

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2010

A. John Voelker
Acting 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. 2009AP2590

Cir. Ct. No. 2008CV188

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

GEORGE E. DANIELS,

PETITIONER-APPELLANT,

V.

**WAUSAU BUSINESS INS. CO., LABOR AND INDUSTRY REVIEW
COMMISSION AND COUNTY OF TAYLOR,**

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Taylor County:
PATRICK J. MADDEN, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. George Daniels appeals from a judgment affirming a Wisconsin Labor and Industry Review Commission order. The Commission determined that work-related stress was not a contributory cause of Daniels' ruptured brain aneurysm. Daniels argues the Commission erred by rejecting the

opinion of a treating physician supportive of his claim. Daniels also contends the Commission relied exclusively on his supervisor's testimony regarding work-place stress and ignored other testimony. We reject Daniels' arguments and affirm.

¶2 Daniels was a seventy-two-year-old jailer for the Taylor County Sheriff's Department when the aneurysm ruptured. In the weeks prior to the rupture, Daniels claims he had been under stress due to concerns that scheduling changes would result in the elimination of his job. Daniels spoke to his jail supervisor, Kim Kasperek, who testified Daniels believed his supervisors were attempting to cut him out of the schedule. Daniels was angry when he arrived at her office, which upset her and caused her to cry. However, Kasperek explained the new work schedule and assured Daniels the administration was not attempting to replace him. Kasperek believed Daniels felt better and was relieved after their discussion.

¶3 After his discussion with Kasperek, Daniels returned to work at his shared intake desk/counter and had a conversation with co-worker Nancy Mayer. Mayer testified that when Daniels first returned, he felt bad because he made Kasperek cry. Mayer testified Daniels was upset and Mayer agreed it appeared Daniels was not given hours on the schedule. However, they also discussed other subjects, including what they were going to have for dinner. After they talked for approximately fifteen-to-twenty minutes, Daniels suddenly collapsed in his chair. Daniels is now permanently disabled.

¶4 Daniels filed an application for worker's compensation benefits. In evaluating the claim, the administrative law judge noted that Daniels' "hallway entry into and exit from [the supervisor's] office and the counter/desk interaction was captured on a multi-angle videotape, all of which are part of the record." The

ALJ found, “Nothing evidenced on the videotape demonstrated anger, agitation, frustration or stress; but, it was clear from all of the testimony and evidence the scheduling issue was controversial in nature and of importance to him.”

¶5 The ALJ also considered the medical opinions of two treating physicians, Dr. Michael Haase and Dr. Mark Weissman. Haase was Daniels’ treating physician for over fifteen years, and opined Daniels was experiencing increased stress at work which subsequently elevated his blood pressure, in turn causing the ruptured aneurysm. However, the ALJ noted that no blood pressure reading was taken just before the rupture, and Haase’s source of information about the “stress” was unclear, “except as it may be suggested by the record of [Haase’s] telephone conversation with the applicant’s previous attorney.”

¶6 The ALJ also indicated Dr. Haase “was addressing the ‘possibility’ not ‘probability’ of the cause of the rupture,” citing the following:

Apparently, a situation had occurred on the day of the rupture at work, which caused [the applicant] to be quite agitated. [The former attorney and/or the applicant] believes this caused the aneurysm to rupture when it might not normally have done that. I would agree with the [applicant] that increased blood pressure could lead to increased wall stress on the aneurysm, which might then have a greater likelihood of rupturing. (Emphasis in original.)

¶7 In contrast, Dr. Weissman was the neurosurgeon who performed a craniotomy following the aneurismal rupture. Weissman opined, “I would like to state quite categorically that the rupture of his cerebral aneurysm was in no way related to any activities described during his work day.” Weissman indicated there were many possible causes for the rupture, “although one can certainly not claim within any reasonable degree of medical probability that it relates to an increased sense of anxiety or stress in the work place.”

¶8 The ALJ indicated the two physicians' opinions seemed contradictory at first blush. However, in dismissing the claim, she concluded:

Neither [physician] can state to a reasonable degree of medical probability that the stress ... either directly ... or indirectly ... caused the aneurysm and/or rupture or was either the sole cause of the aneurysm and/or rupture or at least a material contributory causative factor in their onset or progression Thus, neither opinion constitutes credible medical support for the claim, and at least the neurosurgeon's opinion is credible and warrants dismissal of it.

¶9 Daniels appealed the ALJ's decision to the Commission. The Commission remanded the matter for the taking of additional evidence "in the form of an impartial medical opinion given by a physician chosen by the department." The physician was to assume Kasperek's testimony was credible. Consistent with this directive, Dr. Thomas Berensten submitted an opinion agreeing with Dr. Weissman. Berensten stated, "I do not believe that stress in the workplace was in any way related to the rupture of the cerebral aneurysm."

