

FILED
JAN 05 2018
WASHINGTON STATE
SUPREME COURT

The Supreme Court No. 94241-2-Zbigniew M. Laskowski vs.

State of Washington

Department of Labor and Industries

Superior Court of Washington for Thurston County Cause No.15-02-02798-34

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES, Respondent

V.

ZBIGNIEW M. LASKOWSKI, Petitioner Pro Se

PETITIONER BRIEF

ZBIGNIEW M. LASKOWSKI

PETITIONER, PRO SE

PO BOX 6195

OLYMPIA, WA 98507

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I. INTRODUCTION

This case was proved beyond reasonable doubt during the first trial cross examination of the Department of Labor and Industries witness, Ms. Patricia Richardson by John Barnes, AAG on March 29, 2013.

When asked "Do you know what the current rate is, then?" Ms. Richardson responded with: "I view it before I came over here but I can't remember. It's more than the \$2,976. It's – I think he is getting \$3,100 something. I am not sure. That is just guesstimates."

These above sums are respectfully matching calculations of the ACE/Time Loss for the years 2012 and 2013 presented by the Petitioner below:

$50,196.90 \times 80\% = \$40,157.52$

$\$40,157.52 / 12 \text{ MONTHS} = \$3,346.46$

$\$3,346.46 - \$867 \text{ (SSD)} = \$2,479.46$

WASHINGTON STATE COLA:

YEAR 2006 $\$2,479.46 \times 3.5\% = \86.78

\$ 86.78

2007 $\$2,566.24 \times 5.445\% = \139.73

\$ 139.73

2008 $\$2,705.97 \times 5.018\% = \135.79

\$ 135.79

2009 $\$2,841.76 \times 3.432\% = \97.53

\$ 97.53

2010 $\$2,939.29 \times 1.939\% = \56.99

\$ 56.99

2011 $\$2,996.28 \times \text{NONE COLA} = \0

2012 $\$2,996.28 \times 3.6\% = \107.87

\$ 107.87

2013 $\$3,104.15 \times 3.4\% = \105.54

\$ 105.54

2014 $\$3,209.69 \times 2.016\% = \64.71

\$ 64.71

2015 $\$3,274.40 \times 4.168\% = \136.48

\$ 136.48

2016 $\$3,410.88$

The actual monthly ACE/Time Loss rate paid to the Petitioner at that time was \$2,166.95.

II. ASSIGNMENTS OF ERRORS

ASSIGNMENTS OF ERROR:
STATE OF WASHINGTON, BOARD OF INDUSTRIAL
APPEALS; PROPOSED DECISION AND ORDER;
DOCKET NO. 15 17652

NO. 1	1
NO. 2.....	1
NO. 3.....	2
NO. 4.....	2
NO. 5.....	2
NO. 6.....	3
NO. 7.....	3
NO. 8.....	3
NO. 9.....	3
NO. 10.....	4
NO.11.....	4
NO.12.....	4
NO 13.....	5
NO. 14.....	5
NO.15.....	6
NO. 16.....	6

No. 17.....	6
NO. 18.....	6
NO. 19.....	7
NO. 20.....	7
NO. 21.....	7
NO. 22.....	8

Issues Pertaining to Assignments of Error:

- NO. 1 The Claim AB 17747 didn't reopen till May 31, 2011
51.32.220 but not properly line up with 42 U.S.C. 424(a), 20 C.F.R.
404.408, RCW 51.32.225(2) and RCW 51.32.090
- NO. 2 Time loss rate set with accordance with RCW
- NO. 3 In this case offset is effective one month after the first
calculation not after the Department learns about it or kept on file
- NO. 4 The appeal rose from Department of Labor and
Industries (Department) Order dated November 02, 2011.
- NO. 5 Year 2012 is not the correct date
- NO. 6 The Petitioner Claim No. AB17747 didn't reopen until
May 2011
- NO. 7 The Claim No. AB 17747 was closed by the
Department of Labor and Industries (Department) On April
07, 2008 then reopen on May 31, 2011

NO. 8 The actual amount of retroactive payment-paid to the Petitioner from the \$15,907.41 was reduced to \$10,274.35 with the outstanding balance of \$5,633.06 been sent by the Employer directly the Internal Revenue Service

NO. 9 The recoument by the Department is allow but limited under authority of RCW 51.32.240(1)(b) and else

NO. 10 The Petitioner before and during the second trial requested the evidence of two pages of Department's witness testimony been submitted to show that burden of proof was meat once before with Department own testimony

NO.11 The Claim was close from year 2008 till 2011; the Department authority to take offset lays with the RCW 51.32.225(2)

NO. 12 42 U.S.C. 424a rather than RCW 51.32.220 because disability factor Involved

NO. 13 Several inconsistencies as to dates pertaining in this case including but not limited to: \$2,841.74, not \$2,479.46 is the rate for the year 2009; the effective date for the offset in this claim is November 02, 2011 by the authority of 42 U.S.C. 424a, and not under RCW 51.32.220 as the Board of Industrial Insurance Appeals ALJ Brain Watkins insists

NO.14 DI52150.080, Soc. Sec. Act 42U.S.C. 424a Sec. 224(f) regulates Triennial Redetermination; this section of the Order involve ambiguity

NO. 15 The overpayment never accrued in the amounts stipulated by the Board or the Department; six months collection is limited by the RCW 51.32.240(b) and because of overpayment amount for only \$274.40, not \$5,115.30; recalculation prompt eligibility to higher amount of Average Current Earning (ACE)

NO. 16 "The Department is in title to recoup an overpayment, if any, ..." the writer new the amount will change when additional \$15,907.41 will be use in new calculation

NO. 17 \$2,479.46 is wrong amount as stipulated above

NO. 18 Claim No. AB17747 wasn't eligible for Triennial Redetermination till year 2016 (please see the calculations presented by the Petitioner)

NO. 19 As of September 01, 2009, Petitioner's Time Loss (TL) rate was \$2,841.76, not \$2,479.46

NO. 20 There is more than great conviction that the Department collected overpayment in excess what own

NO. 21 The Department and Board of Industrial Appeals calculations are inconsistent with pertaining laws

NO. 22 The Department order dated May 08, 2015 is wrong and should be corrected.

