

## Honsowetz, Jason

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### DEPARTMENT

#### Authority to recoup overpayment of benefits

Deducting 100% of current time-loss compensation payments as recoupment of an overpayment of permanent partial disability is incorrect as a matter of law. ....*In re Jason Honsowetz*, BIA Dec., 08 18940 (2009)

Scroll down for order.

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

1 **IN RE: JASON S. HONSOWETZ** ) **DOCKET NO. 08 18940**  
2 )  
3 **CLAIM NO. Y-901015** ) **DECISION AND ORDER**

4 **APPEARANCES:**

5 Claimant, Jason S. Honsowetz, by  
6 Casey & Casey, P.S., per  
7 Gerald L. Casey

8 Employer, Perma Bilt Industries, Inc., by  
9 Building Industry Assoc of WA

10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 Christine J. Kilduff, Assistant

13 The claimant, Jason S. Honsowetz, filed an appeal with the Board of Industrial Insurance  
14 Appeals on September 26, 2008, from an order of the Department of Labor and Industries dated  
15 September 17, 2008. In this order, the Department affirmed orders dated January 25, 2007 and  
16 March 15, 2007.

17 In its January 25, 2007 order the Department stated, in part:

18 The following action is taken to comply with the decision of the Board of  
19 Industrial Insurance Appeals dated 12/14/06:

20 Time loss compensation is paid from 08/28/05 through 03/13/06 in the  
21 amount of \$8157.60.

22 . . .

23 A deduction is taken for the assessed overpayment. The remaining  
24 overpayment balance is now \$14064.96.

25 No warrant issued.

26 Total benefits in the amount of \$8157.60

27 Less deductions:

28 Claimant overpayment \$8157.60 -

29 Net entitlement \$ 0.00

1 In its March 15, 2007 order, the Department stated, in part:

2 Time loss benefits are paid from 02/07/07 through 03/10/07 in the  
3 amount of \$1363.84.

4 . . .

5 A deduction is taken for the assessed overpayment. The remaining  
6 overpayment balance is now \$12701.12.

7 No warrant issued.

8 Total benefits in the amount of \$1363.84

9 Less deductions:

10 Claimant overpayment \$1363.84 -

11 Net entitlement \$ 0.00

12 The September 17, 2008 Department order is **REVERSED AND REMANDED**.

### 13 DECISION

14 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
15 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
16 issued on June 10, 2009, in which the industrial appeals judge affirmed the order of the Department  
17 dated September 17, 2008. We have granted review because we conclude that the September 17,  
18 2008 order must be reversed because one of the two orders incorporated by it (the March 15, 2007  
19 order) was incorrect, and to explain the bases for our determinations contained herein.

#### 20 Evidentiary and Procedural Considerations

21 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
22 no prejudicial error was committed. The rulings are affirmed.

23 This appeal was tried pursuant to summary judgment motions filed by the Department on  
24 February 20, 2009, and by Mr. Honsowetz on March 9, 2009. The claimant's motion was not filed  
25 within the time limits set forth in CR 56(c), but we consider it timely as a response to the  
26 Department's summary judgment motion. It is in the interest of judicial economy for us to issue this  
27 decision as if both motions were timely. Were we to refer this to our hearing judge for further  
28 proceedings, it is highly unlikely that the parties would present any evidence in addition to what has  
29 already been submitted. Thus, all this would accomplish is to delay a decision on the merits for a  
30 period of months. The only prejudice to the Department by the untimeliness of the claimant's  
31 motion was that it prevented its response (a second affidavit from Candace Myrum—in the record  
32 as Ex. 11) from being timely as well. That prejudice was erased by the admission of the affidavit by  
our industrial appeals judge.

1 Did the Department Act with Legal Authority when it Issued the Overpayment Collection Orders?

2 The overpayment that the Department is attempting to collect, in part through the orders  
3 under appeal, originated when Mr. Honsowetz successfully appealed the March 13, 2006 closing  
4 order (Ex. 5) in which the Department affirmed the initial closing order dated December 21, 2005  
5 (Ex. 4), that directed payment of \$22,222.56 in permanent partial disability benefits; 50 percent of  
6 which was due him and the other 50 percent was applied to a lien for past due child support that the  
7 Department of Social and Health Services (DSHS) was collecting. Mr. Honsowetz appealed the  
8 claim closure to the Board. On December 14, 2006, the Board issued an Order on Agreement of  
9 Parties (Exhibits 6 and 7) that directed payment of time-loss compensation benefits for the period of  
10 August 28, 2005 through March 13, 2006, and kept the claim open for treatment.

