WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PATRICK BARRERA, ***Applicant***

vs.

NORTHROP GRUMMAN CORP.;
AMERICAN HOME ASSURANCE COMPANY, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ13039423
Anaheim District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant, in pro per, filed a Petition for Reconsideration (Petition) on March 16, 2026, apparently[1] challenging the Findings and Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on March 5, 2026, wherein the WCJ found in pertinent part that there is no good cause shown to strike/disqualify regularly appointed physician Nelhs Betancourt, M.D., and applicant did not sustain injury arising out of and occurring in the course of employment in the form of respiratory, heavy metal poisoning, internal or sleep.

We did not receive an answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, we will deny reconsideration.

[1] The Petition does not specifically reference what applicant seeks to have reconsidered.

I.

Preliminarily, we note that section Labor Code[2] 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> > (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
> >
> > (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on April 1, 2026 and 60 days from the date of transmission is Sunday, May 31, 2026, a weekend. The next business day that is 60 days from the date of transmission is Monday, June 1, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision was issued by or on June 1, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides

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[2] All further references are to the Labor Code unless otherwise stated.

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on April 1, 2026, and the case was transmitted to the Appeals Board April 1, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 1, 2026.

II.

Section 5902 requires that:

> The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.

(Lab. Code, § 5902.)

Moreover, the Appeals Board Rules provide in relevant part: (1) that "[e]very petition for reconsideration … shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration … shall be separately stated and clearly set forth" (Cal. Code Regs., tit. 8, § 10945 and (2) that "a petition for reconsideration … may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved." (Cal. Code Regs., tit. 8, § 10972.)

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g*., Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd*. (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v.*

Workers' Comp. Appeals Bd. (Rios) (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd.* (*Moore*) (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.).) The petition filed herein fails to state grounds upon which reconsideration is sought or to cite with specificity to the record, and it was within our discretion to dismiss it. However, based on the analysis of the WCJ in the Opinion on Decision as discussed below, we will deny the Petition.

Introduction

> Applicant, in Pro-Per, claims to have sustained injury arising out of and in the course of employment to respiratory, heavy metal poisoning, internal and sleep. (*See* Minutes of Hearing (12-3-2025), at 2:5-8.)
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> The case proceeded to trial on the issues of:
>
> "1. Whether Applicant's Petition to Strike/Disqualify Regular Physician Nelhs Betancourt, M.D. should be granted.
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> 2. Injury arising out of and in the course of employment." (*Id*. at 2:21-24.)
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> Applicant testified under direct examination by the Court and cross-examination by the defendant. Thereafter the applicant was afforded an opportunity to give a closing statement after which the case was submitted on the evidentiary record.
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> …
>
> *Applicant's Claimed Injury*
>
> Applicant believes he was a victim of poisoning by a foreign agency by exposure to heavy metals, specifically arsenic, in connection with his work at Northrup Grumman. (*See* Minutes of Hearing/Summary of Evidence (12-17-2025) (MOH/SOE (12-17-2025)), at 5:12, 7:9-10, 10:8-10, 10:21-22.)
>
> Applicant began working at Northrup Grumman in May of 2018 as a Manufacturing Technician, primarily assembling the bulkhead of the Terminal High Altitude Arial Defense (THAD), a non-offensive missile system. (*Id*. at 2:9-13.) His job did not require federal security clearance and there were no federally secured rooms in the building where applicant's main workstation was located. There were other areas on the Northrup Grumman campus that required federally granted security to access. (*Id*. at 2:15-17; 3:16-17; 2:22-23; 3:12-13.)

In July 2019, applicant attended a Northrup Grumman corporate symposium called Tech Fest, which was only open to Northrup Grumman employees. (*Id*. at 4:15-17.) Applicant attended a lecture provided by the Department of Defense. (*Id*. at 4:22-24.) Applicant did not present at the symposium, but he participated in workshops with the aim of helping the Department of Defense meet its goals of improving at a faster rate than China. (*Id*. at 5:3-5.)

