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Workers' Compensation Alert

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The Ohio Supreme Court Takes a New Look at Loss of Vision

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Recently, the Ohio Supreme Court reassessed how loss of vision is determined when an employee's natural lens or cornea is replaced with an artificial lens or a cornea transplant. Generally, under section 4123.57(B) of the Ohio Revised Code, if an injured worker loses sight in an eye, that worker is entitled to 125 weeks of compensation. If the injured worker has permanent partial loss of sight in an eye, the compensation is a portion of the 125 weeks corresponding to the percentage of vision actually lost. An exception, however, is that no compensation will be awarded if the employee suffered less than 25% loss of uncorrected vision. Uncorrected vision means that corrective measures like contacts and glasses are not included in determining the total vision loss.

In the past, the Ohio Supreme Court has held that corneal transplants and artificial lens implants are corrective and not to be considered in determining the percentage of vision actually lost. As a result, attorneys for injured workers have argued that any time an injured worker has to have a corneal transplant or an artificial lens implant, the worker is automatically entitled to total loss of vision for the affected eye.

This past June, the Ohio Supreme Court in *State ex rel. Baker v. Coast to Coast Manpower, LLC* (2011), 129 Ohio St.3d 138, rejected that argument and declined "to adopt a bright-line rule that a claimant is entitled to an award for total loss of vision ... any time the natural lens or cornea of the eye is surgically removed as a result of a workplace injury." In *Baker*, a Bureau doctor determined that an employee suffered an 8% vision loss after he was struck in the eye by a piece of metal. The employee later developed a traumatic cataract and his natural lens was replaced with an artificial lens implant. The Commission denied the employee's loss of vision claim because his loss of uncorrected vision did not meet the 25% statutory threshold.

The Ohio Supreme Court upheld the Commission's decision and held that "[t]he loss of vision is determined by the measurement of uncorrected vision following the injury, but prior to any corrective surgery such as a lens implant or cornea transplant." Because the employee's loss of vision after the injury, but before the surgery, was 8%, it did not meet the 25% loss of vision threshold required by statute.

In September, the Ohio Supreme Court applied its holding in *Baker* to similar facts. In *State ex rel. Dolgencorp, Inc. v. Industrial Commission*, 2011 Ohio 4606, an employee was assessed a 5% vision loss after she splashed bleach in her left eye. Subsequently, the employee underwent a corneal transplant. The Commission granted the employee's request for total loss of vision on the basis that her cornea was surgically removed. The Ohio Supreme Court, however, ordered the Commission to vacate its order and

to issue a new order denying compensation because the employee's vision loss did not meet the 25% statutory threshold.

Employers need to keep in mind that when an eye injury occurs, their liability under section 4123.57(B), or lack thereof, is governed by the percentage of vision actually lost as a result of the injury before any corrective procedure like a cornea transplant or artificial lens implant is performed.

If you have any questions about this or any other workers' compensation or labor and employment law issue, please contact a member of Eastman & Smith Ltd.'s Labor and Employment Law Section at 419-241-6000 or visit our website at www.eastmansmith.com.

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