

Clinton, Donald

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.

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.
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13 On February 22, 1978, the claimant was interviewed by John Clemons, a vocational
14 rehabilitation counselor employed by the Department. At that time he informed Mr. Clemons that
15 he was receiving \$328.00 a month in social security benefits in addition to approximately \$275.00
16 per month time-loss compensation. On March 21, 1978, Mr. Clemons prepared a field vocational
17 report, initial and final evaluation, which was received by the Department on April 4, 1978. We
18 assume that report was noted and relied upon in adjudicating the claim there-after.
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22 By a Department order dated November 18, 1980, the claimant was informed there would be
23 a social security benefit offset to recoup an alleged overpayment for the period, February 16, 1980
24 to August 15, 1980 inclusive, in the amount of \$1,538.22. Following some interlocutory
25 administrative action confirming those figures in the ensuing fourteen months, the instant appeal
26 was brought to the Board. These computations were based, in part, on information that as of
27 November 1980 the claimant was receiving \$410.50 per month in social security disability benefits.
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31 In support of his contention that since his industrial injury occurred on October 19, 1970, the
32 law in effect at that time should apply to this case, the claimant has cited three cases, the most
33 recent of which was decided in the year 1932. We point out that in 1932 there was no Social
34 Security legislation. 42 U.S.C. § 424a permits the Social Security Administration to reduce
35 disability benefits to persons who are also receiving state workers' compensation periodic benefits.
36 42 U.S.C. § 424a(d) provides that the reduction by the Social Security Administration shall not be
37 taken "...if the workman's compensation law or plan under which periodic benefits is payable
38 provides for the reduction thereof..." Under those two provisions of federal law, recipients of
39 periodic benefits face an "either/or" situation. Either the federal government takes the offset under
40 Section 424a or the state takes the offset under section 424a(d). In 1975, the state legislature
41 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)

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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.
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- 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:

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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.
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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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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