IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 15, 2016 Session Heard at Knoxville

LISA PATTON v. PARIS HENRY COUNTY MEDICAL CLINIC

Appeal from the Circuit Court for Carroll County
No. 13CV53 Donald E. Parish, Judge

No. W2016-00203-SC-R3-WC – Mailed October 25, 2016; Filed November 30, 2016

An X-ray technician sought workers' compensation benefits for disability arising from migraine headaches she alleged were caused by exposure to chemicals at her workplace. Her employer denied the claim, asserting her condition did not arise out of and in the course and scope of her employment. The trial court held that the employee's claim was compensable and awarded her permanent and total disability benefits. On appeal, the employer argues that the trial court erred in finding the employee's claim was compensable and in awarding her permanent and total disability benefits. After careful review, we affirm the judgment.

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

SHARON G. LEE, J., delivered the opinion of the Court, in which WILLIAM B. ACREE, JR., SR.J., and KRISTI M. DAVIS, J., joined.

Michael L. Haynie, Nashville, Tennessee, for the appellant, Paris Henry County Medical Clinic.

Ricky L. Boren, Jackson, Tennessee, for the appellee, Lisa Patton.

OPINION

I.

In January 2008, Lisa Patton began working for Paris Henry County Medical Clinic ("the Employer" or "the Medical Clinic") as an X-ray technician. As a part of Ms. Patton's job of taking and processing X-rays, she worked with chemicals in the X-ray development process. In June 2008, Dr. Terry Harrison treated her at the Medical Clinic for a migraine headache. In March 2010, she was treated twice at the Medical Clinic for migraine headaches. By September and October 2010, Ms. Patton's headaches became more frequent and severe. The headaches would sometimes occur three to four days a week and included blurred vision, floaters, and light sensitivity that required her to wear sunglasses. Dr. Harrison referred Ms. Patton to Dr. Thomas Head, a neurologist in Jackson, Tennessee.

Beginning in October 2010, Dr. Head treated Ms. Patton for migraine headaches. In addition, she was treated twice in October 2010 at Baptist Memorial Hospital in Huntingdon, Tennessee, and once in November 2010 at Jackson-Madison County General Hospital for migraine headaches. On January 2, 2011, Ms. Patton had a migraine headache that required her to leave work. This was the last day she worked at the Medical Clinic.

Because Ms. Patton continued to have severe migraine headaches, Dr. Head referred her to Dr. Merle Diamond at Diamond Headache Clinic in Chicago, Illinois. Dr. Diamond began treating Ms. Patton in January 2011 with frequent inpatient and outpatient care. In addition, Ms. Patton was treated at Baptist Memorial Hospital on multiple occasions between April 2011 and July 2014. Ms. Patton was also seen by Dr. John Hopkins of The Jackson Clinic; Dr. Jeremy Warner at Vanderbilt University Medical Center; Dr. Randall Moskovitz, a psychiatrist in Memphis; and Dr. Jan Brandes, a neurologist in Nashville. Dr. Diamond was Ms. Patton's treating physician at the time of trial.

In February 2011, Ms. Patton filed a claim for workers' compensation benefits against the Employer, alleging that exposure to chemical odors at the Medical Clinic caused her to have migraine headaches. After an unsuccessful benefit review conference, Ms. Patton sued the Employer.

A trial was held on November 17, 2015. The parties stipulated that Ms. Patton gave proper notice of her injury, her last day at work was January 2, 2011, temporary total disability benefits had been fully paid, the date of maximum medical improvement was January 12, 2013, and Ms. Patton's injury, if compensable, was a gradually occurring injury. The primary issues to be determined at trial were whether the claim was compensable, and if so, the extent of vocational disability.

Ms. Patton, who was fifty years old at the time of trial, testified she graduated from high school in 1983, later earned a degree at Jackson State Community College, and became a licensed X-ray technician. In January 2008, she began working at the Medical Clinic taking and processing X-rays. As a part of her job, she carried the X-rays into a processing room, shut the door, pulled the film out, put it through a processer, and waited for it to develop. At least once and usually twice per day, she refilled the chemicals in the developer. The processing room was roughly the size of a small bathroom, and the smell of the chemicals was "very potent." The door to the room remained open when she refilled the chemicals, but the door was closed when she was developing film.

