

FILED
SUPREME COURT
STATE OF WASHINGTON
2/4/2020
BY SUSAN L. CARLSON
CLERK

98153-1

FILED
COURT OF APPEALS
DIVISION II

2020 FEB -4 AM 10:50

STATE OF WASHINGTON

BY NS
DEPUTY

ZBIGNIEW M. LASKOWSKI v. STATE OF WASHINGTON

DEPARTMENT OF LABOR
AND INDUSTRIES

THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CAUSE NO. 16-2-03591-34

WASHINGTON STATE COURT OF APPEALS, D. II NO. 53064-3-II

THE SUPREME COURT OF STATE OF WASHINGTON NO. 96147-6

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES, Respondent

V.

ZBIGNIEW M. LASKOWSKI, Petitioner Pro Se

PETITION FOR DESCRETIONARY REVIEW

ZBIGNIEW M. LASKOWSKI

PETITIONER, PRO SE

PO BOX 6195

OLYMPIA, WA 98507

(360) 918 4401

TABLE OF CONTENTS

I.	INTRODUCTION.....	3-4
II.	ASSIGNMENTS OF ERRORS AND ISSUES PERTAINING TO IT:	5-10
A.	UNPUBLISHED OPINION OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II DATED JANUARY 7, 2020 IN CASE NO. 53064-3-II ZBIGNIEW M. LASKOWSKI, APPELLANT V. DEP'T OF LABOR & INDUSTRIES, RESPONDENT.	
III.	STATEMENT OF THE CASE.....	11-17
IV.	ARGUMENT.....	17-19
V.	CONCLUSION.....	19

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

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

STATUTES

42 U.S.C. 424a, SEC. 202, 223, 224

SSA – POMS: DI 52120.265, DI52150.080, DI52150.020

RCW 51.04.060

RCW 51.52.060, 050

RCW 51.32.075, 220, 225, 240

I. INTRODUCTION

Petitioner in this case became disable from industrial disease due to his claim-related medical conditions.

Petitioner requests review in this workers compensation case on appeal from the Board of Industrial Insurance Appeals ("BIIA").

The issue in this case is calculation of time loss rate after reversed social security offset applied. DI 52120. 265 Washington (WA) Workers' Compensation (WC), RCW 51.32.220.

Establishing Petitioner's correct time loss rate is vital because sets the rate of disability compensation for the live of this claim and this claim's eligibility for annual cost of living adjustment (COLA).

In year 2015 Washington State Department of Labor and Industries reached settlement out of court with U.S. Department of Justice in none-English speaking injured workers complains demanding access to equal justice by providing translators in workers compensation claims.

The 2015 agreement, on a contrary, that Industrial Insurance Act ("IIA") passed in 1911 is a "great compromise" between employers and employee, omitted in its nature availability of legal advice or guidelines for blacklisted, under and unrepresented workers.

Farther, acknowledging that the injured worker's hitherto remedy had "been uncertain, slow and inadequate", the legislature provided for "sure and certain relief for workers, injured in their work, and their families and dependents regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation." RCW 51.04.010.

“[T]he guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in a favor of the worker.”
Dennis v. Dep’t of Labor & Indus., 109 Wn. 2d 467, 470, 745 P.2d 1295 (1987).

Unfortunately, that is not the case in Claim AB 17747. Thru the whole year 2006, right after opening this claim, employer, Air Van Lines, Inc. (official sponsor and carrier for Washington State Huskies) when keeping the Petitioner/Claimant on salary paid only 66% out of 100 % of time loss benefits. And to finish strong, at the beginning of year 2007 Air Van Lines, Inc. provided W-2 form leaving its employee/Petitioner/ Claimant, single without dependent, with only 33% of original wages. That was partially solved 6 years later in Thurston County Superior Court Case No. 13-2-02092-8 which added approximately \$16,000.00 to Petitioner’s wages.

14 years later with same malice the Court of Appeals of the State of Washington, Division II in its Unpublished Opinion dated January 07, 2020 in Zbigniew M. Laskowski v. Washington State Department of Labor and Industries omitted and misinterpreted *Frazier v. Dep’t of Labor and Industries*, RCW 51.32.220(4), RCW 51.32.075 and DI 52120.265 to unlawfully take advantage of disable worker compensation, adding to a misery *Birgen v. Dep’t of Labor and Industries* (2015).

II. ASSIGNMENTS OF ERRORS

NO.1 PAGE 2, LINE 4 "The Department....in 2010"

NO.2 PAGE 2-3, LINES 5-2 "In August 2009...through June 3. 2011"

NO.3 PAGE 3, LINES 8-11 "On remand, ...\$50,196.90 for 2006."

NO.4 PAGE 4, LINES 2-3 "Many of ...briefed."

