Shipley, H.U.

CAUSAL RELATIONSHIP

Chiropractor

Chiropractic testimony is sufficient to establish a prima facie case for a causal relationship between an industrial injury and the worker's low back condition, since the treatment of low back conditions is within the "special field" of chiropractic. ***….In re H.U. Shipley*, BIIA Dec., 08,043 (1957)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: H.U. SHIPLEY	**)**	**DOCKET NO. 8043**
	)	
CLAIM NO. C-355206	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, H. U. Shipley, by
Herbert Springer

Employer, Longview Fibre Company, by
Imus, Marsh and Johnson, per
Joe L. Johnson and Richard Long

Department of Labor and Industries, by
The Attorney General, per
Walter F. Robinson, Jr., Assistant

Appeal filed by the claimant, H. U. Shipley, on October 31, 1956, from an order of the department of labor and industries dated October 15, 1956, rejecting the claimant's application for benefits under the workmen's compensation act. **REVERSED AND REMANDED**.

DECISION

On September 4, 1956, the claimant, H. U. Shipley, filed an accident report and claim for compensation with the department of labor and industries, alleging that he sustained a back injury while working for the Longview Fibre Company on August 21, 1956. On October 15, 1956, the department issued an order rejecting the claim for the reason that "there is no proof of a specific injury at a definite time and place in the course of his employment." The claimant appealed from said order to this board on October 31, 1956, and the appeal was granted on November 15, 1956.

The basic issue presented by this appeal is whether or not the claimant sustained an "injury" within the meaning of the workmen's compensation act on August 21, 1956. R.C.W. 51.08. 100 defines "injury" as follows:

> "Injury means a sudden and tangible happening of a traumatic nature producing an immediate or prompt result and occurring from without; an occupational disease; and such physical condition as result from either."

In order, therefore, for a claimant to establish his right to relief under the act, he must prove (1) the occurrence of a sudden and tangible happening of a traumatic nature and (2) a physical condition or disability resulting therefrom.

The claimant testified that he had been employed by the Longview Fibre Company as a millwright for about ten years prior to August 21, 1956. At 3:45 p.m. on that day (a few minutes prior to quitting time), he and three other men picked up a heavy wooden skid about eight feet wide and ten feet long to move it out of the way. As the claimant was moving backward with his corner of the skid, his foot hit a pipe, causing the skid to slip in his grasp and give him a "hard jar." He stated he felt a "terrific popping pain" and "tearing sensation" in his back, but since it was so close to quitting time he did not seek medical assistance from the company nurse until the following morning. The claimant stated that he told a co-worker, "Bud" Potter, that he had injured his back, then he went home, ate dinner and went to bed. He further stated that "I figured it was something that would go away in time," but as his condition did not improve he consulted Dr. R. O. Kinberg, a chiropractor, on August 25, 1956. Dr. Kinberg treated the claimant with "manipulation, physiotherapy, back support," but he lost no time from work during this course of treatment. The claimant denied having had any prior back injuries or any prior difficult with his low back. He admitted, however, that when he signed his time card at the end of his shift on August 21, 1956, he checked the box marked "no" opposite the question "Did you have an injury today?" He did this, he stated, out of "force of habit."

Bernard L. Potter corroborated the claimant's testimony with reference to lifting the skid as part of their clean up duties "close to quitting time" on August 21, 1956. He further stated that he remembered the claimant mentioning that he hurt his back at that time and observed that he was having difficulty with his back the following day.

Dr. Kinberg, who is licensed to practice in this state both as a chiropractor and sanipractor, was called as a witness by the claimant. He testified that he examined the claimant on August 25, 1956, at which time he was complaining of "severe low back ache affecting the right leg." Mr. Shipley told him at that time of the skid lifting incident on August 21, 1956, and also mentioned that "he had apparently strained his back on the job a year ago, but he didn't report it then and then it went away in three or four days." Dr. Kinberg took x-rays which, he stated, showed a narrowed sacrolumbar disc and an arthritic condition. As a result of his examination at that time Dr. Kinberg made a diagnosis of "acute sacrolumbar disc on the right side," which was "complicated by some

arthritis present." Based on a hypothetical question, which incorporated the substance of the claimant's testimony with reference to the incident at his work on August 21, 1956, (which was substantially the same as the history which he received from the claimant), Dr. Kinberg expressed the opinion that the condition he diagnosed resulted from that incident. Subsequently, on examination by the board's examiner, Dr. Kinberg stated that "certainly the acute strain, muscle spasm was from this injury and the narrowed sacrolumbar disc could be caused from it" and that the arthritic condition probably pre-existed the injury.

