Beitler, Kenneth

SOCIAL SECURITY DISABILITY OFFSET (RCW 51.32.220)

Effective date of offset

The effective date of a social security disability offset is the first month after the Department notified the worker of its intent to take the offset. The Department may only recoup benefits paid for a period of six months prior to the date of notification in RCW 51.32.220. **….*In re Kenneth Beitler*, BIIA Dec., 58,976 (1982)** [*Editor's Note*: *Overruled, In re Eddy Maupin* (I), BIIA Dec., 03 21206. *See also, Potter v. Department of Labor & Indus.*, 101 Wn. App 399 (2000).]

Limitation on recovery of overpayment (RCW 51.32.220)

The six month limitation on the recovery of overpayments under RCW 51.32.220 is applicable when the delay in benefits is due solely to bureaucratic inaction following litigation. **….*In re Kenneth Beitler*, BIIA Dec., 58,976 (1982)** [special concurrence] [*Editor's Note*: Holding reversed by *Frazier v. Department of Labor & Indus*., 101 Wn. App 411 (2000), *Potter v. Department of Labor & Indus*., 101 Wn. App 399 (2000).]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: KENNETH E. BEITLER	**)**	**DOCKET NO. 58,976**
	)	
CLAIM NO. G-655888	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Kenneth E. Beitler, by
Nashem, Prediletto, Schussler & Halpin, per
William T. Scharnikow

Employer, Department of Transportation, by
The Attorney General, per
Spencer W. Daniels

Department of Labor and Industries, by
The Attorney General, per
Robert C. Milhem, Assistant

This is an appeal filed by the claimant on March 13, 1981 from an order of the Department of Labor and Industries dated March 4, 1981, which adhered to a prior order dated January 20, 1981, which reinstated the claimant's time-loss compensation effective January 19, 1979, but reduced those time-loss compensation payments by retroactive imposition of a social security disability offset. **REVERSED AND REMANDED**.

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on timely Petitions for Review filed by the employer and the Department of Labor and Industries to a Proposed Decision and Order issued on December 11, 1981, in which the order of the Department dated March 4, 1981 was reversed and this claim remanded to the Department with direction to reinstate the claimant's time-loss compensation payments effective January 19, 1979 through January 20, 1981 without reducing those payments by retroactive imposition of a social security offset reduction.

This appeal presents another sequence of novel issues for determination which turn upon the interpretation and proper application of RCW 51.32.220. Prior to stating our understanding of the factual and legal issues presented, we deem it appropriate to survey the history surrounding that statute.

In 1975, the Washington Legislature first enacted RCW 51.32.220, and took advantage of a somewhat veiled grant of authority in federal law relating to social security disability payments contained in 42 USC § 424a. In passing this legislation, this state was one of several which

deliberately and successfully placed a major financial obligation upon the federal government, which theretofore was being absorbed by workers' compensation insurance funds supported by employer premiums or by companies which had qualified to self-insure their workers' compensation liability. Since that time, thousands of claims have been adjudicated spawning numerous appeals to this Board concerning various aspects of administrative application of this piece of legislation, which we have commonly come to refer to as the social security offset reversal statute.

Freeman v. Harris, 625 F. 2d 1303 (1980), contains a rather succinct and intelligently written history of social security disability income and the offset provisions in federal law which provide an appropriate point of commencement for our discussion:

