

## **Clinton, Donald**

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### **SOCIAL SECURITY DISABILITY OFFSET (RCW 51.32.220)**

#### **Computation based on benefit levels in effect on:**

The date of actual notification of concurrent benefits. ...*In re Donald Clinton*, BIA Dec., 61,711 (1983); *In re Lee Darbous*, BIA Dec., 58,900 (1982)

Scroll down for order.

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

1     **IN RE: DONALD F. CLINTON**                     )     **DOCKET NO. 61,711**  
2                                                             )  
3     **CLAIM NO. G-106656**                             )     **DECISION AND ORDER**  
4

5 **APPEARANCES:**

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7         Claimant, Donald F. Clinton, by  
8         Maxey Law Offices, per  
9         Dana C. Madsen

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11        Employer, Joey August Distribution Company,  
12        None

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14        Department of Labor and Industries, by  
15        The Attorney General, per  
16        Tina Kondo and David Dressel, Assistants  
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18        This is an appeal filed by the claimant on March 12, 1982, from an order of the Department  
19 of Labor and Industries mailed January 27, 1982, which adhered to a November 18, 1980 order  
20 which reduced the claimant's monthly rate of pension to \$308.96 effective February 16, 1980 and  
21 assessed an overpayment in the amount of \$1,538.22 for the period of February 16, 1980 to August  
22 15, 1980. **REVERSED AND REMANDED.**  
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25                                                             **DECISION**

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27        Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
28 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
29 issued on January 28, 1983 in which the order of the Department dated January 27, 1982 was  
30 affirmed.  
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33        The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
34 no prejudicial error was committed and said rulings are hereby affirmed.  
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36        The claimant raises four issues. He first asserts that because his industrial injury occurred in  
37 1970 no social security offset should be taken from his pension benefits. Secondly, the claimant  
38 asserts that if an offset is taken the base figure used should be determined when he first began  
39 receiving benefits in May 1976. In the alternative, the claimant asserts that if the 1976 base figure  
40 is not used then the base figure should be determined as of his benefit rates in March, 1978 when  
41 the claimant informed the Department that he was receiving social security benefits. Finally, he  
42 asserts that the Department is prohibited from recovering overpayments prior to August, 1980.  
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1 The claimant was injured on October 19, 1970 and was off work for two years before  
2 rejoining the labor force. His industrially related condition worsened and in 1975 his claim was  
3 reopened. He received time-loss compensation from September of 1975 to June 29, 1979, at  
4 which time he was granted permanent total disability status. He received subsequent cost of living  
5 increases from the Department of Labor and Industries as provided by the legislature. He applied  
6 for social security benefits on January 14, 1976, and received his first check in May of 1976. He  
7 also received subsequent social security cost of living increases as provided by act of Congress in  
8 the social security laws.

9 On February 22, 1978, the claimant was interviewed by John Clemons, a vocational  
10 rehabilitation counselor employed by the Department. At that time he informed Mr. Clemons that  
11 he was receiving \$328.00 a month in social security benefits in addition to approximately \$275.00  
12 per month time-loss compensation. On March 21, 1978, Mr. Clemons prepared a field vocational  
13 report, initial and final evaluation, which was received by the Department on April 4, 1978. We  
14 assume that report was noted and relied upon in adjudicating the claim there-after.

15 By a Department order dated November 18, 1980, the claimant was informed there would be  
16 a social security benefit offset to recoup an alleged overpayment for the period, February 16, 1980  
17 to August 15, 1980 inclusive, in the amount of \$1,538.22. Following some interlocutory  
18 administrative action confirming those figures in the ensuing fourteen months, the instant appeal  
19 was brought to the Board. These computations were based, in part, on information that as of  
20 November 1980 the claimant was receiving \$410.50 per month in social security disability benefits.

21 In support of his contention that since his industrial injury occurred on October 19, 1970, the  
22 law in effect at that time should apply to this case, the claimant has cited three cases, the most  
23 recent of which was decided in the year 1932. We point out that in 1932 there was no Social  
24 Security legislation. 42 U.S.C. § 424a permits the Social Security Administration to reduce  
25 disability benefits to persons who are also receiving state workers' compensation periodic benefits.  
26 42 U.S.C. § 424a(d) provides that the reduction by the Social Security Administration shall not be  
27 taken "...if the workman's compensation law or plan under which periodic benefits is payable  
28 provides for the reduction thereof..." Under those two provisions of federal law, recipients of  
29 periodic benefits face an "either/or" situation. Either the federal government takes the offset under  
30 Section 424a or the state takes the offset under section 424a(d). In 1975, the state legislature  
31 correctly perceived that fiscal benefits would inure to the state's advantage by enacting RCW  
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1 51.32.220. Thus, in answer to the claimant's contention that no offset should be taken, it is  
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3 apparent that an offset would be taken either by the Social Security Administration or by the  
4 Department of Labor and Industries.

