

Lambert, Howard

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

Calculation

RCW 51.32.225 does not authorize the Department to offset social security retirement benefits for less than the dollar for dollar amount specified in the statute. ...***In re Howard Lambert, BIIA Dec., 01 23275 (2004)*** [*Editor's Note: The Board's decision was appealed to superior court under Spokane County Cause No.03-2-04978-1 (7/30/03) Cause No. 04-2-00943-4 (2/27/04 after remand).*]

Scroll down for order.

1 By Order Granting Petition for Review dated February 3, 2003, the public, business, and
2 labor members of the Board agreed to review the Proposed Decision and Order. After review was
3 granted, the business member of the Board stepped down, leaving the position vacant, pending
4 appointment of a new business member. On July 11, 2003, the two sitting Board members issued
5 an order stating that a majority of the Board members did not agree on the final disposition of the
6 Department orders on appeal. The Board order noted that the business member position remained
7 vacant and that the time limit for issuance of a final Board decision (per RCW 51.52.106) had
8 expired. Based on the lack of a Board majority to affirm or reverse the orders on appeal, the two
9 Board members determined that the Department orders must stand, citing *Department of Ecology*
10 *v. Kirkland*, 84 Wn.2d 25 (1974), and *In re Herbert Thomas*, BIIA Dec., 42,061 (1973). The July 11,
11 2003 order noted that the disposition of the appeals did not foreclose further appeal and review in
12 the courts, pursuant to RCW 51.52.110, RCW 51.52.115, and RCW 51.52.140.

13 On July 30, 2003, the employer filed a Notice of Appeal to the Superior Court of Spokane
14 County (No. 03-2-04978-1). On November 7, 2003, the Superior Court issued an Agreed Order of
15 Remand to the Board of Industrial Insurance Appeals. In the Agreed Order, the Superior Court
16 remanded the cause of action to this Board with direction to "issue a Decision and Order on this
17 matter after consideration of briefs to be filed by all parties. Such order shall contain findings and
18 conclusions as to each contested issue of fact and law, as well as the Board's order based
19 thereon." 11/7/03 Superior Court Order. On December 4, 2003, Board Executive Secretary David
20 E. Threedy acknowledged the November 17, 2003 receipt of the Agreed Order and set a deadline
21 of December 23, 2003, for filing of any briefs. The Department filed its brief on November 26, 2003.
22 The employer's brief was placed in the United States Mail on December 22, 2003, and received at
23 the Board offices on December 24, 2003.

24 The Board has considered the entire record in this appeal, including the briefs filed by the
25 employer and Department on remand from the Superior Court. We have reviewed the evidentiary
26 rulings in the record of proceedings and find that no prejudicial error was committed. The rulings
27 are affirmed. We now address the employer's contention that RCW 51.32.225 requires a
28 dollar-for-dollar offset of social security retirement benefits against total disability benefits paid
29 pursuant to Title 51.

30 Initially, we must resolve an outstanding jurisdictional issue. The August 13, 2001 time-loss
31 compensation order (affirmed in the Department order of October 31, 2001, and currently on
32 appeal) was protested by the employer on October 26, 2001, a date beyond the 60-day protest or
33

1 appeal period. This Board may take notice of the contents of the Department's claim file to
2 determine its jurisdiction. *In re Mildred Holzerland*, BIIA Dec., 15,729 (1965). The file shows that
3 this order was sent to the employer's lay representative rather than the employer's attorney.
4 Therefore, the order was not properly served on the employer and the protest should be considered
5 timely. *In re Bell & Bell Builders II*, BIIA Dec., 90 5119 (1992). This Board has jurisdiction to decide
6 the correctness of the August 13, 2001 order.
7
8
9

