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Workmen's Compensation -- Eye Injuries and Loss of Vision

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power to lease, the court found that the issue that trustees may not execute leases extending beyond the duration of the trust without express authority was not necessarily raised. In view of these two decisions, it appears that a trustee, with only implied authority to lease, may validly execute leases which will not extend beyond the probable duration of the trust. But, where the lease will extend beyond the probable life of the trust, the excess will not bind the remainderman if the trustee failed to secure advance court approval. If the trustee makes application to the court for its approval in advance, it appears that he may be authorized to execute such lease as is absolutely necessary to preserve the trust. However, if the North Carolina Court should be consulted in a case similar on its facts to the principal case, on the basis of the two cases considered above, it is doubtful if it would approve such a lease.

CHARLES J. NOOE

Workmen's Compensation—Eye Injuries and Loss of Vision

The amount of compensation awarded for eye injuries is considerable although such injuries account for a very small percentage of the Workmen's Compensation cases. Earning power is often dependent upon visual acuity and an employee deserves high compensation for the loss or impairment of his sight. In New York it has been estimated that eye injuries constitute approximately three per cent of all industrial injuries but the average cost for eye injuries is about twice the average for other injuries.[1] In North Carolina during the period July 1, 1954, to June 30, 1955, there were 137 cases involving eye injuries closed by the Industrial Commission and the amount of compensation was $354,975.00.[2]

Loss of vision is compensable under all the Workmen's Compensation statutes. A specified sum for loss of an eye is granted and total loss of vision is usually compensated for as loss of an eye. Under the North Carolina statute an employee suffering an eye injury resulting in total loss of vision is granted sixty per cent of his average weekly wages during one hundred and twenty weeks.[3]

Partial loss is compensated in such proportion as the partial loss bears to the total loss and an eighty-five per cent, or more, loss is deemed "industrial blindness" and compensated as total loss of vision.[4]

[1] Davidson, *The State Labor Department Ophthalmologist,* 8 INDUSTRIAL MEDICINE, Number 4, 153.

[2] Letter from Mr. R. F. Thomas, Deputy Commissioner, North Carolina Industrial Commission, to Herbert L. Toms, Jr., January 22, 1957.

[3] N. C. GEN. STAT. § 97-31(q).

[4] N. C. GEN. STAT. § 97-31(t): "Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye or for partial loss of hearing shall be such proportion of

Throughout the country there has been considerable conflict in court decisions as to what method should be used in determining loss of vision.[5] Granting that a correcting lens will improve certain types of defective vision, the question has arisen whether to use corrected visual acuity or uncorrected visual acuity, *i.e.*, that acuity a person has with his naked eye unaided by a corrective lens.

The North Carolina statute is silent as to which method the Industrial Commission is to use. However, from the beginning the Commission has determined the extent of loss of vision on the basis of uncorrected vision, before and after the injury, and at the same time has required the employer to furnish glasses as part of the treatment. In 1938 the North Carolina Supreme Court approved this method of determination in *Schrum v. Catawba Upholstering Co.*[6] for those cases in which there was *not* a complete loss of vision. However, the Court disapproved the method where there was total loss of vision, and held that the extent of loss should be based on corrected vision before the accident. The employee in this case had visual acuity of 20/20 (100 per cent visual efficiency) with glasses and 20/40 (84.6 per cent visual efficiency) without glasses before the accident in which he suffered a complete loss of vision. The Court held that he was entitled to compensation for 100 per cent loss, rather than 83.6 per cent loss. It is submitted that the decision in this case was correct inasmuch as an employee wearing glasses and suffering a complete loss of vision has been injured to the same extent as an employee having 20/20 visual acuity without glasses before such an accident.

However, conflicting opinions exist as to the method to be used when vision is not completely destroyed but only impaired in such a manner that a correcting lens will afford good visual acuity. A number of courts have adopted the "corrected" rule which measures vision with glasses both before and after the accident.[7] In North Carolina under the method approved in the *Shrum* case, an employee with uncorrected vision of 20/20 before the accident and 20/230 after the accident is deemed to have suffered a total loss of vision without regard to the fact that his

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the payments above provided for total loss as such partial loss bears to total loss, except that in cases where there is eighty-five per centum, or more, loss of vision in an eye, this shall be deemed 'industrial blindness' and compensated as for total loss of vision of such eye."