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6 The claimant's second and third contentions, regarding the appropriate base rate to be used  
7 in determining the offset, can be answered together. RCW 51.32.220 clearly states that:

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9 "Any reduction of this section shall be effective the month following the  
10 month in which the department or self-insurer is notified by the federal  
11 social security administration that the person is receiving disability  
12 benefits under the federal old-age, survivors and disability insurance  
13 act..." (Emphasis added)

14  
15 The record does not reveal that the Department of Labor and Industries was notified by the Social  
16 Security Administration directly that Mr. Clinton was receiving federal disability benefits. However,  
17 the Department we believe was clearly put on notice that Mr. Clinton may have been receiving such  
18 benefits. The field vocational report prepared and submitted by Mr. Clemons, an employee of the  
19 Department of Labor and Industries, clearly indicates that the Department had sufficient information  
20 upon which to act to secure confirmation of receipt of benefits from the Social Security  
21 Administration. The record does not explain the Department's delay in seeking such information.  
22 Had the Department acted to confirm that Mr. Clinton was receiving social security disability  
23 benefits when Mr. Clemons' report was received in April of 1978 instead delaying action until  
24 August 1980, the social security benefits base for determining the claimant's offset would be less  
25 and would operate to the claimant's financial advantage.

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27 We do not believe this state's legislature intended the statute to be applied so strictly that it  
28 would require the Department to blindly and slavishly adhere to the language of the statute that it  
29 be notified directly "by" the federal agency. The notification from the federal agency may be a key  
30 for determining the first effective month for the Department to commence the offset, but the date of  
31 such notification should not be the operative fact for determining the base benefit levels for offset  
32 computation. It was perceived when the statute was drafted that the Social Security Administration  
33 controlled the flow of information necessary to make offset calculations and to provide that  
34 information more quickly and reliably than the claimant. However, when that information comes  
35 directly from the claimant and is reasonably accurate and reliable we see no need to engage the  
36 bureaucratic process any further to require that the Department should delay action until the  
37 information is conveyed directly from the Social Security Administration. Consequently, we do not  
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1 feel that Mr. Clinton should be penalized by any bureaucratic delay or failure to take notice that  
2 information was already "in-hand".  
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4 Appeals which have previously reached this Board concerning other legal issues surrounding  
5 the application of RCW 51.32.220 have caused this Board to evolve what is felt to be a  
6 straightforward approach to the resolution of legal disputes. That approach reduced to its barest  
7 terms is simply: the worker ought to be placed in the same position when the Department of Labor  
8 and Industries takes the offset as was the case when the Social Security Administration was taking  
9 the offset. We understand the federal statute and administrative regulations provide that when the  
10 Social Security Administration was taking the offset from workers in this state, that reduction of  
11 benefits by offset was only commenced in the month after the month the Social Security  
12 Administration was put on notice that the worker was entitled to state workers' compensation  
13 benefits. We understand that the benefit levels in effect during the month the Social Security  
14 Administration was put on such notice of entitlement were relied upon for computing the extent of  
15 offset.  
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22 A rule requiring reference to benefit levels during the month the Department of Labor and  
23 Industries is put on notice of entitlement or with due diligence should have been put on notice has  
24 several advantages under this state's statutory scheme. First, in most cases it is simple to  
25 administratively determine. Second, it encourages the Department to make early inquiry whether  
26 collateral federal benefits were being applied for and received. During the waiting period, the  
27 worker still receives all benefits to which he is rightfully entitled, even if he is receiving both federal  
28 and state benefits. By encouraging early inquiry on entitlement to benefits and pegging the offset to  
29 that level, the worker is entitled to keep future federal cost of living increases and state time-loss  
30 compensation adjustments even though such increases may exceed 80% of the worker's average  
31 current earnings.  
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37 In resolving this dilemma with fairness and equity, we must also keep in mind two significant  
38 intents present in the federal and state legislation. First, there is the Congressional intent that the  
39 benefit structure should not be designed to discourage workers from returning to gainful work as  
40 early as they reasonably can. Second, there is the clear intent in this state's law (which must be  
41 considered in conjunction with the congressional intent) not to penalize this state's injured workers  
42 because of bureaucratic delay.  
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1 Finally, Mr. Clinton asserts that RCW 51.32.240 prohibits the Department from recovering  
2 overpayments prior to August 1980. This contention is without merit as RCW 51.32.220 allows  
3 recovery of overpayments six months prior to the notification of overpayment to the claimant. In  
4 this case, the claimant was notified in August 1980 that he had received overpayments, thus the  
5 Department was entitled to recovery overpayments from February 1980 forward.  
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8 In summary, we hold the Department should refer to base levels which Mr. Clinton was  
9 receiving in April 1978 to determine what the extent, if any, of offset should be relative to workers'  
10 compensation monthly pension payments. Moreover, the Department should be entitled to recoup  
11 any such overpayments made, retroactive to February 1980.  
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### 14 **FINDINGS OF FACT**

