

## **Apodaca, Daniel**

---

### **BURDEN OF PROOF**

#### **Presumption in RCW 51.32.185**

The presumption that certain cancers are related to employment as a firefighter shifts the burden of production and persuasion to the Department or self-insured employer. Citing *Spivey v. City of Bellevue*, 187 Wn.2d 716 (2017). The presumption can be overcome by a preponderance of evidence that established the cancer was not caused by exposures in the course of employment as a firefighter. ....*In re Daniel Apodaca*, BIIA Dec., 19 11160 (2020) [dissent]

Scroll down for order.

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

**IN RE: DANIEL F. APODACACLAIM NO. SZ-63078** ) **DOCKET NO. 19 11160**  
 )  
 ) **DECISION AND ORDER**

Daniel Apodaca has been a full-time firefighter with the City of Yakima since 1996. In 2017, he was diagnosed with malignant melanoma, and he filed an industrial insurance claim for the cancerous condition. The Department of Labor and Industries denied his claim. Our industrial appeals judge allowed Mr. Apodaca's melanoma as an occupational disease pursuant to RCW 51.32.185, commonly known as the "firefighter presumption." Mr. Apodaca seeks attorney's fees and costs, whereas the City of Yakima seeks a determination that his protest to the initial Department order denying his claim was untimely, as well as a determination that the claim is denied. We hold that Mr. Apodaca's protest to the initial Department order that denied his claim was timely, but conclude that his claim should be rejected. The Department order of January 4, 2019, denying the claim is **AFFIRMED**.

**DISCUSSION**

Daniel Apodaca was first hired as a firefighter in the state of Washington by the Toppenish Fire Department in 1995. In 1996, he was hired as a full-time firefighter by the City of Yakima. In 2017, he was diagnosed with malignant melanoma on his right ankle, and in 2018, he filed an industrial insurance claim for that condition. RCW 51.32.185 provides that full-time firefighters are entitled to a prima facie presumption that certain conditions, including malignant melanoma, are occupationally related for purposes of industrial insurance. After receiving Mr. Apodaca's claim, the Department of Labor and Industries rejected it on June 18, 2018. On October 3, 2018, more than three months after the Department mailed a copy of the order to Mr. Apodaca, he filed a protest to the rejection. Given the length of time between the mailing of the order and the protest, it would appear that the protest to the claim rejection was untimely. If that is true, the Department order rejecting his claim would be final and binding.

Mr. Apodaca argues that the question of timeliness has been settled in his favor by virtue of an interlocutory order made by our industrial appeals judge that was affirmed by a designee of the chief industrial appeals judge. He is wrong about this. An interlocutory order issued by an industrial appeals judge or by a designee of the chief industrial appeals judge during litigation does not deprive this Board of the authority to review the order and to affirm, modify, or reverse it as we deem appropriate. A Proposed Decision and Order implicitly includes any interlocutory orders upon which

1 it is based. Those interlocutory orders are not final, they are *interlocutory*. To suggest that this Board  
2 has no authority to review the interlocutory orders that led to a Proposed Decision and Order is akin  
3 to suggesting that we have no authority to review the Proposed Decision and Order itself. In that this  
4 issue goes to the Board's jurisdiction, we have reviewed the Department file.<sup>1</sup>  
5  
6

7 Mr. Apodaca submitted a declaration under penalty of perjury stating that he had been  
8 inquiring of the self-insured employer's third-party administrator regarding the status of his claim to  
9 no avail, and that on July 24, 2018, he contacted the Department to ask about his claim. His  
10 declaration further states that he finally received the initial order denying his claim "the first part of  
11 August, 2018." This estimate does not establish an exact date, but if he received the order on  
12 August 1, 2018, the earliest possible date, he would have had until September 30, a Sunday, to file  
13 a protest. Therefore, his deadline would have been Monday, October 1. The Department imaged  
14 his protest on October 3. There is no fax line on the protest that would indicate it had been filed by  
15 fax, and there is no date stamp showing a date of receipt. We only know that it was imaged on  
16 October 3, 2018. There is also no envelope in the Department file showing a postmark date. But  
17 due to the lack of a fax line on the protest, we conclude that it was mailed. If postmarked by  
18 October 1, the deadline date, it would be timely. Given the presumption that correspondence is  
19 received within three days of mailing, its arrival by October 3 would indicate that it was mailed by  
20 October 1, thereby making it timely.  
21  
22

