

**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION**

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JAMIE COX,

Claimant,

v.

**CLAIM NO. 30121052949
Workers' Compensation**

STATE OF TENNESSEE,

Defendant

JUDGMENT

This matter came to be heard on April 22, 2015, before Nancy C. Miller-Herron, Commissioner, Tennessee Claims Commission, Western Division, at the Madison County Courthouse, Jackson, Tennessee. Mr. Ricky Boren, Esq., represented Claimant. Ms. Joseph P. Ahillen, Esq., represented Defendant, State of Tennessee.

Claimant, Jamie Cox, brings this action against the State of Tennessee, hereinafter referred to as Defendant, to recover under Tenn. Code Ann. § 9-8-307 (a)(1)(K), relating to workers' compensation claims by a state employee, for injuries to her neck and arms when she was assaulted by a patient on October 23, 2012, during her employment as a nurse at Western Mental Health Institute, hereinafter referred to as Western.

I.

ISSUES FOR TRIAL

The parties are in agreement: 1) that Claimant's workers' compensation rate is seven hundred ten dollars and fifty-six cents (\$710.56); 2) that Claimant has not

returned to her employment at Western; 3) that Claimant has a compensable claim for the injuries to her neck and back; 4) that Claimant received assault pay from October 24, 2012- January 22, 2013; 5) that Claimant received sick pay from January 23, 2013- February 5, 2013; 6) that Claimant received temporary total disability benefits totaling thirty-six thousand four hundred nine dollars and seventy-eight cents (\$36,409.78) for the time period of February 6, 2013-January 31, 2014; 7) that Claimant received permanent disability payments of six thousand eighty-five dollars and twenty cents (\$6,085.20) for the time period February 1, 2014-April 1, 2014.

The issues presented are: (1) whether Claimant's work-related injured left her permanently and totally disabled; (2) if Claimant was not totally disabled, the degree of permanent partial disability to the body as a whole suffered by the Claimant.

II.

FACT TESTIMONY

Fifty-three year-old Jamie Lynn Cox testified on her own behalf. Cox stated that after graduating from high school, she got her nurse's training at Methodist Hospital School of Nursing in Memphis, becoming an RN. (Tr., p. 13, lines 5-21) Claimant's first nursing job was at the Regional Medical Center in Memphis; she worked there for about 10 years. (Tr., p. 13, line 24- p. 14, line 5) She then worked for a decade at Eastwood Hospital, now Delta Medical Center. (Tr., p. 14, lines 8-15) After that she did travel nursing for 5 years before taking the job at Western in 2005. (Tr., p. 14, lines 19-25)

Claimant testified that being an RN requires lots of physical activity, including "lifting, turning, pushing, stretchers, lifting heavy high backs and, you know, the pumps, and a lot of walking, a lot of standing." (Tr., p. 15, lines 6-9) When asked about

experience as a supervisor, she said she had supervised other nurses on the floor, but her jobs always required being an actual working nurse. (Tr., p. 15, lines 10-15) She said she had never had a job where lifting wasn't required. (Tr., p. 15, lines 18-22)

Claimant said that until the assault, she was able to fulfill all of her job activities and requirements. (Tr., p. 15, lines 23- p. 16, line 1) She also testified she had never had trouble with her neck or lower back prior to the incident in October, 2012. (Tr., p. 16, lines 2-5)

Claimant then described what happened on October 23, 2012. She said she gave a shot to a patient who had gotten assaultive and loud, which made him very angry. Cox said when this patient came out of the "quiet room" and saw her, he "started running for me." (Tr., p. 16, lines 21-22) The patient started beating her in the back of the head. (Tr., p. 16, line 24- p. 17, line 1)

The day of the assault, Claimant sought medical treatment at the emergency room, then saw nurse practitioner Tina McCall for a few visits. Eventually she was referred to an orthopedic doctor in Jackson, Dr. Tim Sweo. Dr. Sweo and the workers' compensation carrier eventually agreed that Claimant should see Dr. Scott Standard at the Howell Allen Clinic in Nashville. (Tr., p. 17, line 7- p. 18, line 5)