Ms. Patton testified that she has had a history of headaches since she was sixteen years old. The headaches she experienced after she began working at the Medical Clinic differed from her previous headaches. The headaches that occurred before she worked at the Medical Clinic were tension headaches and only happened around two times per year. These headaches felt like a bandana was pulled tightly around her head just across her forehead, were not triggered by any specific foods or odors, and were treated with an over-the-counter medication such as Tylenol.

Ms. Patton explained that her first serious migraine headache occurred in June 2008, about five months after she started working at the Medical Clinic. She was treated at the Medical Clinic for the headache. In March 2010, she began having more frequent migraine headaches. Dr. Harrison at the Medical Clinic treated her by providing samples of migraine medications and giving her injections of Demerol, Phenergan, or Nubain. When she received these injections, her husband would have to drive her home from work.

In September and October 2010, Ms. Patton's migraine headaches became more frequent, more intense, and longer in duration. She had migraine headaches three to four times a week. The headaches would be painful throbbing sensations on the right side of her head, accompanied by blurred vision, floaters, nausea, and sensitivity to light. She was referred to Dr. Head for treatment and at one point required hospitalization for Dihydroergotamine ("DHE") treatments. Ms. Patton's first DHE treatment was ineffective. On her last day working at the Medical Clinic in January 2011, she experienced a severe headache and "f[e]ll out" in the hallway. Her husband had to drive her home.

After receiving a referral from Dr. Head, Ms. Patton saw Dr. Diamond at Diamond Headache Clinic. Ms. Patton's treatment regimen with Dr. Diamond included DHE treatments, with Benadryl injections and doses of Norflex administered between treatments. Ms. Patton's headaches improved after these treatments.

At the time of trial, Ms. Patton was having migraine headaches three to four days per week, which required her to lie in bed in a darkened room. She frequently had to wear sunglasses. She could not drive when taking her medications. She did not believe she could

sustain a full-time job because she never knew when her next headache would occur. Pepperoni and bleach were examples of problem odors that would trigger a migraine for her, and stress was also a trigger. Ms. Patton testified that she visited her obstetrician/gynecologist regularly and was not menopausal. In August 2009, hormone tests verified she was not menopausal.

Dr. Diamond, who is board certified in internal medicine and emergency medicine, testified by deposition. She has a certificate of added qualification in headache management from the National Board of Certification in Headache Management and a subspecialty certification for headache medicine from the United Council for Neurologic Subspecialties. She has been a staff physician at Diamond Headache Clinic since 1989 and the managing director of the clinic since 2008. Diamond Headache Clinic, which specializes almost exclusively in the treatment of headaches, is the oldest and largest private headache clinic in the United States and one of two places that has an inpatient treatment unit for patients with debilitating migraine headaches.

Dr. Diamond explained that a migraine is a primary headache that affects about forty-eight million Americans. There are twenty to twenty-five fairly common "triggers" associated with migraines. Triggers can include stress, insomnia, bright light, change in barometric pressure, consumption of alcohol or caffeine, certain medications, odors, and the menstrual cycle. Hormone fluctuation can also be a trigger, as perimenopause is a time patients are often treated for migraine headaches. Dr. Diamond estimated that she can track a family history of migraines for somewhere between 50% and 75% of migraine patients. Patients with a genetic history of migraines are most likely to have migraine headaches triggered by physical or psychological trauma or an odor.

Of the forty-eight million Americans who suffer from migraine headaches, 5%–7% suffer from chronic migraines, meaning they have episodes of severe pain—particularly with nausea, vomiting, and light and noise sensitivity—over fifteen days per month. Dr. Diamond explained that chronic migraines are probably second only to the HIV virus in terms of quality-of-life impact.

Dr. Diamond first saw Ms. Patton on January 24, 2011, after a worsening pattern of migraine headaches. Ms. Patton reported that she had experienced headaches since the age of sixteen and had a family history of migraines. Ms. Patton's headaches worsened after she began working at the Medical Clinic. Dr. Diamond explained there was a clear temporal relationship between Ms. Patton's exposure to chemicals at work and her chronic migraine history and that, in his opinion, they were causally related. According to Dr. Diamond, exposure to odorous chemicals triggered Ms. Patton's severe migraines.

Dr. Diamond explained that Ms. Patton has gone through a process known as "Central Sensitization," where, once a trigger occurs, it is as if a circuitry gets turned on in

the brain, leading to a chronic recurring cycle of headaches. This is the reason Ms. Patton continues to have severe migraine headaches even though she is no longer exposed to the odorous chemicals. Dr. Diamond said in some patients, "the circuitry" gets imprinted in the brain and is a difficult process to stop. Over time, non-painful stimuli that would not normally trigger a migraine headache can act as triggers. According to Dr. Diamond, that has been the case with Ms. Patton, whose current triggers include bright lights, insomnia, overstimulation, anxiety, and weather changes. Ms. Patton's disorder is a "comorbid" condition with anxiety and depression, meaning that if an individual has one of these conditions, then she has a higher likelihood of also having the others.

