

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2006AP645-FT

Cir. Ct. No. 2005CV249

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CAROLYN J. KAMPA,

PETITIONER-RESPONDENT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-APPELLANT,

**TTC, INC., CREDIT GENERAL INSURANCE CO. AND MINNESOTA
INSURANCE GUARANTEE ASSOCIATION,**

RESPONDENTS-CO-APPELLANTS,

WISCONSIN INSURANCE SECURITY FUND,

RESPONDENT.

APPEAL from an order of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Reversed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J.¹ The Labor and Industry Review Commission, TTC, Inc., Credit General Insurance Co., and Minnesota Insurance Guarantee Association (collectively, LIRC) appeal an order reversing LIRC's decision finding that Carolyn Kampa failed to establish her claim for additional medical expenses and temporary total and permanent partial disability benefits. LIRC argues there is credible and sufficient evidence to support its findings and the circuit court incorrectly reversed its findings. We agree and therefore reverse the order.

BACKGROUND

¶2 Carolyn Kampa worked on a semi-truck driving team with her boyfriend. On June 16, 2000, while driving their semi in California, Kampa and her boyfriend were involved in an accident when a car ran a red light and broadsided the semi. When the car struck the semi, it jackknifed and the trailer swung around hitting the semi-truck's cab next to the sleeping berth. At the time of the accident, Kampa was asleep in the sleeping berth. Kampa was thrown around the sleeper berth until the truck came to rest. Kampa was injured in the accident and was taken to the emergency room where she received treatment.

¶3 In August 2000, Kampa stopped driving because of concerns she had about her ability to drive as a result of the accident. Kampa received various treatments from doctors related to the injuries she suffered. Kampa's employer paid benefits for temporary disability in the amount of \$59,818.86 for the period from August 18, 2000, to December 23, 2002.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 Kampa made a claim for additional worker's compensation benefits based on an alleged back injury from the 2000 accident. Kampa filed an application with LIRC for a hearing on: the nature and extent of both functional and vocational disability; and whether her employer had liability for additional medical expenses. At the hearing, an administrative law judge denied benefits for additional medical expenses and temporary total and permanent partial disability. The ALJ did, however, conclude Kampa was injured and was temporarily totally disabled from August 18, 2000, to January 1, 2002. The ALJ also concluded, "the only possible finding based on the record as a whole was that Ms. Kampa injured her right shoulder on June 16, 2000" and that Kampa does have a back injury, but that she did not establish the accident caused it.

¶5 Kampa petitioned LIRC for review of the ALJ's decision. On May 18, 2005, LIRC modified and affirmed the ALJ's findings and order. LIRC found Kampa sustained only a shoulder/scapular injury on June 16, 2000, and did not sustain a back injury from the accident. LIRC also found the injuries caused by the accident did not result in a permanent disability. Finally, LIRC concluded Kampa was temporarily totally disabled from August 18, 2000, to January 1, 2002.

¶6 Kampa appealed to the circuit court. The circuit court reversed LIRC's order because it found LIRC's decision was not supported by credible and substantial evidence. The court noted its reading of the medical records indicated Kampa complained of back pain immediately following the accident, and LIRC could not draw inferences from the medical records without expert medical testimony.

DISCUSSION

¶7 The issue on appeal is whether there is credible and substantial evidence in the record to support LIRC's decision. Because there is sufficient credible evidence to support LIRC's findings, we affirm LIRC's order.

¶8 When reviewing an order reversing an administrative agency's order, our scope of review is the same as that of the circuit court. *Boynton Cab Co. v. DILHR*, 96 Wis. 2d 396, 405, 291 N.W.2d 850 (1980). If there is any credible evidence in the record to support LIRC's findings, we must affirm those findings. *R.T. Madden, Inc. v. DILHR*, 43 Wis. 2d 528, 547-48, 169 N.W.2d 73 (1969). When reviewing the sufficiency of the credible evidence, we need conclude only that the evidence is sufficient to exclude the possibility LIRC's decision was merely speculation. *Bumpas v. DILHR*, 95 Wis. 2d 334, 343, 290 N.W.2d 504 (1980). If the record contains credible evidence to support LIRC's finding, regardless whether there is evidence that might lead to the opposite conclusion, we must affirm. *Valadzic v. Briggs & Stratton Corp.*, 92 Wis. 2d 583, 592-94, 286 N.W.2d 540 (1979).

¶9 Here, the record demonstrates sufficient credible evidence to affirm LIRC's decision. Kampa's initial complaints regarding her injuries were for shoulder and neck pain. She based her claim for additional benefits on thoracic back pain, which she claims was suffered as a result of the June 16, 2000, accident. However, Kampa did not begin to complain of back pain until October 2000. Additionally, the evidence Kampa relies upon, her medical records, only contain her subjective assertion of when the injury took place. In fact, Dr. Thomas Litman, whose findings LIRC found credible, indicated that

objectively Kampa does not have a back injury and that her complaints are subjective.

¶10 Kampa emphasizes Litman’s statement that Kampa suffered a soft tissue injury to her back as a result of the accident, from which she has subsequently healed. However, LIRC rejected this conclusion when it determined Kampa did not establish the accident caused her back injury. LIRC has substantial credible evidence for its decision to reject Litman’s conclusion. Specifically, this decision is supported by the lack of any reference in the medical records from the emergency room or the treating doctors in the months shortly after the accident of any thoracic back injury. Like the medical record notes of other doctors Kampa uses, Litman’s conclusion was based on Kampa’s assertion of when her back pain began. If LIRC found her not credible in the context of her back injury, it is certainly within LIRC’s discretion to extend that conclusion to its interpretation of her assertions within her medical records as to when her injury occurred. *L & H Wrecking Co. v. LIRC*, 114 Wis. 2d 504, 509, 339 N.W.2d 344 (Ct. App. 1983) (“The credibility of a witness or the persuasiveness of the testimony rendered are for [LIRC] to determine.” (citations omitted)). Because sufficient credible evidence exists to support LIRC’s decision, the circuit court’s order is reversed.

By the Court.—Order reversed.

Not recommended for publication in the official reports.