NO.5 PAGE 4-5, LINES 12-8 "Our review ...the superior court."

NO.6 PAGE 5, LINES 9-11 "Laskowski's We disagree."

NO.7 PAGE 6-7, LINES 19-7 "But Laskowski ...,186 Wn. App.851,
859, 347 P.3d 503 (2015)."

NO.8 PAGE 7-8, LINES 8-4 "Laskowski also appears ...has occurred.
RCW 51.32.220(2)."

NO.10 PAGE 8, LINES 5-8 "Here, the Department ...argument
fails."

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS

NO.1

Claim AB 17747 was not reopened until June 2011. After 13 months and failed IME examination, after intervention of Petitioner's attending physician Dr. Mark Wentworth, the claim was allowed for medical care and time loss benefits. Lump sum payment of time loss was paid to Laskowski with delay of the it for over one year. Three (3) different employees of the State of Washington Department of Labor and Industries signed off on it

to ensure correctness of the amount.

NO. 2

The overpayments in Washington State workers' compensation are governed also by properly issued notice of reduction.

RCW 51.32. 220(4).

In *Frazier v. Department of Labor and Industries* in part II. Notice Requirement for offset states as follow: "Because the dating and mailing of notice on May 31, 1994, was not sufficient to give notice that same date, the Board properly found that Frazier did not receive notice of the offset until June 1994 and, thus, the Department was not entitled to an offset in June 1994. But the notice that Frazier received in June 1994 was adequate to allow the Department to take an offset after that date, pursuant to RCW 51.32.220(4). *See Porter*, at 410, 3 P .3d 229. Thus, the Board properly allowed the Department to reduce any benefits it might pay to Frazier after July 1, 1994, by the amount of social security benefits he had received after December 1, 1993, the date the Department became entitled to take the offset under RCW 51.32.220(2). Consequently, the trail court did not err when it affirmed the Board's decision on this issue."

In part IV. Order of "overpayment" of *Frazier v. Department of labor and Industries* the order stipulates farther as follow: "The

facts here are distinguishable in that the Board based its decision upon interpretation of the same statutes at issue before the Department. The Department found that it could appropriately take the offset from the lump sum payment made in June 1994 pursuant to RCW 51.32.220 and .225. On appeal, the Board looked to these statutes to determine if such an offset could indeed, be made from the lump sum payment.

When the Board determined that Frazier could not have received the May 31, 1994, notice until some time in June, it concluded that the Department could not implement the offset until July 1, 1994, the month after the proper provision of notice, pursuant to RCW 51.32.220(4). The Board then observed that subsection (2) and (3) of this statute specifically provided for this circumstance. These subsections state that, in the event of an overpayment of benefits, the department (1) may only recover for overpayments for the previous six months, (2) must immediately *229 notify the claimant of the overpayment and the intent to recover it, and (3) must recover an overpayment from future benefits. RCW 51.32.220(2), (3).

In this case, *Zbigniew M. Laskowski v. Department of Labor and Industries*, the Department not only failed to recover the overpayment from the lump sum paid to Laskowski when

reopening claim in June 2011 (13 months after attending physician filed for opening of the Claim AB 17747), but allowed the time run for another six (6) months till November 2, 2011, to catch up with the provisions of statute RCW 51.32.220, giving notice accordingly, with RCW 51.32.220(4) on November 2, 2011 but not realizing at the same time that every and each time loss payment order issued, once every 14 days, of the time loss benefits in period between June 2, 2011 to December 1, 2011 reached and became final after 60 days, except last four (4) payments retroactively count from December 1, 2011. and of course, all payments after that which are not a part of this ruling. RCW 51.32.240, RCW 51.52.050, RCW 51.52.060.

NO. 3

Program Operations Manual System for DI 52120.265 Washington (WA) Workers Compensation (WC) in subsection 6. Cost-of-living adjustment (COLA), on pages 12-13 [*Exhibit 1*] provides specific historical data for COLA payments since 1990 when benefits are subject to Social Security offset. There is not prejudice in these instruction as to whom the Cost of Living Adjustment should be paid to support this Court suggested absence of COLA in Washington State Workers Compensation.

NO. 4

This court takes unusual pleasure to comment on the Petitioner being blacklisted by the State of Washington in the effort of hiring legal representation in Claim AB 17747, including but not limited that various courts have been petitioned for appointment of qualified attorney.