Initially, Dr. Diamond hospitalized Ms. Patton and administered medicine to help break the cycles of pain and then administered prophylactic medicines. Dr. Diamond has treated Ms. Patton for several years, and, even with a variety of preventative medications, Ms. Patton intermittently has a "status migraine," which is a prolonged, severe headache that requires extensive hospitalization. Before she saw Dr. Diamond and during the time she has been treated by Dr. Diamond, Ms. Patton has taken fifty to sixty preventive medicines. By the date of the trial, Dr. Diamond was prescribing a cocktail of medications that was somewhat effective. Ms. Patton was an inpatient at Diamond Headache Clinic at the time Dr. Diamond gave her deposition. She described Ms. Patton as a very compliant patient.

According to Dr. Diamond, chronic migraines are now a permanent condition for Ms. Patton: "[S]he's been tried on virtually every preventative medicine there is available. She has also done multiple other interventions. And while she can in time have improvement, she . . . will continue probably to have these episodes . . . that require . . . intervention in inpatient setting." Dr. Diamond opined that Ms. Patton is 100% vocationally impaired because of her condition. Dr. Diamond explained that under the Migraine Disability Assessment ("MIDAS") rating system, Ms. Patton would be considered highly disabled, which would correlate with a MIDAS score of 21. A MIDAS score of 21 often equates to having over twenty-five days of severe headaches per month. The MIDAS system was developed for clinical research but has been proposed to be used to measure disability. Dr. Diamond was not previously familiar with the Sixth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment ("AMA Guides"), but she disagreed that a MIDAS score of 21 would equate with a 5% impairment rating under the AMA Guides, stating that a 5% impairment rating for Ms. Patton would be illogical.

Ms. Patton introduced the medical evaluation of Dr. Alan M. Nadel. Dr. Nadel, a neurologist in Memphis, examined Ms. Patton on March 29, 2011, upon a referral by the Medical Clinic's insurance company to determine the relationship between Ms. Patton's work and her migraine headaches. Dr. Nadel reviewed Ms. Patton's medical records, including letters from Dr. Diamond and Dr. Head and Ms. Patton's neuroimaging studies.

Dr. Nadel concluded that Ms. Patton's headaches were work-related and exacerbated by exposure to the smell of the chemicals she used in processing X-rays. He opined that her headaches would gradually revert to their level before she began working at the Medical Clinic and that she could then return to work but not where she was exposed to the chemicals.

Ms. Patton also introduced a number of medical records, including her records from the Medical Clinic, Henry County Medical Center, Baptist Memorial Hospital, Jackson-Madison County General Hospital, Diamond Headache Clinic, and Drs. Hopkins, Head, Brandes, Warner, and Moskovitz.

The Employer presented the testimony of five witnesses. Dr. Harrison, a family practitioner for thirty-seven years and the sole owner of the Medical Clinic, testified he treated Ms. Patton for migraine headaches on a number of occasions. In June 2008, when he treated Ms. Patton for a migraine, she told him she had a history of migraines and was having one at that time because she had been under a lot of stress. She did not complain that any odors triggered her migraine headaches. Between August 2008 and March 2010, Ms. Patton was treated at the Medical Clinic several times for unrelated issues and did not complain of migraines or odors from the X-ray development room. On March 10, 2010, Ms. Patton was treated for a migraine by a nurse practitioner at the Medical Clinic. The next day, Ms. Patton was again treated for a migraine headache. She was also treated for migraine headaches on September 10, 2010, and October 1, 2010. After the October 1 treatment, Dr. Harrison referred Ms. Patton to Dr. Head. Dr. Harrison acknowledged that on at least one other occasion, he had referred a patient to Diamond Headache Clinic for care.

Ms. Patton was treated for migraine headaches at the Medical Clinic in October and November 2010 and was last seen on January 17, 2011. According to Dr. Harrison, Ms. Patton never complained that her migraines were triggered by exposure to chemicals at the Medical Clinic. Dr. Harrison, whose office is next door to the X-ray developing room, said he had never smelled heavy fumes or chemical odors emanating from the room. He explained that the door to the room is left open unless someone is developing film.

