

Maupin, Eddy (I)

SOCIAL SECURITY DISABILITY OFFSET (RCW 51.32.220)

Effective date of offset

SOCIAL SECURITY RETIREMENT OFFSET (RCW 51.32.225)

Effective date of offset

The Department is not prevented from taking the social security reverse offset from a delayed lump sum payment after providing statutory notice that it is taking an offset, even if the delay in payment was due to a bureaucratic delay. *Overruling In re Kenneth Beitler*, BIIA Dec., 58,976 (1982). ...***In re Eddy Maupin (I)*, BIIA Dec., 03 21206 (2004)** [*Editor's Note*: The Board's decision was appealed to superior court under Clallam County Cause No.04-2-01200-0. *See also, Potter v. Department of Labor & Indus.*, 101 Wn. App 399 (2006).]

Scroll down for order.

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

1 **IN RE: EDDY V. MAUPIN**) **DOCKET NOS. 03 21206 & 03 21208**
2)
3 **CLAIM NOS. N-095422 & K-694358**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Eddy V. Maupin, by
8 Casey & Casey, P.S., per
9 Gerald L. Casey

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11 Employer, Northwest Rock, Inc.,
12 None

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Lisa Marsh, Assistant
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18 The claimant, Eddy V. Maupin, filed an appeal with the Board of Industrial Insurance Appeals
19 on October 9, 2003, from an order of the Department of Labor and Industries dated October 1,
20 2003. In this order, the Department adjusted the claimant's monthly compensation rate because
21 the claimant receives social security retirement; the new rate is \$2,353.74 effective July 1, 1997, of
22 which \$882.65 is payable under Claim No. K-694358 and \$1,471.09 is payable under Claim
23 No. N-095422. Effective January 1, 1998, the reduction of the claimant's time loss compensation
24 benefits has been removed, and the full time loss rate is \$2,382.81 per month, of which \$893.55 is
25 payable under Claim No. K-694358 and \$1,489.26 is payable under Claim No. N-095422. The
26 compensation on the claims is again reduced, effective July 1, 1999, because the claimant received
27 social security retirement benefits. The new compensation rate is \$2,682.34 per month, of which
28 \$1,005.87 is payable under Claim No. K-694358 and \$1,676.47 is payable under Claim
29 No. N-095422. Effective January 1, 2001, the reduction of the time loss compensation benefits has
30 been removed, and the full time loss compensation rate is \$2,967.50 per month, of which
31 \$1,112.871 is payable under Claim No. K-694358 and \$1,854.69 is payable under Claim
32 No. N-095422. These rates are based on monthly social security benefits for the claimant totaling
33 \$1,022.00 and 80 percent of the claimant's highest years earnings in the amount of \$3,264.60 per
34 month, as provided by the Social Security Administration. These figures have been updated by a
35 formula contained in federal law to a more current earnings level. The Department order is

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39 **AFFIRMED.**
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1 **DECISION**