After the Tech Fest and Department of Defense lecture, applicant was granted a time budget by management to pursue his desire to research the implementation of iterative engineering at the Northrup Grumman facilities as a more efficient way to develop programs/systems. (*Id*. at 8:15-22.) It was also after the Tech Fest that applicant began experiencing unusual occurrences.

Applicant's roommate reported that an East Asian individual had come onto their property a couple of times. As the property was in a remote area at the end of a cul-de-sac, it was unusual to have visitors. (*Id*. at 8:1-5.) Applicant also experienced a series of vehicular break-ins. While nothing was stolen, on one occasion, the belongings from his glove compartment were laid out in a row as though being documented. (*Id*. at 8:5-9.) Applicant testified that vehicular break-ins occurred in late August to early September 2020. (*Id*. at 8:10-11.) While he did not report the break-ins to the police, they were reported to Facility Security Manager, David Plumley, as required by the National Industrial Security Program. (*Id*. at 8:9-10; 8:12-14; 2:21-22.) When the break-ins occurred, applicant was concerned it was connected to his efforts at implementing facility-wide iterative engineering, so he stopped. (*Id*. at 8:22-24.)

Over the course of months after the break-ins, applicant started having respiratory issues. In December [2020] and January 2021, his symptoms got worse. He noticed burning in his lungs when using his vehicle's air-conditioning. The air-conditioning ducting is accessed through the glove compartment. (*Id*. at 8:25-9:3.) He took his car to a mechanic but nothing unusual was found upon visual inspection. He did not have the air-conditioning ducting removed. (*Id*. at 9:7-8.)

The date of alleged injury, February 18, 2020, is the date applicant first sought medical attention. Applicant believed he had heavy metal exposure because he had a positive response to glutathione supplementation. It was for that reason that applicant sought medical care. (*Id*. at 5:11-14.) For months prior, applicant had been having severe insomnia, chills, sweats, hypnic jerks, and convulsions. His research revealed the most likely cause was heavy metal toxicity. (*Id*. at 5:18-23.) After not having slept for three days, applicant made a medical appointment at SCRIPPS and purchased a glutathione supplement from Amazon. After taking the supplement, applicant was able to sleep. (*Id*. at 5:22-25.)

Applicant attended a medical appointment at SCRIPPS in early March of 2020 at which time blood and urine analyses were conducted looking for arsenic, mercury and lead. (*Id*. at 6:2-4.) The results showed elevated levels of arsenic, with the most

common source being contaminated water. (*Id*. at 3-6.) Applicant conducted a home water test, the results of which were negative for arsenic. (*Id*. at 6:8-19.) Applicant reported to Northrup Grumman that he had tested positive for arsenic exposure and that he did not believe it was from home exposure. (*Id*. at 6:23-25.)

Northrup Grumman used an industrial hygienist to conduct water testing, investigating drinking water sources and the humidifier located in the work area. The results revealed no measurable amount of arsenic from either source. (*Id*. at 7:5-8.)

Applicant did not believe his arsenic exposure was from an incidental source and given the severity of his symptoms, he did not believe arsenic was his lone exposure. (*Id*. at 7:9-13.) Applicant began treating with Dr. Blancet, who requested a comprehensive heavy metal hair sample analysis. (*Id*. at 7:13-14.) Applicant provided hair samples taken in March of 2020 and July of 2020 in a mail-in packet. The samples were mailed in early July 2020 and the results revealed elevated levels of uranium, cobalt, and cadmium. Arsenic was present and elevated but not to the severity as uranium and cobalt. (*Id*. at 7:14-18.)