Dr. Harrison testified that before Ms. Patton began having migraine headaches, she was a good employee and had no issues with absenteeism. He agreed there are multiple potential causes for migraines, and odors are known to be triggers. He also acknowledged that Ms. Patton could have had a different threshold than others as to her reaction to the odors.

Pat Stutzman, a personnel supervisor and medical transcriptionist at the Medical Clinic, testified that she had worked there since April 2000. She was involved in Ms. Patton's hiring and kept a log of her work attendance. When an employee would miss

work, Ms. Stutzman would make a note of it and indicate a brief reason for the absence. She prepared a summary of Ms. Patton's attendance that listed seventeen different occasions between June 4, 2008, and January 7, 2011, where Ms. Patton missed work for either a "migraine" or a "headache." Ms. Stutzman said that Ms. Patton started to complain about her migraines in June or July of 2009 or 2010. Ms. Patton never complained about odors in the developing room. Ms. Stutzman, who worked approximately fifteen to twenty feet from the developing room, never noticed any odors.

Susan Stubblefield, business manager at the Medical Clinic, testified that before February 2011, Ms. Patton never complained to her about exposure to chemicals causing her migraine headaches. Ms. Stubblefield stated that no one other than Ms. Patton has complained to her about odors in the Medical Clinic since 2011.

Dr. Head, a board certified clinical neurologist in Jackson, testified by deposition. Dr. Head treated Ms. Patton for migraine headaches in October and November 2010. He first saw her on October 29, 2010, after she was referred to him by Dr. Harrison. Ms. Patton reported having chronic headaches since the age of sixteen, which had become more severe over time. Ms. Patton described her headaches to Dr. Head as being typically on the right more than the left side with nausea, vomiting, and sensitivity to light, sound, and smells. Dr. Head noted that Ms. Patton did not seem to have migraines on Mondays and recalled that Ms. Patton's husband suggested that exposure to X-ray chemicals at work may cause her migraines. Dr. Head said that Ms. Patton mentioned no other obvious triggers except that she did not sleep well at night. Ms. Patton reported a family history of migraines. Dr. Head explained that migraine headaches typically run in families more so than other types of headaches. He reserved judgment on the cause of Ms. Patton's migraine headaches when he saw her in October 2010. After his initial examination of Ms. Patton, Dr. Head believed that she had a significant problem. He discussed a number of medications that might work but noted that some medications would not be appropriate options due to Ms. Patton's other health conditions, including low blood pressure and a history of anorexia.

On November 10, 2010, Ms. Patton was treated by a nurse practitioner in Dr. Head's office. Because Ms. Patton was having almost daily headaches, she was admitted to Jackson-Madison County General Hospital on November 15, 2010, for DHE treatments. According to Dr. Head, a DHE treatment can be useful in resolving a severe migraine headache that has gone on for several days or weeks. He explained that it is an extreme measure and is considered "the nuclear option," in which a person is admitted to the hospital and given either an around-the-clock infusion of DHE or IV injections of DHE every eight hours. The DHE treatment was not effective. Ms. Patton had a follow-up visit with Dr. Head on November 24, 2010, and her last visit was on January 5, 2011, when he referred her to Diamond Headache Clinic.

Dr. Head explained some triggers of migraine headaches are foods, odors, skipping meals, differing wake-sleep cycles, and hormonal fluctuations. Perimenopause and stress are frequent triggers. He explained that stress is the number one trigger for all types of headaches, with at least 78% of patients listing stress as a trigger for headaches, including migraines. Colognes and perfumes are the most common odor triggers. He also explained that everyone reacts differently to odors, with some people reacting immediately upon smelling the odor and others requiring a longer exposure.

During his testimony, Dr. Head was asked to read from a medical record from a visit Ms. Patton had with Dr. Paul Gray on April 26, 1999. The medical record indicated that Ms. Patton sought treatment from Dr. Gray for a severe migraine headache she had been experiencing since the previous day. Ms. Patton described the migraine headache as right-sided and throbbing, which was similar to previous migraine headaches, and that triggers for Ms. Patton's migraines included allergies, smells, perfume, and her menstrual cycle. She was treated with Zomig, which had worked well in the past. Dr. Head agreed that the symptoms reflected in Dr. Gray's medical record were similar to the migraine headache symptoms Ms. Patton had described to him.