NO. 5

This Court maybe omit or didn't notice that Hon. James Dixon allowed himself to have ex-parte communication with AAG John Barnes, representing Dep't of Labor and Industries in this matter and then when issuing verbal order allowed himself to comment on it "I don't know nothing about this law". (*Please see verbatim report of proceedings in electronic version.*)

If these acts of ex-parte communication by professionals with legal background still makes the Department of Labor and Industries prevailing party in this matter, the Court of Appeals, Division II should make appropriate reference of existing laws supporting such behavior. (*unethical*)

NO. 6

This court owns to itself to familiarize yourself with Program Operations Manual for DI 51120.265 and stop revoking the obvious fraud in *Birgen v. Dep't of Labor & Indus.*

NO. 7

Demagogy should not be part of the laws this Court is quoting in defense of *Birgen v. Dep't of Labor & Indus.* Previously Department of Labor and Industries in various writings introduced the same fraudulent assumption calling it "High Ace Figure". The Petitioner briefed the courts on the eligibility of this claim for COLA but this court decided to embrace fraud in *Birgen v. Dep't of Labor & Indus.*

Because RCW 51.32.220 and 42 U.S.C. Sec. 424(a) "controls the calculations of benefits for a claimant who also receives social security disability benefits", doesn't means prohibits them.

[Exhibit 2]

There is not language in these statues suggesting that COLA should be prohibited, other than this Court's attempt to rewrite them, what legislation shall do it as a designated government branch.

NO. 8

Please see explanation of issues pertaining to errors 1 & 2.

NO. 9

This Court to avoid clash of the laws with its own believes didn't quote even ones RCW 51.32.220(4) thru the entire opinion.

Significant and wonder "why".

III. STATEMENT OF THE CASE

These calculations of the Time Loss in Claim AB 17747:

$$50,196.90 \times 80\% = \$40,157.52 \text{ (80\% OF ANNUAL AVAREGE CURRENT EARNINGS-ACE)}$$

$$\$40,157.52 / 12 \text{ MONTHS} = \$3,346.46 \text{ (80\% OF MONTHLY ACE)}$$

$$\$3,346.46 - \$867 \text{ (SSD)} = \$2,479.46 \text{ (MONTHLY ACE RATE AFTER DEDUCTION OF SSD)}$$

WASHINGTON STATE HISTORICAL C O L A (COST OF LIVING ADJUSTMENT) DI 52120.265:

YEAR 2006	\$2,479.46	X	3.5%	=	\$86.78
	\$ 86.78				
2007	\$2,566.24	X	5.445%	=	\$139.73
	\$ 139.73				
2008	\$2,705.97	X	5.018%	=	\$135.79
	\$ 135.79				
2009	\$2,841.76	X	3.432%	=	\$97.53
	\$ 97.53				
2010	\$2,939.29	X	1.939%	=	\$56.99
	\$ 56.99				
2011	\$2,996.28	X	NONE COLA	=	\$0
2012	\$2,996.28	X	3.6%	=	\$107.87
	\$ 107.87				
2013	\$3,104.15	X	3.4%	=	\$105.54
	\$ 105.54				
2014	\$3,209.69	X	2.016%	=	\$64.71
	\$ 64.71				
2015	\$3,274.40	X	4.168%	=	\$136.48
	\$136.48				
2016	\$3,410.88				

The actual monthly Time Loss rate paid to the Petitioner after social security offset deduction began November was \$2,166.95.

JULY 1, 2011	\$3,134.10	TIME LOSS RATE ELIGIBILITY <i>BEFORE</i>
		SOCIAL SECURITY OFFSET
	- \$2,996.28	TIME LOSS RATE INTITELMENT <i>AFTER</i>
		SOCIAL SECURITY OFFSET
<hr/>		
	\$137.82	MONTHLY OVERPAYMENT ACCURED
AUGUST, 2011	\$137.82	
SEPTEMBER, 2011	\$137.82	
<hr/>		
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 UTIL
		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	
<hr/>		
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
	<hr/>
	\$11,246.40

JULY 01, 2013	\$3,209.69
	- \$2,166.95
	<hr/>
	\$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
	<hr/>
	\$12,512.88

JULY 01, 2014 –	
DEC. 31, 2014	\$3,209.69
	- \$2,166.95
	<hr/>
	\$1,042.74

JULY 2014	\$1,042.74
AUGUST 2014	\$1,042.74
SEPTEMBER 2014	\$1,042.74
OCTOBER 2014	\$1,042.74
NOVEMBER 2014	\$1,042.74
DECEMBER 2014	\$1,042.74
	<hr/>
	\$6,256.44

JAN 01, 2015 –	
JAN 14, 2015	\$1,108.75
	<hr/>
JAN 15, 2015 –	
JAN 28, 2015	\$1,256.36
	<hr/>

JAN 29, 2015 –		
APRIL 30, 2015	\$3,209.69	
	\$2,692.12	
		\$517.57
FEBRUARY 2015	\$517.57	
MARCH 2015	\$517.57	
APRIL 2015	\$517.57	
		\$1,552.71
MAY 1, 2015 –		
MAY 6, 2015	\$538.42	
MAY 7, 2015 –		
MAY 11, 2015	\$448.70	
DEC. 1, 2011 –		
JAN 14, 2015	\$3,803.48	AMOUNT WRONGLY DEDUCTED FROM TIME LOSS PAYMENTS/ \$100.00 PER MONTH

The Claim AB 17747 didn't reopen till May 31, 2011.

