disabled and seeks benefits, past and future pursuant [sic] 287.160 and 287.170 R.S.Mo. Claimant permanently and totally disabled. Claimant's chair rolled out from under [sic] while it was on a plastic chair protector and claimant struck her left posterior skull." The employer filed an answer outside the time allowed under 8 CSR 50-2.010. The commission denied the application for benefits, finding the claimant's testimony that she fell at work not credible. The Court held that the Commission was obligated, based upon the respondent's untimely answer, to deem admitted the fact that the claimant fell at work. The Court remanded the case to the commission "to consider the issue of permanent partial disability *which has not been adjudicated.*" [emphasis added]. *Ward*, 974 S.W.2d at 588. If the claimant's assertion of permanent total disability were deemed admitted, there would be no need for remand. The clear implication is that even though the fact of a work accident was admitted, the legal conclusion determining any resultant disability from the work accident, as defined under the statute, remained an issue requiring a legal determination by the ALJ/commission.

In *Lammert v. Vess Beverages*, 968 S.W.2d 720 (Mo.App. E.D. 1998) the claimant on appeal argued that the Commission exceeded its powers in finding that he failed to prove a medical causal relationship between his arthritis and his work conditions. He argued that the accident and the causal relationship were admitted because the employer failed to file its answer timely.

In Lammert's claim for compensation, he alleged: "Working as a soda truck driver for thirty three years and both knees sustained occupational disease from the repeated trauma of jumping off the trucks." The *Lammert* court found that the admission went only to the facts alleged; the court found that despite the late Answer there was no admission that claimant had suffered arthritis as a result of jumping off trucks, that arthritis was an occupational disease, that claimant suffered a "compensable" occupational disease or that the work was a substantial factor in causing the arthritis. Therefore, the Commission was free to resolve the issue of whether arthritis was an occupational disease and whether it was compensable.

Similarly in this case, the claimant has merely stated his left eye was injured as a result of a piece of wood striking him. He has not alleged a diagnosis, he has not alleged that the permanency is as a result of that diagnosis or even that all of the permanency alleged is attributable to the accident. Further, he has made no allegation that the work injury was "the prevailing factor" (as required by Section 287.020.2 &3) in causing any left eye injury and resulting permanency.

Claimant's argument that the Employer's "admission" of disability means that I am prohibited from making my own conclusion regarding permanency is without merit. Assuming for purposes of argument only that the Employer's late answer is tantamount to an admission or stipulation, the ALJ still may rule otherwise. In *Bull v. Excel Corp.*, 985 S.W.2d 411 (Mo.App. W.D. 1999), the claimant alleged that she sustained bilateral carpal tunnel syndrome as a result of her exposure to repetitive trauma while working for Excel. At the Final Hearing, the parties

stipulated to the date of injury. The A.L.J.'s award of permanent partial disability against Excel was affirmed by the Commission, which found a different date of injury than that stipulated by the parties. The employer challenged the Commission's refusal to enforce the stipulation.

The *Bull* Court noted that while stipulations of facts are generally binding in Missouri and courts are bound to enforce them, stipulations are to be viewed with an eye toward what they were designed to accomplish. *Id.* at 415. The Court determined that even though the stipulation as to date of injury was not factually or legally determinative on the issue of liability, the Commission was not bound by the stipulation. Noting that "[s]tipulations may also be avoided when their enforcement would work a manifest injustice," the Court determined that there was no basis for enforcing a stipulation "which is contrary to all the record facts." *Id.* at 418. The court held that "[i]t was within the authority of the Commission to refuse to allow" the claimant to stipulate against her own interests. *Id.*

As in the *Bull* case, the alleged admission of permanency is "clearly contrary to the actual facts" and therefore "would result in a manifest injustice" occurring in this case if I am bound by such an admission.

Further, the Claim for Compensation does not even ask for a percentage of disability. Claimant's allegation that he has 75% PPD to the left eye is nonresponsive to the question asked in Box 7, which asks only for "Part(s) of body injured." Therefore any allegation of permanency is inappropriate and outside the scope of the Claim for Compensation.