[5] Annot., 8 A. L. R. 1330 (1920); 24 A. L. R. 1469 (1923); 73 A. L. R. 716 (1931); 99 A. L. R. 1507 (1935); 142 A. L. R. 822 (1943).

[6] 214 N. C. 353, 199 S. E. 385 (1938) (dictum).

[7] Washington Terminal Co. v. Hoage, 65 App. D. C. 33, 79 F. 2d 158 (1935); Lambert v. Industrial Commission, 411 Ill. 593, 104 N. E. 2d 783 (1952); Powers v. Motor Wheel Corp., 252 Mich. 639, 234 N. W. 122 (1930); McNamara v. McHarg-Barton Co., 200 App. Div. 188, 192 N. Y. S. 743 (1922); Roveran v. Franklinshire Worsted Mills, 124 Pa. Super, 119, 188 Atl. 78 (1936), Traveler's Insurance Co. v. Richmond, 291 S. W. 1085 (Tex. Civ. App. 1927); Keltz v. General and Fruit Products, 34 Hawaii 317 (1937).

vision might be improved with glasses, or even restored to 20/20 visual acuity. This employee is granted the same compensation as a person receiving an injury resulting in permanent loss of vision who cannot be aided by glasses. Where glasses will restore visual acuity, has the employee really suffered a total loss of vision? He is far from "industrially blind" with glasses and yet is paid for total loss of vision. This employee may deserve some compensation for having to wear glasses, if he did not wear glasses before the accident, but he does not deserve as much compensation as the employee who is "industrially blind" and cannot be aided by glasses.

The preceding example is rather extreme as such a person would probably not achieve binocular vision with a heavy lens over one eye and therefore could not really use his corrected vision. A more frequent situation is where an employee with 20/20 visual acuity suffers an eye injury not resulting in total loss of vision. The probability that his sight can be corrected to 20/20 with glasses is not considered in our cases and he is paid for 20 per cent loss of vision. The practical effect of this problem is even clearer when it is considered that many people with only a 20 per cent loss of vision do not wear glasses except for driving, reading, or upon some job that requires a high degree of vision. It is estimated that between 80 per cent and 90 per cent of the adult working population have subnormal vision without the use of corrective lenses and yet such persons are compensated upon the basis of their uncorrected vision after the accident. It seems doubtful that an employee suffering an impairment of vision which can be corrected with glasses deserves the same compensation as the employee who suffers a "real" loss of vision that cannot be corrected. One of the medical authorities in this field has said: "It is obviously an illogical and unfair procedure to make visual tests for compensation without the use of corrective lenses."[8]

Another frequent situation in eye injury cases in where the employee has less than 100 per cent visual efficiency before an accident but by the use of glasses has corrected vision of 20/20. For example, an employee has 20/70 vision correctible to 20/20 prior to an eye injury and following the injury his vision is 20/100 and cannot be aided by lenses. This individual will be compensated for 15.1 per cent loss under the North Carolina rule of using uncorrected vision both before and after the accident. However, he would be compensated for a 51.1 per cent loss by using the rule of best corrected vision both before and after the accident. If his vision could be corrected with glasses, then he would receive no compensation under the "corrected" rule but would be compensated for 15.1 per cent loss under the "uncorrected" rule. At least one writer[9]

[8] SNELL, MEDICOLEGAL OPHTHALMOLOGY 73 (1940).
[9] Comment, 28 NOTRE DAME LAW. 152, 154 (1952).

has suggested that neither rule is perfect but it is submitted that the "corrected" rule gives better results for the employer and the employee.

As in North Carolina, many state statutes are silent on whether to use corrected or uncorrected vision in computing loss. Seven jurisdictions by court decision[10] have adopted the rule of using best corrected vision as a basis for computation and six states[11] have expressly adopted this method by statute. Two jurisdictions[12] have adopted the "corrected" rule for certain situations and rejected it for others. Ten states[13] have court decisions which approve or adopt the rule that loss of vision shall be computed without reference to whether or not glasses will correct the condition and Maryland[14] has adopted this rule by statute. In his treatise on Medicolegal Ophthalmology, Dr. Snell Criticizes the Maryland statute: "Such a provision shows a complete misunderstanding of the physical and physiological need for and the use of corrective ophthalmic lenses. It is incomprehensible that it could have ever been included in any statute."[15] Some courts state that glasses perform the same function as a brace or crutch and therefore their use should not reduce compensation for a loss. It is true that a foot brace, crutch, wig, or other artificial aids are not considered in computing compensation but Dr. Snell points out that there is no logical analogy between crutches and glasses. A crutch is an artificial support made necessary by some injury or disease. On the other hand all persons with normal eyes will require glasses for close work sometime between the ages of 40 and 50 and no person can escape these normal changes which ultimately necessitate the use of corrective lenses.[16]

