

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2001

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.

No. 00-3267

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DENNIS MAKEEFF,

PLAINTIFF-APPELLANT,

V.

**LABOR AND INDUSTRY REVIEW COMMISSION, CORPORATE
EXPRESS, AND LUMBERMENS MUTUAL CASUALTY CO.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Deininger, JJ.

¶1 PER CURIAM. Dennis Makeeff appeals a judgment affirming a decision of the Labor and Industry Review Commission denying him worker's compensation benefits. Because substantial and credible evidence supports the Commission's decision, we affirm the judgment.

¶2 The Commission must deny Makeeff's claim if there is legitimate doubt that he was disabled by a work-related injury. *See Leist v. LIRC*, 183 Wis. 2d 450, 457 515 N.W.2d 268 (1994). This court must affirm the Commission's findings if they are supported by substantial and credible evidence. *See Bampas v. DILHR*, 95 Wis. 2d 334, 342, 290 N.W.2d 504 (1980).

¶3 Makeeff identifies several facts recited by the Administrative Law Judge and adopted by the Commission that he argues are not supported by the evidence. He challenges the Commission's ultimate findings based on these errors. We need not resolve those issues because this court's duty is to search the record for evidence that supports the Commission's decision, not to weigh conflicting evidence. *See Valadzic v. Briggs & Stratton Corp.*, 92 Wis. 2d 583, 592-94, 286 N.W.2d 540 (1979). Even without considering the challenged evidence, the record contains ample grounds upon which the Commission could doubt Makeeff's claim.

¶4 Makeeff contends that he injured his back by lifting a box at work on April 24, 1997. He went to the emergency room that evening and returned to work the next day. On May 13, after Makeeff was notified that he would lose his job due to a merger, Makeeff saw Dr. Michael Murphy, complaining of pain in his back and right leg. Makeeff associates that pain with the lifting injury he suffered April 24, even though he had also gone to the emergency room on April 20, complaining of pain to his back and left leg. Dr. Murphy wrote a note indicating that Makeeff would be totally incapacitated for one month commencing May 19, the first work day after Makeeff was scheduled to lose his job.

¶5 As the trial court noted, Dr. Murphy's diagnosis, along with inconsistent and contradictory reports of other doctors, x-rays indicating a

degenerative disk disease and Makeeff's history of recent back pain, support the interpretation that the April 24 incident was not a new injury, but rather a manifestation of a preexisting condition unrelated to Makeeff's employment. That position is supported by Dr. Richard Lemon's evaluation. Lemon concluded that Makeeff's symptoms were due to his preexisting degenerative disk disease and that the alleged incident of April 24 did not aggravate or accelerate that condition. Although Lemon was willing to concede minor back strain that was resolved by May 2, 1997, the Commission could reasonably have doubted that concession because Makeeff worked throughout that time and sought treatment from Dr. Murphy only after learning that his job would be terminated. Because the record contains ample evidence to support the Commission's ultimate finding, regardless of any factual error in its inconsequential findings, we affirm its decision.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