23 The employer argues that a minor error in the four-digit extension to Mr. Apodaca's zip code  
24 in the address is insufficient to explain his not receiving the order in a timely manner. We would  
25 observe that sometimes mail simply gets lost. We find Mr. Apodaca's sworn statement that he never  
26 received the initial order credible.  
27

28 Two other factors support a conclusion that Mr. Apodaca's protest was timely. His statement  
29 that he called the Department on July 24 to inquire as to whether an order had been issued is  
30 confirmed by Department records showing that he called on that date. Further, the Department  
31 regarded his protest as timely because two weeks later, it issued an order that it was reconsidering  
32 the rejection order. When a protest appears to be that late, the Department will frequently issue an  
33 order that the protest was untimely, and therefore, the original order is not being reconsidered. But  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

---

45  
46  
47 <sup>1</sup> *In re Mildred Holzerland*, BIIA Dec., 15,729 (1965).

1 here, the Department did not do that. It issued a subsequent order affirming the rejection from which  
2 the claimant timely appealed.  
3

4 Given these factors, we accept Mr. Apodaca's declaration that he did not receive the rejection  
5 order until August 1, 2018, at the earliest. We conclude that his protest to the initial rejection order  
6 was timely filed.  
7

8 We now consider whether Mr. Apodaca's claim should be allowed, taking into consideration  
9 RCW 51.32.185, which creates a presumption that malignant melanoma in firefighters is an  
10 occupational disease. That presumption can be rebutted by the Department or the employer, but  
11 they carry the burden of production and persuasion.<sup>2</sup> In his briefing, Mr. Apodaca cites extensively  
12 from the *Spivey* decision. Because it is one of the most recent decisions from our supreme court on  
13 the firefighter presumption, it warrants our review.  
14  
15

16 Delmis Spivey was a firefighter for the City of Bellevue who developed malignant melanoma.  
17 At the supreme court, his case was consolidated with that of another City of Bellevue firefighter,  
18 Wilfred Larson, who also developed malignant melanoma. The Department had rejected Mr. Spivey's  
19 claim, but it had allowed Mr. Larson's. Appeals to the Board were filed in both claims. At their Board  
20 hearings, both men called Kenneth Coleman, M.D., J.D., as their sole medical witness. The *Spivey*  
21 opinion describes Dr. Coleman as a "family practice physician/medical legal consultant." Following  
22 hearings, this Board issued orders denying both men's claims. In separate actions, they both  
23 appealed to King County Superior Court. In Mr. Spivey's appeal, the trial judge ruled as a matter of  
24 law in favor of the City, finding that the City had rebutted the statutory presumption of occupational  
25 disease under RCW 51.32.185. Therefore, Mr. Spivey's case did not go to the jury.  
26  
27

28 In Mr. Larson's appeal, the case did go to the jury, and it found in his favor, thereby allowing  
29 his claim. Appeals were filed in both cases, and they proceeded to our supreme court where they  
30 were consolidated.  
31

32 In its *Spivey* opinion, the court examined the nature of the firefighter presumption and  
33 considered two theories of statutory presumption: the Thayer theory and the Morgan theory. The  
34 Thayer theory is the most widely followed today and was articulated in the late 19<sup>th</sup> century by James  
35 Bradley Thayer. It says that the only effect of a presumption is to shift the burden of producing  
36 evidence to the party against whom the presumption operates. If such evidence is produced, "the  
37  
38  
39  
40  
41  
42  
43  
44

---

45 <sup>2</sup> *Spivey v. City of Bellevue*, 187 Wn.2d 716 (2017).  
46  
47

1 presumption is spent and disappears," and the presumption is never mentioned to the jury. Thus,  
2 according to Thayer, the City would merely have to present evidence contrary to the presumed fact  
3 to destroy the presumption entirely, and the burden of proof would remain with the firefighter at all  
4 times.  
5  
6

7 A second theory of presumptions is sometimes called the Morgan theory. Here, a presumption  
8 shifts both the burden of producing evidence *and* the burden of persuasion to the opponent of the  
9 presumption. The Morgan theory recognizes that there may be special public policies behind a  
10 presumption. Therefore, the jury is informed of its existence, even if the City has produced evidence  
11 contrary to the presumption, and the presumption does not disappear on the production of such  
12 evidence. Clearly, the Morgan theory is the stronger of the two for the claimant.  
13  
14

