

Lique, Earl

[SOCIAL SECURITY RETIREMENT OFFSET \(RCW 51.32.225\)](#)

Calculation

In calculating the social security retirement offset where the worker has a dependent child, both the dependent child's time-loss compensation and federal retirement benefits are considered. However, these amounts are considered separately from the benefits provided to the worker and require separate offset calculations for the worker and the dependent child. *Citing Anderson*, 40 Wn.2d 210 (1952) and *Gassaway*, 18 Wn. App. 747 (1977). ...***In re Earl Lique*, BIIA Dec., 88 3334 (1990)** [*Editor's Note*: The Board's decision was appealed to superior court under Pierce County Cause No. 90-2-02984-6. *Overruled*, *In re Vernon Strand*, BIIA Dec., [92 1604](#) (1993).]

Scroll down for order.

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

1 **IN RE: EARL F. LIQUE**)
2)
3 **CLAIM NO. G-920873**)
4)
 DOCKET NO. 88 3334
 DECISION AND ORDER

5 APPEARANCES:

6
7 Claimant, Earl F. Lique, by
8 Casey & Casey, P.S., per
9 Gerald L. Casey and Carol Casey

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11 Employer, Fors Farms, Inc., by
12 L.W. Van Camp, Lay Representative

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Steve LaVergne, Paralegal; and
17 Loretta Lopez and Maureen A. Mannix, Assistants

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19 This is an appeal filed by the claimant, Earl F. Lique, on August 16, 1988 from an order of the
20 Department of Labor and Industries dated August 4, 1988 which adhered to the provisions of prior
21 orders of the Department dated December 17, 1987 and June 24, 1988, and determined that claimant
22 was not entitled to time loss compensation for the period of January 1, 1988 to June 30, 1988 due to
23 the social security retirement offset, and established a new rate of time loss compensation in the
24 amount of \$108.79, commencing July 1, 1988. The order dated December 17, 1987 had reduced the
25 rate of time loss compensation to zero, effective January 1, 1988, due to the claimant's receipt of
26 social security retirement benefits for himself and one child, and the order dated June 24, 1988 had
27 set a new monthly rate of time loss compensation of \$108.79, effective July 1, 1988, taking into
28 account the claimant's receipt of social security retirement benefits and the termination of his child's
29 social security benefits. **REVERSED AND REMANDED.**

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36 **PROCEDURAL AND EVIDENTIARY MATTERS**

37 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
38 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
39 issued September 14, 1989 in which the order of the Department dated August 4, 1988 was reversed
40 and the matter remanded to the Department with direction to adhere to the provisions of the order
41 dated December 17, 1987, but to pay the claimant time loss compensation benefits in the amount of
42 \$192.49 per month, less prior awards, effective July 1, 1988.

1 The Board has reviewed the evidentiary rulings in the record of proceedings. Exhibit No. 2 was
2 properly certified and authenticated pursuant to RCW 5.44.040 and is admitted to evidence. The
3 Department's objection to the admission of Exhibit No. 2 (Kennedy Dep. at 12) is overruled. We find
4 that no further prejudicial error was committed and all other evidentiary rulings are hereby affirmed.
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7 DECISION

