

Pfenniger, Ernest

CAUSAL RELATIONSHIP

Chiropractor

Because the low back is a part of the anatomy falling within the special field of chiropractic, a chiropractor may testify to the causal relationship between the worker's low back condition and the injury.*In re Ernest Pfenniger*, BIIA Dec., 41,425 (1973) [dissent]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 **IN RE: ERNEST PFENNIGER**) **DOCKET NO. 41,425**
2)
3 **CLAIM NO. G-283219**) **DECISION AND ORDER**
4

5 APPEARANCES:
6

7 Claimant, Ernest Pfenniger, by
8 Fristoe, Taylor & Schultz, per
9 Don W. Taylor and Clifford L. Stilz

10
11 Employer, Wayne Hallmeyer,
12 None

13
14 Department of Labor and Industries, by
15 The Attorney General, per
16 Robert L. DiJulio and Robert M. Knies, Assistants
17

18 This is an appeal filed by the claimant on August 7, 1972, from an order of the Department of
19 Labor and Industries dated July 18, 1972, which rejected the claimant's application for benefits on
20 the ground there was no proof of a specific injury at a definite time and place in the course of
21 employment. **REVERSED AND REMANDED.**
22
23

24 **DECISION**

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
26 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
27 Proposed Decision and Order issued by a hearing examiner for this Board on October 5, 1973, in
28 which the order of the Department dated July 18, 1972 was reversed and the Department directed
29 to allow this claim as an industrial injury.
30
31

32 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
33 prejudicial error was committed and said rulings are hereby affirmed.
34
35

36 The issue presented by this appeal and the evidence presented by the parties are
37 adequately set forth in our hearing examiner's Proposed Decision and Order.
38

39 This case squarely turns upon the question of whether or not a chiropractor is qualified to
40 testify as an expert witness as to the causal relationship of a back condition to an on-the-job
41 accident.
42

43 The Department contends that a chiropractor is not so qualified, citing as authority Kelly v.
44 Carrol, 36 Wn. 2d 482, for the proposition that a chiropractor is not a medical expert and therefore
45 is precluded from testifying as to matters in the general realm of medicine and surgery.
46
47

1 By no means does Kelly purport to totally exclude chiropractors from the realm of expert
2 testimony. On the contrary, the court therein stated that chiropractors, as expert witnesses, are
3 "limited in their testimony to their special field," whereas medical doctors "are competent to give
4 testimony in the entire medical field." In addition, the court noted that the determination as to "what
5 field of expert testimony is involved in any particular situation," is a matter to be resolved through
6 the exercise of "sound discretion."
7

8
9
10 In this state, chiropractic is judicially recognized as one of the "healing arts," and is subject to
11 legislative regulation. Ellestad v. Swayze, 15 Wn. 2d 281. Its "special field" of practice is
12 legislatively defined as the adjustment "by hand any articulation of the spine." RCW 18.25.030. It
13 has been held that a chiropractor is competent to give expert testimony as to the interpretation of
14 an x-ray of the lumbar spine and in what respect it showed deviation from a normal spine (Manos v.
15 James, 7 Wn. 2d 695).
16

17
18
19 In the instant case, the condition in issue involves the lower lumbar spine -- a part of the
20 anatomy which falls within the "special field" of chiropractic. Based upon his interpretation of x-rays
21 of the claimant's lumbar spine, his physical examination of the claimant, and a history of the injury,
22 the claimant's chiropractic witness (who attended him for his injury) expressed the opinion that the
23 claimant's low back condition was related to the injury. We think this testimony falls within the
24 chiropractic field of practice as prescribed by the Legislature, and is therefore competent as expert
25 testimony.
26

27
28
29 Indeed, the Department's own Medical Aid Rules recognize the competency of chiropractors
30 to render opinions of causal relationship within their field of practice. Under WAC 296-23-610,
31 Chiropractic Rules, the section governing Initial Treatment and Report of Accident, provides that
32 chiropractors are to submit to the Department their "Specific diagnosis relating to the injury."
33 (Emphasis added) One must ask, by what twist of logic does a diagnosis and opinion which is
34 competent when submitted to the Department, become incompetent when submitted to this Board?
35

36
37
38 After consideration of the Proposed Decision and Order and the Petition for Review filed
39 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
40 Decision and Order is supported by the preponderance of the evidence and is correct as a matter of
41 law.
42
43
44
45
46
47

1 The hearing examiner's proposed findings, conclusions and order are hereby adopted as this
2 Board's findings, conclusions and order and are incorporated herein by this reference.

3
4 It is so ORDERED.

5
6 Dated this 6th day of December, 1973.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

8
9 /s/ _____
10 PHILLIP T. BORK Chairman

11
12 /s/ _____
13 R.H. POWELL Member

14 **DISSENTING OPINION**

15
16 I dissent because I do not find any medical evidence in the record which would persuade me
17 to join in reversing the Department of labor and Industries in this claim.

18
19 I will not accept the opinions of a chiropractor in the area of causal relationship between an
20 orthopedic condition and an alleged work incident. Mr. Wilson is not a medical man nor in any
21 sense of the term a medical expert. A chiropractor is licensed by the state to adjust by hand any
22 articulation of the spine, but a chiropractor is not licensed to prescribe or administer medicine. Mr.
23 Wilson is a drugless healer and he should perform services in that restricted field and not as an
24 expert witness in matters involving medicine; certainly not as an expert medical witness as to the
25 probable causal relationship of a physical condition as it may relate to an industrial injury.

26
27 The fact that the Department pays the bills under the Medical Aid Act for chiropractic
28 manipulation and massage does not raise Mr. Wilson's testimony on causal relationship to the level
29 of medical testimony.

30
31 Dated this 6th day of December, 1973.

32
33 BOARD OF INDUSTRIAL INSURANCE APPEALS

34
35 /s/ _____
36 R.M. GILMORE Member