10 The facts material to this appeal are not in dispute. Mr. Lambert was born on May 2, 1919.
11 He began drawing periodic social security retirement benefits (SSRB) in March 1983. In May 1984,
12 at age 65, he started receiving regularly paid SSRB benefits. He has never received social security
13 disability benefits (SSDB). Mr. Lambert operated his own business in 1984 and 1985 but, for much
14 of the time until 1997, he and his wife lived on his SSRB. In 1997, at age 78, he returned to the
15 workforce to supplement his income, securing employment with Aluminum Products, Inc.
16 Mr. Lambert sustained an injury in the course of that employment on September 5, 2000, and he
17 has received time-loss compensation benefits since September 8, 2000.
18
19
20
21

22 Debbie Brookman is a social security offset specialist for the Department, a position she has
23 held since May 1998. In that capacity, Ms. Brookman calculates State Fund time-loss
24 compensation offsets for both SSRB and SSDB. Her training was based on the policies and
25 procedures contained in the Department's social security offset manual.
26
27

28 Ms. Brookman calculated, and recalculated, Mr. Lambert's SSRB offset on three occasions,
29 February 13, 2001, February 22, 2001, and May 17, 2001. Board Exhibit No. 3, the Offset
30 Computation Sheet, includes a chart showing the bases for each of the three calculations. Initially,
31 Ms. Brookman received little information from the social security Administration (SSA). In early
32 July 2003, shortly before the hearing in these appeals, she received from the SSA a response to
33 her request for more information.
34
35
36

37 In each of the calculations, Ms. Brookman used December 1, 2000, as the effective date of
38 offset. The amount of SSRB used in each calculation (\$696) was the total family benefit (TFB) as
39 of the SSRB entitlement date (March 1983). She calculated the TFB by taking information about
40 Mr. Lambert's 1999 and 2000 SSRB benefits and subtracting the federal cost-of-living adjustments
41 authorized since 1983. Although Ms. Brookman performed this calculation herself, rather than
42 obtaining the amount directly from the SSA, she believed it was fairly accurate, down to pennies.
43
44
45

46 The February 14, 2001 Department order reflects Ms. Brookman's February 13, 2001
47 calculation. Mr. Lambert's time-loss rate, as of the December 1, 2000 offset effective date, was

1 \$1,267.20. Ms. Brookman described the method set forth in the Department's manual for
2 calculating the amount that a claimant's time-loss compensation benefits will be offset by the
3 claimant's SSRB.
4

5 The Department's procedures permit a total of time-loss compensation and SSRB not to
6 exceed the highest of the following:
7

- 8 • 80 percent of the Average Current Earnings (ACE);
- 9 • the SSRB total family benefit alone; or
- 10 • time-loss compensation benefit alone.

11
12
13 Ms. Brookman explained that the ACE typically is supplied by the SSA, which calculates the ACE
14 pursuant to §424(a) of the federal social security statute. The ACE, as calculated by the SSA, is
15 the single highest income year out of the five consecutive years prior to retirement. The SSA also
16 will average any 5 years of income. The social security disability benefits calculation uses the ACE
17 to set the limit on the total of social security plus state workers' compensation benefits; the total can
18 be no more than 80 percent of the ACE. Because neither the SSA, nor the claimant, had provided
19 earnings information to the Department, Ms. Brookman calculated 80 percent of ACE using \$0
20 earnings. The SSRB total family benefit (\$696) became the offset amount, resulting in a new
21 time-loss rate of \$571.20.
22

23
24
25
26
27 Ms. Brookman again calculated the SSRB offset on February 22, 2001, after the claims
28 manager adjusted Mr. Lambert's wage based on a determination that he was not a full-time
29 employee at the time of injury. His new time-loss rate, effective December 1, 2000, was \$733.70.
30 Ms. Brookman recalculated the benefit changing only the time-loss compensation rate, which
31 resulted in an offset time-loss compensation rate of \$37.30. She issued the February 23, 2001
32 order, that superseded the February 14, 2001 order, and resulted in a \$904 overpayment.
33
34