The only testimony presented by the employer was that of Mr. Gale Hazen, foreman of the millwright crew, who testified merely that the skid which the claimant and three other men moved on August 21, 1956, weighed, in his estimation, between 300 to 350 pounds. On cross-examination Mr. Hazen further testified that the claimant had been a good worker and that he had never had any complaints with reference to his back prior to August 21, 1956.

The department presented no testimony, but made a motion to dismiss the claimant's appeal on the ground that no "medical evidence" was presented to establish that the back condition complained of by the claimant resulted from the incident on August 21, 1956. The basis of the department's motion, as stated by its counsel, was that "testimony of causal connection must be by medical experts; that it requires the testimony of an M.D., a physician authorized to practice medicine to express an opinion as to the physical condition resulting from a sudden and tangible traumatic happening and the testimony and opinion of a chiropractor and sanipractor is not sufficient in that regard." The question raised by the department with reference to the competency of a chiropractor to testify as to his opinion concerning the relationship between a back condition and a traumatic happening presents the only serious issue in this case.

Our supreme court has held that "the probability of a causal connection between the industrial injury and the subsequent physical condition must be established by the testimony of medical experts." Stampas v. Department of Labor and Industries, 38 Wn. (2d) 48. At the outset it may be noted that the interpretation of the word "medical" as being limited to doctors of medicine, which is now urged by the department, is directly contrary to the long established practice of the department in authorizing the treatment of back conditions of injured workmen by chiropractors, inasmuch as the medical aid act only authorizes the department to provide "proper and necessary medical and surgical services, at the hands of a physician of his own choice." (Emphasis added) The word "medical" is defined in Dorland's American Illustrated Medical Dictionary (22nd Edition) as

"pertaining to medicine or to the treatment of diseases" and in Webster's New Collegiate Dictionary as "of, pertaining to, or dealing with the healing art or the science of medicine. Although the common law does not require that an expert witness on a medical subject must be duly licensed to practice medicine, (see Volume 2 Wigmore on Evidence sec. 569, page 667) our supreme court in the case of Kelly v. Carol 36 Wn, (2d) 482, laid down the following rule:

> "There are fields of opinion testimony in which the expert must be licensed, and there are others where he need not be. In the non-licensed field, the court exercises a sound discretion as to the competency of each individual witness as an expert. In the licensed field, the law presumes that licensed witnesses are experts and non-licensed witnesses are not. Thus, doctors with unlimited licenses are competent to give expert testimony in the entire medical field. See Robinson v. Marino, 3 Wash. 434, 28 Pac. 752, in which the court said:
>
> 'Physicians and surgeons of experience are presumed to be acquainted with all matters pertaining to their profession, and to be competent to testify concerning the same.'
>
> Chiropractors, on the other hand, are limited in their testimony to their special field. See Voight v. Industrial Commission, 297 211. 109, 130 N.E. 470; Carnine v. Tibbets, 158 Ore. 21, 74P. (2d) 974." (Emphasis added)

The case of Voight v. Industrial Insurance Commission cited by our court in support of the statement above quoted that chiropractors "are limited in their testimony to their special field," involved a contention by the employer that the Illinois Commission erred in considering the testimony of a chiropractor on the question of the effect of a back injury suffered by a workman. In that case the court held:

> "'Anyone who is show to have special knowledge and skill in diagnosing and treating human ailments is qualified to testify as an expert, if his learning and training show that he is qualified to give an opinion upon the particular question in issue. The injury in question was to the spine. Dr. Fullmer testified that physicians of her school are specially educated and trained to diagnose and treat posterior and lateral derangements and ailments of the spine. That was the character of the ailment suffered by plaintiff. She was a graduate of a school of chiropractics and had practiced for four years since her graduation. Her testimony shows that she was able to detect a prominent subluxation of the spine with her hands, and that she discovered and located this condition before she learned from the patient about his injury. It is not the province of the courts to pass upon the merits of the various systems now in use and practice in the treatment and cure of diseases; but when

> a physician schooled, educated and trained in any one of these particular systems qualifies as a witness by showing that he has special knowledge or skill diagnosing and treating the particular ailment or disease which is the subject of investigation by the court, it is the duty of the court to admit his testimony as an expert. The weight of such testimony is to be determined by the character, capacity, skill and opportunity of the witness to know and understand the matters about which he testifies and his state of mind or fairness to the parties litigant. Dr. Fullmer was competent.'"

