

Hannaman, Glenn

BURDEN OF PROOF

Presumption under RCW 51.32.187

In a Hanford appeal, just as in any other appeal at the Board of Industrial Insurance Appeals, to overcome a CR 41(b)(3) motion, the party with the burden of production must establish a prima facie case—substantial evidence which, if un rebutted, would convince an unprejudiced, thinking mind of the truth of the issues on appeal. The Board will follow the *Morgan* theory of presumptions in claims arising under RCW 51.32.187. Accordingly, RCW 51.32.187 shifts both the burden of production and the burden of persuasion (proof) to the employer, in this case, DOE.***In re Glenn Hannaman, BIIA Dec., 19 12787 (2021)*** [Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 21-2-01716-3]

Scroll down for order.

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

1 **IN RE: GLENN O. HANNAMAN, JR.)** **DOCKET NOS. 19 12787, 19 20585, 19 20586 &**
2 **DEC'D)** **19 23288**
3)
4 **CLAIM NO. SL-21073)** **DECISION AND ORDER**

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6 Glenn O Hannaman, Jr., passed away from metastatic lung cancer following a 29-year career
7 with the US Department of Energy at Hanford (the "DOE"). His widow, Roberta Hannaman, filed a
8 beneficiary application for benefits under the Industrial Insurance Act. In a series of orders, the
9 Department allowed the claim, denied second injury fund relief to DOE, awarded Mrs. Hannaman a
10 widow's pension, calculated Mr. Hannaman's wages, and assessed an overpayment. DOE appealed.
11 Following a hearing, our industrial appeals judge granted the Department's CR 41 motion, and
12 dismissed the self-insured employer's appeals after determining that it failed to establish a prima facie
13 case. DOE petitioned for review, arguing that in granting the CR 41 motion, our industrial appeals
14 judge misapplied the "clear and convincing" burden set forth in RCW 51.32.187. We agree, and grant
15 review to reverse the CR 41 ruling. Moreover, because the parties completed their presentation of
16 evidence, we review these appeals on their merits. The uncontested record established that
17 Mr. Hannaman was an RCW 51 covered worker on DOE related projects, within the statutorily
18 defined areas at the Hanford Nuclear Site for the requisite number of shifts. As a result, there exists
19 a prima facie presumption that Mr. Hannaman's colorectal and lung cancers were an occupational
20 disease. Because DOE did not rebut the Hanford presumption by clear and convincing evidence,
21 the Department Orders are **AFFIRMED**.

DISCUSSION

22
23 These appeals present some procedural matters to untangle. The procedural issues may
24 have been caused by confusion regarding that legal concept known as the **Burden of Proof**. Black's
25 Law Dictionary defines the term:

26 [a] party's duty to prove a disputed assertion or charge; a proposition regarding which
27 of two contending litigants loses when there is no evidence on a question or when the
28 answer is simply too difficult to find. The burden of proof includes both the *burden of*
29 *persuasion* and the *burden of production*.¹

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31 Thus, the burden of proof includes two distinct concepts. The burden of production, describes
32 one party's burden of going forward,² that is, their burden to produce sufficient evidence to justify a
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46 ¹ Black's Law Dictionary (11th ed. 2019), burden of proof.

47 ² See, Black's Law Dictionary (11th ed. 2019) burden of going forward with evidence.

1 finding,³ or to avoid a ruling against them (for example, summary judgment or directed verdict).⁴ A
2 party has met their burden of production once they have introduced sufficient evidence to establish
3 a prima facie case. This standard may be met even though that same evidence may fall short of
4 convincing a trier of fact to ultimately rule in the party's favor.
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7 In contrast, the burden of persuasion is a party's duty to convince the fact-finder to view facts
8 in a way that favors that party.⁵ This concept assigns risk to one of the parties in the event that the
9 evidence is so close a fact finder cannot decide. In that instance, the party bearing the burden of
10 persuasion loses the appeal.
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13 In most industrial insurance appeals, the appellant's burden of persuasion is by a
14 preponderance of the evidence. In criminal cases, the burden of persuasion is beyond a reasonable
15 doubt. In Hanford presumption cases, the burden of persuasion is clear and convincing evidence,
16 which is generally considered to be a standard in between preponderance and beyond a reasonable
17 doubt.
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19 **CR 41 Motion**