> "Social Security was first proposed by President Roosevelt as part of the New Deal legislative reform. As initially instituted, the Social Security Act of 1935 contained no provisions for disability insurance. It did, however, provide old age and unemployment insurance which, as a general rule, the states were not providing.
>
> In 1956 the Social Security Act was expanded to include monthly benefits for disabled wage earners. As enacted in 1956, there was a full offset of workers' compensation payments against Social Security disability benefits. 70 Stat. 816 (1956). 'It is self-evident that the offset reflected a judgment by Congress that the workmen's compensation and disability insurance programs in certain instances served a common purpose, and that the workmen's compensation programs should take precedence in the area of overlap.' Richardson v. Belcher, 404 U.S. at 82, 92 S.Ct. at 257. The offset provision was repealed in 1958, 72 Stat. 1025 (1958), but was reinstituted in 1965 in a slightly different form, 79 Stat. 406 (1965).
>
> The reinstitution of the offset was triggered by data submitted to legislative committees which showed that in the majority of the states, the typical worker who was receiving workers' compensation and federal disability benefits actually received more in benefits than his pre-disability take-home pay. Hearings on H.R. 6675 before the Senate Comm. on Finance, 89th Cong., 1st Sess. 151 (1965). This was thought to cause two evils: first, it reduced the worker's incentive to return to the work place and hence impeded rehabilitative efforts; and second, it created fears that the duplication of benefits would lead to an erosion of state workers' compensation programs. Hearings on H.R. 6675 Before the Senate Comm. on Finance, 89th Cong. 1st Sess. 252, 259, 366, 540, 738-40, 892-97, 949-54, 990 (1965).
>
> Section 424a of title 42 was then enacted to deal with the problem. As is relevant here, it requires an offset of Social Security disability payments against workers' compensation so that the total benefits received by the worker under the two programs do not exceed 80% of his pre-disability

> income... This eradicated the problem of a worker being financially better off disabled than if he or she returned to work.
>
> ...However, because Social Security disability payments are less than 80% of a workers' pre-disability income, the system which resulted after the 1965 amendment did encourage workers to pursue state worker's compensation as well as federal social security."

This history recited in the Freeman case is significant when the federal government is taking the offset, but it does not tell the whole story for those stated like Washington which enacted offset-reversal statutes.

42 USC § 424a, permits the Social Security Administration to reduce disability benefits to persons who are also receiving state workers' compensation periodic benefits. 42 USC § 424a(d) provides that the reduction by the Social Security Administration shall not be taken "...if the workmen's compensation law or plan under which periodic benefits is payable provides for the reduction thereof...." This provision permits the states paying worker's compensation benefits to effectively reverse the offset. By so doing, a state could reduce the dollars paid from funds supported by employer premiums and cause the federal government to pay disabled workers the full social security disability amounts which would be paid were they not receiving any periodic workers' compensation benefits.

Prior to 1975, persons who received temporary total or permanent total disability payments under this state's Industrial Insurance Act and who also qualified to receive social security disability benefits, were paid their full workers' compensation entitlement from the Department of Labor and Industries. Applying the offset reduction of42 USC § 424a, the Social Security Administration paid a lesser amount to these individuals than would have been paid had those individuals not been covered by the workers' compensation.

In 1975, the state legislature correctly perceived that fiscal benefits would inure to the state's advantage by enacting RCW 51.32.220. By "reversing" the offset, it was envisioned that this state's employers would realize considerable savings. Instead of having the state compensation fund pay the lion's share of benefits, the offset reversal permitted the federal government with its larger tax base to carry the greater financial burden.

The operative feature of RCW 51.32.220 is to permit the Department or self-insurer to reduce periodic state benefits paid on lieu of wages (temporary total disability or permanent total disability benefits) and permit the injured worker to receive his full entitlement of social security disability

income. The net effect to the worker was intended to result in no change of combined monthly dollar benefits than if the federal government was taking the reduction out of social security disability benefits under 42 USC § 424a.

The legislature has, however, placed additional requirements on the taking of reductions by offset authorized the state statute. For example, the injured worker must cooperate to authorize the release of information from the Social Security Administration to properly compute his or her benefits. If this cooperation is not secured, subsection (1) gives the Department authority to estimate the amounts payable under the federal act and that estimate will be considered to be correct until the worker cooperates, with no readjustment for any period of non-cooperation.

Another requirement is that reduction in benefit payments cannot be commenced until "the month following the month in which the Department or self-insurer is notified" that the worker is receiving federal disability benefits. RCW 51.32.220(2).

Furthermore, pursuant to the provisos in RCW 51.32.220(2), the Department or self-insurer may only seek recovery for any overpayments for the six months immediately preceding the date the worker is notified that overpayments had occurred. Thus, if it takes the claims administrators longer than six months to assemble the required data and put the offset into effect, then the Department or self-insurer will not be entitled to recover any of the "extra" benefits paid to the worker prior to that six-month period. Moreover, the six months' recovery permitted can only be made from future benefit payments, per RCW 51.32.220(3). That is, a worker cannot be required to reimburse the Department (or the self-insured employer) in a lump sum from previous payments he or she has received.