Dr. Standard prescribed a very specific type of physical therapy for Claimant's back and traction for her neck and continued the pain medications prescribed by Dr. Sweo. (Tr., p. 18, lines 10-17) Claimant testified she takes aspirin, Naprosyn, Ibuprofen, Ultram and Flexeril. (Tr., p. 18, lines 22-23) Claimant stated that she takes "something for pain every day." (Tr., p. 19, line 5)

Claimant testified that she does drive, but when she does, she is not able to take the pain medication. (Tr., p. 19, lines 21-23)

Claimant was asked about Dr. Standard's diagnosis of post-traumatic stress disorder, hereinafter referred to as PTSD. She said, "It's to the point that I don't want to leave my home. And just to go anywhere, I have to take Buspar [an anti-anxiety medication]." (Tr., p. 20, lines 8-10)

Claimant testified that these days she watches a lot of television and does her physical therapy exercises. (Tr., p. 20, lines 24-25) She has to have help with housekeeping (Tr., p. 21, lines 2-5) and she uses a walker only to walk "any distance." (Tr., p. 21, line 8)

Claimant testified that she has not been back to work since the assault and she does not think she could do any nursing job she has ever had. (Tr., p. 22, lines 4-6) She explained:

For one thing, you have to be CPR certified to be a nurse and to do the—and there's no way that I could actually get on the floor to do CPR on a patient. I cannot lift. If I move the wrong way, I cannot lift, and my back goes out. And if I try to do any kind of writing like this at a desk, my neck goes into spasm, and I have to put my neck in traction. (Tr., p. 22, lines 8-15)

When asked whether she could do a job where all she had to do was sit at a desk and operate a computer, Claimant said she could not. She said when she sits, "my toes go numb, and they actually turn blue, so I have to get up and move." (Tr., p. 22, lines 22-24) She said she has difficulty even paying her bills or reading a book. (Tr., p. 22, line 25- p. 23, line 5) She also testified that she doesn't have typing skills. "I can't type." (Tr., p. 23, line 20) Claimant also acknowledged that Dr. Standard said she shouldn't sit more than an hour at a time. She said if she goes over that time, it's

difficult for her to walk or straighten up, her toes go numb and she experiences increased weakness in her left leg. (Tr., p. 24, lines 13-16) She also has pain down her left arm from her neck. (Tr., p. 24, lines 19-20)

Claimant further testified that she can only manage to stand for around 10 to 15 minutes. (Tr., p. 24, lines 24-25) Cox stated that it was probably an understatement to say that in every nursing job she had ever had she had to stand at least half the day. (Tr., p. 25, lines 3-9) Claimant said she had never had a job where she sat and told other people what to do. (Tr., p. 25, lines 15-18)

On cross-examination, Claimant admitted she had supervised other nurses. But, she said, those jobs involved “[m]aking rounds all through the hospital and assisting where needed.” (Tr., p. 27, lines 12-13) She testified her job with the staffing agency mostly involved work with ICUs—surgical ICUs, medicine ICUs, or CCUs. (Tr., p. 28, lines 8-10) She said it was fair to say she has had considerable work experience as a nurse—in ICUs, ERs and in mental health. (Tr., p. 28, lines 15-25)

When asked about supervisory positions, Cox reiterated that she supervised other nurses at Delta and the Med. However, she explained that it wasn’t like she had a sit-down job; she still had to work on the floor. (Tr., p. 29, lines 5-7)

She testified she has not attempted to find work since the assault. (Tr., p. 29, lines 13-17)

III.

EXPERT TESTIMONY

Board-certified neurological surgeon Scott Standard, M.D. testified by deposition on October 29, 2014. (Tr. Ex. 6, p. 5, lines 5-6) Dr. Standard testified that he began

treating Jamie Cox on March 22, 2013. (Tr. Ex. 6, p. 6, line 6) Dr. Standard testified that he took a medical history from Cox, who told him that during an October, 2012 assault she had been “beaten about the back of her head and low back.” (Tr., Ex. 6, p. 6, lines 10-11) Dr. Standard said Cox had significant pain and her MRI indicated “some possible lesion and weakness in the low back.” (Tr. Ex. 6, p. 6 , lines14-16)

