

## **Netherda, Elwyn**

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### **[SOCIAL SECURITY DISABILITY OFFSET \(RCW 51.32.220\)](#)**

#### **Limitation on recovery of overpayment (RCW 51.32.220)**

The Department's practice of intentionally overpaying time-loss compensation benefits pending adjustments due to the reverse offset permitted by RCW 51.32.220 does not violate the six month limitation for recoupment of overpayments and is permitted by subsection (5) which requires that a worker's benefits not be reduced to less than they would be entitled without the offset. . . .***In re Elwyn Netherda, BIA Dec., 01 23803 (2002)*** [*Editor's Note: The Board's decision was appealed to superior court under King County Cause No. 03-2-00352-KNT.*]

Scroll down for order.

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

1 **IN RE: ELWYN D. NETHERDA ) DOCKET NOS. 01 23803 & 01 23804**  
2 )  
3 **CLAIM NOS. P-442467 & P-323972 ) DECISION AND ORDER**  
4

5 **APPEARANCES:**

6  
7 Claimant, Elwyn D. Netherda, by  
8 David B. Vail & Associates, per  
9 Jennifer M. Cross

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11 Employer (P-442467), Archer Construction, Inc., by  
12 None

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14 Employer (P-323972), Grinnell Corporation, by  
15 None

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17 Department of Labor and Industries, by  
18 The Office of the Attorney General, per  
19 Lisa Marsh, Assistant  
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22 Docket No. 01 23803 is an appeal filed with the Board of Industrial Insurance Appeals on  
23 October 19, 2001, by the claimant, Elwyn D. Netherda, from an order of the Department of Labor  
24 and Industries dated August 30, 2001, and issued under Claim No. P-442467. The order affirmed  
25 Department orders dated November 28, 2000 and January 16, 2001. The November 28, 2000  
26 order, which was issued jointly under this claim and Claim No. P-323972, provided as follows:  
27 According to our records, Social Security has yet to correct your Federal benefit amount. Per the  
28 order dated February 11, 2000, an overpayment continues to accrue. The payments currently  
29 scheduled for you through November 30, 2000, will result in an additional overpayment of  
30 \$7,380.44 (\$6,899.84 under P-323972; \$480.60 under P-442467). You cannot be charged an  
31 overpayment for March 1, 2000 through May 31, 2000. Effective November 11, 2000, it has been  
32 determined that your time loss benefit is payable concurrently with P-442467. This change  
33 increases your monthly offset compensation rate to \$2,229.95 per month (\$1,022.03 per month  
34 under P-323972; \$1,207.92 per month under P-442467). Because Social Security is still not paying  
35 your full federal benefits, Labor and Industries will continue to pay your full time loss rate. An  
36 overpayment will accrue at the new rate of \$44.36 per day (\$22.33 under P-323972; \$24.03 under  
37 P-442467).  
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1 The January 16, 2001 order provided as follows: Benefits are also being paid under  
2 Claim No. P-323972 for the same time period. The claimant's compensation rate is being adjusted  
3 beginning December 30, 2000, because of the entitlement to social security benefits. Any payment  
4 for time loss periods on or after this date will be at the new rate. The deduction listed below is  
5 being made to recover the overpayment because of the claimant's receipt of social security  
6 benefits. The remaining overpayment balance is now \$12,735.67. Labor and Industries has been  
7 notified that your federal benefits have now been corrected. The overpayment that accrued for the  
8 periods November 11, 2000 through December 29, 2000, in the amount of \$1,177.47, will be  
9 recovered from future benefits at an initial rate of \$45 per month. There is an additional  
10 overpayment under the other claim (P-323972). **AFFIRMED.**

11 Docket No. 01 23804 is an appeal filed with the Board of Industrial Insurance Appeals on  
12 October 19, 2001, by the claimant, Elwyn D. Netherda, from an order of the Department of Labor  
13 and Industries dated August 30, 2001, and issued under Claim No. P-323972. The order affirmed  
14 Department orders dated November 28, 2000 and January 16, 2001. The contents of the  
15 November 28, 2000 order is as stated above.

