

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 2, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 2004AP1468**

**Cir. Ct. No. 2003CV6665**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IRA BANKS,**

**PLAINTIFF-APPELLANT,**

**v.**

**STATE OF WISCONSIN WORK INJURY SUPPLEMENT  
BENEFIT FUND, STATE OF WISCONSIN LABOR AND  
INDUSTRY REVIEW COMMISSION, FINLAY FINE  
JEWELRY, LIBERTY MUTUAL INSURANCE COMPANY,  
COMMERCIAL UNION INSURANCE, ONE BEACON  
INSURANCE, HAWKEYE SECURITY INSURANCE,  
STERLING MERCHANDISE/SHAW'S JEWELERS,  
HARTFORD ACCIDENT AND INDEMNITY COMPANY,  
ARTHUR ANDERSON JEWELERS COMPANY, OHIO  
CASUALTY GROUP, SELIGMAN & LATZ AND GIMBELS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KITTY K. BRENNAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Ira Banks appeals from the order of the circuit court that affirmed the decision of the State of Wisconsin Labor and Industry Review Commission. The issue presented by the appeal is whether there was credible and substantial evidence to support LIRC's finding that Banks did not sustain a work-related injury. Because we conclude that there was, we affirm.

¶2 For nearly twenty-five years, Banks worked for the respondent jewelry stores. He alleged that his work for these employers caused him numerous injuries, and he sought payment of his medical expenses and permanent total disability. He filed his initial petition in December 1999. The administrative law judge dismissed his petition because he did not submit sufficient medical evidence to support his claim. LIRC then dismissed the petition for review finding it had no authority to review a decision that did not award or deny compensation, and the circuit court affirmed that decision.

¶3 In May 2002, Banks filed a new application. After a hearing, the ALJ dismissed the application. The ALJ considered the evidence of both sides' experts and made a credibility determination that none of Banks' claimed symptoms were related to his work for the respondents. Banks then appealed to LIRC, who affirmed the findings and order of the ALJ. Banks then sought review in the circuit court. The circuit court affirmed LIRC's decision and Banks now appeals.

¶4 Banks appears to raise a number of issues in his brief. His arguments, however, are difficult to comprehend. The essential issue presented by his appeal is whether he sustained an injury that arose out of and in the course of

his employment with one of the respondents. LIRC weighed the evidence of the experts and determined that Banks had not sustained such an injury.

¶5 Under WIS. STAT. § 102.23(1)(e) (2003-04), we may only set aside LIRC’s decision if it acted without or in excess of its powers, the order or award was obtained by fraud, or its findings of fact do not support the order or award.

LIRC’s findings of fact are conclusive on appeal so long as they are supported by credible and substantial evidence. WIS. STAT. § 102.23(6); *Nottelson*, 94 Wis. 2d at 114 [287 N.W.2d 763]. The evidence need only be sufficient to exclude speculation or conjecture. *Bumpas v. DILHR*, 95 Wis. 2d 334, 343, 290 N.W.2d 504 (1980). This court does not weigh the evidence or pass upon the credibility of the witnesses; rather, the weight and credibility of evidence is to be determined by LIRC. *Brakebush Bros., Inc. v. LIRC*, 210 Wis. 2d 623, 630, 563 N.W.2d 512 (1997). Our role on review is to search the record to locate credible evidence that supports LIRC’s factual findings. *Id.*

*Id. v. LIRC*, 224 Wis. 2d 159, 165, 589 N.W.2d 363 (1999). Whether the facts, as determined by LIRC, meet a particular legal standard is a question of law which we review *de novo*. *Id.* at 166. The law in this state is “well settled that the determination of disability, its cause, its extent, or duration, present questions of fact and the [department’s] findings thereon become conclusive if supported by credible evidence.” *Vande Zande v. DILHR*, 70 Wis. 2d 1086, 1095, 236 N.W.2d 255 (1975) (citation omitted). “In evaluating medical testimony, the department is the sole judge of the weight and credibility of the witnesses.” *Manitowoc County v. DILHR*, 88 Wis. 2d 430, 437, 276 N.W.2d 755 (1979) (citation omitted).

¶6 Banks claimed in these proceedings that he sustained various injuries arising out of and in the course of his employment with the respondent jewelry

stores. Banks offered the opinion of one doctor that there was a work-related causation. LIRC determined that the evidence offered by Banks' medical expert failed to credibly explain his diagnosis of a work-related injury. LIRC, therefore, affirmed the decision and order of the ALJ, and dismissed Banks' petition. We see no basis to overturn LIRC's decision, and we affirm.

¶7 Banks raises a number of other arguments in his brief which are difficult to decipher or comprehend. We need not address each and every issue raised in an appellate brief. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“[A]n appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”). For the reasons stated, we affirm the order of the circuit court.

*By the Court.*— Order affirmed.

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

