

Jacobs, Verlin

SOCIAL SECURITY DISABILITY OFFSET (RCW 51.32.220)

Computation based on benefit levels in effect on:

The date of constructive notification of concurrent benefits. ...*In re Verlin Jacobs*, BIIA Dec., 66,644 (1985); *In re Selma Hayes*, BIIA Dec., 66,196 (1985); *In re Charles Hamby*, BIIA Dec., 59,175 (1982)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 **In Re: VERLIN JACOBS**) **DOCKET NO. 66,644**
3)
4 **CLAIM NO. F-823180**) **DECISION AND ORDER**
5)
6 _____)

7 APPEARANCES:

8
9 Claimant, Verlin Jacobs, by
10 William J. Van Natter

11
12 Employer, Kriken Machine Manufacturing Company,
13 None

14
15 Department of Labor and Industries, by
16 The Attorney General, per
17 James S. Kallmer, Assistant
18

19 This is an appeal filed by the claimant on January 6, 1984, from
20 an Order of the Department of Labor and Industries dated December 27,
21 1983, applying an offset pursuant to RCW 51.32.220 and setting
22 claimant's monthly pension at \$222.81 effective December 16, 1983, to
23 be paid beginning January 15, 1984. Reversed and Remanded.

24 DECISION

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is
26 before the Board for review and decision on timely Petitions for
27 Review filed by the claimant and the Department of Labor and
28 Industries to a Proposed Decision and Order issued on February 1,
29 1985, in which the Order of the Department dated December 27, 1983 was
30 reversed, and the claim remanded to the Department to recompute the
31 claimant's pension benefit level with reference to the social security
32 benefit amount received by the claimant in July, 1977.

5/31/85

1 The Board has reviewed the evidentiary rulings in the record of
2 proceedings and finds that no prejudicial error was committed and said
3 rulings are hereby affirmed.

4 The issues, the evidence presented by the parties, and the
5 applicable statutory provisions are quite adequately set forth in the
6 Proposed Decision and Order and will not be extensively reiterated
7 herein. We have granted review because, although we agree that the
8 Department order must be reversed, we are of the opinion that offset
9 to be taken pursuant to RCW 51.32.220 should be computed on the basis
10 of the rate of social security disability benefits being paid to the
11 claimant as of March 1, 1977.

12 The facts presented by the instant appeal are quite similar to
13 those encountered by the Board in the case of Charles J. Hamby, Docket
14 No. 59,175, Decision and Order of March 29, 1982. Mr. Hamby's claim
15 for industrial insurance benefits filed as a result of an industrial
16 injury on November 22, 1977 was initially closed without award for
17 permanent partial disability. As a result of an appeal to this
18 Board, Mr. Hamby was adjudicated to be a permanently totally disabled
19 worker effective December 19, 1978, which Order was implemented by the
20 Department on June 27, 1980. While Mr. Hamby had been receiving
21 social security benefits since May, 1978, the Department did not
22 formally become aware of his entitlement to such benefits until
23 December, 1980, when the claimant sent notification of his benefits to
24 the Department. The Department ultimately computed the claimant's
25 social security offset with reference to his social security
26 disability benefit levels as of January, 1981, the month following the

1 month in which notification of his entitlement to receive such
2 benefits was received.

3 In reversing the Department's action, we determined in Hamby
4 that the amount of Mr. Hamby's social security offset should be
5 computed with reference to his social security disability benefit
6 levels as of the date the Department of Labor and Industries was put
7 on notice of entitlement or with due diligence should have been put on
8 notice, and that this date was December 19, 1978. In holding that
9 Mr. Hamby's social security offset should be determined with
10 reference to his benefit level as of December 19, 1978, rather than
11 with reference to his benefit level as of the month following the
12 month in which the Department was notified of his entitlement to
13 social security disability benefits, this Board concluded that
14 December 19, 1978, was the earliest date, had the claim been correctly
15 adjudicated by the Department, that concurrent state and federal
16 benefits accrued, and that it was also the date the Department should
17 be held to have been placed on notice of entitlement. Since the
18 facts in the instant appeal are so similar to those in Hamby, we are
19 of the opinion that Hamby is controlling and that the amount of Mr.
20 Jacobs' social security offset should be determined with reference to
21 his social security disability benefit level as of the date the
22 Department was put on notice of entitlement or with due diligence
23 should have been put on notice.