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21 Fulfilling a similar "winnowing" function as a pretrial CR 56 motion for summary judgment,
22 CR 41(b)(3) authorizes involuntary dismissal following a hearing where the moving party has failed
23 to meet their burden of production.⁶ This motion is granted when there is no evidence, or reasonable
24 inferences therefrom, which would support a verdict for the moving party.⁷ Because a CR 41 motion
25 assesses whether a party has satisfied its burden of going forward, a CR 41(b)(3) motion to dismiss
26 amounts to an assessment of whether that party has met its burden of production.
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28 **Whose Burden is it? Application of the Morgan Theory of Presumptions**

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30 DOE does not dispute that Mr. Hannaman worked sufficient hours within areas covered by
31 RCW 51.32.187 and was subsequently diagnosed with two predicate conditions (that is, colorectal
32 and lung cancer).⁸ As a result, RCW 51.32.187 (the "Hanford presumption statute") establishes a
33 rebuttable presumption that those cancers were an occupational disease.
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41 ³ See, Black's Law Dictionary (11th ed. 2019) burden of persuasion, second paragraph (distinguishing the two concepts
42 contained within the concept known as burden of proof.)

43 ⁴ See, for example, Black's Law Dictionary (11th ed. 2019) burden of production.

44 ⁵ Black's Law Dictionary (11th ed. 2019) burden of persuasion.

45 ⁶ CR 41(b)(3).

46 ⁷ See, for example, *In re Donald W. Wright*, Dckt. Nos. 14 16368, 14 16568, & 15 10063 (November 23, 2015) citing
47 *Spring v. Dep't of Labor & Indus.*, 96 Wn.2d 914 (1982), after remand, 39 Wn. App. 751 (1985); *Nelson Construction v.*
Port of Bremerton, 20 Wn. App. 32, (1978).

⁸ Petition for Review at 17.

1 How the Hanford presumption operates is a matter of first impression. Fortunately, we are not
2 without some direction on the topic. In 1987, our Legislature adopted a statute quite similar to the
3 one before us now. Amended over the years, RCW 51.32.185 (the "firefighter presumption") affords
4 certain firefighters a similar (albeit more easily disputed) presumption of occupational disease. In
5 *Spivey v. Bellevue*,⁹ a consolidated case involving two Bellevue firefighters diagnosed with malignant
6 melanoma, our Supreme Court clarified that in firefighter presumption cases, Washington will follow
7 the *Morgan theory of presumptions*. The Court held that employers of qualifying firefighters must
8 overcome a continuing, rather than disappearing presumption.
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10 Noting that "RCW 51.32.185 reflects a strong social policy in favor of the worker,"¹⁰ the
11 Supreme Court concluded that whether the employer, in that case, Bellevue, rebutted the firefighter
12 presumption was a factual determination properly given to the jury. The court also applied the Morgan
13 theory of presumptions to RCW 51.32.185, and held that the firefighter presumption shifted both the
14 burden of production and the burden of persuasion to the employer.¹¹
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16 In its Petition for Review, DOE anticipates that we will follow *Spivey* and the *Morgan Theory*
17 *of Presumptions* will also be applied to RCW 51.32.187. We agree. Like the firefighter presumption,
18 the Hanford presumption statute reflects a strong social policy and must be accorded the strength
19 intended by our Legislature. As with the firefighter presumption, the plain language of the Hanford
20 presumption statute supports application of the Morgan theory of presumptions in these occupational
21 disease allowance cases. For these reasons, we hold that RCW 51.32.187 shifts both the burden of
22 production and the burden of persuasion (proof) to the employer, in this case, DOE.
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24 **Has DOE Met its Burden of Production?**

25 The next issue for us to untangle is whether our industrial appeals judge properly dismissed
26 the self-insured employer's appeals. To overcome the Department's CR 41(b)(3) motion, DOE must
27 establish a **prima facie case**, that is, substantial evidence¹² which, if un rebutted, would convince an
28 unprejudiced, thinking mind of the truth of the issues on appeal.¹³ Put another way, a prima facie
29 case is one that "will prevail until contradicted and overcome by other evidence."¹⁴
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⁹ 187 Wn.2d 716 (2017).