16 The January 16, 2001 order provided as follows: Benefits are also being paid under  
17 Claim No. P-442467 for the same time period. The claimant's compensation rate is being adjusted  
18 beginning December 30, 2000, because of the entitlement to social security benefits. Any payment  
19 for time loss periods on or after this date will be at the new rate. The deduction listed below is  
20 being made to recover the overpayment because of the claimant's receipt of social security  
21 benefits. The remaining overpayment balance is now \$12,735.67. Labor and Industries has been  
22 notified that your federal benefits are not corrected. The overpayment that accrued for the periods  
23 November 1, 1999 through February 29, 2000 and June 1, 2000 through December 29, 2000, in the  
24 amount of \$11,579.20, will be recovered from future benefits at an initial rate of \$45 per month.  
25 There is an additional overpayment under the other claim (P-442467). **AFFIRMED.**

### 26 **DECISION**

27 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
28 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
29 issued on July 2, 2002, in which the orders issued by the Department on August 30, 2001, under  
30 each claim, were affirmed. The Board has reviewed the evidentiary rulings in the record of  
31 proceedings and finds that no prejudicial error was committed. The rulings are affirmed. We have  
32 granted review to discuss a jurisdictional matter that heretofore has been unidentified, to limit the  
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1 application of two earlier non-significant decisions addressing the same or similar issues, and to  
2 make corrections and additions to the findings of fact and conclusions of law.  
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4 These appeals were tried through stipulations of fact. Mr. Netherda has an open industrial  
5 injury claim and an open occupational disease claim. Portions of his total disability benefits  
6 (hereinafter referred to as time loss compensation or as TLC) have been paid under each claim.  
7 The allocation of the TLC between the two claims is not at issue. The Social Security  
8 Administration determined that Mr. Netherda was entitled to Social Security Disability benefits  
9 (hereinafter referred to as SSD) in August 1999, with a retroactive disability date of June 12, 1997.  
10 The Social Security Administration began paying SSD benefits; with a reduced rate retroactively  
11 applied to April 1998, due to an offset it applied because of the worker's receipt of time loss  
12 compensation benefits.  
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17 In October 1999, the Department received notice of the worker's entitlement to SSD. On  
18 February 11, 2000, the Department issued an order that notified the worker of its reverse offset, but  
19 only under Claim No. P-323972. In addition, that order notified the worker that the reverse offset  
20 was not being implemented at that time because the federal offset was still in effect and established  
21 an overpayment of TLC (slightly less than \$4,000 as of February 29, 2000) because of the delay in  
22 implementation of the reverse offset. The February 11, 2000 order was never appealed or  
23 protested. On November 28, 2000, the Department issued an order, jointly under these claims, that  
24 reduced the rate of the worker's TLC because of his receipt of SSD benefits, and reiterated that the  
25 implementation of the reduced rate (the reverse offset) was being delayed because the federal  
26 offset was still being taken by the Social Security Administration. The result was the accrual of  
27 additional overpayments of TLC (which now exceeded \$7,300) until the Social Security  
28 Administration removed the federal offset. Unbeknownst to the Department at that time was the  
29 fact that the Administration had lifted the federal offset in October 2000, retroactive to October 31,  
30 1999, with the result that Mr. Netherda received a lump sum of over \$12,000 as past SSD benefits  
31 that had been offset by the Social Security Administration. The worker notified the Department in  
32 January 2001 that he was receiving his full SSD benefits. The Department immediately  
33 implemented its reverse offset and began to recoup the overpayments, the balance of which then  
34 exceeded \$12,700, by December 29, 2000.  
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#### 44 **Scope of Jurisdiction**