In this claim offset is effective one month after the first offset was calculated by the Department in Order dated November 02, 2011, not after the Department learns about it or kept on file. (Sec.224. [42 U.S.C. 424a] (7)), RCW 51.32.220(4).

The Highest Year of Earnings amount was fixed and set by the Thurston County Superior Court Judge Hon. Gary Tabor in the order dated November 21, 2014 to rise to \$50,196.90 from \$34,289.49. By adding disputed amount of \$15,907.41 monthly average current earning (ACE) rise from \$4,051.46 to \$4,183.07 ($\$50,196.90 / 12$ months = \$4,183.07)

The six months delay following the reopening of Claim AB 17747 on May 31, 2011 till November 02, 2011 it is a trap the Department set up for gain of ill profits in the amount of \$5,115.30. Department's wrong calculations are broader and reaching back to November 2011 and extending to present because new

calculations issued don't include cost of living adjustment (COLA). Claim AB 17747 was closed from April 2008 through May 31, 2011, therefore, no benefits were paid to the Laskowski.

RCW 51.32.220: "For person receiving compensation for temporary or permanent total disability pursuant of the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established to 42 U.S.C. Sec. 424a." Sec. 224(7)(8) [42 U.S.C. 424a] instructs as follow:" the total of the benefits under section 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 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"

The RCW 51.32.220(4) derived from 42 U.S.C. Sec. 424a 224(7)(8) explains date when actual reduction should take effect, which is different from the date when the Department of Labor and Industries received the information from Social Security and kept on file.

The law allows for first Triennial Determination to take place 3-years after offset was first determinate. In this case because the first offset calculation date was November 02, 2011, first Triennial Determination was due in November 2015.

Claim No. AB17747 wasn't eligible for Triennial Redetermination till

year 2015 when new COLA (cost of living adjustment) supposed to be added on July 01, 2015. For the first time the Time Loss rate would increase above accepted 'ceiling' in this claim set for \$3,346.46 (please see the calculations presented by the Petitioner). New calculation should always increase the rate of Time Loss, never decrease according to DI52150.080 and Social Security Act Sec. 224(f).

In accordance with RCW 51.32.240(b), if clerical error accrues the Department shall be only in title to recovery from orders which aren't final yet (60 days formula applies.)

Explanation that the department didn't know about it that the Petitioner was receiving Social Security Disability benefits since 2009 is another self-denial, consider that these facts were pointed several times to the case manager Ms. Suzette Slipper by the claimant, when petitioned for reopening of the claim in early 2010.

Recoupment of the \$3,800.00 of previously deducted by the Department from time loss payments to claimant should be credited back to him.

The Thurston County Superior Court Judge Hon. Gary Tabor accept and enter the Finding of Facts and Conclusions of Law and Judgment in Cause No. 13-2-02092-8 on November 21, 2014. In the follow up of Thurston County Superior Court Judgement Department of Labor and Industries issued Order on January 01, 2015 awarded 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 without any explanation.

The Department did 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.

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

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

COLA once applied became permanent factor of all calculations.

The Court shall take a note that the Department doesn't disputed prepared by the Laskowski calculations.

IV. ARGUMENT

The Court of Appeals. Division II, Hon. Worswick wrote on page 7 of Unpublished Opinion dated January 7, 2020 for Court of Appeals of the State of Washington, Division II, Case No. 53064-3-II:

"These annual adjustments are referred to as COLA's. However, under RCW 51.32.220, 42 U.S.C. § 424(a) controls the calculation of benefits for a claimant who also receives social security disability benefits. And under 42 U.S.C. § 424(a), Laskowski's offset was calculated using his 80%-of-ACE figure and not by using his time loss compensation rate. This is because the 80%-of-ACE figure was higher than the time loss compensation rate.⁴ 42 U.S.C. § 424(a) does not provide for present value adjustment to an ACE figure.⁵ *Birgen v. Dep't of Labor & Indus.*, 186 Wn. App. 851, 859, 347 P.3d 503 (2015)."

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, his pre-offset time-loss compensation rates didn't surpass his 80%-of-ACE figure until the 2015 cost of living adjustment."

These two above statements, first by Hon. Worswick, then second by ALJ Watkins, contradict each other. The only common characteristics for both of them is fraud.

Similar statements are part of the illegal hoax which AAG John Barnes used as well. That was the reason why Petitioner asked the Board to take sworn testimony from John Barnes, AAG.

