

NO. 73561-6-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Owen M Henderson,
Petitioner

v

State of Washington, Department of Labor and Industries
Respondent.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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BRIEF OF PETITIONER

OWEN M. HENDERSON

Pro Se

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Everson, WA. 98247

360-220-2394

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TABLE OF AUTHORITIES

Cases

Allison v. Department of Labor and Industries
66 Wn. 2d v263, 401 P. 2d982 (1965).....

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Marley v. Department of Labor and Industries
125 Wn. 2d 533, 538,886 P.2d 189 (1994).....

Ravsten v. Department of Labor and Industries
108 Wn. 2d 143, 149, 735 P.2d 235 (1987).....

Ruse v. Department of Labor and Industries
138 Wn. 2d 1, 977 P. 2d 570 (1999).....

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63 Wn. App. 405, 407, 819 P. 2d 399 (1991).....

Stertz v. Department of Labor and Industries
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Vasquez v. Department of Labor and Industries
44 Wn. App. At 383 citing Saltis 94 Wn. 2d 889,621 P. 2d 716 (1980).

Vasquez v. Department of Labor and Industries
44 Wn. App. 379, 382-84, 722 P. 2d 854(1986).....

STATE STATUTES

RCW 51.04.010.....

RCW 51.08.178.....

RCW 51.32.220.....

RCW 51.32.225.....;

RCW 51.52.110.....

RCW 51.52.116.....

I. NATURE OF THE CASE

This is a worker's compensation case involving establishing the Amount of income that is to be used to set offset, if such is legal. The Department of labor and Industries (L&I), The Board of Industrial Insurance Appeal (BIIA) and the Superior Court of Whatcom County, all Have ignored the orders issued and finalized, the RCW's of the State of Washington and have failed to show the authority needed to set offset in this case.

In addition several error's, omissions and inefficiencies have taken place In this case and the Dept. continues to practice said procedure to this day.

II. STATEMENT OF CASE AND ASSIGNMENT OF ERROR

Owen Henderson sustained an on the job injury on March 15, 1991 and has been on temporary time loss (TLC) until the 15th of November 2015, at which time I was pensioned.

On March 15, 1991 I was injured on the job and began receiving TLC until November 15, 2015, I then began receiving pension funding.

On May 25, 1995 the Dept. issued a Payment order that set my monthly earnings when I worked at \$5,886.63 per month., CP 0006, CP 0110. This followed an investigation by the Dept. as a result of a complaint by the new owner of Advance Properties, my then employer. I had not worked long for the new owner and went to Preview Properties Inc. to work. I sent in to the Dept. a 1099 IRS form for 1990 in the amount of \$70,639.35 and my draw schedule for the same year from Advance Properties. Said draw schedule and 1099 were received Jan, 18, 1994 And are part of my file, CP 0027, CP0028.

On June 15, 2011 the Dept. issued a Direct Order, DO for offset and requested I provide proof of income greater than \$58,034.40. I then provided the Dept. with a 1099 for 1989 I the amount of \$77,696.60 notified them that I was not receiving any monies from SSA. I then received an order canceling the order of march 15, 2011, CP 0028,. The Judge the admitted both orders to the case by exhibit. The result of the order of July 13, 2011 order was my income had been raised to \$6,466.67 per month and I was qualified to receive both SSA and TLC with no off set. CP 006.

On March 2, 2012 I received a Notice and Decision stating I again was not entitled to receive my retirement and TLC unless I could show a gross income over \$45,666.00, CP 006. I responded by supplying a 1099 for 1989. I requested from the Dept. a definition of earnings as per the Policy and Procedure manual of the State of Washington, (P&P) and what gave the Dept. jurisdiction to do such from the P&P?

I did not receive a reply to the earnings definition, but I did receive a recorded message on my home recorder from Mr. Donald C. Roman Stating that he had no P&P that governed his actions. CP 0007, CP 0067, CP0068.

A. DEPARTMENT OF LABOR AND INDUSTRIES ACTION:

It is clear that my claim has been accepted and the Dept. has issued many orders over the 25 years plus of this claim. Prior to the order of May 25, 1995 the Dept. conducted an investigation into my earned income and on May 25, 1995 issued an order setting my income at \$5,886.63 per month. CP 006, CP0116. This order became final with no appeals.

On June 15,2011 the Dept. issued an order requesting proof of income in excess of \$58,934.48 to be entitled to receive my SSA retirement, CXP 0110, CP 0113. I send it a 1099 form for year 1989 showing the amount of \$77,696.60, CP 0112. I also notified the Dept. that at that time I was not receiving said retirement from SSA.