8 This case involves various issues related to the Department's reduction in the rate of
9 compensation for temporary total disability due to offset for federal social security retirement benefits
10 of the claimant and the claimant's dependent child. The reduction in rate of time loss compensation
11 for persons receiving social security retirement benefits is required by the provisions of RCW
12 51.32.225.
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16 In addition to one issue which we further discuss below, claimant, Earl F. Lique, raises several
17 issues regarding the social security retirement offset upon which this Board has previously ruled.
18 These involve: the contention that RCW 51.32.225 does not apply to the claimant because he had a
19 vested right in the amount of pre-offset time loss compensation, based on principles of statutory
20 construction involving legislative intent and constitutional allegations; and, the argument that the offset
21 is invalid because the Department has not promulgated regulations governing the same pursuant to
22 the Administrative Procedure Act, Ch. 34.04 RCW. See, In re Lois Oakley, BIIA Dec. 87 3830 (1989).
23 In Oakley, we decided these issues in a manner which is adverse to Mr. Lique. They do not require
24 further discussion here.
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30 The remaining issue involves the actual calculation of the offset. As background we indicate
31 that Mr. Lique sustained an industrial injury on July 15, 1976. His rate of time loss compensation was
32 initially based upon a status of being married and having five dependent children. In December, 1987,
33 this status was corrected to properly reflect that claimant was married, with one dependent child, with
34 a corrected rate of time loss compensation to take effect on January 1, 1988. Exhibit No. 3.
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37 Mr. Lique last worked in April, 1981. He received social security retirement benefits for himself
38 and on behalf of his dependent minor child, beginning March, 1982, until July 1, 1988, when the
39 dependent child turned 18 and her social security benefits became payable directly to her. After July
40 1, 1988, Mr. Lique received social security retirement benefits to which he alone was entitled. When
41 the Department first applied the offset on January 1, 1988, the Department calculated a "total" offset
42 and began paying no time loss compensation based upon the understanding that the total of the social
43 security retirement benefits received by Mr. Lique for himself (understood to be \$432.00) and his
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1 dependent child (understood to be \$215.00) was \$647.00, which exceeded the time loss
2 compensation benefit rate of \$602.84.
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4 As is not uncommon in social security offset cases, whether under RCW 51.32.220 or RCW
5 51.32.225, the facts are extremely difficult to glean from the record. However, it is clear that the
6 \$432.00, \$647.00 and \$602.84 figures are all incorrect. The Department conceded after the
7 presentation of social security adjudicator Victoria Kennedy's testimony on June 28, 1989, that the
8 \$432.00 figure actually should be \$348.30, and this is substantiated by Exhibit No. 2.¹ Thus, the total
9 social security retirement benefits received by father and child which are applicable to offset time loss
10 compensation are \$563.30, not \$647.00.
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12 Furthermore, Ms. Kennedy incorrectly testified that the time loss compensation amount to be
13 offset was \$602.84. As Exhibit No. 3 indicates, the time loss compensation rate from January 1, 1988
14 through June 30, 1988 was \$529.14. As Ms. Kennedy correctly testified, two percent of the time loss
15 compensation rate is attributable to the child. See RCW 51.32.060. Thus, using the correct figures,
16 \$10.58 of the monthly time loss compensation rate represents the child's portion. Using the corrected
17 figures with the Department's calculation method, the total retirement benefit of \$563.30 would be
18 offset against the total time loss compensation rate of \$529.14, placing Mr. Lique in total offset for the
19 period of January 1, 1988 through June 30, 1988. The Department's proposed method is graphically
20 illustrated as follows:
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22	\$348.30	\$528.56
23	<u>+215.00</u>	<u>+ 10.58</u>
24	\$563.30	> \$529.14

25 Mr. Lique contends that the Department may not consider a minor child's entitlement to social
26 security benefits when calculating the offset required in RCW 51.32.225. He argues that, since the
27 minor child is not totally disabled, that child is not within the offset provisions as contemplated by our
28 legislature. He further attempts to support this argument by suggesting that the language "any worker"
29 in RCW 51.32.225(1) operates in a manner to exclude consideration of the minor child's social security
30 benefits, i.e., the minor child is not a "worker". We disagree with the contention that the minor child's
31 social security benefits play no role in calculation of the offset. The full text of the section which Mr.
32 Lique references reads as follows:
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¹ The Department's policy is to exclude all subsequent cost of living increases applicable to
the social security retirement benefit after the date of initial entitlement.