Steve Vinyard, AAG and John Barnes, AAG are same two lawyers who represented Department of Labor and Industries for Washington State Court of Appeals, Division II in Birgen v. Dep't of Labor and Industries (2015) which is driven by fraud also and shall be reversed.

The argument narrows to four elements:

1. The date of the first calculation on November 02, 2011 authorized by 42U.S.C. 424a (7)(8), RCW 51.32.225(2) and RCW 51.32.220(4), not September 01, 2009, to assure

compliance.

2. Abolishment of RCW 51.32.240(b).
3. The Court shall use calculation of benefits presented by Laskowski in the absence of the alternative calculations by the Department.

V. CONCLUSION

The Department's orders of November 02, 2011, February 17, 2012 and May 08, 2015 are incorrect and shall be reversed.

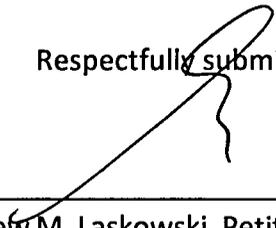
The Board of Industrial Insurance Appeals order dated August 18, 2016 upholding Proposed Decision and Order dated July 12, 2016, both shall be reversed.

The Thurston County Superior Court findings of Fact, Conclusions of Law and Judgment issued on June 22, 2018 in Cause 16-2-03591-34 shall be reversed and money own by the Department should be paid with 50% penalty as foreseen by RCW 51.32.240(5)(a).

The Court of Appeals of the State of Washington, Division II Unpublished Opinion Case No. 53064-3-II, dated January 7, 2020, Zbigniew M. Laskowski v. Dep't of Labor and Industries shall be reversed and remanded for new trail.

DATED, February 2, 2020

Respectfully submitted,



Zbigniew M. Laskowski, Petitioner Pro Se

FILED
COURT OF APPEALS
DIVISION II

2020 FEB -4 AM 10: 50

STATE OF WASHINGTON

BY W
DEPUTY

Certificate of Service

I certify that on February 03, 2020, 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: **February 03, 2020**

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

Name: THE SUPREME COURT OF
THE STATE OF WASHINGTON

Attorney for: SUPREME COURT CLERK

WSBA #:

Address: TEMPLE OF JUSTICE
PO BOX 40929
OLYMPIA, WA 98504-0929

Telephone:

Name: STEVE VINYARD, AAG

Attorney for: OFFICE OF

ATTORNEY GENERAL

WSBA #: 29737

Address: 7141 CLEANWATER DR. S.W.
PO BOX 40121
OLYMPIA, WA 98504-0121

Telephone: (360) 586-7715

Name: WASHINGTON STATE
COURT OF APPEALS
DIVISION II

Attorney for: CLERK'S OFFICE

WSBA #:

Address: 950 BROADWAY, SUITE 300
TACOMA, WA 98402

Telephone:

Name: AIR VAN LINES, INC

Attorney for:

WSBA #:

Address: 2340 130TH AVE N.E., #201
BELLEVUE, WA 98005-1763

Telephone:

RECEIVED

FEB 04 2020

Clerk of Court of Appeals

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Washington State Court of Appeals, Division II

950 Broadway, Suite 300

Tacoma, WA 98402

RE: **Zbigniew M. Laskowski v. DLI**
Superior Court No. 16-2-03591-34
Court of Appeals, D.II No. 53064-3-II
Supreme Court of the State of Washington No. 96147-6

Dear Clerk of Court of Appeals, Division II:

Please accept ready for filing Petition for Discretionary Review.

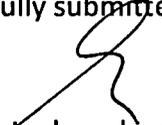
If you should have any questions, please contact me at:

(360) 918-4401 or **preferably temporary** by using email address:

zlaskowski@yahoo.com

DATED, February 03, 2020

Respectfully submitted,


Zbigniew M. Laskowski, Appellant Pro Se

January 7, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ZBIGNIEW M. LASKOWSKI,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
LABOR AND INDUSTRIES,

Respondent.

No. 53064-3-II

UNPUBLISHED OPINION

WORSWICK, J. — Zbigniew Laskowski appeals the superior court’s order affirming a Board of Industrial Insurance Appeals (Board) decision that the Department of Labor and Industries properly calculated Laskowski’s workers’ compensation disability benefits, which included an offset for social security disability benefits. Laskowski lists 35 assignments of error, but the only apprehensible arguments are whether Laskowski is entitled to annual time loss compensation cost of living adjustments (COLAs) and whether the Department relied on an incorrect effective date for his social security benefit offset. We hold that the superior court’s order affirming the Board’s decision was proper and affirm.

FACTS

Laskowski sustained an industrial injury on January 5, 2006. The Department allowed his workers' compensation claim and paid Laskowski time loss compensation benefits until February 1, 2008. The Department awarded Laskowski a partial permanent disability award and closed his claim on April 17, 2008. The Department reopened Laskowski's claim in 2010.