43 ¹⁰ *Spivey* at 721.

44 ¹¹ *Spivey*, 187 Wn.2d 728.

45 ¹² A mere scintilla of evidence is insufficient. *In re Peter Kim*, BIIA Dec. 00 21147 at 2 (2002) citing *Omeitt v. Dep't of*
46 *Labor and Indus.*, 21 Wn.2d 684 (1944).

47 ¹³ *In re William Morgan*, Dckt. No. 91 3417 (January 14, 1993).

¹⁴ Black's Law Dictionary, 1189 (6th ed. 1990).

1 Here, DOE produced medical testimony indicating that Mr. Hannaman was not exposed to
2 sufficient radiation or chemical exposures to cause his cancers. Moreover, the medical testimony
3 established that Mr. Hannaman's history as a smoker from 1971 to 1991 was an enormous risk factor,
4 and was most certainly the cause of his lung cancer. When considered in the light most favorable to
5 DOE, this un rebutted evidence is sufficient to convince an unprejudiced, thinking mind that
6 Mr. Hannaman's exposures at Hanford were not a cause of his cancers. Because our industrial
7 appeals judge applied a different standard to the Department's CR 41 motion (that is, DOE's clear
8 and convincing burden of persuasion), she erred in dismissing these appeals. But, our inquiry does
9 not end there.

10 **Decision on the Merits: Clear and Convincing Evidence**

11 Having already determined that DOE met its burden of production (that is, it established a
12 prima facie case), we next address whether it met its burden of persuasion (that is, that it rebutted
13 the presumption of occupational disease by clear and convincing evidence). For the reasons set
14 forth below, we find that it has not.

15 Black's Law Dictionary defines clear and convincing evidence as follows:

16 [e]vidence indicating that the thing to be proved is highly probable or reasonably certain.
17 This is a greater burden than preponderance of the evidence . . . but less than evidence
18 beyond a reasonable doubt, the norm for criminal trials.¹⁵

19 We are well acquainted with this standard of proof. Although most appeals before us are decided by
20 a preponderance of the evidence, we have long applied the higher clear and convincing standard in
21 willful misrepresentation cases. The *Washington Pattern Jury Instructions* provide:

22 A party who alleges [*willful misrepresentation*] [_____] has the burden of proving each
23 of the elements of [*willful misrepresentation*] [_____] by clear, cogent, and convincing
24 evidence.

25 Proof by clear, cogent, and convincing evidence means that the element must be
26 proved by evidence that carries greater weight and is more convincing than a
27 preponderance of evidence. Clear, cogent, and convincing evidence exists when
28 occurrence of the element has been shown by the evidence to be highly probable.
29 However, it does not mean that the element must be proved by evidence that is
30 convincing beyond a reasonable doubt.

31 A "preponderance of the evidence" means that you must be persuaded, considering all
32 the evidence in the case, that a proposition is more probably true than not true.
33 "Preponderance of the evidence" is defined here solely to aid you in understanding the
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47 ¹⁵ Evidence, Black's Law Dictionary (11th ed. 2019). Emphasis supplied.

