



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 17, 2013

To:

Hon. Patrick Taggart
Circuit Court Judge
Sauk Co. Courthouse
515 Oak Street
Baraboo, WI 53913-0449

Richard B. Moriarty
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Loretta Roberts
Clerk of Circuit Court
Juneau County Justice Center
200 Oak St., PO Box 246
Mauston, WI 53948

John D. Neal
Stafford, Neal & Soule, S.C.
6250 Nesbitt Road, Suite 500
Madison, WI 53719

Sarah Germonprez
Bell, Moore & Richter SC
44 E. Mifflin Street
P.O. Box 1807
Madison, WI 53701-1807

Timothy J. Yanacheck
Bell, Moore & Richter, S.C.
P. O. Box 1807
Madison, WI 53701-1807

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

2011AP2947

Juneau County v. Labor and Industry Review Commission
(L.C. # 2011CV156)

Before Sherman, Blanchard and Kloppenburg, JJ.

Juneau County appeals a circuit court order affirming a decision of the Labor and Industry Review Commission (LIRC), which upheld a worker's compensation decision in favor of Timothy Andres. 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 (2011-12).¹ We summarily affirm.

Andres sustained a knee injury while at work for his employer, Juneau County. The County does not dispute that Andres' injury and the meniscectomy surgery that followed were work-related and covered by the Worker's Compensation Act. On appeal, the County challenges that portion of LIRC's decision that affirmed and adopted the finding of an administrative law judge (ALJ) that an infection suffered by Andres following surgery was work-related.

In reviewing a circuit court order affirming a decision of LIRC, our review is limited in scope. *L&H Wrecking Co., Inc. v. LIRC*, 114 Wis. 2d 504, 507-08, 339 N.W.2d 344 (Ct. App. 1983). We review the decision of LIRC, and not that of the circuit court. *Jarrett v. LIRC*, 2000 WI App 46, ¶7, 233 Wis. 2d 174, 607 N.W.2d 326. We are to affirm LIRC's findings if there is any credible evidence in the record to support those findings. *L&H Wrecking*, 114 Wis. 2d at 508.

The County argues that LIRC was required to deny Andres' claims because there is legitimate doubt as to the cause of Andres' infection. In support of its argument, the County references notes in two of Andres' medical reports indicating that Andres told his physician he went into a hot tub about a week after his surgery and that, on another occasion, he expressed to a different physician his desire to use a hot tub, contrary to his physician's advice. The County contrasts these notes with Andres' own testimony at his worker's compensation hearing before the ALJ, at which Andres denied having used a hot tub after his surgery. The County argues that

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

the inconsistencies between the medical reports and Andres' testimony create a "legitimate doubt" as to the cause of the infection, citing *Kowalchuk v. LIRC*, 2000 WI App 85, ¶8, 234 Wis. 2d 203, 610 N.W.2d 122.

We reject the County's argument that the inconsistencies between the medical reports and Andres' testimony create a legitimate doubt. The County distorts and takes out of context this court's discussion in *Kowalchuk*, 234 Wis. 2d 203, ¶8, regarding what constitutes a "legitimate doubt" as to the existence of facts essential to establish a worker's compensation claim. The supreme court rejected an argument similar to the County's in *Employers Mut. Liab. Ins. Co. v. DILHR*, 62 Wis. 2d 327, 332, 214 N.W.2d 587 (1974). In that case, the employer argued that disputed testimony revealed a "legitimate doubt." *Id.* The supreme court rejected this argument, concluding that the disputed testimony raised a question of credibility, not a "legitimate doubt." *Id.* The court stated that "[w]here the commission ... has not evinced the legitimate doubt, it is not to be superimposed upon it by a reviewing court." *Id.*

In its decision, LIRC noted that the ALJ, who had been in the position of observing Andres' demeanor at the hearing, found Andres' testimony to be credible, and LIRC found nothing in its own independent review of the record to warrant overturning that credibility determination. LIRC also credited the opinion of one of Andres' physicians, Dr. Perpich, who opined that Andres' knee infection and related problems were a direct result of his work injury and subsequent surgery. "[T]he weight and credibility to be accorded to both witnesses and medical evidence are functions left to the commission." *Lange v. LIRC*, 215 Wis. 2d 561, 567, 573 N.W.2d 856 (Ct. App. 1997). We will not now second-guess those determinations on appeal.

IT IS ORDERED that the order is summarily affirmed under Wis. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals