

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-0608

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**PALZKILL, PETERSON & ASSOCIATES, INCORPORATED
AND EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL
COMPANY,**

PLAINTIFFS-APPELLANTS,

v.

**LABOR AND INDUSTRY REVIEW COMMISSION AND
LINNSEY P. BRUNGES,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Eau Claire County:
THOMAS H. BARLAND, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Palzkill, Peterson & Associates, Inc. (PPA) and Employers Insurance of Wausau appeal a trial court order that upheld a workers compensation ruling of the Labor and Industry Review Commission (LIRC).

Linnsey Brunges fell and injured his left wrist while working for PPA. Eight surgical procedures have not restored the use of his wrist and hand. Brunges' wrist and hand surgeon, Dr. Peter Amadio, expressed the opinion that Brunges has suffered 100% permanent partial disability of the left hand at the wrist, and LIRC accepted this conclusion. On appeal, PPA does not dispute that the injury is permanent. Rather, it makes two arguments for overturning LIRC's ruling: (1) the worker's compensation laws allow 100% disability only for amputation or complete paralysis, conditions Brunges has not suffered; and (2) the evidence did not show 100% disability. We reject these arguments and affirm the trial court's order.

¶2 Workers who sustain permanent disability from a job injury listed in §§ 102.52, 102.53, or 102.55, STATS., receive benefits according to a statutory schedule. *See Langhus v. LIRC*, 206 Wis.2d 494, 498, 557 N.W.2d 450, 453 (Ct. App. 1996). Section 102.52 gives the schedule for those who lose various body members or sustain a member's total impairment. Section 102.55(2) provides that LIRC shall consider complete paralysis of a member to be the equivalent of amputation. *See* § 102.55(2), STATS. It also provides that LIRC shall rate and compensate the degree of disability from other ailments by comparison to amputation and complete paralysis. *See* § 102.55(3), STATS. The statute does not expressly equate any ailment besides complete paralysis with amputation. According to PPA, these provisions mean that LIRC must rate all ailments other than amputation and complete paralysis as causing less than 100% disability. PPA views amputation and complete paralysis as the only two ways to reach 100% disability. Brunges does not claim that his wrist is completely paralyzed.

¶3 We conclude that LIRC has the power to find a body member to have 100% disability without amputation or complete paralysis. We interpret

statutes de novo and as questions of law must read the worker's compensation laws to effect their plain meaning. See *Berna-Mork v. Jones*, 174 Wis.2d 645, 650-51, 498 N.W.2d 221, 223 (1993). We recognize that § 102.55(2) and (3), STATS., puts complete paralysis in the same category as amputation. We see nothing in that statute, however, that bars LIRC from finding 100% disability absent complete paralysis. The statute simply acknowledges the fact that complete paralysis is an ailment that, like amputation, totally disables a member. The statute nowhere disqualifies other ailments from reaching 100% disability if they cause the functional use equivalent of complete paralysis. Rather, we are satisfied that the legislature intended a wrist with no functional use could have 100% disability, even though the wrist had not sustained complete paralysis. The faculty to productively use the wrist, not the wrist's paralysis, is the linchpin of disability, and PPA has not shown that a nonparalyzed wrist always has less than 100% functional impairment. We see no error.

¶4 We also conclude that LIRC had sufficient evidence to find 100% disability. We look only for substantial and credible evidence, owing LIRC a high degree of deference on its findings. See *DILHR v. LIRC*, 155 Wis.2d 256, 262, 456 N.W.2d 162, 164 (Ct. App. 1990). LIRC found, in effect, that any remaining movement in Brunges' left wrist and hand now had no functional use. Dr. Amadio, Brunges' hand specialist and surgeon, found 100% disability from the fact that Brunges' wrist itself no longer moves. This in turn caused a loss of hand movement and grip strength. The wrist was fused up to the knuckle. This evidence supported LIRC's finding of 100% disability, despite PPA's evidence that Brunges occasionally swings a sledge hammer, pronates and supinates the hand, goes deer hunting every year, and remains capable of working as a bridge inspector. These remaining wrist and hand capabilities had no material economic

uses. Viewed from a functional use standpoint, Brunges' current wrist and hand faculties have no more productive use than a completely paralyzed wrist and hand.

By the Court.—Order affirmed.

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