35
36 Ms. Brookman's third SSRB offset calculation was done on May 17, 2001, in response to
37 the claimant's protest to the February 23, 2001 order. At this point, she had secured earnings
38 information from Mr. Lambert, which she used to calculate the ACE. The Department's manual
39 allows the specialist to use as the ACE the earnings from any year from the claimant's entire
40 working history. Ms. Brookman chose 1984, when Mr. Lambert's earnings were \$34,333.
41 Ms. Brookman determined that 80 percent of the ACE (\$34,333) is \$27,466.40. This figure
42 replaced the \$0 used previously as 80 percent of the ACE when Mr. Lambert's earnings were
43 unknown. Use of the 1984 earnings as the ACE established 80 percent of the ACE as a higher
44
45
46
47

1 value than the SSRB alone or the time-loss compensation benefit alone (the other potential sources
2 of the maximum combined benefits amount).
3

4 Dividing \$27,466.40 by 12, Ms. Brookman calculated the monthly maximum total of SSRB
5 benefits and time-loss compensation benefits (\$2,288.87). She subtracted the TFB of \$696 from
6 \$2,288.87, leaving \$1,592.87 as the maximum time-loss compensation benefits payable without
7 triggering an offset. Since Mr. Lambert's time-loss rate was only \$733.70, no offset was taken.
8
9

10 In the employer's post-hearing brief and Petition for Review, the employer relies on
11 application of the law to the undisputed facts to present its prima facie case. In his Proposed
12 Decision and Order the industrial appeals judge improperly dismissed this appeal on grounds that
13 the employer had not presented testimony "that a different calculation, or a different result, was
14 required." Proposed Decision and Order, at 8. The evidence provides a sufficient factual basis to
15 support the employer's legal argument. We now address the legal issue raised in this appeal.
16
17
18

19 The employer relies primarily on our decision, *In re Lois Oakley*, BIIA Dec., 87 3830 (1989).
20 *Oakley* affirmed the Department's dollar-for-dollar offset of SSRB in Lois Oakley's claim, finding that
21 to do so was within the Department's authority pursuant to RCW 51.32.225. The procedure used in
22 *Oakley* was the same procedure used here. Ms. Oakley was entitled to a total of time loss and
23 SSRB benefits not to exceed the highest of the following: 80 percent of the average current
24 earnings (ACE); the SSRB alone; or time-loss compensation alone. In *Oakley*, the total combined
25 amount was calculated identically to the first (February 13, 2001) calculation in Mr. Lambert's claim
26 because in both cases, the claimants had not provided the Department with earnings information.
27 In both claims, \$0 was used when calculating 80 percent of ACE; the ACE-derived number was the
28 lowest of the three options; and the time-loss compensation rate was the highest of the three
29 values. The time-loss rate was used as the maximum combined benefit and the SSRB benefit was
30 subtracted, dollar-for-dollar, bringing the benefit down to the maximum allowable.
31
32
33
34
35
36

37 In *Oakley*, we upheld the dollar-for-dollar subtraction of SSRB benefits:

38 Since we conclude that RCW 51.32.225 provides for the taking of a
39 social security offset in the full amount of social security retirement
40 benefits being received by the worker, we must comment on the
41 question of the effect, if any, of the Department's policy **not** to reduce
42 temporary or permanent total disability benefits by the full amount of
43 social security retirement benefits being received by the worker in all
44 cases. We believe that if the Department chooses to offset less than
45 the full amount of social security retirement benefits being received by
46 the worker, then it is required to establish procedures for doing so.
47 Such procedures must comply with the administrative rule-making
requirements of RCW 34.04. We believe it is questionable whether

1 the Department has the authority to offset less than the full amount of
2 the social security retirement benefits being received by the claimant.

3
4 *Oakley*, at 14. We declined to address the “questionable” practice, however, because the issue
5 was not before us. See also, *In re Esther I. Rodriguez*, Dckt. No. 88 0212 (June 22, 1989), (issue
6 was not reached).

