Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 1, 2019

CLAIM NO. 201677431

JOHNNA HENDRICKS — PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

TLD LOGISTICS and
HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE — RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Johnna Hendricks ("Hendricks") appeals from the September 21, 2018 Opinion, Award, and Order rendered by Hon. John B. Coleman, Administrative Law Judge ("ALJ"). The ALJ found Hendricks sustained a cervical strain and developed a somatic symptom disorder due to a July 17, 2015 work-related motor vehicle accident ("MVA"). The ALJ awarded permanent partial

disability benefits and medical expenses. Hendricks also appeals from the October 16, 2018 Order denying her petition for reconsideration.

On appeal, Hendricks argues the ALJ erred in dismissing claims for occipital neuralgia, migraine headaches and vertigo caused by the work incident, and that the evidence compels a contrary result. Hendricks argues she "should be deemed permanently and totally disabled" when those conditions are properly considered. Because substantial evidence supports the ALJ's determination those conditions are unrelated to the work injury, and no contrary result is compelled, we affirm.

Hendricks filed a Form 101 alleging she injured her "neck, face, back, neck, head; mental" on July 17, 2015, while working for TLD Logistics ("TLD") as a safety coordinator. Hendricks alleged she was driving to a work conference when a bale of hay came off a truck, went through her windshield, and struck her in the face in Loogootee, Indiana.

Hendricks testified by deposition on September 1, 2017, and at the final hearing held July 26, 2018. Hendricks resides in Owensboro, Kentucky, and was born in July 1977. Hendricks previously underwent a lumbar fusion in 2000 and a surgical repair in 2011, both of which were performed by Dr. James Hardacker. Hendricks denied having any other previous neck, back or head injuries, noting she worked full-time without difficulty or restrictions at the time of the MVA. Hendricks acknowledged she was prescribed Wellbutrin due to stress stemming from her work immediately prior to the July 17, 2015 work injury.

Hendricks began working for TLD in December 2007, and testified she was working as the assistant safety manager as the time of the accident. On July 17, 2015, Hendricks left work to travel to Indianapolis for a conference for her work. Hendricks explained she left a day early in order to attend a funeral on Saturday morning in Mooresville, Indiana. Hendricks indicated she would not have gone to the funeral if the conference had not been scheduled. Hendricks testified that a truck lost its load of hay bales while she was traveling northbound on US 231 in Loogootee, Indiana. One of the bales went through the windshield of the company car Hendricks was driving and struck the left side of her face. The impact thrust her backwards and twisted her to the right. Hendricks did not lose consciousness and she was able to stop the car. After the accident, Hendricks felt pain in her neck, upper back and shoulder blades. An ambulance transferred Hendricks to Jasper Memorial Hospital. There, multiple diagnostic studies were performed, her eyes were checked for glass, and Hendricks was given medication for pain and nausea. Hendricks visited another emergency room in Mooresville, Indiana several days later due to continuing symptoms.

Hendricks next visited Dr. Hardacker, who confirmed the hardware from her previous fusion remained intact. Hendricks then saw her primary care provider, Judy Carrico, APRN ("Nurse Carrico"), who ordered a scan of her jaw and restricted her from work for a week. Nurse Carrico ordered physical therapy for Hendricks' neck and upper back complaints. Nurse Carrico subsequently ordered head, neck and upper back MRIs when Hendricks did not improve. Nurse Carrico referred Hendricks to Dr. Jeffrey Gray, a neuropsychologist. After testing, Dr. Gray

referred Hendricks to Gina Topper, PA, ("Topper") at Deaconess Health System and Dr. Steven Sampson, an optometrist. Dr. Sampson ordered therapy and placed prisms in Hendricks' glasses. Topper recommended therapy. By this time, Hendricks complained of balance and memory problems, vertigo, vision difficulties, motion sickness, light sensitivity, debilitating headaches, and muscle spasms.

Hendricks was then referred to Dr. Tristan Briones, who diagnosed her with occipital neuralgia. He administered occipital nerve blocks and referred Hendricks to Dr. Randall Oliver for pain management. Hendricks also sought a second opinion from Dr. William Strickland, a neurologist in Nashville, Tennessee, as well as counseling for depression and worsening anxiety. Hendricks indicated this treatment provided little to no relief of her symptoms.

