

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 4, 2000

Cornelia G. Clark  
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-1315**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**ROBIN J. GLINDINNING,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LABOR AND INDUSTRY REVIEW COMMISSION,**

**DEFENDANT-APPELLANT,**

**DEPARTMENT OF DEVELOPMENT AND DEPARTMENT OF  
ADMINISTRATION,**

**DEFENDANTS.**

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APPEAL from an order of the circuit court for Douglas County:  
MICHAEL T. LUCCI, Judge. *Reversed and remanded with directions.*

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

¶1 PER CURIAM. The Labor and Industry Review Commission (LIRC) appeals a trial court order reversing LIRC's worker's compensation

decision to deny Robin Glindinning's claim for permanent total disability benefits and to grant her temporary benefits. Glindinning claimed permanent disability from Multichemical Sensitivity Disorder (MCS) resulting from air contaminants in her workplace. Medical experts disagreed on the diagnosis, and LIRC found that Glindinning's employment did no more than aggravate preexisting depression and rhinitis. The trial court ruled that LIRC had misweighed the evidence. On appeal, LIRC argues that the trial court wrongly assumed the role of a factfinder and that LIRC's decision stands on substantial and credible evidence. In response, Glindinning argues that LIRC held an inadequate credibility conference with the administrative law judge (ALJ) who presided at the administrative hearings. We agree with LIRC and reject Glindinning's arguments. We therefore reverse the trial court order and remand with directions to reinstate LIRC's order.

¶2 The trial court erroneously reversed LIRC's factual findings. The trial court had a duty to accept the findings if they were supported by substantial, credible evidence. *See Applied Plastics, Inc. v. LIRC*, 121 Wis. 2d 271, 276, 359 N.W.2d 168 (Ct. App. 1984). Here, LIRC was entitled to accept the opinion of Dr. Ronald Gots that Glindinning did not suffer from MCS or asthma. He attributed her health problems to preexisting conditions, including fibromyalgia, mechanical back pain, arthritis of the ankle, premenstrual syndrome, and depression. He also believed that Glindinning's workplace revealed no significant sources of contaminants known to cause occupational asthma. There is nothing in Dr. Gots's opinion that was incredible as a matter of law. In addition, Dr. Richard Roche believed that any harm was temporary, and Dr. Mark Moore found no work-related disease. While other medical experts disagreed, LIRC had no duty to

accept the other evidence. Because there is credible evidence to support LIRC's factual findings, the trial court in its review must accept these findings.<sup>1</sup>

¶3 We reject Glindinning's claim that LIRC held a deficient credibility conference with the ALJ. If credibility is at issue in a way that the ALJ has a superior ability to judge it, then LIRC should hold such a conference. See *Carley Ford, Lincoln, Mercury, Inc. v. Bosquette*, 72 Wis. 2d 569, 575, 241 N.W.2d 596 (1976). Here, however, a conference was immaterial to LIRC's ultimate holding. LIRC resolved the issue of medical causation from written evidence. It considered several written reports by medical experts on Glindinning's health problems. The authors of those reports never testified, and the ALJ did not view their demeanor. While Glindinning and other nonmedical witnesses testified, their testimony was not controlling on the medical issues in the final analysis. Under these circumstances, the ALJ had no unique, firsthand knowledge to impart to LIRC on the credibility of medical witnesses, and the credibility conference furnished LIRC no useful information on the issue. See *Hermax Carpet Marts v. LIRC*, 220 Wis. 2d 611, 617-18, 583 N.W.2d 662 (Ct. App. 1998). In sum, LIRC's decision rests on substantial and credible evidence, and the trial court should not have overruled its findings on factual matters.

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<sup>1</sup> We also do not share the trial court's view that LIRC refused to recognize MCS as a valid, generally accepted medical condition. LIRC may have expressed doubt regarding the condition's validity, but it ultimately denied Glindinning claims on the weight of the proof, finding that the evidence failed to show she had such a condition. LIRC took note that Glindinning continued to heat her home with a woodburning stove, evidently with no harmful effect.

*By the Court.*—Order reversed and the cause is remanded with directions to reinstate LIRC's order.

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