7
8 The employer’s appeal in Mr. Lambert’s claim puts this question squarely before us. The
9 first Department calculation of Mr. Lambert’s offset, when his unknown wage was listed as \$0, ruled
10 out the ACE as the determiner of the maximum combined benefit. Mr. Lambert’s time-loss
11 compensation benefit amount, as the highest of the three values, became the maximum combined
12 benefit amount, requiring the dollar-for-dollar offset. The subsequently-supplied wage information
13 allowed the 80 percent of ACE to become the highest value. Using this value as the determiner of
14 the maximum combined benefit, the Department calculated a combined maximum that exceeded
15 the combined total of Mr. Lambert’s workers’ compensation and SSRB benefits, and his SSRB
16 offset dropped to \$0. We hold that the Department is without authority to apply RCW 51.32.225 in
17 this fashion, with or without rulemaking.

18
19 RCW 51.32.225 authorizes the Department to offset SSRB from a worker’s total disability
20 benefits. It provides, in relevant part:

21
22 (1) For persons receiving compensation for temporary or permanent
23 total disability under this title, the compensation shall be reduced by the
24 department to allow an offset for social security retirement benefits
25 payable under the federal social security, old age survivors, and
26 disability insurance act, 42 U.S.C. This reduction shall not apply to any
27 worker who is receiving permanent total disability benefits prior to July 1,
28 1986.

29
30 (2) Reductions for social security retirement benefits under this section
31 shall comply with the procedures in RCW 51.32.220(1) through (6),
32 except those that relate to computation, and with any other procedures
33 established by the department to administer this section.

34
35 The plain language of section (1) requires an offset for SSRB benefits, but does not specify whether
36 a partial offset is permissible. No method for calculating a less than dollar-for-dollar offset is
37 provided. Further, the statute explicitly prohibits the Department from computing the SSRB offset
38 using the method set forth in RCW 51.32.220(1)-(6) (“Reductions in total disability compensation”).
39 Based on court decisions post-*Oakley*, we conclude that RCW 51.32.225 requires that the
40 Department offset the full dollar-for-dollar amount of SSRB against workers’ compensation
41 temporary or permanent total disability benefits.

1 *Harris v. Department of Labor & Indus.*, 120 Wn.2d 461 (1993), is particularly instructive. In
2
3 *Harris*, the claimant's widow challenged the reduction of her husband's time-loss compensation
4 benefits by the amount of his SSRB, pursuant to RCW 51.32.225. On the effective date of the
5 statute, Mr. Harris was 75 years old and was collecting both SSRB and state time-loss
6 compensation. The Department issued an order reducing Mr. Harris's workers' compensation
7 payments "by the amount of Social Security retirement benefits he was receiving." *Harris*, at 465.
8
9

10 The *Harris* court addressed a variety of challenges to the statute, including whether it
11 applied to the claimant, constitutional questions, and a federal pre-emption argument. In the course
12 of its analysis, the court focused on statutory history, noting that "[d]uring legislative debate, two
13 major justifications for the [SSRB] offset emerged: avoiding duplicative benefits and limiting the
14 cost of industrial insurance." *Harris*, at 465. The statute "allows workers' compensation benefits to
15 be reduced by the amount of Federal Social Security retirement benefits a worker receives."
16
17
18
19 *Harris*, at 467.

20 In the course of her equal protection argument, Ms. Harris contended that the statute did not
21 effectuate the statute's intent of eliminating duplicative benefits because the state and federal
22 benefits are not duplicative. The court disagreed:
23
24

25 State disability benefits and federal old-age Social Security benefits
26 serve the same purpose: to restore earnings due to wage loss. The
27 cause of wage loss--whether it be old age, disability, or
28 unemployment--is irrelevant.
29

30 *Harris*, at 480. The court concluded, "RCW 51.32.225 serves a legitimate purpose in avoiding
31 duplication of benefits." *Harris*, at 480.
32

33 *Frazier v. Department of Labor & Indus.*, 101 Wn. App. 411 (2000), also concerned an
34 injured worker whose SSRB were offset from his time-loss compensation, pursuant to
35 RCW 51.32.225. The Department applied a dollar-for-dollar offset. *Frazier* quotes liberally from
36 *Harris* regarding the purpose and intent of RCW 51.32.225.
37
38