At the hearing, Hendricks testified she was able to continue to work with great difficulty for TLD for nearly two years after the MVA in the same position as assistant safety manager due to the accommodations her employer provided. She stopped physically working for TLD when Dr. Oliver restricted her from work on August 14, 2017. Dr. Oliver released her from his care and returned her to work without restrictions in March or April 2018. Subsequently, Nurse Carrico restricted her from work. Hendricks described the following symptoms she attributes to the work injury: depression and anxiety, migraines, vertigo, motion sickness, memory issues, difficulty with focusing, vision problems, occipital pain affecting her neck and upper back, spasms, and seizures. Hendricks believes she is unable to return to work for TLD as an assistant safety manager, and she has not returned to any work since August 14, 2017.

Voluminous treatment records were filed in the record by both parties. The July 17, 2015 ambulance report notes primary complaints of possible glass in eyes and pain in between Hendricks' shoulder blades. Hendricks was transferred to Memorial Hospital. Dr. Stephen DeWitt noted the MVA with no loss of consciousness and complaints of neck and upper back pain. A thoracic spine x-ray was read as negative, while a lumbar x-ray showed a possible fracture in the fusion hardware. A cervical CT revealed no evidence of acute osseous injury, but findings were suggestive of muscle spasm. She was ultimately diagnosed with multiple contusions and abrasions secondary to the MVA, and was prescribed pain medication, a muscle relaxer and medication for nausea and vomiting.

A head CT was performed at Franciscan Health Mooresville on July 20, 2015, and was interpreted as normal.

Hendricks then visited Dr. Hardacker on July 21, 2015. He noted the previous lumbar fusion and repair. After comparing imaging studies taken before and after the MVA, Dr. Hardacker found no evidence of breakage or loosening of instrumentation.

Hendricks treated with Dr. David Johnson at the Medical Pain Clinic on multiple occasions in January and February 2016 for primarily upper back and bilateral shoulder pain. She also complained of headaches, visual disturbances, thoracic pain, memory issues, and vertigo. Dr. Johnson treated Hendricks with injective therapy and noted she displayed post-concussion syndrome.

Hendricks treated with Topper at Deaconess Health System from April 2016 through December 2016 for complaints of headache, nausea, fatigue, dizziness,

balance and vision problems, sensitivity to light and sound, difficulty concentrating, irritability, sadness and trouble sleeping. Topper prescribed medication, cognitive rest, cervical physical therapy and vestibular therapy. Her most recent diagnoses consisted of post-concussive syndrome, post-traumatic headache, neck pain, dizziness and photophobia.

Hendricks treated with Dr. Sampson, an optometrist, on a monthly basis from May 2016 through March 2017 for multiple visual complaints beginning after the MVA. He ordered vision therapy and prescribed prisms for her glasses. In his last treatment note dated March 24, 2017, Dr. Sampson diagnosed visual disturbance, binocular vision disorder, left hyperphoria, saccadic eye movement deficit, and smoot motor pursuit deficient. Although Hendricks reported continued vision problems, Dr. Sampson found Hendricks had attained maximum medical improvement ("MMI) since there was no more he could do for her and released her from his care.

Hendricks treated with Dr. Briones on four occasions in 2016 and 2017. He diagnosed Hendricks with occipital neuralgia and myalgia. He performed bilateral occipital nerve blocks, cervical trigger point injections and thoracic trigger point injections. He referred Hendricks to Dr. Oliver.

Hendricks treated with Dr. Oliver from September 2016 to September 2017. She reported neck, shoulder and upper back pain, severe headaches, vision changes, difficulty with memory, sleep, concentration, and word finding, as well as irritability, anxiety and depression since the MVA. He administered medial branch blocks, and prescribed medication for Hendricks' headaches and primarily Cymbalta

and Wellbutrin for her pain and depression. He also referred her to psychotherapy and to a neurologist. He restricted Hendricks from work on August 14, 2017. In the last treatment note of record dated September 5, 2017, Dr. Oliver diagnosed Hendricks with post-concussion syndrome; migraine with aura, not intractable, without status migrainosus; occipital neuralgia; cervical spondylosis without myelopathy or radiculopathy; central pain syndrome; generalized anxiety disorder; major depressive disorder, single episode, unspecified; thoracic spondylosis without myelopathy or radiculopathy; attention-deficit hyperactivity disorder; and pseudobulbar effect. Dr. Oliver opined Hendricks' headaches, as well as her other symptoms, including fatigue, memory loss, word finding, and difficulty concentrating, are related to post-concussion syndrome. He also stated he had no further treatment option for Hendricks.

Hendricks treated with Dr. Strickland. He assessed chronic post-traumatic headache, not intractable; cervicalgia; concussion without loss of consciousness, sequela; vertigo; subjective muscle weakness; bilateral photophobia; bilateral occipital neuralgia; and numbness and tingling. He ordered blood work, brain and cervical MRIs, and prescribed Gabapentin.

Hendricks attended at least ten counseling session at Counseling Associates with Jennifer Vertrees, RN, NCC, LPCC, from September 2016 to April 2017. She diagnosed Hendricks with depressive disorder due to another medical condition; anxiety disorder to another medical condition; insomnia disorder; and other problems related to employment.

A December 27, 2015 cervical MRI ordered by Nurse Carrico was unremarkable other than showing loss of cervical lordosis related to muscle spasm. A December 27, 2015 thoracic MRI ordered by Nurse Carrico was unremarkable. A December 30, 2015 brain MRI ordered by Nurse Carrico was negative, and demonstrated chronic mucous retention cyst in the left maxillary sinus. A March 29, 2017 EEG was ordered by Dr. Strickland for possible seizures. This test demonstrated no electrographic correlation for seizures due to the work accident. An October 4, 2017 brain MRI ordered by Dr. Timothy Allen demonstrated no "abnormality identified to suggest sequela of prior traumatic injury. No acute abnormality."

TLD also filed the pre-injury records from Nurse Carrico dated November 15, 2013 and December 23, 2013. Nurse Carrico prescribed Wellbutrin for anxiety and depression. Hendricks' diagnoses included depression, fatigue, insomnia, and diabetes mellitus Type II.

TLD filed Dr. John Vaughan's July 15, 2017 report. Dr. Vaughan evaluated Hendricks at TLD's request. He noted the July 17, 2015 MVA and subsequent treatment rendered, as well as the previous low back surgeries in 2000 and 2011. He noted Hendricks complained of pain in her neck and between her shoulder blades, decreased cervical range of motion and mobility, cervical spasms and headaches. He diagnosed, "cervical strain and cervical spondylosis (mild age-related degenerative changes)." Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Vaughan assessed a 5% impairment rating for decreased cervical range of

motion, attributable to the July 17, 2015 injury. Dr. Vaughan opined Hendricks needs no further medical treatment except for Ibuprofen as needed. He opined Hendricks attained MMI six months after the injury on January 17, 2016. He assigned no permanent restrictions and found no objective reason why Hendricks could not return to her previous occupation as a safety manager, noting Hendricks had previously returned to her full-time job with TLD.

Hendricks filed the August 4, 2017 report of Dr. Endraetta Watts, a neurologist. Dr. Watts noted the July 17, 2015 MVA, and the treatment history provided by Hendricks. Dr. Watts reviewed the medical records and noted her physical findings. Dr. Watts noted Hendricks complained of pain in her neck and shoulder blades, limited mobility in her neck, decreased ability to focus and concentrate, light sensitivity, misuse of words, vertigo, vision disturbances, headaches, irritability, fatigue and sleep difficulty. Dr. Watts diagnosed, "cognitive change/memory loss-work related injury." Pursuant to the AMA Guides, Dr. Watts assessed a 20% impairment rating and assigned restrictions due to her memory issues, headaches and vertigo. In an undated addendum, Dr. Watts explained how she calculated the 20% impairment rating, and opined, "all data supports a mild cognitive injury, Class II CDR."

TLD filed the October 20, 2017 report of Dr. Timothy Allen, who performed a psychiatric evaluation at its request. He summarized Hendricks' account of the July 17, 2015 MVA and the subsequent treatment rendered. She reported short term memory issues, fatigue, weight gain, poor sleep, vision difficulties, vertigo, irritability, depression, nervousness, panic, poor concentration,

word-finding difficulty, confusion, trouble thinking, complaints of shaking, tremors, and abnormal movements of her face and body, as well as head, neck, right arm, right hand, and mid back pain. Dr. Allen reviewed the medical records and diagnostic studies, including those from Dr. Gray. He noted Dr. Gray administered a comprehensive battery of neurobehavioral tests on April 7, 2016. He noted those results fell within the low normal to normal range, and that overall, the data was not consistent with clear-cut cerebral compromise or protracted neurocognitive deficits secondary to concussion. Dr. Gray referred Hendricks to a concussion clinic in light of her reported, continuing difficulties.

Dr. Allen diagnosed somatic symptom disorder and pre-existing unspecified depressive disorder. He further diagnosed an L4-S1 fusion in 1996 with revision in 2010; headache and neck pain; acid reflux; and Diabetes Mellitus II. He noted Hendricks scored significantly lower on her testing that what Dr. Gray reported in April 2016. Dr. Allen provided the following conclusions:

> - The evidence available does not support that [Hendricks] suffered a Mild Traumatic Brain Injury/Concussion from the accident of July 17, 2015, due to the lack of altered consciousness or amnesia at the time.
>
> - She returned to work for 2 years and underwent a neuropsychological test battery 7-8 months after the accident which showed no cognitive deficit.
>
> - There is no mechanism in which the accident of July 17, 2015 would cause substantial worsening of her mood and cognitive function from month 8 to month 27 post-injury. A combination of less than optimal effort and intervening factors must be the cause of her current low test scores.

- [Hendricks] suffered from pre-existing anxiety and depression which was exacerbated by the work accident and has resulted in a Somatic Symptom Disorder, for which she has been treated with Buspar and Cymbalta which are reasonable and necessary treatments that should be maintained for the foreseeable future. Wellbutrin was used to treat her pre-existing depression.

- She is at MMI from the [MVA].

- She has no psychiatric or cognitive work restrictions.

Dr. Allen assessed a 10% impairment rating due to psychiatric causes, apportioning 5% to the somatic symptom disorder due to the MVA and 5% to pre-existing conditions, pursuant to the AMA Guides.

Hendricks filed the January 30, 2018 report of Dr. Dion Dulay, an eye physician and surgeon who evaluated Hendricks at her request. After performing an eye exam, Dr. Dulay assessed a 21% impairment rating using the AMA Guides for her loss of visual system function.

TLD filed the March 9, 2018 report of Dr. Richard Eiferman, an ophthalmologist who evaluated Hendricks at its request. He reviewed the July 17, 2015 MVA and subsequent eye care treatment. Dr. Eiferman performed an eye examination and "could not find any specific abnormality with [Hendricks'] visual system with the exception of a possible vertical phoria." He found no residual visual problems related to the MVA and assessed a 0% impairment rating pursuant to the AMA Guides. He opined Hendricks was at MMI and found no additional treatment necessary with the exception of possibly changing her glasses. He assigned no permanent restrictions other than needing glasses. In a March 31, 2018 addendum,

Dr. Eiferman criticized the examination and impairment rating assessed by Dr. Dulay.

A benefit review conference was held on March 14, 2018. The parties identified the following contested issues: causation, extent, work-related injury, TTD benefits paid, medical expenses, physical capacity to return to the type of work performed at the time of injury, exclusion for pre-existing impairment, benefits pursuant to KRS 342.730 including multipliers, and course and scope of employment.

In the September 21, 2018 opinion, the ALJ first determined Hendricks' accident arose in the course and scope of her employment since it was a dual-purpose trip and thus compensable. In addressing causation to Hendricks' alleged injuries to her neck and upper back, along with vertigo, vision disturbances, migraine headaches, memory and concentration problems, motion sickness, depression and seizures, the ALJ stated as follows:

> When the causal relationship between an injury and a medical condition is not apparent to a layperson, the issue of causation is solely within the province of a medical expert. Elizabethtown Sportswear v. Stice, Ky. App., 720 S.W.2d 732, 733 (1986); Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., Ky., 618 S.W.2d 184 (1981). Further, the employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his workers' compensation claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App., 1979).
>
> The ALJ has reviewed all of the evidence, not only is[sic] summarized above, but as contained in the entire file and has been convinced that the plaintiff sustained a cervical strain injury as opined by Dr. Vaughan and has also developed a somatic symptom disorder as noted by Dr. Allen. The plaintiff alleges numerous other

> conditions as noted above, but the objective evidence of these injuries is lacking. The CT of the plaintiff's head taken on July 20, 2015 was interpreted as normal. X-rays of the plaintiff's mandible on July 24, 2015 was negative as was the MRI of her brain on December 30, 2015. The thoracic MRI of November 27, 2017 was also considered negative. However, the cervical MRI revealed reversal of the cervical lordosis, which was indicative of muscle spasm. Dr. Vaughan examined the plaintiff's spine on July 15, 2017 and diagnosed a work related cervical strain and cervical spondylosis. He opined the condition was attributable to the work related accident of July 17, 2015. Dr. Allen conducted a thorough neuropsychiatric examination and noted the plaintiff to have pre-existing non-work related anxiety and depression. He noted the plaintiff was able to work through August 14, 2017 following the work related injury, but described a continuing worsening of her cognitive abilities and mood. He noted this was indicative of a less than optimal effort or intervening factors and would not be related to the plaintiff's work accident. Therefore, he opined that the plaintiff had somatic symptom disorder related to the accident, but did not suffer from post-traumatic concussion, traumatic brain injury, anxiety or depression related thereto. Additionally, Dr. Eiferman conducted a thorough visual examination of the plaintiff and concluded that she did not suffer from any work related impairment or injury because of the accident in question.
>
> While I recognize the plaintiff has presented evidence, which if believed, would indicate the plaintiff would have more significant impairments and injuries than that recognized by Dr. Allen and Dr. Vaughan. However, I find the opinions of these two physicians to be the most persuasive and find that the plaintiff has proven the existence of a cervical injury and somatic symptom disorder, but has failed to prove any other condition causally related to the work related event. Therefore, other than these two conditions, the plaintiff is not entitled to medical or income benefits.

The ALJ next performed an analysis pursuant to City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015), and Ira A. Watson Department Store v.

Hamilton, 34 S.W.3d 48 (Ky. 2000), and determined Hendricks is not permanently and totally disabled. He adopted the 5% impairment rating for the cervical condition assessed by Dr. Vaughan and the 5% impairment rating assessed by Dr. Allen for the somatic symptom disorder, for a combined 10%. He noted Hendricks continued to work for TLD for two years following the MVA. He noted Dr. Vaughan opined Hendricks does not need any permanent restrictions for her cervical condition and felt she could return to her previous occupation as safety manager. The ALJ also noted Dr. Allen did not impose any necessary restrictions due to the somatic symptom disorder. Therefore, the ALJ determined Hendricks did not demonstrate an inability to perform any work due to the work accident and is not entitled to an award of permanent total disability benefits.

The ALJ determined Hendricks is not entitled to the three multiplier. However, since she returned to work earning the same or greater wages, the ALJ found she is entitled to the two multiplier beginning on August 15, 2017, when she ceased her employment earning her normal salary. The ALJ found Hendricks is not entitled to temporary total disability benefits but is entitled to future medical expenses for her cervical spine and somatic symptom disorder. The ALJ dismissed Hendricks' claim for benefits for other conditions including vision disturbance, vertigo, migraine headaches, motion sickness, seizures, depression or other spinal injuries.

Hendricks filed a petition for reconsideration arguing credible evidence established the diagnoses of post-concussion syndrome, migraine headaches, bilateral occipital neuralgia, vertigo, and stereopsis. Hendricks also requested a finding from

the ALJ regarding the compensability of the medical treatment she has received to date. In the October 16, 2018 order denying the petition, the ALJ found the evidence of record supports his decision. The ALJ also noted no medical expenses were contested since Hendricks testified the expenses were paid through her health insurance carrier. Therefore, no particular expenses remained at issue at the time of the final hearing.

On appeal, Hendricks argues the ALJ erred in dismissing her medical conditions consisting of occipital neuralgia, migraine headaches and vertigo. Hendricks argues the ALJ erred in concluding the diagnoses of occipital neuralgia, migraine headaches and vertigo were not supported by objective evidence by noting numerous medical records documenting Hendricks' symptoms, as well as direct observations by a variety of physicians. Hendricks also asserts the medical evidence regarding the presence and severity of occipital neuralgia, migraine headaches and vertigo is unrebutted and cannot be rejected by the ALJ. Hendricks asserts the reports of Drs. Vaughn and Allen neither contradict, negate, nor address the diagnosis of occipital neuralgia, migraine headaches and vertigo. She also notes these appealed conditions are likely outside the scope of the practice of Drs. Vaughan and Allen, an orthopedic surgeon and psychiatrist. Hendricks asserts compelling evidence established the presence of those conditions, and given that such evidence was uncontroverted, it was an error for the ALJ to dismiss those elements of her claim. Hendricks further argues she "should be deemed permanently and totally disabled" when properly considering the erroneously dismissed conditions of occipital neuralgia, migraine headaches and vertigo.

In a workers' compensation proceeding, Hendricks had the burden of proving each of the essential elements of her claim, including work-relatedness/ causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Hendricks was unsuccessful in her burden regarding the dismissed conditions, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision

is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp an ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences could otherwise have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

We begin by noting Hendricks' arguments on appeal focus on the presence or absence of the diagnoses of occipital neuralgia, migraine headaches and vertigo. However, the ALJ ultimately found Hendricks failed to prove any of the alleged conditions, other than cervical injury and somatic symptom disorder, are causally related to the work-related event. He relied upon Drs. Vaughan and Allen in reaching this determination. We find the opinions by Drs. Allen and Vaughan constitute substantial evidence upon which the ALJ could rely in dismissing Hendricks' appealed conditions/injuries based upon causation, and no contrary result is compelled. Dr. Vaughan noted Hendricks' complaints of pain in her neck and between her shoulder blades, decreased cervical range of motion and mobility, cervical spasms and headaches. He diagnosed, "cervical strain and cervical spondylosis (mild age-related degenerative changes)" and assessed a 5% impairment rating pursuant to the AMA Guides attributable to the work injury. He opined Hendricks attained MMI on January 17, 2016 and needs no further medical

treatment other than Ibuprofen. Dr. Vaughan declined to assign any permanent restrictions for her cervical condition and found no objective reason why Hendricks cannot return to her previous occupation as a safety manager, noting Hendricks had returned to her full-time job with TLD.

Dr. Allen diagnosed Hendricks with somatic symptom disorder and pre-existing unspecified depressive disorder. He further diagnosed an L4-S1 fusion in 1996 with revision in 2010; headache and neck pain; acid reflux; and Diabetes Mellitus II. Dr. Allen specifically found the available evidence does not support Hendricks sustained a mild traumatic brain injury/concussion due to the July 17, 2015 MVA. He pointed to the lack of altered consciousness or amnesia at the time of the MVA, that Hendricks returned to work for two years and underwent a neuropsychological test battery seven to eight months after the MVA which showed no cognitive deficit. Dr. Allen found the July 17, 2015 MVA would not cause substantial worsening of her mood and cognitive function from month eight to month twenty-seven post-injury. Dr. Allen found a combination of less than optimal effort and intervening factors must be the cause of her current low test scores. Dr. Allen found Hendricks suffered from pre-existing anxiety and depression, which was exacerbated by the work accident and has resulted in a somatic symptom disorder. Dr. Allen found Hendricks has attained MMI and has no psychiatric or cognitive work restrictions. Dr. Allen assessed a 5% impairment rating for the somatic symptom disorder due to the MVA.

If "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion

to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). Although Hendricks may point to evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal as long as substantial evidence supports the ALJ's ultimate determination. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The opinions of Drs. Allen and Vaughan constitute substantial evidence upon which the ALJ could rely upon, and no contrary result is compelled.

We disagree with TLD's assertion that neither Dr. Vaughan nor Dr. Allen addressed the diagnoses of occipital neuralgia, migraine headaches and vertigo, particularly in light of Dr. Allen's report. Dr. Allen documented Hendricks' complaints, including short term memory issues, fatigue, weight gain, poor sleep, vision difficulties, vertigo, irritability, depression, nervousness, confusion, panic, poor concentration, word-finding difficulty, trouble thinking, complaints of shaking, tremors, and abnormal movements of her face and body, as well as head, neck, right arm, right hand, and mid back pain. Dr. Allen ordered a brain MRI, which was performed on October 4, 2017, and demonstrated no "abnormality identified to suggest sequela of prior traumatic injury. No acute abnormality."

Dr. Allen reviewed the medical records and diagnostic studies, including those from Dr. Gray. He summarized Dr. Gray's records, which revealed he administered comprehensive neurobehavioral battery tests on April 7, 2016. Dr. Allen summarized those results from the neurobehavioral battery tests on April 7, 2016. Dr. Allen based his conclusions, in part, by comparing the April 7, 2016 results to the results of the neuropsychological testing he performed for the

evaluation. Dr. Allen was clearly aware of Hendricks' complaints and reviewed the medical records, but ultimately opined the somatic symptom disorder was the only condition related to the July 17, 2015 MVA.

We likewise find the ALJ considered all of the evidence of record and properly performed an analysis pursuant to City of Ashland v. Stumbo, supra, and Ira A. Watson Department Store v. Hamilton, supra, in determining Hendricks is not permanently and totally disabled due to her work-related cervical strain and somatic symptom disorder.

Accordingly, the September 21, 2018 Opinion, Award, and Order, and the October 16, 2018 Order on petition for reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON PHILLIPE W RICH
1001 TREVILIAN WAY
LOUISVILLE, KY 40213

COUNSEL FOR RESPONDENT: **LMS**

HON H CLAY LIST
3292 EAGLE VIEW LN, STE 350
LEXINGTON, KY 40509

ADMINISTRATIVE LAW JUDGE: **LMS**

HON JOHN B COLEMAN
657 CHAMBERLIN AVE
FRANKFORT, KY 40601