Finally, and of considerable importance in this case, reductions cannot begin unless the worker receives notice of the reduction prior to the month in which the reduction in benefits is to be made.

RCW 51.32.220(4).

Given the foregoing background, we turn to the issues presented by the instant appeal. As foundation for discussion, a summary of facts gleaned from the stipulation of the parties is necessary.

On August 22, 1974, while working for the State Department of Transportation, Mr. Beitler sustained the industrial injury which is the subject of his claim on appeal. Pertinent to the matter before us, Mr. Beitler began receiving time-loss compensation for his temporary total disability,

including an order of payment on July 11, 1978, grant- ing time-loss compensation for the period June 23, 1978 through July 21, 1978. There was no indication by that order of any termination of benefits, but no further benefits were paid until January 18, 1979, when the Department closed the claim with "time loss as paid" and with a permanent partial disability award equal to 15% as compared to total bodily impairment. The claimant appealed from that closing order to this Board. His appeal resulted in the entry of an Order on Agreement of Parties dated August 8, 1979, reversing the Department closing order of January 18, 1979, and requiring the Department to allow further treatment and to make the payment of time-loss compensation for the period July 22, 1978 through January 18, 1979. On September 6, 1979 the Department issued an order implementing in part the Board's order, by holding the January 18, 1979 order for naught and indicating that the permanent partial disability award was to be considered either as an advance on eventual permanent partial disability and/or time-loss compensation. It was not until January 28, 1980, however, that the Department actually entered an order paying time-loss compensation for the period required, and in addition, terminated the payment of further time-loss benefits, but the claim remained open. To this point, all such time-loss compensation had been paid without reference to reduction or offset on account of claimant's receipt of disability benefits under the Federal Old Age, Survivors and Disability Insurance Act.

Prior to the initial attempt at closure of the claim in January 1979 but subsequent to the payment of time-loss benefits as indicated in its July 11, 1978 order, the Department of Labor and Industries did send a letter to the claimant requesting information relative to receipt of social security disability benefits. The letter, being a "form" letter, merely stated in general that industrial insurance recipients drawing social security disability benefits were entitled to receive a total of only 80% of his or her average current earnings computed in one of three described ways. The letter did not indicate that in Mr. Beitler's case there would be any benefits in excess of 80% of his average current earnings and did not specifically state that the Department of Labor and Industries was notifying the claimant of its intent to take any offset. In August 1978, Mr. Beitler responded to the Department's inquiry providing the necessary information from which it could compute whether an offset was appropriate.

However, nothing further with respect to implementing the offset was heard from the Department until January 20, 1981, when the Department issued an order adjusting monthly

compensation rates although, in fact, no order of payment was included.[1] On January 23, 1981 the Department issued an order which granted the payment of time loss at the rates described in the January 20th order.[2] In a timely fashion, the claimant protested the Department's order of January 20, 1981, which terms were reaffirmed by the Department's order of March 4, 1981, which is the subject order in this appeal.

From these facts, this Board must determine answers to the following questions: (1) When did the Department of Labor and Industries give notice to the claimant of its intent to take the reduction by offset in compliance with RCW 51.32.220(4)? (2) When can the reduction by offset first be taken? (3) For what period of time prior to the effective date of implementation may the offset by applied, i.e., the permissible retroactive period? (4) Assuming retroactive offset may be taken, from what benefits may recoupment of "overpayments" be made?

In providing definitive answers in a manner which represents both fairness and equity, we must keep in mind two significant intents present in the federal and state legislation. First, there is the Congressional intent that the benefit structure be designed to preclude excessive combined benefits for the same disability. Iglinsky v. Finch, 314 F. Supp. 425 (D. La. 1970), aff'd, 433 F. 2d 405. Second, there is the clear intent in this state's law, which must be considered in con- junction with the Congressional intent, not to penalize this state's injured workers because of bureaucratic delay.

Under most circumstances, this state's statute which (1) prohibits the Department from recovering overpayments in lump sums from past benefits paid, and (2) requires overpayments to be recovered from future benefits solely, and (3) limits recovery to the overpayments made in the

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[1] The wording of that portion of the Department order adjusting the claimant's compensation rates stated:

> "...your new monthly rate of compensation is 0.00 effective January 19, 1979; 55.81 effective July 1, 1979; and 132.87 effective July 1, 1980 because of cost-of-living increases.
>
> NOTIFY THE DEPARTMENT OF LABOR AND INDUSTRIES OF ANY CHANGES IN YOUR SOCIAL SECURITY DISABILITY BENEFITS, OTHER THAN COST OF LIVING INCREASES, IMMEDIATELY."