Dr. Standard testified Claimant came in again on June 14, 2013 “complaining more of her neck issues.” (Tr. Ex. 6, p. 6, lines 22-23) Standard decided to try physical therapy and injections in Claimant’s back and neck. (Tr. Ex. 6, p. 6, lines 23-25) Dr. Standard said Claimant “did get the cervical traction.” (Tr. Ex. 6, p. 7, line 2) During her visits in July and August, 2013, Claimant was having pain in the low back and sacroiliac joint. He treated her with injections and physical therapy. (Tr. Ex. 6, p. 7, lines 2-10) She was also complaining of “atrophy of the right side of her neck muscles.” (Tr. Ex. 6, p. 7, lines 11-12)

Dr. Standard stated that his diagnosis included cervical lumbar strain, sacroiliitis and atrophy of the platysma muscle. (Tr. Ex. 6, p. 7, lines 17-20) In his office notes, he described her condition as “radiculopathy in both the lumbar and cervical area.” (Tr. Ex. 6, p. 8, line 1) Standard explained that back strain like Claimant’s can cause “irritation of the nerve structure, and this can produce this nerve-type pain which is called lumbar radiculopathy.” (Tr. Ex. 6, p. 8, lines 5-7)

Dr. Standard opined that Claimant’s medical problems “were made symptomatic and caused by the assault on 10/24/12.” (Tr. Ex. 6, p. 8, lines 13-14)

Dr. Standard testified that when he saw Claimant in January, 2014, he became very concerned “that she was developing post-traumatic stress disorder.” (Tr. Ex. 6, p.

9, lines 13-14) Standard explained that PTSD “can magnify the underlying issues and create an increased sensation of pain and suffering.” (Tr. Ex. 6, p. 9, lines 19-21) Standard further opined that the PTSD was connected to the assault against Claimant at work. (Tr. Ex. 6, p. 15, lines 13-17)

Dr. Standard stated that when he saw Claimant in January, 2014, “I felt like at this point she was not going to be able to return to work due to the large number of symptoms she was complaining of.” (Tr. Ex. 6 p.10, lines 3-5) Standard said he ordered a functional capacity evaluation, hereinafter referred to as FCE, although he knew the PTSD would make it difficult to get an accurate reading on the FCE. (Tr. Ex. 6, p. 10, lines 5-10)

Standard opined that Claimant had reached maximum medical improvement on January 31, 2014. (Tr. Ex. 6, p. 10, lines 11-14) He further opined that, based on the 6th Edition of the *AMA Guides*, Claimant had a permanent physical impairment of fifteen percent (15%) to the body as a whole. (Tr. Ex. 6, p. 10, lines 15-25)

Standard said he placed restrictions on Claimant of not lifting more than 10 pounds and not sitting for more than one hour. (Tr. Ex. 6, p. 11, lines 5-6) Standard went on: “So basically that would render her unemployable.” (Tr. Ex. 6, p. 11, lines 6-7)

On cross-examination, Standard acknowledged that the FCE indicates that Claimant’s effort was poor. (Tr. Ex. 6, p. 13, lines 24-25) He stated that even without the FCE, he would have the same opinion about Cox’s ability to work. (Tr. Ex. 6, p. 14, lines 17-20) Standard further opined that even without the PTSD, based on the cumulative effect of her other injuries, Cox would not be able to work. (Tr. Ex. 6, p. 14, line 22- p. 15, line 5)

Psychologist Robert W. Kennon, Ph.D, testified live at the trial of this cause on behalf of Claimant. Dr. Kennon, who has a forensic-type practice and performs a great deal of work for the court system, including vocational evaluations, (Tr., p. 31, lines 20-24) performed a vocational evaluation of Jamie Cox. He noted that Cox “primarily has training, experience, vocational experience in the nursing industry.” (Tr., p. 39, lines 3-4) He noted that there are “very few sedentary positions in nursing, all those sedentary positions are positions that someone’s either elected to, or been placed in, or has some type of management/supervisory experience to be able to perform those, so . . .” (Tr., p. 39, lines 17-22) He further noted that nursing “requires medium work activity and is very strenuous and demanding.” (Tr., p. 39, lines 24-25) Kennon testified that some aspects of nursing, such as “the ability to manage patients, manipulate patients, transfer patients, and to—and to move them about can be really in the heavy to very heavy range. . .” (Tr., p. 40, lines 3-6)

