

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

OCTOBER 3, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0245

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

LORRAINE SCHWARTZ,

Plaintiff-Appellant,

v.

LABOR AND INDUSTRY REVIEW  
COMMISSION, WEINBRENNER SHOE  
MERRILL, a Wisconsin  
corporation, and EMPLOYERS  
INSURANCE OF WAUSAU, a  
Wisconsin Insurance Corporation,

Defendants-Respondents

APPEAL from an order of the circuit court for Lincoln County:  
J. MICHAEL NOLAN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Fine, JJ.

PER CURIAM. Lorraine Schwartz appeals an order affirming a decision of the Labor and Industry Review Commission (LIRC) that she is not entitled to additional worker's compensation benefits. She argues that the evidence does not support LIRC's findings that she suffered from a pre-existing degenerative arthritic back condition temporarily aggravated by work-related incidents for which she had already been compensated. Because substantial evidence supports LIRC's decision, we affirm the order.

While working at Weinbrenner Shoe Merrill, Schwartz sustained two compensable low back injuries when she twice tried to push a wheeled rack full of shoes a short distance. Her numerous treating physicians, apparently unaware of any past treatment for lower back problems, attributed her condition to the work-related incidents. She informed her insurance carrier investigator and an independent medical examiner that she had no low back problems prior to the work incidents. She also testified to that effect. However, LIRC also considered evidence that Schwartz had a pre-existing back injury. Her chiropractor's treatment records show pre-existing back problems. Doctors Dominic Chu and Samuel Idarraga attributed Schwartz's symptoms to a degenerative arthritic back condition.

The credibility of witnesses and the persuasiveness of their testimony is for LIRC to determine. See *Goranson v. DILHR*, 94 Wis.2d 537, 556, 289 N.W.2d 270, 279 (1980). We must affirm LIRC's findings if they are supported by credible and substantial evidence or reasonable inferences. *Briggs & Stratton Corp. v. DILHR*, 43 Wis.2d 398, 403-04, 168 N.W.2d 817, 819-20 (1969). Under § 102.23(1), STATS., the findings of fact by the commission acting within its powers shall, in the absence of fraud, be conclusive. It is not the function of the court, but of the commission, to determine the facts of a case. See *Bumpas v. DILHR*, 95 Wis.2d 334, 342, 290 N.W.2d 504, 507 (1980). Applying this deferential standard of review, the opinions of Drs. Chu and Idarraga, along with the chiropractor's records, constitute sufficient evidence to support LIRC's finding that Schwartz failed to establish that she sustained a permanent low back injury while working at Weinbrenner Shoe Merrill. Because the evidence before the commission raised a legitimate doubt as to the existence of facts essential to compensation, the commission had a duty to deny compensation. *Beem v. Industrial Comm'n*, 244 Wis. 334, 337, 12 N.W.2d 42, 43 (1943).

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.