Superior Court of Washington In and For Thurston County Cause
No. 15-2-02798-34;

“Declaration of Brian Watkins in response to Superior Court
Order directing Board of Industrial Insurance Appeals to
supplement the record”:

Assignments of Errors:

NO. 1 Page 2

NO. 2 Page 3

Issues Pertaining to Assignments of Error:

NO.1 From the middle of the page'2' “Mr. Laskowski...”
contrary to what ALJ Brian Watkins wrote in the first line,
suggesting April 13 and May 11, 2012 are the dates of appealed
orders; November 02, 2011 is the date of the appealed order with
other orders to follow. The obsession with the year 2012 came
from wrong interpretation of law to satisfy greed. The discussion is
lacking any legal background as to what possible rule the Board
follows. April 13, 2012 and May 11, 2012 aren't relevant in this
discussion

NO. 2 This part maybe informative but rather irrelevant in
calculation of the whole amount.

III. STATEMENT OF THE CASE

The second trial was a setup and manipulation, to the extent that the presiding ALJ Brian O. Watkins found very sincere when I warned seating next to me Ms. Patricia Richardson, the Department witness, that I may have to get up frequently without warning. The seats arrangement was very unusual consider how much protection the courts offer. The intimidation by John Barnes, AAG in the absence of the judge, but with the Court Reporter present was wrong. The Thurston County Superior Court Judge Hon. Gary Tabor accepted and entered the Finding of Facts and Conclusions of Law and Judgment in Cause No. 13-2-02092-8 on November 21, 2014. Some of the errors were corrected by John Barnes, AAG. The Thurston County Superior Court Cause No. 13-2-02092-8 was appealed in the Court of Appeals of the State of Washington, Division II Cause No. 47301-1-II. The negligence of Mr. John R. Connelly was reason for dismissal. In the follow up of Thurston County Superior Court Judgment Department of Labor and Industries issued Order on January 01, 2015 awarding Petitioner with higher Time Loss (TL) rate, in amount of \$2,479.46. This rate changed on February 17, 2015 to amount of \$2,692.12 per month. The Department does not present any calculations for the amount, except suggestion that Triennial Redetermination took effect.

The Department Order dated May 08, 2015 was appealed to the Board of Industrial Insurance Appeals Docket No. 15 17652. Brian O. Watkins, ALJ on July 12, 2016 in Proposed Decision and Order affirmed the Departments May 08, 2016 decision.

The facts, law and mathematics are misrepresented in July 12, 2016 Board Order.

Two laws are missing from ALJ Brian Watkins decision. RCW 51.32.225(2) and RCW 51.32.240(b) should be a part of this adjudication. The authority of RCW 51.32.225(2) delegates the Social Security offset calculation to be done under 42 U.S.C. 424a (7)(8), not as ALJ Brian Watkins suggests RCW 51.32.220 only. The RCW 51.32.240(b) would take care partly about the alleged overpayment, which was implemented incorrectly, do to adjudicator failure to consider information on the file.

In this claim, there is no excuse for six months recoupment because law limits its jurisdiction to the orders which aren't final yet as provided in RCW 51.52.050 and RCW 51.52.060

On the page '5' line 17 of Proposed Decision and Order ALJ Brian Watkins wrote: "Mr. Laskowski is bewildered that since the state gave COLAs to worker's compensation recipients in July 2010, July 2012, July 2013, July 2014, why the Department didn't increase his offset time-loss rate each year as each COLA occurred. But the evidence establishes that at no time in 2010, 2012, 2013, 2014, Mr. Laskowski time-loss compensation didn't exceed his 80%-of-ACE figure."

Farther on the same page the Board's ALJ Brian Watkins continued "As an evidence by Mr. Laskowski's own calculation in Exhibit 1, his pre-offset time-loss compensation rates didn't surpass his 80%-of-ACE figure until the 2015 cost of living adjustment."

These two quoted statements of WSBA licensed lawyer are part of the legal hoax the Assistant Attorney General John Barnes introduced it first. That became the standing issue when the Petitioner asked the Board to cross-examine Mr. John Barnes under oath.

The table of ACE calculation placed above shows two sums which represent ACE figure.

The \$2,479.46 is a sum without COLA added. The gap in of \$867, between \$2,479.46 and \$3,346.46 is a gap usually fill up by COLA. When the gap reaches the highest allowed by law in this Claim, equal of \$3,346,46, Triennial Redetermination can only increase the value, but never became less. COLA once applied became permanent factor.

The Social Security Act and the Disability Act are not only written as liberal documents, they were created to benefit injured workers, never punish or disadvantage.

The Court may notice that nobody attempts to discuss calculations prepared by the Petitioner.

The Department imposed overpayment when issuing November

02, 2011 Order in amount of \$5,115.30, of which \$3,803.48 was paid back before the claim closure.

The overpayment of \$275.64 for the 60 days which didn't become final yet is the only money own to the Department. ALJ Brian Watkins also alleges that the Thurston County Superior Court enter not clear enough language when addressing overpayment. Despite he could just contact the Department's attorney for the instruction, he reflexes on it as a Typographical error and hopes that will get self-corrected.