Dr. Kennon explained that sedentary work requires you to be able to lift up to 10 pounds occasionally, (Tr., p. 41, lines 5-7) whereas light work requires lifting “up to 20 pounds occasionally, and 10 pounds of force frequently.” (Tr., p. 41, lines 8-9) Moreover, for a position to be characterized as a light position, you have to be “able to stand or walk to a significant degree.” (Tr., p. 41, lines 14-15) Dr. Kennon said the restrictions Dr. Standard gave Ms. Cox, lifting no more than 10 pounds and sitting for no more than an hour, put her in the sedentary category, “with the modification of being able to—not be able to sit for longer than an hour.” (Tr., p. 41, line 25- p. 42, line 2) So, Dr. Kennon noted, Cox would not only have to find a sedentary job, but one with an

employer willing to make modifications to allow her to sit no longer than an hour. (Tr., p. 42, lines 3-8)

Dr. Kennon testified that he used the *Dictionary of Occupational Titles* to define sedentary work. (Tr., p. 43, lines 5-10) He explained this important treatise is “a guideline for determining what strength ratings are required for each job title.” (Tr., p. 45, lines 3-5) Dr. Kennon noted that most of the work Claimant has done up to now has been “medium, and sometimes more than that.” (Tr., p. 45, lines 9-10)

Dr. Kennon testified that he performed a battery of tests on Claimant. He said he had concerns after looking at her medical records regarding PTSD. When asked whether PTSD can affect a person’s ability to find and retain employment, Kennon responded: “Posttraumatic stress disorder can significantly impact one’s ability to attend, to concentrate, to focus. It can also impact their capacity to maintain emotional stability.” (Tr., p. 46, line 25- p. 47, line 4)

Dr. Kennon opined that just based on the fact that Cox had been placed in sedentary work, she suffered “an 85.11 percent loss of vocational opportunities.” (Tr., p. 49, lines 12-13) He then looked at job titles Cox might have available to her. Kennon insisted that the remaining job titles were jobs that Claimant “had no experience in, such as a clinical therapist” (Tr., p. 49, lines 18-19) or “a director of nursing service.” (Tr., p. 49, lines 20-21) Kennon emphasized that it is not realistic to just walk in the door of the state nursing board and say “I want to be the executive of the Nurses Association.” (Tr., p. 49, line 25- p. 50, line 2) In short, Dr. Kennon stated that the job titles he listed are probably not practically available Claimant. (Tr., p. 50, lines 3-9)

Dr. Kennon noted that in the U.S. labor market only eleven percent of the jobs are sedentary. (Tr., p. 54, lines 20-21) And he emphasized, many of these jobs require high levels of training and education. (Tr., p. 55, lines 4-6) He noted that there's "an indirect correlation that occurs between the amount of weight you have to lift and the amount of education you have." (Tr., p. 55, lines 7-9)

Dr. Kennon opined that of the two remaining job titles he identified, "nurse consultant or the director of nursing service," (Tr., p. 55, line 25- p. 56, line 1) he did not find to be available to Claimant. (Tr., p. 56, lines 1-2) He said he would question whether she could even physically perform the job of director of nursing at a nursing home because they frequently "have to run down, assist a patient, help fellow nurses. They're still nurses even though the majority of what they do is administrative. . ." (Tr., p. 56, lines 5-9) He noted both job titles require areas of training and knowledge which Cox does not currently possess. (Tr., p. 56, lines 15-18)

Dr. Kennon said he agreed with Dr. Standard's opinion that with or without the PTSD, Claimant is "not employable, reasonably employable." (Tr., p. 50, lines 14-15) He further noted: "I would agree with Dr. Standard, that I found no reasonable opportunities for Mrs. Cox for employment." (Tr., p. 57, lines 12-14; Tr. Ex. 3) Kennon characterized the PTSD as "just an additional factor that is going to further preclude and erode opportunities for her. . ." (Tr., p. 50, lines 17-18) Kennon noted that only about 30 percent of those diagnosed with PTSD recover. (Tr., p. 53, line 3)