In 1940 the House of Delegates of the American Medical Association adopted a report submitted by Drs. Snell, Cradle, and Cowan entitled

[10] Cases cited note 7 *supra.*

[11] ARK. STATS. (1947, § 81-1313 (c) (18)); CONN. GEN. STATS. 1949, § 7430 (f); Sec. 13 of c. 31, REV. STAT. MAINE, 1954; MASS. ANN. LAWS c. 152, § 36 (b) (1949); GEN. LAWS R. I. 1938, c. 300, art. II § 12 (c); BURNS' ANN. IND. STATS., 1952, § 40: 1303 (3), but see Shaw v. Rosenthal, 112 In. A. 468, 42 N. E. 2d 383 (1942) in which the court decided that there were two classes of impairment and vision with glasses would only be used in one class.

[12] Kelley v. Prouty, 54 Idaho 225, 30 P. 2d 769 (1934); Foster v. Schmahl, 197 Minn. 602, 268 N. W. 631 (1936).

[13] Globe Cotton Oil Mills v. Industrial Accident Commission, 64 Calif. App. 307, 221 Pac. 658 (1923); Great American Indemnity Co. v. Industrial Commission, 114 Col. 91, 162 P. 2d 413 (1945); Alessandro Petrillo Co. v. Marioni, 3 Harr 99 131 Atl. 64 (Del., 1925); Burdine's Inc. v. Green, 150 Fla. 361, 7 So. 2d 460 (1942); McCullough v. Southwestern Bell Telephone Co., 155 Kan. 629, 127 P. 2d 467 (1942); Otoe Food Products Co. v. Cruickshank, 141 Neb. 298, 3 N. W. 2d 452 (1942); Schrum v. Catawba Upholstering Co., 214 N. C. 353, 199 S. E. 385 (1938) (Dictum); Johannesen v. Union Iron Works, 97 N. J. L. 569, 117 Atl. 639 (1922); Marland Refining Co. v. Colbaugh, 110 Okl. 238, 238 Pac. 831 (1925); Pocahontas Fuel Co. v. Workmen's Compensation Appeal Board, 118 W. Va. 565, 191 S. E. 49 (1937).

[14] MD. CODE, art. 101, Section 35-3 (c) (1951).

[15] SNELL, MEDICOLEGAL OPHTHALMOLOGY 273 (1940).

[16] *Ibid.*

Standard Method of Appraising Visual Efficiency.[17] In section I of this report the term visual acuity is defined as *the best acuity obtainable with ophthalmic lenses* and in section IV of the same report the point is again emphasized: "The best central acuity obtainable with ophthalmic lenses shall be used in determining the degree of visual efficiency." Dr. Snell has said that one of the four major faults with the Workmen's Compensation statutes is a failure to comprehend the importance of, and necessity for the use of lenses to correct refractive errors.[18]

From the foregoing discussion it can be seen that the courts are split in opinion as to whether vision shall be measured with or without glasses, but that leading medical authorities, including the American Medical Association, are agreed that corrected vision should be the basis for computing compensation. Glasses are often responsible for the saving of eyes and sight of individuals in industry and they should now be considered a protective device rather than a nuisance. The proper use of glasses will increase visual efficiency and thereby aid both the employer and employee. The employer should not have to pay for a loss of vision, at least in full, when the employee can be corrected with lenses but the employer should be required to furnish lenses as part of the necessary treatment where there is a change in vision which is in any way connected with the accident.

The fairest method would be to consider the effect an injury might have on the need for corrective lenses. If the injury contributes to the need for wearing lenses, then the degree it contributes can be computed since an employee is usually already wearing glasses if he needs them or his present visual acuity is a matter of record. If this data is not on record, it certainly should be.[19] It is believed that a person with visual acuity of 20/40, or less, should wear glasses. An injury to such an individual making glasses mandatory should not be compensated. However, a person with prior visual acuity of better than 20/40 deserves some compensation for having to wear glasses if such is necessitated by an eye injury. It is suggested that the exact amount be left in the discretion of the Industrial Commission with a maximum being set by statute.

