

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION PANEL
AT NASHVILLE**

SHERRY LAWRENCE,)
)
Plaintiff/Appellee)
)
v.)
)
ERIN TRUCKWAYS, LTD. d/b/a)
DIGBY TRUCK LINE, INC., and THE)
TRAVELERS INSURANCE COMPANY,)
)
Defendants/Appellants)

DAVIDSON CIRCUIT

Hon. Walter C. Kurtz,
Judge

NO. 01S01-9512-CV-00216
(No. 92C-580 Below)

FILED

July 8, 1996

**Cecil Crowson, Jr.
Appellate Court Clerk**

For the Appellants:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Senior Judge John K. Byers
Special Judge William S. Russell

**AFFIRMED
AS MODIFIED**

BYERS, Senior Judge

_____This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court 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 plaintiff 100% permanent vocational disability. Defendants challenge the trial court's finding of permanent impairment and the trial court's finding of 100% permanent vocational disability.

We find that the evidence preponderates in favor of a finding of a compensable permanent injury. We find, however, that the evidence preponderates against an award of 100% permanent vocational disability. We find the evidence preponderates in favor of a finding of 75% permanent partial vocational disability. We so modify the judgment of the trial court and, as modified, affirm it.

Plaintiff, 41, has a tenth-grade education. Her past work history includes work as a waitress, bartender, factory worker and a truck driver. On October 30, 1990, plaintiff and her husband were driving for defendant when plaintiff fell from the truck cab as she was trying to open a partially stuck passenger door. She was diagnosed with a sprain to the right upper back and right neck and admitted to the hospital for an unstable diabetic condition. She was also visited by a psychiatrist while at the hospital for depression and sleeplessness. Since her injury, plaintiff has developed chronic pain in her neck and back and eventually in her lower back. She never returned to work for the defendant but, in 1992, she began working as a bartender. She quit after ten months due to pain.

Plaintiff was first treated by Dr. Gurumurthy Reddy, an orthopedic surgeon, who diagnosed a neck and upper back strain and noted muscle spasm and limitation of range of motion of the neck. He last saw her on January 31, 1991, when he diagnosed myofascial neck and upper back pain and released her to return to work on a trial basis.

Plaintiff was eventually treated by Dr. Dennis Aguirre, an anesthesiologist. He diagnosed fibromyalgia in August 1993. He testified that fibromyalgia is a

systemic disease involving many body functions and producing chronic pain and fatigue. He opined that plaintiff's lower back pain is consistent with fibromyalgia. He opined that plaintiff's fibromyalgia is related to her fall from the truck. On cross-examination, he testified that the cause of fibromyalgia is often idiopathic or unknown.

At the request of the defendants, plaintiff was examined by Dr. Harry Bachman, an orthopedic surgeon and Dr. William Platt, a physiatrist. Dr. Bachman testified that he found no objective findings whatsoever, that the existence of fibromyalgia was questioned by some physicians and that plaintiff could return to work. Dr. Platt diagnosed chronic pain syndrome with depressing features. He opined that plaintiff did not have fibromyalgia when he saw her and that she could return to light-duty work. He opined that plaintiff's lower back pain was more likely related to her bartending than her fall. He further testified that the causes of fibromyalgia are uncertain.

Plaintiff saw Dr. David Forester, a psychiatrist. He diagnosed major and severe depression which is likely to deteriorate. He related her current mental condition to the results of her fall: her fibromyalgia and her inability to work. He opined that plaintiff has a Class IV marked impairment. Dr. Stephen Fulmer, a psychologist, evaluated plaintiff for defendants. He diagnosed plaintiff with Dysthymic Disorder, or depression continuing for more than two years. He opined that plaintiff's depression preceded her fall and that her fall did not cause her depression but that it did aggravate it.

Our review is *de novo* on the record, accompanied by the presumption that the factual findings of the trial court are correct. TENN. CODE ANN. § 50-6-225(e)(2). Under this standard of review, we must weigh in more depth factual findings of the trial court. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). Where evidence is documentary, we are equally situated to the trial court in assessing credibility and weight of evidence. *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355 (Tenn. 1989).

We find the evidence preponderates in favor of the finding of the trial court that the plaintiff suffered a compensable permanent injury. We find, however, that the evidence in the record preponderates against the trial court's finding of 100% permanent vocational disability. We find that the evidence in the record preponderates in favor of a finding of 75% permanent vocational disability. We accordingly modify the judgment of the trial court and, as modified, we affirm the judgment. Costs of the appeal are taxed to the plaintiff/appellee.

John K. Byers, Senior Judge

CONCUR:

Adolpho A. Birch, Jr., Justice

William S. Russell, Special Judge