1 meaning of "clear, cogent, and convincing."¹⁶

2 Notes following this section indicate that use of WPI 160.02 is not just limited to fraud causes.
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4 Subsequent comments indicate that although the instruction did not always include the "highly
5 probable" standard, in 2010, the WPI Committee added a sentence clarifying for jurors that "clear,
6 cogent, and convincing" proof means proof that an occurrence is "highly probable." Because this
7 standard is well established as a means for defining clear, cogent, and convincing evidence,¹⁷ we
8 apply it here.
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11 DOE's Petition for Review next explores what quantum of evidence could possibly satisfy this
12 burden of persuasion within the unique context of RCW 51.32.187. By unique context, we refer to
13 the fact that under the Act, the distinctive conditions of employment need only be "a cause" of an
14 occupational disease for that condition to be covered.¹⁸
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17 DOE encourages us to apply dicta from *Spivey*, specifically, where our Supreme Court
18 indicates as follows:
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20 The use of the *Morgan* standard does not impose on the employer a burden of proving
21 the specific cause of the firefighter's melanoma. Rather, it requires that the employer
22 provide evidence from which a reasonable trier of fact could conclude that the
23 firefighter's disease was, more probably than not, caused by non-occupational factors.¹⁹
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25 This argument misses the mark, however. Unlike the Hanford presumption statute, *Spivey* involved
26 a presumption statute which only obligated rebuttal proof by a preponderance of the evidence.²⁰
27 Because DOE's burden of persuasion is the higher, clear and convincing standard, this dicta from
28 *Spivey* is inapposite.
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31 DOE argues that the Hanford presumption statute sets an impossibly high burden for
32 employers. We disagree. The statute specifically provides that employers like DOE may successfully
33 rebut their presumption with evidence which "may include, but is not limited to, use of tobacco
34 products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other
35 employment or nonemployment activities."²¹ As the party most able to monitor employee exposure
36 to the chemicals it asked employees to work with, and the party most able to retain those records for
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41 ¹⁶ WPI 160.02 (*emphasis supplied*).

42 ¹⁷ See, for example, *Dalton v. State*, 130 Wn.App. 653 (2005); *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn.App. 454,
43 465–66 (1998); see generally DeWolf & Allen, 16A Washington Practice, *Tort Law & Practice* § 19.2 (4th ed.); Tegland,
44 5 Washington Practice, *Evidence Law and Practice* § 301.3 (6th ed.).

45 ¹⁸ *In re Shauna Guyman*, BIIA Dec., 05 13662 (2006).

46 ¹⁹ *Spivey* 187 Wn.2d 716, 735 (2017), *citing* RCW 51.32.185(1).

47 ²⁰ See, RCW 51.32.185(1)(d).

²¹ RCW 51.32.187(2)(b).

1 later use, DOE can also meet its higher burden of persuasion by creating, maintaining, and producing
2 records which demonstrate that its employees are not exposed to hazardous substances in sufficient
3 quantities to result in conditions covered by the Hanford presumption statute.
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5 DOE's Petition for Review explores a number of methods by which it could rebut the Hanford
6 presumption. For example, it argues it could utilize employee monitoring records to demonstrate
7 Mr. Hannaman's exposures at Hanford were insufficient to constitute a cause of his cancers. DOE
8 argues it could use surrogate measures of exposure and causative effect, such as comparing the
9 period between Mr. Hannaman's exposures and his cancer onset to that cancer's common latency
10 period. Finally, DOE suggests it could argue that the chemicals found at Hanford do not cause the
11 decedent's specific type of cancer.
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13 Except for the last suggestion, which Division Two recently rejected in *Bradley v. City of*
14 *Olympia*,²² the remaining arguments might be an acceptable means of rebutting the Hanford
15 presumption assuming the right foundation. On the record before us, DOE has not carried its burden.
16 In this respect, we endorse our industrial appeals judge's factual analysis.
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18 **Factual Analysis**