IV. ARGUMENT

The argument narrows to three elements:

1. The date of the first calculation on November 02, 2011, not September 01, 2009, authorized by 42U.S.C. 424a (7)(8) and RCW 51.32.225(2)
2. In assessing overpayment compliance with RCW 51.32.240(b)
3. The Court should use calculation of benefits presented by Petitioner in the absence of alternative, reliable source.

V. CONCLUSION

In the exhibits section of this Brief, the Petitioner will provide the Court with the amounts own to the

Petitioner.

January 05, 2018

Respectfully submitted,



Zbigniew M. Laskowski, Petitioner Pro Se

TABLE OF AUTHORITIES

TABLE OF CASES

JOSEL BIRRUETA v. DEPARTMENT OF LABOR AND INDUSTRIES OF
THE STATE OF WASHINGTON, NO. 92215-2; 2016.

CONSTITUTIONAL PROVISIONS

TITLE II – FEDERAL OLD – AGE, SURVIVORS, AND DISABILITY
INSURANCE, SEC. 203, 204, 205, 223, 224, 22

STATUTES

42 U.S.C. 424a

SSA – POMS: DI 52120.265

RCW 51.52.060, 050

RCW 51.32.240, 220, 225.

Certificate of Service

I certify that on January 5th , 2018, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this document to the attorney(s) of record for Plaintiff/
Petitioner X Defendant/Respondent All Other Parties of Record.

Attorney for Plaintiff/Petitioner
 Defendant/Respondent
 Other: _____

PRESENTING PARTY:

Sign: _____

Print/Type Name: **ZBIGNIEW M. LASKOWSKI**

WSBA # _____ (if attorney)

Address **PO BOX 6195**

City/State/Zip: **OLYMPIA/ WA/ 98507**

Attorney for:

Telephone: **(360) 918 4401**

Date: **January 5th , 2018**

**LIST NAMES, ADDRESSES & TELEPHONE NUMBERS
OF ALL PARTIES REQUIRING NOTICE**

**Name: THURSTON COUNTY SUPERIOR COURT
CLERK'S OFFICE**

Attorney for:

WSBA #: _____

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2000 LAKERIDGE DR. SW
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Telephone: _____

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SUPREME COURT CLERK**

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**Attorney for: OFFICE OF AG
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INC**

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WSBA #:

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Telephone:

EXHIBITS

DISCUSSION

JULY 1, 2011	\$3,134.10	TIME LOSS RATE ELIGIBILITY BEFORE SOCIAL SECURITY OFFSET
	- \$2,996.28	TIME LOSS RATE INTITELMENT AFTER SOCIAL SECURITY OFFSET
	\$137.82	MONTHLY OVERPAYMENT ACCURED
AUGUST, 2011	\$137.82	
SEPTEMBER, 2011	\$137.82	
OCTOBER, 2011	\$137.82	
NOVEMBER, 2011	+ \$137.82	
	(-) \$275.64	ACCORDING WITH RCW 51.32.240(b) IF CLERICAL ERROR ACCURES THE DEPARTMENT IS ONLY IN TITLE TO RECOVERY FROM ORDERS WHICH AREN'T FINAL YET (60 DAYS FORMULA APPLIES)
DECEMBER 01, 2011	\$2,996.28	
	- \$2,166.95	TIME LOSS RATE BASED ON A CALCULATION OF BENEFITS BEFORE THURSTON COUNTY SUPERIOR COURT DECISION; USED UTILL JANUARY 14, 2015
DECEMBER, 2011	\$829.33	
JANUARY 2012	\$829.33	
FEBRUARY 2012	\$829.33	
MARCH 2012	\$829.33	
APRIL 2012	\$829.33	
MAY 2012	\$829.33	
JUNE 2012	\$829.33	
	\$5,805.31	

JULY 1, 2012 \$3,104.15
 - \$2,166.95

JULY 2012 \$937.20
AUGUST 2012 \$937.20
SEPTEMBER 2012 \$937.20
OCTOBER 2012 \$937.20
NOVEMBER 2012 \$937.20
DECEMBER 2012 \$937.20
JANUARY 2013 \$937.20
FEBRUARY 2013 \$937.20
MARCH 2013 \$937.20
APRIL 2013 \$937.20
MAY 2013 \$937.20
JUNE 2013 \$937.20

\$11,246.40

JULY 01, 2013 \$3,209.69
 - \$2,166.95

\$1,042.74

JULY 2013 \$1,042.74
AUGUST 2013 \$1,042.74
SEPTEMBER 2013 \$1,042.74
OCTOBER 2013 \$1,042.74
NOVEMBER 2013 \$1,042.74
DECEMBER 2013 \$1,042.74
JANUARY 2014 \$1,042.74
FEBRUARY 2014 \$1,042.74
MARCH 2014 \$1,042.74
APRIL 2014 \$1,042.74
MAY 2014 \$1,042.74
JUNE 2014 \$1,042.74

\$12,512.88

MAY 01'15 – MAY 06'15	+ \$103.50
MAY 07'15 – MAY 11'15	+ \$86.25
DEC 01'11 – JAN 14'2015	+ \$3,803.48 AMOUT WRONGLY DEDUCTED
OCT 04'13	+ \$240.00

\$53,476.13 X 18.43% = \$9,855.65

APR'15 – SEPT'16 **INTEREST ONLY** + \$9,855.65

AS OF SEPTEMBER 2016	\$63,331.78	PRINCIPAL + INTEREST
	- \$41,997.56	PRINCIPAL

\$21,334.22 INTEREST ONLY

RCW 51.52.135

Worker or beneficiary entitled to interest on award—Rate.

(1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be.

[1983 c 301 § 1.]

