

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

KATHERINE WILSON,	)	
	)	
Employee,	)	
Claimant,	)	INTERLOCUTORY
	)	DECISION AND ORDER
v.	)	
	)	AWCB Case No. 202127694
PROVIDENCE ALASKA MEDICAL	)	
CENTER,	)	AWCB Decision No. 23-0077
	)	
Employer,	)	Filed with AWCB Anchorage, Alaska
and	)	on December 18, 2023
	)	
PROVIDENCE HEALTH & SERVICES,	)	
	)	
Insurer,	)	
Defendants.	)	

---

Providence Alaska Medical Center's April 11, 2023 petition for a Social Security offset was heard on the written record in Anchorage, Alaska on December 14, 2024, a date selected on September 27, 2023. A June 2, 2023 hearing request gave rise to this hearing. Non-attorney representative Barbara Williams represented Katherine Wilson (Employee). Attorney Jeffrey Holloway represented Providence Alaska Medical Center and Providence Health & Services (Employer). The record closed on December 14, 2023.

## ISSUE

Employer contends it is entitled to a Social Security offset. Employee does not object to the Social Security offset but wants to know how it is calculated.

**Is Employer entitled to a Social Security offset?**

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On November 4, 2021, Employee reported after receiving a work mandated Covid 19 vaccination her temperature rose, and she had a rapid heart rate. She reported after returning to work on September 21, 2021 she had tachycardia, vertigo, near syncope, shortness of breath, nausea, vomiting, fatigue, and an increase in migraine headaches. (Report of Injury, November 4, 2021.)
- 2) On November 3, 2021, Employer started paying Employee temporary total disability (TTD) benefits and those benefits were paid through June 1, 2023. Employee's compensation rate was \$1,186.00 based upon gross weekly earnings of \$1,775.65 and her status as married with two dependents. (ICERS Payments Screen; ICERS Wages Screen.)
- 3) On November 16, 2022, Employer controverted TTD and temporary partial disability (TPD) benefits because Employee refused a November 11, 2022 modified duty work offer. Employer said, "She is no longer disabled and has refused work made available as per AS 23.30.395(16)." (Controversion Notice, November 16, 2022).
- 4) On January 23, 2023, the Social Security Administration (SSA) provided Employee notice that she was entitled to monthly disability benefits of \$2,216.20 beginning May 2022. (SSA Notice of Award, January 23, 2023, page 2). The SSA found Employee's disability began on November 10, 2021, one week after the date Employer commenced paying Employee TTD benefits. (*Id.*, page 1; Observations and inferences.)
- 5) On April 11, 2023, Employer petitioned for a Social Security offset under AS 23.30.225(b). The petition stated, "Supporting documentation will be provided in a hearing brief." (Petition, April 11, 2023.)
- 6) On October 13, 2023 and November 6, 2023, Employer notified Employee how it computed the Social Security offset reduction:

Gross weekly wage: \$1,775.65 (based on 2019 gross earnings of \$88,782.55)

Social security monthly amount per award letter: \$2,240.12 per month (based on \$17,921.00 awarded for May-December 2022, for a monthly average of \$2,240.12); weekly amount of \$516.95

Gross weekly wage x .8 = \$1,420.52 (maximum payment of social security disability and TTD)

New compensation rate: \$1,420.52 - \$516.95 = \$903.57 in TTD

The offset would be effective May 1, 2022, which is the first month of entitlement to social security disability payments.

(Letters to Barbara Williams from Jeffrey Holloway, October 13, 2023 and November 6, 2023).

7) On June 2, 2023, Employer filed a hearing request for its April 11, 2023 petition for a Social Security offset. (Affidavit of Readiness for Hearing, June 2, 2023.)

8) From May 1, 2022 and November 16, 2022, 28 weeks and 4 days, Employee received Social Security Disability benefits and TTD without an offset, creating an overpayment. (Record; Observations.)

#### PRINCIPLES OF LAW

**AS 23.30.001. Intent of the Legislature and Construction of Chapter.** It is the intent of the legislature that

(1) this chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers . . . .

The board may base its decision on not only direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

**AS 23.30.155. Payment of compensation.**

. . . .

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board. . . .

KATHERINE WILSON v. PROVIDENCE ALASKA MEDICAL CENTER

AS 23.30.155(j) permits withholding up to 20 percent of future compensation installments and can be invoked at an employer's discretion. *Davenport v. K&L Distributors, Inc.*, AWCB Decision No. 92-0180 (July 22, 1992).

**AS 23.30.225. Social security and pension or profit sharing plan offsets.**

....

(b) When it is determined that, in accordance with 42 U.S.C. 401 - 433, periodic disability benefits are payable to an employee or the employee's dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401 - 433, and (2) weekly disability benefits to which the employee would otherwise be entitled under this chapter, exceeds 80 percent of the employee's average weekly wages at the time of injury.

*Stanley v. Wright-Harbor*, AWCB Decision No. 82-0039 (February 19, 1982) *aff'd* 3 AN-82-2170 Civil (Alaska Super. Ct. May 19, 1983), established guidelines for calculating an employer's Social Security offset under AS 23.30.225(b) and held an offset must be based upon an employee's initial Social Security entitlement. Social Security offsets are calculated as follows:

- A. Determine employee's Gross Weekly Earnings (GWE)
- B. From GWE, determine Weekly Compensation Rate for worker's compensation (Weekly WC Rate)
- C. Calculate employee's Weekly Social Security benefit by multiplying monthly payment x 12 and ÷ 52 (Weekly SS Benefit)
- D. Add Weekly WC Rate + Weekly SS Benefit [B + C]
- E. Calculate 80% of GWE [80% of A]
- F. Calculate Social Security Offset [D – E] *Id.*

**8 AAC 45.225. Social security and pension or profit sharing plan offsets.**

....

(b) An employer may reduce an employee's weekly compensation under AS 23.30.225(b) by

- (1) getting a copy of the Social Security Administrations award showing the

- (A) employee is being paid disability benefits;
  - (B) disability for which the benefits are paid;
  - (C) amount, month, and year of the employee’s initial entitlement; and
  - (D) amount, month, and year of each dependent’s initial entitlement;
- (2) computing the reduction using the employee or beneficiary’s initial entitlement, excluding any cost-of-living adjustments;
- (3) completing, filing with the board, and serving upon the employee a petition requesting a board determination that the Social Security Administration is paying benefits as a result of the on-the-job injury; the petition must show how the reduction will be computed and be filed together with a copy of the Social Security Administration’s award letter;
- (4) filing an affidavit of readiness for hearing in accordance with 8 AAC 45.070(b); and
- (5) after a hearing and an order by the board granting the reduction, completing a Compensation Report form showing the reduction, filing a copy with the board, and serving it upon the employee.

....

- (d) An employee . . . who is receiving weekly compensation benefits shall
- (1) send the employer a copy of the award letter from the Social Security Administration . . . ; and
  - (2) upon the employer’s request, sign a release for the employer to get information from the Social Security Administration . . . .

In *Underwater Construction, Inc. v. Shirley*, 884 P.2d 150 (Alaska 1994), the Supreme Court held “‘average weekly wages’ as a benefit cap under AS 23.30.225(b) is synonymous with ‘gross weekly earnings’ under AS 23.30.220, insofar as both terms represent a measure of historical earning capacity.” *Id.* at 156.

