# 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]

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#### BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

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#### IN RE: ERNEST PFENNIGER

**DOCKET NO. 41,425** 

#### CLAIM NO. G-283219

**DECISION AND ORDER** 

APPEARANCES:

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

Employer, Wayne Hallmeyer, None

Department of Labor and Industries, by The Attorney General, per Robert L. DiJulio and Robert M. Knies, Assistants

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

## DECISION

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

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

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

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

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

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

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

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

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

After consideration of the Proposed Decision and Order and the Petition for Review filed thereto, and a careful review of the entire record before us, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence and is correct as a matter of law. The hearing examiner's proposed findings, conclusions and order are hereby adopted as this Board's findings, conclusions and order and are incorporated herein by this reference.

It is so ORDERED.

Dated this 6th day of December, 1973.

# BOARD OF INDUSTRIAL INSURANCE APPEALS

<u>/s/</u> Phillip T. Bork

Chairman

<u>/s/</u> R.H. POWELL

Member

## **DISSENTING OPINION**

I dissent because I do not find any <u>medical</u> evidence in the record which would persuade me to join in reversing the Department of labor and Industries in this claim.

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

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

Dated this 6th day of December, 1973.

BOARD OF INDUSTRIAL INSURANCE APPEALS

<u>/s/</u> R.M. GILMORE

Member