45 In reviewing the record to determine the scope of our jurisdiction, we noted that there  
46 appeared to be no timely protest or appeal from the February 11, 2000 Department order issued  
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1 under Claim No. P-323972. Without a timely protest or appeal, that order became final and its  
2 provisions no longer subject to attack long before the appeals under consideration herein were  
3 filed. The February 11, 2000 order is significant inasmuch as it was the first order issued that set  
4 forth the Department's decision to assess the reverse offset but delay collection of it until after the  
5 federal offset was removed. That order also assessed an overpayment of TLC based on its  
6 imposition of the reverse offset while paying full TLC benefits.  
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10 We conducted a review of both Department files (P-442467 and P-323972) pursuant to *In re*  
11 *Mildred Holzerland*, BIIA Dec., 15,729 (1965), in order to resolve the question of our jurisdiction.  
12 We were unable to locate any written protest or appeal of the February 11, 2000 order in either  
13 claim file. We also were unable to locate a February 11, 2000 order issued under Claim  
14 No. P-442467. Although the parties stipulated that such an order exists, we reject that portion of  
15 their jurisdictional stipulation. We note that their stipulation is that the contents of the February 11,  
16 2000 order allegedly issued under Claim No. P-442467 would be exactly the same as the order  
17 issued under Claim No. P-323972. We view that as highly unlikely inasmuch as it is clear from the  
18 November 28, 2000 order (issued jointly under both claims) that the worker's rate of TLC and his  
19 monthly benefit amounts were **not** the same for both claims at that time.  
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25 The effect of these findings on the instant litigation is relatively minor. The overpayment  
26 established by the February 11, 2000 order in Claim No. P-323972 is final. So is the Department's  
27 use of the retroactive implementation process of the reverse offset under that claim to that date.  
28 *Marley v. Department of Labor & Indus.*, 125 Wn.2d 533 (1994). However, the validity of the  
29 Department's continued use of that process in Claim No. P-323972 after February 11, 2000, and  
30 any use of that process under Claim No. P-442467 is within our jurisdiction because of the timely  
31 protests and appeal of the November 28, 2000, January 16, 2001, and August 30, 2001 orders.  
32 We therefore proceed to discuss and reach determinations on the merits of these appeals.  
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### 37 **Validity of the Delayed Implementation of the Reverse Offset**

38 42 USC sec. 424a allows the Social Security Administration to offset SSD benefits to a  
39 disabled worker who is also receiving workers' compensation disability benefits, such as TLC.  
40 42 USC sec. 424a(d) permits the states to take this offset themselves (commonly called a "reverse  
41 offset"), by reducing the rate of workers' compensation disability benefits. RCW 51.32.220(1)  
42 permits the Department to take the reverse offset by reducing the worker's TLC entitlement in an  
43 amount equal to the amount of SSD benefits he is receiving, subject to certain limitations designed  
44 to provide the worker with a minimum amount of the combined benefits. As is illustrated by this  
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1 case, the coordination of the offset and the reverse offset is haphazard, at best, due to problems  
2 including time lags in the notification of one or another agency of entitlement to benefits, or a  
3 change in benefits amounts, as well as administrative or bureaucratic delays in acting on  
4 information received.  
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7 In this case, the Department delayed the implementation of its offset because to apply it  
8 when it legally could do so would mean that Mr. Netherda's benefits would be offset or reduced by  
9 the Administration and the Department simultaneously. Practically, such a "double offset" would  
10 cause extreme hardship to a disabled worker who is forced to rely on disability payments to survive.  
11 Legally, such a double offset would violate provisions in 42 USC sec. 424a(d) and  
12 RCW 51.32.220(1) and (5). See, e.g., *Harris v. Department of Labor & Indus.*, 120 Wn.2d 461  
13 (1993), and *Potter v. Department of Labor & Indus.*, 101 Wn. App. 399 (2000). In order to avoid a  
14 double offset, the Department placed the onus of preventing it upon itself rather than relying upon  
15 the Social Security Administration to remove its offset in a timely fashion. The Department's  
16 response is a pragmatic attempt to avoid immediate hardship to Mr. Netherda without ultimately  
17 providing him with a windfall of benefits. The Department accomplished this by continuing to pay  
18 Mr. Netherda's full TLC until it had notice that the Social Security Administration ceased taking its  
19 offset against his SSD benefits. The Department assessed an overpayment equal to the difference  
20 between the full amount of TLC to which Mr. Netherda was entitled absent any offset and the  
21 amount of TLC to which he would have been entitled once the federal offset was removed and the  
22 state reverse offset was implemented. The Department notified Mr. Netherda of the reverse offset  
23 and the delay in its implementation. Pursuant to RCW 51.32.220(3), the Department is recouping  
24 its overpayment over time, from Mr. Netherda's current and future workers' compensation monetary  
25 benefits.  
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36 Mr. Netherda objects to the process adopted by the Department for the reason that it permits  
37 it to recoup benefit overpayments of greater than six month's duration. He argues that the duration  
38 of benefits that the Department is permitted to recoup is limited to the 6-month period specified in  
39 RCW 51.32.220(2). (The Department has already acknowledged that this statute has limited its  
40 recoupment somewhat by determining that it is unable to recoup the overpayment for the period of  
41 March 1, 2000 to May 31, 2000.) However, the statutory language shows that the limitation period  
42 is tied to the date of notification of the worker that an overpayment has accrued or is accruing.  
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46 RCW 51.32.220(2) includes the following proviso:  
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That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months

