

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 20, 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. 98-2606-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ELLA MAE GALINDO,

PETITIONER-APPELLANT,

v.

**LABOR AND INDUSTRY REVIEW COMMISSION,
CORNWELL TEMPORARY SERVICE AND CASUALTY
INSURANCE COMPANY,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Ella Mae Galindo appeals from an order of the circuit court affirming the Labor and Industry Review Commission's determination that there was legitimate doubt regarding whether Galindo sustained a compensable back injury on February 21, 1996. We conclude that there was

substantial and credible evidence to support LIRC's decision. Accordingly, we affirm.¹

Cornwell Temporary Service hired Galindo in November 1995 to work in the linen department at St. Luke's Medical Center. The job required Galindo to fill linen carts with blankets, sheets, surgical gowns and other items. Galindo testified that the carts weighed several hundred pounds when filled and that she was required to pull the carts in a large circle from station to station as she placed the items in the cart. On February 21, 1996, Galindo experienced severe pain in her left calf while pulling one of the linen carts. Believing that her calf pain was the result of hitting her left leg with the linen cart, Galindo sought a diagnosis and medical treatment for her calf over a period of months.

On June 21, 1996, Galindo was examined by Dr. Daniel H. Rosler who diagnosed Galindo's calf pain as the result of a herniated disc in the lumbar region of her spine. Dr. Rosler concluded that Galindo's disc herniation resulted from the pulling incident at work on February 21, 1996. Galindo was examined in September 1996 by Dr. Timothy S. Hart, a physician hired by Cornwell. Dr. Hart concluded that Galindo's herniated disc, resulting in the onset of her left calf symptoms in February 1996, was not caused by her work but rather was caused by a preexisting degeneration in the structure of a lumbar disc.

Galindo filed a hearing application with the Department of Workforce Development alleging that she sustained a herniated disc in her lower back as a result of pulling the laundry cart in the course of her employment. The administrative law judge issued an interlocutory order in Galindo's favor.

¹ This is an expedited appeal under RULE 809.17, STATS.

Cornwell and its insurer petitioned LIRC for review. Subsequently, LIRC issued an order reversing the interlocutory order and dismissing Galindo's application on the ground that there was legitimate doubt regarding whether Galindo's injury was work related.

Galindo appealed. The circuit court issued a memorandum decision affirming LIRC's decision, determining that the evidence considered by LIRC was sufficient to raise a legitimate doubt as to whether Galindo suffered a compensable injury.

Whether the applicant sustained an injury to her lower back while working for Cornwell was a question of fact for LIRC to decide. *See Vasquez v. DILHR*, 39 Wis.2d 10, 17, 158 N.W.2d 331, 335 (1968). In an appeal from LIRC's finding of fact, a court's right of review is limited to a determination of whether there is sufficient credible evidence in the record to support LIRC's finding. *See id.* The evidence in support of LIRC's finding of fact needs only to be "sufficient to exclude speculation and conjecture." *Kress Packing Co. v. Kottwitz*, 61 Wis.2d 175, 178, 212 N.W.2d 97, 98 (1973). "If there is credible evidence to support the findings of [LIRC], such findings will not be upset on appeal." *Erickson v. DILHR*, 49 Wis.2d 114, 118, 181 N.W.2d 495, 497 (1970).

The question presented for review in the circuit court and here on appeal is whether there was sufficient evidence presented to raise a legitimate doubt in the mind of LIRC regarding the applicant's claim of injury. The circuit court's July 27, 1998, memorandum decision provides an accurate and thorough analysis of the facts and law regarding the issue presented and properly applies the law to the facts. Accordingly, we adopt the decision of the circuit court as the decision of this court.

Therefore, we conclude that there was substantial evidence to support LIRC's finding that a legitimate doubt existed regarding whether Galindo sustained a work-related back injury on February 21, 1996.

By the Court.—Order affirmed.

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

