

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
May 1, 2006 Session

**MARK ANTHONY HATMAKER v. ALLIED INDUSTRIAL EQUIPMENT,  
INC., ET AL.**

**Direct Appeal from the Circuit Court for Anderson County  
No. A3LA0019 Donald R. Elledge, Judge**

**Filed October 9, 2006**

**No. E2005-02519-WC-R3-CV - Mailed June 21, 2006**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court awarded the plaintiff 76 percent permanent partial disability to the body as whole and 39 additional weeks of temporary total disability benefits. On appeal, the defendant contends that the award of permanent partial disability was excessive; that the award of temporary total disability was not warranted; and the trial court erred in allowing the testimony of a vocational expert. After carefully reviewing the record and applicable authorities, we find no error and affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) Appeal as of Right; Judgment of the Circuit Court  
Affirmed**

SHARON G. LEE, SP.J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP.J., joined.

Arthur G. Seymour, Jr. and Robert L. Kahn, Knoxville, Tennessee, for the Appellant, Allied Industrial Equipment, Inc.

Jason E. Legg, Knoxville, Tennessee, for the Appellee, Mark Anthony Hatmaker.

## MEMORANDUM OPINION

### *I. Background*

The plaintiff, Mark Anthony Hatmaker, began working for the defendant, Allied Industrial Equipment, Inc. ("Allied"), in February of 2002, performing preventive maintenance and repairs on forklifts at various job sites. On May 6, 2002, as Mr. Hatmaker pulled a cord to start the gas engine of an air compressor he was repairing, the cord recoiled and struck him in the face several times, knocking him unconscious. He sustained injuries to his head, face, and right eye. He was first treated by the company doctor and then referred to several medical specialists, including an eye surgeon, a plastic surgeon, and a neurologist. He underwent three surgical procedures to repair the damage to his face and right eye.

Mr. Hatmaker filed a timely suit seeking workers' compensation benefits against Allied and the State of Tennessee Second Injury Fund.<sup>1</sup> At the trial of this cause, the parties stipulated to the amount of Mr. Hatmaker's workers' compensation rate and that Mr. Hatmaker was injured in the course and scope of his employment with Allied; that he sustained injuries to his head, face, and right eye; and that proper notice had been given. The issues to be decided by the trial court were the amount of permanent partial disability ("PPD") and whether additional temporary total disability benefits ("TTD") were due.

At trial, Mr. Hatmaker testified that he continues to suffer from vision difficulties, daily headaches, depth perception problems, instability, difficulty walking, dizziness, frequent eye infections, and a lack of moisture in his right eye requiring application of eye drops. He continues under the care of his neurologist and takes medications for depression and seizure control.

Mr. Hatmaker returned to work at Allied immediately after the accident, but left the defendant's employment in August 2002. He then underwent surgeries for his injuries on September 17, 2002; December 19, 2002; and March 26, 2003. Mr. Hatmaker received TTD following the surgeries until July 7, 2003. He testified that he was unable to work from July 7, 2004, through April 5, 2004, and did not receive TTD benefits during this period of time. When he subsequently returned to work for another employer, he was doing similar work at a higher rate of pay.

At the time of trial, Mr. Hatmaker was 45 years old. He is a high school graduate and has an employment history of working as a mechanic and as a parts inspector in a boat factory.

The plaintiff's expert medical proof at trial consisted of a C-32 form signed by Dr. Jonathan W. Sowell and the deposition of Dr. Sam Kabbani. Dr. Sowell, a board certified ophthalmologist, assigned Mr. Hatmaker an impairment rating of 10 percent to the body as a whole based on a 6 percent impairment of visual acuity and a 4 percent impairment of visual field. He noted that Mr.

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<sup>1</sup> The plaintiff had suffered a prior back injury while working at Sea Ray Boats resulting in a 5 percent impairment to the body as a whole and an agreed disability rating of 12.5 percent as of March 20, 2000.

Hatmaker had lost the upper outer quadrant of vision in the right eye, and this visual field defect restricted the plaintiff from running heavy equipment. Dr. Kabbani, a board certified neurosurgeon and the partner of the plaintiff's treating physician, Dr. Bertram Henry, observed that Mr. Hatmaker's right eye drooped, he had facial scarring, and his gait was unsteady. He noted that Mr. Hatmaker had sustained a head injury with direct impact to his face, resulting in injuries that required reconstructive surgery. Dr. Kabbani determined that Mr. Hatmaker had a 27 percent permanent physical impairment to the body as a whole as a result of the work-related injury. He permanently restricted Mr. Hatmaker from operating machinery and/or performing tasks that require a lot of balance and visual concentration. According to Dr. Kabbani, Mr. Hatmaker reached maximum medical improvement on August 31, 2004. He specifically noted his reliance on Dr. Henry's medical records, in which Dr. Henry had assigned temporary work restrictions and had informed Mr. Hatmaker "not to drive an automobile."

Over Allied's objection, the trial court allowed Mr. Hatmaker to present the testimony of Rodney E. Caldwell, Ph.D., a vocational expert, who opined that Mr. Hatmaker had sustained a 76 percent vocational disability due to the accident.

Following the presentation of proof, the trial judge dismissed the case as to the Second Injury Fund and awarded Mr. Hatmaker 76 percent permanent partial disability to the body as a whole; TTD benefits from July 7, 2003, through April 5, 2004; and lifetime medical benefits for treatment of the injuries. Allied appeals.

## *II. Standard of Review*

Our standard of review of factual issues in a workers' compensation case is *de novo* upon the record, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *see also Rhodes v. Capital City Ins. Co.*, 154 S.W.3d 43, 46 (Tenn. 2004); *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 825-26 (Tenn. 2003). When the trial court has seen the witnesses and heard the testimony, the appellate court must extend considerable deference to its findings, especially where issues of credibility and the weight of testimony are involved. However, when medical proof is presented by deposition, the reviewing court may draw its own conclusions about the weight and credibility of the expert testimony, since it is in the same position as the trial judge for evaluating such evidence. *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729 (Tenn. 2002). Our standard of review of questions of law is *de novo* without a presumption of correctness. *Smith v. U.S. Pipe & Foundry Co.*, 14 S.W.3d 739, 742 (Tenn. 2000).

Questions regarding the qualifications, admissibility, relevancy, and competency of expert testimony are reviewed based on an abuse of discretion standard. Such matters are left within the broad discretion of the trial court. *McDaniel v. CSX Transp., Inc.*, 955 S.W.2d 257 (Tenn. 1997). Thus, on appellate review, the trial court's ruling will not be overturned absent a finding that the trial court abused its discretion in admitting or excluding the expert testimony. *State v. Ballard*, 855 S.W.2d 557, 562 (Tenn. 1993).

### III. Temporary Total Disability Benefits

At issue are TTD benefits from July 7, 2003, through April 5, 2004, the period of time that Mr. Hatmaker claims he was unable to work following his surgeries. In order to establish a *prima facie* case of TTD, an employee must prove (1) total disability to work by a compensable injury, (2) causal connection between the injury and the inability to work, and (3) duration of the period of disability. *Simpson v. Satterfield*, 564 S.W.2d 953, 955 (Tenn. 1978). TTD benefits "are terminated either by the ability of the employee to return to work or [by] the attainment of maximum recovery from his injury." *Lock v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 809 S.W.2d 483, 488 (Tenn. 1991); *Brown Shoe Co. v. Pipes*, 581 S.W.2d 140 (Tenn. 1979); *Simpson*, 564 S.W.2d at 955.

Allied questions whether Mr. Hatmaker has demonstrated sufficient proof of disability, arguing that the plaintiff failed to present adequate and competent expert medical testimony of the causal connection between his injury and his inability to work during the relevant period of time. Allied contends that it is beyond the common knowledge and experience of a layperson as to whether there exists a causal connection between Mr. Hatmaker's injury and his inability to work. Thus, the defendant argues that expert medical testimony was required to make that connection. Accordingly, Allied asserts that Mr. Hatmaker failed to make out a *prima facie* case of entitlement to 39 weeks of TTD benefits. "[W]hen the nature of the injury and the resulting circumstances do not in and of themselves supply the element of causal connection when tested by the common knowledge and experience of mankind, expert medical testimony is necessary." *See Simpson*, 564 S.W.2d at 956.

Mr. Hatmaker testified that he was not able to work during the time in question because of problems with lack of coordination and stability, severe headaches, depression, pain in his eye, frequent eye infections, and depth perception difficulties which adversely effected his ability to drive a vehicle. The trial court found Mr. Hatmaker to be a credible witness and, relying on his testimony, determined that the plaintiff was totally disabled from July 7, 2003, until April 5, 2004.

We find that the trial judge properly considered Mr. Hatmaker's testimony, as "[l]ay testimony, including that of the injured employee, may be admitted on the issue of the employee's inability to work and may be sufficient to establish that fact without medical testimony." *Thompson v. Leon Russell Enterprises*, 834 S.W.2d 927 (Tenn. 1992); *Simpson*, 564 S.W.2d at 956 (trial court awarded the employee TTD benefits based solely on the lay testimony of the employee and his wife). In the *Simpson* case, the Tennessee Supreme Court concluded that "a lay witness may testify to his own physical condition or that of another person provided that the witness first states the detailed facts and then gives his opinion or conclusion." 564 S.W.2d at 956. "Where the nature of the injury and the result produced thereby as testified to by lay witnesses is such that it is evident to the lay mind based upon common knowledge and experience of mankind that a causal connection exists between the injury and employee's inability to work, no expert medical testimony is required." *Id.* The Court has indicated that "the claimant's own assessment of his physical condition and resulting

disabilities is competent testimony and cannot be disregarded.'" *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 458 (Tenn. 1988) (quoting *Tom Still Transfer Co. v. Way*, 482 S.W.2d 775, 777 (Tenn. 1972)). Any reasonable doubt as to causation is to be construed in favor of the employee. *White v. Werthan Industries*, 824 S.W.2d 158, 159 (Tenn. 1992).

