IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
May 21, 2018 Session

**MID-CUMBERLAND HUMAN RESOURCE AGENCY**
**v. BRENDA BINNION**

**Appeal from the Chancery Court for Wilson County**
**No. 2012-CV-401 Charles K. Smith, Chancellor**

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**No. M2017-00970-SC-R3-WC – Mailed September 20, 2018**
**Filed October 31, 2018**

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Employee, a commercial van driver, suffered an impact injury in April 2011 to her neck after assisting a passenger into Employer's van. Employee continued to work for three months. Employee timely provided notice to Employer. Employee was diagnosed as suffering from a condition called torticollis. Employee received temporary total disability benefits from July 2011 until May 2016. Employee reached Maximum Medical Improvement in November 2015. Trial was held in February 2017 to determine the existence and extent of Employee's permanent disability. Based on Employee's medical treatment history, testimony by medical experts, and Employee's testimony regarding her ability to function day-to-day, the chancery court found that Employee was permanently and totally disabled. Employer has appealed. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e)(1) (2014) (applicable to injuries arising before July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed**

J. RUSSELL PARKES, SP.J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and RICHARD H. DINKINS, SP.J., joined.

Stephen W. Elliot, Nashville, Tennessee, for the appellant, Mid-Cumberland Human Resource Agency.

Neal Agee, Jr., Lebanon, Tennessee, for the appellee, Brenda Binnion.

## OPINION

### I. Factual and Procedural Background

Brenda Binnion ("Employee") worked as a commercial driver from the 1980s until July 2011. While transporting medical patients in a van for her employer, Mid-Cumberland Human Resource Agency ("Employer"), Employee, then age fifty-one, suffered the workplace injury at issue in this case. Before daylight on the morning of April 21, 2011, Employee assisted a passenger into a van owned by Employer and then struck a bar protruding from the van's driver's side mirror, injuring her neck and shoulder. Employee continued to work over the course of three months; however, spasms in Employee's neck worsened, and Employee sought medical treatment on July 11, 2011. The following week, Employee gave notice to her Employer of the injury.

For approximately one week, Employee discontinued driving a van for Employer but continued to perform office-related work. Employee was ultimately sent home by a supervisor. The supervisor was worried that Employee would aggravate her injury, and Employee was told that there was no light-duty work for her to perform. On August 17, 2011, Employee saw Dr. Christopher Kauffman, a spine surgeon. Dr. Kauffman diagnosed Employee as suffering from torticollis.[1] This condition caused Employee to experience uncontrollable twitches or spasms in her neck and accompanying pain. Dr. Kauffman prescribed Employee muscle relaxants and referred her to Dr. Scott Baker for physical therapy and possible Botox-injection treatment.

After physical therapy failed to relieve Employee's pain and spasms, Dr. Baker ordered trigger point injections. These injections were not effective, and Dr. Baker recommended that she be seen by the Vanderbilt Movement Disorders Clinic. However, Vanderbilt Movement Disorders Clinic was unable to treat Employee due to the clinic not accepting workers' compensation patients. From late October until early December 2011, Employee also saw Dr. Garrison Strickland, a neurologist. Dr. Strickland also recommended that Employee receive treatment at the Vanderbilt Movement Disorders Clinic.

Although Vanderbilt Movement Disorders Clinic did not accept patients covered by workers' compensation, Employee began seeing Dr. Thomas L. Davis at the Vanderbilt Movement Disorders Clinic on January 24, 2012, through her own health insurance provider. Employee was again diagnosed as suffering from torticollis, alternatively referred to in her medical records as spasmodic dystonia and post-traumatic cervical dystonia. Employee began receiving Botox injections every three months from

[1]Torticollis is an acute or chronic often painful condition characterized by involuntary intermittent or sustained contractions of the muscles of the neck that cause the head to tilt or turn sideways, bend forward or backward, or jerk abnormally.

Dr. Davis. The injections relieved some of Employee's pain and helped with her spasms, but not to such a degree that Employee felt she could return to work.

On November 21, 2012, Employee filed a Motion for Initiation of Temporary Disability Benefits. Employer responded that Employee had not shown that her diagnosed injury, torticollis, was caused by her work-related accident. After reviewing Employee's medical records, which included notes from Drs. Kauffman, Baker, Strickland, and Davis, the Chancery Court for Wilson County found that Employee's condition was work-related on December 21, 2012.[2] The court ordered Employer to pay temporary total disability benefits and made the benefits retroactive to December 7, 2011. The court ordered that the benefits continue until Employee reached Maximum Medical Improvement ("MMI").

