

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 9, 1998

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. 97-3566**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**ROEHL TRANSPORT INC. AND LIBERTY MUTUAL  
INSURANCE COMPANY,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**WAYNE PIPER AND LABOR AND INDUSTRY REVIEW  
COMMISSION,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Brown County:  
SUSAN E. BISCHER, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Roehl Transport Inc. and its insurer appeal a judgment affirming a decision of the Labor and Industry Review Commission. LIRC awarded Wayne Piper benefits based on his loss of earning capacity resulting from an industrial injury. LIRC found that Piper reasonably refused

Roehl's offer to work as a dispatcher for eighty-five percent of his previous truck driver pay because the new job was 130 miles from his home. We affirm the judgment upholding LIRC's decision.

Roehl argues that this court should decide whether Piper's refusal was reasonable without deference to LIRC because § 102.44(6), STATS., is not ambiguous and application of the law on the undisputed facts is a question of law. Resolving the standard of review is not dispositive because we would reach the same conclusion regardless of whether we give deference to LIRC's decision. Nonetheless, we conclude that LIRC's decision should be accorded due weight. This case does not involve statutory interpretation. Rather, it involves application of a statutory concept to a set of facts that calls for a value judgment. When the administrative agency's expertise is significant to the value judgment, its decision is accorded some weight. *See Michels Pipeline Constr. Inc. v. LIRC*, 197 Wis.2d 927, 931, 541 N.W.2d 241, 243 (Ct. App. 1995). The law giving LIRC responsibility for this determination has been in effect since 1980, and LIRC's decision refers to other decisions it has made regarding the reasonableness of refusing a job based on commuting distance. Because LIRC has developed some experience in the area, its decision should be accorded due weight deference. *See UFE, Inc. v. LIRC*, 201 Wis.2d 274, 286-87, 548 N.W.2d 57, 62 (1996).

Regardless whether we accord LIRC's decision any deference, we conclude that Piper reasonably refused Roehl's offer of employment. It is not unreasonable to refuse employment 130 miles from home at eighty-five percent of one's previous pay. Piper was instructed by his doctor to drive no more than one to three hours in an eight-hour work day.

Because commuting would create insurmountable problems for Piper, Roehl offered him accommodations at the work site consisting of a bunk room described as small, noisy and uncomfortable. LIRC found that no one had ever worked as a dispatcher and stayed in the bunkhouse more than six months. Roehl contends that living in the bunkhouse provided better accommodations than Piper experienced as a truck driver. As a driver, Piper was frequently away from home for a longer duration and lived in the back of his truck, using truck stops for bathing and other needs and eating from a cooler. On the other hand, living in the bunkhouse would have entailed a completely different lifestyle for Piper, one that would not entail the perceived independence and variety of the road that a truck driver might consider compensation for the disamenities of his profession. Piper reasonably refused to accept what he considered to be a less desirable job 130 miles from his home at eighty-five percent of his previous pay.

Finally, Roehl argues that reversal is required because, in reaching its decision, LIRC reversed the administrative law judge's finding that Roehl had not made a bona fide job offer. Roehl argues that LIRC was required to provide a memorandum opinion explaining why it differed from the ALJ's finding. No credibility conference is required in circumstances where, as here, LIRC's decision does not depend on a credibility determination. *See Conradt v. Mt. Carmel Sch.*, 197 Wis.2d 60, 71-73, 539 N.W.2d 713, 717-18 (Ct. App. 1995). In addition, LIRC's reversal favors Roehl. Therefore, Roehl suffered no prejudice from LIRC's failure to consult with the ALJ on credibility questions.

*By the Court.*—Judgment affirmed.

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