DI 52120.265 Washington (WA) Workers' Compensation (WC)

Citations:

SSR 94-6 , Workers' Compensation Offset—Excluding Legal Expenses Incurred in Connection with Initial Award of Workers' Compensation Benefits—Washington
Washington State reduces its WC benefits if the disabled worker also receives Social Security disability insurance benefits (DIB). Since WC benefits are reduced (offset), rather than DIB, this is referred to as reverse offset or reverse jurisdiction (RJ).

A. WA WC types

There are four types of WC benefits payable under Washington State law.

SSA WC Type	State WC Type
Temporary Total (TT)	Time Loss Option 1 Vocational Plan Payments
Temporary Partial (TP)	Loss of Earning Power (LEP)
Permanent Total (PT)	Pension
Permanent Partial (PP)	Permanent Partial Disability

Washington State reduces (offsets) its Time Loss and Pension benefits if the disabled worker is also receiving Social Security retirement insurance benefit (RIB) or DIB. The State offset also applies to Time Loss or Pension benefits paid to the spouse and children living in the same household as the disabled worker. State law does not provide for offset of PP for the receipt of Social Security RIB or DIB. A permanent partial lump sum (LS) will cause offset of Social Security DIB.

B. WA WC important dates

The list below contains dates that are important to keep in mind when considering WA WC:

09/01/1975	Washington State reverse offset took effect
01/16/1981	SSA offset of PP took effect
09/01/1981	SSA offset of TT and PT took effect
01/01/1983	State extends offset from age 62 to 65 (not recognized by SSA)
07/01/1986	State offset of RIB took effect
06/01/1993	State TT payments switched from twice a month to a daily rate paid every 14 days
01/01/2008	State begins pilot program for Vocational Plan Payments
01/01/2012	State adds Structured Settlement Agreement option for workers age 55 and older

C. Processing WA WC offset cases

1. When to impose offset

- Impose offset for the retroactive period of the DIB award, and

- Impose offset beginning the month the number holder (NH) attains age 62 (use the full WC rate, not the State's offset rate).

2. When reverse offset applies

Do not impose offset effective the month after the calendar month of adjudication. For example, we award Social Security DIB to a disabled worker (30 years old) who is receiving Washington PT benefits. The worker's month of entitlement to DIB is 09/2011. The DIB claim is adjudicated 01/13/2012. DIB is offset 09/01/2011-01/31/2012 and RJ is effective 02/01/2012.

EXCEPTION: If the NH is already age 62, continue to offset at the full WC rate.

3. Verifying and excluding legal expenses

- State documents (including completed Form SSA-1709 (Request for Workers' Compensation/Public Disability Benefit Information) do not contain legal expense information.
- Verify possible legal expenses through the NH, attorney, or non-attorney. See DI 52120.265E in this section.

4. When to use the Washington State WC data sheet

If adjudicating a claim with WA WC or re-imposing offset at age 62:

- Complete, date and mail or fax the Washington State WC Data Sheet. The carrier or self-insurer must receive notice timely.
- Retain a copy of the completed data form in the electronic folder, non-disability repository for evidentiary documents (NDRed) or Paperless.

D. How Washington makes WC payments

This section describes how WA makes WC payments under State law and provides instructions on how to treat these payments for SSA offset purposes.

1. Payers

- State of Washington Department of Labor & Industries (L&I)
- Self-insured Employer (indicated by WC claim number with prefix "S" or "T" or "W"), or
- Third Party Administrator (i.e., a service organization hired by the self-insured employer)

2. Periodic payments

WC Type	How Awarded and Paid	State offsets for receipt of SSA?	Amount for SSA Offset
Time Loss (TT)	Awarded monthly (30 days) and paid every two weeks at daily rate X 14*	<ul style="list-style-type: none"> • Yes • Based on either DIB or RIB • SSA offsets retroactive payment per DI 52120.265C.1. 	<ul style="list-style-type: none"> • Multiply the biweekly rate by 2 1/6 to get the monthly amount or enter the biweekly amount in Interactive Computation Facility (ICF) using Frequency code E. • If a monthly TT rate is shown on Form SSA-

			<p>1709 or on a State document, divide the monthly amount by 30, round to the nearest penny, and then multiply by 7 for a weekly rate for offset (round to the nearest penny).</p> <ul style="list-style-type: none"> • See Case Example 1 in DI 52120.265K in this section.
<p>Vocational Plan Payments (TT under Option 1)</p>	<ul style="list-style-type: none"> • Pilot program 1/1/2008-6/30/2016 • Under approved plan, worker has two options: <ul style="list-style-type: none"> ◦ Option 1: Worker receives Time 	<ul style="list-style-type: none"> • Yes (Option 1 only) 	<ul style="list-style-type: none"> • Multiply the biweekly rate by 2 1/6 to get the monthly amount or enter the biweekly amount in

Loss (TT) payments (see above) while actively and successfully participating in plan.

- Option 2: Worker declines further Vocational Rehabilitation services, claim is closed, and worker receives an amount equal to six months of Time Loss (in lieu of TT—see DI 52110.005).

- Paid biweekly under either option; option 2 may be converted to a LS.

ICF using Frequency code E.

<p>Loss of Earning Power (LEP) (TP)</p>	<ul style="list-style-type: none"> • Awarded monthly (30 days) and usually paid to correspond with the employer's paycheck periods • Payable when TT claimant returns to work with only partially restored earning power • Payments are processed after L&I verifies the gross earnings paid for the calendar month 	<p>No</p>	<p>Add together the payments paid for the calendar month and enter the total as a monthly amount in ICF using Frequency code M.</p>
<p>Pension (PT)</p>	<ul style="list-style-type: none"> • Awarded and paid monthly (on or about the 15th of each month) • May be reduced because a survivor annuity option was elected (effective 07/01/1986) • May be reduced for prior PP 	<ul style="list-style-type: none"> • Yes • Based on either DIB or RIB • SSA offsets retroactive payments per DI 52120.265C.1. 	<ul style="list-style-type: none"> • Use the monthly rate (round to the next lower dime). For ICF input, enter the actual monthly rate using Frequency code M.