On July 13, 2011 the Dept. issued an order that canceled the order of June 11, 2011. CP 0115

On March 2, 2012 the Dept. issued yet another order requesting I show gross income over \$45,666.00 This is the order that is on appeal. CP 0107.

B. BOARD OF INDUSTRIAL APPEALS (BIIA) ACTIONS

The BIIA accepted the appeal of order dated March 2, 2012 and proceeded to trial.

Judge Harada was named the Judge. And had the responsibility to prepare and present to all parties the Jurisdictional History. I did not receive such until we had begun the hearing. Not only did I receive such late but said document was not complete CP 0027, CP0028. The Judge talked of adding the left out documents by exhibit but then refused such as he seemed to get side tracked from our discussion of such on CP 0027 and CP0028, as he only allowed the addition of four Documents. This was a gross error on the part of the Judge.

Judge Harada refused to allow me to play the recording I had from Mr. Roman stating that He, Mr. Roman had no P&P governing his actions. Judge Harada, stopped the hearing and stated he did not want to hear this and then instructed the Ast. Attorney General, John Barnes to instruct me how to introduce this into evidence. A very gross error.

Mr. Barnes was then given the duty to depose his client and stole my thunder by asking if his client had left said recording? CP0067. Off course Mr. Roman could not remember as he said ‘ he left several messages ‘ Mr. Roman did state, CP 0067 that the Dept. does not have a policy manual for Social Security offset?

Judge Harada asked me at the beginning of the trial if I was representing myself of my own free will and I replied NO. as the State of Washington set the amount of money an attorney could receive from such a case and I could not find one willing to accept such. I had paid an attorney for such services but he was disbarred and died. I also informed the Judge that part of my disability was mental and that I was not comfortable representing myself. CP 0013.

Judge Harada did allow the order of June 15, 2011 to be entered as an exhibit, but he referred to such as a letter not and order. CP 0028. This was an error on his part.

C. THE SUPERIOR COURTOF WHATCOM COUNTY, JUDGE SNYDER erred in his determination of RCW 51.32.110 about time to file the appeal. He also erred was in stating that he believed the Dept. had P&P and that they followed them. This inspite the only testimony was by Mr. Roman and he stated there were no P&P for him. CP 0072, CP 0067. This was the only testimony other than my claim that the Department had no jurisdiction.

D. My attorney, Brian Wright, erred by not submitting his trial brief to the court until the session had begun. Judge Synder commented on this in his decision, RP

F. Both the BIIA and Superior Court erred by accepting the figures provided by the Dept. Mr. Roman took the figures of earned income from a SSA form that is only for SSA use. He did not follow the rules of evidence, CP 0073, He received such from me and was also told that said document was not correct. CP0073. Mr. Roman reports to use the figures from said document knowing full well that said document is only showing the amount of income subject to FICA taxes., for the year 1989 this amount cannot be any higher than \$ 46,000.00. This was the highest amount of income I would have been required to pay FICA tax on and is not the amount of my earned income nor is it the gross income requested by the Dept. Mr. Roman seems to be confused by the difference of gross income, vs. net income, and adjusted gross income. CP 0060, CP 0079.

III. SUMMARY OF ARGUMENT

The Dept. stated that the authority for their actions is RCW 51.32.220 and RCW 51.32.225. This case is a somewhat unusual case under Title 51 as Owen Henderson never received SSA disability benefits. Most people who receive SSA retirement benefits have at some point prior, also received SSA disability benefits which at retirement age are converted into retirement benefits. RCW 51:32:225 clearly shows that there is a distinction between these people, CP 0293

Subsection (2) distinguishes between people whose eligibility for SSA retirement benefits is immediately preceded by eligibility for SSA disability benefits. Those whose retirement benefits are not immediately preceded by SSA disability benefits, is where I fit in. The benefits I received from SSA are solely based on what I paid into the system over my life time. It is not calculated based on , or is it awarded, based on a disability. It is only, by virtue of what I paid into the system over my life time.

IV. ARGUMENT

In this case in particular there is a discrepancy between how SSA calculates earnings and how the Dept. calculates my earnings. Most important is the Dept. only requested gross income .

Generally speaking, the individual, upon receipt of both SSA benefits and TLC benefits is limited to 80 percent of what is the combined benefits limit. It is 80 percent of the highest years earnings or what is called ACE, (average current earnings) and is calculated by federal law.

Federal law does not offset retirement benefits, only disability benefits. There is no federal statute guiding the Dept. to calculate earnings for the purpose of a retirement benefit and the gist of the argument presented is that the State of Washington should be bound by their own determination of an individual's wages for purpose of calculating the combined benefits.