11 In January 2007, the Department issued two orders. In its January 23, 2007 order (Ex. 3)  
12 the Department kept the claim open and stated that the permanent partial disability award paid was  
13 an overpayment that may be deducted from future benefits payable from the accident fund. Much  
14 of this order was in response to the Order on Agreement of Parties, and thus was ministerial. The  
15 provision of the January 23, 2007 order declaring the permanent partial disability award already  
16 paid to be an overpayment was not part of the Order on Agreement of Parties, and thus was not  
17 ministerial. The January 25, 2007 order (Ex. 9) paid time-loss compensation benefits for the entire  
18 period stated in the Order on Agreement of Parties, thus making that provision ministerial, but it did  
19 so by applying the full amount of that payment to the overpayment, a provision that was not part of  
20 the Order on Agreement of Parties, and therefore not ministerial. On February 2, 2007, the  
21 claimant filed Protests and Requests for Reconsideration of both the January 23, 2007, and  
22 January 25, 2007 orders. On February 14, 2007 the Department issued an order (Ex. 2) in which it  
23 affirmed the January 23, 2007 order. No mention was made of the January 25, 2007 order. The  
24 claimant appealed the February 14, 2007 order and we affirmed the Department's order.  
25 Claimant's appeal to superior court from our order is pending.

26 Subsequently, the Department issued the March 15, 2007 order (Ex. 10), which "paid"  
27 time-loss compensation benefits for the period of February 7 to March 10, 2007, by deducting the  
28 entire amount of the payment from the overpayment. The time-loss compensation benefits paid by  
29 this Order on Agreement of Parties was for a period of time subsequent to the period addressed by  
30 the December 14, 2006 order. In that earlier litigation, the Board did not have jurisdiction over the  
31 entitlement of Mr. Honsowetz to time-loss compensation benefits in 2007. The claimant timely  
32 protested the March 15, 2007 order.

1 The claimant filed a timely appeal with the Board from the order establishing the  
2 overpayment, which as stated earlier we affirmed and is now before the superior court. On  
3 September 17, 2008 the Department issued an order affirming the January 25, 2007 and the  
4 March 15, 2007 orders. It is the claimant's appeal from the September 17, 2008 order that is the  
5 subject of the instant appeal.

6 The Department had subject-matter jurisdiction to issue the January 25, 2007 and March 15,  
7 2007 orders. The Department's adjudication of the existence and repayment of an overpayment of  
8 industrial insurance benefits is within its statutory mandate. See *Marley v. Department of Labor &*  
9 *Indus.*, 125 Wn.2d 533 (1994). Furthermore, we conclude that these orders do not constitute a  
10 second adjudication of the amount or validity of the overpayment, which are the issues before the  
11 superior court. We interpret the reference to the overpayment in the January 25, 2007 and  
12 March 15, 2007 orders as merely an explanation for the basis of the withholding of the time-loss  
13 compensation benefits payments that normally would have been paid directly to Mr. Honsowetz.

14 The Department, by issuing the September 17, 2008 order (and the January 25, 2007 and  
15 March 15, 2007 orders that it affirmed), implemented the overpayment provision of its January 23,  
16 2007 order as affirmed by the Board's order dated August 25, 2008 under Docket No. 07 13534).  
17 Board orders are not automatically stayed pending a superior court appeal, although of course the  
18 court itself may exercise its inherent discretion and issue such a stay. *Lee v. Jacobs*, 81 Wn.2d.  
19 937 (1973); *In re Steven Carrell*, BIIA Dec. 99 11430 (1999). There is no indication that such a stay  
20 has been granted in this case.

21 In some circumstances it can be an error of law for the Department to make claim  
22 adjudications while an earlier determination is pending in superior court. For instance, while the  
23 Department can issue a ministerial order based on a Board order that is on appeal to superior  
24 court, it cannot through that order vest itself or the Board with the ability to reconsider the subject  
25 matter of the order that was appealed to the Court. *Carrell*. We have also held that when a  
26 Department order is on appeal to superior court the Department's ability to further adjudicate the  
27 claim is limited to those issues that are independent of issues pending on appeal. *In re Harold*  
28 *Heaton*, BIIA Dec. 68,701 (1986); *In re Betty Wilson*, BIIA Dec. 02 21517 (2004). The test is  
29 whether the Department can logically adjudicate the particular issue in the claim independent from  
30 the issue pending in superior court. See *Reid v. Department of Labor and Indus.*, 1 Wn.2d. 430  
31 (1939).