2 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
3 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
4 Proposed Decision and Order issued on July 21, 2004, in which the industrial appeals judge
5 reversed and remanded the orders of the Department dated October 1, 2003, under the rationale
6 enunciated in *In re Kenneth Beitler*, BIIA Dec., 58,976 (1982).
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10 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
11 no prejudicial error was committed. The rulings are affirmed. We have granted review because we
12 believe that our decision in *Beitler* has been overruled by *Potter v. Department of Labor & Indus.*,
13 101 Wn. App. 399 (2000), and we affirm the Department orders under appeal.
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16 Mr. Maupin is a 74-year-old man who has worked in construction all his life. He has had
17 numerous injuries; he wears an artificial leg as of November 14, 1988, when he injured his left
18 shoulder on the job. This injury was designated Claim No. K-694358. The second claim involved in
19 this set of appeals is Claim No. N-095422, and occurred on July 3, 1991, when Mr. Maupin injured
20 his low back. This is a remarkably sparse record, but even so it would appear that these two claims
21 languished at the Department. Although Mr. Maupin initially tried to work after the 1991 injury, he
22 was able to do so only for about three months, and has not worked since 1992.
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26 With respect to the K claim, Mr. Maupin's application for benefits was allowed and closed by
27 an order dated August 21, 1988. This order was protested, and ultimately set aside. On
28 September 30, 2002, the Department issued an order in which it closed the claim with a permanent
29 partial disability award equal to 13 percent of the amputation value of the left arm. This was duly
30 protested, and the claim remained open. On August 26, 2003, the Department issued a wage rate
31 order, and several time loss compensation orders were issued, but the dates that time loss
32 compensation was paid are not clear from the record. Be that as it may, on October 1, 2003, the
33 Department issued an order in which it set the time loss compensation rates and also provided as
34 follows: for the period July 1, 1997 through December 31, 1997, a social security offset was
35 applied; for the period January 1, 1998 through June 30, 1998, no social security offset was
36 applied; for the period July 1, 1999 through December 31, 2000, a social security offset was
37 applied; and effective January 1, 2001, the offset was removed.
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1 This order was issued in connection with both claims currently before this Board.
2 Apparently, Mr. Maupin hovered between offset and non-offset status, partly because his earnings
3 were high and partly due to the fact that he was entitled to time loss compensation in connection
4 with both the K and N claims.
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7 On April 23, 1992, the Department was notified by the Social Security Administration that
8 Mr. Maupin was receiving social security disability benefits. As of 1992, however, his ACE
9 (average current earnings) was high enough that no offset was applied. However, when there was
10 a state COLA (cost of living adjustment) on July 1, 1997, his state compensation was higher than
11 his ACE, and this pushed him into offset status. At this time Mr. Maupin was receiving social
12 security retirement benefits. Later, however, the Social Security Administration did a triennial
13 redetermination, and this increased Mr. Maupin's ACE, thereby dropping him out of offset status.
14 Another state COLA done on July 1, 1999, pushed him back into offset status.
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17 After the October 1, 2003 order, several time loss compensation orders were issued on
18 subsequent dates in October, in which the Department implemented the terms of the October 1,
19 2003 order. We note, however, that those orders are not a part of these appeals and are thus not
20 before this Board. The subject matter of the two appeals currently before this Board is strictly the
21 two October 1, 2003 orders issued in connection with the K claim and the N claim. These two
22 orders are identical, with the exception of having been issued in connection with the two different
23 claims.
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26 Turning, then, to the N claim, the claim was allowed and some time loss compensation was
27 paid, but again, the record does not reflect the period for which time loss compensation was paid. It
28 would appear that some time loss compensation was paid, but very little happened in connection
29 with the claim until the October 1, 2003 order was issued in connection with the N claim as well.
30 Again, after the October 1, 2003 order there were several time loss compensation orders issued
31 during the month of October, in which the Department implemented the terms of the October 1,
32 2003 order; again, these orders are not the subject of this appeal. The claimant appeals the orders
33 issued in connection with each claim. He takes the position that the Department may not impose
34 an offset due to his receipt of social security benefits.
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37 The starting point for analysis of this matter is RCW 51.32.225 and RCW 51.32.220, which
38 we will not reprint here. Suffice it to say that RCW 51.32.225 authorizes a reduction to a given
39 claimant's time loss compensation or pension benefits based on the amount of federal social
40 security retirement benefits the claimant receives. Reductions for social security retirement benefits
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1 must comply with the procedures set out in RCW 51.32.220(2). The provisos for this reduction are
2 as follows: RCW 51.32.220(2) provides that any reduction shall be effective the month following
3 the month in which the Department or self-insurer is notified by the federal Social Security
4 Administration that the person is receiving disability benefits under the federal Old-age, Survivors,
5 or Disability Insurance Act. However, the proviso to (2) is that "in the event of an overpayment of
6 benefits the Department or self-insurer may not recover more than the overpayments for the
7 six months immediately preceding the date the Department or self-insurer notifies the worker that
8 an overpayment has occurred." Finally, RCW 51.32.220(4) provides that no reduction may be
9 made unless the worker receives notice of the reduction prior to the month in which the reduction is
10 made.
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16 Our industrial appeals judge undertook a thoughtful review of the previous Board decisions
17 as well as cases decided by the Court of Appeals. Ultimately, she determined that using the
18 framework set forth in *In re Kenneth E. Beitler*, BIIA Dec., 58,976 (1982) and *Frazier v. Department*
19 *of Labor & Indus.*, 101 Wn. App. 411 (2000), the Department was to pay full time loss
20 compensation for the periods of July 1, 1997 through December 31, 1997 and July 1, 1999 through
21 December 31, 2000. She further held that the Department is allowed only to recoup any
22 overpayment beginning six months prior to October 1, 2003, which is the first date the Department
23 notified the claimant of its intent to take the offset. However, there was no overpayment for that
