

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

SEPTEMBER 6, 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(1), 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. 95-0367

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT III

JOSEPH T. EELLS,

Plaintiff-Appellant,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,  
CITY OF RIVER FALLS  
POLICE DEPARTMENT  
and WAUSAU UNDERWRITERS  
INSURANCE COMPANY,

Defendants-Respondents.

APPEAL from a judgment of the circuit court for St. Croix County:  
SCOTT R. NEEDHAM, Judge. *Affirmed.*

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

PER CURIAM. Joseph Eells appeals a judgment affirming a LIRC decision that he is not entitled to worker's compensation benefits. Eells, a police officer, suffered post-traumatic stress disorder after witnessing a suicide. LIRC concluded that this incident did not constitute an accident resulting in injury to Eells because witnessing a suicide did not subject Eells to "unusual stress of greater dimension than the day-to-day emotional strain and tensions

experienced by police officers." Eells argues that LIRC misapplied the law and that its findings of fact are not supported by substantial and credible evidence. We reject these arguments and affirm the judgment.

Section 102.01(2)(c), STATS., defines injury as "mental or physical harm to an employe caused by an accident ...." In situations where the employe claims nontraumatically caused mental injury, LIRC construes this statute to limit recovery to employes who suffer greater stress or strain than others similarly employed. Relying on *School Dist. No. 1 v. DILHR*, 62 Wis.2d 370, 377-78, 215 N.W.2d 373, 377-78 (1974), Eells argues that the comparison should be made with all employes, not those with the same occupation. While that decision uses the words "all employees," it does not specifically indicate whether the comparison should be made with others of similar occupation or with every person who has a job. That issue was not squarely presented in *School Dist. No. 1*. LIRC has consistently compared the claimant's stress to that endured by others similarly employed.

We are compelled to give great weight to LIRC's interpretation of the statutes it administers. See *Jicha v. DILHR*, 169 Wis.2d 284, 291, 485 N.W.2d 256, 258-59 (1992). When deference is accorded to an administrative agency, the agency's conclusion of law will be sustained if it is reasonable, even if an alternative is equally reasonable. This court will uphold the agency's construction of a statute unless it is clearly contrary to the legislative intent. *DILHR v. LIRC*, 161 Wis.2d 231, 246, 467 N.W.2d 545, 550 (1991).

LIRC's construction of the mental injury test is not clearly contrary to the legislative intent. *School Dist. No. 1* described an accident as a "fortuitous event unexpected or unforeseen ...." *Id.* at 375 N.W.2d at 376. The nature of a person's job determines what is expected or foreseen. It is reasonable for LIRC to conclude that the "accident" upon which the mental injury is based must constitute an unusual occurrence for the type of job the employe was hired to perform.<sup>1</sup>

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<sup>1</sup> Eells also argues that this court should modify or eliminate the unusual stress test. We conclude that the unusual stress test was created by the Supreme Court in *School Dist. No. 1 v. DILHR*, 62 Wis.2d 370, 215 N.W.2d 373 (1974), and this court has no

LIRC's findings of fact are supported by sufficient evidence. The burden of proof was on Eells to establish the essential elements of his claim for worker's compensation benefits. LIRC was compelled to deny his claim if the evidence raised a legitimate doubt as to the existence of necessary facts. *Bumpas v. DILHR*, 95 Wis.2d 334, 342-43, 290 N.W.2d 504, 508 (1980). The weight and credibility of the testimony are decided by LIRC. *E.F. Brewer Co. v. DILHR*, 82 Wis.2d 634, 636-37, 264 N.W.2d 222, 224 (1978). LIRC's findings are supported by the testimony of Edward Nowicki, a career law enforcement officer and police training specialist. Nowicki testified that it was "probable" that an officer in a smaller community at some time would have to handle very traumatic incidents such as severe traffic accidents or incidents involving carnage, injury and death. LIRC was entitled to credit this testimony and find that witnessing a suicide is not out of the normal realm for a police officer.

*By the Court.*— Judgment affirmed.

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

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authority to overturn that precedent. *State v. Lossman*, 118 Wis.2d 526, 533, 348 N.W.2d 159, 163 (1984).