In an April 2013 clinic visit, Dr. Davis began to discuss with Employee Deep Brain Stimulation ("DBS") as a treatment option for Employee. While the Botox injections and medication were helping Employee, the relief was not to such a degree that Employee felt she could return to work.

Dr. Davis explained that DBS requires multiple surgeries to implant two electrodes into a patient's brain, and then to wire those electrodes to a battery-powered device "that outwardly looks like a pacemaker," and has adjustable "voltage, pulse width, frequency, and electrode configuration." DBS is an approved therapy under a Food and Drug Administration "humanitarian device exception." Dr. Davis stated that "there are no oral medications approved for dystonia, and there were multiple case reports in the literature of deep brain stimulation being a safe and effective therapy." However, Dr. Davis went on to say that "relatively little is known about the improvement of dystonia after deep brain stimulation and even less known about . . . posttraumatic dystonia after deep brain stimulation."

In December 2013, Dr. Davis again discussed DBS with Employee after she reported continued "severe pain in the neck despite treatment with Botox injections." Multiple tests and scans were performed on Employee and reviewed by Vanderbilt neurosurgeon, Joseph Neimat. Dr. Neimat found neither an "obvious cause of [Employee's] dystonic symptoms" nor any signs of a lesion or radiculopathy. Thereafter, Employee's case was presented to a group "of neurology and neurosurgery and physical therapy and neuropsychology" practitioners to determine whether she was a good candidate for DBS. A clinic note from February 2014 relates that Employee was "not really interested in DBS because she would not be able to pass a T[ennessee] D[epartment] O[f] T[ransportation] physical with the DBS device in place" and thus she believed she would not be able to work as a commercial driver with the device. Regardless, in March 2014, the practitioners' group determined that Employee "would

[2]Employee's motion for temporary disability benefits was initially filed in Davidson County but transferred by order of the Davidson County Chancery Court to Wilson County.

benefit from DBS" and, after discussing the risks and benefits of the surgery with a nurse practitioner at the Vanderbilt clinic, Employee decided to undergo the implantation procedure.

After a series of surgeries, the DBS device was fully implanted and became functional on May 21, 2014. In a June 3 clinic visit, Employee was shown how to adjust the settings on the device at home. As she increased the brain stimulation "dose" Employee began to experience slurred speech. That slurred speech dissipated almost immediately when the device was turned off. However, turning the device off caused her neck spasms and the accompanying pain to return. Employee preferred to keep the device settings high enough to limit her neck spasms and pain and simply to tolerate a degree of slurred speech, some difficulty swallowing, and decreased levels of concentration and memory. Six months after her DBS implantation surgery, on December 18, 2014, Employee's side-effects were corroborated by a neuropsychological exam performed at the Vanderbilt clinic. On January 29, 2015, Dr. Davis again began giving Employee Botox injections because she was unable to totally control her neck spasms with the DBS and could not increase the dosage of stimulation without suffering more severe side-effects described above.

Employee reached MMI in November 2015, and trial was eventually set for February 13, 2017.[3] Employee sought an Independent Medical Examination ("IME") by Dr. Martin Wagner. Dr. Wagner evaluated Employee on December 1, 2016. Employer sought an IME by Dr. Scott Baker. Dr. Baker evaluated Employee on December 12, 2016.[4] The evidence at trial consisted of Employee's medical records, deposition testimony by Dr. Davis, her treating physician, deposition testimony from Drs. Baker and Wagner, based on their IME's, and live testimony by Employee and John Rye, an executive of Employer.

Dr. Davis testified that he had never issued any permanent restrictions on Employee's ability to work. Dr. Davis also testified that issuing work restrictions was not something that he generally did in his practice. He also stated that he had no opinion on whether Employee was capable of driving commercially, although he qualified that by

[3]Part of this delay can be attributed to Employee's treating physician's inexperience with treating workers' compensation patients. Dr. Davis indicated that Employee was at MMI in January 2015, but retracted that conclusion in April 2015. When deposed and asked about Employee's MMI, Dr. Davis stated that he had never seen the AMA Guides or the definition of MMI before that deposition. Dr. Davis believed that MMI meant that a patient was receiving the maximum level of medical treatment. In March 2016, Employer procured a letter from Dr. Alan Freeman of Emory University's Department of Neurology who opined, after reviewing Employee's medical records, that she had reached MMI. When deposed again on January 20, 2017, regarding Employee's condition, Dr. Davis testified that Employee had likely reached MMI in November 2015.

