

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MERCEDES M. THOMAS-WILSON,

Claimant,

vs.

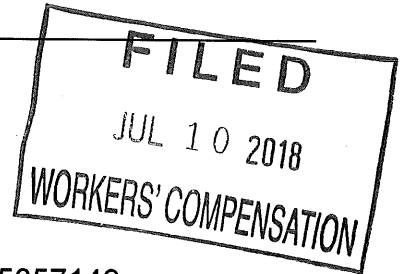
UPF TECHNOLOGIES, INC. d/b/a
MOLDED FIBRE TECHNOLOGY,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5057149

ORDER NUNC PRO TUNC

On January 26, 2018, the undersigned filed an arbitration decision in this case. On February 21, 2018, the undersigned entered a ruling on claimant's motion to enlarge findings, conclusions and order concerning interest rate. On June 26, 2018, defendants filed an application for order nunc pro tunc.

Defendants contend that the undersigned made a scrivener's error and transposed numbers when looking up the applicable weekly rate for this case. In the arbitration decision, the undersigned found claimant's average weekly wage to be \$461.00 and ordered weekly benefits to be paid at the rate of \$396.87.

Defendants note in their application that the weekly rate for someone with gross average weekly wages of \$461.00 is \$293.52. The weekly rate of \$396.87 would apply to someone with average gross earnings of \$641.00 per week. Defendants contend that the undersigned transposed the numbers "4" and "6" when looking up the applicable weekly rate and ask the undersigned to clarify and correct this error by entering a weekly rate that was actually intended.

Claimant has not filed a response to the application for nunc pro tunc. The deadline for filing a resistance or response has now expired.

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. District Court for Washington City, 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. 11/13/2008) (Iowa App., 2008).

Review of the arbitration decision demonstrates that the undersigned intended to find and did find that the applicable gross weekly earnings as of the date of injury were \$461.00. In reality, the transposition of numbers occurred between pages 10 and 11 of the arbitration decision. On page 6 of the arbitration decision, the undersigned entered a factual finding that “claimant’s average gross weekly earnings at the time of her August 21, 2014 work injury were \$461.00.” Temporary partial disability benefits were calculated in the arbitration decision using the average gross weekly earnings of \$461.00.

The specific factual finding noted on page 6 was repeated correctly in the conclusions of law section of the arbitration decision at page 10. However, the numbers were transposed on page 11 of the arbitration decision and the average gross weekly earnings changed to \$641.00 without explanation or intent by the undersigned. I utilized the \$641.00 wages to then calculate claimant’s weekly rate.

However, the undersigned intended to award weekly benefits that correspond with the average weekly wage of \$461.00. It is apparent that I transposed the numbers when looking of applicable weekly rate and that the gross earnings should have been consistently referred to as being \$461.00. It is apparent that the scrivener’s error resulted in the undersigned utilizing an inaccurate weekly rate from the commissioner’s rate book.

It was and remains my intention that defendants should pay a weekly rate based upon averaged weekly wages of \$461.00. I conclude that this error was the result of a scrivener’s error in transposing two numbers when looking up the applicable weekly rate. Although all applicable appeal deadlines have long expired, I conclude that an order nunc pro tunc is an allowable means to correct this obvious scrivener’s error to remedy this situation and enter an order that reflects my actual intention at the time of filing this arbitration decision. The proper and applicable weekly rate should be \$293.52.

THEREFORE, IT IS ORDERED:

Defendants’ motion for order nunc pro tunc is sustained.

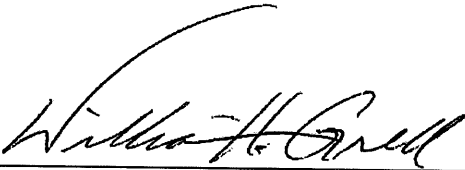
The first paragraph on page 11 of the arbitration decision is amended to read as follows:

The weekly benefits amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant was singled, entitled to one exemption and that her gross average weekly wage was \$461.00, I utilize the Iowa Workers' Compensation Manual ("rate book") with effective dates of July 1, 2014 through June 30, 2015, and determine that the applicable weekly rate for claimant's weekly benefits is \$293.52.

The sixth paragraph in the order section of the arbitration decision, found on page 16, is amended to read as follows:

All weekly benefits shall be paid at the rate of two hundred ninety-three and 52/100 dollars (\$293.52) per week.

Signed and filed this 10th day of July, 2018.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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