In August 2009, the Department received notice that Laskowski was receiving social security benefits in the amount of \$867 per month. When a worker receives time loss compensation and social security disability payments for the same period of time, the Department must reduce the worker's time-loss compensation. RCW 51.32.220(1). On November 2, 2011, the Department notified Laskowski that it intended to offset the amount of time loss compensation benefits it paid him based on his receipt of social security disability benefits. The Department informed Laskowski that although the adjusted rate was effective as of September 1, 2009—when it received notice of Laskowski's social security benefits, the adjusted rate would not be implemented until December 1, 2011, as required by statute.¹ The Department also notified Laskowski that an overpayment had occurred and would be recovered for the period

¹ RCW 51.32.220(2) provides:

Any reduction under subsection (1) of this section shall be effective the month following the month in which the department . . . is notified by the federal social security administration that the person is receiving disability benefits . . . : PROVIDED, That in the event of an overpayment of benefits the department . . . may not recover more than the overpayments for the six months immediately preceding the date the department . . . notifies the worker that an overpayment has occurred.

No. 53064-3-II

of June 4, 2011 through November 30, 2011, but that Laskowski could not be charged any overpayment for the period from September 1, 2009 through June 3, 2011.

The Department initially calculated Laskowski's compensation rate at \$2,109.25 per month. Laskowski appealed the Department's order to the Board, which the Board affirmed. Laskowski appealed the Board's order to the superior court, and the superior court directed the Department to include additional wages Laskowski earned in 2006 in its calculation of Laskowski's wages.

On remand, the Department issued an order on February 17, 2015, recalculating Laskowski's compensation rate at \$2,479.46 per month, based on his monthly social security disability benefits of \$867.00 and 80 percent of his highest year's earnings, which the Department calculated to be \$50,196.90 for 2006.

Laskowski appealed the Department's February 17 order to the Board, arguing that the Department failed to properly apply the State's annual COLAs to his compensation rate. The Board affirmed the Department's order, and Laskowski petitioned the superior court for review of the Board's August 2016 order. The superior court concluded that Laskowski's compensation rate was correct because the Department correctly calculated the offset to be applied to Laskowski's workers' compensation benefits based on his receipt of social security benefits. Accordingly, the superior court affirmed the Department's order.

Laskowski sought direct review by our Supreme Court of the superior court's order. The Supreme Court transferred the case to this court.

ANALYSIS

In his opening brief, Laskowski lists 35 assignments of error, of which 28 pertain to the Board's August 2016 order, which we do not review. *See* RCW 51.52.140. Many of Laskowski's arguments are difficult to discern and are inadequately briefed.² And we will not consider claims unsupported by references to the record or citation to authority. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3. Accordingly, the only questions properly before us are whether the superior court erred by concluding that the Department properly calculated the amount of Laskowski's workers' compensation disability benefits after applying the social security offset, and whether the superior court erred by concluding that the Department used the correct effective date of that offset. We hold that the superior court's decision was correct.

I. STANDARD OF REVIEW

Our review of the superior court decision is governed by RCW 51.52.140. Unlike a typical appeal governed by the Administrative Procedure Act, chapter 34.05 RCW, in an appeal

² The entirety of Laskowski's argument section in his opening brief states:

The argument narrows to three elements:

1. The date of the first calculation on November 02, 2011, not September 01, 2009, authorized by 42 U.S.C. 424a (7)(8), RCW 51.32.225(2) and RCW 51.32.220.
2. In assessing overpayment compliance with RCW 51.32.240(b) was abolished.
3. The Court should use calculation of benefits presented by Appellant in the absence of the alternative.

Br. of Appellant 19-20.

governed by the Industrial Insurance Act, Title 51 RCW, we do not sit in the same position as the superior court. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 180, 210 P.3d 355 (2009). Instead, we review the superior court's decision by determining "whether substantial evidence supports the [superior] court's factual findings and then review, de novo, whether the [superior] court's conclusions of law flow from the findings." *Rogers*, 151 Wn. App. at 180 (quoting *Watson v. Dep't of Labor & Indus.*, 133 Wn. App. 903, 909, 138 P.3d 177 (2006)). We review the record in the light most favorable to the party who prevailed in superior court. *Rogers*, 151 Wn. App. at 180.

II. SOCIAL SECURITY OFFSET & STATE COLAS

Laskowski's primary argument appears to be that the Department erred by failing to apply State COLAs to his net workers' compensation benefits after accounting for an offset of his social security disability benefits. We disagree.