1 In *Heaton*, an appeal from a Department order reopening a claim was pending in superior  
2 court when the Department issued another order that awarded the injured worker a pension under  
3 that same claim. We determined that it was appropriate for the Department to do so because the  
4 Department's order addressed issues that were independent of the issues pending in superior  
5 court. The situation here is similar in that directing a method of repayment of an overpayment does  
6 not require a reconsideration of the existence of the overpayment, which is currently the issue on  
7 appeal to superior court. Thus, as in *Harold Heaton*, the Department appropriately issued the  
8 further orders regarding the repayment of the overpayment.

#### 9 Collection of the Overpayment

10 In both the January 25, 2007 and March 15, 2007 orders the Department offset 100 percent  
11 of the time-loss compensation benefits payments against the permanent partial disability  
12 overpayment resulting in no warrant being issued to the claimant in either case. The amount of the  
13 permanent partial disability paid in error was \$22,222.56, with half of that payment made to  
14 Mr. Honsowetz, and the other half going to DSHS as payment of the back due child support that  
15 agency was in charge of collecting from the claimant. The amount of the time-loss compensation  
16 benefits from the two orders that was applied against the permanent partial disability overpayment  
17 was somewhat less than 50 percent of the overpayment. The time-loss compensation benefits  
18 awarded to the claimant by the January 25, 2007 order was for the period of August 28, 2005  
19 through March 13, 2006, which encompasses the complete period of time-loss compensation  
20 benefits that was awarded to the claimant in the Board's Order on Agreement of Parties that also  
21 resulted in the permanent partial disability overpayment. The time-loss compensation benefits  
22 period adjudicated in the March 15, 2007 order was for the period of February 7, 2007 through  
23 March 10, 2007. In the Proposed Decision and Order, the industrial appeals judge stated that the  
24 time-loss compensation benefits were paid in compliance with the Order on Agreement of Parties  
25 (PD&O at p. 6 and p. 8, line 20). This is factually incorrect as the time-loss compensation benefits  
26 period stated in the March 15, 2007 order occurred **after** the date of the Order on Agreement of  
27 Parties. The order itself did not direct payment of any benefit for that period.

28 Mr. Honsowetz's objections to the offset fall under two general headings: (1) the claimant  
29 himself was not the "recipient" of the payments that were offset within the meaning of  
30 RCW 51.32.240 (4) and therefore the offset should not be collected from him; (2) The Department  
31  
32

1 should not be able to offset 100 percent of a time-loss compensation benefits payment as that will  
2 cause hardship to the claimant. We were unable to locate statutory or case law applicable to these  
3 issues. The record contains three written Department policy statements regarding the collection of  
4 overpayments, which are not consistent with each other.

5 The term "recipient" is not defined by RCW 51.32.240. The term connotes receipt of  
6 something, in this case the erroneous payment, by a person or entity. There were two direct  
7 recipients of the erroneously paid permanent partial disability award; Mr. Honsowetz received  
8 50 percent of the amount, and DSHS received the other 50 percent. Because the money DSHS  
9 received would be applied to the claimant's child support debt thus reducing it, he also "received" a  
10 benefit from that payment even if it was not made directly to him.

11 Thus the issue is whether the Department is required to collect equally from DSHS and  
12 Mr. Honsowetz instead of only from the latter. There is no evidence to suggest that the Department  
13 attempted to recoup any of the monies erroneously sent to DSHS. We note that the amount  
14 collected from the claimant by these orders does not exceed the total amount of money sent  
15 directly to him in error. This failure to collect from DSHS appears to be in violation of the procedure  
16 the Department summarized in the "permanent partial disability Overpayments" Quick Reference  
17 Card or QRC (Ex. 13), which states at p. 2 that when there is an alternate recipient, the  
18 overpayment must be assessed against both recipients. However, this direction does not appear in  
19 either of the written policy statements of the Department that were placed into evidence,  
20 Task 2.81-A (Ex. 16) and the Management Update dated September 2, 2005 (Ex. 12) which  
21 superseded it. Inasmuch as Mr. Honsowetz received the benefit of all monies paid regardless of to  
22 whom the payments were made, the provision in the QRC does not seem to be a sufficient basis for  
23 us to remand this matter to the Department to collect from both alternative recipients equally since  
24 the amount collected was not greater than the total amount the claimant received directly.

