

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 22, 2014 Session

**VANESSA HOBBS v. AUTO OWNERS MUTUAL INSURANCE
COMPANY**

**Appeal from the Chancery Court for Montgomery County
MC CH CV WC 12 5 Laurence M. McMillan, Chancellor**

**No. M2014-00532-SC-R3-WC - Mailed November 7, 2014
Filed January 23, 2015**

The sole issue presented in this workers' compensation appeal is whether the trial court correctly found that the employee did not have a meaningful return to work. The employee, a Head Start teacher, sustained a compensable back injury. She continued to work for about a year but then was not rehired because she had failed to meet a federal education mandate. The trial court found that she had not made a meaningful return to work and awarded benefits in excess of one and one half times the anatomical impairment. Tenn. Code. Ann. § 50-6-241(d). The employer's 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 in accordance with Tennessee Supreme Court Rule 51. We reverse the trial court's finding and remand for entry of a judgment based on one and one-half times the anatomical impairment.

**Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right;
Judgment of the Chancery Court Reversed and Remanded**

BEN H. CANTRELL, SR. J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, J., and PAUL G. SUMMERS, SR. J., joined.

Michael L. Haynie, Nashville, Tennessee, for the appellant, Auto Owners Mutual Insurance Company.

William L. Aldred, Jr., Clarksville, Tennessee, for the appellee, Vanessa Hobbs

OPINION

Factual and Procedural Background

Vanessa Hobbs (“Employee”) was injured in the course of her employment as a teacher for the Montgomery County Head Start Program (“Employer”) in August 2010. The parties attended a benefit review conference but were unable to reach an agreement. Employee filed this civil action in the Chancery Court for Montgomery County on April 3, 2012. The case went to trial on February 26, 2014.

Employee began working for Employer in approximately 2001 as a teaching assistant. In 2002, she was promoted to teacher. She continued to work in that position until her termination prior to the Fall 2011 term. She was injured on August 12, 2010, when she fell, striking her back and head. Employer accepted the injury as compensable. Employee was treated by Dr. Timothy Schoettle, a neurosurgeon. Dr. Schoettle provided conservative treatment until August 22, 2011. At that time, he discharged her from his care. He assigned a 10% permanent impairment to the body as a whole for Employee’s work injury. He assigned permanent restrictions of maximum lifting or carrying of twenty-five pounds, frequently lifting no more than fifteen pounds and pushing or pulling no more than twenty pounds. Dr. Schoettle discussed the possibility of surgical treatment with Employee, but she decided against that treatment. Dr. Schoettle did not take Employee off of work, and the only time she missed due to her injury was for medical appointments and physical therapy.

On July 13, 2011, Felicia Bagwell, the Director of the Montgomery County Head Start Program sent a letter to Employee informing her that she would not be rehired as a teacher because she no longer had the necessary credentials for holding that position. Specifically, Employee had failed to obtain an Associate’s Degree which was required by the United States Department of Health and Human Services. The mandate had been issued in October 2008 and was effective beginning in the Fall semester of 2011. Ms. Bagwell testified that local Head Start programs had been advised of the degree requirement as early as 2000 and that she had conveyed that information to staff generally, and to Employee specifically, on numerous occasions over the years.

Employee's testimony and records from Nashville State established that she took two classes in the Spring of 2002 and passed one, receiving three credit hours. In the Summer of 2002, she passed two classes for six hours. She passed one class in Summer 2004, one class in Spring 2005 and one class in each of the following semesters: Spring 2006, Fall 2006, Fall 2007, Fall 2008, Spring 2009 and Fall 2009. In Summer 2010, she completed one additional class. She received eleven credit hours for classes taken at other institutions. At that time, one year before the deadline, she had forty-one credit hours of the sixty needed to complete an associate's degree. Employee took two courses in the Spring 2011 term, but withdrew from one, receiving three additional credit hours. The record of Nashville State Community College states that she had forty-seven total hours as of October 2012. It is not clear where the discrepancy in the number of credit hours arises.