Applicant continues to experience symptoms associated with exposure and he continues with his detoxification program. (*Id*. at 9:9-10). His detoxification program consists of consuming aminos that make up glutathione, glycine, n-acetyl cysteine and glutamine, as well as supplemental vitamins and minerals in the form of calcium, iron and magnesium. (*Id*. at 9:15-17.) Because detoxing from heavy metals disrupts the metabolism, supplemental vitamins are needed to relieve the associated symptoms of chills, muscle spasms, fatigue, irregular bow[e]l movements, overheating, anxiety and irregularity. (*Id*. 9:10-14.)

Regular Physician Nelhs Betancourt, M.D.

Pursuant to the Findings and Orders issued on November 15, 2023, Nelhs Betancourt, M.D. was appointed by this Court as a regular physician to evaluate the applicant and provide a comprehensive report addressing all issues. (*See* Minutes of Hearing (12-3-2025), *supra*, at 2:17-19; *see also* Opinion on Decision and Findings and Order (11-15-2023)[, at p. 4].)

Dr. Betancourt conducted a physical examination of the applicant on March 7, 2024, at which time Dr. Betancourt requested additional studies. (*See* Court Exhibit VV.) Thereafter, Dr. Betancourt authored 3 comprehensive medical-legal reports, each of which contained a detailed record review.

Via a "Motion to Impeach Dr. Betancourt's Physician Qualified Medical Examination" filed on May 9, 2024, applicant alleges that Dr. Betancourt did not review all the materials provided to him including laboratory testing and an academic paper, mis-characterized applicant's report of injury to wit: "Dr. Betancourt states that Applicant claimed was injured by "terrorists", a term

Applicant has categorically never used. Applicant describes "Hostile Foreign Actors", due to personal theory accusing People's Republic of China or other Nation hostile to the interests of the United States", and Dr. Betancourt did not serve applicant with a copy of the report at issue. (*See* Applicant's Exhibits 2 and 3.)

Based thereon, applicant asked that the Court,

…Impeach DR. BETANCOURT'S PQME, have it be struck from the record, and asks the court for appropriate consequence and relief, such as, but not limited to, referring all parties for investigation by the California Department of Insurance Worker's Compensation Fraud Program and other relevant authorities for any and all transgressions; Applicant submits his faith to the Good Judgment of the Court." (*Id*.)

Via an "Objection to IME Report dated May 23, 2025" applicant asked that the Court,

1. sustain this objection and strike the portions of the Reports in violation of relevant Code and established IME conduct;

2. limit distribution of the report to protect Applicant's privacy and clearance status, per Labor Code § 4062.3;

3. order Dr. Nehls [sic] Betancourt to write a Final Report in compliance with relevant Code and established IME conduct;

4. grant such other relief as deemed just. (*See* Applicant's Exhibit 8.)

Via a "Motion for Summary Judgment" filed on September 3, 2024, applicant asked that the Court

Applicant moves the Court to Impeach DR. BETANCOURT'S PQME according to Applicant's Motion to Impeach, Addendum of Exhibits, and Motion for Summary Judgment; Declare Defense's Declaration of Readiness to Proceed as Invalid (and as necessary and proper CAWCAB's Notification of Hearing;) and Grant Summary Judgment DECLARING APPLICANT INJURED BY MEANS OF HEAVY METAL TOXICITY BY INHALATION ARISING OUT OF EMPLOYMENT AND RECOGNITION OF DISABILITY CONSISTENT WITH CLAIM, thereby entitling the Applicant all appropriate benefits under Workers' Compensation and California Labor Law, including but not limited to the provision by the Defense of medical care administered by Dr. Scott Miscovich or other appropriate medical providers as time and circumstance requires in accordance with California Labor Code § 4600.

Otherwise, a new PQME and medical tests ordered would. be the FOURTH PQME to be conducted after initially filing the claim in 2020 and would further prejudice Applicant's claim. As more time passes with continued treatment there will be less obvious evidence of toxic exposure while the threat of long-term medical complications persists. The Applicant places his Faith in the Good Judgment of the Court." (*See* Applicant's Exhibit 4.)