15  
16 *Spivey* noted that Washington has not adopted a general rule and therefore, depending on the  
17 statute and the type of case, Washington decisions have applied one theory or the other, or  
18 sometimes neither. In adopting the Morgan theory for the firefighter presumption, the court noted  
19 that the statute explicitly states that the presumption may be rebutted with a *preponderance* of the  
20 evidence. This indicates that the burden of proof shifts to the party contesting the claim to show that  
21 the firefighter's condition is not occupationally related.  
22  
23

24  
25 The court also found support in the presumption's legislative history, noting that malignant  
26 melanoma was not among the diseases that had originally been included in the firefighter  
27 presumption. Melanoma was added despite concerns that there was not enough scientific evidence  
28 to support its addition. The court opined that "the apparent purpose of adding melanoma was to  
29 compensate firefighters even in circumstances when there may not be strong medical or scientific  
30 evidence establishing a definitive causal relationship between firefighting and the disease."<sup>3</sup> The  
31 court also pointed to the application of the Morgan theory by other states in interpreting their own  
32 firefighter presumption statutes.  
33  
34

35  
36 Further, the court stressed "that this standard does not impose on the employer a burden of  
37 proving the specific cause of the firefighter's melanoma. Rather, it requires that the employer provide  
38 evidence from which a reasonable trier of fact could conclude that the firefighter's disease was, more  
39 probably than not, caused by nonoccupational factors."<sup>4</sup>  
40  
41  
42  
43  
44

---

45  
46 <sup>3</sup> *Spivey*, at 735.

47 <sup>4</sup> *Spivey*, at 735.

1 The court went on to hold that the question of whether the Department or employer had  
2 rebutted the firefighter presumption was a question of fact, not of law, and therefore that question is  
3 to be submitted to the trier of fact at the superior court level.  
4

5 The decision also ruled on the interplay of the firefighter presumption with the provision of  
6 RCW 51.52.115, which provides that at superior court, a Board decision is "prima facie correct, and  
7 the burden of proof shall be upon the party attacking the same." The court held that RCW 51.52.115  
8 does not flip the burden of proof at superior court to the claimant when the Board has ruled against  
9 a firefighter. Rather, the Department or employer retains the burden of convincing the superior court  
10 by a preponderance of the evidence that the firefighter did not acquire the disease in question due to  
11 being a firefighter.  
12

13 Finally, the court went on to review the jury instructions in the *Larson* case and concluded that  
14 there was no error. Therefore, it upheld the jury verdict. In *Spivey*, it remanded to the superior court  
15 for a new trial that would include submission to the jury of the occupational disease question in light  
16 of the firefighter presumption.  
17

18 In the case before us of Mr. Apodaca, the City of Yakima called two board-certified oncologists  
19 to testify, Robert Burdick, M.D., and Robert Levenson, M.D. Dr. Levenson performed an independent  
20 medical exam of Mr. Apodaca in September 2017. His medical training included education in  
21 diagnosing and treating malignant diseases, including melanoma, and their interaction with the  
22 various organ systems within the body. In 1981, he established the cancer care program at Highline  
23 Medical Center in Burien, Washington, where he has worked ever since, including in the position of  
24 medical director. He said that Mr. Apodaca had a malignant melanoma on his right ankle *in situ*,  
25 which means that it had not invaded surrounding tissues, so the risk of its metastasizing was much  
26 less. The melanoma had been removed. He said that the primary risk factor for melanoma is sun  
27 exposure, which Mr. Apodaca had. Another risk factor is the presence of many moles.  
28

29 Dr. Levenson had reviewed a meta-analysis of 32 studies from 2006 that had been published  
30 in *The Journal of Occupational and Environmental Medicine* titled "Cancer Risk Among Firefighters."  
31 The study's conclusion was that there was a "possible" connection between firefighting and malignant  
32 melanoma. Dr. Levenson concluded that Mr. Apodaca's melanoma was related to other causative  
33 factors besides his occupation and that he would have developed the cancer whether he was a  
34 firefighter or not. The reasons for his opinion were, first, Mr. Apodaca's multiple moles, fair  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 complexion, and history of sun exposure; and second, the meta-analysis showing only a possible  
2 relationship between melanoma and firefighting.  
3

