

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 19, 2002**

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. 02-1272-FT  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CV-597**

**IN COURT OF APPEALS  
DISTRICT IV**

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**LINDA L. KOZIARA,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LABOR AND INDUSTRY REVIEW COMMISSION,**

**DEFENDANT-APPELLANT,**

**AMERICAN STANDARD, INC. AND THE TRAVELERS  
INDEMNITY COMPANY OF ILLINOIS,**

**DEFENDANTS-CO-APPELLANTS.**

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APPEAL from an order of the circuit court for La Crosse County:  
RAMONA A. GONZALEZ, Judge. *Reversed and cause remanded with  
directions.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. American Standard, Inc., Travelers Indemnity Company of Illinois, and the Labor and Industry Review Commission (collectively, “LIRC”) appeal from the circuit court’s order reversing LIRC’s decision. LIRC argues that its decision is supported by substantial and credible evidence. We agree. Therefore, we reverse and remand to the circuit court with directions to reinstate LIRC’s order.<sup>1</sup>

¶2 Koziara was employed by American Standard, Inc. On August 23, 1995, she tripped and fell forward when running up concrete stairs at work during her break. Although she initially returned to work, she was later taken to the emergency room at Gundersen Lutheran Hospital where she was diagnosed as having acute neck and right shoulder strain.

¶3 Koziara applied for worker’s compensation benefits. The hearing examiner concluded that Koziara suffered a permanent partial disability of four percent for the symptoms related to her lower back, and permanent partial disability of two percent for symptoms of the upper back. LIRC reversed the hearing examiner, concluding that Koziara had sustained a compensable work injury, but that she had not proven a causal relationship between the injury and any permanent back problems. LIRC awarded Koziara medical expenses from the date of her fall until October 4, 1996, the date LIRC concluded Koziara reached “a healing plateau.” LIRC also concluded that Koziara had sustained a major depressive episode attributable to her injury from which she had not yet recovered. LIRC awarded her medical expenses related to her treatment for depression from

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<sup>1</sup> Pursuant to our order of June 4, 2002, this case was placed on the expedited appeals calendar. *See* WIS. STAT. RULE 809.17 (1999-2000).

the date of the injury to the date of the hearing, reserving jurisdiction with respect to additional medical expense and disability attributable to the depressive disorder. Koziara appealed LIRC's decision to the circuit court. The circuit court reversed LIRC.<sup>2</sup>

¶4 LIRC argues that its decision is supported by substantial and credible evidence. "The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive." WIS. STAT. § 102.23(1)(a) (1999-2000).<sup>3</sup> "If the commission's order or award depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to weight or credibility of the evidence on any finding of fact." Section 102.23(6). "The court may, however, set aside the commission's order or award and remand the case to the commission if the commission's order or award depends on any material and controverted finding of fact that is not supported by credible and substantial evidence." *Id.* We will search the record to locate credible and substantial evidence supporting LIRC's determination, "rather than weighing the medical evidence opposed thereto." *Vande Zande v. DILHR*, 70 Wis. 2d 1086, 1097, 236 N.W.2d 255 (1975). Our scope of review is the same as that of the circuit court. *See Liberty Trucking, Co. v. DIHLR*, 57 Wis. 2d 331, 342, 204 N.W.2d 457 (1973).

¶5 We conclude that LIRC's conclusion that Koziara has not shown that her back and neck problems were causally related to her work injury is

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<sup>2</sup> On appeal we review LIRC's decision, not the circuit court's decision. *See Stafford Trucking, Inc. v. DILHR*, 102 Wis. 2d 256, 260, 306 N.W.2d 79 (Ct. App. 1981).

<sup>3</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

supported by substantial and credible evidence. LIRC relied on the opinion of Dr. Kenneth Lay, who examined and evaluated Koziara at the insurer's request. Dr. Lay indicated in his report dated October 29, 1996, that Koziara had sustained a work injury, straining her neck and lower back, but that there was no permanent disability attributable to this injury. Lay opined that Koziara's continuing back pain was attributable to her back condition before the injury, for which she had been treated for many years and was taking pain medicine prior to her fall at work. While it is true that Koziara's treating physician, Dr. Linda Dierschky, opined that Koziara's continuing medical problems were causally related to her fall, LIRC relied on the opinion of Dr. Lay, rather than Dr. Dierschky, because it concluded that Dr. Dierschky had not provided a "credible medical explanation of what permanent changes to the applicant's neck or lower back were allegedly caused by the fall of August 23, 1995," as opposed to Koziara's pre-existing lower back problems stemming from an auto accident in 1988. Because LIRC is the sole judge of the weight and credibility of the testimony of the medical witnesses, LIRC was entitled to choose to believe the opinion of Dr. Lay rather than Dr. Dierschky. *Semons Dep't Store v. DILHR*, 50 Wis. 2d 518, 528-29, 184 N.W.2d 871 (1971). LIRC did not find Koziara's testimony that she sustained permanent injury attributable to the fall at work credible because "[t]he inconsistencies in [Koziara's] testimony ... led the commission to doubt the accuracy of her memory and perception with regard to her current versus her past neck/low back symptoms." In sum, LIRC's decision must be reinstated because LIRC concluded, based on credible and substantial evidence before it, that Koziara had not proven a causal relationship between her work injury and the permanent disability she alleges she had sustained. See *Burkes v. DILHR*, 45 Wis. 2d 1, 8, 172 N.W.2d 27 (1969) ("The applicant's problem is a simple one of causation, and cause had not been proved.").

*By the Court.*—Order reversed and cause remanded with directions.

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

