

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARGARET E. DEBOER,

Claimant,

vs.

HYVEE, INC.,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

FILED

DEC 13 2018

WORKERS COMPENSATION

File No. 5061529

NUNC PRO TUNC ORDER

On December 5, 2018, the undersigned filed an arbitration decision in this case. On December 11, 2018, defendants filed a motion for an order nunc pro tunc. Defendants indicated claimant agrees with the content of this motion. It is, in fact, clear that the undersigned made scrivener's errors in the arbitration decision that can and should be corrected by nunc pro tunc order.

In the arbitration decision, the undersigned found that claimant's calculations of the weekly rate were accurate and should include tip income from her bartending work. Claimant's calculations delineate that the applicable weekly rate should be \$289.98 per week.

However, in the order section of the arbitration decision, the undersigned used the gross wages instead of the appropriate rate and ordered that benefits should be payable at the rate of \$429.95 per week. This was actually the gross wages which were applicable. This was a scrivener's error by the undersigned.

In addition, when ordering payment of the IME, the undersigned mistakenly referenced an incorrect exhibit on pages 2, 14, and 15 of the Arbitration decision.

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. November 13, 2008).

In this instance, my intention was to award benefits at the weekly rate of \$289.98. This would conform with the weekly rate permitted and mandated by the Iowa Workers' Compensation Manual (rate book), as well as with my findings of fact and conclusions of law in the arbitration decision. It is appropriate; therefore, to correct my scrivener's error in the order section of the arbitration decision.

It was also my intent to award Dr. Patra's IME expenses as set forth in Claimant's Exhibit 20, page 25.

THEREFORE, IT IS ORDERED:

Defendants' motion for order nunc pro tunc is sustained.

The first paragraph in the order section of the arbitration decision is amended to read as follows:

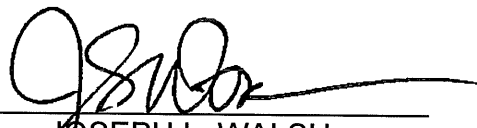
Defendants shall pay the claimant one hundred and seventy-five (175) weeks of permanent partial disability benefits at the rate of two hundred eighty-nine and 98/100 (\$289.98) per week from February 3, 2017.

The fifth paragraph in the order section of the arbitration decision is amended to read as follows:

Defendants shall reimburse the IME expense of Dr. Patra in Claimant's Exhibit 20, page 25.

All other references to Dr. Patra's IME expenses in the body of the decision shall conform with this order.

Signed and filed this 13th day of December, 2018.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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