4 Dr. Burdick has been a medical oncologist for almost 50 years and is also a hematologist. He  
5 reviewed Mr. Apodaca's medical and other records at the City of Yakima's request, although he did  
6 not examine Mr. Apodaca. He had reviewed meta-analysis studies that had been done of the  
7 relationship between the work of firefighters and various cancers. He echoed Dr. Levenson's review  
8 that the studies had found only a possible connection between firefighting and malignant melanoma.  
9 He noted that Mr. Apodaca has light-colored skin and "a huge number of moles," some of which were  
10 very large. These are genetic factors that make it likely he's more susceptible to developing  
11 melanoma than a patient without these characteristics. Dr. Burdick also thought the claimant would  
12 have developed melanoma whether or not he had been a firefighter.  
13  
14  
15  
16  
17

18 Mr. Apodaca called to testify Kenneth Coleman, M.D., J.D., a lawyer and former family practice  
19 and emergency room physician who has never met Mr. Apodaca. This is the same Dr. Coleman that  
20 the *Spivey* decision referred to as a "family practice physician/medical legal consultant." Dr. Coleman  
21 said he no longer practices medicine. At one time, he was Board-certified in family practice, but that  
22 certification expired in 2013. He has never been a primary cancer caregiver. He had reviewed a  
23 number of articles that Mr. Apodaca's counsel sent to him. His testimony consisted largely of  
24 agreeing with sections of studies that Mr. Apodaca's counsel read to him in question form. His opinion  
25 was that firefighting was a cause of Mr. Apodaca's malignant melanoma.  
26  
27  
28  
29

30 In addition to testifying on behalf of Mr. Larson and Mr. Spivey, Dr. Coleman also testified at  
31 the Board in the case of *In re David F. Goff, Dec'd*.<sup>5</sup> Our Decision and Order in that case noted that  
32 when Dr. Coleman was asked whether cancer cells can look differently from each other he said, "I  
33 believe so. I'm not a pathologist or an expert on that." We also observed in that case that  
34 Dr. Coleman appears to have only a general medical knowledge of cancer. Our Decision and Order  
35 in that case was not appealed and has become final.  
36  
37  
38

39 In his briefing, Mr. Apodaca argues that the City's experts are refusing to accept the firefighter  
40 presumption regarding melanoma. But the statute and the *Spivey* decision both say that the  
41 presumption can be overcome by a preponderance of the evidence. In making his argument,  
42 Mr. Apodaca seems to be claiming that the presumption is conclusive. But the presumption is not  
43 conclusive or irrefutable. As RCW 51.32.185 explicitly says, "This presumption of occupational  
44  
45  
46

---

47 <sup>5</sup> Dckt. No. 17 14435 (July 16, 2018).

1 disease . . . may be rebutted by a preponderance of the evidence. Such evidence may include, **but**  
2 **is not limited to**, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors,  
3 and exposure from other employment or nonemployment activities." (Emphasis added.) Therefore,  
4 it is clear that the presumption can be rebutted.  
5  
6

7 Simply stated, the effect of the presumption is to relieve the claimant of the burden of proving  
8 that the medical condition is occupationally related, and it imposes on the Department or the employer  
9 the burden of proving that it is not. This is in contrast to the usual rule in a workers' compensation  
10 case that the claimant will lose if the evidence is evenly split. If the evidence is evenly split in a  
11 firefighter presumption case, the claimant will win.  
12  
13

14 The City's experts testified that sun exposure was more likely the cause of Mr. Apodaca's  
15 melanoma and that he would have developed it whether or not he had been a firefighter. The claimant  
16 objects to this testimony, claiming that it impermissibly argues with the statutory presumption. But  
17 the testimony is nothing more than evidence aimed at rebutting the presumption, which the City has  
18 the right to present.  
19  
20  
21

22 While acknowledging the weight of the firefighter presumption as articulated by the *Spivey*  
23 court and other precedent, we find that on this record Dr. Coleman's opinion pales in comparison to  
24 those of the testifying oncologists, who were certified by the national oncology board. It may be that  
25 the King County jury assembled for Wilfred Larson found Dr. Coleman to be persuasive, but we  
26 cannot agree that he is in this case. We find him to be just barely qualified on the matters on which  
27 he expresses opinions. We conclude that the City of Yakima has presented the preponderance of  
28 evidence in this appeal, thereby rebutting the statutory presumption of RCW 51.32.185.  
29 Mr. Apodaca's claim should be denied. Because we determine the claim was properly denied,  
30 Mr. Apodaca is not entitled to all reasonable costs of the appeal, including attorney fees and witness  
31 fees.  
32  
33  
34  
35  
36

