

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

**IN RE: ARTHUR C. BEARD** ) **DOCKET NO. 23 11002**  
 )  
**CLAIM NO. AU-66627** ) **DECISION AND ORDER**

In 2015, Arthur C. Beard, sustained an industrial injury in the course of employment with Project Time & Cost, LLC. He filed a claim with the Department of Labor and Industries (Department). The Department allowed the claim, provided benefits, and eventually placed Mr. Beard on an industrial insurance pension. Mr. Beard opted to have his pension actuarially reduced so his wife could have the right of survivorship if he died from a cause unrelated to his injury. His pension would go to her after his death. At the time, he also applied for and received Social Security disability and then retirement benefits. Thereafter, the Department adjusted his monthly pension by offsetting his Social Security benefits, as it is entitled to do under state and federal law. Mr. Beard appealed the offset. He seeks a determination that the Department took too great an offset. After hearing a motion for summary judgment, our industrial appeals judge granted summary judgment in favor of the Department, and affirmed the Department order. Mr. Beard filed this Petition for Review, arguing that the Department has taken sequential offsets by offsetting both the Industrial Insurance survivorship option he chose and his Social Security retirement benefits. The Department counters that the Department followed the proper procedure as set forth in RCW 51.32.220 and RCW 51.32.225. We agree with our industrial appeals judge's resolution of this appeal, but grant review to supplement the conclusions of law. The Department's January 11, 2023 order is **AFFIRMED**.

**DISCUSSION**

We agree with our industrial appeals judge and affirm the Department order dated January 11, 2023. We have granted review to briefly address the claimant's Petition for Review and supplement the conclusions of law. Our decision is based upon a careful review of the following materials:

1. Mr. Beard's Motion for Summary Judgment dated August 15, 2023.
2. Declaration of Brian M. Wright, Mr. Beard's attorney, dated August 15, 2023, with the following attached exhibits:
  - a. Exhibit 1, Board of Industrial Insurance Appeals (Board) Order on Agreement of Parties, Docket No. 20 14906, and Report of Proceeding Agreement of Parties, both dated April 26, 2021.
  - b. Exhibit 2, Department of Labor and Industries (Department) May 14, 2021 order.
  - c. Exhibit 3, Department Pension Benefits Questionnaire, signed by Mr. Beard on May 17, 2021; Mr. Beard's license and certificate of marriage dated April 2, 2005;

1 Department Married Option Pension Form dated June 9, 2021; Mr. Beard's  
2 notarized signature dated June 15, 2021.

- 3  
4 d. Exhibit 4, June 22, 2021 Department Notice of Decision to Mr. Beard regarding his  
5 selection of Option 3 under RCW 51.32.067.  
6 e. Exhibit 5, June 27, 2018 Department Notice of Decision correcting Department order  
7 dated April 5, 2017, regarding wage rate.  
8 f. Exhibit 6, September 2, 2021 letter from the Social Security Administration to  
9 Mr. Beard regarding its notice of a "fully favorable" decision regarding his disability  
10 claim.  
11 g. Exhibit 7, October 22, 2021 Department Notice of Decision adjusting Mr. Beard's  
12 compensation rate.  
13 h. Exhibit 8, December 9, 2021 Department Notice of Decision correcting its order of  
14 October 14, 2021, regarding Mr. Beard's wage rate.  
15 i. Exhibit 9, August 9, 2022, Department Notice of Decision adjusting Mr. Beard's  
16 compensation rate and assessing an overpayment.  
17 j. Exhibit 10, Department's answers and objections to Mr. Beard's first set of  
18 interrogatories and requests for production.  
19  
20  
21  
22 3. Department's Response to Mr. Beard's Motion for Summary Judgment, dated  
23 August 31, 2023.  
24 4. Mr. Beard's Reply regarding the motion for summary judgment, dated September 7, 2023.  
25 5. The parties' oral argument at hearing on September 12, 2023.  
26 6. The record before the Board.

27  
28 In his Petition for Review, Mr. Beard argues that the Department has, in essence, taken  
29 sequential offsets. We do not agree with this view. Regarding his Industrial Insurance pension, he  
30 chose Option III under RCW 51.32.067(c). It provides:

31  
32  
33 (c) **Option III.** An injured worker selecting this option shall receive an actuarially  
34 reduced benefit and, upon death, one-half of the reduced benefit shall be continued  
35 throughout the life of and paid to the surviving spouse, child, or other dependent as the  
36 worker has nominated by written designation duly executed and filed with the  
37 department.

38 Under this statute, the reduced monthly pension payment is an actuarial reduction based upon  
39 Mr. Beard's choice—not an offset taken by the Department. Regarding the offset for Social Security  
40 retirement benefits, RCW 51.32.225(3) provides: "(3) Any reduction in compensation made under  
41 chapter 58, Laws of 1986, shall be made before the reduction established in this section."  
42

43 That is what the Department did here. Offsets for Social Security retirement benefits are to be  
44 calculated under the provisions of RCW 51.32.220, which addresses offsets for Social Security  
45  
46  
47

1 disability benefits.<sup>1</sup> Of particular concern to Mr. Beard's argument is RCW 51.32.220(5), which  
2 provides: "In no event shall the reduction reduce total benefits to less than the greater amount the  
3 worker may be entitled to receive under this title or the federal old-age, survivors, and disability  
4 insurance act."  
5