24 period, as the Department took no offset for that period, and the practical effect is to preclude the
25 Department from recouping any overpayment at all. As we have indicated above, however, we
26 believe that *Beitler* has been overruled by *Potter*.
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32 In *Beitler*, the claimant was injured on August 22, 1974. He received time loss compensation
33 benefits for the period of June 23, 1978 through July 21, 1978, but no further benefits were paid.
34 On August 8, 1979, the parties entered into an agreement reversing a closing order dated
35 January 18, 1979, which required the Department to provide further treatment and to pay time loss
36 compensation for July 22, 1978 through January 18, 1979. On September 6, 1979, the Department
37 issued an order holding the January 18, 1979 order for naught, and stating that the permanent
38 partial disability award was to be considered either an advance on future permanent partial
39 disability or to be applied to payment of time loss compensation. However, on January 28, 1980,
40 the Department issued an order in which it paid time loss compensation for July 22, 1978 through
41 January 18, 1979 (apparently, the Department elected to apply the permanent partial disability
42 award to any future permanent partial disability award).
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1 The Findings of Fact reflect that Mr. Beitler sent notice to the Department on August 21,
2 1978, that he was receiving social security benefits. On January 20, 1981, the Department issued
3 an order in which it adjusted monthly compensation rates to reflect a zero offset effective
4 January 19, 1979; \$55.81 effective July 1, 1979; and \$132.87 effective July 1, 1980, due to cost of
5 living increases. The order did not include an order of payment. On January 23, 1981, the
6 Department issued an order in which it granted the payment of time loss compensation for July 1,
7 1979 through January 15, 1981. The order of January 20, 1981, was timely protested, and was
8 affirmed by Department order of March 4, 1981, the subject matter of the appeal.
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10 The Board held that clearly, the date Mr. Beitler was first given notice was January 20, 1981.
11 Thus, the next month, February 1981, was the month in which the Department could begin the
12 offset. However, with regard to the period of time for which the Department could take the offset,
13 the Board noted that there had been no payments for January 18, 1979 through January 23, 1981,
14 and thus there was no overpayment. Since there was no overpayment, the question was whether
15 the Department could offset the lump sum payment of back time loss compensation. In analyzing
16 this question, the Board looked at the reason for the delay, and determined that where it was due to
17 bureaucratic delay, to permit the Department to offset lump sums paid only because of bureaucratic
18 delay "would encourage the Department to purposely allow the claim to be entangled in the
19 bureaucracy of claims administration solely for the purpose of delaying payments which rightfully
20 should be paid to disabled workers." *Beitler*, at 5. Thus, the Board did not permit the Department
21 to offset in February 1981 benefits it should have paid from January 19, 1979 through July 20,
22 1980.
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24 Accordingly, the Board directed the Department to pay full benefits for time loss
25 compensation from January 19, 1979 through January 15, 1981. The Board acknowledged this
26 would create an overpayment, which could then be recouped. However, because the Department
27 only notified Mr. Beitler in January, it would only be permitted to reach back as far as July 20, 1980
28 (six months back).
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30 In subsequent matters, however, we have declined to extend the *Beitler* rationale. In
31 *In re James D. Conrad*, BIIA Dec., 68,967 (1985), and *In re Estavan Sambrano*, BIIA Dec., 63,484
32 (1984), the Department was allowed to offset a lump sum payment of back time loss compensation
33 because there had been a genuine dispute as to entitlement to time loss compensation. We
34 believe, moreover, that *Potter v. Department of Labor & Indus.*, 101 Wn. App. 399 (2000) has
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1 effectively overruled *Beitler*, and that this analysis may no longer be used. We base this holding on
2 language used in the *Potter* decision that would preclude any analysis involving bureaucratic delay.
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4 Ms. Potter was injured in 1987; her claim was allowed and subsequently closed in 1990. In
5 1992, she applied to reopen her claim, which the Department denied in 1994. This was duly
6 protested and then appealed, and in September 1995 the Board issued a decision in which it
7 reversed the Department and reopened the claim effective June 3, 1992, and directed the
8 Department to pay time loss compensation from February 23, 1993 through October 25, 1994. On
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10 December 19, 1995, the Department received notice from the Social Security Administration that
11 Ms. Potter had been receiving social security benefits since August 1, 1993. That same day, the
12 Department issued an order in which it gave Ms. Potter notice that it would reduce her retroactive
13 disability payments effective as of the August 1, 1993 pay period. On January 2, 1996, the
14 Department issued an order in which it paid the compensation minus the offset. Thus, the
15 Department paid full time loss compensation for the period of February 23, 1993 through July 31,
16 1993, but took an offset for the period of time loss compensation for the period of August 1, 1993
17 through October 25, 1994. Ms. Potter appealed this order to the Board, which affirmed the
18 Department order. She then appealed this to Superior Court, which reversed the Board. On
19 appeal to the Court of Appeals, however, the Court of Appeals reversed the trial court and affirmed
20 the Board.
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28 One of Ms. Potter's arguments was that allowing a retroactive offset would remove any
29 incentive for the Department to correctly or timely adjudicate claims, and would encourage lethargic
30 and erroneous claims administration. To this the court replied:
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32 Even if she had presented data supporting these contentions, this is an
33 argument properly addressed to the Legislature. We cannot give a
34 statute an interpretation that is inconsistent with its plain language
35 based upon speculation that a plain reading may possibly produce
36 negative repercussions. See *Cooper's Mobile Homes, Inc. v. Simmons*,
37 94 Wn.2d 321, 326 617 P.2d 415 (1980) (reviewing court will not apply
38 absurd interpretation of statute to achieve desired result); *Geschwind v.*
39 *Flanagan*, 121 Wn.2d 833, 841 854 P.2d 1061 (1993) (reviewing court
40 obliged to give plain meaning of statute full effect, even when results
41 seem unduly harsh).
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43 Consequently, Potter received benefits when the Department
44 made the January 1996 lump sum payment. At that time, the
45 Department acted in accordance with RCW 51.32.220(1) when it
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1 deducted the offset from its payment to Potter. The trial court erred in
2 concluding otherwise.