1 For persons receiving compensation for temporary or permanent total
2 disability under this title, the compensation shall be reduced by the
3 department to allow an offset for social security retirement benefits
4 payable under the federal social security, old age survivors, and disability
5 insurance act, 42 U.S.C. This reduction shall not apply to any worker who
6 is receiving permanent total disability benefits prior to July 1, 1986.
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8 RCW 51.32.225(1). (Emphasis added)
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10 Our reading of the quoted section as a whole does not support Mr. Lique's contention that the
11 minor child's social security benefits should not be considered in computing the offset. The operable
12 language with regard to applicability of the section is clearly " For persons receiving compensation for
13 temporary or permanent total disability" and "social security retirement benefits payable . . ." under
14 Title 42 U.S.C. (Emphasis added) These terms clearly include claimant's dependent child's benefits,
15 both state and federal, within the offset. In contrast, the sentence containing the language "any
16 worker" does not deal with general applicability; rather, the sole purpose of this sentence is to
17 establish a cut-off date, excluding certain workers who were receiving permanent total disability
18 benefits prior to July 1, 1986 from the application of the offset. We are thus convinced, by the plain
19 language of general operability contained in RCW 51.32.225(1), that the social security retirement
20 offset calculation should consider both state time loss compensation and federal retirement benefits
21 payable on behalf of minor children.
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23 However, the manner in which the Department calculated the offset in the present case is not
24 authorized by RCW 51.32.225. The Department may only offset the worker's social security benefits
25 against the time loss compensation benefits which would be payable to the worker if he had no
26 dependent child; and the Department may only offset the dependent child's social security benefits
27 against the additional time loss compensation benefits payable on account of the dependent child
28 status. The Department must calculate and take these offsets separately. This is graphically
29 illustrated as follows:
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\$348.30	<	\$518.56
\$215.00	>	\$10.58

Our analysis in this regard, as applied to invalidate the Department's method, is also further supportive
of our rejection of Mr. Lique's contention that his minor child's social security benefits should not be
considered at all.

1 Under Title 42 U.S.C., a child's benefits are a separate entitlement payable on behalf of, or to, a
2 child in the child's own right. See, 42 U.S.C. § 402(d), et seq., and 20 CFR § 404.350, et seq.
3 Likewise, there can be no doubt that a child's allocation of periodic benefits, whether related to
4 permanent total disability compensation under RCW 51.32.060 or to temporary total disability benefits
5 under RCW 51.32.090, are a separate entitlement of the child, whether paid directly to or on behalf of
6 the child. Anderson v. Dep't of Labor & Indus., 40 Wn.2d 210, 242 P.2d 514 (1952) and Gassaway v.
7 Dep't of Labor & Indus., 18 Wn.App 747, 571 P.2d 966 (1977). In Anderson, the Court ruled that the
8 Department had no right to correct mistakes as to the parent's pension at the expense of the child's
9 pension because "the child's pension is distinct from and not a part of the parent's pension as such".
10 Anderson, 40 Wn.2d at 215. Likewise, in Gassaway, the Court, citing Anderson, rejected the
11 plaintiff-appellant's contention that monthly benefits were to be divided equally among beneficiaries
12 and rather ordered benefits allocated consistent with the derivation under RCW 51.32.050(2). In so
13 holding, the Court observed that RCW 51.32.010 requires that any payments made on behalf of a
14 worker's natural children should be made to the person having legal custody. Gassaway, 18 Wn.App,
15 at 749-750.

16 The holdings of Anderson and Gassaway compel us to conclude that RCW 51.32.225, which
17 refers to "persons" receiving time loss compensation and social security retirement benefits "payable",
18 mandates two separate offset calculations in the present case. Mr. Lique and his dependent child are
19 separate "persons" who were entitled to separate time loss compensation and social security benefits.
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21 The result in this case is that for the period of January 1, 1988 through June 30, 1988, Mr.
22 Lique's child's social security retirement benefits of \$215.00 are offset against her time loss
23 compensation benefit of \$10.58, placing her in total offset for that period. Mr. Lique's own social
24 security retirement benefit of \$348.30 is offset against his portion of the time loss compensation rate,
25 i.e., \$518.26, resulting in a monthly time loss compensation entitlement of \$170.26 for the period of
26 January 1, 1988 through June 30, 1988. For the period commencing July 1, 1988, the Department
27 now concedes that Mr. Lique should receive time loss compensation at the rate of \$192.48 rather than
28 \$108.79. This is based on the Department's policy of not applying an offset against the child's benefit
29 when the child is receiving a separate check. We assume the difference between the rate of \$170.26
30 for January 1, 1988 through June 30, 1988 as compared with \$192.48 thereafter is attributable to the
31 state cost of living increase effective July 1, 1988.
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1 The Department order of August 4, 1988 must therefore be reversed and the matter remanded
2 to the Department with direction to pay claimant time loss compensation at the monthly rate of
3 \$170.26 from January 1, 1988 through June 30, 1988 and at the monthly rate of \$192.48 thereafter.
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5 In so deciding, we adopt from the Proposed Decision and Order Finding of Fact No. 1 and
6 Conclusion of Law No. 1. In addition, we make the following Findings of Fact and Conclusions of Law:
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9 **FINDINGS OF FACT**