The Social Security Act allows the federal government to reduce the amount of social security disability benefits it pays to a worker under the age of 65 who also receives state disability benefits. 42 U.S.C. § 424a. 42 U.S.C. § 424a(d) contains an exception to the general offset rule: it allows for a "reverse offset" if a state passes enabling state legislation. *Frazier v. Dep't of Labor & Indus.*, 101 Wn. App. 411, 416, 3 P.3d 221 (2000). Such enabling legislation allows the worker to receive the full amount of social security benefits, but allows the state to reduce the amount of time loss compensation paid to the worker. *Frazier*, 101 Wn. App. at 416. Reverse offset provisions thus shift costs to the federal government. *Harris v. Dep't of Labor &*

Indus., 120 Wn.2d 461, 469, 843 P.2d 1056 (1993). The legislature passed RCW 51.32.220 and RCW 51.32.225 in order to take advantage of this exception. *Frazier*, 101 Wn. App. at 416-17.

RCW 51.32.220 requires that a claimant's workers' compensation disability benefits be reduced by the amount that person receives in social security benefits, or by an amount calculated under 42 U.S.C. § 424a, whichever is less. This reduction is referred to as a social security offset. RCW 51.32.225. To calculate a claimant's workers' compensation disability benefits under RCW 51.32.220, the Department considers three amounts as identified in 42 U.S.C. § 424a(a)(8). The first amount is the social security total family benefit amount that is subject to offset. The second amount is the claimant's time loss compensation rate before the offset is applied. The third amount is 80 percent of the worker's "average current earnings" (ACE), which is the highest year's earnings within the five years preceding the year in which the worker became disabled. The offset is then subtracted from the highest of those three amounts.

Laskowski does not dispute that his ACE figure was based on his 2006 wages, which amounted to \$50,196.90. As a result, his 80%-of-ACE figure amounted to \$3,346.46 monthly. Laskowski also does not dispute that his 80%-of-ACE figure was properly offset by the amount of his monthly social security disability benefits payment—\$867. After applying the offset to Laskowski's 80%-of-ACE figure, his monthly workers' compensation disability benefits amounted to \$2,479.46.

But Laskowski contends that the \$2,479.46 figure should be subject to Washington State COLAs. RCW 51.32.075 provides for annual adjustments to a claimant's time loss compensation rate effective July 1 of each year, based on the annual change to the average

monthly wage in the state.³ These annual adjustments are referred to as COLAs. However, under RCW 51.32.220, 42 U.S.C. § 424(a) controls the calculation of benefits for a claimant who also receives social security disability benefits. And under 42 U.S.C. § 424(a), Laskowski's offset was calculated using his 80%-of-ACE figure and not by using his time loss compensation rate. This is because the 80%-of-ACE figure was higher than the time loss compensation rate.⁴ 42 U.S.C. § 424(a) does not provide for a present value adjustment to an ACE figure.⁵ *Birgen v. Dep't of Labor & Indus.*, 186 Wn. App. 851, 859, 347 P.3d 503 (2015).

III. OFFSET IMPLEMENTATION DATE

Laskowski also appears to argue that the Department improperly relied on September 1, 2009, as the effective date for his social security offset. He contends that the proper date is November 2, 2011, which is when the Department notified him of the offset. This argument misapprehends the date the Department implemented the offset.

RCW 51.32.220(2) provides that an offset becomes effective the month after the month in which the Department learns that the claimant is receiving social security benefits. But this

³ RCW 51.32.075(4) contains an exception for 2011, during which no COLA applied.

⁴ As of September 1, 2009, Laskowski's time loss compensation rate before the offset amounted to \$2,976.25, and his ACE figure was \$3,346.46. A Department witness testified before the Board that between 2011—when the offset was implemented—and 2015, Laskowski's 80%-of-ACE figure remained higher than his time loss compensation rate even after accounting for the State COLAs.

⁵ 42 U.S.C. § 424a(f) does require a triennial redetermination of the amount of a worker's benefits subject to an offset. In 2015, a triennial redetermination of Laskowski's ACE figure increased his ACE by \$212.66. In his opening brief, Laskowski comments that this increase was made "without any explanation." Br. of Appellant at 17. But a Department witness testified before the Board that Laskowski's benefits increased in 2015 due to a triennial redetermination.

does not mean that the Department is necessarily entitled to recoup an overpayment from the effective date. If an overpayment has occurred, the Department may recover the overpayment for only the six months preceding the date on which the Department notifies the claimant that an overpayment has occurred. RCW 51.32.220(2).

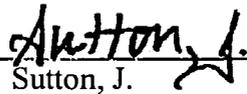
Here, the Department properly relied on September 1, 2009, as the effective date for the social security offset because that is the date it learned Laskowski was receiving social security benefits. However, the Department did not implement the offset or begin to recover overpayment until December 1, 2011, thus Laskowski's argument fails.

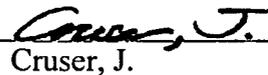
Accordingly, we affirm the superior court.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:


Sutton, J.


Cruser, J.