[4]This same Dr. Scott Baker was Employee's treating physician, briefly, in 2011.

admitting he was unfamiliar with the requirements of driving a commercial vehicle.[5] Dr. Davis said it was his policy to encourage patients to be as active as they can be. Dr. Davis observed that portions of Employee's medical records stating that Employee could not work or drive commercially were based on Employee's own statements to medical staff. However, Dr. Davis believed that Employee's assessment of her abilities and limitations were credible and that her conclusion that she was unable to work was consistent with her medical condition.

At Employer's request, Dr. Baker reviewed Employee's medical records and conducted an IME of Employee. Dr. Baker's conclusions were summarized in his report as "significant perceived disability [] yet the objective findings of impairment are minimal. Her symptoms and self-imposed limitations far exceed objective findings." Dr. Baker assigned Employee a three percent (3%) whole body impairment and opined that Employee was not capable of driving commercially but that she could do sedentary work. It was Dr. Baker's opinion that Employee's condition, as seen "objectively on imaging and physical examination," did "not correlate with someone who [] reports that she can't stand or can't walk or needs assistance." He speculated that there was "a symptom magnification type of behavior, perhaps, secondary gain related to the work[ers'] comp[ensation] claim." However, Dr. Baker admitted that the findings of Vanderbilt medical staff, including Employee's treating physician, the panel of practitioners who approved the DBS, and neurological examiners who assessed Employee before and after her surgeries, were "the same findings" that he had made when he saw Employee. He also agreed that the DBS was a dangerous treatment, although he believed that Employee had "a mild condition."

At Employee's request, Dr. Wagner reviewed Employee's medical records and conducted an IME of Employee. Dr. Wagner opined that Employee would be "nonfunctional" without the aid of her DBS device. He characterized her condition as being "severe" because she had "moderate symptoms despite continuous treatment." He assigned Employee a twenty-eight percent (28%) whole body impairment. Dr. Wagner also discussed why his assessment differed so markedly from that of Dr. Baker. He compared Employee's condition to a migraine disorder, saying sufferers "may have very severe impairment in life because of their migraine, yet their brain MRI scan is completely normal, as you would expect it to be." Dr. Wagner stated that Employee's condition "produces a great deal of subjective symptoms" that do not manifest on imaging tests, but he concluded that her condition "seriously impairs her ability to function day-to-day." Dr. Wagner also stated that he personally observed the symptoms of Employee's torticollis during his brief exam.

[5]In 2015, Dr. Davis had stated in a letter that he believed Employee would never be able to drive commercially. He later retracted that conclusion and explained, "I do not know what it takes to drive a commercial vehicle."

Employee testified as to the effects of her torticollis on her day-to-day living. Employee testified that before she had surgery to install the DBS device her involuntary head and neck movements were "absolutely driving [her] crazy" and that the device was helpful because it mitigated those symptoms. Even with the device and Botox injections, she stated that she was unable to remain on her feet for more than a couple of hours at a time. Employee also testified that she required multiple showers, even while seated, to clean her whole body. At trial, Employee stated she had difficulty cleaning herself after using the bathroom and attaching a bra to the point that she frequently did not wear one. She said that she could not fasten clothes with buttons and could only wear slip-on shoes. She testified that her inability to be on her feet for extended periods of time and the pain and spasms she suffered rendered her unable to cook at home. Employee also mentioned that she relied on her daughter, husband, and granddaughter to help her while bathing and to prepare meals for her. Employee had given up going to the grocery store, although occasionally she was able to drive her car.

Before she had surgery to install the DBS device, Employee was hopeful that she would eventually be able to return to work as a commercial driver for Employer. At trial, Employee stated that she no longer believed she could drive commercially for Employer because doing so would require her to transport people with medical needs, and Employee could no longer even push her mother's wheelchair when visiting her mother at the nursing home. Employee admitted that she had not attempted to return to work with Employer and had not sought work with other companies. Employee testified that she would have attempted to return to work if "there was something that [she] could do" but she did not think that she could work in any position because of her need to lie down every couple of hours.

Finally, John Rye, the CFO and Director of Operations for Employer, testified. Mr. Rye testified that the company had never made a formal offer for Employee to return to work, although he had been involved in internal company discussions about finding Employee a position within the company. Mr. Rye also testified that Employee had never approached the company about finding a suitable position for her and that any employment offer would be dependent on a doctor's opinion as to Employee's capabilities and medical restrictions.

After reviewing the evidence, the trial court found that Employee was permanently and totally disabled. The trial court judge described Dr. Davis's testimony as inconsistent and changing as to when and whether Employee had reached MMI and also whether Employee could drive commercially. The trial court addressed Dr. Davis's unwillingness to assign Employee any work restrictions or a disability rating.[6] The court

[6]The trial court's order indicates that the trial court's oral findings of fact were to be incorporated by attached exhibit. However, no such exhibit was attached to the order in the record before us. Under Rule 24 of the Tennessee Rules of Appellate Procedure, the appellant has the burden of providing the appellate court with "a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the basis of

said that Dr. Davis "lacked credibility" in his testimony on these issues but that this was more indicative of the fact that Dr. Davis "did not want to get involved in a workers' comp[ensation] case" than of his belief that Employee was capable of working without restrictions. The trial court found Employee to be "very credible" in her testimony. Employee's testimony was called into question by Dr. Baker, who believed that Employee was potentially exaggerating the degree of her symptoms. Employee's testimony was corroborated by Dr. Davis, who believed her to be credible in reporting her symptoms and limitations. The trial court judge added, at the end of his findings of fact, that his personal observations of Employee at trial confirmed that she was severely disabled.

Based on the court's observations, the testimony in the record, and Employee's long history of treatment under the supervision and care of multiple medical professionals, which culminated in the implantation of the DBS device along with ongoing Botox injections and usage of prescription medication, the court concluded that the Employee was "totally incapacitated from working at any occupation which would bring her any type of income." The trial court awarded Employee benefits of $312.55 per week until she reaches the age of sixty-six years and ten months. Employer has appealed, contending that the trial court erred by finding Employee permanently and totally disabled. The appeal has been assigned to this Panel in accordance with Tennessee Supreme Court Rule 51.

## II. Standard of Review

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (applicable to injuries arising before July 1, 2014), which provides that appellate courts must "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding[s], unless the preponderance of the evidence is otherwise." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). "'The extent of an injured worker's . . . disability is a question of fact.'" Lang v. Nissan North Am., 170 S.W.3d 564, 569 (Tenn. 2005). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence, such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly,

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appeal." State v. Knowles, 470 S.W.3d 416, 427 (Tenn. 2015) (quoting Tenn. R. App. P. 24(a)–(b)). In any event, we are able to identify the portion of the trial transcript where the trial court judge made his findings of fact.

reviewing courts afford no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

## III. Analysis

The single issue on appeal is whether the evidence supports the trial court's finding that Employee is permanently and totally disabled pursuant to Tennessee Code Annotated section 50-6-207(4)(A)–(B) (2014) (applicable to injuries occurring prior to July 1, 2014).

An individual is permanently and totally disabled when he or she is incapable of "working at an occupation that brings the employee an income." Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 681 (Tenn. 2005) (citing Tenn. Code Ann. § 50-6-207(4)(B) (1999)). When determining whether an individual is permanently and totally disabled, this Court looks to "a variety of factors such that a complete picture of an individual's ability to return to gainful employment is presented to the Court." Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 535 (Tenn. 2006) (citing Vinson v. United Parcel Serv., 92 S.W.3d 380, 386 (Tenn. 2002)). Factors considered by the Court include "the employee's skills and training, education, age, local job opportunities, and his [or her] capacity to work at the kinds of employment available in his [or her] disabled condition." Cleek v. Wal-Mart Stores, 19 S.W.3d 770, 774 (Tenn. 2000) (quoting Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn. 1986)). Although this assessment is usually made and presented at trial by a vocational expert, "it is well settled that despite the existence or absence of expert testimony, an employee's own assessment of his or her overall physical condition, including the ability or inability to return to gainful employment, is 'competent testimony that should be considered.'" Vinson, 92 S.W.3d at 386 (quoting Cleek, 19 S.W.3d at 774).