On cross-examination, Kennon conceded he first identified seven highly transferable jobs before whittling them down to two. (Tr., p. 63, line 4) He noted that he eliminated titles like clinical therapist, Director of Occupational Health Nursing and

Executive Director of the Nurses Association and Director of Speech and Hearing, which are rated sedentary but for which Claimant lacks experience, training and background and which, therefore, are not practical and available options. (Tr., p. 63, line 5- p. 65, line 5) With the exception of two of the job titles, the remaining ones would require a much higher educational component than Claimant now has. (Tr., p. 73, lines 21-24) Kennon underscored the fact that Claimant has no real experience in management. The only supervision she did was as a "working nurse supervisor," Tr., p. 74, line 23) which they call a "rover." (Tr., p. 74, line 25)

Kennon testified that a review of the local labor market found no available positions for a nurse consultant or a director of nursing services. (Tr., p. 65, lines 15-19) Kennon said to determine this he did a computer search. (Tr., p. 66, lines 8-11) Kennon acknowledged that nursing is a very high demand field. But, he opined, in light of Dr. Standard's restrictions, Cox will not be able to return to the field of nursing. (Tr., p. 67, lines 14-16)

Kennon testified that the combination of only being able to lift 10 pounds and sit for less than one hour puts Claimant in a category that is really a little bit less than sedentary. (Tr., p. 72, lines 7-12)

Vocational rehabilitation counselor and consultant Patsy V. Bramlett testified live on behalf of the State of Tennessee. Bramlett got her master's degree in rehabilitation counseling in 1975. (Tr., p. 76, line 25- p. 77, line 1) She stated she has the certifications and qualifications necessary to do vocational evaluations. (Tr., p. 77, lines 12-15)

Ms. Bramlett testified that she met with Ms. Cox on March 27, 2015. (Tr., p. 78, lines 16-17) Bramlett says when she does an evaluation she looks at the person's profile both before and after the injury or incident. Bramlett said all of Cox's experience had been in the field of nursing, though she had had a wide variety of experience as a nurse, working in "a lot of different specialized areas." (Tr., p. 81, lines 20-21)

Bramlett also noted that Claimant had experience as a clinic nurse supervisor. So, she had "supervisory skills from past work." (Tr., p. 83, line 11) Bramlett opined that such experience is "helpful in finding other jobs that may be less hands-on, less physical, in nature . . ." (Tr., p. 83, lines 23-25)

Bramlett testified that an FCE is "designed to be a more objective way to arrive at opinions regarding physical restrictions." (Tr., p. 85, lines 7-9) She noted that the evaluation did not produce a valid result. (Tr., p. 85, lines 14-25)

Bramlett was asked whether a work restriction of only being able to lift 10 pounds would make someone unable to work. She said it would not. Similarly, she said only being able to sit for an hour at a time or having a sedentary work restriction would not make a person unemployable. (Tr., p. 89, line 17- p. 90, line 1) When asked whether the restrictions assigned by Dr. Standard would make Ms. Cox permanently and totally disabled, Bramlett replied:

But just based on the physical restrictions alone, the 10 pounds, the sedentary classification, those -- and the one-hour sitting without having a chance to -- to move or to change positions, those would permit jobs, and would not render someone permanently and totally disabled to work. (Tr., p. 90, lines 8-14)

Bramlett said she did a transferability of skills analysis and found a "loss of labor market access or a vocational loss of 82 percent." (Tr., p. 90, lines 24-25) She said this

would still leave jobs available to Cox in the sedentary category. (Tr., p. 91, lines 1-2) When Bramlett generated a list of possible jobs from her database (Dictionary of Occupational Titles and the Selected Characteristics of Occupations), she found, among others, the following possible jobs: nurse consultant, registrar for a nurse's registry, nurse case manager, outpatient or hospital admitting clerk, medical receptionist, cardiac monitor technician and telemetry technician. (Tr., p. 93, lines 6-19)