39 The *Frazier* court did not reach the issue of whether RCW 51.32.225 provides the
40 Department with authority to use procedures that allow for a less than dollar-for-dollar offset of
41 SSRB. Mr. Frazier did argue "that the Department uses a computation different than a
42 dollar-for-dollar offset in some cases," thereby invalidating the Department's calculation method.
43
44
45 *Frazier*, at 423. In dicta, the court noted:

46 Frazier does not take issue with the fact that the actual reduction
47 amounted to a dollar-for-dollar offset, which appears to be consistent
 with the plain language of RCW 51.32.225(1) (a worker's state

1 compensation "shall be reduced by the department to allow an offset for
2 social security retirement benefits payable under . . . 42 U.S.C.")
3

4 *Frazier*, at 422, fn.1. The court ultimately decided that, because the social security offset manual
5 was not part of the record and the argument regarding inconsistent computation was not raised
6 below, the court could not consider it. The cited footnote from the *Frazier* decision, while dicta, is
7 nonetheless consistent with our opinion in this matter.
8
9

10 We conclude that the Department's method for calculation of SSRB offsets is contrary to the
11 intent of RCW 51.32.225. With or without an agency rule, the Department lacks statutory authority
12 to assess social security retirement benefit offsets of workers' compensation total disability benefits
13 in amounts less than dollar-for-dollar.
14

15 **FINDINGS OF FACT**

- 16
17 1. On September 13, 2000, the claimant, Howard G. Lambert, filed an
18 application for benefits with the Department of Labor and Industries,
19 alleging an industrial injury on September 5, 2000, to his right elbow
20 during the course of his employment with Aluminum Products, Inc. The
21 Department issued an order allowing the claim on December 1, 2000.
22 Time-loss compensation benefits were paid continuously for the period
23 September 8, 2000 through November 19, 2001.
24

25 On December 18, 2000, the employer filed a Protest and Request for
26 Reconsideration with the Department of any adverse orders. On
27 January 16, 2001, the Department issued an order stating that it was
28 reconsidering its order of December 1, 2000 (which allowed the claim)
29 and December 15, 2000 (which paid a period of time-loss
30 compensation). On January 29, 2001, the employer filed a Protest and
31 Request for Reconsideration with the Department of the time-loss
32 compensation rate and all time-loss compensation orders.
33

34 On February 14, 2001, the Department issued an order adjusting the
35 claimant's time-loss compensation rate due to a social security offset,
36 assessed an overpayment, and set a repayment rate. On February 23,
37 2001, the Department issued an order correcting and superseding its
38 order of February 14, 2001. The order adjusted the claimant's time-loss
39 compensation rate due to a change in reported wages, assessed an
40 overpayment, and set a new repayment rate.
41

42 On February 26, 2001, the Department issued an order assessing an
43 overpayment of time-loss compensation benefits because of a change in
44 the claimant's reported gross income. On March 7, 2001, the claimant
45 filed a Protest and Request for Reconsideration with the Department of
46 its order of February 26, 2001. On April 12, 2001, the claimant filed a
47 Protest and Request for Reconsideration with the Department of its
order of February 23, 2001.

1
2 On May 18, 2001, the Department issued an order that set aside and
3 held for naught its order of February 23, 2001. The order set the
4 claimant's time-loss compensation benefit rate at \$733.70 per month,
5 with no social security offset, based on the claimant's 1984 earnings of
6 \$34,333; repaid the claimant for previous deductions for overpayments;
7 and stated that future time-loss compensation benefits would be paid at
8 this new rate. The employer received the Department's order of May 18,
9 2001, no earlier than May 31, 2001. On July 26, 2001, the employer
10 filed a Protest and Request for Reconsideration with the Department of
11 its order of May 18, 2001, May 21, 2001, June 4, 2001, and any
12 subsequent orders that fail to take a social security offset. On
13 August 10, 2001, the employer filed a Protest and Request for
14 Consideration of Department orders dated June 18, 2001, July 2, 2001,
15 and July 16, 2001. An August 13, 2001 order was mailed by the
16 Department to the employer's lay representative, rather than the
17 employer's attorney of record.