Employee testified that she began taking classes because she was aware that an Associate's Degree was going to become a requirement to hold her job. She testified that she "was just going to do my best and go to school and hop[e] if I didn't have [a degree], they would give me a chance to get it or help me get it."¹ She "would have tried" to complete her course work on time if she had not been injured. She testified that she withdrew from a geography class she was enrolled in at the time of her injury because the medication she was taking made her sleepy. She did not identify the specific medication in her testimony, nor was it mentioned in Dr. Schoettle's C-32. She also testified that she would have taken two classes in the Fall 2010 term and implied that she would have completed both of the classes she took in the Spring 2010 term but was unable to do so because of the effects of her injury. She also suggested that she would or could have taken "accelerated" courses, which typically last six weeks, if she had not been injured. She agreed, however, that she did not have the necessary qualifications to be a head start teacher in the Fall of 2011, when the federal mandate went into effect.

Ms. Bagwell testified that she had been Employee's immediate supervisor for several years before being promoted to Director of Head Start. She confirmed that

¹ A program called "Vision 2000" was established to assist prospective teachers in paying for classes. Employee was one of several persons selected for the program. She took two classes under this program. However, funding for the program was discontinued. Thereafter, prospective head start teachers were eligible for financial assistance through a program called "TECTA." Under this program, eligible employees were permitted to receive reduced tuition for classes taken at Nashville State Community College and Austin Peay State University. Employee took some classes under this program.

the Associate's Degree mandate had been promulgated in 2008 but stated that employees of the program had been aware of the impending change since 2000. She stated that staff members were advised "often" about the mandate and the consequences for those who did not satisfy it. She said she had individual meetings with Employee at which she reminded her that her job was at stake. At no time did Employee advise her that she was unable to complete classes due to time, financial or physical restraints. She confirmed that Employee would have been rehired as a teacher if she had satisfied the education requirement prior to the Fall 2011 semester. In addition to Employee, one other teacher was terminated in 2011 for failure to obtain a degree.

Sonya Mallory, who was Employee's immediate supervisor at the time of her injury, also testified at trial. She said that the federal mandate was discussed with all teachers as a group at the start of fall classes and also during individual evaluation sessions. She recalled discussing the subject with Employee, who "never said anything" in response and did not mention time or financial constraints, or her injury, as barriers to completion of her degree requirements. She added that Employee was given time off to attend medical and physical therapy appointments after the injury.

The trial court issued its findings from the bench at the conclusion of the proof. Concerning the meaningful return to work issue, the court stated:

The Court finds that this Court's focus must be on the reasonableness of the employer in attempting to return the employee to work and the reasonableness of Ms. Hobbs in failing to return to work.

The Court finds that at the time Ms. Hobbs was terminated, she was required to have 60 credit hours and an Associate's Degree pursuant to a federal mandate that came down in 2008. At the end of 2010, Ms. Hobbs had 41 of 60 credit hours to her credit. And on the date of termination, she had 47 of 60 hours, or 78 percent of the credits necessary to have her Associate's Degree.

The Court finds under that set of facts that it was not misconduct of Ms. Hobbs; and, therefore, she was not allowed a meaningful return to work in this Court's opinion. The Court

finds that the caps, therefore, do not apply.

The court went on to find that Employee had sustained a 35% permanent partial disability to the body as a whole from the injury. Judgment was entered in accordance with those findings. Employer has appealed, contending that the trial court erred by finding that Employee did not have a meaningful return to work.

Analysis

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). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Madden v. Holland Group of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained 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 the reviewing court may draw its own conclusions with regard to those issues. Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). 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).

Here, the issue presented is whether Employee had a meaningful return to work and is thus limited to receiving a permanent disability award of one and one-half times the medical impairment. Our Supreme Court discussed this issue in depth in Tryon v. Saturn Corp., 254 S.W.3d 321 (Tenn. 2008):

When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.