1                   **immediately preceding** the date the department or self-insurer notifies  
2                   the worker that an overpayment has occurred: (Emphasis ours.)  
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4           The bulk of the overpayment for which Mr. Netherda is responsible occurred **after** the  
5 Department notified him that an overpayment had occurred, and told him that it would continue to  
6 accrue, as well as, how much the daily increase of the overpayment would be. RCW 51.32.220(2)  
7 does not limit the length of time for which the Department can recoup an overpayment when that  
8 period of time is subsequent to the date the worker received notification of the existence and  
9 accrual of the overpayment. If under the circumstances the recoupment of the overpayment is  
10 excessively onerous to the worker, he can still avail himself of RCW 51.32.220(6) and petition the  
11 director of the Department to waive some or all of it.  
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13           There is no express statutory authority for the delayed recoupment process adopted by the  
14 Department in this case. However, we believe that such a process is fairly implied by the  
15 RCW 51.32.220 offset provisions as they interact with the provisions of 42 USC sec. 424a. (See  
16 Final Legislative Report, 1979, SSB 2317, p. 143.) The process adopted by the Department allows  
17 it to comply with all provisions of RCW 51.32.220. By preventing a double offset against the  
18 worker's disability benefits, the Department's process furthers the primary policy of the Industrial  
19 Insurance Act of mitigating any hardship to workers caused by industrial injuries. The Department's  
20 process also effectuates the provisions of RCW 51.32.220(5), which requires that the worker's total  
21 benefits shall not be reduced to less than the amount he would receive without the offset.  
22 Additionally, the process prevents the claimant from receiving a windfall of over \$12,000,  
23 representing the lump sum payment of SSD benefits by the Social Security Administration after it  
24 retroactively ended its offset against those benefits. This comports with the legislative policy behind  
25 RCW 51.32.220 when it was enacted in 1975.  
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27           We acknowledge that our determination in this case differs from that contained in two prior  
28 appeals: *In re Rachael D. Helms (Wherry)*, Dckt. No. 98 12506 (July 22, 1999) and *In re Darla K.*  
29 *Merkouris*, Dckt. No. 99 13825 (August 10, 2000). We have not designated *Helms (Wherry)* or  
30 *Merkouris* as "Significant Decisions" pursuant to RCW 51.52.160. Our decision in those prior  
31 appeals did not include any discussion of the legal rationale for disposition of the issues common to  
32 Mr. Netherda's appeals. In fact, in *Helms (Wherry)* we merely adopted without comment, the  
33 determination contained within a Proposed Decision and Order. *Merkouris* was similarly disposed  
34 of except that we modified a conclusion of law to eliminate a provision directing future Department  
35 action that was beyond the scope of that appeal. The *Helms (Wherry)* and *Merkouris*  
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1 determinations are limited to the facts in those cases. We do not consider them to establish any  
2 authoritative rule or principle for other appeals.  
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4 **FINDINGS OF FACT**

