

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 10, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 98-2378**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**REBECCA A. YAGER,**

**PLAINTIFF-APPELLANT,**

**v.**

**LABOR AND INDUSTRY REVIEW COMMISSION, SENTRY  
INSURANCE COMPANY AND LANDS' END,**

**DEFENDANTS-RESPONDENTS.**

---

APPEAL from an order of the circuit court for Iowa County:  
WILLIAM D. DYKE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Rebecca Yager appeals from an order affirming a decision of the Labor and Industry Review Commission (LIRC). In that decision, LIRC denied Yager's claim for worker's compensation. The dispositive issue is

whether LIRC heard sufficient credible evidence to deny the claim. We conclude that it did, and therefore affirm.

Yager worked for Lands' End from 1989 until May 1996 in a job involving lifting and substantial movement with her arms and hands. On January 25, 1996, Yager left work and went to the emergency room at a local hospital for treatment of a left shoulder injury. At that time, in subsequent treatment, and throughout this proceeding, Yager attributed her injury to a repetitious throwing motion she was engaged in at work.

Several physicians treated and evaluated Yager. In early March, Dr. Henry Marsh found no permanent disabling condition and recommended that Yager return to work with modified duties. Yager returned to light work in April 1996, but lasted only three weeks. In June, she underwent surgery for removal of a rib, after a diagnosis of “[d]ynamic bilateral but left greater than right thoracic outlet syndrome with associated vasoplasm,” “[p]osttraumatic dyesthenic pain exacerbating upper extremity symptoms,” and “[c]ervicogenic disc disease with myofacial pain with no evidence of radiculopathy or myelopathy.” Yager subsequently continued with various therapies, evaluations and chiropractic care, but the pain continued. A physician’s evaluation later in 1996 found Yager able to return to lighter sedentary work, with a recommendation for work hardening to restore capability for heavier tasks. Lands' End offered Yager such work, but she refused on her primary physician’s advice. In April 1996, the insurer for Lands' End referred Yager to Dr. David Goodman, a board certified independent medical examiner in occupational medicine. He noted that Yager had complained of neck, shoulder and arm pain since 1988, a year before beginning work at Lands' End. He also noted her extensive chiropractic treatments for that pain since then. After

giving Yager a physical examination and reviewing her records, Dr. Goodman concluded:

[t]he mechanism of injury as described by Ms. Yager is medically inconsistent with causing acute injury or illness. It is highly unlikely that the action demonstrated to me by Ms. Yager ... caused any injury.... Her complaints are in excess of physical findings.... Her history of her injury provides strong evidence that her symptoms are under voluntary control.... Ms. Yager presents no objective medical findings indicting [sic] any impairment. There are no medical indications present to necessitate work restrictions for her.

In summary, Dr. Goodman found “no evidence from my evaluation of Ms. Yager, review of her job description, and review of the job videotape that supports her claim of injury. I find that Ms. Yager has simulated complaints of pain and impairment grossly in excess to any objective findings.”

Dr. Goodman again examined Yager in January of 1997. He reported similar findings, diagnosed her as a malingerer, and concluded that she had suffered no disability.<sup>1</sup>

Consequently, Lands’ End denied her benefits beyond temporary disability pay between January 25 and April 25, 1996, and Yager filed a claim to contest that decision. At the hearing on her claim, the administrative law judge (ALJ) concluded:

The Administrative Law Judge has reviewed the entire record and considers the opinion of Dr. Goodman to be the most credible. Several specialists opined that the applicant suffered many different ailments. However, it

---

<sup>1</sup> Dr. Goodman summarized his findings as follows: “I find that the examinee is malingering. This diagnosis is supported by clinical history and physical presentation. She requires no further treatment, has sustained no permanent partial disability, and is capable of working without restrictions at the current time.”

was not established that these were attributable to the work incident or that these physicians were privy to the applicant's past medical history. The Administrative Law Judge believes that the applicant was not forthcoming with her treating physicians as far as her previous neck and shoulder complaints and the treatment for those complaints. Accordingly, these treating physicians were unable to make any kind of accurate diagnosis. Dr. Goodman, who was privy to these medical records, and had the opportunity to examine the applicant in concert with her past medical treatment concluded that the applicant did not suffer a compensable work-related injury, or any work injury on January 25, 1996.

Under the circumstances, the applicant failed to establish that she sustained a traumatic shoulder injury arising out of her employment while she performed services growing out of and incidental to her employment on January 25, 1996. Rather, the record reflects legitimate doubt.

Yager was therefore denied benefits. On appeal to LIRC, the ALJ's determination was affirmed. LIRC concluded that the decision essentially rested on the ALJ's credibility determination, and nothing in the record warranted overturning that decision. LIRC's opinion added:

The inconsistencies in the applicant's testimony as compared to her medical records undercuts her credibility. In addition, the evidence indicated that the applicant had a history of preexisting neck, shoulder and back problems which required treatment and were bothering her up until the day before the alleged incident on January 25, 1996. Given the medical evidence in the record, including the reports from Dr. Goodman and Dr. Marsh, ... the evidence was sufficient to raise a legitimate doubt that the applicant sustained a shoulder, neck, or back injury arising out of her employment ... on January 25, 1996.

The trial court affirmed on judicial review, resulting in this appeal.

We review LIRC's decision, not the circuit court's. See *Barnes v. DNR*, 178 Wis.2d 290, 302, 506 N.W.2d 155, 160 (Ct. App. 1993), *aff'd*, 184 Wis.2d 645, 516 N.W.2d 730 (1994). We affirm that decision if LIRC's findings

of fact are supported by credible and substantial evidence. Section 102.23(6), STATS. The evidence is sufficient under this standard if it is enough to exclude speculation or conjecture. *Bumpas v. DILHR*, 95 Wis.2d 334, 343, 290 N.W.2d 504, 508 (1980). It need not constitute the great weight and clear preponderance of the evidence. *Goranson v. DILHR*, 94 Wis.2d 537, 554, 289 N.W.2d 270, 278 (1980). We will not set aside LIRC's findings of fact merely because alternative findings are reasonably available from the same evidence. *Vocational, Technical & Adult Educ. Dist. 13 v. DILHR*, 76 Wis.2d 230, 242, 251 N.W.2d 41, 47 (1977). LIRC's decision on the credibility of the evidence is not subject to review. *Manitowoc County v. DILHR*, 88 Wis.2d 430, 437, 276 N.W.2d 755, 758 (1979).

Yager contends that the opinions of Drs. Goodman and Marsh, which LIRC relied upon, were inherently and patently incredible as a matter of law. Yager describes Dr. Goodman's opinion as such because it contradicted her worker's compensation history, her general health history of occupational disease, and the records and diagnosis of her treating physicians. If, in fact, Dr. Goodman did what Yager asserts, that would not render his opinion inherently or patently incredible. It would simply provide reasons why LIRC should disregard it. *See Haskins v. State*, 97 Wis.2d 408, 425, 294 N.W.2d 25, 36 (1980) (inconsistencies and contradictions in the statements of witnesses do not render the testimony inherently or patently incredible, but simply create credibility questions for the trier of fact.) In short, good reasons may exist to reject Dr. Goodman's opinion, but LIRC's decision to accord it great weight despite those reasons is not subject to reversal here.

As for Dr. Marsh, Yager argues that his opinion is incredible as a matter of law because he saw her only once and was a consultant for the insurer. Again, those assertions might support an attack on Dr. Marsh's credibility during

the administrative proceeding. They have no bearing on our review, which defers to LIRC on such credibility questions.

Additionally, Yager contends that LIRC had no evidence to find that Yager withheld relevant medical information from her treating physicians. However, the records of those physicians reasonably allow just that inference. None give any indication that the physicians were aware of her long and substantial history of back, shoulder and neck pain, predating her employment. LIRC may disregard conclusions in medical reports based on information supplied by the claimant that LIRC concludes is false or incomplete. *Erickson v. DILHR*, 49 Wis.2d 114, 126, 181 N.W.2d 495, 501 (1970).

*By the Court.*—Order affirmed.

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

