

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 24, 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. 98-3545**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**ROBERT H. ARTTUS, JR.,**

**PLAINTIFF-APPELLANT,**

**V.**

**LABOR AND INDUSTRY REVIEW COMMISSION,  
EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL  
COMPANY, AND LA CROSSE FOOTWEAR, INC.,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for La Crosse County:  
RAMONA A. GONZALES, Judge. *Affirmed.*

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

PER CURIAM. Robert H. Arttus, Jr. appeals from an order affirming a decision of the Labor and Industry Review Commission. In that decision, LIRC affirmed a decision to terminate Arttus's worker's compensation benefits. The dispositive issue is whether there was substantial and credible

evidence to support LIRC's decision. We conclude that there was, and therefore affirm.

Arttus incurred a serious work-related injury to his left arm and hand in June 1995. In August 1995, he received a thirty percent permanent partial disability rating from his treating orthopedic physician, Dr. Morrissey. Dr. Morrissey later adjusted that rating to thirty-five percent. In January 1996, Arttus then received a sixty percent rating from Dr. Meythaler. Based on a further evaluation by Dr. Meythaler, LIRC's worker's compensation division computed Arttus's eligibility for worker's compensation benefits to be 380.74 weeks.

Dr. Kenneth Lay subsequently evaluated Arttus in December 1996, and rated him at a substantially lower level of permanent disability. Dr. Lay said, "I believe he is magnifying the disability remarkably with his behavior in an attempt to make it appear far more of a disability than it actually is." Consequently, the worker's compensation division recalculated Arttus's entitlement at 64.93 weeks, cutting off Arttus's payments since he had already exceeded that eligibility period.

Arttus petitioned for administrative review of that determination. Upon hearing the testimony and reviewing the physicians' reports, the administrative law judge concluded:

For the following reasons, I find the opinions of Dr. Kenneth Lay to be more persuasive and adopt them here. At hearing, the applicant was observed using his left hand and forearm easily, while gesturing as testifying, apparently unintentionally. In addition, when asked to demonstrate his ability to flex and extend his forearm, he was able to do so with nearly complete range of motion. Moreover, I note that the applicant has not treated for the injury since August 1995, two years before the hearing. I further note that the opinions of Dr. Meythaler appear relatively high given the

nature of the injury, and symptoms, and apparent loss of motion.

On review of the ALJ's decision, LIRC affirmed. It rejected Arttus's assertion that Dr. Lay's testimony was not credible, due to Dr. Lay's disagreement with the opinions of physicians whom Arttus claims were more familiar with his injury. It agreed with the ALJ that the opinion of Dr. Lay was more credible, given the ALJ's personal observations of Arttus.

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 will affirm that decision if LIRC's findings of fact are supported by credible and substantial evidence. See § 102.23(6), STATS. The evidence is sufficient under this standard if it excludes speculation or conjecture, see *Bumpas v. DILHR*, 95 Wis.2d 334, 343, 290 N.W.2d 504, 508 (1980), but it need not constitute the great weight and clear preponderance of the evidence, see *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 reasonable alternative findings are possible based on the same evidence. See *Vocational, Technical & Adult Educ. Dist. 13 v. DILHR*, 76 Wis.2d 230, 242, 251 N.W.2d 41, 47 (1977). LIRC's decision as to the credibility of witnesses giving medical testimony is not subject to review. See *Manitowoc County v. DILHR*, 88 Wis.2d 430, 437, 276 N.W.2d 755, 758 (1979).

On appeal, Arttus contends that Dr. Lay's opinion was not credible because Dr. Meythaler was more familiar with Arttus and did a more thorough evaluation. However, LIRC concluded that Dr. Lay's testimony was credible. Since LIRC's assessment of Dr. Lay's credibility is not open to review, we

conclude that there was substantial and credible evidence to support LIRC's decision terminating Arttus's worker's compensation benefits.

*By the Court.*—Order affirmed.

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