In asking this Court to reverse the trial court, Employer characterizes the evidence of Employee's disability and inability to work as based solely on "her self-serving testimony about her overall physical condition and her subjective assessment of her physical limitations." Employer also points to the testimony of its expert witness, Dr. Baker, who observed that Employee's reported symptoms did not correlate to his objective findings and observations. However, that evidence must be taken in light of all of the other evidence before the trial court. Dr. Baker only conducted a brief IME of Employee as compared to the years of treatment that she received from Dr. Davis. Carter v. First Source Furniture Grp., 92 S.W.3d 367, 373 (Tenn. 2002) (assigning greater weight to the opinion of the treating physician than to the opinion of an independent medical examiner); Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 677 (Tenn.1991) ("It seems reasonable that the physicians having greater contact with the [Employee] would have the advantage and opportunity to provide a more in-depth opinion, if not a more accurate one.") In evaluating conflicting expert opinion evidence, a court may consider, inter alia, "the qualifications of the experts, the circumstances of their

examination, the information available to them, and the evaluation of the importance of that information by other experts." Orman, 803 S.W.2d at 676.

Employee's medical treatment history and the progression of interventions, from medications to Botox injections to ultimately surgery to install a DBS device, is certainly evidence which the trial court had before it and could consider. The trial court also had before it Employee's treating physician, Dr. Davis, as well as the multi-disciplinary practitioner panel at the Vanderbilt clinic, which recommended Deep Brain Stimulation surgery. Dr. Davis explicitly affirmed that he found Employee to be credible in reporting her symptoms and limitations to him, including her inability to drive a commercial vehicle and to concentrate on sedentary tasks. The trial court also heard testimony from Employee who would set her DBS device to such high levels that it caused side-effects such as slurred speech, difficulty swallowing, and decreased levels of concentration and memory.

Most importantly, the trial court found Employee to be "very credible" in her testimony before the court. The court had the opportunity to see, hear, and observe Employee on the witness stand. The testimony and observations led the court to believe Employee was credible and not magnifying her symptoms. This finding by the trial court is entitled to "considerable deference" on appeal. Tryon, 254 S.W.3d at 327.

Employee's testimony summarized the multiple ways that her torticollis and the treatments to control it disrupted her ability to conduct aspects of day-to-day life such as bathing, dressing, using the bathroom, cooking, and shopping for groceries. Employee testified that although she uses a bath chair and handle grip, she is unable to take a complete shower. Employee also testified that due to her limited mobility her husband or daughter must help her with washing her hair. Employee also testified that she now has difficulty with personal hygiene, such as issues with cleaning herself after using the bathroom. Her testimony further revealed that getting dressed has become a difficult task as well. Employee now has to wear different clothing, such as pullovers or any other clothing that does not have buttons. Slip-on shoes are the only shoes that Employee can now wear.

Along with the impairment of her activities of daily living, Employee testified that she has to lie down approximately five times per day due to pain in order to avoid taking pain medication. Employee testified that she can only be up for a maximum of two to three hours before she has to return to bed. Employee also testified that her ability to swallow has become yet another very difficult task as she has problems with strangling on food, taking medicine, and drinking water.

When determining an individual's degree of vocational impairment, the court must look to an individual's particular "skills, training, education, age, job opportunities in the immediate and surrounding communities, and the availability of work suited for an individual with that particular disability." Hubble, 188 S.W.3d at 535-36. Here,

Employee worked many years as a commercial driver, and the evidence does not preponderate against a finding that she can no longer work in that capacity. Additionally, Employee testified as to her need to lie down periodically. Employee described the effects of her condition, the effects of her medication, and the effects of the DBS device and how all these measures, taken together, prevent her from performing even sedentary office work.

Employer further argues that the lack of expert proof from a medical professional imposing restrictions on Employee and the lack of vocational expert testimony concerning her inability to work support a finding that Employee is not permanently and totally disabled.