- | | | | |
|--|--|--|--|
| | | | <ul style="list-style-type: none">• See Case Example 2 DI 52120.265K in this section.• If the pension was reduced because of a survivor annuity election, use the reduced amount received by the NH per DI 52150.035.• For Pension awards involving prior PP LS awards, see DI 52120.265H in this section. |
|--|--|--|--|

*Prior to 06/01/1993, L&I made TT payments twice a month; insurance carriers and self-insured employers made TT payments biweekly. To determine a monthly amount follow DI 52150.035. (For periods prior to 06/01/1993, use the monthly TT rate as shown on Form SSA-1709 or on L&I document as the monthly amount.)

3. LS payment

WC Type	How Awarded and Paid	State Offset?	Amount for SSA Offset
Permanent Partial Disability (PP)	<ul style="list-style-type: none"> • LS • May specify a monthly rate • May be paid in installments 	No	<ul style="list-style-type: none"> • Prorate the LS award following the instructions in DI 52150.060. Use the specified monthly rate, if shown. • If PP is paid in installments, do not use the installment payment amounts for purposes of proration. See Case Example 3, DI 52120.265K in this section.

NOTE: Do not offset PP WC for any period prior to 01/16/1981. SSA's decision to begin imposing offset of PP WC is based on a change in Washington State law. Claims adjudicated prior to the change in SSA's policy were identified in normal case processing and had offset imposed with the current operating month or, if later, the month after the month of notice in Notice Provision cases per DI 52170.040.

A claimant/claimant's attorney may negotiate a voluntary LS settlement agreement (sometimes referred to as a "sidebar agreement") directly with the employer/insurance carrier to settle the WC claim. The agreement usually includes language where the claimant agrees to an immediate claim closure, agrees not to protest or appeal the closing order, and acknowledges that the settlement resolves all issues relating to the WC claim. These agreements are subject to offset whether or not they require approval of the Washington State WC board, and whether or not Washington State law considers the payment to be payment of weekly WC. Follow proration instructions in DI 52150.060

Prorating a Workers' Compensation/Public Disability Benefit (WC/PDB) Lump Sum Settlement.

4. Structured settlement agreement

WC Type	How Awarded and Paid	State Offset?	Amount for SSA Offset
Structured Settlement Agreement	<ul style="list-style-type: none"> • Approved by the Board of Industrial Insurance Appeals (BIIA) • Worker must be age 55 or over (age requirement drops to age 53 effective 1/1/2015 and age 50 effective 1/1/2016) • Optional initial LS followed by periodic payments, usually paid monthly, but not more often than every two weeks. • Cannot include an amount for 	No	<ul style="list-style-type: none"> • Prorate the initial LS using regular LS proration procedure; treat periodic payment rates and periods as specified in the agreement and actually paid per DI 52150.065A.

	<p>future medical benefits</p> <ul style="list-style-type: none"> • Claim is closed in most cases; worker may still receive medical treatment under the claim • Board may approve a reasonable attorney fee limited to 15 percent of the total award amount. 		
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As of January 1, 2012, State law (RCW 51.04.063) changed to include a new WC option for injured workers. The new option is Claim Structured Settlement Agreement. In order to be eligible for the new option, the injured worker must be at least 55 years old as of January 1, 2012 AND have an accepted L&I claim that is at least six months old. When the injured worker receives the structured settlement, they receive a LS award and relinquish any further rights to L&I benefits or payments.

5. Sequence of payments by type

The sequence in which WA makes TT, PT and PP payments can **vary**. Generally, the payments follow one of the patterns shown below. If a worker received both PT and TT payments, the TT payments always precede the PT payments.

- Time Loss (TT) followed by PP

- Time Loss (TT) followed by PP followed by gap(s) followed by Time Loss (TT) followed by pension (PT)
- Time Loss (TT) followed by pension (PT) (possible gaps and PP)
- PP alone with no TT

6. Cost-of-living adjustments (COLAs)

WA pays a cost-of-living increase each July 1 for TT and PT benefits. The annual increase became effective 07/1984 under State law. The table below shows the COLA percentage increases from 1990 to the present:

Effective Date	Percent	Multiplier
07/01/2016*	2.633	1.02633
07/01/2015*	4.168%	1.04168
07/01/2014*	2.016%	1.02016
07/01/2013*	3.4%	1.034
07/01/2012*	3.6%	1.036
07/01/2011	No COLA	
07/01/2010	1.939%	1.01939
07/01/2009	3.432%	1.03432
07/01/2008	5.018%	1.05018
07/01/2007	5.445%	1.05445
07/01/2006	3.5%	1.035
07/01/2005	0.6%	1.006
07/01/2004	2.251%	1.02251
07/01/2003	1.9%	1.019
07/01/2002	0.9%	1.009

Effective Date	Percent	Multiplier
07/01/2001	3.59%	1.0359
07/01/2000	8.4%	1.084
07/01/1999	7.8%	1.078
07/01/1998	6.6%	1.066
07/01/1997	5.25%	1.0525
07/01/1996	4.255%	1.04255
07/01/1995	2.152%	1.02152
07/01/1994	0.703%	1.00703
07/01/1993	6.963%	1.06963
07/01/1992	5.718%	1.05718
07/01/1991	4.829%	1.04829
07/01/1990	3.955%	1.03955

*For dates of injury on or after July 1, 2011, the TT or PT COLA is not effective until the second July 1st after the date of injury. For example:

Scenario #1 - WC date of injury 06/30/2011 – first TT or PT COLA is **07/01/2012**.