The Court notes that requests for summary judgement are not permitted in workers' compensation proceedings. (Cal. Code Regs., tit. 8, § 10515.) For purposes of this Opinion on Decision, however, applicant's pleadings as referenced above will be considered as one Motion to Strike/Disqualify Dr. Nelhs Betancourt as the regularly appointed physician.

Any decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281, 113 Cal. Rptr. 162, 520 P.2d 978; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal. 3d 312, 317, 90 Cal. Rptr. 355, 475 P.2d 451; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635, 83 Cal. Rptr. 208, 463 P.2d 432.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "[A]Medical opinion … fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal. 3d 162, 169 [93 Cal. Rptr. 15, 480 P.2d 967, 36 Cal.Comp.Cases 93, 97].)

In his first comprehensive report of March 11, 2024, Dr. Betancourt outlined a detailed history of the injury derived from the applicant, noted applicant's current complaints and pertinent findings from applicant's history, summarized his review of 7[2]5 pages of records/documents, reviewed applicant's symptoms, detailed a thorough physical examination, and provided his summary and discussion which included the pertinent findings derived from the medical records along with a comprehensive discussion of arsenic toxicity. (*See* Court Exhibit WW.) The report was addressed to and served upon the third-party claims administrator Sedgwick CMS, counsel for the defendant, and applicant. Dr. Betancourt requested additional studies (*See* Court Exhibit VV) and provided his opinion based on the record as it stood.

Dr. Betancourt's "Diagnostic Impression" was

1. Obesity
2. Probable Obstructive Sleep Apnea
3. No evidence of Arsenic poisoning. (*See* Court Exhibit WW, *supra*, at 12.)

Under "Preliminary Opinion based on Information Currently Available", Dr. Betencourt opined:

1. The Examinee's clinical presentation is not suggestive of exposure to arsine (gas) or inorganic arsenic (the laboratory findings are negative for excess).
2. The laboratory findings, with arsenic more abundant in urine, suggests these were caused by detoxification agents; the blood levels were small and well below the toxic level.
3. The mechanism of injury (the car intrusion with involvement of the A/C filter) is unlikely to be a source of arsenic gas or inorganic arsenic. The clinical presentation is not consistent with acute arsenic exposure.
4. None of the laboratories have shown hemoglobinuria, proteinuria with casts, hemolytic anemia, elevated BUN, creatinine, or electrolyte derangements.
5. Some of the symptoms (urinary burning, constipation) could result from excessive oral glutathione and aggressive detoxification with DMSA (Dimercaptosuccinic acid, a chelating agent). (*Id*. at pgs. 15-16.)

With respect to the specific question posed by this Court to wit: "Did the Applicant sustain injury arising out of and occurring in the course of his employment with Northrup Grumman on February 10, 2020 to his respiratory, heavy metal poisoning and/or internal?", Dr. Betancourt opined:

"Based on the available information, I have not identified an acute or chronic toxicology injury associated to his work at Northrup Grumman." (*Id*. at p. 16.)

Dr. Betancourt thereafter reviewed an additional 12 pages of documents/records and provided a supplemental report dated December 18, 2024, wherein he opined,

All of the test results enumerated above were normal and consistent with previously stated opinions. The polysomnogram, which was ordered to evaluate his complaints of insomnia and my clinical impression that he has Obstructive Sleep Apnea was not available for my review. The collagen profile was not completed, either. (*See* Court Exhibit XX, at p. 4.)

Dr. Betancourt concluded his report,

"After reviewing the entire case, and the above enumerated test results, in my professional opinion and within reasonable medical probability, there is no evidence of occupational injury. Specifically, there is no evidence of intoxication with heavy metals.

I have already noted in my previous report that some of the symptoms Mr. Barrera is experiencing are probably secondary to overdosing with glutathione and the detoxification protocols he is following." (*Id*.)