- 10 2. Mr. Lique was not receiving Washington State permanent total disability
11 benefits prior to July 1, 1986.
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- 13 3. During the period of January 1, 1988 through June 30, 1988 claimant's
14 base entitlement to social security retirement benefits, exclusive of cost of
15 living increases, was \$348.30. During that same period, his minor
16 dependent child's base entitlement to social security retirement benefits,
17 exclusive of cost of living increases, was \$215.00.
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- 19 4. During the period of January 1, 1988 through June 30, 1988, claimant's
20 total monthly time loss compensation entitlement was \$529.14, based on
21 a status of married with one dependent child. Two percent of the \$529.14,
22 i.e., \$10.58, constituted claimant's child's portion of the total time loss
23 compensation rate.
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- 25 5. As of July 1, 1988, claimant's child had reached the age of 18 and was no
26 longer a minor. Thereafter, social security payments were made directly
27 to the child, not to Mr. Lique.
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- 29 6. As of July 1, 1988, the Department began to offset claimant's social
30 security retirement benefits, exclusive of his child's federal benefits,
31 against the claimant's time loss compensation entitlement.

32 **CONCLUSIONS OF LAW**

- 33 2. The social security retirement offset of RCW 51.32.225 applies to Mr.
34 Lique because he was not a worker receiving permanent total disability
35 benefits as of July 1, 1986. The offset applies with respect to the state
36 and federal benefits received by Mr. Lique on behalf of himself and his
37 minor child for the period of January 1, 1988 through June 30, 1988.
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- 39 3. The fact that the Department has not promulgated WAC's implementing
40 RCW 51.32.225 does not invalidate the offset.
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- 42 4. The Department incorrectly calculated the offset pursuant to RCW
43 51.32.225 for the period of January 1, 1988 through June 30, 1988 by
44 offsetting Mr. Lique's and his minor child's combined social security
45 retirement benefits against their combined state time loss compensation
46 benefits. The child's and the worker's state and federal benefits are
47 separate entitlements. The child's federal benefits of \$215.00 must be
offset against the child's time loss compensation entitlement of \$10.58,

1 placing the child in total offset from January 1, 1988 through June 30,
2 1988. The worker's federal benefits of \$348.30 must be offset against the
3 worker's time loss compensation entitlement of \$518.56 with the result that
4 Mr. Lique is entitled to a monthly time loss compensation payment of
5 \$170.26 for the period of January 1, 1988 through June 30, 1988.

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7 5. While the Department was correct in offsetting the claimant's social
8 security retirement benefits alone against the claimant's time loss
9 compensation as of July 1, 1988, the Department concedes that the
10 incorrect figure was used for the social security entitlement. Using the
11 correct figure of \$348.30, claimant's entitlement to time loss
12 compensation, after offset, is \$192.48 as of July 1, 1988, not \$108.79 as
13 directed in the Department order of August 4, 1988.
- 14 6. The order of the Department dated August 4, 1988, which adhered to the
15 provisions of orders dated December 17, 1987 and June 24, 1988, and
16 which established the rate of time loss compensation benefits as zero, for
17 the period of January 1, 1988 through June 30, 1988, and \$108.79,
18 effective July 1, 1988, is incorrect. The order of August 4, 1988 is
19 reversed and the matter remanded to the Department with direction to pay
20 claimant time loss compensation at a monthly rate of \$170.26 for the
21 period of January 1, 1988 through June 30, 1988 and at a monthly rate of
22 \$192.48 commencing July 1, 1988.

23 It is so ORDERED.

24 Dated this twenty-eighth day of March, 1990.

25 BOARD OF INDUSTRIAL INSURANCE APPEALS

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30 /s/
31 SARA T. HARMON Chairperson

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34 /s/
35 PHILLIP T. BORK Member