

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 30, 1996

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

NOTICE

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

No. 95-1819

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ALAN MAINS,

Plaintiff-Appellant,

v.

**LABOR & INDUSTRY
REVIEW COMMISSION,
UDEEN BROS. TRUCKING, INC.
and EMPLOYERS MUTUAL
CASUALTY COMPANY,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Douglas County:
JOSEPH A. MC DONALD, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Alan Mains appeals a judgment affirming the order of the Labor and Industry Review Commission denying him compensation for an alleged back injury that Mains contends he suffered at

work. LIRC affirmed the decision of the Administrative Law Judge who concluded that Mains did not meet his burden of proving a disability beyond legitimate doubt. Mains argues that a prehearing stipulation precluded LIRC from denying the claim based on Mains' failure to prove a work-related back injury and that the evidence does not support LIRC's finding. We reject these arguments and affirm the judgment.

The burden of proof in a worker's compensation case is on the claimant to establish the essentials of his claim beyond legitimate doubt and, if the evidence presented to LIRC raises legitimate doubt as to the existence of facts essential to compensation, it is LIRC's duty to deny compensation. See *Bumpas v. DILHR*, 95 Wis.2d 334, 342-43, 290 N.W.2d 504, 507-08 (1980). The cause and extent of the claimant's disability, if any, is a question of fact and LIRC's findings of fact on that question are conclusive if supported by credible and substantial evidence. *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 52, 330 N.W.2d 169, 172 (1983). The weight and credibility of the testimony is to be decided by LIRC, not the courts. *E.F. Brewer Co. v. DILHR*, 82 Wis.2d 634, 636-37, 264 N.W.2d 222, 224 (1978).

The prehearing stipulation does not preclude LIRC from finding legitimate doubt regarding Mains' alleged injury. Construction of a stipulation is a question of law. *Duhamé v. Duhamé*, 154 Wis.2d 258, 262, 453 N.W.2d 149, 150 (Ct. App. 1989). The transcript of the attorneys' exchange shows the issues were limited to the nature and extent of the disability. The attorney for the employer and its insurer agreed that the injury, if any, was work related. Nothing in the stipulation precludes the ALJ or LIRC from finding legitimate doubt that Mains suffered any injury or disability. The challenge to the "nature and extent" of disability includes the right to argue that there was none and requires the claimant to prove the disability.

The record supports LIRC's finding of legitimate doubt that Mains was disabled. Mains alleged that he hurt his back when he fell against his truck after the running board collapsed. There were no other witnesses to the accident. Prior to the alleged accident, Mains' boss had caught him with material belonging to the company or a customer. The ALJ found that there were hard feelings between Mains and his boss prior to the date of the alleged injury. That finding is supported by evidence that Mains told workers before

the alleged accident that if he happened to fall down on his truck and happened to hurt his back, he would sue.

Mains' credibility was seriously impugned at the hearing. First, he had complained to co-workers about back pains prior to the date of the alleged injury. He told his doctors that he had no prior back injury. Second, his employer introduced a photograph showing him carrying his daughter who weighed more than Mains was supposed to lift or carry. Mains initially denied that it was him in the photo, stating that it was his brother who looked like him. He later admitted it was him in the photo. Third, Mains stated that his doctor took him off work due to the injury on June 17, 1990. That testimony was rebutted by work slips and time cards. Mains denied that the handwriting on the exhibits were his, but the ALJ thought they looked like the same handwriting.

Legitimate doubt was also supported by a report of Dr. Matacyznski stating that Mains requested a disability rating, but the doctor was unable to give him a rating "because mainly he has symptoms without findings." A physical therapist noted that according to the research and observed behaviors, Mains appeared to demonstrate high signs of "symptom magnification" and "inappropriate illness behavior."

Mains cites the testimony of his neurosurgeon and a doctor assigned by his opponents to support his claim of injury and disability. LIRC's reliance on the contrary opinion of Dr. Matacyznski is an appropriate exercise of its exclusive fact-finding function. The reports of the doctors necessarily depend on accurate statements by the patient regarding his level of pain and the circumstances of the injury. When the patient has demonstrated a lack of credibility and a medical doctor is unable to find any factual basis for his complaints, LIRC can reasonably find legitimate doubt as to the existence of any disability.

Mains argues that there are other explanations for each of the inconsistencies noted by LIRC. Each of these inconsistencies can be reasonably viewed as evidence that Mains was not truthful regarding this incident and the alleged injuries. The existence of other explanations for the inconsistencies does

not provide any basis for challenging LIRC's findings. LIRC is the sole judge of Mains' credibility. *E.F. Brewer Co.*, 82 Wis.2d at 636-37, 264 N.W.2d at 224.

Mains argues that the physical therapist's finding of symptom magnification and inappropriate illness behavior should not be relied upon because it depended in part on a written questionnaire and Mains is functionally illiterate. Mains does not explain how his inability to understand some of the questions resulted in a finding that he magnified the symptoms. He also fails to refute the physical therapist's statement that "observed behaviors" demonstrate symptom magnification. The weight to be accorded this evidence is committed to LIRC's discretion. *Id.*

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.