19 Addressing DOE's second argument next, to rely on an average latency period is to inherently
20 admit that within the range of acceptable latencies are latencies lower and higher than that average.
21 Moreover, averages are less helpful in situations where (as here) a claimant's exposures spanned
22 almost three decades.
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24 Stronger was radiology and nuclear medicine specialist Fred M. Mettler, Jr., M.D.'s testimony
25 that the claimant's low dosimeter readings did not correlate with his rectal or lung cancers. But,
26 Dr. Mettler ignores the gaps in radiation exposure documentation, (established by certified industrial
27 hygienist Bruce Miller and toxicologist Joyce Tsuji, PhD) during periods when Mr. Hannaman was
28 potentially exposed to radioactive materials while working for DOE.
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30 Dr. Mettler's opinion that Mr. Hannaman's metastatic squamous cell lung cancer was more
31 likely due to smoking and radon is likewise unpersuasive. First, Dr. Mettler conceded
32 Mr. Hannaman's risk of squamous cell carcinoma was really only 5.5 percent higher than a
33 nonsmoker's risk because he stopped smoking more than 25 years before his cancer diagnosis.
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45 ²² Division II, 54981-6-II (November 9, 2021) (holding that because the Legislature has already determined firefighting
46 contributes to bladder cancer, the employer must present sufficient evidence that the **individual** claimant's bladder cancer
47 was caused by non-occupational factors if the employer is to avoid summary judgment.)

1 Dr. Mettler also testified that welders have a 43 percent increase in lung cancer. Dr. Tsuji
2 explained that Mr. Hannaman's welding work at Hanford would have exposed him to carcinogenic
3 metals, particular fume and combustion products. She noted that welders commonly suffer from
4 squamous cell carcinoma—the lung cancer which spread to Mr. Hannaman's brain and ultimately
5 killed him. Mr. Wachtel established that Mr. Hannaman's duties at Hanford included welding.
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9 Dr. Mettler's opinions also failed to consider Mr. Hannaman's occupational exposure to
10 carcinogenic chemicals, heavy metals, vapors and fumes (established by Mr. Miller, Dr. Tsuji,
11 Mr. Hannaman's friend and former colleague, Mark Wachtel, and family medicine specialist
12 Dr. Matthew Lawrence). According to Mr. Miller, chemicals²³ were also openly vented from repository
13 tanks and were subject to prevailing winds around the nuclear reservation. Dr. Lawrence explained
14 how Mr. Hannaman's ingestion of carcinogenic chemicals (for example, inhaled plutonium particles
15 [not easily detectable by dosimeters but found in **seven** of Mr. Hannaman's urine samples between
16 1985 and 1987) increased his risk of lung cancer.
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20 Although industrial hygienist Lawrence D. Yearsley felt it unlikely that Mr. Hannaman's job as
21 a stationary operating engineer exposed him to hazards, Mr. Miller established that the job analyses
22 upon which Mr. Yearsley relied did not likely include all the chemicals to which Mr. Hannaman was
23 exposed while working at Hanford. For example, some of the ventilation systems that Mr. Hannaman
24 maintained were situated in laboratory facilities where Hanford employees conducted experiments
25 involving many different types of fuels and waste. Without records of those experiments, no claimant
26 in Mr. Hannaman's position could quantify those exposures.
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30 Similarly, internal medicine and medical oncologist Robert M. Levenson, M.D., concluded that
31 Mr. Hannaman's lung cancer was not caused by vapor exposure because there were no records of
32 chemical exposures. But, until 1987 the DOE's primary focus was weapon material production.
33 Moreover, Mr. Miller testified that no industrial hygienist program even existed in the 1980s and 1990s
34 (either with DOE or with its contractors).²⁴ Given those factors, we cannot conclude that a lack of
35 documentation amounts to a lack of exposure.
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43 ²³ Mr. Miller testified that even today the waste within these tanks has not been completely characterized.

44 ²⁴ From 2004 to 2013, Mr. Miller served as Health and Safety Director for North Wind, an environmental contractor for
45 Department of Energy. Mr. Miller testified that once industrial hygiene programs were set up, they weren't necessarily
46 using feedback from worker exposures to determine what types of exams and tests should be performed like modern
47 occupational medicine programs do. Instead, they were geared toward making sure workers could perform their essential
job functions.

