THE STATE EX REL. HARRIS, APPELLANT, *v.* INDUSTRIAL COMMISSION ET AL., APPELLEES.

[Cite as *State ex rel. Harris v. Indus. Comm.*, 172 Ohio St.3d 672, 2023-Ohio-3081.]

Workers' compensation—Scheduled loss—Some evidence exists to support Industrial Commission's decision—Judgment affirmed.

(No. 2022-1288—Submitted April 4, 2023—Decided September 5, 2023.)

APPEAL from the Court of Appeals for Franklin County, No. 21AP-60, 2022-Ohio-3149.

Per Curiam.

{¶ 1} Appellee, Industrial Commission of Ohio, denied appellant Stephen W. Harris's request for scheduled-loss compensation under R.C. 4123.57(B) for the permanent partial loss of sight of both eyes, based on the absence of a credible assessment of Harris's vision. Harris sought a writ of mandamus from the Tenth District Court of Appeals ordering the commission to reverse its decision. The Tenth District denied the writ because Harris had not sustained actual injury to his eyes. In so holding, the Tenth District relied on *State ex rel. Smith v. Indus. Comm.*, 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d 1142.

{¶ 2} On appeal, Harris argues that *Smith* is factually distinguishable from this case and that R.C. 4123.57(B) does not limit compensation for loss of sight to instances of actual injury to the eye. Because the commission did not deny compensation on this basis, we do not address these arguments on appeal. And because the commission's order is supported by some evidence, we affirm the Tenth District's judgment denying the writ.

I. BACKGROUND

{¶ 3} In June 2014, while employed as a corrections officer by appellee Southern Ohio Correctional Facility, Harris was rendered unconscious and sustained multiple injuries when an inmate attacked him. The Bureau of Workers' Compensation allowed Harris's claim for several conditions, including a closed head injury, multiple abrasions and contusions, and a rotator-cuff tear of the right shoulder.

{¶ 4} Harris soon reported headaches and blurred vision in his left eye. Neurologist Marsha Smith, M.D., examined Harris in July 2014 and diagnosed postconcussive syndrome. Dr. Smith observed no sign of damage to the optic nerves, but she assessed diminished visual acuity[1] in the left eye and homonymous hemianopsia[2] in the left visual field.

{¶ 5} Also in July 2014, Harris was examined by optometrist Robin LaValley, O.D., and ophthalmologist John Evans, M.D. Dr. Evans assessed a "subjective visual disturbance related to the left hemianopsia," with "no evidence of optic neuritis," and diagnosed "homonymous bilateral field defects visual field [sic]." Harris's uncorrected visual acuity measured 20/20-1 in the right eye and 20/25-3 in the left eye. In September 2014, Dr. Evans assessed no improvement to the left hemianopsia since July and no definite brain pathology to account for the visual-field deficit. Harris's uncorrected visual acuity measured 20/25 in both eyes.

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1. Visual acuity, which is only one component of total vision, " 'describes the ability of the eye to perceive details.' " *State ex rel. Beyer v. Autoneum N. Am.*, 157 Ohio St.3d 316, 2019-Ohio-3714, 136 N.E.3d 454, ¶ 4, quoting American Medical Association, *Guides to the Evaluation of Permanent Impairment* 280 (5th Ed.2001).

2. The Cleveland Clinic's informational page on "homonymous hemianopsia," which is included in the parties' stipulation of evidence, defines it as "a condition in which a person sees only one side—right or left—of the visual world of each eye. The condition results from a problem in brain function rather than a disorder of the eyes themselves." Cleveland Clinic, *Homonymous Hemianopsia*, https://my.clevelandclinic.org/health/diseases/15766-homonymous-hemianopsia (accessed June 21, 2023) [https://perma.cc/8JXU-H97V].

{¶ 6} At the bureau's request, ophthalmologists Stuart M. Terman, M.D., and James Ravin, M.D., reviewed Harris's files. Based on their reports, Harris's claim was allowed for the additional conditions of blurred vision left eye, postconcussion syndrome, and bilateral homonymous field deficit with left hemianopsia, bilateral eyes.

{¶ 7} Harris's uncorrected visual acuity fluctuated throughout the next few years, ranging anywhere from 20/20 to 20/300. During this time, Dr. Evans noted that Harris's visual-field deficit appeared to be neurological, presumably due to Harris's head trauma. An MRI performed in September 2017 revealed unremarkable optic nerves, optic tracts, and optic chiasm. The report stated, "No acute intracranial process or definitive etiology of [Harris's] symptoms [was] identified."

