

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN McCOY,
Claimant,

vs.

MENARD, INC.,
Employer,

and

XL INSURANCE AMERICA, INC.,
Insurance Carrier,
Defendants.

File No. 1651840.01
ORDER NUNC PRO TUNC

On December 3, 2020, defendants filed a motion for nunc pro tunc. There is no resistance on file. The basis of the motion is that there is a conflict between the percentage award of disability in the body of the decision and the percentage award of disability in the order section.

The phrase, “nunc pro tunc” means “now for then.” See: Black’s Law Dictionary, page 1218 (Revised 4th Edition 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. Dist. Court for Washington Cty., 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. November 13, 2008).

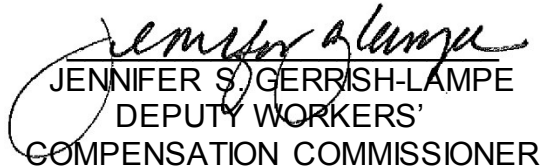
On page 8 of the arbitration decision, it was found claimant had sustained a 14 percent disability to the whole body. On page 10, defendants were to pay 75 weeks. 14 percent of 500 is 70 weeks. The Order section should be changed to reflect the correct percentage impairment which is 70 weeks.

THEREFORE IT IS ORDERED, the defendants’ motion to reconsider and for Order Nunc Pro Tunc is granted.

The Order section shall read as follows:

That defendant employer and insurer are to pay unto claimant seventy (70) weeks of permanent partial disability benefits at the rate of two hundred twenty-three and 54/100 dollars (\$223.54) per week from January 7, 2019.

Signed and filed this 16th day of December, 2020.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Neal (via WCES)

Charles Blades (via WCES)