24 The Department argues that the language in RCW 51.32.220(2)
25 requires the amount of the social security offset to be computed with
26 reference to the social security disability benefit level as of the

1 month following the month in which the Department is notified by the
2 Federal Social Security Administration that the worker is receiving
3 social security disability benefits. That section reads:
4 "Any reduction under Subsection (1) of this section
5 shall be effective the month following the month in
6 which the Department or self insurer is notified by
7 the Federal social security administration that the
8 person is receiving disability benefits under the
9 federal old age, survivors, and disability insurance
10 act ..."

11 In choosing that language, we do not believe this state's
12 legislature intended the statute to be applied so strictly that it
13 would require that the Department be notified directly "by" the
14 federal agency. The notification from the federal agency may be a
15 key for determining the first effective month for the Department to
16 commence the offset, but we believe, and essentially held in re Hamby,
17 that the date of such notification should not be the operative fact
18 for determining the base benefit level for offset computation.

19 We still feel a rule requiring reference to benefit levels
20 during the month the Department of Labor and Industries is put on
21 notice of entitlement or with due diligence should have been put on
22 notice has several advantages under this state's statutory scheme.
23 First, in most cases, it is simple to administratively determine.
24 Second, it encourages the Department to make early inquiry whether
25 collateral federal benefits were being applied for and received. In
26 fact, logic urges recognition of the date of concurrent entitlement as
27 the reference date of benefit levels for determining the amount of
28 offset. Under the federal scheme, a totally disabled worker is
29 entitled to benefits regardless of the cause of total disability.

1 Rarely would the situation arise where a worker found permanently
2 totally disabled under state workers' compensation law would not also
3 be assured of the same status under a social security disability
4 adjudication. It is to the direct financial benefit of insurers in
5 those states like Washington, where the offset is reversed, to make
6 inquiry as soon as possible whether a disabled worker is also
7 receiving social security disability insurance benefits. Logically,
8 the date on which a worker is effectively declared permanently totally
9 disabled under state law ought to trigger the astute claims manager to
10 make such inquiry--the earlier information of concurrent benefits is
11 received, the earlier the workers' compensation insurer may reduce its
12 benefit payments, thereby saving substantial financial resources.
13 During the waiting period, the worker still receives all benefits to
14 which he is rightfully entitled, even if he is receiving both federal
15 and state benefits.

16 In reaching our present result, we are mindful of two
17 significant intents present in the federal and state legislation.
18 First, there is the Congressional intent that the benefit structure
19 should not be designed to discourage workers from returning to gainful
20 work as early as they reasonably can. Second, there is the clear
21 intent in this state's law, which must be considered in conjunction
22 with the Congressional intent, not to penalize this state's injured
23 workers because of bureaucratic delay.

24 As we see it, March 1, 1977, was the earliest date, had Mr.
25 Jacob's claim been correctly adjudicated by the Department, that both
26 state and federal benefits accrued. Therefore, it was also the date

1 the Department should be held to have been placed on notice of
2 entitlement. We hold, then, that the offset permitted the Department
3 of Labor and Industries by RCW 51.32.220 should be computed by
4 reference to the benefit levels in effect as of that date, even though
5 that date was established as a result of subsequent litigation. To
6 permit the Department to compute the offset based on benefit levels in
7 effect at a later date would encourage the erroneous and/or untimely
8 adjudication of workers' legitimate claims of being permanently
9 totally disabled.

10 The claimant was forced to exercise his right of appealing to
11 this separate quasi-judicial agency, in order to attain his correct
12 disability status. We believe it would clearly be unjust to treat him
13 differently under the offset reversal statute than a worker who had
14 been adjudicated as permanently totally disabled at the administrative
15 agency level and who was not forced into exercising his right of
16 appeal.

17 After consideration of the Proposed Decision and Order and the
18 Petition for Review filed thereto, and a careful review of the entire
19 record before us, we hereby enter the following Findings:

20 FINDINGS OF FACT

- 21 1. On June 19, 1969, the claimant, Verlin Jacobs,
22 filed an application for benefits with the
23 Department of Labor and Industries alleging the
24 occurrence of an industrial injury on June 9, 1969,
25 while in the course of his employment with Kriken
26 Machine Manufacturing Company. On September 2,
27 1969, the Department issued an Order allowing the
28 claim for
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1 treatment, then closing it with no award for
2 permanent partial disability.
3

4 On November 28, 1969, the claimant filed an
5 application to reopen the claim because of
6 aggravation of condition with the Department. On
7 January 12, 1970, the Department issued an order
8 reopening the claim. On November 13, 1970, the
9 Department issued an order closing the claim with
10 no award for permanent partial disability.
11

12 On May 8, 1975, claimant filed an application to
13 reopen the claim because of aggravation of
14 condition with the Department. On July 9, 1975,
15 the Department issued an order reopening the claim.
16 On May 7, 1976, the Department issued an order
17 closing the claim, with a permanent partial
18 disability award of 20% of the maximum allowed for
19 unspecified disability.
20

21 On March 1, 1977, claimant filed an application to
22 reopen the claim because of aggravation of
23 condition with the Department. On July 7, 1977,
24 the Department issued an order reopening the claim
25 effective January 1, 1977. On July 21, 1981, the
26 Department issued an order closing the claim with
27 no additional award for permanent partial
28 disability. On July 27, 1981, the Department
29 issued an order holding the order of July 21,
30 1981, in abeyance. On June 16, 1982, the
31 Department issued an order closing the claim with
32 an additional permanent partial disability award of
33 5% of the maximum allowed for unspecified
34 disabilities (25% total). On July 1, 1982,
35 claimant filed a notice of appeal with this Board.
36 On July 27, 1982, this Board issued an order
37 granting claimant's appeal. On October 20, 1983,
38 the Board issued a Decision and Order reversing the
39 Department's June 16, 1982 order and reopening the
40 claim to grant claimant the status of a totally
41 permanently disabled worker, effective March 1,
42 1977. On November 7, 1983 the Department issued an
43 order complying with the terms of the Board order.
44

- 45 2. On December 27, 1983 the Department issued an order
46 applying an offset pursuant to RCW 51.32.220 to
47 claimant's pension, setting that pension at the
48 rate of \$222.81 per month, effective December 16,
49 1983, to be paid beginning January 15, 1984. On
50 January 5, 1984 claimant filed a notice of appeal
51 with this
52

1 Board. On January 25, 1984 the Board issued an
2 order granting claimant's appeal, assigning it
3 Docket No. 66,644, and directing that hearings be
4 held on the issues therein raised.
5

- 6 3. As of March 1, 1977, claimant received monthly
7 social security disability income benefits in the
8 amount of \$297.80 for himself as well as an
9 additional \$38.50 for each of his three children.
10 As of June, 1977 claimant's monthly social security
11 disability benefit was \$315.40 with an additional
12 \$43.40 for each of his three children. Claimant's
13 monthly benefit has increased to \$504.27 in
14 November, 1983, and \$521.00 in December, 1983 for
15 himself alone.
16
- 17 4. As of March 1, 1977, claimant was entitled to
18 receive monthly benefits under the Federal Old-age,
19 Survivors, and Disability Act and also benefits as
20 a permanently totally disabled worker under the
21 Washington Industrial Insurance Act.
22
- 23 5. March 1, 1977 was the date upon which the
24 Department should have been placed on notice of the
25 claimant's entitlement to both federal social
26 security disability income benefits and permanent
27 total disability benefits under this state's
28 Industrial Insurance Act.
29
- 30 6. In November, 1983, the Department received
31 notification from the Social Security
32 Administration that the claimant has been receiving
33 social security disability benefits since at least
34 March 1, 1977.
35

36 CONCLUSIONS OF LAW
37

- 38 1. The Board of Industrial Insurance Appeals has
39 jurisdiction of the parties and the subject matter of
40 this appeal.
41
- 42 2. The offset to be taken pursuant to RCW 51.32.220 with
43 respect to this claimant's benefits should be computed
44 by reference to the benefit levels (for his status as a
45 permanently totally disabled worker and as one entitled
46 to receive social security disability income benefits
47 from the Federal Social Security Administration) as of
48 March 1, 1977.
49
- 50 3. The order of the Department of Labor and Industries
51 dated December 27, 1983, applying an offset pursuant to
52

1
2 RCW 51.32.220 and setting claimant's monthly pension at
3 \$222.81 effective December 16, 1983, to be paid
4 beginning January 15, 1984, is incorrect and should be
5 reversed and this claim remanded to the Department to
6 recompute the claimant's benefit levels consistent with
7 the Findings and Conclusions herein.

8
9 It is so ORDERED.

10
11 Dated this thirty-first day of May, 1985.

12 BOARD OF INDUSTRIAL INSURANCE APPEALS

13 /S/ _____

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18 —
19 Chairperson

MICHAEL L. HALL

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21 /S/ _____

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23 —
24 Member
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FRANK E. FENNERTY, JR.