

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2000

Cornelia G. Clark
Acting 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* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1681

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ERIC S. BRUNNER,

PLAINTIFF-RESPONDENT,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,

DEFENDANT-APPELLANT,

**BURGER KING AND INTEGRITY MUTUAL INSURANCE
COMPANY,**

DEFENDANTS.

APPEAL from an order of the circuit court for Marquette County:
RICHARD O. WRIGHT, Judge. *Reversed.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. The Labor and Industry Review Commission (LIRC) appeals from an order reversing its decision on Eric Brunner's worker's

compensation claim. LIRC's order denied Brunner's claim to permanent partial disability benefits arising out of an injury he suffered while employed at Burger King. The circuit court remanded for further findings on its conclusion that LIRC considered only whether Brunner's injury caused his disabling condition, whereas the law on disability also required it to consider whether the injury may have aggravated a preexisting condition to the point of disability. We conclude that LIRC properly denied Brunner's claim, and therefore reverse.

¶2 There was no dispute that Brunner injured his back while working at Burger King in January 1995, and that he subsequently suffered disabling back problems. At the hearing on Brunner's claim, he testified that the Burger King injury caused the disabling condition. A treating chiropractor submitted an evaluation form in which he reached the same conclusion. That chiropractor, however, later modified his opinion, upon receipt of additional medical information, and concluded that the disc herniation probably occurred before the Burger King incident. Additionally, two evaluating physicians submitted reports stating that Brunner's disability probably derived from a herniated disc attributable to a 1993 car accident.

¶3 LIRC affirmed the hearing examiner's preliminary decision to deny the claim, concluding that the evidence raised a legitimate doubt that the applicant's back problems "arose" out of his work injury in January 1995. Instead, "the applicant suffered a temporary aggravation in the nature of a lumbar sprain which subsequently resolved." On judicial review, the circuit court concluded that LIRC's decision addressed only causation and did not adequately consider whether the Burger King injury aggravated the preexisting disc problem beyond normal progression. Consequently, the circuit court reversed LIRC's determination and remanded for further findings on that question.

¶4 An injury is compensable not only if it directly causes the disabling condition, but also if it “precipitates, aggravates and accelerates beyond normal progression, a progressively deteriorating or degenerative condition” *See Lewellyn v. Department of Indus., Labor & Human Relations*, 38 Wis. 2d 43, 58-59, 155 N.W.2d 678 (1968). On review, we examine LIRC’s decision, and not that of the circuit court. *See Knight v. LIRC*, 220 Wis. 2d 137, 147, 582 N.W.2d 448 (Ct. App. 1998), *review denied*, 220 Wis. 2d 365, 585 N.W.2d 157 (1998). We may reverse only where LIRC acted outside its authority, its order was procured by fraud, or its findings of fact do not support the order or award. *See* WIS. STAT. § 102.23(1)(e) (1997-98).¹ It is not disputed that reversal is appropriate where LIRC does not correctly or completely apply the applicable law.

¶5 LIRC could properly deny Brunner’s claim based on the record. For example, the finding that Brunner “suffered a temporary aggravation in the nature of a lumbar sprain which subsequently resolved,” necessarily implies that the injury did not aggravate a preexisting herniated disc injury.

¶6 Even if that implicit finding were not available, remand is unnecessary because Brunner presented no evidence to support a finding that the Burger King injury aggravated a preexisting condition. His own testimony attributed the onset of his condition to the Burger King injury, and he denied any preexisting deteriorating or degenerative condition. The only medical evidence favorable to Brunner consisted of his chiropractor’s initial conclusion that the Burger King injury caused the herniated disc, but his chiropractor modified that opinion upon receiving Brunner’s entire medical records. The other physicians

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

who evaluated Brunner both concluded that the herniated disc probably derived from a 1993 car accident. Therefore, LIRC was not required to make an express finding on aggravation, because denying the claim on that basis can be inferred in the absence of any evidence to support it. *See Christnovich v. Industrial Comm'n*, 257 Wis. 235, 237, 43 N.W.2d 21 (1950) (LIRC need not expressly make findings that are necessarily inferred from its decision if those inferred or implied findings are supported by evidence in the record). Accordingly, we reverse the order of the circuit court.

By the Court.—Order reversed.

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

