

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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SHARON MURRAY as Conservator  
of WILLIAM MEYERS,

Claimant,

vs.

LAZER SPOT, INC.,

Employer,

and

GREAT AMERICAN ALLIANCE  
INSURANCE CO.,

Insurance Carrier,  
Defendants.

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File No. 21004833.01

NUNC PRO TUNC ORDER

Defendants filed an application for order nunc pro tunc. Claimant has not responded. The application is considered.

The phrase, "nunc pro tunc" means "now for then." See: Black's Law Dictionary, 1218 (rev. 4th ed. 1968). The definition in Black's Law Dictionary further provides: "A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done." Black's at 1218. A nunc pro tunc order "is not for the purpose of correcting judicial thinking, a judicial conclusion, or a mistake of law." Headley v. Headley, 172 N.W.2d 104, 108 (Iowa 1969). The nunc pro tunc order can be employed to correct obvious errors or to make an order conform to the judge's original intent. Graber v. Iowa District Court for Washington County, 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. 2008). "[T]he intent of the trial judge is crucial to the determination of whether a nunc pro tunc order is appropriate to 'correct' a record." Freeman v. Ernst & Young, 541 N.W.2d 890, 893 (Iowa 1995), citing McVay v. Kenneth E. Montz Implement Co., 287 N.W.2d 149, 151 (Iowa 1980).

The following two paragraphs are found on page two of the arbitration decision in this case:

*As noted above, Mr. Presley was the safety manager for defendant employer at the time of injury. Statements made in his report were made a part of his investigation of the injury at issue. Any statements made by Mr.*

*Presley are corroborated, in part, by statements made by Mr. Denning, Mr. Lamphier and Ms. Baker. Mr. Presley was at hearing, and claimant could have easily called him to testify at hearing but failed to do so. **Defendants'** motion to exclude Mr. Presley's statement and reports are again denied.*

*Mr. Lamphier's statement was made a part of the investigation done by Mr. Presley. Mr. Lamphier's statements, in part, are corroborated by the statements made by Mr. Denning, Mr. Presley, and Ms. Baker. **Defendants'** motion to exclude Mr. Lamphier's statement is denied. (Emphasis added)*

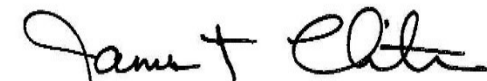
The motion to exclude, as discussed on pages one and two of the arbitration decision, were claimant's not defendants' motions. As such, the words bolded above are changed and the paragraphs shall read as follows:

*As noted above, Mr. Presley was the safety manager for defendant employer at the time of injury. Statements made in his report were made a part of his investigation of the injury at issue. Any statements made by Mr. Presley are corroborated, in part, by statements made by Mr. Denning, Mr. Lamphier and Ms. Baker. Mr. Presley was at hearing, and claimant could have easily called him to testify at hearing but failed to do so. Claimant's motion to exclude Mr. Presley's statement and reports are again denied.*

*Mr. Lamphier's statement was made a part of the investigation done by Mr. Presley. Mr. Lamphier's statements, in part, are corroborated by the statements made by Mr. Denning, Mr. Presley, and Ms. Baker. Claimant's motion to exclude Mr. Lamphier's statement is denied.*

The decision remains the same in all other respects.

Signed and filed this 29<sup>th</sup> day of August, 2022.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Saffin Parrish-Sams (via WCES)

Paul Salabert, Jr. (via WCES)

Lindsey Mills (via WCES)