- 5 1. Under **Claim No. P-44467**, Elwyn Netherda, the claimant, filed a claim  
6 for benefits with the Department of Labor and Industries on May 12,  
7 1998, alleging that he was injured on April 24, 1998, while in the course  
8 of his employment with Archer Construction, Inc. The claim was  
9 allowed.  
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11 No Department order was issued under this claim on February 11, 2000.  
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13 On November 28, 2000, the Department issued an order providing as  
14 follows: According to our records, Social Security has yet to correct your  
15 Federal benefit amount. Per the order dated February 11, 2000, an  
16 overpayment continues to accrue. The payments currently scheduled  
17 for you through November 30, 2000, will result in an additional  
18 overpayment of \$7,380.44 (\$6,899.84 under P-323972; \$480.60 under  
19 P-442467). You cannot be charged an overpayment for March 1,  
20 2000 through May 31, 2000. Effective November 11, 2000, it has been  
21 determined that your time loss benefit is payable concurrently with  
22 P-442467. This change increases your monthly offset compensation  
23 rate to \$2,229.95 per month (\$1,022.03 per month under P-323972;  
24 \$1,207.92 per month under P-442467). Because Social Security is still  
25 not paying your full federal benefits, Labor and Industries will continue to  
26 pay your full time loss rate. An overpayment will accrue at the new rate  
27 of \$44.36 per day (\$22.33 under P-323972; \$24.03 under P-442467).  
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29 On January 16, 2001, the Department issued an order providing as  
30 follows: Benefits are also being paid under Claim No. P-323972 for the  
31 same time period. The claimant's compensation rate is being adjusted  
32 beginning December 30, 2000, because of the entitlement to social  
33 security benefits. Any payment for time loss periods on or after this date  
34 will be at the new rate. The deduction listed below is being made to  
35 recover the overpayment because of the claimant's receipt of social  
36 security benefits. The remaining overpayment balance is now  
37 \$12,735.67. Labor and Industries has been notified that your federal  
38 benefits have now been corrected. The overpayment that accrued for  
39 the periods November 11, 2000 through December 29, 2000, in the  
40 amount of \$1,177.47, will be recovered from future benefits at an initial  
41 rate of \$45 per month. There is an additional overpayment under the  
42 other Claim (P-323972).  
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44 On January 29, 2001, the claimant filed a protest (mailed on January 26,  
45 2001) to the Department's November 28, 2000 order.  
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47 On March 19, 2001, the claimant filed a protest to the Department's  
January 16, 2001 order.

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2 On August 30, 2001, the Department issued an order affirming its  
3 November 28, 2000 and January 16, 2001 orders.  
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5 On October 19, 2001, the claimant filed a Notice of Appeal with the  
6 Board of Industrial Insurance Appeals from the Department's August 30,  
7 2001 order. On November 9, 2001, the Board issued an order granting  
8 the appeal under Docket No. 01 23803.  
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- 10 2. Under **Claim No. P-323972**, the claimant filed an application for benefits  
11 on November 28, 1995, alleging that he was injured on November 23,  
12 1994 while in the course of his employment with Grinnell Fire Protection.  
13 The claim was allowed.