In the case at bar, the evidence does not preponderate against a finding that Mr. Hatmaker established all of the elements necessary to assert a *prima facie* case for TTD benefits. Drs. Kabbani and Sowell both provided evidence that the cause of the plaintiff's permanent injuries was the work-related incident of May 6, 2002, and assigned permanent work restrictions. Dr. Kabbani established a date of maximum medical improvement of August 31, 2004. Mr. Hatmaker testified that he was unable to work from July 7, 2003, through April 5, 2004, as a result of the three surgical procedures he underwent to correct the damage he sustained as a result of the May 6, 2002 accident. The plaintiff's testimony and the medical proof establishes that Mr. Hatmaker's inability to return to work until April 2004 was directly caused by his work-related injury of May 6, 2002. Allied did not submit any countervailing proof. We conclude that the evidence in this record does not preponderate against the trial court's award of TTD benefits.

#### *IV. Allowance of Vocational Expert Testimony*

The plaintiff introduced the testimony of Dr. Caldwell over the objection of the defendant. Dr. Caldwell has a masters degree and a Ph.D. degree, has worked in the field of vocational rehabilitation for over 25 years, and has testified as an expert witness in many courts in East Tennessee. Prior to forming his opinion, he reviewed the deposition of Dr. Kabbani and the C-32 form from Dr. Sowell, and interviewed and administered the Wide Range Achievement Test to Mr. Hatmaker. He learned that Mr. Hatmaker had completed the 12th grade, had some additional training as an automobile mechanic, and demonstrated reading skills at the 11th grade level and math skills at the 9th grade level. Dr. Caldwell opined that Mr. Hatmaker had sustained a 76 percent vocational disability.

Rule 702 of the Tennessee Rules of Evidence provides that "[i]f scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise." Tenn. R. Evid. 702. The expert's opinion must substantially assist the trier of fact in its determination and the question of what will substantially assist the trier of fact is a decision to be determined by the trial court. *Primm v. Wickes Lumber Co.*, 845 S.W.2d 768, 770 (Tenn. Ct. App. 1992).

Allied argues, *inter alia*, that Dr. Caldwell's methodology was flawed and not trustworthy. The defendant contends that Dr. Caldwell was not informed of Mr. Hatmaker's pre-existing work restrictions resulting from a prior work related injury and, therefore, his opinion as to disability was incorrect and excessive.

Rule 703 of the Tennessee Rules of Evidence provides as follows:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

Tenn. R. Evid. 703. In properly exercising its discretion, the trial court must first make a determination that the witness is qualified by knowledge, skill, experience, training or education to express an opinion within the limits of the expert's expertise. Tenn. R. Evid. 702. The determinative factor is whether the witness' qualifications authorize him or her to give an informed opinion on the subject at issue. *See Stevens*, 78 S.W.3d 817, 834 (Tenn. 2002) (citing *United States v. Starzeczpyzel*, 880 F.Supp. 1027, 1043 (S.D.N.Y. 1995)). The trial court must next ensure that the basis for the witness' opinion, *i.e.*, testing, research, studies, or experience-based observations, adequately supports that expert's conclusions. *Id.*

After careful review, we conclude that the trial court properly found that Dr. Caldwell provided the basis for his conclusion (*i.e.*, his testing, research and experience) and that the trial court was able to determine that the vocational expert's testimony regarding vocational disability was adequately supported. Dr. Caldwell interviewed Mr. Hatmaker and obtained information regarding the plaintiff's age, education, work background and medical history. In assessing Mr. Hatmaker's educational abilities, Dr. Caldwell administered the Wide Range Achievement Test. Dr. Caldwell reviewed the medical deposition of Dr. Kabbani and the C-32 form executed by Dr. Sowell. Dr. Caldwell explained his methodology of determining vocational disability and discussed the significance of the different elements or factors. In rendering his opinion, Dr. Caldwell analyzed the relevant labor market as it related to the plaintiff's age, education, work history and work restrictions. Based upon all of this information, Dr. Caldwell testified that Mr. Hatmaker had sustained a 76 percent vocational disability. The trial court may make a finding of reliability if the expert's conclusions are sufficiently straightforward and supported by a "rational explanation which reasonable [persons] could accept as more correct than not correct." *Stevens*, 78 S.W.3d at 834 (quoting *Wood v. Stihl*, 705 F.2d 1101, 1107-08 (9th Cir. 1983)).