[2] The January 23, 1981 order indicates payment in a total amount of $1,531.80 but states the period of payment to encompass only July 1, 1979 -- January 15, 1981. No mention is made of the entitlement of the claimant to the status of temporary total disability from January 19, 1979 through June 30, 1979. But since the reduced payment amount for time loss according to the January 20th offset implementation order was $0.00 for those months, we view the January 20th and January 23rd orders in concert to stand for the proposition that the claimant was temporarily totally disabled between January 19, 1979 and June 30, 1979, but such period was not mentioned in the order of January 23rd, because by the terms of the January 20th order no payment was due. In addition, in support of our view, by letter of February 5, 1981, the Department indicated to the claimant's attorney that time-loss compensation was to have been reinstated "effective January 19, 1979", and the offset was thereafter computed.

six-month period immediately preceding the date the worker is notified that overpayment has occurred, provides a sound and sufficient assurance that an injured worker will not be penalized by bureaucratic delay. However, as will be seen, these safeguards are not necessarily sufficient because of the facts which developed in this case.

In answering the first question posed for resolution, it is clear that January 20, 1981 was the first determinative point at which the Department could reasonably have been interpreted as communicating its intent to implement the offset. That was the date of the order which in effect readjusted the claimant's time-loss compensation rates for prior periods because of social security income. It follows, in answer to question (2), that February 1, 1981 is the first month that the offset in fact may be taken. The statute prescribes that the reduction can only be effective when the worker is given notice of the reduction prior to the month in which the reduction is commenced. RCW 51.32.220(4).

The answers to questions (3) and (4) become more complicated. The first proviso to Subsection 2 of the statute indicates "[t]hat in the event of an overpayment of benefits, the Department or self-insurer may not recover more than the overpayment for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred." Therefore, having notified the claimant by its order of January 20, 1981 of its intent to take the offset retroactive to January 19, 1979, and viewing that order as constructive notice of "overpayments," recovery, i.e., application of offset, may only be made for the period after July 20, 1980.

We note specifically that the statute speaks to the fact of recovery of overpayments. It can be argued that in fact, no "overpayment" had been made since in fact no payments at all had been made between January 18, 1979 and January 23, 1981. There having been no overpayments, should the Department be able to apply the offset to the accumulated lump sum of all those unpaid past time-loss benefits? Although the logic to permit such retroactive recovery is superficially attractive, when one examines why the accumulation of unpaid benefits occurred, it is apparent that the Department's ineffective administration of the claim, i.e., bureaucratic delay, bears sole responsibility. The failure of the Department to continue to make regular periodic payments was due to no fault of Mr. Beitler, based on the stipulated facts before us. He had promptly responded to the Department, in August 1978, everything which was requested of him about his social security disability benefits. To hold otherwise and permit this method of recovery would encourage the

Department to purposely allow the claim to be entangled in the bureaucracy of claims administration solely for the purpose of delaying payments which rightfully should be paid to disabled workers.

We must bear in mind that the offset scheme as designed under the federal social security act was not designed to reduce the totality of benefits to the worker but only to assure that the rate at which periodic benefits were paid did not exceed a specified earnings history level (80% of average current earnings). It completely frustrates that scheme for the Department to delay its on-going benefit payments for the months of entitlement to permit the accumulation of lump sums to which to apply eventual offset, without paying any "periodic benefits" in lieu of wages. 42 USC 424a.

In summary, the Department of Labor and Industries cannot be permitted to offset in February 1981 benefits it should have paid from January 19, 1979 through July 20, 1980, when such benefits were not paid solely because of its own bureaucratic delay. Had those benefits been paid when they should have been paid in each successive month of entitlement, no offset would have been permitted because at that point the claimant had not been "notified" by the Department that a reduction by offset was being made. Had the Department been paying regular periodic time-loss benefits it probably would have notified Mr. Beitler of its reductions and the offset would have been perfectly appropriate. However, the Department did not do so--traceable again to its own bureaucratic delay. We do not believe the scheme of the state offset statute is such that the Department of Labor and Industries should profit from such ineffective claims administration. The prevention of such is the implicit legislative intent of RCW 51.32.220.