Social Security

Program Operations Manual System (POMS)

TN 35 (07-19)

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 WC offset when RJ applies. Apply RJ 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-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).

WC Type	How Awarded and Paid	State offsets for receipt of SSA?	Amount for SSA Offset
			<ul style="list-style-type: none"> See Case Example 1 in DI 52120.265K in this section.
Vocational Plan Payments (TT under Option 1)	<ul style="list-style-type: none"> Pilot program 1/1/2008-6/30/2016	<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 ICF using Frequency code E.

WC Type	How Awarded and Paid	State offsets for receipt of SSA?	Amount for SSA Offset
	<ul style="list-style-type: none"> • Under approved plan, worker has two options: • Option 1: Worker receives Time 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). 		

WC Type	How Awarded and Paid	State offsets for receipt of SSA?	Amount for SSA Offset
	<ul style="list-style-type: none"> • Paid biweekly under either option; option 2 may be converted to a LS. 		
Loss of Earning Power (LEP) (TP)	<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 	No	Add together the payments paid for the calendar month and enter the total as a monthly amount in ICF using Frequency code M.
Pension (PT)		<ul style="list-style-type: none"> • Yes 	

WC Type	How Awarded and Paid	State offsets for receipt of SSA?	Amount for SSA Offset
	<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"> • 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. • 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. <p>See Case Example 3, DI 52120.265K in this section.</p>

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 future medical benefits • Claim is closed in most cases; worker may still receive medical treatment under the claim 	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 52150.065D.

WC Type	How Awarded and Paid	State Offset?	Amount for SSA Offset
	<ul style="list-style-type: none"> Board may approve a reasonable attorney fee limited to 15 percent of the total award amount. 		

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 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
07/01/2019*	5.516%	1.05516
07/01/2018*	4.969%	1.04969
07/01/2017*	4.769%	1.04769
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
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

Effective Date	Percent	Multiplier
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.
 - Payments under the Critical Payment System (CPS) do not constitute adjudication.
 - 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:
 - Is reverse jurisdiction involved? Y
 - If Yes, Start (MMDDCCYY) _____. (Input the Date of Filing plus 3 months.)
 - 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

42 U.S. Code § 424a. Reduction of disability benefits

U.S. Code Notes

(a) CONDITIONS FOR REDUCTION; COMPUTATION If for any month prior to the month in which an individual attains retirement age (as defined in section 416(l)(1) of this title)—

(1) such individual is entitled to benefits under section 423 of this title, 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 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under title 38, (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 418 of this title, 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 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title 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 423 and 402 of this title 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 423 of this title for such month and of any monthly insurance benefits under section 402 of this title 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 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, 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 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) 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 409(a)(1) and 411(b)(1) of this title) 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 423(d) of this title) and the five years preceding that year.

(b) REDUCTION WHERE BENEFITS PAYABLE ON OTHER THAN MONTHLY BASIS

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) REDUCTIONS AND DEDUCTIONS UNDER OTHER PROVISIONS

Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 403 of this title, but before deductions under such section and under section 422(b)^[1] of this title.

(d) EXCEPTION

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 subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

(e) CONDITIONS FOR PAYMENT

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, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits

under section 402 of this title 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 405(i) of this title.

(f) REDETERMINATION OF REDUCTION

(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 423 of this title and any benefits under section 402 of this title 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 subchapter 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 409(k)(1) of this title) 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) PROPORTIONATE REDUCTION; APPLICATION OF EXCESS

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) FURNISHING OF INFORMATION

(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 subchapter, 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 the Commissioner may require to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title II, § 224, as added Pub. L. 89-97, title III, § 335, July 30, 1965, 79 Stat. 406; amended Pub. L. 90-248, title I, § 159(a), Jan. 2, 1968, 81 Stat. 869; Pub. L. 92-603, title I, § 119(a), (b), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 94-202, § 8(j), Jan. 2, 1976, 89 Stat. 1140; Pub. L. 95-216, title II, § 205(d), title III, § 353(c), Dec. 20, 1977, 91 Stat. 1529, 1553; Pub. L. 97-35, title XXII, § 2208(a), Aug. 13, 1981, 95 Stat. 839; Pub. L. 99-272, title XII, § 12109(a), Apr. 7, 1986, 100 Stat. 286; Pub. L. 99-509, title IX, § 9002(c)(2)(F), Oct. 21, 1986, 100 Stat. 1972; Pub. L. 101-239, title X, § 10208(b)(2)(A), (C), (d)(2)(A)(i), (iii), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480, 2481; Pub. L. 103-296, title I, § 107(a)(4), title III, § 321(e)(2)(H), Aug. 15, 1994, 108 Stat. 1478, 1540; Pub. L. 113-295, div. B, title II, § 201(a), Dec. 19, 2014, 128 Stat. 4064.)