### 37 **DECISION**

38 In Docket No. 19 11160, the claimant, Daniel F. Apodaca, filed an appeal with the Board of  
39 Industrial Insurance Appeals on February 20, 2019, from an order of the Department of Labor and  
40 Industries dated January 4, 2019. In this order, the Department rejected Mr. Apodaca's claim. This  
41 order is correct and is affirmed.  
42  
43  
44  
45  
46  
47



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

### FINDINGS OF FACT

1. On February 21, 2018, Daniel Apodaca filed Claim No. SZ-63078 for the condition of malignant melanoma on his right ankle.
2. On June 18, 2018, the Department of Labor and Industries placed in the U.S. mails, postage prepaid, to Mr. Apodaca an order rejecting Claim No. SZ-63078. Mr. Apodaca received a copy of the Department's rejection order no earlier than August 1, 2018. Mr. Apodaca's protest to the order was placed in the U.S. mails, postage prepaid, no later than Monday, October 1, 2018. The Department received the protest on October 3, 2018. On October 17, 2018, the Department issued an order that the claim rejection was being reconsidered. On January 4, 2019, the Department affirmed the claim rejection order. On February 20, 2019, Mr. Apodaca appealed the rejection to the Board of Industrial Insurance Appeals.
3. Mr. Apodaca began working for the City of Yakima as a full-time firefighter in 1996, and continued to do so through the date that he submitted his workers' compensation claim. Mr. Apodaca underwent a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer.
4. The distinctive conditions of Mr. Apodaca's employment included engaging in acts attendant to fire suppression, fire prevention, fire investigation, emergency medical services, rescue operations, and hazardous materials response.
5. Mr. Apodaca is fair-skinned and he has large moles on his body. During his lifetime, his skin has had exposure to the sun.
6. Mr. Apodaca's right ankle malignant melanoma condition did not arise naturally and proximately from the distinctive conditions of his employment as a firefighter with the City of Yakima Fire Department.

### CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
  2. The rebuttable presumption of occupational disease provided by RCW 51.32.185 to firefighters applies to Mr. Apodaca's right ankle malignant melanoma.
  3. The self-insured employer, City of Yakima, rebutted the occupational disease presumption of RCW 51.32.185 with a preponderance of the evidence presented in this appeal.
  4. As of January 4, 2019, Mr. Apodaca did not have an occupational disease that arose naturally and proximately from the distinctive conditions of his employment with the City of Yakima Fire Department, within the meaning of RCW 51.08.140.
- 33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

- 1 5. Mr. Apodaca is not entitled to an award for attorney fees and costs as  
2 provided by RCW 51.32.185(9).  
3  
4 6. The Department order of January 4, 2019, is correct and is affirmed.

5 Dated: June 10, 2020.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

7  
8   
9 LINDA L. WILLIAMS, Chairperson

10  
11   
12 JACK S. ENG, Member  
13  
14

15 **DISSENT**

16  
17 There are two arguments that the City's experts make in attempting to rebut the firefighter  
18 presumption. One is that studies have shown only a possible link between firefighting and melanoma.  
19 Contrary to the majority, I agree with the claimant that this argument shows the experts are not  
20 accepting the presumption on melanoma. As the majority stated, in *Spivey* the court assessed the  
21 fact that there was not a definitive causal relationship between firefighting and melanoma and found  
22 that, nevertheless, including it in the firefighter presumption was intentional. So, the City's experts  
23 point about there not being a definitive connection is moot.  
24  
25

26  
27 The other argument the City's experts make is that Mr. Apodaca is fair skinned and has  
28 numerous moles. These genetic factors predispose him to getting melanoma as a result of sun  
29 exposure. That may well be true, but it does not rebut the firefighter presumption for a few reasons.  
30 One, if Mr. Apodaca is predisposed to get melanoma, then it is likely he would be even more  
31 susceptible to other causative factors such as the carcinogenic material to which firefighters are  
32 exposed. Two, the proximate cause of an occupational disease does not require the work exposure  
33 to be the sole cause, just one of the causes for the disease. Mr. Apodaca's melanoma could be  
34 partially caused by his genetics, but as long as one of the causes for the disease is his work  
35 conditions, then it is work related. Finally, the location of the melanoma points much more toward it  
36 being work related than as a result of sun exposure.  
37  
38