18
19 The employer filed Protests and Requests for Reconsideration within
20 60 days of communication of the Department orders dated May 18,
21 2001, May 21, 2001, June 4, 2001, June 18, 2001, July 2, 2001, July 16,
22 2001, July 30, 2001, August 13, 2001, August 28, 2001, September 10,
23 2001, September 24, 2001, October 8, 2001, and October 22, 2001.
24 These orders collectively paid time-loss compensation benefits from
25 May 1, 2001 through October 18, 2001.

26
27 On October 31, 2001, the Department issued an order affirming its
28 orders of May 18, 2001, May 21, 2001, June 4, 2001, June 18, 2001,
29 July 2, 2001, July 16, 2001, July 30, 2001, August 13, 2001, August 28,
30 2001, September 10, 2001, September 24, 2001, October 8, 2001, and
31 October 22, 2001. On November 19, 2001, the Department issued an
32 order awarding time-loss compensation benefits for the period from
33 November 2, 2001 through November 15, 2001. On December 10,
34 2001, the employer filed a Notice of Appeal with the Board of Industrial
35 Insurance Appeals of the Department's orders of October 31, 2001 and
36 November 19, 2001. On January 8, 2002, the Board issued an order
37 granting the appeal to the order of October 31, 2001, assigning the
38 appeal Docket No. 01 23275, and directing that proceedings be held.
39 Also on January 8, 2002, the Board issued an order granting the appeal
40 to the order dated November 19, 2001, assigning the appeal Docket
41 No. 01 23276, and directing that proceedings be held. The appeals
42 were consolidated for decision.

43
44 A Proposed Decision and Order was issued on November 26, 2002, in
45 Docket Nos. 01 23275 and 01 23276. On January 13, 2003, the
46 employer filed a Petition for Review of the Proposed Decision and
47 Order. By Order Granting Petition for Review dated February 3, 2003,
the public, business, and labor members of the Board agreed to review

1 the Proposed Decision and Order. After review was granted, the
2 business member of the Board stepped down, leaving the position
3 vacant pending appointment of a new business member. On July 11,
4 2003, the two sitting Board members issued an order stating that a
5 majority of the Board members did not agree on the final disposition of
6 the Department orders on appeal. The order noted that the business
7 member position remained vacant and that the time limit for issuance of
8 a final Board decision (per RCW 51.52.106) had expired. Based on the
9 lack of a Board majority to affirm or reverse the orders on appeal, the
10 two Board members determined that the orders must stand, citing
11 *Department of Ecology v. Kirkland*, 84 Wn.2d 25 (1974), and *In re*
12 *Herbert Thomas*, BIIA Dec., 42,061 (1973). The July 11, 2003 order
13 noted that the disposition of the appeals did not foreclose further appeal
14 and review in the courts, pursuant to RCW 51.52.110, RCW 51.52.115,
15 and RCW 51.52.140.

16
17 On July 30, 2003, the employer filed a Notice of Appeal to the Superior
18 Court of Spokane County (No. 03-2-04978-1). On November 7, 2003,
19 the Superior Court issued an Agreed Order of Remand to the Board of
20 Industrial Insurance Appeals. The Agreed Order remanded the cause of
21 action to this Board with direction to "issue a Decision and Order on this
22 matter after consideration of briefs to be filed by all parties. Such order
23 shall contain findings and conclusions as to each contested issue of fact
24 and law, as well as the Board's order based thereon."