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4 Potter, at 409.

5 We recognize that the issue of bureaucratic delay was not squarely before the *Potter* court,
6 and that there is an argument that this comment is dicta. We, however, reject this contention. We
7 believe that with this language the court clearly rejects any argument that bureaucratic delay should
8 affect the analysis of whether an offset should be imposed in payment of retroactive benefits.
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11 In this matter, Mr. Maupin has not worked since 1992. He was not paid any time loss
12 compensation for any periods after July 1997 until 2003. We are disturbed that the Department did
13 not act on this claim in a more timely fashion. Testimony from the Department in which it alleged
14 that its personnel were simply too busy is unacceptable. However, we do not believe that *Beitler*
15 rationale survives the *Potter* decision. We thus affirm the Department order applying the offset in
16 making its lump sum payment of time loss compensation for the periods of July 1, 1997 through
17 December 31, 1997 and for July 1, 1999 through December 21, 2000.
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20 We note, too, that the *Potter* decision specifically rejects the argument that permitting the
21 Department to offset lump sum payments of time loss compensation encompassing more than
22 six months of time loss compensation is contrary to the section of RCW 51.32.220(2) that prohibits
23 the Department from recovering overpayments made for more than six months prior to the date the
24 claimant is notified that an overpayment has occurred. The court held that this section operates
25 strictly to prevent undue hardship on claimants who may have spent or encumbered the excess
26 payments. Where, as here, no overpayment had been received, the Department is simply acting to
27 prevent an overpayment. *Potter*, at 410. Thus, in situations where the claimant is paid a lump sum,
28 whether or not due to the Department's lack of diligence, the Department may offset more than
29 six months of time loss payments.
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32 Finally, we note that our industrial appeals judge held that the Department had also failed to
33 provide adequate notice to begin the offset, pursuant to *In re Lucien Saltz*, BIIA Dec., 92 4309
34 (1993). However, we note that there are two orders under appeal in this matter, and these orders
35 simply **establish** the offset. There is no reference in either order as to when the offset would occur,
36 nor is there an appeal of any order actually implementing the offset. As neither order addresses the
37 issue of when the offset payments would begin, the issue of notice is not before the Board. Any
38 time the Department seeks to establish an offset, it must do so by issuance of an order so stating.
39 While that order may constitute notice, an appeal of that order alone does not raise the issue of
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1 whether the Department provided timely notice to the claimant of the offset until the actual order
2 implementing the offset is issued. The *Saltz* matter is to be distinguished from the situation here,
3 as it did not concern whether a claimant was given notice of an action the month before the action
4 was taken.
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7 Accordingly, because we overrule *Beitler*, and because the issue of notice is not before the
8 Board, we affirm the Department orders herein under appeal.
9