Dr. Head further agreed that a number of different kinds of stress could trigger migraines. He was asked to read from a clinic visit note from Nova Counseling Center, which indicated that on January 9, 2008, Ms. Patton sought treatment for anxiety and depression, as she had been dealing with frequent crying episodes, lack of motivation, and had been depressed due to an extramarital affair by her husband. Dr. Head agreed that as of January 9, 2008, Ms. Patton appeared to be under a high amount of stress. Dr. Head further explained that depression would have an important impact on someone with a history of migraines, as depressed patients seem to have a greater incidence of sleep disturbances, which make migraines worse. He also noted that because depression lowers the pain threshold, "everything that hurts when you're depressed hurts more."

Dr. Head gave no opinion on the cause of Ms. Patton's migraines, as he "never . . . got completely . . . engaged in her clinical problem." Because of the short amount of time he spent with Ms. Patton, he could not assess the different factors and determine the cause of her headaches. He said, however, that he was not aware of literature stating that brief exposure to chemical odors can cause someone to have permanent headaches for the rest of the person's life. He posited that if Ms. Patton is no better now than she was when she was being exposed to the chemicals, it would be hard to say that the chemicals were playing a major role. Dr. Head agreed, however, that Dr. Diamond would know more about the cause and prognosis of migraine headaches than he would. Although he stopped short of deferring to Dr. Diamond's opinion on the cause of Ms. Patton's migraine headaches without additional information, he agreed that Diamond Headache Clinic is one of the preeminent headache clinics in the country and that Dr. Diamond is highly qualified in her field.

Dr. Jonas Kalnas, a physician certified in occupational medicine and licensed in Tennessee, Michigan, and California, testified by deposition. Dr. Kalnas, who was working at Vanderbilt University Medical Center, was retained by the Medical Clinic to evaluate Ms. Patton's case. Dr. Kalnas reviewed the medical records and the material safety data sheets on the X-ray chemicals Ms. Patton used at the Medical Clinic and the material safety data sheets for each ingredient of the X-ray chemicals. He also reviewed the complaint, medical literature concerning migraine headaches, and the depositions of Ms. Patton, Dr. Diamond, and Dr. Head. He did not examine Ms. Patton.

According to Dr. Kalnas, Ms. Patton's medical records show she had a history of migraine headaches and sought medical treatment for those headaches before working at the Medical Clinic. Dr. Kalnas concluded that while odors from X-ray chemicals may act as a trigger of migraine headaches, Ms. Patton's exposure to the chemicals caused no permanent worsening or aggravation of her migraine condition, and it did not cause her to develop chronic migraine headaches. Dr. Kalnas said he found no evidence in the medical literature supporting the conclusion that exposure to chemicals or their odors would cause a person to become a migraine headache patient. Instead, according to Dr. Kalnas, the propensity for migraine headaches is an inherited trait. He said that "[i]f the odor is going to cause any kind of effect, it would cause a person to experience an exacerbation of migraine within minutes of that odorous sensation, and we don't have that history reported by Ms. Patton." Dr. Kalnas pointed out that Ms. Patton did not complain of increased headaches from January 2008 until October 2010 although she was exposed to the chemicals over that period of time, and her migraine headaches have not improved even though she has not been exposed to the chemicals since January 2011.

In Dr. Kalnas's opinion, perimenopause was a likely trigger for Ms. Patton's migraine headaches. Ms. Patton's medical records indicated that she reported symptoms of perimenopause and sought advice from nurses and doctors because she was concerned she was entering menopause around the same time she experienced her migraine symptoms. Dr. Kalnas explained that the medical literature provides that migraines are two to three times more frequent in women than in men and that migraine headaches are affected by hormonal fluctuations. He said that for women predisposed to migraines, the migraine onset usually happens when they have menstrual periods. Dr. Kalnas explained that Ms. Patton stated that her migraine headaches started at age sixteen, which was just a few years after the usual age of menarche, when hormone levels began to fluctuate. The worsening of her migraine headaches in 2010 coincided with the onset of perimenopause. He concluded that the hormonal fluctuation during the time of perimenopause was the key factor that explained why her migraine headaches worsened in 2010.