As a result of extensive litigation over the concept of “meaningful return to work” in the context of claims for permanent partial disability benefits, we have the benefit of many decisions in which this Court and the Appeals Panel have addressed whether a particular employee has had a meaningful return to work. These decisions provide that an employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury. Accordingly, the multiplier in Tenn. Code Ann. § 50-6-241[(d)(2)] is applicable. If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work which triggers the [one] and one-half multiplier allowed by Tenn. Code Ann. § 50-6-241[(d)(1)].

Id. at 328-29. (Citations omitted).

In this case, Employee continued to work at her regular job after the injury. Employer was able to accommodate whatever temporary restrictions were placed on her during her recovery period.² Employee testified that she believed herself to be physically capable of performing her duties, and Ms. Bagwell testified that she would have been retained if she had successfully satisfied the requirement of obtaining an Associate’s Degree by the Fall 2011 semester. It is undisputed that she did not satisfy that requirement and that her termination was for that reason.

Employee asserts that the reason she was unable to satisfy the degree requirement was related to her work injury, and thus, her loss of employment was also related to the injury. For that reason, she submits that she did not have a meaningful return to work. The evidentiary basis for her position is in her own testimony. She stated that she withdrew from one of the two classes she had enrolled in Fall 2010 because, “After working during my injury, it was hard to work at night because I had to take -- I really couldn’t take the medicine during the day because it made me sleepy. And I tried -- I tried to do them both, and I couldn’t.” She added that she

² The nature of any temporary restrictions is not set out in Dr. Schoettle’s C-32 medical report and no other evidence on the subject was introduced.

intended to take two classes while working but did not do so “because of my injury.” She said she “was just going to do my best” between August 2010 and August 2011 to obtain the thirteen to sixteen hours she needed to get a degree.

Employee’s academic record does not provide a basis for her confidence that she would have been able to successfully complete her course work in time. By all accounts, she and the other Head Start teachers were aware at least as early as 2002 that a degree would eventually be required of them. Employee began taking classes at that time. As the trial court found, she had accumulated a total of forty-one credit hours by the end of 2010, an average of slightly less than five hours per calendar year. At that point in time, she needed to pass nineteen credit hours within nine months in order to continue her employment. She was able to complete six additional hours, a number entirely consistent with her previous record. Although she mentioned the effects of unnamed medications and symptoms of her work injury as barriers to her success, the record is barren of any medical evidence to support her claims.

We find our decision in Pigg v. Liberty Mutual Insurance Co., No. M2007-01949-WC-R3-WC, 2009 WL 585962 (Tenn. Workers’ Comp. Panel Mar. 9, 2009) to be instructive here. Ms. Pigg sustained a compensable injury. She returned to work and settled her claim subject to the two and one-half times impairment cap in effect at the time. 2009 WL 585962 at *1. She was later terminated from her employment because of her continuing inability to satisfy a production quota established by her employer. Id. at *2. Ms. Pigg asserted that her inability to meet the quota was related to her work injury. Id. at *3. She sought reconsideration of her settlement pursuant to Tennessee Code Annotated section 50-6-241. The trial court ruled that her failure to satisfy production standards was not related to her work injury and that she had therefore been terminated for misconduct and was not eligible for reconsideration. Id. We affirmed the judgment, stating:

The cases [concerning meaningful return to work] do not provide a bright line test, but illustrate a continuum. At one end, an employee who voluntarily leaves his employment for reasons of his own choosing, or who is terminated for disruptive or violent behavior is subject to the lower cap on his disability award initially, and is not an appropriate candidate for reconsideration. At the other, an employee who leaves his or her employment because the effects of an injury do not permit the employee to

perform his or her job, or is terminated because of a reduction in the size of the employer's workforce, is not subject to the lower cap initially, or, if he or she has previously had a meaningful return to work, may properly seek reconsideration. The facts of this case fall somewhere toward the center of that continuum.