In effect, we must require the Department to pay the claimant his benefits for temporary total disability in full from January 19, 1979 through January 15, 1981, and thereby create an overpayment which must be recovered in the manner authorized by law. Because of its notification of the claimant on January 20, 1981 of its intent to reduce benefits, the Department may then be permitted beginning February 1, 1981 to implement the reduction by offset. Yet, the Department may only reach back as far as July 20, 1980 to recover its overpayments. Additionally, such recovery may only be made from future benefits to which the claimant may be entitled after January 15, 1981, which was the date to which benefits payments were last carried. RCW 51.32.220(3).

In view of the totality of the provisions of RCW 51.32.220, particularly subsections (2) through (6) which were added by chapter 151, Laws of 1979 1st ex. sess., it is clearly the

legislature's intent that all administrative actions on social security disability offset matters in a claim--e.g., obtaining of Social Security Administration information on receipt of the federal benefits, determination of amount of offset, notice to the claimant of reduction in compensation at some time prior to the month when such reduction will commence, notification to claimant that overpayments have occurred--should be accomplished in six months time. Thus, that is the maximum period to be allowed for retroactive adjustment of monthly compensation by reason of the offset, measured retrospectively from the time of notification to the claimant. Further, such adjustment for overpayment is to be made and recovered only from future benefits to which the claimant may be entitled. The resolution of this case as set forth in this decision is, in our opinion, the only proper way to achieve the legislature's intent in light of the unusually complex fact pattern of the case.

FINDINGS OF FACT

Based upon the entire record, the following findings are made:

1. On October 23, 1974 the Department of Labor and Industries received a report of accident and application for benefits under the Industrial Insurance Act from the claimant, Kenneth E. Beitler, who had sustained an industrial injury during the course of his employment with the State Department of Transportation on August 22, 1974. The claim was allowed under Claim No. G-655888 and benefits were commenced. On July 11, 1978 the Department issued an order paying time-loss compensation from June 23, 1978 to July 21, 1978. On January 18, 1979 the Department issued an order closing the claim with time loss as paid and with a permanent partial disability award of 15% as compared to total bodily impairment. On January 29, 1979 the claimant filed an appeal from that order with the Board of Industrial Insurance Appeals. As a result of that appeal, the Board issued an Order on Agreement of Parties on August 8, 1979, directing reversal of the Department order of January 18, 1979, and remanding the claim to the Department to provide further treatment and pay compensation for temporary total disability from July 22, 1978 through January 18, 1979.

2. On September 6, 1979 the Department issued an order in partial compliance with the Board's Order on agreement of Parties modifying the Department order of January 18, 1979, from final to interlocutory, declaring the claim to remain open for treatment, and stating that the prior permanent partial disability award should be considered as an advance on permanent partial disability and/or time-loss compensation. Eventually, on January 28, 1980, the Department issued an order terminating time-loss compensation with a payment in full compliance with the Board's Order on Agreement of Parties, for the period July 23, 1978 to January 18, 1979, without reference to reductions for the claimant's receipt of social security disability payments. The claim remained otherwise open.

3. On January 20, 1981 the Department issued an order adjusting the claimant's monthly time-loss compensation in conformity with the social security offset reversal scheme expressed in RCW 51.32.220 and 42 USC § 424a. As an implementation of that order, on January 23, 1981, the Department issued an order of payment, paying time-loss compensation for the period January 19, 1979 through January 15, 1981, in a total reduced amount, due to retroactive imposition of social security offset, of $1,531.80. A protest was filed on behalf of the claimant on January 29, 1981, and on March 4, 1981 the Department issued an order adhering to the provisions of its January 20, 1981 order. On March 13, 1981 the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals. On March 31, 1981 the Board issued an order granting the appeal and directed that proceedings be held on the issues raised by the appeal.

4. On July 18, 1978 a letter was sent by the Department of Labor and Industries to the claimant requesting information relative to his social security disability benefits, but containing no specific language indicating or notifying the claimant that a reduction in compensation benefits would be forthcoming. On August 21, 1978 the claimant responded to the Department's inquiry letter of July 18, 1978, providing all the information requested.