Dr. Kalnas disagreed with Dr. Diamond's temporal relationship theory of causation, stating that while temporal relationship is a factor to be considered in causation, it is only one of many factors. He explained that just because something precedes an effect does not

make it causal. He noted there is a temporal relationship between Ms. Patton's hormonal fluctuations and her onset of migraines. Dr. Kalnas stated, "[Ms. Patton] got exposure to odors at work for a couple of years, and her headaches didn't get worse. But then when she got old enough and started getting worsening of perimenopause, her headaches did get worse." Dr. Kalnas believed Dr. Diamond overlooked this correlation. Dr. Kalnas also disagreed with Dr. Diamond's sensitization theory, saying he could find no medical literature to support it. He further added that even if the theory was plausible, Ms. Patton's medical history did not support the conclusion she experienced some sort of sensitization. He noted that Ms. Patton had denied odor sensitivity when she first visited Dr. Diamond and that Ms. Patton had identified bleach as a problem odor, thus exposure to bleach could be the cause of the supposed sensitization. Dr. Kalnas also dispensed with the notion that Ms. Patton might have suffered from "darkroom disease," a condition experienced by workers who develop film. Diagnosis of this condition requires the presence of three or more out of five symptoms, only one of which—headache—was experienced by Ms. Patton.

Dr. Kalnas explained that a 5% impairment is the highest rating provided by the AMA Guides Sixth Edition for a migraine headache condition. Dr. Kalnas stated that while it is premature to assign an impairment rating given Ms. Patton's potential for improvement with certain treatments, Ms. Patton's impairment rating would not be more than 5%.

The trial court found all of the witnesses to be credible. In comparing the quality of medical testimony, however, the trial court observed that the testimony of Dr. Diamond and Dr. Head carried additional weight because each had treated Ms. Patton and had considerable experience in caring for patients suffering from disabling headaches. Dr. Kalnas did not examine or treat Ms. Patton, and his opinions were based solely on a review of the medical records and the deposition testimony of others. The trial court accredited Dr. Diamond's testimony, as she was one of the top clinicians for the treatment of migraine headaches in the country, and found Dr. Diamond's and Dr. Nadel's findings to be the most persuasive.

The trial court further noted that Dr. Diamond's testimony showed no indicia of bias, whereas Dr. Kalnas, whose practice is limited to performing evaluations and not treatment, rendered his opinion in response to a referral by the Employer's workers' compensation insurance carrier. Further, the trial court noted that, unlike Dr. Diamond, Dr. Kalnas's medical specialty is not in the diagnosis and treatment of headaches. The trial court afforded Dr. Kalnas's testimony less weight than that of Dr. Diamond. The trial court ruled that Ms. Patton's migraine headaches were exacerbated by her exposure to the chemical odors at the Medical Clinic and resulted in a chronic disabling condition. The trial court ruled that Ms. Patton was permanently and totally disabled and gave little weight to the maximum 5% impairment rating provided under the AMA Guides, stating that the

rating was "not at all representative of what the disabling [e]ffects of migraine headaches can be and certainly are in [Ms. Patton's case]."

The Employer appealed. This appeal was referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law under Tennessee Supreme Court Rule 51.

II.

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). Regarding credibility and weight to be given to testimony, the trial court is afforded considerable deference when the trial judge had the opportunity to observe and hear witness testimony first-hand. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008) (citing *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002)). When the issues involve expert medical testimony in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and a reviewing court may draw its own conclusions regarding those issues. *Id.* (citing *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006)). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009) (citing *Goodman v. HBD Indus., Inc.*, 208 S.W.3d 373, 376 (Tenn. 2006); *Layman v. Vanguard Contractors, Inc.*, 183 S.W.3d 310, 314 (Tenn. 2006)).

Causation

The Employer contends that the trial court erred in finding that Ms. Patton's migraine headaches constituted an injury that arose out of and in the course and scope of her employment with the Medical Clinic. The Employer argues that the evidence preponderates against the trial court's finding on causation and that the trial court erroneously afforded more weight to Dr. Diamond's testimony. Ms. Patton responds that the trial court did not err. We find the evidence does not preponderate against the trial court's finding.

Injuries arising out of and in the course and scope of employment are compensable. Tenn. Code Ann. § 50-6-103(a) (2008). A workers' compensation claimant must prove every element of his or her case by a preponderance of the evidence. *Crew v. First Source Furniture Grp.*, 259 S.W.3d 656, 664 (Tenn. 2008) (citing *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 543 (Tenn. 1992)). "The phrase 'arising out of' refers to the cause or origin of the injury and the phrase 'in the course of' refers to the time, place, and circumstances of the injury." *Id.* (quoting *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483,

487 (Tenn. 1997)). After considering all of the circumstances, if it is apparent to the rational mind there is a causal link between the conditions under which the work must be performed and the resulting injury, "then such accidental injury 'arises out of one's employment.'" *Id.* (quoting *Wilhelm v. Krogers*, 235 S.W.3d 122, 127 (Tenn. 2007)).