10 FINDINGS OF FACT

- 11 1. **Claim No. K-694358:** On November 14, 1988, the claimant, Eddy V.
12 Maupin, filed an application for benefits in which he alleged that he had
13 sustained a left shoulder, wrist, and middle finger injury in the course of
14 employment with Northwest Rock, Inc., on April 6, 1988.

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16 On August 21, 1989, the claim was allowed and closed, with medical
17 treatment only.
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19 Within sixty days of receiving the August 21, 1989 order, the claimant
20 filed a Protest and Request for Reconsideration of that order.
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22 On November 1, 1989, the Department issued an order in which it
23 affirmed the August 21, 1989 order.
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25 On December 21, 1989, the claimant filed a Protest and Request for
26 Reconsideration of the November 1, 1989 order.
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28 On October 18, 1996, the Department issued an order in which it set
29 aside the August 21, 1989 order and paid time loss compensation for
30 the period of June 18, 1996 through October 13, 1996.
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32 On September 30, 2002, the Department issued an order in which it
33 closed the claim with a permanent partial disability award equal to
34 13 percent of the left arm at or above the deltoid insertion or by
35 disarticulation at the shoulder.
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37 On November 14, 2002, the claimant filed a Protest and Request for
38 Reconsideration of the September 30, 2002 order. On November 18,
39 2002, the claimant filed an appeal with the Board of Industrial Insurance
40 Appeals from the September 30, 2002 order. The appeal was assigned
41 Docket No. 02 22402.
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43 On December 13, 2002, the Department issued an order in which it held
44 the September 30, 2002 order in abeyance. On December 20, 2002,
45 the Board issued an order in which it denied the appeal in Docket
46 No. 02 22402.
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1 On March 27, 2003, the Department issued an order in which it affirmed
2 the September 30, 2002 order.

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4 On April 3, 2003, the claimant filed an appeal with the Board, which was
5 assigned Docket No. 03 13703.

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7 On April 23, 2003, the Department issued an order in which it held the
8 March 27, 2003 order in abeyance.

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10 On April 24, 2003, the Department issued an order in which it modified
11 the September 30, 2002 order from final to interlocutory and stated that
12 the claim would remain open for authorized treatment and action as
13 indicated.

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15 On April 24, 2003, the Board issued an order in Docket No. 03 13703, in
16 which it returned the case to the Department for further action.

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18 On October 1, 2003, the Department issued an order in which it
19 adjusted monthly compensation because the claimant was receiving
20 social security retirement benefits. Effective July 1, 1997, the new
21 compensation rate was \$2,353.74 per month, of which \$882.65 was
22 payable under Claim No. K-694358 and \$1,471.09 was payable under
23 Claim No. N-095422. Effective January 1, 1998, the reduction was
24 removed and the full time loss compensation rate was \$2,382.81, of
25 which \$893.55 was payable under Claim No. K-694358 and \$1,489.26
26 was payable under Claim No. N-095422. Effective July 1, 1999, the
27 compensation rate was reduced again, with a new rate of \$2,682.34,
28 \$1,005.87 payable under Claim No. K-694358 and \$1,676.47 payable
29 under Claim N-095422. Effective January 1, 2001, the reduction was
30 removed. The full time loss compensation rate was \$2,967.50,
31 \$1,112.81 payable under Claim No. K-694358 and \$1,854.69 payable
32 under Claim N-095422. These rates were based on monthly social
33 security benefits totaling \$1,022 and 80 percent of the claimant's highest
34 year's earnings in the amount of \$3,264.60 per month, as provided by
35 the Social Security Administration.

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37 On October 9, 2003, the claimant filed an appeal with the Board from
38 the October 1, 2003 order. That appeal was assigned Docket
39 No. 03 21208. On November 7, 2003, the Board issued an order in
40 which it extended the time to act on the appeal. On November 18,
41 2003, the Board granted the appeal.