1 Rather, we credit attending physician Matthew Lawrence's testimony that his patient's
2 exposures at Hanford cannot be ruled out as a cause of Mr. Hannaman's cancers. Attending
3 Hematologist and Oncologist Rangaswamy A. Chintapatla, M.D., agreed. Despite the stellar
4 credentials of the employer's witnesses, there is no evidence that any of them ever personally
5 examined Mr. Hannaman. On the other hand, physicians who attend to a claimant for a considerable
6 period are entitled to special consideration.²⁵ This is especially the case where causation opinions
7 (like Dr. Lawrence's observations regarding the uncommon confluence of three rare diseases) are
8 not based solely on their patient's history of the injury.²⁶

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10 Given the gaps in documentation of exposure to radiation, chemicals, and vapors, the length
11 of time since Mr. Hannaman had quit smoking, and again, his uncommon confluence of rare diseases,
12 DOE has failed to establish, by clear and convincing evidence, that the distinctive conditions of
13 Mr. Hannaman's employment at Hanford were not a cause of his rectal and squamous cell lung
14 cancers.

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16 The employer also appealed an order denying second injury fund relief, an order awarding a
17 beneficiary pension to Mrs. Hannaman, a bond order, and a wage order. Beyond the causation
18 arguments outlined above, which we have now addressed, DOE produced no evidence that these
19 orders were incorrect. The orders are likewise affirmed.

20 21 22 23 24 25 26 27 **DECISION**

- 28 1. In Docket No. 19 12787, the employer, US Department of Energy, filed an appeal with the Board
29 of Industrial Insurance Appeals on March 11, 2019, from an order of the Department of Labor and
30 Industries dated January 28, 2019. In this order, the Department affirmed a December 28, 2018
31 order in which the Department allowed Glenn O Hannaman's occupational disease claim with a
32 September 16, 2005 date of manifestation, pursuant to RCW 51.32.187. This order is correct and
33 is AFFIRMED.
- 34 2. In Docket No. 19 20585, the employer, US Department of Energy, filed an appeal with the Board
35 of Industrial Insurance Appeals on August 23, 2019, from an order of the Department of Labor
36 and Industries dated July 10, 2019. In this order, the Department affirmed a May 28, 2019 order
37 which awarded a beneficiary pension to Mr. Hannaman's surviving spouse, Roberta L.
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46 ²⁵ *Spalding v. Dep't of Labor & Indus.*, 29 Wn.2d 115, 128 (1947); *Hamilton v. Dep't of Labor & Indus.*, 111 Wn.2d 569,
47 571 (1988).

²⁶ See, for example, *In re Natishia M. Powell*, Dckt. No. 00 16728 (October 1, 2001).

1 Hannaman, and issued an overpayment order for and requested repayment of benefits conferred
2 to Mr. Hannaman's estate for the period November 13, 2018, through November 13, 2018, in the
3 amount of \$1,659.92. The July 10, 2019 order also affirmed a Department order dated May 29,
4 2019. That order denied second injury fund relief to the employer. The July 10, 2019 order is
5 correct and is AFFIRMED.
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9 3. In Docket No. 19 20586, the employer, US Department of Energy, filed an appeal with the Board
10 of Industrial Insurance Appeals on August 23, 2019, from an order of the Department of Labor
11 and Industries dated August 13, 2019. In this order, the Department affirmed its June 20, 2019
12 Bond Order, which required the employer to submit the reserve required to pay Roberta L.
13 Hannaman's spouse's pension or to pay Ms. Hannaman the accrued benefits from August 14,
14 2018, to June 15, 2019, plus a cash deposit and to file the required bond in an amount to be
15 determined by the Department and to make further quarterly obligations thereafter. This order is
16 correct and is AFFIRMED.
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20 4. In Docket No. 19 23288, the employer, US Department of Energy, filed an appeal with the Board
21 of Industrial Insurance Appeals on October 14, 2019, from an order of the Department of Labor
22 and Industries dated August 30, 2019. In this order, the Department affirmed its June 19, 2019
23 order which established Mr. Hannaman's gross monthly wages at the time of his injury or date of
24 manifestation. This order is correct and is AFFIRMED.
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29 **FINDINGS OF FACT**