14 On February 11, 2000, the Department issued an order reducing the  
15 time loss compensation rate to \$2,022.60 per month effective  
16 November 1, 1999, due to receipt of social security disability benefits.  
17 This order stated that Social Security is not paying your full federal  
18 benefits at this time. It directed that time loss compensation will  
19 continue to be paid at the full benefit rate of \$3,012.27 per month until  
20 the federal payments are corrected. An overpayment will accrue at the  
21 rate of \$32.99 per day. Payments currently scheduled for you through  
22 February 29, 2000, will result in an overpayment of \$3,991.79. The  
23 February 11, 2000 Department order was not protested or appealed by  
24 any party.  
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26 On November 28, 2000, the Department issued an order providing as  
27 follows: According to our records, Social Security has yet to correct your  
28 Federal benefit amount. Per the order dated February 11, 2000, an  
29 overpayment continues to accrue. The payments currently scheduled  
30 for you through November 30, 2000, will result in an additional  
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32 P-442467). You cannot be charged an overpayment for the period  
33 March 1, 2000 through May 31, 2000. Effective November 11, 2000, it  
34 has been determined that your time loss benefit is payable concurrently  
35 with P-442467. This change increases your monthly offset  
36 compensation rate to \$2,229.95 per month (\$1,022.03 per month under  
37 P-323972; \$1,207.92 per month under P-442467). Because Social  
38 Security is still not paying your full federal benefits, Labor and Industries  
39 will continue to pay your full time loss rate. An overpayment will accrue  
40 at the new rate of \$44.36 per day (\$22.33 under P-323972; \$24.03  
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45 same time period. The claimant's compensation rate is being adjusted  
46 beginning December 30, 2000, because of the entitlement to social  
47 security benefits. Any payment for time loss periods on or after this date  
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1 recover the overpayment because of the claimant's receipt of social  
2 security benefits. The remaining overpayment balance is now  
3 \$12,735.67. Labor and Industries has been notified that your federal  
4 benefits are now corrected. The overpayment that accrued for the  
5 periods November 1, 1999 through February 29, 2000 and June 1, 2000  
6 through December 29, 2000, in the amount of \$11,579.20, will be  
7 recovered from future benefits at an initial rate of \$45 per month. There  
8 is an additional overpayment under the other Claim (P-442467).

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10 On January 29, 2001, the claimant filed a protest to the Department's  
11 November 28, 2000 order.

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13 On March 19, 2001, the claimant filed a protest to the Department's  
14 January 16, 2001 order.

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16 On August 30, 2001, the Department issued an order affirming its orders  
17 of November 28, 2000 and January 16, 2001.

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19 On October 19, 2001, the claimant filed a Notice of Appeal from the  
20 Department's August 30, 2001 order. On November 9, 2001, the Board  
21 issued an order granting the appeal under Docket No. 01 23804.