To award Mr. Taylor 75% disability of the left eye based upon a finding that nature and extent has been admitted would create an unreasonable result. Workers' compensation is statutory. *Elrod v. Treasurer of Mo.*, 138 S.W.3d 714 (Mo. 2004). This court "uses rules of statutory construction that subserve rather than subvert legislative intent." *Id.* at 716. This Court "will not construe the statute so as to work unreasonable, oppressive, or absurd results." *Id.* To construe the law to mean that the claimant can simply allege a percentage of disability without any proof in his Claim for Compensation and which allegation binds both the employer and the A.L.J. would create an unreasonable result. Under this theory, an employee could injure the toenail of a single toe or lose one tooth and allege an outrageous percentage of resulting disability to the body as a whole without any basis in law or fact. The allegation would bind everyone but him, and he would not have to provide any evidence in support of the alleged disability. Such a construction would encourage a claimant to allege the highest degree of disability possible in the hope that the employer does not file its Answer on time and the claimant would receive a windfall. This would create an "unreasonable" and "absurd" result which would promote bad faith claims.

Disability is a legal construct determined by medical opinions operating within the auspices and parameters delineated by the legislature and the Division of Workers' Compensation. The division has promulgated regulation 8 CSR 50-5.020 for evaluating visual disability. This rule has been converted to a specific "Physician's Report on Eye Injuries," form WC-241 (02-08) AI.

Moreover, the legislature has set forth a specific requirement for medical evidence of permanent partial disability, to wit, "Permanent partial disability or permanent total disability

shall be demonstrated and certified by a physician. Medical opinions addressing compensability and disability shall be stated within a reasonable degree of medical certainty.” RSMO 287.190.6 (2). It is permissible for the court to assign disability based only upon the claimant’s testimony where the injury falls within the realm of lay understanding. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697, 704 (Mo. App. 1973). In cases where there is surgery required, a “highly scientific technique for diagnoses,” or multiple injuries to the same area, an injury is more likely to be outside the realm of lay understanding. *Bock v. City of Columbia*, 274 S.W.3d 555, 561 (Mo. W.D. 2008). Whether a particular matter is beyond lay understanding is a question of law. *Id.* at 562. I find that here, the complexity of the medical examination set forth by the Division of Workers’ Compensation for medical evaluation of eye injuries demonstrates a requirement beyond that of lay understanding. If this were a case where the claimant’s eye was completely destroyed in the accident, I might come to a different conclusion. Where, as here, the claimant suffered a disability to his eye that is clearly not total in nature, I find conclusions regarding the claimant’s ultimate disability under the Act is a matter that requires medical testimony due to its complexity.

Here, the claimant is asking this court to treat as an admitted fact the claimant’s bald assertion of 75% disability, a legal conclusion that was not even solicited in the claim for compensation. It defies common sense and settled law to believe that a claimant can willy-nilly put every factual allegation and ultimate conclusion of law including accident, compensability, temporary benefits and final percentage of disability into a claim for compensation and have it all treated as binding on everyone except the claimant. Taken to its logical conclusion, this policy would conceivably have every splinter alleged as a permanent total disability - and employers and courts would be bound by the claimant’s own legal conclusion about their disability.

Because the answer was late, the employer cannot dispute the fact that “claimant was struck in the left eye by a piece of wood that broke off of a wooden block he was striking with a sledge hammer.” They cannot dispute that the accident occurred in Independence, Missouri on or about November 3, 2006. The ultimate legal conclusion of the percentage of disability is the exclusive determination of the ALJ, using the guidance set forth under the statute and regulations.

There is only one medical report that complies with the statutory and regulatory requirements for a legal finding of permanent partial disability – the report of Dr. Rolfe Becker. Doctor Becker completed the Physician’s Report on Eye Injuries, resulting in the opinion that the claimant has sustained a 30% loss of visual efficiency based upon the photophobia and pupil dysfunction in the left eye. I find Dr. Becker’s evaluation of thirty percent of the left eye to be the appropriate percentage of disability under the statute based upon all the evidence in the case.

I find that claimant suffers a 30% permanent partial disability to the left eye and order Labor Pros to provide Mr. Taylor with forty-two (42) weeks permanent partial disability benefits for permanent disability compensation totaling \$8,959.86.

The last issue to be determined is regarding whether future medical treatment is required. Again the only evidence available to the Court regarding the necessity of future medical care lies in Dr. Becker’s report wherein he states, “Future medical follow up and care is definitely required, not only for the chronic inflammation, but also for the variable eye pressure which may

lead to optic nerve damage and vision loss.” There being no evidence to the contrary this Court finds the employer shall provide 44such future medical care as may reasonably be required to cure or relieve claimant of the effects of his eye injury of November 4, 2006 as determined by Dr. Becker in his aforementioned report.

Claimant’s attorney requested a fee equal to 25 percent of all amounts awarded. I find that such request is fair and reasonable and order a lien attached to this award for \$2,239.96 until paid in full.

Made by: _____

Emily S. Fowler
Administrative Law Judge
Division of Workers' Compensation