¶10 Following the submission of Dr. Berensten's opinion, the Commission issued its decision affirming the ALJ. The Commission specifically found Kasperek's testimony credible and supported by the videotape, leading to the inference that Daniels "experienced minimal stress during his conversation with her." The Commission acknowledged Mayer's testimony that Daniels seemed "upset" when discussing the scheduling, but noted that Daniels and Mayer "also spent time discussing what they would eat for their upcoming dinner." The totality of Mayer's testimony led the Commission to infer "the applicant calmly discussed this ongoing work matter with her, and was not under significant stress."

¶11 The Commission also found credible Dr. Berensten's opinion that the aneurysm was pre-existing and there was no evidence of raised blood pressure

prior to the rupture. In this regard, the Commission noted Dr. Weissman's citation of Daniels' pre-existing factors, including vasculopathic disease, hypertension and history of heavy smoking, as well as his father's aneurysm at age sixty-three. The Commission concluded workplace stress was not a causative factor in Daniels' ruptured aneurysm.

¶12 Daniels appealed the Commission's order and the circuit court affirmed, concluding the Commission had ample evidence to support its reliance on Drs. Weissman's and Berensten's opinions that workplace stress was not related to Daniels' aneurysm. Daniels now appeals the circuit court's order.

¶13 We review the Commission's decision, not that of the circuit court. *Applied Plastics, Inc. v. LIRC*, 121 Wis. 2d 271, 276, 359 N.W.2d 168 (Ct. App. 1984). Our scope of review is set forth in WIS. STAT. § 102.23.¹ We will uphold the Commission's findings of fact if supported by credible and substantial evidence. *See* WIS. STAT. § 102.23(6); *Applied Plastics*, 121 Wis. 2d at 276. "Substantial evidence" is evidence that is relevant, credible and probative, upon which reasonable persons could rely to reach a conclusion. WIS. STAT. § 102.23(6); *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983). Our role is to search the record to locate credible evidence that supports the Commission's findings, not for evidence to support findings the Commission could have made but did not. *See Brakebush Bros. v. LIRC*, 210 Wis. 2d 623, 630, 563 N.W.2d 512 (1997). The Commission's interpretation of the worker's compensation statute is entitled to great weight and will be affirmed

¹ References to the Wisconsin Statutes are to the 2007-08 version.

if reasonable and not contrary to the statute's clear meaning. *See UFE, Inc. v. LIRC*, 201 Wis. 2d 274, 287, 548 N.W.2d 57 (1996).

¶14 On appeal, Daniels insists Dr. Haase's opinion is more persuasive than Dr. Weissman's. Daniels argues Weissman's opinion is not credible because it is incomplete and not based on a true understanding of the facts surrounding the ruptured aneurysm. Daniels contends Dr. Weissman's opinion is simply a generalized statement of legal opinion that a ruptured aneurysm is never an appropriate worker's compensation claim. Similarly, Daniels also asserts Dr. Berensten's opinion is nothing more than a legal conclusion based on incomplete knowledge of the facts. According to Daniels, "Dr. Haase's opinion remains the only true medical opinion that is specific to Daniels and relies on the credible facts of record."

¶15 We conclude Daniels' arguments are non-starters that ignore the applicable standards of review. Here, substantial and credible evidence supported the Commission's finding that work-related stress was not causally related to the ruptured aneurysm. The Commission acknowledged that severe stress could be causative of an aneurismal episode, but found Daniels was exposed to minimal stress. The determinative question became whether that minimal stress was causative of Daniels' ruptured aneurysm.

¶16 The Commission found Dr. Weissman and Dr. Berensten "review[ed] the individual circumstances of the applicant's workplace exposure on May 7, 2003, and credibly concluded that this exposure was not a causative factor in the applicant's aneurismal rupture." The Commission emphasized that both Dr. Weissman and Dr. Berensten considered Daniels' pre-existing risk factors, which "point to a spontaneous rupture." These pre-existing factors included

Daniels' high blood pressure, history of heavy smoking and aneurismal disease, as well as the fact that his father died of an aneurism. The Commission also emphasized there was no evidence of raised blood pressure prior to the rupture.

¶17 Quite simply, the Commission found Weissman's and Berensten's opinions more compelling and credible than Haase's. Conflicts in testimony of medical witnesses are to be resolved by the Commission. *E.F. Brewer Co. v. DILHR*, 82 Wis. 2d 634, 637, 264 N.W.2d 222 (1978).

¶18 Significantly, the Commission indicated Dr. Haase's opinions might have been accepted if Daniels had presented a credible case of work-related stress severe enough to have caused a significant elevation in his blood pressure. However, the Commission found the credible evidence in the record supported the inference that Daniels' work-related stress did not reach that level of severity.

¶19 Daniels also argues the Commission relied solely on Kasperek's testimony, and ignored conflicting testimony. This argument relies upon a misstatement of the record. The Commission did not rely solely on Kasperek's testimony. Rather, its findings were based upon the medical reports of Dr. Weissman and Dr. Berensten, as well as the testimony of Kasperek and Mayer, together with the videotaped evidence. In any event, the Commission was entitled to believe whatever portion of the evidence it thought credible. *See id.* at 639. That it could have given credence to evidence which tended to support a compensable injury is not dispositive.

By the Court.—Judgment affirmed.

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

