

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 27, 2001

Cornelia G. Clark
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. 00-0949

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HOLLY J. HAYES,

PLAINTIFF-APPELLANT,

V.

**LABOR & INDUSTRY REVIEW COMMISSION,
K MART CORP. AND BUILDERS SQUARE, INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Langlade County:
ROBERT A. KENNEDY. SR., Judge. *Affirmed.*

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

¶1 PER CURIAM. Holly Hayes appeals a judgment affirming a decision of the Labor & Industry Review Commission. The commission found that Hayes's initial elbow injury had healed and her subsequent medical problems,

including a neck injury, were not related to that injury and were not work related. Hayes argues that the evidence does not support the commission's findings and that it was required to identify some other specific accident that led to her spinal problems and surgery. We reject these arguments and affirm the judgment.

¶2 Hayes injured her right elbow at work in September 1995. Following treatment that terminated in November 1995, by her own account she did not experience additional elbow pain until July 1996. At that time she reported pain in both elbows and her forearm. Her treating physician determined that the pain was a manifestation of a spinal problem. Hayes's claims are based on her theory that the spinal problems are related to the earlier work-related injury. Her claims are supported by her doctor's medical report, but are contradicted by two other doctors' reports.

¶3 Credible and substantial evidence supports the commission's finding that Hayes's later injury is not work-related. Hayes had the burden to establish the essential elements of her claim, and the commission had the duty to deny the claim if the evidence raised a legitimate doubt. *See Bumpas v. DILHR*, 95 Wis. 2d 334, 342-43, 290 N.W.2d 504 (1980). The commission's findings of fact are conclusive when supported by credible and substantial evidence. *See id.* The medical reports by Dr. Gay Anderson and Dr. Frederick Yuhas provide credible and substantial evidence to support the commission's finding. The commission is the sole judge of the witnesses' credibility and the weight to be accorded their evidence. *See Manitowoc County v. DILHR*, 88 Wis. 2d 430, 437, 276 N.W.2d 755 (1979). The courts may not substitute their judgment for that of the commission on that issue. *See WIS. STAT. § 102.23(6)* (1999-2000).

¶4 The commission was not required to specify some other non-work related cause of Hayes's neck injury. Hayes relies on *Leist v. LIRC*, 183 Wis. 2d 450, 459, 515 N.W.2d 267 (1994), to support her argument that the commission must be able to point to another cause of the injury in order to deny benefits. In *Leist*, the court held that the commission could not ignore the only medical evidence available and substitute its own "cultivated intuition" regarding another injury. The commission must be able to point to some other evidence to support its conclusions. *See id.* Here, the commission, reasonably relied on two medical reports that raised a legitimate doubt about Hayes's theory of causation.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