25 There is also a lack of statutory and case law about what percentage of a time-loss  
26 compensation benefits payment may be taken by the Department in offset of a permanent partial  
27 disability overpayment. The 25 percent limitation advocated by Mr. Honsowetz appears to come  
28 from RCW 51.32.220 (3) involving recovery of overpayments that may arise when an injured worker  
29 receives social security payments in addition to total disability benefits under the Industrial  
30 Insurance Act in amounts that result in an overpayment of the latter. RCW 51.32.240(4), the  
31  
32

1 statute under the authority of which the Department issued the order under appeal, allows  
2 recoupment from payments of ongoing or future (as well as past due amounts) total disability  
3 benefits but does not state any limitation on the percentage of each ongoing or future payment that  
4 may be offset.

5 Here, too, the Department's policy statements contradict each other. Task 2.81-A, the earlier  
6 policy statement specifically said at p. 2, that the RCW 51.32.220(3) limitation only applies to social  
7 security overpayments. This language was not included within the 2005 Management Update. The  
8 QRC, on the other hand cites RCW 51.32.220(3) when stating that, the maximum deduction for  
9 **future** payments is 25 percent. Task 2.81-A also directed that when (as here) an overpayment is  
10 greater than the amount of back time-loss compensation benefits to be awarded that the  
11 Department first send one full month's worth of time-loss compensation benefits to the claimant and  
12 then take 100 percent of the remaining lump sum payment. This method of offset is not recorded  
13 within either the Management Update or the QRC. The Management Update essentially directs that  
14 100 percent of any payment of back time-loss compensation benefits is to be offset and that the  
15 amount of deductions from future time-loss compensation benefits payments is within the discretion  
16 of the claims manager with the only limitation being that there is no financial burden on the  
17 recipient. The QRC also contains the distinction between back time-loss compensation benefits to  
18 be paid and future time-loss compensation benefits. It is consistent with the Management Update  
19 in that 100 percent of the back time-loss compensation benefits may be offset but that future  
20 time-loss compensation benefits offset amounts are at the adjudicator's discretion except with the  
21 added limitation stated above of 25 percent pursuant to .220(3).

22 We believe two legislative policies are relevant in this case. First and foremost is the policy  
23 that is codified in RCW 51.04.010, that the Industrial Insurance Act should be construed to prevent  
24 hardship to the injured worker, which is also recognized in the later expression of Department  
25 policy, the Management Update. Additionally there is the policy behind the promulgation of the  
26 recoupment statute, RCW 51.32.240, which recognizes that the Department is the trustee of the  
27 accident fund. With these policies as guidance, we conclude the following: First, (in regard to the  
28 January 25, 2007 order) we conclude that the offset of 100 percent of the **back** time-loss  
29 compensation benefits payment was correct because: (a) the amount offset was less than the  
30 amount of permanent partial disability the claimant erroneously received directly (as opposed to  
31 being sent to DSHS), (b) the



1 limitation in RCW 51.32.220(3) is not applicable to an overpayment recouped under  
2 RCW 51.32.240; and (c) the claimant presented no proof of hardship caused by the Department's  
3 action in offsetting these past due benefits against benefits that he received erroneously. Second,  
4 (in regard to the March 15, 2007 order) we conclude that the offset of 100 percent of ongoing  
5 time-loss compensation benefits payments (also described as **future** benefits within the meaning of  
6 the Management Update) is incorrect as a matter of law. Ongoing (or future) time-loss  
7 compensation benefits generally are used to pay current bills and living expenses. These benefit  
8 payments are used by injured workers to put food on the table and pay the rent and utility bills that  
9 come due periodically. We conclude that as a matter of law taking 100 percent of the current  
10 time-loss compensation benefits as recoupment of an overpayment of permanent partial disability in  
11 the past would constitute a hardship to an injured worker contrary RCW 51.04.010 (and a financial  
12 burden within the meaning of the Management Update).