Dr. Betancourt's report of December 18, 2024, was addressed to and served upon the third-party claims administrator Sedgwick CMS, counsel for the defendant, and the applicant. (*Id*.)

Finally, Dr. Betancourt was provided with 49 more pages of records, including correspondence from the applicant attaching an article entitled "The effect of cadmium on sleep parameters assessed in polysomnographic studies: A case control study" from the Journal of Clinical Medicine, 2023. (*See* Applicant's Exhibit 5.) After a thorough review and discussion of the newly submitted documentation, Dr. Betancourt concluded,

"In my professional opinion, and within reasonable medical probability, Mr. Barrera's claim is not compensable. His Obstructive Sleep Apnea is not a consequence of work exposure, and he does not have any objective evidence in support of heavy metal exposure or toxicity.

In view of the above, there is no residual impairment, future medical care, partial/total permanent disability to speak of. There is no past, actual or future prophylactic or actual work restrictions. No temporary partial or total disability is warranted. He is not at MMI because there is no injury.

There is no need to complete any of the other tests requested in my initial report." (*See* Court Exhibit YY, at p. 6.)

Again, the report was addressed to and served upon the third-party claims administrator Sedgwick CMS, counsel for the defendant, and the applicant. (*Id*.)

Dr. Betancourt's reports contained thorough and detailed discussions of the issues presented. His opinions and conclusions were framed in terms of reasonable medical probability, were not speculative, and were based on pertinent facts and documents and on an adequate examination and history. Dr. Betancourt also thoroughly set forth his reasoning in support of his conclusions. Based thereon, Dr. Betancourt's opinions constitute substantial medical evidence upon which the Court can rely.

Applicant disagrees with Dr. Betancourt's opinions and seeks to have him disqualified citing primarily to alleged defects in the service of the reports and Dr. Betancourt's alleged failure to review all of the documents served by the applicant specifically, additional laboratory testing and research articles. As outlined above, all of Dr. Betancourt's reports reflect service upon the applicant and Dr. Betancourt appears to have reviewed all the records and documents that were properly served and identified in the requisite affidavits.

"'[Factual] determinations of the board must be upheld if there is substantial evidence in their support and the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial

evidence.'" (*Place v. Workmen's Comp. App. Bd*. (1970) 3 Cal.3d 372, 378 [90 Cal. Rptr. 424, 475 P.2d 656].)

Based on the above, it is found that there is no good cause to disqualify Dr. Betancourt and therefore applicant's Motion to Strike/Disqualify Dr. Nelhs Betancourt as the regularly appointed physician is DENIED.

Injury AOE/COE

Applicant believes he was a victim of poisoning by a foreign agency by exposure to heavy metals, specifically arsenic, in connection with his work at Northrup Grumman. (*See* MOH/SOE (12-17-2025), *supra*, at 5:12, 7:9-10, 10:8-10, 10:21-22.)

Regular Physician Dr. Betancourt opined, based on a reasonable medical probability, that applicant does not have heavy metal poisoning and that he "does not have any objective evidence in support of heavy metal exposure or toxicity." (*See* Court Exhibit YY, *supra*, at pg. 6.) Even assuming in arguendo, however, that applicant does present with heaving metal poisoning, applicant is unable to meet his burden of proving industrial causation.

Applicant bears the initial burden of proving industrial causation by showing his employment was a contributing cause. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*., (*Clark*), 61 Cal. 4th 291, 297.) Applicant must establish by a preponderance of the evidence that an injury occurred arising out of and in the course of employment (AOE/COE). (Labor Code sections 3202.5; 3600(a).)

Labor Code section 3202.5 defines the preponderance of evidence as

""Preponderance of the evidence" means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence." (Cal. Labor Code section 3202.5.)