Because an employer takes an employee "as is," the employer "assumes the responsibility for any work-related injury which might not affect an otherwise healthy person, but which aggravates a preexisting injury." *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (citing *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 488 (Tenn. 1997)). An employer is "liable for disability resulting from injuries sustained by an employee arising out of and in the course of his employment even though it aggravates a previous condition with resulting disability far greater than otherwise would have been the case." *Id.* (quoting *Baxter v. Smith*, 364 S.W.2d 936, 942–43 (Tenn. 1962)). An injury need not be traceable to a definite moment in time or triggering event to be compensable; rather, an employee may sustain a compensable gradual injury because of continual exposure to the conditions of employment. *Id.* at 643–44.

Whenever a permanent disability is not obvious to a layman, expert medical testimony must establish the permanency of the injury. *Crew*, 259 S.W.3d at 664 (quoting *Henley v. Roadway Express*, 699 S.W.2d 150, 155 (Tenn. 1985)). However, absolute certainty in expert medical testimony is not required. *Fitzgerald v. BTR Sealing Sys. N. Am.-Tenn. Ops.*, 205 S.W.3d 400, 404 (Tenn. 2006) (citing *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005)). Benefits may be awarded where medical evidence shows that the employment "could or might have been the cause" when there is also lay testimony from which causation may be inferred. *Id.* (quoting *Fritts v. Safety Nat'l Cas. Corp.*, 163 S.W.3d 673, 678 (Tenn. 2005)). "Any reasonable doubt as to whether the worker's injuries arose out of his employment must be construed in the worker's favor." *Wilhelm v. Krogers*, 235 S.W.3d 122, 127 (Tenn. 2007).

When faced with conflicting medical testimony, the trial court must decide which testimony to accredit. *Cloyd*, 274 S.W.3d at 644. In making this determination, a trial court may consider "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 v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

After considering all the evidence, the trial court concluded that Ms. Patton's gradually occurring injury of chronic migraine headaches arose out of and in the course of her employment. While the evidence supporting causation is not overwhelming, "[a]bsolute certainty . . . is not required." *See Fitzgerald*, 205 S.W.3d at 404. The medical proof supporting causation in this case was not speculative or conjectural. Dr. Diamond testified there was a clear temporal relationship between Ms. Patton's exposure to chemicals at the Medical Clinic and her chronic migraine history and concluded that they

were causally related. She testified there was "no question" that exposure to odorous chemicals triggered Ms. Patton's severe migraines. Dr. Diamond's medical opinion was echoed by Dr. Nadel in his March 29, 2011, medical evaluation, in which he opined that Ms. Patton's migraines were work-related and exacerbated by exposure to the smell of the chemicals she used in processing X-rays. Although Dr. Kalnas offered a different conclusion, the trial court accepted Dr. Diamond's and Dr. Nadel's opinions over that of Dr. Kalnas.

Although the medical experts in this case were all well-qualified, the trial court did not err in placing more weight on Dr. Diamond's testimony. Dr. Diamond, who has served as Ms. Patton's treating physician since January 2011, specializes in the treatment of headaches and is recognized as highly qualified in her medical specialty. Dr. Head acknowledged during his deposition that Diamond Headache Clinic is one of the preeminent headache clinics in the country and that Dr. Diamond is highly qualified in her field. Even Dr. Harrison admitted that he has referred at least one patient to Diamond Headache Clinic. Further, Dr. Nadel, who came to the same conclusion as Dr. Diamond, also evaluated Ms. Patton in person.

Dr. Kalnas has never examined or treated Ms. Patton and does not specialize in the area of migraine headaches. His practice focuses on performing evaluations, and he rendered his opinion in response to a referral by the Employer's insurance carrier. Similarly, although Dr. Head doubted whether Ms. Patton's headaches could be caused by her exposure to X-ray chemicals, he only treated Ms. Patton a few times and does not specialize in the treatment of migraine headaches. Given his limited time treating Ms. Patton, Dr. Head reached no conclusion on the cause of her headaches. Dr. Head admitted that Dr. Diamond would know more about the cause and prognosis of migraine headaches than he would.