5. By its order of January 20, 1981, the Department effectively notified the claimant of its intention to implement reduction of benefits by applying the offset provisions contained in RCW 51.32.220 in the form of reduced monthly time-loss compensation.

6. The Department of Labor and Industries is not authorized under RCW 51.32.220 to implement the social security offset until the month following the month in which notification to the claimant had been made of the Department's intention to implement the offset, the earliest possible date being February 1, 1981, in this case.

7. The claimant was not paid his entitlement to temporary total disability benefits on a regular and periodic basis for the period between January 19, 1979 and January 15, 1981, because of the Department of Labor and Industries' delays in the administration of Mr. Beitler's claim.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction of the parties and subject matter to this appeal.

2. The Department of Labor and Industries, by reason of the provisos in RCW 51.32.220(2), is limited to recovery of overpayment of benefits which should have been paid on a regular and periodic basis, only for the six months immediately preceding January 20, 1981.

3. The Department of Labor and Industries improperly withheld payment of full benefits for temporary total disability during the period January 19, 1979 through January 15, 1981.

4. The Department order of March 4, 1981, adhering to the provisions of a prior order dated January 20, 1981, insofar as it permits the retroactive reduction of benefits from an accrued lump-sum entitlement due to the claimant's temporary total disability, is incorrect, should be reversed, and the claim remanded to comply with the provisions of our order below.

ORDER

The Department of Labor and Industries is directed to enter an order setting aside its order of March 4, 1981, and awarding the claimant time-loss compensation benefits at full time-loss rates to which he would be entitled if not receiving social security disability benefits for the period January 19, 1979 through January 15, 1981, less prior benefits paid for said period. The Department thereafter, effective February 1, 1981, is directed to commence recovery for the overpayment of benefits which occurred between July 20, 1980 and January 15, 1981, but it is ordered that such recovery may be taken only from future temporary or permanent total disability benefits or permanent partial disability benefits provided under Title 51, and such recovery may be made only in the manner prescribed in RCW 51.32.220(3).

Dated this 31st day of March, 1982.

BOARD OF INDUSTRIAL INSURANCE APPEALS
/s/_____
MICHAEL L. HALL Chairman

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
PHILLIP T. BORK Member

SPECIAL CONCURRING STATEMENT

I have joined with the other Board members in the foregoing decision on the merits of this case, but wish to make this additional general statement on the subject of "bureaucratic delay".

We have discussed in the decision at some length the Department's bureaucratic delay in accomplishing its actions and decisions on the social security offset issue. That there was substantial administrative delay, and that it has important legal impact on our ultimate disposition of this appeal, is very clear.

The terms "bureaucratic delay" and "bureaucracy" have very negative meanings these days, connoting in the public's minds such words as incompetence, inefficiency, and even purposeful delay in decision-making. It is not my intent to imply those kinds of connotations as a general proposition to the personnel of the Industrial Insurance Division of the Department. I suggest, from experience of several years ago as a former supervisor of that Division, that a more likely explanation for bureaucratic delay, at least in this particular unit of "the bureaucracy," may be something else: namely, understaffing.

The Division has a literal mountain of compensation cases before it at all time, with a wide variety of difficult claims decisions to be constantly made. It is felt by many that the Department's ratio of serious-injury claims per each claims adjudicator is too high for thorough claims handling. It is certainly a higher ratio than in state funds of a number of other states, and in effectively-managed private insurance firms, and it may be ever thus, given the present legislative control over administrative budgets, personnel staffing levels, etc., of this large insurance organization. Small wonder, then, that important claims decisions are sometimes slow to be reached and thus suffer the opprobrium of "bureaucratic delay".

Having made these general observations on what may be the underlying reason for the Department's administrative delay, the fact remains that it did occur in this case and precluded reasonably prompt adjudication of the social security offset issue. Thus, I concur in the Board's decision on this particular appeal. Given the legislative intent as gleaned from the various subsections of RCW 51.32.220, as applied to the lengthy and involved administrative history of this particular claim, our resolution of this appeal appears to me to be the only rational application of the legislature's intent.

Dated this 31st day of March, 1982.

/s/
PHILLIP T. BORK Member