Bramlett agreed that some of the jobs on the list (and which were discussed by Dr. Kennon) would not be reasonable options. She noted, for example, that to get a director job "you would have to go in and trump somebody else who had a job in that organization, and I don't see that happening." (Tr., p. 95, lines 20-24)

On the other hand, there were some, such as nurse consultant or case manager in a medical facility, which Bramlett did think were reasonable options. (Tr., p. 95, line 25- p. 96, line 9) She noted that there are a lot of job opening in nursing and healthcare. (Tr., p. 97, lines 20-22)

On cross-examination, Bramlett conceded that when you plug the restrictions into the database, it only considers the 10-pound limit and not other factors such as PTSD, depression or the need to take pain medication. (Tr., p. 100, lines 10-22) She agreed that not being able to sit for more than one hour also affects someone's employability. (Tr., p. 100, line 23- p. 101, line 6) She further agreed that if Ms. Cox were to get teary in a job interview, it would likely affect her ability to get the job. (Tr., p. 102, line 23- p. 103, line 2)

When read the description of a nurse consultant, Bramlett agreed that it would require some data entry. She said she had no reason to think Claimant's testimony that she can't do that for any length of time is incorrect. (Tr., p. 105, lines 7-18)

Bramlett acknowledged that employees often have to undergo drug testing. When asked whether she would agree that the medications Claimant takes would preclude her from many of the jobs Bramlett testified about, Bramlett responded: "Well, I'm not a pharmacologist, and I do know that there are warnings about operation of equipment for some of those medications." (Tr., p. 108, lines 1-3) She said the medications wouldn't screen her out of sedentary jobs "unless there are some mental effects from those medications, and I'm not an expert on that. . ." (Tr., p. 108, lines 6-7)

IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case and carefully weighed the credibility of the live witnesses. Consideration was given to Claimant's age, education, work history, her testimony about her physical condition and resulting disability, and the medical evidence and expert testimony summarized above.

The decision in the instant case must be consistent with the provisions of Tenn. Code Ann. § 50-6-207(4)(A)(i) and (4)(B), which read as follows:

§ 50-6-207. Schedule of Compensation

(4) Permanent Total Disability.

(A)(i) For permanent total disability, as defined in subdivision (4)(B), sixty-six and two thirds percent (66 2/3%) of the wages received at the time of the injury . . . This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act, compiled in 42 U.S.C. § 401 et seq. . .

(B) When an injury not otherwise specifically provided for in this chapter totally incapacitates the employee from working at an occupation that brings the employee income, the employee shall be considered totally disabled and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable under this subdivision (4)(B) shall not exceed the maximum total benefits , exclusive of medical and hospital benefits.

Claimant reached maximum medical improvement on January 31, 2014. At that point, she would have been fifty-two (52) years old. For a person of Claimant's age, full Social Security retirement benefits will not be payable until she is sixty-seven (67) years old. Therefore, the potential financial award is substantial.

The parties are in agreement that Claimant was injured when she was assaulted by a patient while she was working as a nurse at Western. The sole medical proof in this case came from the Claimant's treating physician, Scott Standard, M.D., a board-certified neurological surgeon. Dr. Standard testified that, in his opinion, Claimant's injuries left her unable to work. (Tr. Ex. 6, p. 11, lines 6-7)

Dr. Standard stated that his diagnosis included cervical lumbar strain, sacroiliitis and atrophy of the platysma muscle. (Tr. Ex. 6, p. 7, lines 17-20) In his office notes, he described her condition as "radiculopathy in both the lumbar and cervical area." (Tr. Ex. 6, p. 8, line 1) Standard explained that back strain like Claimant's can cause "irritation of the nerve structure, and this can produce this nerve-type pain which is called lumbar radiculopathy." (Tr. Ex. 6, p. 8, lines 5-7) Dr. Standard opined that Claimant's medical problems "were made symptomatic and caused by the assault on 10/24/12." (Tr. Ex. 6, p. 8, lines 13-14)

Dr. Standard also testified that Claimant's symptoms were magnified and increased by PTSD (Tr. Ex. 6, p. 9, lines 19-21), which he opined was connected to the assault against Claimant at work. (Tr. Ex. 6, p. 15, lines 13-17)

Dr. Standard testified that he placed restrictions on Claimant of not lifting more than 10 pounds and not sitting for more than one hour. (Tr. Ex. 6, p. 11, lines 5-6) Standard went on: "So basically that would render her unemployable." (Tr. Ex. 6, p. 11, lines 6-7) Dr. Standard further opined that even without the PTSD, based on the cumulative effect of her other injuries, Cox would not be able to work. (Tr. Ex. 6, p. 14, line 22- p. 15, line 5)

The State offered no countervailing medical testimony.

