



# West Virginia Workers' Compensation Law Notes

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## DISABILITY AWARD FOR “FUNCTIONAL” LOSS OF VISION DOES NOT PRECLUDE AN ADDITIONAL AWARD FOR “PHYSICAL” REMOVAL OF EYE

Kevin Goff, a police officer for the Department of Natural Resources, was injured in the course of his employment when he was struck in the eye by a briar on February 6, 2011. Unfortunately, he developed an infection in his eye and ultimately underwent the removal of his injured eye. He was fitted with a prosthetic eye, but continued to need treatment for conjunctivitis, blepharitis and other conditions related to the eye socket itself. Additionally, medical reports noted that he suffered a permanent disfigurement to the area around his eye.

Mr. Goff was seen by Keith Cox, M.D., in July of 2011 for purposes of determining the amount of impairment he suffered from the loss of his eye. Dr. Cox rated the impairment at twenty-four percent, according to the Guides to the Evaluation of Permanent Impairment, 4th Edition. Dr. Cox increased that amount to thirty-three percent, based on the statutory award contained in W.Va. Code §23-5-6(f). The statute mandates that “the total and irrevocable loss of sight in one eye” is thirty-three percent.

Mr. Goff was thus awarded thirty-three percent permanent partial disability. Nothing was awarded for the permanent impairment caused by his continuing problems with infections and related conditions to his right eye socket, nor for the permanent disfigurement caused by his eye injury.

An appeal was filed from the Claims Administrator’s award. The Office of Judges affirmed, noting that the thirty-three percent PPD award for the loss of vision of the eye is a total and complete grant of impairment for the eye. The OOJ was of the opinion that a grant of any additional impairment for

disfigurement, chronic blepharitis and conjunctivitis would compensate the claimant twice for the same loss. The Board affirmed the denial of additional permanent total disability benefits.

Mr. Goff then sought review by the Supreme Court of Appeals. The Court noted that the percentage of disability for the full functional loss of vision in an eye is governed by W.Va. Code §23-4-6(f), which provides as follows:

If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the percentage of disability specified in this table:

....

The total and irrevocable *loss of the sight* of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one or both eyes, the percentages of disability shall be determined by the commission, using as a basis the total loss of one eye.

The Court specifically noted that the Legislature limited its statutory wording to the *functional* loss of sight in an eye, not the resulting corollary permanent effects results from the actual *physical* loss of an eye. The Legislature could have gone further had it wanted to include the permanent effects resulting from a physical loss of an eye just as it did within the statute with respect to the physical severance of limbs and other body parts. The Legislature chose not to do so, and the Court declined to write into the statute something which the Legislature did not. Thus, Mr. Goff was not precluded from seeking an additional percent of disability for permanent impairment from his eye injury beyond

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that of total loss of vision in his eye. He may seek a permanent disability award for the *physical* harm caused by the work-related loss of his eye over and beyond the *functional* loss of vision.

The Court noted that its holding is not contrary to its holding in *Linville v. State Compensation Commissioner*, 112 W.Va. 522, 165 S.E. 803 (1932). In *Linville*, the claimant had received a disability award for his foot equal to the statutory award for the total physical loss of the foot. The applicable statutory section related to the total physical loss of a limb, which includes all functional uses related to the loss of that limb. Thus, the claimant could not recover any greater award than for the total physical loss of the limb. Here, the Legislature focused on something less than a total physical loss of the eye, limiting the statute to the “loss of vision” or

“sight” of the eye rather than to the loss of the physical eye itself.

Giving effect to the plain meaning of the statute, the Court held that the statutory percentage disability award contained within W.Va. Code §23-5-6(f) for the total functional loss of vision of an eye caused by an occupational injury does not preclude an additional award, if appropriate, for permanent disfiguring effects and other permanent disabling effects caused by the physical removal of the eye itself.

For a complete reading of the Court’s opinion, please see *Kevin S. Goff v. West Virginia Office of Insurance Commissioner and West Virginia Department of Natural Resources*, No. 14-0977, Filed November 18, 2015.

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