Scenario #2 - WC date of injury 07/01/2011 (one day later than Scenario #1) – first TT or PT COLA is **07/01/2013**.

The following rules govern how the increases are determined and paid:

- All TT & PT recipients are eligible for a full COLA increase, regardless of when benefits began.
- The COLA percentage is added to the current benefit amount and the result is rounded to the nearest penny.
- TT COLA increases are payable immediately; PT COLA increases first appear in the August 15 check, which will include the difference due from July 1.

7. Third party

Generally, when a third party settlement is awarded in WA WC, the third party reimburses L&I for any WC payments already made. L&I will adjust the WC payments by withholding future payments until the settlement amount is fully recovered. Offset does not apply in this situation to the extent L&I was repaid by the third party per DI 52105.010. See case Example 4, in DI 52120.265K. in this section.

E. Excludable expenses (see DI 52150.050)

1. Attorney fees

Payment of attorney fees is always the responsibility of the disabled worker in WA WC cases. The State will not normally account for or set attorney fees, except when approving Structured Settlement Agreements (see DI 52120.265D.4. in this section). The State may pay benefits directly to the attorney who will deduct legal fees and disburse the balance to the worker. Therefore, always verify the amount of attorney fees through the NH or attorney. Prior to the ruling, we excluded legal expenses only when WC benefits were awarded on appeal. This change in position was effective 01/31/1989.

Under WA WC law, an attorney may charge a reasonable fee of not more than 30 percent of the increase in the WC award secured by the attorney's services. Social Security Ruling SSR 94-6 included in the definition of "increase" those initial awards that increase the amount of the WC from zero to the amount awarded.

2. Medical expenses

WA WC cases rarely involve medical expenses because State law provides for direct payment of medical expenses by the WC payer.

F. Reverse offset

Since 09/1975, Washington WC law has provided for a reduction of TT and PT WC payments due to the receipt of Social Security DIB. This is a recognized reverse offset plan. For more information on reverse offset, see DI 52105.001.

- State law provides that offset may not be imposed until the State (L&I):
 1. Receives notice from SSA that the disabled worker is receiving Social Security benefits; **and**
 2. Notifies the worker of the offset of the L&I benefit.
- L&I applies offset beginning the month after notification and does not retroactively apply offset. We remove offset the month following the month of adjudication.
- L&I uses the same basic formula as we do in applying offset, limiting the total amount of WC and Social Security benefits to the higher of total family benefit (TFB) or total WC or 80 percent average current earning (ACE). For example, for a record with HA only, entitled 05/1999 with a primary insurance amount (PIA) of \$1289.20, total monthly WC of \$2,000.00, and 80 percent ACE of \$2611.20, L&I will calculate an "offset" WC payment of \$1322.20 (\$2611.20 minus \$1289.00 monthly benefit payable (MBP)).

NOTE: The instructions in this section apply to cases adjudicated **09/01/1981 or later**. For cases adjudicated **before 09/01/1981**, do not offset for any month after 08/1975 when the NH received TT or PT WC.

1. Applying reverse offset when adjudicating a claim

- a. Offset TT and PT WC from the first possible month of offset up to and including the full calendar month of adjudication.
- b. Reverse offset applies beginning with the month after the calendar month of adjudication and continues through the month prior to the month of attainment of age 62.

- o Payments under the Critical Payment System (CPS) do not constitute adjudication.
 - o A delay in processing due to exceptions, etc. will not change the month of adjudication.
- c. To adjudicate a claim via MCS, see the processing instructions in DI 52120.265G. in this section.
- d. When adjudicating a claim with WA WC, send the Washington State WC Data Sheet to L&I or the self-insured employer. **It is important to send the data sheet at the point of adjudication as L&I rely on timely and accurate notification from SSA to impose State offset. Also, notify L&I that offset resumed and provide the amount of the monthly benefit amount (MBA) payable after offset.**
- e. Tell the NH to notify the nearest Social Security office if he or she receives a PP settlement or if PP payments begin.
- f. Diary for 4 months prior to age 62. If you process the claim via MCS, enter a 042 diary and update the due date to 4 months prior to age 62. Complete the DIAR screen to explain the reason for the diary.

See case Examples 2 and 4, DI 52120.265K in this section.

2. Applying reverse offset when an appeal reverses DIB cessation

Offset TT and PT WC from the effective month of DIB reinstatement up to and including the month in which adjudicative action is taken to resume DIB.

3. Applying reverse offset when WC payments start after DIB awarded

- SSA's WC offset applies from the first possible month of offset through the month of the award action that initiates DIB payments (and at age 62). Once SSA starts DIB payments, reverse jurisdiction applies. Therefore, if a beneficiary, who was not receiving WC payments at the time of

adjudication of the DIB award, begins receiving either TT or PT payments, offset will not apply until age 62.

- Code the case RJ and do not adjust benefits already paid. There is no need for a State data sheet in this situation.

4. Re-imposing offset at age 62

In 03/1982, the State extended its offset provision from age 62 to 65 for workers who are awarded TT or PT WC effective 01/01/1983 or later. Since this change in State reverse offset law was not in effect by 02/18/1981, we do not recognize the change for DIB offset purposes for cases where the DIB onset is 03/01/1981 or later and the DIB month of entitlement (MOE) is 09/1981 or later.

RJ ends the month prior to the month the NH attains age 62.