Claimant's vocational expert, Dr. Kennon, testified that Claimant was basically in a less than sedentary category. He said the restrictions Dr. Standard gave Ms. Cox, lifting no more than 10 pounds and sitting for no more than an hour, put her in the sedentary category, "with the modification of being able to—not be able to sit for longer than an hour." (Tr., p. 41, line 25- p. 42, line 2) So, Dr. Kennon noted, Cox would not only have to find a sedentary job, but one with an employer willing to make modifications to allow her to sit no longer than an hour. (Tr., p. 42, lines 3-8)

Dr. Kennon opined that just based on the fact that she had been placed in sedentary work, she suffered "an 85.11 percent loss of vocational opportunities." (Tr., p. 49, lines 12-13) Kennon testified that of the job titles he first identified as possibilities, he eliminated all except two of them because Claimant lacks the required education, background and experience. Of the remaining titles, Kennon said a review of the local labor market found no available positions for a nurse consultant or a director of nursing

services. (Tr., p. 65, lines 15-19) Kennon underscored the fact that Claimant has no real experience in management. The only supervision she did was as a “working nurse supervisor,” Tr., p. 74, line 23) which they call a “rover.” (Tr., p. 74, line 25) Kennon acknowledged that nursing is a very high demand field. But, he opined, in light of Dr. Standard’s restrictions, Cox will not be able to return to the field of nursing. (Tr., p. 67, lines 14-16)

Kennon further noted that Claimant’s PTSD could significantly impact Claimant’s “ability to attend, to concentrate, to focus. It can also impact their capacity to maintain emotional stability.” (Tr., p. 46, line 25- p. 47, line 4)

Dr. Kennon stated he agreed with Dr. Standard’s opinion that with or without the PTSD, Claimant is “not employable, reasonably employable.” (Tr., p. 50, lines 14-15) He further noted: “I would agree with Dr. Standards, that I found no reasonable opportunities for Mrs. Cox for employment.” (Tr., p. 57, lines 12-14; Tr. Ex. 3)

Even the State’s vocational expert, Patsy V. Bramlett, conceded that when you plug the restrictions assigned by Dr. Standard into the Dictionary of Occupational Titles and the Selected Characteristics of Occupations database, it only considers the 10-pound limit and not other factors such as PTSD, depression or the need to take pain medication. (Tr., p. 100, lines 10-22) She agreed that not being able to sit for more than one hour also affects someone’s employability. (Tr., p. 100, line 23- p. 101, line 6) She further agreed that if Ms. Cox were to get teary in a job interview, it would likely affect her ability to get the job. (Tr., p. 102, line 23- p. 103, line 2)

Finally, Ms. Cox herself testified very credibly and forthrightly about how her injuries have affected her. When asked about her activities, she testified that she has to

have help with housekeeping (Tr., p. 21, lines 2-5) and she uses a walker to walk “any distance.” (Tr., p. 21, line 8) Claimant said she has difficulty even paying her bills or reading a book. (Tr., p. 22, line 25- p. 23, line 5)

Cox testified when she sits for any length of time, “my toes go numb, and they actually turn blue, so I have to get up and move.” (Tr., p. 22, lines 22-24) Sitting for more than an hour also makes it difficult for her to walk or straighten up and increases the weakness in her left leg. (Tr., p. 24, lines 13-16) She also has pain down her left arm from her neck (Tr., p. 24, lines 19-20) and she can’t stand for more than 10-15 minutes at a time. (Tr., p. 24, lines 24-25) Cox testified that her anxiety has gotten so bad she does not want to leave her home and when she does she often has to take the anti-anxiety drug Buspar. (Tr., p. 20, lines 8-10)

Based on the foregoing testimony, the Commission **FINDS** that Claimant, Jamie Lynn Cox, is permanently and totally disabled.