In Vinson v. United Parcel Services, 92 S.W.3d 380 (Tenn. 2015), an employee was awarded permanent and total disability benefits based on the employee's own testimony as to his condition and without testimony from an occupational or medical expert. In Vinson, the court noted that there was a doctor's report restricting the employee from lifting and carrying beyond certain weights and limiting the employee in standing and walking to three hours per day. Id. at 383, 386. Here, the medical expert testimony of Drs. Wagner and Davis did not include any specific work-related restrictions or a determination that Employee was totally vocationally impaired. Employer's medical expert, Dr. Baker, opined that Employee was capable of performing sedentary work even though she could not drive commercially. However, Employee's medical history and her testimony, which was found to be credible at trial, clearly weighed heavily in the trial court's decision. Employee's assessment of her limitations was buttressed by the testimony of her treating physician, Dr. Davis, who described Employee's self-reported limitations as credible and consistent with her condition. The testimony of Employee is further corroborated by Dr. Wagner's conclusion that Employee's condition "seriously impairs her ability to function day to day."

Similarly, in Conatser v. Fentress Farmers Cooperative, No. M2012-01798-WC-R3-WC, 2013 WL 3936497 (Tenn. Workers Comp. Panel July 26, 2013), the employee was under lifting, pushing, and pulling restrictions from his doctor. The court found him to be permanently and totally disabled based largely on the employee's own testimony. In Conatser, the court found the employee to be permanently and totally disabled *despite* the employee's testimony that he was able to work on his family farm "three hours a morning" and an additional "couple hours in the evening" after resting and taking pain medication.[7] Id. at *4. In Conatser, the employee suffered severe back and shoulder pain for which he took pain medications that prevented him from driving. In Conaster, the employee described his work on his farm as only "piddling," and the employee testified that he did not believe he was capable of working in an income-producing position even

[7]In Conatser, the employee would have received a longer period of benefits with a finding of permanent partial disability than permanent total disability and the employee in the case argued that he had a permanent partial rather than a permanent total disability. Id. at *3.

part-time. Id. An employee's limitations in his or her home life and in doing daily activities may be a significant factor shedding light on an employee's capacity to work in an income-producing job, as it was in Conatser and is in the case before us.

Finally, in Patton v. Paris Henry County Medical Clinic, No. W2016-00203-SC-R3-WC, 2016 WL 7011396 (Tenn. Workers Comp. Panel Nov. 30, 2016), the employee suffered from frequent migraine headaches so severe that the employee's medical treatment occasionally even required admittance to a hospital. In Patton, the employee's symptoms did not always prevent her from undertaking activities such as driving. However, the employee's chronic condition, even after years of treatments, prevented the employee from "sustain[ing] an occupation that could generate income." Id. at *10. Here, Employee's symptoms likewise persist after years of treatment, and, while Employee is sometimes able to carry out activities such as driving, there is strong evidence that it would be difficult or impossible for her to *sustain* income-generating employment.

As has previously been noted in workers' compensation cases, the employee bears the burden of proving each element of his or her cause of action. Fritts, 163 S.W.3d at 677–78. At the time of the injury at issue in this action Tennessee Code Annotated, section 50-6-116 (2014) (applicable to injuries occurring prior to July 1, 2014), instructed the courts to give the workers' compensation law "an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained." Thus in examining the issue of causation, the courts were to resolve "any reasonable doubts" in favor of the Employee. Phillips v A & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004). It is also well settled that once causation and permanency are established, "the extent of vocational disability is a question of fact for the trial court to determine from all of the evidence, including lay and expert testimony; the medical expert's rating of anatomical disability is merely one of a number of relevant factors used to make this determination." Corcoran v Foster Auto GMC, Inc., 746 S.W.2d 452, 458 (Tenn. 1988). Our Supreme Court has also held that a trial court should consider other factors including, but not limited to, the extent of vocational disability including the employee's job security, training, education, age, anatomical impairment, duration of impairment, local job opportunities, and the employee's capacity to work at the kinds of employment available to him considering his disabled condition. McIlvain v Russell Stover Candies, Inc., 996 S.W.2d 179, 183 (Tenn. 1999). "While expert testimony may be used to establish vocational disability, it is not required. The extent of vocational disability can be established by lay testimony". Perkins v. Enter. Truck Lines, Inc., 896 S.W.2d 123, 127 (Tenn. 1995) (citations omitted). Moreover, an employee's own assessment of his physical condition and resulting disability must be considered. Fritts, 163 S.W.3d at 680. Here, the evidence in the record, taken together, does not preponderate against the trial court's finding that Employee is permanently and totally disabled.

## IV. Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Mid-Cumberland Human Resource Agency and its surety, for which execution may issue if necessary.

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J. RUSSELL PARKES, SPECIAL JUDGE