The guiding principle to be applied in addressing this issue is “the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work,” Tryon, 254 S.W.3d at 328. “The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.” Id. “[A]n employer should be permitted to enforce workplace rules without being penalized in a workers’ compensation case.” Carter [v. First Source Furniture Group], 92 S.W.3d 367 (Tenn.2002)], at 371. However, an employer’s decision to terminate an employee for non-compliance with workplace rules is subject to examination by the courts in that employee’s workers’ compensation lawsuit. Id.; Krantz v. Nissan N. Am., Inc., No. M2007-01812-WC-R3-WC, 2008 WL 4645192, *5-6 (Tenn. Workers Comp.Panel Oct.6, 2008); Moore v. Best Metal Cabinets, No. W2003-00687-WC-R3-CV, 2004 WL 2270751 (Tenn. Workers Comp.Panel Oct.7, 2004).

Continuing satisfaction of production quotas was a condition of employment at Dell and is, therefore, justifiably viewed as a work rule. The establishment of a production quota, as a general proposition, is reasonably related to the business necessity of producing and selling goods or services in sufficient quantities to make a profit. In the absence of specific evidence that a particular quota is simply unrealistic or is being applied to an individual employee in a discriminatory manner, an employer should be able to enforce such a rule without penalty. There is no substantial evidence in this case that the production quotas imposed by Dell were unrealistic or that they were being applied to Ms. Pigg in a discriminatory manner. To the contrary, it

appears that, in recognition of Ms. Pigg's many medical and other problems, Dell was quite lenient in its application of the metric to her. In short, the rule was reasonable and appears to have been reasonably applied by the employer. Consistent with Carter, we find that Dell should not be "penalized" for its reasonable conduct.

2009 WL 585962 at *4-*5.

In the present case, Employee lost her job because of Employer's enforcement of a work rule. The reasonableness of the rule is not an issue, because it was imposed upon Employer by the federal government. Employer made reasonable efforts to promote compliance with the rule, through tuition assistance programs and by repeatedly advising its workers of the necessity of compliance. The proof indicates that the rule was not enforced in a discriminatory manner because Employee was not the only person terminated for failing to comply. Employee contends that her work injury prevented her from completing her degree requirements in a timely fashion. However, the trial court made no finding to that effect, and there is no medical evidence to support that contention. Further, Employee and other Head Start employees had been aware for years that the requirement was impending. By at least October 2008, she and they were aware of the date upon which compliance would become mandatory. In our view, Employee had ample time in which to satisfy the federal mandate. She simply did not act with sufficient purpose to do so. Her loss of employment was, therefore, the result of her personal decisions. As the Court said in Pigg, the negative inferences associated with the term misconduct are not applicable in this case. But Ms. Hobbs' failure to perform her job for reasons unrelated to her work injuries subject her to the caps set out in Tennessee Code Annotated section 50-6-241(d).

We conclude that the evidence preponderates against the trial court's finding that Employee was entitled to an award in excess of the one and one-half times impairment cap established by Tennessee Code Annotated section 50-6-241(d). Employer does not contest an award in that amount.³

³ The Employer does not contest an award of one and one-half the anatomical impairment.

Conclusion

The trial court's finding that Employee was entitled to an award in excess of the cap is reversed. The case is remanded for entry of a judgment consistent with this opinion. Costs are taxed to Vanessa Hobbs, for which execution may issue if necessary.

BEN H. CANTRELL, SR. JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**VANESSA HOBBS v. AUTO-OWNERS MUTUAL INSURANCE
COMPANY**

**Chancery Court for Montgomery County
No. MCCHCVWC125**

No. M2014-00532-SC-WCM-WC - Filed January 23, 2015

Judgment Order

This case is before the Court upon the motion for review filed by Vanessa Hobbs pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), 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 Vanessa Hobbs, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Jeffrey S. Bivins, J., not participating.