

VISION AND HEARING LOSS

- I. VISION LOSS
 - A. R.C. 4123.01(C) Injury
 - 1. Injury includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment
 - 2. Injury does not include injury or disability caused primarily by the natural deterioration of tissue, an organ or part of the body.
 - B. R.C. 4123.01(F) Occupational Disease
 - 1. A disease contracted in the course of employment
 - 2. A disease which is peculiar to employment by its causes and characteristics of its manifestations, or the conditions of the employment result in a hazard which distinguishes the character of the Claimant's employment from employment generally
 - 3. The Employment creates greater risks of the employee contracting the disease of greater degree and in a manner different from risk to the general public.
 - C. R.C. 4123.57(C) Loss of Use
 - 1. 125 weeks for the loss of sight of an eye
 - 2. For the permanent partial loss of sight of an eye, the portion of 125 weeks as the administrator in each case determines, based upon the percentage of vision actually lost as a result the injury or occupational disease, but in no case shall an award of compensation be made for less than 25% loss of uncorrected vision.
 - 3. "Loss of uncorrected vision" means the percentage of vision actually lost as a result of the injury or occupational disease.
 - D. Case Law
 - 1. "Vision" includes visual acuity, visual field and ocular motility. If the Injured Worker has conditions affecting aspects of vision other than visual acuity, the "percentage of vision lost" must account for those factors. State ex rel. Bowman v. Indus. Comm., 2022-Ohio-233 (Feb. 2, 2022) citing State ex rel. Beyer v. Autoneum N. Am., 157 Ohio St.3d 316, 2019-Ohio-374, 136 N.E.3d 454. In Bowman, Bowman developed vision issues stemming from an E Coli infection, including a cataract, double vision, night blindness and involuntary disruption of her normal eye movements. The Court held that the IC abused its discretion in relying solely upon the AMA Guidelines when the medical evidence outlined that Bowman's vision issues were not adequately addressed by the AMA Guidelines.
 - 2. State ex rel. AutoZone v. Indus. Comm., 117 Ohio St.3d 186, 2008-Ohio 541, 883 N.E.2d 372 (2008). Employee perforated his eye with a screwdriver while changing a windshield wiper which resulted in the loss of the lens and rendered him "legally" blind. The Court held that it is "self-evident" that blindness fulfills the requirement of "the loss of sight of an eye."
 - 3. State ex rel. General Electric Corp. v. Indus. Comm., 103 Ohio St.3d 420, 2004-Ohio-5585, 816 N.E.2d 580 (2004). Employee received an electrical shock which resulted

in cataracts and a loss of vision therefrom. Employee underwent cataract surgery with intraocular lens implants which corrected his vision. The Court held that the Injured Worker is entitled to receive a total loss of uncorrected vision award even though he had corneal implants that resulted in the improvement of his vision. Emphasizing that a corneal lens implant is corrective not restorative, the Court ruled that an injured worker's vision loss is to be measured at the time the cataract is removed. However, if the attempted corrective procedure results in worsened vision, that fact MAY be taken into account when making an award. State ex rel. Kroger Co. v. Stover, 31 Ohio St.3d 229, 510 N.E.2d 356 (1987).

4. In State ex rel. La-Z-Boy Furniture Galleries v. Thomas, 126 Ohio St.3d 134, 2010-Ohio-3215, 931 N.E.2d 545, the Court, holding that the Industrial Commission has some discretion in determining the appropriate measure of **pre**-injury vision, agreed that the Employee's pre-injury vision was his previously corrected vision. In Thomas, the Employee had undergone cataract surgery prior to the date of injury, thereby correcting his vision. The Industrial Commission found that the corrected vision as of the date of injury was the vision to be compared to the post-injury vision loss.
5. State ex rel. Smith v. Indus. Comm., 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d. 1142 and Memo F4 stand for the proposition that, to be entitled to an award for loss of vision, the evidence must demonstrate an actual loss of function of the eyes. The Court found that the statute does not provide for compensation for loss of vision that arises from a loss of brain-stem functioning,

II. HEARING LOSS

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2. A disease which is peculiar to employment by its causes and characteristics of its manifestations, or the conditions of the employment result in a hazard which distinguishes the character of the Claimant's employment from employment generally
3. The Employment creates greater risks of the employee contracting the disease of greater degree and in a manner different from risk to the general public.

C. R.C. 4123.57(C) Loss of Use

1. 25 weeks for the loss of hearing in an ear.
2. In no case shall an award of compensation be made for less than the permanent and total loss of hearing in on ear.

D. Case Law

1. State ex rel. Sheller-Globe Corp. v. Indus. Comm., 66 Ohio St.2d 51, 419 N.E.2d 1084 (1981) defined the meaning of “total loss of hearing” as the ability to comprehend everyday speech in order to communicate with others.
2. In State ex rel. Lockheed Martin v. Indus. Comm., 2006-Ohio-215, the Employee was found to have moderately severe sensorineural hearing loss with “very poor word recognition ability.” Citing the definition established in Sheller, the Court found that the Employee’s “poor word recognition” was sufficient to establish a total loss of hearing. The Court held that there is a total loss of hearing where a person is completely unable to gain information through oral conversation by use of auditory signs.
3. State ex rel. Smith v. Indus. Comm., 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d. 1142 and Memo F4 stand for the proposition that, to be entitled to an award for loss of hearing, the evidence must demonstrate an actual loss of function of the ears. The Court found that the statute does not provide for compensation for loss of hearing that arises from a loss of brain-stem functioning.

E. OSHA

1. Employee must have had a noise exposure at or above 85 decibels average over 8 working hours (8 hour time weighted average).
2. Employer must notify any employee with an exposure over the time weighted average.
3. Employer is to provide audiometric testing to any employee with an exposure over the time weighted average and annual re-testing.
4. Employee should have a baseline audiogram for comparison purposes.
5. Audiogram should evidence a standard threshold shift at 4000 Hz with recovery thereafter.
6. There should be an adjustment made for consideration of age related hearing loss (presbycusis).

F. Current Trend at the BWC/IC Level

1. Mass solicitation of factory retirees to obtain audiograms
2. No required evidence of noise levels during employment.
3. No required evidence previous hearing ability or baseline audiogram
4. No requirement that causal reports provide adjustment to consider age related hearing loss.