In the case of Inter-Ocean Oil Company v. Marshal, 166 Okla. 118, 26 Pac. (2d) 399, in which it was contended by the defendant in a personal injury action that a chiropractor was not a competent witness to testify on a question of causal relationship, which was a question "requiring knowledge of medical science," the Oklahoma court stated:

> "By the use of the term '"Medical Science"' the plaintiffs limited the proposition. There are many manners and methods of treating and healing the human body, which might not be strictly termed '"Medical Science"', but nevertheless are recognized as scientific methods and render their qualified practitioners eligible to testify as expert witnesses within the scope of their knowledge, according to their qualifications. The practice of chiropractic, as a method of treatment and healing, is permitted and regulated in Oklahoma by statute. The course of study and preparation precedent to admission to practice is prescribed by law. When a duly licensed chiropractor is called as an expert witness and establishes his qualification to testify as an expert witness, that is, as a chiropractor, he is competent to testify as an expert witness. The question of whether his qualifications have been established and the extent to which his competency goes is a question for the trial court, in the same manner and the same extent as any other expert witness. The weight and value of his testimony is a matter for the jury and is subject to be supported or minimized by examination and cross-examination, just as is that of any other expert witness."

The practice of chiropractic in this state is authorized and regulated by chapter 18.25.R.C.W. which requires that all applicants for licenses shall be a graduate of a chiropractic college which teaches a course of two years or more and shall be examined on "anatomy, physiology, hygiene, symptomatology, nerve tracing, chiropractic-orthopedic, principles of chiropractic and adjusting as taught by chiropractic schools and colleges."

Dr. Kinberg testified that he had practiced as a chiropractor and sanipractor in this state for ten years, that he had pre-medical training at the University of Washington and that he studied

chiropractic for four years at the Portland Western State College with an additional two years study of sanipractic.

This case does not involve any complicated medical problems, but merely an acute back strain- a condition, which is customarily and regularly treated by chiropractors and clearly within their "special field.'" The board is therefore of the opinion that Dr. Kinberg was qualified to testify concerning the relationship between the back condition he diagnosed and the lifting incident in connection with the claimant's employment on August 21, 1956. In the absence of any testimony to the contrary, therefore, the board must find that the claimant suffered a lumbosacral strain as a result of that incident and that he was entitled to benefits under the workmen's compensation act.

FINDINGS OF FACT

In view of the foregoing and after reviewing the entire record herein, the board finds as follows:

1. The claimant, H. U. Shipley, filed a report of accident and claim for compensation with the department of labor and industries on September 4, 1956, in which he alleged that he sustained a back injury in the course of his employment with the Longview Fibre Company on August 21, 1956. On October 15, 1956, the supervisor of industrial insurance issued an order rejecting the claim for the reason that "there is no proof of a specific injury at a definite time and place in the course of employment." The claimant filed a notice of appeal from the last-mentioned order with this board on October 31, 1956, and the appeal was granted by a board order dated November 15, 1956.

2. On August 21, 1956, the claimant experienced low back pain when he stepped on a pipe, slipped and jarred his back while carrying a heavy wooden skid in the course of his employment with the Longview Fibre Company.

3. As a result of the above-mentioned incident in the course of his employment, the claimant suffered a lumbosacral strain, which necessitated medical (chiropractic) treatment.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the board concludes:

1. The claimant, H. U. Shipley, sustained an injury within the meaning of the workmen's compensation act in the course of his employment on August 21, 1956.

2. The order of the supervisor of industrial insurance issued herein on October 15, 1956, rejecting the claimant's application for benefits under the workmen's compensation act should be reversed and the claim remanded to the department with direction to allow the same and to take such other and further action in connection therewith as may be authorized or required by law.

ORDER

Now, therefore, it is hereby **ORDERED** that the order of the supervisor of industrial insurance issued herein on October 15, 1956, be, and the same is hereby, reversed, and the above numbered claim is remanded to the department of labor and industries with direction to allow the same and to take such other and further action in connection therewith as may be authorized or required by law.

Dated this 19th day of June, 1957.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
J. HARRIS LYNCH Chairman

/s/ _____
ARTHUR BORCHER Member

/s/ _____
A.W. ENGSTROM Member