In compliance with a subpoena issued by the applicant, David Plumley, Facility Security Manager for Northrup Grumman was deposed on January 23, 2024, and was questioned by the applicant and counsel for the defense. (*See* Defendant's Exhibit A.) With a history as a counterintelligence specialist with the United States Marine Corps for over 20 years, Mr. Plumley commenced his employment with Northrup Grumman in January 2008 as the facility security manager and has remained in that capacity. (*Id*. at 12:9-16; 6:24-7:7.) Mr. Plumley is responsible for "overall security and safety of employees, the facilities, and oversight for [ ] closed areas, classified information, and technology that is built and manufactured at the San Diego facility" which includes being responsible for government classified information, propriety secrets and security and counterintelligence and security. (*Id*. at 7:18-8:6.)

Mr. Plumley is familiar with applicant's employment and presence at the facility ending in 2020. During that time, Mr. Plumley did not receive any reports of a foreign agent or espionage at the facility. If there had been such a report, Mr. Plumley would have received that information. During applicant's employment, there were no specific threats targeting employees at the Northrop Grumman San Diego facility and no employees at the Northrup Grumman San Diego facility reported being a victim of foreign espionage. (*Id*. at 8:16-9:13.)

Mr. Plumley was not aware that applicant believed he had been subjected to radioactivity. (*Id*. at 9:14-19.) Mr. Plumley is familiar with the National Industrial Security Program Operation Manual and the reporting requirements contained therein. (*Id*.at 13:18-14:20.) During his time as the facility security manager, Mr. Plumley has never submitted reports for actual, probable, or possible espionage, sabotage, terrorism, or subversive activities to the Federal Bureau of Investigations (FBI). There have been no arrests related to those activities at Northrup Grumman San Diego. Mr. Plumley has neither detected nor received reports of the San Diego facility being targeted by North Korea or China. (*Id*. at 22:5-20.)

Mr. Plumley has not filed a report with the FBI or Defense Counterintelligence and Security Agency (DCSA) about the applicant's case because there is no indication of loss or theft of classified government information. (*Id*. at 20:20-21:1.) There were no cases at the San Diego facility during applicant's employment that required Mr. Plumley to report to the FBI or DCSA. (*Id*. at 21:19-21.)

During trial, applicant confirmed that his belief that he was a victim of sabotage by foreign agents is speculative. (*See* MOH/SOE (12-17-2025) *supra* at 10-8-10.) Applicant was asked if he had anything other than speculation to confirm that he was a victim of poisoning by a foreign country. Applicant responded that suspicion is enough to warrant an investigation per federal regulations as is possible sabotage. (*Id*. at 10:11-14). Hoping for a federal investigation, applicant reported to the FBI that he was a victim of poisoning by a foreign agency, yet there has been no investigation. (*Id*. at 10:21-22; 11:14-15.)

While certainty is not required, applicant must establish industrial causation based on substantial evidence and a reasonable probability. Reasonable probability of industrial causation however, cannot be established based on surmise and speculation alone.

No evidence has been proffered supporting applicant's suspicion that he was a victim of poisoning by a foreign agency and in fact, applicant's testimony regarding same was, at times, contradictory. Applicant testified that the date of injury of February 18, 2020, coincided with the first date he sought medical treatment for suspected heavy metal poisoning, yet applicant also testified that the vehicular break-ins occurred in late August to early September 2020. It was after the break-ins occurred that applicant started having respiratory issues when using his

> vehicle's air-conditioning in December 2020 and January 2021. (*See* MOH/SOE (12-17-2025) *supra* at 5:11-14; 8:10-11; 8:25-9:3.) The timeline of events as relayed by the applicant is inconsistent.
>
> Based on the totality of the evidence before the Court, and without any evidence offered in support of applicant's suspicion, it is found that applicant did not sustain his burden of proving by a preponderance of the evidence that he sustained an injury arising out of and in the course of hi[s] employment with Northup Grumman.

(Opinion on Decision, March 5, 2026, at pp. 1-10, EAMS Doc ID numbers omitted.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 1, 2026

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

PATRICK BARRERA
SILVER & FENSTEN, LLP

SL/cm

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o