15 After a thorough review of the entire record, the Board finds as follows:  
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- 17 1. On November 6, 1970, the Department of Labor and Industries received  
18 an accident report from the claimant, Donald Clinton, alleging an  
19 industrial injury on October 19, 1970, during the course of his  
20 employment with Joey August Distribution Company. The claim was  
21 allowed and closed after benefits were provided, but reopened in 1975.  
22 On July 24, 1979, the Department issued an order placing the claimant  
23 on a pension effective December 13, 1978. On August 27, 1980, the  
24 Department issued an order establishing a social security offset and  
25 determining there was an overpayment in the sum of \$2,463.00.  
26 Following interlocutory action, that declaration of overpayment was  
27 reduced to \$1,538.22 by an order entered November 18, 1980. This  
28 sum was later confirmed by an order entered January 27, 1982. On  
29 March 12, 1982, the claimant filed a notice of appeal with the Board of  
30 Industrial Insurance Appeals. On April 1, 1982, the Board issued an  
31 order granting the appeal and directed that proceedings be held on the  
32 issues raised by the appeal.  
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- 34 2. On April 4, 1978, the Department was notified by the claimant that he  
35 was then receiving full benefits from both the Social Security  
36 Administration and the Department. This information was included in a  
37 field vocational report prepared by an employee of the Department of  
38 Labor and Industries who forwarded the information to the Olympia  
39 office of the Department of Labor and Industries.  
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- 41 3. In an order dated August 27, 1980, the Department first notified the  
42 claimant of its intention to implement reduction of benefits by applying  
43 the offset provisions contained in RCW 51.32.220.  
44
- 45 4. In an order dated November 18, 1980, the Department recomputed the  
46 claimant's benefits by offsetting the amount of social security benefits  
47 the claimant was then receiving and further determined there was an  
overpayment in the amount of \$1,538.22.

1 5. On April 4, 1978, the claimant was receiving \$328.00 per month social  
2 security benefits, but due to cost of living increases, that benefit was  
3 increased to \$410.50 by August 27, 1980.

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5 **CONCLUSIONS OF LAW**

6 Having made the foregoing findings of fact, the Board now concludes as follows:

- 7  
8 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties  
9 and subject matter of this appeal.
- 10 2. Workers who are covered under the Washington Industrial Insurance Act  
11 and who are receiving both social security disability benefits and  
12 workers' compensation benefits are subject to the offset provisions of  
13 RCW 51.32.220.
- 14 3. The offset provided for in RCW 51.32.220, and any overpayment  
15 resulting therefrom, should be computed on the basis of the social  
16 security benefits received by the claimant on April 4, 1978.
- 17  
18 4. Under the provisions of RCW 51.32.220 the Department is entitled to  
19 recover the overpayment which occurred in the six months preceding  
20 August 1980.
- 21 5. The order of the Department of Labor and Industries mailed January 27,  
22 1982 which adhered to its prior order of November 18, 1980, is incorrect  
23 and should be reversed, and this claim remanded to the Department of  
24 Labor and Industries with direction to recompute the offset provisions  
25 and the overpayment of benefits based upon the claimant's social  
26 security entitlement and level of benefits existing on April 4, 1978.

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28 It is so ORDERED.

29 Dated this 15th day of April, 1983.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

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32  
33 /s/  
34 MICHAEL L. HALL Chairman

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36 /s/  
37 FRANK E. FENNERTY, JR. Member

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39 /s/  
40 PHILLIP T. BORK Member