13 We are also concerned about the lack of guidance the Department policy appears to give  
14 each individual claims manager in setting a percentage of ongoing time-loss compensation benefits  
15 that may be offset. We suggest that the Department engage in rule-making or otherwise set written  
16 standards in this situation in order to prevent unbridled claims administrator discretion and to  
17 protect both the worker and the accident fund. We reverse the September 17, 2008 order and  
18 remand it to the Department to affirm its January 25, 2007 order and to recalculate the amount of  
19 recoupment from the claimant's ongoing or future time-loss compensation benefits (for the period  
20 covered by the March 15, 2007 order) consistent with the policies of the Industrial Insurance Act, as  
21 described above.

### 22 **FINDINGS OF FACT**

- 23 1. The claimant, Jason S. Honsowetz, filed an Application for Benefits with  
24 the Department of Labor and Industries on January 15, 2004, in which  
25 he alleged that he sustained an industrial injury on January 9, 2004,  
26 during the course of his employment with Perma Bilt Industries, Inc.  
The claim was allowed and benefits paid.

27 The Department issued an order on December 21, 2005, in which it  
28 closed the claim with an award for permanent partial disability of 15  
29 percent of the right leg at the ankle and 20 percent of the left leg at the  
30 ankle, less a deduction.

31 The claimant protested this order on December 30, 2005.

32 The Department affirmed the December 21, 2005 order on March 13,  
2006.

1 The claimant filed a Notice of Appeal from this order on March 20, 2006,  
2 with the Board of Industrial Insurance Appeals.

3 The Board issued an order on April 26, 2006, in which it granted the  
4 appeal, assigned it Docket No. 06 13140 and ordered that further  
5 proceedings be held.

6 On December 14, 2006, the Board issued an Order on Agreement of  
7 Parties that stated:

8 "The parties have stipulated as follows:

9 If called to testify, Gregory Duff, M.D., would state on a more-probable-  
10 than-not basis:

11 1. The claimant was not medically fixed and stable as of  
12 December 21, 2005, and March 13, 2006.

13 2. Due to the condition(s), proximately caused by the  
14 industrial injury the claimant was unable to perform or obtain  
15 reasonably continuous gainful employment for the period from  
16 August 28, 2005, through March 13, 2006, inclusive.

17 The parties further stipulate and agree that the March 13, 2006 order  
18 should be reversed and this matter should be remanded to the  
19 Department to pay claimant time-loss compensation benefits for the  
20 period from August 28, 2005, through March 13, 2006, and to take such  
21 other and further action as is necessary and proper under the law and  
22 the facts.

### 23 **ORDER**

24 Based on the record and the agreement of the parties, the Board has  
25 jurisdiction over this timely appeal. The Department order dated  
26 March 13, 2006, is reversed and this matter remanded to the  
27 Department with direction to pay the claimant time-loss compensation  
28 benefits for the period from August 28, 2005, through March 13, 2006,  
29 inclusive, and to take such other and further action as is necessary and  
30 proper under the law and the facts."

31 On January 25, 2007, the Department issued an order, pursuant to the  
32 Board's December 14, 2006 Order on Agreement of Parties that stated:

"The following action is taken to comply with the decision of the Board of  
Industrial Insurance Appeals dated 12/14/06:

Time loss compensation is paid from 08/28/05 through 03/13/06 in the  
amount of \$8157.60.

...

A deduction is taken for the assessed overpayment. The remaining  
overpayment balance is now \$14064.96.

No warrant issued.

1 Total benefits in the amount of \$8157.60

2 Less deductions:

3 Claimant overpayment \$8157.60 -

4 Net entitlement \$ 0.00

5 The claimant protested this order on February 2, 2007.

6 On March 15, 2007, the Department issued an order that stated:

7 "Time loss benefits are paid from 02/07/07 through 03/10/07 in the  
8 amount of \$1363.84.

9 ....

10 A deduction is taken for the assessed overpayment. The remaining  
11 overpayment balance is now \$12701.12.

12 No warrant issued.

13 Total benefits in the amount of \$1363.84

14 Less deductions:

15 Claimant overpayment \$1363.84 -

16 Net entitlement \$ 0.00"

17 The claimant protested this order on March 22, 2007.

18 On September 17, 2008, the Department issued an order in which it  
19 affirmed both the January 25 and March 15, 2007 orders.

20 The claimant filed a Notice of Appeal from this order on September 26,  
21 2008, with the Board of Industrial Insurance Appeals.