The federal definition is based on the income on which FICA taxes were paid, the Stat of Washington definition is not.

In the State of Washington definition here, there is a final and binding order from the Dept. establishing wages of \$ 5,886.83. CP 0114. Said order is one issued on May 25, 1995. Following this the Dept. issued another order that changed said income to \$6,466.67 on July 13,2013, CP0115.

What the Dept. did was, instead of capping my income at 80 percent. Under the federal definition, that figure is lower than my time loss compensation rate. So the Dept. took a dollar for dollar offset for my receipt of SSA benefits, after the Dept. had told me that I was entitled for said benefits. CP 0115. The total I would from the combination is the same I would receive without the SSA retirement benefit.

This is legally incorrect where the offset is exclusively a product of state law. There is o federal law for retirement benefits and if an entity is going to offset federal, (the receipt of federal insurance benefits against the receipt of state disability benefits), then that entity should be bound by its own order. The Dept. first stated my income to be \$5886.63 per month.

Another issue with the state law is that RCW:51:32:225 presented to the BIIA, for individuals such as myself, where the SSA benefits were not preceded by disability benefits. The Dept. is obligated to issue rules and procedures by statute to implement that sort of offset. The Dept. states they have no such policy or procedures for such action, CP 0072

No administrative code. No WAC, no policy or procedure exists. There is a general intent in the statute to take that offset in these cases basically with the intent of the offset statute overall taken into account, but the Dept. is directed to establish policies and procedures to implement this by said RCW claimed to give authority, CP 0072. The only thing offered by the Dept. is the testimony of Mr. Roman and he states he has no P&P. CO 0072. The trial Judge erred by stating in his decision that he believed the state had such P&P and followed such. RP trans script. The court is to only take the evidence provided to the BIIA, not create such for the Dept.

No policy or procedure exists, so essentially individuals such as me are stuck trying to navigate a legal landscape where there are no guidelines for them and perhaps , an individual such as me is surprised and confused when the Dept. issues an order setting my wages at the time of injury and then they come back and state my wages for purpose of their now use are completely different. I have always been told that if not appealed an order is final , CP 0115.

So, in the non-existence of P&P , this essentially leaves the Dept. in a bad place, where I do not have any guidance or knowledge of what is going to happen if they determine that I had reached retirement age when I was told by Dept. order that I was entitled to said benefits. CP0115.

Another issue is the finding that I missed the dead line to file an appeal in the Superior Court of Whatcom County. The trial judge stated that I failed to read the RCW that governs this issue. It is very clear that the time of response was set to start when I received the mailing, not when it was mailed, CP 0296.

Both the Dept. and the Superior Court held that such time begins when said form is mailed. This has been dealt with directly in the case law of Vasquez v. Department of Labor and Industries. This particular case states that the time period to appeal runs from the individual's receipt of the board order to the date the individual places the notice of appeal in the mail.

The Dept. has not shown what date I received the Board's order, it only shows the date the Dept. or the board received it. That date is not relevant to determining the time period and again under the aforementioned Vasquez case, substantial compliance with this rule was ruled to be sufficient to invoke the Superior Court appellate jurisdiction as the Superior Court in these Title 51 cases, only have appellate jurisdiction.

VIII. CONCLUSION

Even with the errors, it is truth that the authority of RCW.51:32:220, RCW, 51:32:225 and the Federal law 42 USC section 424a do not pertain to my situation as I have never been on SSA disability. I therefore ask the Court of Appeals to direct the State of Washington to honor the contract and orders that are final and to refund me the monies that have been withheld and or take from me in said offset.

Signed  Date: April 20, 2016

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ProSe

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No. 73561-6-1

**The Court of Appeals
Of the
State of Washington**

Owen M. Henderson)

Petitioner)

V)

Dept. of Labor & Industries)

State of Washington)

Respondent)

No. 73561-6-1

Declaration of Service

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COURT OF APPEALS
STATE OF WASHINGTON
2016 APR 25 PM 12:19

I certify under penalty of perjury under the laws of the State of Washington that on this date, Owen M. Henderson, sent by certified mail, return receipt requested, the Brief of Petitioner, Declaration of service to Labor & Industries, to the Court of Appeals at the address below..

Dated April 20, 2016

Court of Appeals, State of Washington

Division 1, One Union Square

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Everson, WA. 98247 360-220-2394

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Owen M. Henderson

Appellant

v.

Washington State, Dept.

Of Labor and Industries

Respondent

Declaration

of Service

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I served said Brief of Appellant. Declaration in Support and this Declaration of Service to all parties on the record as follows, via First Class U.S. Mail. Certified, prepaid to:

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Dated this day April 20, 2016



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