{¶ 8} The commission awarded Harris permanent-total-disability benefits based in part on the July 2019 report of ophthalmologist David G. Howard, M.D., who had examined Harris at the commission's request. Combining Harris's visual-acuity and visual-field test results, Dr. Howard reported that Harris suffered a 98 percent bilateral loss of his visual field due to the allowed conditions of his claim. Harris also submitted Dr. Howard's report in support of his request for scheduled-loss compensation, pursuant to R.C. 4123.57(B), for the permanent partial loss of sight of both eyes.[3]

{¶ 9} The bureau requested an independent evaluation by ophthalmologist Marshall Wareham, M.D., for the purpose of Harris's scheduled-loss request. In the instructions provided to Dr. Wareham, the bureau explained that "[a]n eye must have at least 25-percent loss of uncorrected vision for there to be an award" and

3. The law permits injured workers to recover both permanent-total-disability benefits and permanent partial disability in the form of scheduled-loss benefits. *See* R.C. 4123.58(E) ("Compensation payable under this section for permanent total disability is in addition to benefits payable under division (B) of section 4123.57 of the Revised Code").

that "[l]oss of uncorrected vision means the percentage of vision actually lost in the specific eye as a result of the injury or occupational disease." The bureau instructed Dr. Wareham to assess Harris's preinjury and postinjury uncorrected vision and to use the most recent bureau-approved edition of the American Medical Association ("AMA") *Guides to the Evaluation of Permanent Impairment* when determining the percentage of vision lost. The bureau also asked that Dr. Wareham evaluate Harris based on the following:

> *Per memo F4* of the industrial commission the [sic] R.C. 4123.57(B) does not permit an award for loss of vision or hearing resulting from the loss of brain functioning. To be entitled to an award for loss of vision or hearing, evidence must demonstrate an actual injury to the eyes or ears. Please review the injured worker's allowed conditions and opine if the loss of use for vision * * * is due to an actual injury to the eyes or if this is due to loss of brain functioning.

(Emphasis added.)

{¶ 10} In Memo F4, the commission provides:

> **Memo F4 | Loss of Use of Vision and/or Hearing Secondary to a Traumatic Brain Injury**
>
> R.C. 4123.57(B) does not permit an award for loss of vision or hearing resulting from the loss of brain stem functioning. To be entitled to an award for loss of vision or hearing, evidence must demonstrate an actual loss of function of the eyes or ears.
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> **NOTE**: *State ex rel. Smith v. Indus. Comm.*, 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d 1142.

Effective: 07/30/2018

(Boldface sic.) Ohio Industrial Commission, *Adjudications Before the Ohio Industrial Commission*, Section F: Scheduled Loss, at 31, available at https://www.ic.ohio.gov/about-ic/resource-library/resource-pdfs/adjudications-before-oic.pdf (accessed June 22, 2023) [https://perma.cc/8D93-D5ER].

{¶ 11} And in *Smith*, 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d 1142 (the opinion that is noted in Memo F4), we held that R.C. 4123.57(B) does not authorize compensation for a loss of brain-stem functioning that precludes a claimant from processing and understanding visual stimuli received by functioning eyes, *id.* at ¶ 13. Thus, whereas Memo F4 tracks the holding of *Smith* by using the phrases "loss of brain stem functioning" and "loss of function of the eyes," the bureau's instruction to Dr. Wareham refers to "loss of brain functioning" and "actual injury to the eyes."

{¶ 12} In his January 2020 report, Dr. Wareham described Harris's visual-field examination as follows:

> On count-fingers visual field test, [Harris] professed to be unable to count fingers in all four quadrants in each eye. On motility testing, he claimed that he was unable to follow the light by moving only his eyes because he had no peripheral vision; however when I allowed him to move his head, he was able to follow the light, and as he got towards the limits of the motion of his head, his eyes were capable of following the light even when his head was not moving, so he was actually able to follow the light even though he said he could not.

He also measured Harris's uncorrected visual acuity at 4/200 in each eye. Dr. Wareham questioned the accuracy and reliability of these results, however, due to Harris's performance during the evaluation. He therefore used Harris's July 2014 examination for the postinjury uncorrected visual acuity, which was 20/20-1 in the right eye and 20/25-3 in the left eye. And based on a 2005 examination, Dr. Wareham reported that Harris's preinjury uncorrected visual acuity was "20/20-[sic] in the right eye and 20/20 in the left eye."