6  
7 We are not persuaded by Mr. Beard's argument that the statute's reference to "may be entitled  
8 to receive" requires the Department to look back and consider the monthly benefit amount he might  
9 have been entitled to if he had not elected to provide a lifetime pension extension to his surviving  
10 spouse under RCW 51.32.067. The statutes themselves do not provide support for this approach,  
11 and Mr. Beard does not point to any other convincing authority. By choosing Option III, he did not  
12 change what he is entitled to receive. He *chose* to defer some of the monthly amount he receives in  
13 the event he predeceases his spouse so that monthly payments continue. In fact, it would appear  
14 that for workers who may meet the minimum benefit threshold provided by RCW 51.32.220(5), with  
15 the reduction taken for a survivorship option before the calculation of a Social Security offset as  
16 mandated by RCW 51.32.225(3), those who do, or even can, choose a survivorship option ultimately  
17 may have less of an offset of Social Security benefits than those who do not or cannot choose a  
18 survivorship option.  
19  
20  
21  
22  
23  
24

### 25 **DECISION**

26 In Docket No. 23 11002, the claimant, Arthur C. Beard, filed an appeal with the Board of  
27 Industrial Insurance Appeals on February 2, 2023, from an order of the Department of Labor and  
28 Industries dated January 11, 2023. In this order, the Department affirmed its August 9, 2022 Initial  
29 Offset order that adjusted his compensation effective November 16, 2021, because of his receipt of  
30 Social Security benefits. This order is correct and is affirmed.  
31  
32  
33

### 34 **FINDINGS OF FACT**

- 35 1. On April 26, 2023, an industrial appeals judge certified that the parties  
36 agreed to include the Jurisdictional History in the Board record solely for  
37 jurisdictional purposes.
- 38 2. On January 15, 2015, the claimant, Arthur C. Beard, was injured while  
39 working for Project Time & Cost, LLC. His claim was allowed and benefits  
40 were provided.
- 41 3. On May 14, 2021, the Department determined Mr. Beard was  
42 permanently totally disabled and placed him on a pension effective  
43 March 31, 2020.  
44  
45

---

46  
47 <sup>1</sup> RCW 51.32.225(2)

- 1 4. On June 15, 2021, Mr. Beard selected Option III, RCW 51.32.067,  
2 allowing his spouse to continue receiving 50 percent of his pension in the  
3 event of his death. On June 22, 2021, the Department memorialized that  
4 election in a Notice of Decision.
- 5 5. On September 2, 2021, the Social Security Administration decided that  
6 Mr. Beard had been disabled under the Social Security Act since  
7 May 12, 2017, and that he was entitled to Social Security disability  
8 benefits.
- 9 6. On September 27, 2021, Mr. Beard reached Social Security retirement  
10 age and began receiving Social Security retirement benefits.
- 11 7. On October 22, 2021, the Department issued an order adjusting  
12 Mr. Beard's Industrial Insurance compensation effective  
13 November 16, 2021, by offsetting the Social Security retirement and  
14 disability benefits.
- 15 8. On December 9, 2021, the Department issued an order adjusting  
16 Mr. Beard's Industrial Insurance compensation effective  
17 November 16, 2021, by offsetting the Social Security retirement and  
18 disability benefits.
- 19 9. The pleadings and evidence submitted by the parties demonstrate that  
20 there is no genuine issue as to any material fact.

#### 21 **CONCLUSIONS OF LAW**

- 22 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
23 and subject matter in this appeal.
  - 24 2. RCW 51.32.067 provides for an actuarially reduced benefit upon selection  
25 of Option II or Option III that provide for continued benefits paid to a  
26 surviving spouse or dependents.
  - 27 3. RCW 51.32.225(3) provides that the reduction in Mr. Beard's  
28 compensation due to his Option III choice under RCW 51.32.067 be made  
29 before an offset of Social Security benefits.
  - 30 4. RCW 51.32.225(2) provides that the offset for Social Security retirement  
31 benefits shall be calculated pursuant to RCW 52.32.220.
  - 32 5. RCW 52.32.220 and RCW 52.32.225(5) neither provide for nor require  
33 the Department to consider the monthly benefit amount Mr. Beard would  
34 have received if he hadn't chosen the survivorship Option III under  
35 RCW 51.32.067 in calculating the offset of his compensation due to  
36 receipt of Social Security retirement benefits.
- 37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

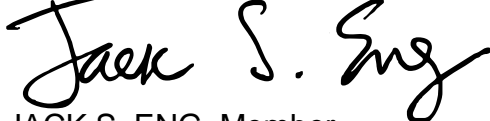
- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47
- 6. The Department is entitled to a decision as a matter of law as contemplated by CR 56.
  - 7. The Department order dated January 11, 2023, is correct and is affirmed.

Dated: March 18, 2024.

BOARD OF INDUSTRIAL INSURANCE APPEALS



HOLLY A. KESSLER, Chairperson



JACK S. ENG, Member

**Addendum to Decision and Order  
In re Arthur C. Beard  
Docket No. 23 11002  
Claim No. AU-66627**

**Appearances**

Claimant, Arthur C. Beard, by Causey Wright, per Brian M. Wright

Employer, Project Time & Cost, LLC (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per John S. Barnes

**Petition for Review**

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on November 16, 2023, in which the industrial appeals judge affirmed the Department order dated January 11, 2023. The Department filed a Response to the claimant's Petition for Review.