In *Bailey v. Colonial Freight Systems, Inc.*, 836 S.W.2d 554 (Tenn. 1992), the Tennessee Supreme Court previously upheld the trial court's admission of a vocational expert's testimony in a workers' compensation case. We note that the extent of vocational disability is a question of fact for the trial court to determine from all the evidence. *Worthington v. Modine Mfg. Co.*, 798 S.W.2d 232 (Tenn. 1990). In a case such as this, the trial court is entitled to determine the extent of disability from all the evidence and may consider many pertinent factors, including job skills, age, education, training, work experience, duration of disability and job opportunities for the disabled, in addition to the anatomical disability testified to by the medical experts. *Miles v. Liberty Mut. Ins. Co.*, 795 S.W.2d 665, 666 (Tenn. 1990); *Jaske v. Murray Ohio Mfg. Co. Inc.*, 750 S.W.2d 150 (Tenn. 1988). The trial judge specifically found that the plaintiff and Dr. Caldwell were credible, and he was not

concerned regarding any lack of additional testimony regarding the prior injury and restrictions. We find that the trial court did not abuse its discretion in considering Dr. Caldwell's expert's testimony, as the evidence satisfies the requirements of Tenn. R. Evid. 702 and 703. We cannot say that the evidence preponderates against the trial judge's finding on this issue.

#### *V. Assignment of Permanent Partial Disability*

As noted, Allied argues that within a few days following his injury, Mr. Hatmaker returned to work for the defendant, doing the same job he had done prior to the accident. Following his surgeries and a recuperation period, the plaintiff then went to work for another employer, performing essentially the same maintenance work as he had done previously for the defendant.

In workers' compensation cases, it is appropriate to consider how a work-related injury affects an employee's capacity to engage in normal, every day activities insofar as that inquiry is oriented toward establishing anatomical or vocational disability. *Lang v. Nissan North America, Inc.*, 170 S.W.3d 564, 572 (Tenn. 2005). Returning to work is merely a factor among the total circumstances to be considered by the trial court, and is not itself dispositive. *See Corcoran*, 746 S.W.2d at 459. A vocational disability may exist despite an employee's return to employment, if the employee's ability to earn wages in any form of employment that would have been available to him in an uninjured condition is diminished by an injury. *Lang*, 170 S.W.3d at 570. The claimant's own assessment of his physical condition and resulting disabilities must also be evaluated. *Uptain Const. Co. v. McClain*, 526 S.W.2d 458, 459 (Tenn. 1975). "Once permanent impairment has been established, the amount of vocational disability suffered by the plaintiff must be determined. In making this determination, the trial court must decide how much the injury impairs the employee's earning capacity, not the degree of anatomical impairment." *Corcoran*, 746 S.W.2d at 458. Courts should consider "many pertinent factors, including job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to the anatomical disability testified to by medical experts." *Clark v. National Union Fire Ins. Co.*, 774 S.W.2d 586, 588 (Tenn. 1989); *McIlvain v. Russell Stover Candies, Inc.*, 996 S.W.2d 179, 183 (Tenn. 1999).

Dr. Kabbani testified that the plaintiff has sustained a 27 percent permanent physical impairment rating to the body as a whole and permanently restricted him from operating machinery and/or performing tasks that require a lot of balance and visual concentration. Dr. Sowell in the C-32 form provided that due to the loss of vision, the plaintiff has also sustained a 10 percent permanent physical impairment rating to the body as a whole and permanently restricted him from running heavy equipment. Dr. Caldwell testified that the plaintiff had sustained a 76 percent vocational disability.

The defendant presented no evidence to contradict the proof presented by Mr. Hatmaker. After considering the testimony of the plaintiff, the medical experts and the vocational expert, the trial court was of the opinion that the plaintiff had sustained a 76 percent permanent partial disability. It is evident that Mr. Hatmaker sustained a significant injury and has substantial residual physical

problems. We find that the evidence does not preponderate against the trial court's award of 76 percent permanent partial disability.

*VI. Conclusion*

After reviewing the record and applicable authorities, we conclude that the trial court did not abuse its authority in admitting the testimony of Dr. Caldwell and that the evidence in the record does not preponderate against the trial judge's findings. Accordingly, the judgment is affirmed. Costs are assessed to Allied Industrial Equipment, Inc., for which execution may issue if necessary.

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SHARON G. LEE, JUDGE



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**JUDGMENT**

This case is before the Court upon the motion for review filed by Allied Industrial Equipment, Inc., pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Allied Industrial Equipment, Inc., for which execution may issue if necessary.