- RETAP will produce an alert in addition to any manual or MCS diary.
- Resume offset beginning the month the NH attains age 62 at the full WC rate that would have been payable had there been no State offset. Offset continues up to, but not including, the month the NH attains age 65 before December 19, 2015. Effective December 19, 2015 or later, WC offset termination extends from age 65 to full retirement age (FRA). See 2015 Amendment in DI 52101.005.
- For instructions on protected benefit increases during the RJ period and when to establish a new ACE and TFB in age 62 reimposition cases, see DI 52105.001G.2.
- Notify L&I that offset resumed and provide the amount of the MBA payable after offset. Fax or mail the Washington State WC Data Sheet to L&I. Include in Remarks "Offset resumed at age 62. MBA = \$\$\$\$\$.cc." See case Example 2, DI 52120.265K in this section.

5. RIB benefit considerations

WA applies offset against both DIB and RIB. When SSA re-imposes offset from age 62-65, the State treats this as a reduction in the amount of disability benefits and adjusts the WC benefits accordingly. Once SSA offset ends at age 62 (for pre-1981 cases); at age 65 before December 19, 2015 (in the 1981 amendments); and at FRA effective December 19, 2015 or later; L&I will adjust the State offset for the increase in the SSA payment.

- Do not routinely secure RIB claims from NHs age 62-65, as their DIB entitlement will usually continue to be more advantageous than the RIB claim.
- NHs can contact L&I if they want to know the effect on their specific L&I benefit amount.
- If a NH files for RIB in this situation, normal protective filing rules apply, i.e., there is no protective filing by the mere fact of attaining age 62.
- Do not delay re-imposing offset at 62 when developing a RIB claim.

NOTE: In a small number of cases where the NH has been simultaneously entitled to DIB and WC for an extended period of time, the offset computation figures used by L&I and SSA may differ. In these cases, the NH may benefit from electing RIB. Prior to electing RIB, the NH should contact L&I to determine any changes that may occur in the WC benefit.

6. Re-imposing offset retroactively

As explained in DI 52120.265F.4. in this section, we re-impose offset at age 62 using the full WC rate without reduction for State offset. Sometimes we discover after the fact that we failed to re-impose offset at age 62. Include AURORA paragraph PCWCP5003 in the notice when adjusting payments retroactively to age 62.

Prior to 04/26/2005, if the WC claim was closed (PT Pension awarded, or closure with or without PP), L&I was barred from adjusting WC payments and therefore could only report to SSA the WC benefits "as paid," not the full unreduced rate that would have been payable without State offset. In this

situation, we used the COLA chart in DI 52120.265D.6 in this section, to convert the last known full rate.

On 04/26/2005, WA amended State law to allow L&I or a self-insurer to retroactively adjust closed WC claims if SSA assesses an overpayment and the worker submits a written request for adjustment. The legislation became permanent effective 07/22/2007. L&I can now provide us with the full WC rate when requested and adjust State offset as needed to pay additional benefits.

7. When to protect benefit increases at age 62

DIB increases due to COLAs, PIA recalculations or recomputations, or the imposition of a combined family maximum that occur during the reverse offset period are only protected for offset computation purposes, if offset was considered for at least one month before the first reverse offset month.

For instructions on protected benefit increases during the RJ period and when to establish a new ACE and TFB in age 62 reimposition cases, see DI 52105.001G.2.

8. When we failed to remove offset in a reverse offset case

If we erroneously continued to offset benefits instead of removing offset (RJ) when we adjudicated a DIB award:

- Verify that the WC payments are either TT or PT.
- Remove offset retroactively effective the month after the calendar month of adjudication of the award per DI 52120.265F.1. in this section. **Note:** Reverse offset only applies up to age 62 and only when the NH is receiving TT or PT.
- Send the **Washington State WC Data Sheet** to L&I or to the self-insured employer.

NOTE: Do not verify that a reduction was actually applied by the State. It is sufficient that the plan provides for reverse offset. See DI 52105.001E.1.

G. Processing claims involving WA WC via MCS

When you answer "Y" to the mandatory question "REVERSE JURISDICTION INVOLVED?" on the MCS Common WC/PDB Claim Data (WPCL) Screen, you must enter a start date for reverse offset. Since the start date for reverse offset for WA depends on the claim adjudication date, the FO will not know the start date at the time you input a disability claim involving WA periodic payments through MCS.

Process disability claims involving WA WC where TT or PT payments have been awarded as follows:

1. Input the following on the WPCL Screen:

- o Is reverse jurisdiction involved? Y
- o If Yes, Start (MMDDCCYY) _____. (Input the Date of Filing plus 3 months.)
- o No Stop Date is required. However, a stop date equal to age 62 may be used.

2. Establish an issue of "WPCL" on the DW01 screen.

3. Do not input Non-Medical Completion (SPORT) or Auto-Initiate on these claims.

4. When a claim is approved, update the START date on the WPCL screen to reflect the first of the month following the month the DECI screen is completed.

5. Update the DW01 to reflect receipt of the WPCL issue and indicate the reverse jurisdiction start month in the REMARKS column.

6. Enter a 042 diary on the DECI screen and change the due date on the DIAR screen to 4 months prior to age 62.

7. If the WC/PDB data must be input via ICF WC/PDB (e.g., due to an MCS processing limitation), enter "Y" under "REVERSE JURISDICTION INVOLVED (Y/N)" and the appropriate first of the month START date on the ICF WCCD screen. For more information on ICF entries, see MSOM ICFT2 031.012.

H. When the State revises WC payments

Sometimes L&I send us an amended or corrected form SSA-1709. This usually happens when a worker's closed WC case is re-opened on appeal. When a Pension is awarded, L&I may reopen and reverse a prior PP LS award. In this case, L&I must revise the periodic payment and LS information that they previously furnished us. L&I will attempt to redistribute the LS to any gaps in periodic payments then prorate the remainder of the LS by reducing the monthly Pension amount.

