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DISTRICT IV

November 19, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2014AP1444

Joseph Schulte v. LIRC (L.C. # 2013CV3927)

Before Lundsten, Higginbotham, and Blanchard, JJ.

Joseph Schulte appeals a circuit court order affirming a decision of the Labor and Industry Review Commission. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The issue before the commission was whether to grant Schulte's claim for permanent total disability. The commission denied the claim because it found the employer's medical and vocational experts more credible than Schulte's.

Schulte's opening brief on appeal is inadequate. The fact and argument sections of the brief state many facts, but there appear to be only five citations to the record, in violation of WIS. STAT. RULE 809.19(1)(d) and (1)(e). The absence of record citations unnecessarily makes the work of the court and opposing counsel more difficult. For example, most of Schulte's argument consists of an attack on the credibility of the employer's vocational expert. However, the brief fails to provide record citations for many of the statements made in that discussion, which leaves us unable to readily determine the merits of the argument made. Therefore, we affirm on this basis. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (we may reject arguments that are inadequately briefed).

Furthermore, even if we were to review the merits, Schulte does not provide a meaningful reply to the respondents' briefs. In his opening brief, Schulte appears to regard sufficiency of the evidence as a question that we should review de novo, but the respondents note that WIS. STAT. § 102.23 greatly limits our review of factual findings made by the commission. Schulte's reply does not dispute that our review is limited, and does not meaningfully develop an argument for reversal under those standards.

Finally, Schulte's reply brief is devoted mainly to arguing that the commission's order should have been interlocutory on all issues. We normally do not consider arguments made for the first time in a reply brief, and we see no reason to do that here. *See Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981).

IT IS ORDERED that the circuit court order is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals