

Broderson, Ricky

SOCIAL SECURITY DISABILITY OFFSET (RCW 51.32.220)

Computation based on benefit levels in effect on

The date of actual notification of concurrent benefits when state periodic benefits commenced before social security benefits. ...*In re Ricky Broderson*, BIIA Dec., 86 4201 (1987)

Scroll down for order.

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

1 **IN RE: RICKY A. BRODERSON**) **DOCKET NO. 86 4201**
2)
3 **CLAIM NO. H-558381**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Ricky A. Broderon, by
8 Gerald L. Casey

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10 Employer, Life International Companies,
11 None

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13 Department of Labor and Industries, by
14 The Attorney General, per
15 William R. Strange
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17 This is an appeal filed by the claimant on November 21, 1986 from an order of the Department
18 of Labor and Industries dated October 31, 1986 which adhered to the provisions of a prior order which
19 reduced time loss compensation to \$581.69 per month effective July 1, 1986, due to the claimant's
20 receipt of social security benefits. **AFFIRMED.**

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23 **DECISION**

24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
26 issued on February 26, 1987 in which the order of the Department dated October 31, 1986 was
27 affirmed.
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29 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
30 prejudicial error was committed and said rulings are hereby affirmed.
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32 The issue presented by this appeal is whether Mr. Broderon's 1980 or 1986 state and federal
33 benefit levels should be used in calculating the social security reverse offset pursuant to RCW
34 51.32.220. The evidence is accurately set forth in the Proposed Decision and Order and will not be
35 discussed at length here.
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38 In computing the offset pursuant to RCW 51.32.220, the Department of Labor and Industries
39 used the state and federal benefit levels in effect as of July 1, 1986. Mr. Broderon argues that the
40 offset should have been calculated by reference to the lower benefit levels of 1980, when he first
41 became entitled to concurrent state and federal periodic benefits. In particular, he contends that state
42 and federal cost of living increases since 1980 cannot be included in the computation.
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1 In a number of prior decisions we have detailed the history and intent of the social security
2 reverse offset statute. E.g. In re Lee Darbous, BIIA Dec., 58,900 (1982). We will therefore not
3 reiterate that discussion here. Suffice it to say that RCW 51.32.220(1) provides that the state reverse
4 offset should be calculated in the same manner as provided by 42 U.S.C. § 424a. That is, the worker
5 should be placed in the same position whether the Social Security Administration or the Department of
6 Labor and Industries or the self-insured employer takes the offset.
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10 42 U.S.C. § 424a(a) (1) provides for computation of the offset based on the benefit levels in the
11 month that the worker becomes entitled to both state and federal periodic benefits, provided that the
12 Secretary has, in a prior month, received notice that the worker is receiving concurrent benefits. The
13 question of when Mr Broderson became entitled to concurrent state and federal benefits is relatively
14 easy to ascertain. That date is January 1980. It is the question of when the Department was notified
15 that Mr. Broderson was receiving social security benefits which is in dispute.
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19 That notification date is critical under both 42 U.S.C. § 424a(a)(1) and RCW 51.32.220(2). The
20 latter section provides that subsection 1 of RCW 51.32.220 (which mandates that the state
21 computation should be identical to the federal computation) "shall be effective the month following the
22 month in which the department or self-insurer is notified by the federal social security administration
23 that the person is receiving disability benefits under the federal old-age, survivors and disability
24 insurance act"
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28 This Board has had occasion to interpret this statutory notification requirement in a number of
29 prior decisions. In re Verlin Jacobs, BIIA Dec., 66,644 (1985); In re Selma Hayes, BIIA Dec., 66,196
30 (1985); In re Donald Clinton, BIIA Dec., 61,711 (1983); In re Charles Hamby, BIIA Dec., 59,175
31 (1982); In re Lee Darbous, BIIA Dec., 58,900 (1982). Our decision in Hayes contains a good
32 summary of most of these decisions. The rule which has evolved through time is formulated in Hayes
33 as follows:
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37 "Our prior decisions show that the Department has been held to have
38 been put on notice of concurrent entitlement for the purpose of
39 determining what benefit levels to reference in its offset computation, from
40 the date that temporary total or permanent total workers' compensation
41 benefits were commenced except where such date preceded the date that
42 federal SSDI benefits were commenced. It was felt that the Department
43 ought to be held to have been put on notice when concurrent entitlement
44 in fact existed and inquiry at that time would have so revealed. However,
45 when in fact concurrent entitlement did not exist at the time of
46 commencement of periodic state benefits or a decision regarding federal
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1 entitlement was made retroactive subsequent to the date of
2 commencement of state benefits, the Department ought not to be held to
3 have been put on notice until such time as its own records revealed the
4 probable existence of that fact." Hayes at 7-8.
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7 That is, if state periodic benefits commence before social security benefits, then the level of benefits in
8 effect on the date the Department received actual notice (from whatever source) of the worker's
9 subsequent entitlement to concurrent social security benefits is used in the offset calculation. See in
10 particular In re Donald F. Clinton, BIIA Dec., 61,711 (1983).
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13 In the instant appeal, Mr. Broderson's state time loss compensation benefits commenced in
14 August of 1979 and he did not become entitled to social security benefits until January of 1980. Thus
15 the date on which the Department had actual notice that Mr. Broderson was receiving concurrent
16 social security disability payments is the critical date for determining what benefit levels should be
17 used in calculating the social security reverse offset.
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20 We have reviewed the record to determine if Mr. Broderson has established that the
21 Department had actual notice of his receipt of concurrent social security benefits prior to June of 1986.
22 While the record establishes that Mr. Broderson and his attorney were notified of Mr. Broderson's
23 entitlement to social security disability benefits on January 6, 1981, retroactive to January, 1980,
24 nothing in the record indicates that the Department was ever notified of this concurrent entitlement
25 prior to June, 1986. Nor is there any suggestion in the record that the Department's delay in taking the
26 offset was the result of "bureaucratic delay" as alleged in claimant's Petition for Review. For all that
27 appears in the record, the delay was just as likely caused by Mr. Broderson's failure to timely disclose
28 the requisite information. At any rate, Mr. Broderson, as the appealing party, had the burden of
29 establishing that the Department order taking an offset based on the benefit levels in effect as of July
30 1, 1986 was incorrect. This he has failed to do.
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33 If Mr. Broderson's benefit levels were forever fixed for purposes of offset computation on the
34 date he was first eligible for both federal and state benefits, then he would only benefit by concealing
35 the fact that he was receiving concurrent benefits for as long as possible. Even without specific
36 concealment, he would be discouraged from releasing information so that the information gathering
37 period could be prolonged. In the interim, he would be permitted to keep excessive combined benefits
38 for the same disability.
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1 The evidence indicates that the Department calculated the offset in compliance with the intent
2 of both state and federal statutes. Mr. Broderson has had the benefit of full social security and
3 worker's compensation payments from 1980 until 1986. He has had the benefit of all state and federal
4 cost of living increases in the meantime, which by 1986 afforded him a yearly income of \$21,060.00,
5 greatly in excess of his prior salary. Although state cost of living increases will be taken into account in
6 future redeterminations of the offset (42 U.S.C. § 424a(f)(1) and 20 CFR § 404.408(k)), Mr. Broderson
7 will enjoy further federal cost of living increases in the future. He cannot now be heard to complain
8 that he did not insist upon having his worker's compensation benefits offset in 1980.
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10 After consideration of the Proposed Decision and Order and the Petition for Review filed
11 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
12 Decision and Order is supported by the preponderance of the evidence and is correct as a matter of
13 law.
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15 **FINDING OF FACTS**

- 16 1. On August 14, 1979 claimant filed an application for benefits with the
17 Department of Labor and Industries alleging the occurrence of an
18 industrial injury on July 19, 1979 while in the course of employment with
19 Lile International Companies. On August 24, 1979 provisional time loss
20 compensation benefits were commenced effective August 4, 1979 and on
21 September 11, 1979 a determination order was issued, paying time loss
22 compensation for the period beginning August 19, 1979.
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24 On January 4, 1982 the Department issued an order closing the claim with
25 a permanent partial disability award equal to 10% of the amputation value
26 of the right leg and 15% as compared to total bodily impairment for a back
27 impairment, paid at 75% of its monetary value. On January 14, 1982 the
28 claimant filed a protest with the Department. On August 13, 1982 the
29 January 4, 1982 order was held for naught and the claim was held open
30 for further treatment, with the permanent partial disability award to be
31 considered as an advance on future benefits.
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33 The Department issued further orders paying time loss compensation and
34 on June 25, 1986 the Department issued an order declaring that an offset
35 would be taken for social security benefits, reducing time loss
36 compensation to \$581.69 per month, effective July 1, 1986. On July 14,
37 1986 the claimant filed a protest with the Department.
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39 On October 31, 1986 the Department issued an order adhering to the
40 provisions of its order dated June 25, 1986. On November 21, 1986 the
41 claimant filed a notice of appeal with the Board of Industrial Insurance
42 Appeals. On December 19, 1986 the Board issued an order granting the
43 appeal subject to proof of timeliness, assigning it Docket No. 86 4201 and
44 directing that hearings be held on the issues raised by the appeal.
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2. Ricky Broderson sustained an industrial injury on July 19, 1979 while in the course of employment with Lile International Companies. He first became entitled to state time loss compensation benefits on August 4, 1979. He first became entitled to federal social security benefits in January of 1980.
 3. The Department of Labor and Industries first offset Mr. Broderson's time loss compensation benefits pursuant to RCW 51.32.220 effective July 1, 1986, reducing claimant's monthly time loss compensation payment to \$581.69. In calculating the social security reverse offer, the Department used the state and federal benefit levels in effect as of July 1, 1986. Mr. Broderson's state benefit level was \$1,168.00 per month as of July 1, 1986 and his federal benefit level was \$587.00 per month as of July 1, 1986.

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CONCLUSIONS OF LAW

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1. Claimant's appeal was timely filed and the Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter of this appeal.
 2. The action of the Department of Labor and Industries in reducing Mr. Broderson's time loss compensation benefits based upon his state and federal benefit levels as of July 1, 1986 was correct pursuant to RCW 51.32.220 and 42 U.S.C. § 424a.
 3. The order of the Department of Labor and Industries dated October 31, 1986 which adhered to the provisions of its prior order dated June 25, 1986 which reduced the claimant's time loss compensation to \$581.69 per month effective July 1, 1986 due to the claimant's receipt of social security benefits, is correct and should be affirmed.

29 It is so ORDERED.

30 Dated this 9th day of September, 1987.

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32 BOARD OF INDUSTRIAL INSURANCE APPEALS

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35 /s/ _____
36 SARA T. HARMON Chairperson

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39 /s/ _____
40 PHILLIP T. BORK Member