In the event that some appellate court should not agree with the Commission’s finding of a total and permanent disability, the Commission **FINDS** alternatively that Claimant did not experience a meaningful return to work and therefore would qualify for an award of six times the physical impairment rating given by Dr. Standard, or 90% to the body as a whole. See Tenn. Code Ann. § 50-6- 241.

The Commission **FURTHER FINDS** that the Claimant’s attorney, Ricky L. Boren, is entitled to receive twenty percent (20%) of the judgment in attorneys’ fees and that Mr. Boren’s fee was earned as the result of good and valuable services provided to Claimant.

The Commission **FURTHER FINDS** that accrued benefits are to be paid in a lump sum with subsequent payments to be made on a bi-weekly basis. Claimant reached maximum medical improvement on January 31, 2014. As of June 12, 2015, 71 weeks of permanent total benefits had accrued, totaling fifty thousand four hundred forty-nine dollars and seventy-six cents (\$50,449.76). The State of Tennessee already has paid Claimant permanent benefits totaling six thousand eighty-five dollars and twenty cents (\$6,085.20), leaving a net of forty-four thousand three hundred sixty-four dollars and fifty-six cents (\$44,364.56).

For Social Security Disability purposes, after payment of attorney's fees and unrecovered costs, calculating benefits due Claimant from October 23, 2012, the date of injury, to June 12, 2015, and giving credit for temporary benefits paid through January 31, 2014, the date of maximum medical improvement, Claimant will receive the lump sum net amount of thirty-seven thousand two hundred one dollars and twenty-one cents (\$37,201.21)¹. According to the mortality calculations are set forth in Table VI of *Tennessee Code Annotated*, since Claimant was 50 years old on the date of injury, she had a life expectancy of 35.46 years, or 425.52 months. Accordingly, the amortized monthly benefit received by the Claimant for the sole purpose of calculating any set-off of any Federal Social Security disability is eighty-seven dollars and forty-two cents (\$87.42) per month and represents future income replacement. This paragraph is intended for social security purposes only and not for any other purpose.

¹ Note that an additional \$6,085.20 will be deducted from Claimant's actual lump sum award as the State already paid permanent disability benefits in that amount as indicated above.

The Commission **FURTHER FINDS** that Claimant is entitled to receive future medical benefits for the treatment of conditions caused by the injury of October 23, 2014. Based on the testimony of Dr. Standard, that includes PTSD.

V.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Claimant, Jamie Cox, is awarded permanent and total disability benefits.

IT IS FURTHER ORDERED that accrued benefits of forty-four thousand three hundred sixty four dollars and fifty-six cents (\$44,364.56)² are to be paid in a lump sum with subsequent payments to be made on a bi-weekly basis.

IT IS FURTHER ORDERED that discretionary costs are awarded to Claimant for the deposition fee of her treating physician, Scott Standard, M.D.

IT IS FURTHER ORDERED that Claimant is entitled to all future reasonable and necessary medical expenses connected with her employment related injury.

IT IS FURTHER ORDERED that Ricky L. Boren, counsel for Claimant, is awarded his statutory attorney fee of twenty percent (20%), computed in the manner set out in the workers' compensation law.

Costs of this cause are taxed pursuant to T.C.A. § 9-8-307 (d).

IT IS SO ORDERED.



**NANCY C. MILLER-HERRON
COMMISSIONER**

² An additional \$6,085.20 in accrued benefits were paid in February, 2014.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Mr. Ricky L. Boren, Esq.
1269 North Highland
P.O. Box 3539
Jackson, TN 38303-3539

Mr. Joseph Ahillen, Esq.
Assistant Attorney General
Civil Rights & Claims Division
P.O. Box 20207
Nashville, TN 37202-0207

on this the 22 day of June, 2015.

Paula Merrifield

**PAULA MERRIFIELD, CLERK
TENNESSEE CLAIMS COMMISSION**