22 The Board issued an order on November 6, 2008, in which it granted the  
23 appeal, assigning it Docket No. 08 18940 and ordering that further  
24 proceedings be held.

25 2. On January 23, 2007, the Department issued an order that kept the  
26 claim open and stated that the permanent partial disability paid was an  
27 overpayment that may be deducted from future benefits payable from  
28 the accident fund. On February 2, 2007, the claimant filed a protest and  
29 request for reconsideration from the January 23, 2007 order. On  
30 February 14, 2007 the Department issued an order (Ex. 2) that affirmed  
31 the January 23, 2007 order. The claimant filed a timely appeal with the  
32 Board from the February 14, 2007 order establishing the overpayment,  
which was affirmed by the Board and timely appealed to superior court.  
Currently that action is pending before the superior court.

3. In both the January 25, 2007 and March 15, 2007 orders the  
Department offset 100 percent of the time-loss compensation benefits  
payments against the permanent partial disability overpayment. The  
amount of the permanent partial disability paid in error was \$22,222.56,  
with half of that amount paid directly to the claimant and the other half

1 paid to DSHS as payment of the claimant's back due child support debt  
2 that DSHS was authorized to collect from him.

3 4. The amount of the time-loss compensation benefits paid by the  
4 January 25, 2007 order was \$8,157.60 for the period of August 28, 2005  
5 through March 13, 2006. The Department offset the entire amount of  
6 this payment against the permanent partial disability benefits the  
7 claimant received erroneously.

8 5. The amount of time-loss compensation benefits paid by the March 15,  
9 2007 order was \$1,363.84 for the period of February 7, 2007 through  
10 March 10, 2007, which represented a period of current or ongoing  
11 time-loss compensation benefits at the time the order was issued. The  
12 Department offset the entire amount of this payment against the  
13 permanent partial disability benefits the claimant received erroneously,  
14 causing a hardship for the claimant.

### 15 CONCLUSIONS OF LAW

16 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
17 parties to and subject matter of this appeal.

18 2. The motions, supporting documents, and oral arguments on the hearing  
19 for summary relief pursuant to CR 56, demonstrate that there is no  
20 genuine issue of material fact. Both the claimant and the Department of  
21 Labor and Industries are entitled to summary disposition as a matter of  
22 law, as contemplated by CR 56.

23 3. The Department had subject-matter jurisdiction to issue the January 25,  
24 2007, March 15, 2007, and September 17, 2008 orders. These orders  
25 do not constitute a second adjudication of the amount or validity of the  
26 overpayment, currently at issue in superior court.

27 4. The claimant was a "recipient" within the meaning of RCW 51.32.240 (4)  
28 of the entire permanent partial disability award that was declared by the  
29 January 23, 2007 Department order to be an overpayment. DSHS was  
30 an alternate recipient of that portion of the permanent partial disability  
31 award paid directly to it by the Department for application to the  
32 claimant's child support obligation.

5. The 25 percent limitation on the collection from a total disability payment  
pursuant to RCW 51.32.220 (3) is not applicable to the recoupment of  
benefits made by the Department under the authority of  
RCW 51.32.240.

6. The Department may offset 100 percent of a back time-loss  
compensation benefits payment in order to recoup a permanent partial  
disability payment made in error. This action does not constitute per se  
a hardship to an injured worker.

7. The Department may not offset 100 percent of the ongoing or future  
time-loss compensation benefits payments in order to recoup a  
permanent partial disability payment made in error. Recoupment of an  
overpayment of permanent partial disability in this fashion constitutes a

1 hardship to an injured worker contrary to the meaning of  
2 RCW 51.04.010.

- 3 8. The Department order dated September 17, 2008, is incorrect and is  
4 reversed and the matter is remanded to the Department to affirm its  
5 January 25, 2007 order and to recalculate the amount of recoupment  
6 from the claimant's ongoing or future time-loss compensation benefits  
7 (for the period covered by the March 15, 2007 order) consistent with the  
8 policies of the Industrial Insurance Act.

9 Dated: December 4, 2009.

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

11 /s/ \_\_\_\_\_  
12 THOMAS E. EGAN Chairperson

13 /s/ \_\_\_\_\_  
14 FRANK E. FENNERTY, JR. Member

15 /s/ \_\_\_\_\_  
16 LARRY DITTMAN Member