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- 31 1. On October 22, 2020, an industrial appeals judge certified that the parties
32 agreed to include the Jurisdictional History in the Board record solely for
33 jurisdictional purposes.
 - 34 2. Glenn O. Hannaman, Jr., was a United States Department of Energy
35 Hanford site worker from 1985 through 2014. In the 1980s,
36 Mr. Hannaman worked full time in the 100 Area, the 300 Area, and the
37 reactor areas doing radioactive waste handling and decontamination, and
38 as a stationary operator and powerhouse operator in the 200 Areas. In
39 the 1990s, Mr. Hannaman performed engineer support work in the 222
40 South laboratory and in the plutonium finishing plant maintaining
41 ventilation, heating, and air conditioning systems. His job duties included
42 making uranium billets, welding, and decommissioning the reactor.
 - 43 3. When entering the reactor area, Mr. Hannaman would occasionally
44 receive the full allowable radiation dosage for a week in 25 minutes.
45 While working at Hanford, Mr. Hannaman was also exposed to
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1 carcinogenic chemicals (that is, inhaled plutonium particles), heavy
2 metals, vapors, fumes and combustion products.

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4 4. Working full time in Hanford's 100 Area, 300 Area, and the reactor areas
5 performing radioactive waste handling and decontamination, working as
6 a stationary operator and powerhouse operator in the 200 Areas,
7 performing engineer support work in the 222 South laboratory and in the
8 plutonium finishing plant maintaining ventilation, heating, and air
9 conditioning systems, making uranium billets, welding, decommissioning
10 a nuclear reactor, receiving the full allowable radiation dosage for a week
11 in 25 minutes, being exposed to carcinogenic chemicals (that is, inhaled
12 plutonium particles), heavy metals, vapors, fumes and combustion
13 products constitute distinctive conditions of employment.
- 14 5. Mr. Hannaman smoked a pack of cigarettes per day for 20-plus years but
15 quit by 1993.
- 16 6. Glenn O. Hannaman's conditions diagnosed as rectal cancer and
17 squamous cell lung cancer arose naturally and proximately out of the
18 distinctive conditions of his employment with the US Department of
19 Energy. On August 14, 2018 Mr. Hannaman died. The cause of his death
20 was metastatic squamous cell carcinoma of the lung.

22 CONCLUSIONS OF LAW

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
24 and subject matter in these appeals.
- 25 2. The rebuttable presumption of occupational disease provided by
26 RCW 51.32.187 applies to Glenn O. Hannaman's occupational disease
27 claim.
- 28 3. The self-insured employer, US Department of Energy, failed to rebut the
29 statutory presumption of occupational disease by clear and convincing
30 evidence. The distinctive conditions of Mr. Hannaman's Hanford
31 employment with the US Department of Energy were a cause of his rectal
32 cancer and squamous cell lung cancer conditions, as well as of his death.
- 33 4. The Department orders dated January 28, 2019, July 10, 2019,
34 August 13, 2019, and August 30, 2019, are correct and are affirmed.

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37 Dated: November 29, 2021.

38 BOARD OF INDUSTRIAL INSURANCE APPEALS

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40 MARK JAFFE, Chairperson Pro Tem

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42 ISABEL A. M. COLE, Member

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3 **Addendum to Decision and Order**
4 **In re Glenn O. Hannaman, Jr., Dec'd**
5 **Docket Nos. 19 12787, 19 20585, 19 20586 & 19 23288**
6 **Claim No. SL-21073**
7

8 **Appearances**

9 Beneficiary, Roberta Hannaman, Self-Represented

10 Self-Insured Employer, US Department of Energy, by Wallace Klor Mann Capener & Bishop,
11 P.C., per Lawrence E. Mann
12

13 Department of Labor and Industries, by Office of the Attorney General, per Patti Jo Foster
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15 **Petition for Review**

16 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
17 and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order
18 issued on May 4, 2021, in which the industrial appeals judge dismissed the appeals.
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20 **Evidentiary Rulings**

21 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
22 prejudicial error was committed. The rulings are affirmed.
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