- 25
26 2. The claimant, Howard G. Lambert, was born on May 2, 1919. He began
27 drawing periodic social security retirement benefits (SSRB) in
28 March 1983. In May 1984, at age 65, he started receiving regularly paid
29 SSRB benefits. He has never received social security disability benefits
30 (SSDB). Mr. Lambert operated his own business in 1984 and 1985 but,
31 for much of the time until 1997, he and his wife lived on his SSRB.
32
- 33 3. In 1997, at age 78, Mr. Lambert returned to the workforce to supplement
34 his income, securing employment with Aluminum Products, Inc.
35 Mr. Lambert sustained an injury in the course of that employment on
36 September 5, 2000, and he has received time-loss compensation since
37 September 8, 2000.
38
- 39 4. The Department calculated, and recalculated, Mr. Lambert's SSRB
40 offset on three occasions, February 13, 2001, February 22, 2001, and
41 May 17, 2001. Initially, the Department received little information from
42 the Social Security Administration (SSA). In early July 2003, shortly
43 before the hearing in these appeals, the SSA responded to the
44 Department's request for additional wage information.
45
- 46 5. December 1, 2000, is the effective date of social security offset.
47 Mr. Lambert's time-loss rate, as of the December 1, 2000 offset effective
date, was \$1,267.20. The amount of SSRB used in each of the three

1 calculations (\$696) was the total family benefit (TFB) as of the SSRB
2 entitlement date (March 1983).
3

4 6. The Department's social security offset manual allows a claimant to
5 receive a total of time-loss compensation and SSRB not to exceed the
6 highest of the following: 80 percent of the average current earnings
7 (ACE); the SSRB total family benefit alone; or time-loss compensation
8 benefit alone. The ACE typically is supplied by the SSA, which
9 calculates the ACE pursuant to §424(a) of the federal social security
10 statute. Because neither the SSA, nor the claimant, had provided
11 earnings information to the Department, 80 percent of the ACE was
12 calculated using \$0 earnings. In the first calculation of Mr. Lambert's
13 SSRB offset, reflected in the February 14, 2001 order, his SSRB total
14 family benefit (\$696) became the offset amount. Subtracted from the
15 initial rate of \$1,267.20, the offset resulted in a new time-loss rate of
16 \$571.20.
17

18 7. The Department next calculated the SSRB offset on February 22, 2001,
19 because Mr. Lambert's wage was adjusted based on a determination
20 that he was not a full-time employee at the time of injury. The resulting
21 time-loss compensation rate, effective December 1, 2000, was \$733.70.
22 The benefits were recalculated changing only the time-loss
23 compensation rate, which resulted in an offset time-loss compensation
24 rate of \$37.30. This calculation is reflected in the February 23, 2001
25 order, which superseded the February 14, 2001 order, and resulted in a
26 \$904 overpayment.
27

28 8. The Department's third SSRB offset calculation took place on May 17,
29 2001, in response to the claimant's protest to the February 23, 2001
30 order. At this point, Mr. Lambert had provided earnings information,
31 which was used to calculate the ACE. The Department's procedures
32 allow the use of earnings from any year from the claimant's entire
33 working history as the ACE. In Mr. Lambert's case, 1984 was chosen.
34 During 1984, Mr. Lambert's earnings were \$34,333. Eighty percent of
35 the ACE (\$34,333) is \$27,466.40. The Department used this amount in
36 place of the \$0 used as 80 percent of the ACE when Mr. Lambert's
37 earnings were unknown. Use of the 1984 earnings as the ACE
38 established 80 percent of the ACE as a value higher than the SSRB
39 alone or the time-loss compensation benefit alone (the other potential
40 sources of the maximum combined benefits amount). Dividing
41 \$27,466.40 by 12, the Department calculated the monthly maximum
42 total of SSRB benefits and Department benefits (\$2,288.87). The TFB
43 of \$696 was subtracted from \$2,288.87, leaving \$1,592.87 as the
44 maximum time-loss compensation benefits payable without triggering an
45 offset. Since Mr. Lambert's time-loss rate was only \$733.70, no offset
46 was taken. This final calculation is reflected in the May 18, 2001
47 Department order.