Besides the medical proof, the trial court properly considered Ms. Patton's testimony that she had never experienced migraine headaches until after she began working at the Medical Clinic. According to Ms. Patton, the smell of the chemicals was "very potent," and in June 2008, she began having migraine headaches. Her migraine headaches became more frequent and severe in September and October 2010, and her condition progressively worsened to where she would experience a migraine headache three or four days a week. She said that on her last day working at the Medical Clinic in January 2011, she experienced a severe headache and had to be driven home by her husband. She did not return to work after this incident.

We hold that the evidence does not preponderate against the trial court's finding that Ms. Patton's migraine condition was exacerbated by her exposure to chemical odors and resulted from her employment at the Medical Clinic. The trial court did not err in finding that Ms. Patton's injury was compensable.

Extent of Vocational Disability

The Employer asserts that the trial court erred in finding Ms. Patton to be permanently and totally disabled. Upon our review of the record, we find that the evidence does not preponderate against the trial court's finding.

Compensable disabilities under the Workers' Compensation Act fall into one of four statutory classifications: (1) temporary total disabilities; (2) temporary partial disabilities; (3) permanent partial disabilities; and (4) permanent total disabilities. Tenn. Code Ann. § 50-6-207(1)–(4). Each classification is independent and serves a specific compensation goal. *Davis v. Reagan*, 951 S.W.2d 766, 767 (Tenn. 1997) (citing *Roberson v. Loretto Casket Co.*, 722 S.W.2d 380, 383 (Tenn. 1986); *Redmond v. McMinn Cnty.*, 354 S.W.2d 435, 437 (Tenn. 1962)).

Permanent total disability occurs "when an injury not otherwise specifically provided for [under the Workers' Compensation Act] totally incapacitates the employee from working at an occupation that brings the employee an income." Tenn. Code Ann. § 50-6-207(4)(B). Disabled workers falling under this definition are entitled to permanent total disability benefits. Tenn. Code Ann. § 50-6-207(4)(B).

> The determination of permanent total disability is to be based on a variety of factors such that a complete picture of an individual's ability to return to gainful employment is presented to the Court. Such factors include the employee's 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 v. Dyer Nursing Home, 188 S.W.3d 525, 535–36 (Tenn. 2006) (citations omitted).

Here, the trial court assessed whether Ms. Patton was totally incapacitated from working at an occupation that could generate an income. The trial court considered Ms. Patton's age, education, work history, and physical condition and the expert medical testimony that Ms. Patton's headaches were permanent, highly disabling, and resulted in her inability to sustain gainful employment. The trial court also found the 5% impairment rating under the AMA Guides not to be representative of the disabling effects of Ms. Patton's migraine headaches. Accordingly, the trial court found, by clear and convincing evidence, that Ms. Patton was permanently and totally disabled.

The record indicates that due to Ms. Patton's condition, she cannot sustain an occupation that could generate income, as she will likely continue to suffer debilitating migraines and require ongoing care. Dr. Diamond testified that despite many preventative medications administered over several years, Ms. Patton still experiences "status

migraines," which are prolonged, severe headaches requiring extensive hospitalization and medication. She opined that chronic migraines are now a permanent condition for Ms. Patton and that she is 100% vocationally impaired. We agree with the trial court that, based on the expert testimony and Ms. Patton's medical history, a 5% impairment rating is not an accurate representation of the disabling effects of Ms. Patton's migraine headaches. Besides the medical evidence, we consider Ms. Patton's testimony on the debilitating nature of her condition. *See Vinson v. United Parcel Serv.*, 92 S.W.3d 380, 386 (2002) ("[I]t is well settled that . . . 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." (internal quotation marks omitted)). Ms. Patton testified that she has migraine headaches three to four days a week, which require her to lie in bed in a darkened room. She cannot drive when taking her medications and does not believe she could sustain a full-time job, as she never knows when her next headache will occur.

We conclude that the evidence does not preponderate against the trial court's finding that Ms. Patton is permanently and totally disabled.

III.

We hold that the trial court did not err in finding that Ms. Patton's injury was compensable and that she is permanently and totally disabled. We affirm the judgment of the trial court. Costs of this appeal are taxed to Paris Henry County Medical Clinic and its surety for which execution may issue if necessary.

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SHARON G. LEE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

LISA PATTON v. PARIS HENRY COUNTY MEDICAL CLINIC

Circuit Court for Carroll County
No. 13CV53

No. W2016-00203-SC-R3-WC – Filed November 30, 2016

JUDGMENT ORDER

This case is before the Court upon 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, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are assessed to Paris Henry County Medical Clinic and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM