

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP348

Cir. Ct. No. 2007CV1984

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOSEPH WILSON,

PLAINTIFF-APPELLANT,

v.

**STATE OF WISCONSIN, LABOR AND INDUSTRY REVIEW COMMISSION,
TRADESMEN INTERNATIONAL AND TRANSPORTATION INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
DIANE M. NICKS, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Joseph Wilson appeals a circuit court order affirming the Labor and Industry Review Commission's denial of his claim for worker's compensation benefits. We affirm.

BACKGROUND

¶2 Wilson worked as a roofer for Tradesman International. It is undisputed that he injured his left knee during the course of his employment on July 22, 2003, and was paid temporary disability benefits for that injury from July 23, 2003 to October 10, 2003. However, Wilson continued to experience problems with both his right and left knees after October 10, 2003, which culminated in bilateral knee surgery in 2005 and physical therapy continuing into 2006.

¶3 Wilson sought additional disability benefits through the worker's compensation program. The Commission determined, however, that Wilson's continuing knee problems were attributable to a degenerative condition and were not caused by a traumatic injury at work. It therefore denied additional compensation.

¶4 The circuit court affirmed the Commission's decision on certiorari review, and Wilson appeals. He argues that: (1) the Commission erred in considering a WKC-16 "Report on Industrial Injury" form as to the cause of his injury when the record also contained a WKC-16-B "Practitioner's Report in Lieu of Testimony" form; and (2) the Commission's material findings of fact were not supported by substantial and credible evidence. We will set forth more detailed facts relating to these issues in our discussion below.

STANDARD OF REVIEW

¶5 We review the decision of the administrative agency rather than that of the circuit court. *Currie v. DILHR*, 210 Wis. 2d 380, 386, 565 N.W.2d 253 (Ct. App. 1997). Our certiorari review is limited to considering: (1) whether the

agency kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive or unreasonable, representing its will rather than its judgment; and (4) whether it could reasonably make the determination in question based upon the evidence before it. *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, ¶12, 271 Wis. 2d 547, 679 N.W.2d 514.

¶6 LIRC's findings of fact on worker's compensation issues are conclusive in the absence of fraud or action outside of its authority. WIS. STAT. § 102.23(1)(a) (1999-2000). Therefore, we may not substitute our judgment for that of LIRC as to the weight or credibility of the evidence. *Advance Die Casting Co. v. LIRC*, 154 Wis. 2d 239, 249, 453 N.W.2d 487 (Ct. App. 1989). Rather, we must examine the record for any credible and substantial evidence that supports the agency's determination. WIS. STAT. § 102.23(6) (2005-06);¹ *Currie*, 210 Wis. 2d at 387.

DISCUSSION

¶7 Tradesman International offered into evidence a WKC-16 form filled out by Dr. James Self. Dr. Self was the physician who had treated Wilson's left knee in the months immediately following the work incident. On the form, Dr. Self diagnosed Wilson as having suffered a left knee strain on 7/22/03 which had completed healing by 10/11/03 and left no permanent disability. Wilson stipulated to the form's admission, and did not offer any objection to its consideration during the hearing.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶8 Wilson now contends that the Commission could not rely on Dr. Self's WKC-16 form as evidence of the cause and extent of his disability after October of 2003 because: (1) the form was not "certified" as generally required by WIS. STAT. § 102.17(1)(d) and WIS. ADMIN. CODE § DWD 80.22; and (2) the form did not explicitly address the cause of Wilson's post-October-2003 knee problems, which were the actual subject of the current disability claim. Wilson, however, waived any objection to the lack of certification by stipulating to the form's admission. Once admitted, the Commission was free to consider the form for any relevant purpose, including causation. Although Dr. Self could obviously not offer an opinion as to the causation of complaints which had not yet been made at the time he filled out the report, the Commission could make inferences about the causal connection between the work incident and Wilson's post-October-2003 problems based upon Wilson's failure to seek treatment from Dr. Self for his right knee prior to October of 2003 and Dr. Self's opinion that Wilson's left knee had healed from his work injury without any permanent disability by that time.

¶9 Wilson also attempts to argue that the information contained in Dr. Self's WKC-16 form could not be used to overcome a presumption² arising from other medical reports Wilson had submitted on WKC-16B forms which were certified and did directly address the causation of Wilson's subsequent knee problems. However, it was for the Commission to decide what weight to give each of the medical reports before it. This court will not substitute its judgment for that of the Commission in that regard.

² Wilson asserts the existence of a presumption regarding causation, but he does not provide authority other than WIS. STAT. § 102.07(1)(d). That subsection merely provides that certified medical reports constitute prima facie evidence of the matters contained in the reports.

¶10 In sum, we are satisfied that Dr. Self's WKC-16 form in and of itself provided substantial and credible evidence to support the Commission's determination that Wilson's work injury on July 22, 2003 was not the cause of his post-October 2003 knee problems. Additional medical records detailing Dr. Self's treatment of Wilson bolster that determination by showing that Wilson did not make complaints about his right knee and had reported improvements in his left knee in the months following the work incident; and that he suddenly insisted in February of 2004 that it was his right knee which had been hurting him all along. There is no basis to overturn the Commission's decision.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