If we previously applied offset based on the now-voided PP award, process the amended form SSA-1709 as follows:

1. Use the amended Form SSA-1709 to rework the WC offset.
2. Use the unreduced PT "Pension" amount as the WC rate effective with the date of the first PT payment.

I. Verifying WC

For verifying WA WC payments, which includes contact information, follow the link for the State of Washington Department of Labor and Industries.

J. Washington State WC data sheet

Washington State WC Data Sheet. (titled "Washington State Workers' Compensation Social Security Benefit Notification and Data Form"). When there is an allowance on a claim involving Washington State L&I, the technician adjudicating the claim must complete the Washington State WC data sheet and fax the document to WA L&I using the fax number indicated on the form.

K. Case examples

Access the following links to case examples:

1. Determining Time Loss (TT) Rates – COLA Involved

2. Pension (PT) Award
3. Permanent Partial (PP) LS Award – Paid in Installments
4. Third Party Settlement – Deducted from WC Payments

L. References

- DI 52101.005 - Social Security Amendments with Workers' Compensation/Public Disability Benefits (WC/PDB) Offset Provisions
- DI 52105.001 - Reverse Offset Plans
- DI 52105.010 - Third Party Settlements
- DI 52150.025 - WC/PDB Offset Ending Date
- DI 52150.030 - Considering the RIB Option
- DI 52150.035 - Determining the WC/PDB Amount Used to Compute Offset
- DI 52150.050 - Excludable Expenses
- DI 52150.060 - Prorating a WC/PDB Lump Sum
- DI 52145.015 - Retention of WC/PDB Proofs
- MSOM ICFT2 031.012 ICF WC/PDB Offset - Claim Data (WCCD)
- Washington State Department of Labor & Industries

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0452120265>

DI 52120.265 - Washington (WA) Workers' Compensation (WC) -

08/05/2014

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REDUCTION OF BENEFITS BASED ON DISABILITY

SEC. 224. [42 U.S.C. 424a] (a) If for any month prior to the month in which an individual attains retirement age (as defined in section 216(l)(1)) [251]—

- (1) such individual is entitled to benefits under section 223, and
- (2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(g)), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 218, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 210,

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 215(b) as in effect prior to January 1979) used for purposes of computing his benefits under section 223, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a)(1) and 211(b)(1)) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a)(1) and 211(b)(1)) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year.

(b) If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a).

(c) Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 203, but before deductions under such section and under section 222(b).

(d) The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223, and such law or plan so provided on February 18, 1981.

(e) If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give

rise to reduction under this section, he may require, as a condition of certification for payment of any benefits under section 223 to any individual for any month and of any benefits under section 202 for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 205(i).

(f)(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a); and

(B) the ratio of (i) the national average wage index (as defined in section 209(k)(1)) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of \$1 shall be reduced to the next lower multiple of \$1.

(g) Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h)(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this title, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as he may require to carry out the provisions of this section.

[251] P.L. 113-295, §201(a), struck out "the age of 65" and inserted "retirement age (as defined in section 216(l)(1))", effective after December 19, 2014 to any individual who attains 65 years of age, EFFECTIVE DATE.— subsection (a) shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after December 19, 2014.

RCW 51.32.240

Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Recoupment of overpayments by self-insurer—Penalty—Appeal—Enforcement of orders.

(1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor

and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW **51.52.050**. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW **51.32.190** or **51.32.210**, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW **51.32.190**(3) or by the department pursuant to RCW **51.32.210**, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter **34.05** RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter **34.05** RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW **51.32.040**, any self-insurer requested by

the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

- (i) Willful false statement; or
- (ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the

warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by a method for which receipt can be confirmed or tracked accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer.

[2011 c 290 § 6; 2008 c 280 § 2; 2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

NOTES:

Effective date—2008 c 280: "Section 2 of this act takes effect January 1, 2009." [2008 c 280 § 6.]

Application—2008 c 280: See note following RCW 51.52.050.

Application—2004 c 243 § 7: "Section 7 of this act applies to willful misrepresentation determinations issued on or after July 1, 2004." [2004 c 243 § 9.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

RCW 51.32.225

Reduction in total disability compensation—Offset for social security retirement benefits.

(1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6) and with any other procedures established by the department to administer this section. For any worker whose entitlement to social security retirement benefits is immediately preceded by an entitlement to social security disability benefits, the offset shall be based on the formulas provided under 42 U.S.C. Sec. 424a. For all other workers entitled to social security retirement benefits, the offset shall be based on procedures established and determined by the department to most closely follow the intent of RCW 51.32.220.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section.

[2006 c 163 § 1; 1986 c 59 § 5.]

NOTES:

Effective date—1986 c 59 § 5: See note following RCW 51.32.090.

RCW 51.52.135

Worker or beneficiary entitled to interest on award—Rate.

(1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be.

[1983 c 301 § 1.]

RCW 51.32.220

Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions.

(1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal.

[2007 c 255 § 1; 2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

NOTES:

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such

reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

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January 5th, 2018

Ms. Susan L. Carlson

Supreme Court Clerk

The Supreme Court of the State of Washington

Temple of Justice

Po Box 40929

Olympia, WA 98504-0929

RE: **Zbigniew M. Laskowski v. DLI**
Supreme Court No. 94241-2
Superior Court No. 15-2-02798-8

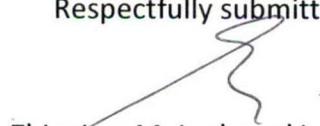
Dear Ms. Carlson:

Please find attached for filing: The Petitioner Brief.

If you should have any questions, please contact me at

(360)918-4401.

Respectfully submitted,


Zbigniew M. Laskowski, Petitioner Pro Se