Dated: June 5, 1995.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Acquiescence Ruling 95-2(9)

Hodge v. *Shalala*, 27 F.3d 430 (9th Cir. 1994)—Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law—Title II of the Social Security Act.

Issue: Whether, when offsetting workers' compensation benefits awarded for permanent disability under Oregon workers' compensation law against Social Security disability benefits, section 224(b) of the Social Security Act (the Act) requires the Social Security Administration (SSA)[1] to prorate a lump-sum award or settlement over the remainder of an individual's working life which the court concluded ends at age 65.

Statute/Regulation/Ruling Citation: Sections 224(a)(2) and (b) of the Social Security Act (42 U.S.C. 424a(a)(2) and (b)); 20 CFR 404.408; Social Security Rulings (SSRs) 76-34c, 81-33, 85-6c and 87-21c.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Hodge v. *Shalala*, 27 F.3d 430 (9th Cir. 1994).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: On October 23, 1986, the plaintiff, Gerald Hodge, injured his right wrist while working as a boilermaker. For a period of seven months, from October 24, 1986 through May 20, 1987, he received $344.77 per week in temporary disability benefits under Oregon workers' compensation law. Eventually, it was determined that Mr. Hodge had lost the use of 40 percent of his right forearm and he was deemed permanently injured as of May 20, 1987. After payment of court costs, attorneys' fees and the recoupment of a prior overpayment, Mr. Hodge received a net lump-sum award of $4,068.75 under Oregon workers' compensation law.

Mr. Hodge also became entitled to Social Security disability benefits for a closed period between October 22, 1986 through February 29, 1988. In accordance with section 224(b) of the Act, SSA offset Mr. Hodge's lump-sum workers' compensation award against his disability benefits at the rate of $344.77 per week, the same rate at which he had received temporary disability benefits under Oregon law. The plaintiff challenged the offset and the offset rate at a hearing, but an ALJ affirmed the prior determination and calculation of the offset. Regarding the offset rate issue, the plaintiff alleged that the offset amount should equal the lump-sum divided by the number of months remaining in his natural life. The ALJ found that because the lump-sum award did not specify an offset rate the proration should be based on the prior periodic rate, i.e., the temporary disability payments of $344.77 per week. The Appeals Council denied Mr. Hodge's request for review of the ALJ's decision.

The plaintiff sought judicial review and the district court reversed SSA's decision to offset the plaintiff's Social Security disability benefits, holding that ''scheduled'' loss awards[2] were not substitutes for periodic benefits and thus were not offsettable. The district court accordingly did not address the offset rate issue. SSA appealed and the United States Court of Appeals for the Ninth Circuit reversed the judgment of the district court and found that an offset should be applied. However, the Ninth Circuit held that the proper offset rate, based on Oregon workers' compensation law, is calculated by prorating the lump-sum award over the working life of the plaintiff.

Holding: The Court of Appeals held that, under Oregon workers' compensation law, both ''scheduled'' and ''unscheduled'' awards substitute for periodic benefits and ''represent a stream of lost future wages'' intended to provide wage replacement for a worker's loss of earning capacity. Accordingly, both types of benefits, including Mr. Hodge's scheduled award, ''must be offset to the extent that they overlap with federal benefits in a given month.''

Regarding the calculation of the offset, the Ninth Circuit held that ''the monthly offset amount should be equal to Hodge's lump-sum award divided by the number of months between the date of the award and the date Hodge reaches the age of 65.'' The court presumed that under section 224(a) of the Act, age 65 marks the end of an individual's working life. Under section 224(b) of the Act, SSA must ''approximate as nearly as practicable'' the rate at which the lump-sum award would have been paid on a monthly basis. Because Oregon workers' compensation law provided for payment of Mr. Hodge's lump-sum award as ''a substitute for a stream of payments for the remainder of his working life,'' the Court of Appeals found that the monthly offset rate could be determined from the application of State law without referring to SSA's policy guidelines for assistance in determining the offset.

The court noted that SSA has established policy guidelines for determining the monthly offset rates for various types of lump-sum awards.[3] Because these guidelines must be consistent with the clear requirement of section 224(b) of the Act, the court interpreted the proration method most favored by SSA, the one that calculates the offset according to the rate specified in the lump-sum award, as referring not only to the rate expressly stated in the award, ''but also to a rate specified by operation of [State] law.'' The court concluded that SSA should apply the prior periodic rate paid under a workers' compensation law only in cases where the monthly offset rate is not established by State law.

Statement As To How Hodge Differs From Social Security Policy

Under section 224(a) of the Act, a claimant's Social Security disability benefits are reduced because of the receipt of workers' compensation so that the total worker's compensation and Social Security disability benefits that a disabled worker receives will not exceed 80 percent of the worker's ''average current earnings'' at the onset of disability. In calculating this reduction when a claimant receives a workers' compensation lump-sum award or settlement, section 224(b) of the Act gives SSA authority to prorate the lump-sum in a way that ''approximate[s] as nearly as practicable the reduction'' that would have been made if the claimant had received benefits at a monthly periodic rate. According to SSA's regulation implementing section 224(b) of the Act (20 CFR 404.408(g)), the lump-sum is treated as a substitute for periodic

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, the Social Security Administration (SSA) became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security programs under title II of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] Under Oregon law, a permanently partially disabled worker receives either a scheduled or unscheduled award. Scheduled awards are fixed-sum awards for injuries to specified limbs or body parts. Unscheduled awards cover all other injuries (Or. Rev. Stat. § 656.214(2)-(5) (1993)).

[3] SSR 87-21c and Program Operations Manual System (POMS) DI 52001.555 C.4.