

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 5, 2012

Diane M. Fremgen
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. 2011AP1824-FT

Cir. Ct. No. 2010CV466

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DAWN FRIEDRICH,

PLAINTIFF-APPELLANT,

v.

**WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION,
WOODBRIIDGE CORPORATION, AND ZURICH AMERICAN
INSURANCE Co.,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Green County:
THOMAS J. VALE, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Dawn Friedrich appeals a circuit court order that affirmed the decision of the Labor and Industry Review Commission (LIRC) to

deny her claim for worker's compensation benefits. We affirm for the reasons discussed below.

BACKGROUND

¶2 Friedrich's application for benefits claimed that standing on her feet at work on a production line for over thirty years had materially contributed to the degeneration of her right knee joint, ultimately requiring replacement surgery. Friedrich also testified at the hearing before an administrative law judge that she overextended her knee at work once in 1997, after which she continued to have problems.

¶3 The parties submitted opposing medical reports. Dr. Stormont and Dr. Szachnowski opined that Friedrich's working conditions could have put stress on the knee and accelerated the progression of her degenerative joint disease. Dr. O'Brien opined that the condition of Friedrich's knee was attributable to her age and weight, and not to her working conditions. LIRC gave more weight to Dr. O'Brien's assessment because it considered it more consistent with Friedrich's medical records and lack of pain complaints over the years. Accordingly, LIRC found that Friedrich's work exposure was not a material contributory causative factor in the onset or progression of Friedrich's osteoarthritis.

STANDARD OF REVIEW

¶4 The determination of the cause and extent of a claimant's disability present questions of fact. *Manitowoc County v. DILHR*, 88 Wis. 2d 430, 437, 276 N.W.2d 755 (1979) (citation omitted). We review questions of fact in

worker's compensation cases under the highly deferential standard set forth in WIS. STAT. § 102.23 (2009-10).¹ We may not substitute our judgment for that of LIRC as to the weight or credibility of the evidence on any finding of fact. WIS. STAT. § 102.23(6). Rather, we must examine the record for any credible and substantial evidence that supports the agency's determination. *Id.* Substantial evidence is that which is "relevant, probative, and credible, and which is in a quantum that will permit a reasonable factfinder to base a conclusion upon it," even if against the great weight and preponderance of the evidence. *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 54-55, 330 N.W.2d 169 (1983).

DISCUSSION

¶5 Friedrich argues that it was illogical for Dr. O'Brien to have concluded that her weight was a factor in the degeneration of her knee, but that standing all day with that weight bearing down on the knee did not contribute to the degeneration. She also challenges LIRC's view that Dr. Stormont had failed to sufficiently explain how standing with limited movement would work to significantly abrade the joint surfaces, labeling it mere speculation that abrasion was necessary for degeneration to occur. She similarly faults LIRC's reasoning that her lack of pain was significant in the absence of any medical evidence that the degenerative process would necessarily produce pain.

¶6 The problem with all of Friedrich's arguments on appeal is that they boil down to attacks on LIRC's assessment of the relative credibility of the medical reports. That is precisely the sort of weighing of the evidence that this

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

court is prohibited from performing under our standard of review. In short, we see no basis to set aside LIRC's decision.

By the Court.—Order affirmed.

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