39 Mr. Apodaca's melanoma was on his right ankle. That's a very specific spot and generally not  
40 a spot that one would presume to find a melanoma related to sun exposure. The tops of the  
41 shoulders, the back, the arms below the shirt sleeves, the face, especially the nose, and maybe the  
42  
43  
44  
45  
46  
47

1 tops of the feet are all parts of the body that get a lot of sun exposure. But the right ankle? That is  
2 not an area of the body generally exposed to a lot of sun. It is an area, however, that is exposed to  
3 the carcinogens found in Mr. Apodaca's daily work.  
4

5 Mr. Apodaca testified "I would find, you know, dirt, grime, soot around the neck area, the wrists,  
6 and your legs, bottom legs."<sup>6</sup> He went on to explain that after the first 10 years or so that he worked  
7 they began putting their gear in an extractor to clean out the residue from the fires. However, one of  
8 the items that did not go through the extractor was the boots. Those were not cleaned between uses.  
9

10 The majority cites also to the comparison between Dr. Coleman as a family practice doctor  
11 and the two oncology experts called by the City and finds Dr. Coleman wanting. But Dr. Coleman's  
12 medical knowledge is important because of his ability to understand studies and medical terminology,  
13 not his knowledge of cancer. The important information in this case is the studies and articles testified  
14 to by Dr. Coleman. He does not need to be an oncologist to understand the medical language and  
15 attest to it.  
16

17 That information supports the allowance of Mr. Apodaca's melanoma as work related. "The  
18 PAHs most likely entered firefighters [*sic*] bodies through their skin, with the neck being the primary  
19 site of exposure and absorption, due to the lower level of dermal protection afforded by hoods.  
20 Aromatic hydrocarbons could have been absorbed dermally during firefighting or inhaled during the  
21 doffing of gear that was off-gassing contaminants."<sup>7</sup> Most of the articles and studies in Dr. Coleman's  
22 testimony quoted similar findings. This testimony makes it much more likely that Mr. Apodaca's  
23 melanoma on this ankle is related to his work exposure rather than sun exposure.  
24

25 Mr. Apodaca testified that he would find debris and soot from the fires in the areas of his body  
26 that were not as protected by his gear. Those areas include the lower legs. He spoke of having to  
27 physically scrub his calves on the area above where his boots ended. He agreed that the socks he  
28 wore covered the ankle where the melanoma was discovered, but he also said that when he would  
29 take off his boots his socks would be soaked through with sweat. He also testified that his boots  
30 were never put through the extractor and that the cloth lining of the boots absorbed all of the  
31 contaminants from the fire. He explained that most of the firefighters didn't have a backup set of  
32 boots and so they didn't wash the insides of the boots they wore.  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

---

45  
46 <sup>6</sup> 10/8/19 Tr. at 20.

47 <sup>7</sup> Coleman Dep. at 20-21.

1 The testimony of Mr. Apodaca and Dr. Coleman is enough to show a causal relationship  
2 between Mr. Apodaca's firefighting and his ankle melanoma even without the firefighter presumption  
3 because the standard is simply more probable than not. But with the firefighter presumption, as the  
4 majority stated, if there is a tie then Mr. Apodaca wins. Because the testimony shows he wins in  
5 either case, I would not disturb our judge's finding. Therefore I dissent.  
6  
7

8 Dated: June 10, 2020.  
9

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

11   
12  
13  
14 ISABEL A. M. COLE, Member  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**Decision and Order**  
**In re Daniel F. Apodaca**  
**Docket No. 19 11160**  
**Claim No. SZ-63078**

**Appearances**

Claimant, Daniel F. Apodaca, by Ron Meyers & Associates, PLLC, per Ron Meyers  
Self-Insured Employer, City of Yakima, by Gress, Clark, Young & Schoepper, per James L. Gress and Brett B. Schoepper

**Petition for Review**

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant and employer filed timely Petitions for Review of a Proposed Decision and Order issued on March 3, 2020, in which the industrial appeals judge reversed and remanded the Department order dated January 4, 2019. The claimant filed a response to the employer's Petition for Review on April 29, 2020.

**Evidentiary Rulings**

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