

Turning first to the issue of permanency, in the absence of a recent examination there can be no projection of permanent limitation (*Bidetto v. Williams*, 276 AD2d 516 [2nd Dept. 2000]). The affidavit of Dr. Isaac Cohen annexed to plaintiff's opposition papers states that plaintiff was treated in his office shortly after the accident until "the Spring of 2000 when his No-Fault benefits were terminated". Plaintiff did not return to Dr. Cohen's office until October 17, 2001. That gap in treatment, one and one-half years, is not adequately explained (*Grossman v. Wright*, *supra*).

Even if the October 17, 2001 office visit is considered to be a "recent examination", Dr. Cohen's affidavit fails to set forth the objective tests he performed on this date in order to reach the conclusion that plaintiff sustained a permanent partial disability. Plaintiff's subjective complaints are not enough nor are limitation of motion tests with unspecified degrees of restriction (*Toure v. Avis Rent-A-Car*, 284 AD2d 271 [1st Dept. 2001]).

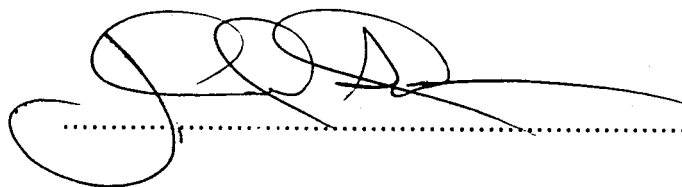
Further, references to prior diagnostic testing are of no probative value when the earlier findings have no mention of causation or permanency (*Betheil-Spitz*, 276 AD2d 732 [2nd Dept 2000]).

As to the significance of plaintiff's injuries, a physicians's findings of significance, like that of permanency, must be based upon qualitative objective testing (*Walcott v. Hsuehli*, 283 AD2d 485 [2nd Dept. 2001]).

Finally, plaintiff does not meet the criteria for the 90/180 day category of medically determined injury. Dr. Cohen's's affidavit did not address whether plaintiff was prevented from performing substantially all of the material acts which constituted his customary activities during that time period (*Lanuto v. Constantine*, 192 AD2d 989 [3rd Dept. 1993]). Plaintiff's personal affidavit, without more, is insufficient to defeat defendant's motion (*Walcott v Husehli*, *supra*).

Accordingly, defendant's motion is granted.

Dated: March 13, 2002


.....J.S.C.

ENTERED

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