

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

<p>ESTATE OF ALAN HARTIG, BY ASHLEY HARTIG, EXECUTOR OF THE ESTATE,</p> <p>Claimant,</p> <p>vs.</p> <p>MEDICAL ASSOCIATES CLINIC, P.C.,</p> <p>Employer,</p> <p>SOCIETY INSURANCE,</p> <p>Insurance Carrier,</p> <p>Defendants.</p>	<p>File No. 19005447.01</p> <p>ORDER FOR NUNC PRO TUNC</p>
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On April 6, 2023, the agency issued an arbitration decision in this case. The claimant applied for nunc pro tunc with respect to the arbitration decision so that Section VI, Order, accurately reflects the determination in Section V(A) regarding the number of weeks of permanent partial disability (PPD) benefits to which the claimant is entitled. The defendants did not resist the motion.

The phrase “nunc pro tunc” is a Latin term meaning “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.” Id. 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 Dist. 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)).

In Section V(A) of the arbitration decision, the undersigned concludes the claimant is entitled to 325 weeks of PPD benefits, commencing on November 20, 2020, subject to credits discussed in Section V(C). The undersigned further determined that because Alan Hartig passed away on June 24, 2022, the claimant is entitled to PPD

benefits from November 20, 2020, through that date. The decision states this time period equals 67.572 weeks; however, it is in fact 83.143 weeks. It is appropriate to correct the decision accordingly so that the credit to which the defendants are entitled, as discussed in Section V(C), is applied to 83.143 weeks.

THEREFORE, IT IS ORDERED:

- 1) The motion is GRANTED.
- 2) Section V(A) at Page 22 is hereby amended to replace 67.572 weeks with 83.143 weeks.
- 3) On Page 24, under Section VI, Order, is amended to read:

The defendants shall pay to Hartig 83.143 weeks of permanent partial disability benefits at the rate of six hundred sixty-eight and 46/100 dollars (\$668.46) per week from the commencement date of November 20, 2020, through June 24, 2022, his date of death.

Signed and filed this 2nd day of May, 2023.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BENJAMIN G. HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Thomas M. Wertz (via WCES)

Stephen W. Spencer (via WCES)