{¶ 13} Dr. Wareham concluded that Harris's loss of uncorrected vision was zero percent, stating: "*As I understand from memo F4 of the Industrial Commission R.C. 4123.57(B)* [sic], *the loss of vision must be related to damage to the eyes, actual injury to the eyes, rather than loss of brain functioning.* Clearly, there was no evidence of injury to the eyes, so there is 0% loss of vision due to actual injury to the eyes." (Emphasis added.) Finally, Dr. Wareham expressed the following:

> As an additional comment, I would note that I think that it is fairly likely that [Harris's] vision is actually better now than he professes, both visual acuity and peripheral vision. It is extremely unlikely that his vision would go from 20/20 to 20/200 three years after the injury with no evidence of any change in his brain function or eye function. There is no explanation that would make sense that would show his vision suddenly changing from 20/20 to 20/200 three years after the original injury. Also, at a visit nearly a year after the 20/200 vision of August 2017 and July 2018, his vision was 20/60, so his vision seemed to be fluctuating for unexplained reasons, which could be artificial or not real.
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> [Harris] also was shown on the visual field test to have nearly extinguished peripheral vision, and he professed to be unable to count fingers in any quadrant. However, he had no difficulty

> negotiating into the exam room or down the hallways, which would be unlikely with no peripheral vision.[4] Therefore, I think it is rather unlikely [sic: likely] that he has better visual acuity that [sic: than] he appears to have, and his vision is most likely much better than that. It is also unlikely that his peripheral vision is as bad as it has measured, but once again, even if it is, it would not be due to damage or injury to the eyes. Clearly, it would be due to injury to the brain rather than injury to the eyes. Therefore, there is 0% loss of uncorrected vision due to the allowed conditions in the claim as there was no injury sustained to the eyes.

{¶ 14} The commission denied Harris's request for scheduled-loss compensation based on Dr. Wareham's report. The district hearing officer ("DHO") determined that the medical evidence failed to establish that Harris had sustained *any* loss of vision in either eye as a result of the industrial injury. The DHO also found "that the alleged loss of vision in this Injured Worker is not due to a lack of brain stem function and, therefore, Memo F4 of the Adjudications Before the Ohio Industrial Commission is not applicable." The DHO noted the inconsistencies in Harris's visual-examination history and the lack of an explanation for any vision loss and found that Dr. Wareham's examination "called into question the credibility of the alleged loss of sight." The DHO concluded, "Given the absence of a credible assessment, * * * a permanent loss of sight for either of [Harris's] eyes has not been established." The staff hearing officer affirmed without making any additional evidentiary findings, and the commission denied further administrative review.

4. Harris's wife submitted an affidavit to the commission, in which she averred that when they arrived at Dr. Wareham's office, she led Harris down the hallway with his right hand placed upon her left shoulder until they entered the examination room.

{¶ 15} Harris filed a mandamus action in the Tenth District Court of Appeals, alleging that the commission had abused its discretion and requesting an order directing the commission to reverse its decision. The Tenth District held that "R.C. 4123.57(B) does not authorize loss of use compensation when the loss of brain function is the cause of the vision loss rather than actual damage to the eye structure itself." 2022-Ohio-3149, ¶ 7. The Tenth District denied the writ, and Harris appealed.

II. ANALYSIS

A. Legal Standards

{¶ 16} In a direct appeal of a mandamus action originating in a court of appeals, we review the judgment as if the action had been originally filed here. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 164, 228 N.E.2d 631 (1967). Harris is entitled to a writ of mandamus if he shows by clear and convincing evidence that he "has a clear legal right to the requested relief, that the commission has a clear legal duty to provide it, and that there is no adequate remedy in the ordinary course of the law." *State ex rel. Zarbana Industries, Inc. v. Indus. Comm.*, 166 Ohio St.3d 216, 2021-Ohio-3669, 184 N.E.3d 81, ¶ 10. A writ of mandamus will lie when there is a legal basis to compel the commission to perform its clear legal duty under the law or when the commission has abused its discretion in carrying out its duties. *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶ 9. "When an order [of the administrative agency] is adequately explained and based on some evidence, there is no abuse of discretion and a reviewing court must not disturb the order." *State ex rel. Aaron's, Inc. v. Ohio Bur. of Workers' Comp.*, 148 Ohio St.3d 34, 2016-Ohio-5011, 68 N.E.3d 757, ¶ 18.