The American Medical Association recommends that "industrial blindness" be defined as an eighty per cent, or more, loss of vision.[20] Under this definition an employee with visual acuity of 20/200, or less, would be compensated as for total loss of vision. The Model Workmen's

[17] KUHN, EYES AND INDUSTRY 330 (1950).
[18] SNELL, MEDICOLEGAL OPHTHALMOLOGY 273 (1940).
[19] *Id.* at 274. If the employer does not have this data on record he could secure it from the person who last examined the eyes of the employee. Such other sources as the Driver's License Division of the North Carolina Department of Motor Vehicles might be utilized.
[20] KUHN, EYES AND INDUSTRY 331 (1950).

Compensation Law[21] as prepared by the United States Department of Labor, the Longshoremen's and Harbor Worker's Act,[22] and several state statutes[23] have adopted this definition. One writer has recommended that 20/200 be accepted as "industrial blindness" since this visual acuity has received the endorsement of most authorities.[24] The North Carolina statute [25] defines "industrial blindness" as eighty-five per cent, or more, loss of vision which would be a visual acuity of 20/230. Very few modern visual acuity charts have a 20/230 line and all do have a 20/200 line so it would seem that the definition eighty per cent loss would be the better and would agree with the authorities in this field.

The North Carolina statute does not provide for loss of binocular single vision. The American Medical Association recommends that loss of binocular single vision be equivalent to the loss of use of one eye.[26] This recommendation is based upon the fact that an employee can often be corrected to 20/20 with a heavy lens but he will have "double vision" with such a correction as the images from the two eyes cannot be fused because of their difference in size. It is submitted that such an employee has lost the use of an eye and should be compensated therefor.

In conclusion certain recommendations are made for changes in the North Carolina statute. These recommendations are based upon statutes and court decisions from other jurisdictions as well as the opinion of some of the outstanding medical authorities in the country who have had wide experience in dealing with eye injuries and resulting visual conditions. It is believed that the employer and the employee would benefit from the following changes in the North Carolina statute:

1. The extent of vision loss and compensation for same should be determined on the basis of corrected vision, before and after the accident.
2. The definition of "industrial blindness" should be changed to eighty per cent loss of vision so a visual acuity of 20/200, or less, with glasses would be compensated as loss of an eye.
3. The statute should require binocular vision and thereby compensate an employee when the two eyes will not function together.
4. The employer should be required to replace glasses which are broken in an industrial accident.[27]

HERBERT L. TOMS, JR.

[21] MODEL WORKMEN'S COMPENSATION LAW, U. S. Department of Labor 23 (1953).
[22] 64 STAT. 1271 (1950), 33 U. S. C. § 908 (c) (16) (1952).
[23] ARK. STATS. (1947), § 81-1313 (c) (19); F. S. A. § 440.15-3 (p) (1952); N. Y. WORKMEN'S COMPENSATION LAW § 15-3 (p) (1946).
[24] SNELL, MEDICOLEGAL OPHTHALMOLOGY 201 (1940).
[25] Note 4 *supra*. [26] KUHN, EYES AND INDUSTRY 330 (1950).
[27] To implement the sugestions made above, it is recommended that:

(1) N. C. GEN. STAT. § 97-31 (t) (Supp. 1955) be amended to read as follows:

Total loss of use of a member shall be equivalent to the loss of such member. The compensation for partial loss of or for partial loss of use of a member or for partial loss of hearing shall be such proportion of the payments above provided for total loss as such partial loss bears to the total loss.

Loss of binocular single vision or an eighty per centum, or more, loss of vision in an eye shall be compensated as for loss of an eye. The compensation for partial loss of vision of an eye shall be such proportion of the payments provided in subsection (q) as such partial loss bears to the total loss. Provided; that compensation shall be computed upon the basis of vision with glasses before the accident and vision with glasses after the accident. If the employee did not require glasses before the accident but does require glasses after the accident, then such employee shall be compensated in the discretion of the Industrial Commission in an amount not to exceed twenty per centum of the average weekly wages during ten weeks.

(2) N. C. GEN. STAT. § 97-25 (Supp. 1955) be amended to include the following sentence:

The employer shall also replace eyeglasses or any part thereof that may be broken in an accident arising out of and in the course of employment.