

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 10, 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. 96-0243

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WANDA MAE ZIMMERMAN,

Plaintiff-Appellant,

v.

**LABOR AND INDUSTRY
REVIEW COMMISSION,
WEYERHAUSER PAPER COMPANY
and WEYERHAUSER COMPANY,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Marathon County:
RAYMOND F. THUMS, Judge. *Affirmed.*

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

PER CURIAM. Wanda Zimmerman appeals a trial court order that affirmed a worker's compensation decision of the Labor and Industry Review Commission denying her worker's compensation benefits. She sought the benefits to pay for additional spinal fusion back surgery she underwent in

1993 that she claimed was necessary to help rectify a work-related back injury originally suffered in 1980. She had previously undergone spinal fusion surgery for the 1980 back injury in 1984. LIRC found that a 1989 automobile accident Zimmerman suffered, not the natural worsening of the 1980 back injury, caused the need for the 1993 surgery. Zimmerman argues that LIRC misjudged the evidence. We reject Zimmerman's argument and affirm the trial court's order.

We must affirm LIRC's decision if it rested on credible and substantial evidence. *Ray Hutson Chevrolet, Inc. v. LIRC*, 186 Wis.2d 118, 122, 519 N.W.2d 713, 716 (Ct. App. 1994). Here, LIRC had such evidence. Several doctors expressed the opinion that the 1989 automobile accident, not a natural worsening in Zimmerman's preexisting back problem, caused the need for more surgery in 1993. We see nothing inherently incredible in their opinions. It is the function of LIRC, not this court, to determine the credibility of witnesses and the weight to be given their testimony. See *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 52, 330 N.W.2d 169, 172-73 (1983). Although one doctor later changed his mind and concluded that the automobile accident did not cause her back problem's worsening, he changed his opinion after Zimmerman had settled her lawsuit against those involved in the automobile accident. Under these circumstances, LIRC could reasonably accept the opinions expressed by the majority of doctors, reject the dissenting doctor's view, and find that the 1989 automobile accident precipitated the physical deterioration in Zimmerman's back.

By the Court. — Order affirmed.

This opinion will not be published.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