{¶ 17} R.C. 4123.57 sets forth scheduled rates of compensation payable per week at the statewide average weekly wage for the loss or loss of use of listed body parts and functions. Scheduled-loss compensation payable to an injured worker for

the "permanent partial loss of sight of an eye" is authorized for "the portion of one hundred twenty-five weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but, in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision." R.C. 4123.57(B). " 'Loss of uncorrected vision' means the percentage of vision actually lost as the result of the injury or occupational disease." *Id.*

{¶ 18} The "percentage of vision actually lost" is a medical determination that must be made by a physician, not by the commission. *Beyer*, 157 Ohio St.3d 316, 2019-Ohio-3714, 136 N.E.3d 454, at ¶ 12-13. " 'Vision' is not necessarily synonymous with 'visual acuity.' As we recently explained, vision has several components, including visual acuity, visual field, and ocular motility." *State ex rel. Bowman v. Indus. Comm.*, 170 Ohio St.3d 270, 2022-Ohio-233, 211 N.E.3d 1167, ¶ 14, citing *Beyer* at ¶ 4, citing the AMA *Guides to the Evaluation of Permanent Impairment*. "If the injured worker has conditions affecting aspects of vision other than visual acuity, the 'percentage of vision actually lost' must account for those factors." *Id.*

B. "Some Evidence" Supports the Commission's Order

{¶ 19} Harris maintains that actual injury to the eye structure is not required for a scheduled loss-of-sight award under R.C. 4123.57(B) and that the Tenth District's decision is inconsistent with *Smith*, 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d 1142. He further contends that the commission abused its discretion by basing its decision on a medical report that relied on the bureau's instruction to Dr. Wareham pertaining to *Smith*.

{¶ 20} However, the commission based its decision not on the absence of an injury to Harris's eyes but on "the absence of a credible assessment" of Harris's alleged loss of sight. The commission found that "the medical evidence on file fails to establish that the Injured Worker has sustained any loss of sight in either eye as

a result of this industrial injury based on the report of Marshall Wareham, M.D., dated 01/02/2020." We must therefore determine whether "some evidence" supports the commission's finding.

{¶ 21} Regarding visual acuity, Dr. Wareham reported that there was no explanation for the fluctuation in Harris's visual-examination history, as there was no evidence of any change in Harris's brain or eye functions during the relevant time. Dr. Wareham also questioned the results of the visual-field examination based on Harris's performance during the evaluation. Yet, the doctor asserted that "even if" Harris's peripheral vision "is as bad as it has measured, * * * it would not be due to damage or injury to the eyes. * * * Therefore, there is 0% loss of uncorrected vision due to the allowed conditions in the claim as there was no injury sustained to the eyes."

{¶ 22} This report is some evidence supporting the commission's determination that because of the lack of a credible assessment, Harris did not establish his claimed loss of vision in either eye due to his industrial injury. Although Harris submitted evidence supporting a contrary conclusion, it is solely within the commission's discretion to determine the appropriate weight and credibility of the evidence. *See State ex rel. LTV Steel Co. v. Indus. Comm.*, 88 Ohio St.3d 284, 287, 725 N.E.2d 639 (2000).

{¶ 23} Harris argues that if the bureau had not provided the Memo F4 instruction pertaining to *Smith*, then Dr. Wareham might have reached a different conclusion. Considering that the commission found Memo F4 inapplicable and did not base its decision on Dr. Wareham's application of the instruction, instead denying compensation based on the absence of a credible assessment of Harris's vision, we reject this argument as a basis for reversal. Our role in reviewing a mandamus action challenging a decision of the commission is limited to whether there is some evidence in the record to support the commission's stated basis for its

decision. *State ex rel. Burley v. Coil Packing, Inc.*, 31 Ohio St.3d 18, 20, 508 N.E.2d 936 (1987).

III. CONCLUSION

{¶ 24} Because some evidence exists to support the commission's decision, the commission did not abuse its discretion in denying Harris's request for scheduled-loss compensation. We therefore affirm the Tenth District's judgment denying the writ of mandamus, albeit on different grounds.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, and DETERS, JJ., concur.

BRUNNER, J., concurs in judgment only.

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