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43 **Claim No. N-095422:** Within a year of July 3, 1991, the claimant filed an
44 application for benefits in which he alleged that he had sustained a back
45 injury in the course of employment with Northwest Rock, Inc., on July 3,
46 1991.

1 On January 31, 1992, the Department issued an order in which it
2 allowed the claim and paid time loss compensation benefits for the
3 period of November 7, 1991 through December 7, 1991.
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5 On October 1, 2003, the Department issued an order in which it
6 adjusted monthly compensation because the claimant was receiving
7 social security retirement benefits. Effective July 1, 1997, the new
8 compensation rate was \$2,353.74 per month, of which \$882.65 was
9 payable under Claim No. K-694358 and \$1,471.09 was payable under
10 Claim No. N-095422. Effective January 1, 1998, the reduction was
11 removed and the full time loss compensation rate was \$2,382.81, of
12 which \$893.55 was payable under Claim No. K-694358 and \$1,489.26
13 was payable under Claim No. N-095422. Effective July 1, 1999, the
14 compensation rate was reduced again, with a new rate of \$2,682.34,
15 \$1,005.87 payable under Claim No. K-694358 and \$1,676.47 payable
16 under Claim No. N-095422. Effective January 1, 2001, the reduction
17 was removed. The full time loss compensation rate was \$2,967.50,
18 \$1,112.81 payable under Claim No. K-694358 and \$1,854.69 payable
19 under Claim No. N-095422. These rates were based on monthly social
20 security benefits totaling \$1,022 and 80 percent of the claimant's highest
21 year's earnings in the amount of \$3,264.60 per month, as provided by
22 the Social Security Administration.
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24 On October 9, 2003, the claimant filed an appeal with the Board from
25 the October 1, 2003 order. That appeal was assigned Docket
26 No. 03 21206. On November 7, 2003 and November 17, 2003, the
27 Board issued orders in which it extended the time to act on the appeal.
28 On November 18, 2003, the Board granted the appeal.
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- 30 2. In Claim No. K-694358, Eddy V. Maupin sustained a left shoulder, wrist,
31 and middle finger injury on April 6, 1988, while in the course of
32 employment with Northwest Rock, Inc.
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- 34 3. In Claim No. N-095422, Mr. Maupin sustained a back injury on July 3,
35 1991, while in the course of employment with Northwest Rock, Inc.
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- 37 4. The Department learned that Mr. Maupin was receiving social security
38 disability benefits on April 23, 1992.
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- 40 5. Mr. Maupin's date of birth is January 17, 1930. In January 1995,
41 Mr. Maupin's social security disability benefits were automatically
42 changed to social security retirement benefits because he had reached
43 the age of 65.
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- 45 6. On October 1, 2003, the Department issued two orders; one in
46 connection with Claim No. K-694358 and the other in connection with
47 Claim No. N-095422. Those orders notified Mr. Maupin that the
Department intended to pay time loss compensation benefits for the

1 periods of July 1, 1997 through December 31, 1997 and July 1, 1999
2 through December 31, 2000, reduced to reflect his receipt of social
3 security retirement benefits during those periods. The Department used
4 the higher time loss compensation rate under Claim No. N-095422 as
5 the starting point for its calculations.
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- 7 7. Neither of the two October 1, 2003 orders issued in connection with the
8 two claims and herein under appeal implemented the offset or paid time
9 loss compensation.
10

11 **CONCLUSIONS OF LAW**

- 12 1. The Board of Industrial Insurance Appeals has jurisdiction over the
13 parties to and the subject matter of these appeals.
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15 2. The Department correctly reduced Mr. Maupin's time loss compensation
16 benefits for the period July 1, 1997 through December 31, 1997 and
17 July 1, 1999 through December 31, 2000, due to the receipt of social
18 security retirement benefits, as required by RCW 51.32.225 and
19 RCW 51.32.220(2).
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21 3. The Department order of October 1, 2003, in Claim Nos. K-694358 and
22 N-095422, is correct and is affirmed.
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24 It is so **ORDERED**.

25 Dated this 21st day of December, 2004.
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27 BOARD OF INDUSTRIAL INSURANCE APPEALS
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31 /s/ _____
32 THOMAS E. EGAN Chairperson
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36 /s/ _____
37 CALHOUN DICKINSON Member
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