ANALYSIS

**Is Employer entitled to a Social Security offset?**

KATHERINE WILSON v. PROVIDENCE ALASKA MEDICAL CENTER

An employer seeking a Social Security offset to reduce an employee's weekly compensation must first obtain an order before it is entitled to offset its compensation liability against an employee's Social Security disability benefit entitlement. 8 AAC 45.225(b). Employer has complied with the required procedures for its Social Security offset request. *Id.* Employer obtained a copy of the SSA's Notice of Award showing Employee receives monthly Social Security disability benefits of \$2,240.12 and her initial entitlement was May 2023. 8 AAC 45.225(b)(1)(A) and (C). The award notice states Employee is receiving Social Security disability benefits for her disability that started on November 10, 2021, one week after the date Employer commenced paying Employee TTD benefits. 8 AAC 45.225(b)(1)(B). Employee is married and has two dependents. 8 AAC 45.225(b)(1)(D). Employer calculated a \$282.43 Social Security offset. Employer calculated Employee's initial Social Security award amount of \$2,240.12 by dividing \$17,921.00, the past award amount for May through December 2022, by eight ( $\$17,921.00 \div 8 = \$2,240.12$ ). Using \$2,240.12 as Employee's initial monthly entitlement, Employer showed how the reduction was calculated. 8 AAC 45.225(b)(2) and (3). Employer filed its affidavit of readiness for hearing on January 10, 2017. 8 AAC 24.225(4).

Employer's calculation of Employee's initial award amount did not account for the December 2022 cost of living increase in Employee's Social Security disability benefit, paid in January 2023. *Rogers & Babler*. Employee's initial entitlement is shown on the award notice, page two and was \$2,216.20. *Id.*

Employer has met 8 AAC 45.225(b)'s criteria to reduce Employee's weekly compensation under AS 23.30.225(b). Employee does not object to Employer's Social Security offset but requested further clarification regarding the calculation.

Applying the *Stanley* Social Security offset formula, Employee's compensation rate with the offset is calculated as follows:

Employee's Gross Weekly Earnings (GWE)	\$1,775.65
Weekly Compensation Rate	\$1,186.00
Weekly Social Security benefit ( $\$2,216.20 \times 12 = \$26,594.40 \div 52$ ) =	\$ 511.43

KATHERINE WILSON v. PROVIDENCE ALASKA MEDICAL CENTER

Weekly WC Rate + Weekly SS Benefit	\$1,697.43
80% of GWE [\$1,775.65 x .8]	\$1,420.52
Social Security Offset (\$1,697.43 - \$1,420.52)	\$ 276.91
Compensation Rate with Social Security Offset (\$1,186.00 - \$276.91)	\$ 909.09

*Id.*

Employer is entitled to take a weekly \$276.91 Social Security offset both prospectively, if Employee is found entitled to further indemnity benefits, and retroactively to May 1, 2022, the date Employee's entitlement began. Employee's compensation rate reduced by the Social Security offset is \$909.09. AS 23.30.001; AS 23.30.225.

Without an order, an employer can withhold up to 20 percent of future compensation payments if it has made an overpayment. AS 23.30.155(j). If an employer wishes to withhold more than 20 percent, an order is required. Employee's entitlement to Social Security disability benefits started on May 1, 2022, and she continues to receive them. From May 1, 2022 through November 16, 2022, Employee received TTD and Social Security disability benefits. This is a 28-week, 4-day period. Employer overpaid Employee \$276.91 per week, which is \$39.56 per day, the amount of its Social Security offset. Employee has received an overpayment totaling \$7,911.72 ([\$276.91 x 28 weeks = \$7,753.48] + [\$39.56 x 4]). Employer may recover its overpayment if, in the future, Employee is found entitled to indemnity benefits. AS 23.30.155; *Davenport*.

CONCLUSION OF LAW

Employer is entitled to a Social Security offset.

ORDER

- 1) Employer is entitled to take a \$276.91 offset retroactively to May 1, 2023 and continuing if Employee is found entitled to past or future indemnity benefits.
- 2) Employer has overpaid Employee \$7,911.72.

Dated in Anchorage, Alaska on December 18, 2023.

ALASKA WORKERS' COMPENSATION BOARD

/s/  
Janel Wright, Designated Chair  
8 AAC 45.071(b)(1)(G)

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Katherine Wilson, employee / claimant v. Providence Alaska Medical Center, employer; Providence Health & Services, insurer / defendants; Case No. 202127694; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 18, 2023.

/s/  
Rachel Story, Law Office Assistant I