- 22 3. On August 7, 1999, the Social Security Administration determined the  
23 claimant to have a disability onset date of June 12, 1997.
- 24 4. The claimant became entitled to social security disability benefits  
25 effective April 1998 in the amount of \$1,331 per month.
- 26 5. The claimant's social security disability benefits were paid at a reduced  
27 rate effective April 1998, due to receipt of workers' compensation  
28 benefits.
- 29 6. The Social Security Administration determined that \$3,353.60 per month  
30 equaled 80 percent of the claimant's average current earnings.
- 31 7. On October 9, 1999, the Department of Labor and Industries received  
32 notice of the claimant's entitlement to social security disability benefits.
- 33 8. The Department, by order of February 11, 2000, issued only under  
34 Claim No. P-323972, notified the claimant that his Labor and Industries  
35 compensation would continue at his full benefit rate of \$3,012.24 per  
36 month until the federal payments were corrected. An overpayment was  
37 to accrue at \$32.99 per day. The payments currently scheduled through  
38 February 29, 2000, would result in an overpayment of \$3,991.79.
- 39 9. The Department, by order of February 22, 2000, established the  
40 claimant's time loss benefits under Claim No. P-323972, based upon  
41 wages at the time of injury of \$4,576 per month, with a marital status of  
42 married, with zero dependents.  
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10. The Department, by order of November 20, 2000, established the claimant's time loss benefits under Claim No. P-442467, based upon wages at the time of injury of \$4,840 per month, with marital status of married, with zero dependents.
  11. The Social Security Administration continued imposing an offset until sometime around October 2000, at which time it lifted the offset retroactive to October 31, 1999.
  12. By order of November 28, 2000, the Department continued to pay full benefits to the claimant because Social Security had yet to correct the claimant's federal benefit amount. An overpayment continued to accrue, and the payments currently scheduled through November 30, 2000, would result in an additional overpayment of \$7,380.44 (\$6,899.84 under Claim No. P-323972; \$480.60 under Claim No. P-442467). The claimant was not charged an overpayment for March 1, 2000 through May 31, 2000. The claimant was notified that effective November 11, 2000, his time loss benefit was payable concurrently with Claim No. P-442467. The change increased his monthly offset compensation rate to \$2,229.95 per month (\$1,022.03 per month under Claim No. P-323972; \$1,207.92 per month under Claim No. P-442467). Since Social Security was still not paying the claimant's full federal benefits, the Department continued to pay his full time loss rate. The claimant was notified that an overpayment would accrue at the new rate of \$44.36 per day (\$22.33 under Claim No. P-323972; \$24.03 under Claim No. P-442467).
  13. On January 12, 2001, the claimant notified the Department that he was receiving full social security disability benefits since October 2000, during which month he received a retroactive payment.
  14. On January 16, 2001, by orders under both Claim No. P-323972 and Claim No. P-442467, the Department implemented the social security offset, and adjusted the claimant's compensation rate beginning December 30, 2000, to recover overpayments in the amount of \$12,735.67, which accrued for the periods November 1, 1999 through February 29, 2000, and June 1, 2000 through December 29, 2000. That overpayment would be recovered from future benefits at an initial rate of \$45 per month.

#### **CONCLUSIONS OF LAW**

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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter to these appeals.
  2. The provisions of the February 11, 2000 Department order issued in Claim No. P-323972, are final and binding on all parties.

- 1 3. Following notice of the claimant's receipt of federal Social Security  
2 benefits, the Department of Labor and Industries was required to  
3 continue paying the claimant's full level of benefits until such time as the  
4 Social Security Administration lifted its offset, thus accruing an ongoing,  
5 prospective overpayment of \$44.36 per day, as contemplated by  
6 RCW 51.12.010, RCW 51.32.220(1) and (5).  
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8 4. Upon the claimant's receipt of a lump sum payment of \$12,735.67 from  
9 the Social Security Administration representing entitlements accrued  
10 pending the administrative lifting of the federal social security offset, the  
11 Department of Labor and Industries was required to reduce the  
12 claimant's future benefits by \$45 per month, as contemplated by Title 51  
13 RCW.  
14  
15 5. The implementation of the offset by the Department for all periods of  
16 time, except March 1, 2000 through May 31, 2000, is not prohibited by  
17 the limitation period established by RCW 51.32.220(2).  
18  
19 6. **Docket No. 01 23803:** The order of the Department of Labor and  
20 Industries issued under Claim No. P-442467 on August 30, 2001, is  
21 correct and is affirmed.  
22  
23 7. **Docket No. 01 23804:** The order of the Department of Labor and  
24 Industries issued under Claim No. P-323972 on August 30, 2001, is  
25 correct and is affirmed.  
26

27 It is so **ORDERED**.

28 Dated this 19th day of December, 2002.  
29

30 BOARD OF INDUSTRIAL INSURANCE APPEALS  
31

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33  
34 /s/ \_\_\_\_\_  
35 THOMAS E. EGAN Chairperson  
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37  
38 /s/ \_\_\_\_\_  
39 JUDITH E. SCHURKE Member  
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