

**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. 96-0816

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**GREEN BAY
PACKAGING, INC. and
EMPLOYERS INSURANCE
OF WAUSAU,
a Mutual Company,**

Plaintiffs-Appellants,

v.

**LABOR AND INDUSTRY REVIEW
COMMISSION and
MARVIN J. PROCESS,**

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. Green Bay Packaging, Inc, together with its worker's compensation insurer, appeals a trial court order that affirmed a worker's compensation decision of the Labor and Industry Review Commission. LIRC awarded Marvin Process worker's compensation benefits for a hearing loss that LIRC found resulted from his long-term exposure to noise while working in the GBP boiler room. GBP opposed the award on the ground that Process had already suffered hearing loss at the time he began work at GBP's plant. Two doctors supported GBP's view.

GBP argues that LIRC misjudged the evidence by improperly relying on the opinion of Process' examining doctor concerning the degree of protection afforded by earplugs and earmuffs. GBP considers the doctor's opinion unreliable because Process thought the ear protection provided a high degree of protection, while the doctor opined it provided a low degree of protection. GBP also claims that Process did not show whether the doctor examined the devices. We reject GBP's arguments and affirm the trial court's order.

We must affirm LIRC's decision as long as 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. Process worked many years in the noisy GBP boiler room. This by itself permitted the inference that his current hearing loss had a workplace origin. In addition, Process' examining doctor believed that Process' current hearing loss was work related. Although Process and his examining doctor did differ strongly on the level of noise protection afforded by Process' earplugs and earmuffs—Process had far more faith in these than his doctor—LIRC could consider this divergence unimportant. Process was not an expert on his current hearing loss, and his view on the subject did not render his doctor's opinion inherently improbable. 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).

Last, GBP has not shown that the doctor lacked adequate knowledge of the devices, either through inspection of the devices or discussion with Process. In the absence of evidence to the contrary, LIRC could assume that the doctor had sufficient knowledge to express an opinion. Further, GBP has not shown that extensive knowledge of such devices would be critical to the

validity of the doctor's opinion. LIRC could rationally conclude that the doctor could express a valid opinion on Process' hearing loss on the basis of his medical examination, Process' medical history, and the information Process provided him. In sum, despite two contrary medical opinions, LIRC could reasonably find from the evidence as a whole that Process' long-term exposure to boiler room noise was the source of his current hearing loss.

By the Court. – Order affirmed.

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