



Defendants A+ Lawn & Landscape, Inc. and Amguard Insurance Company (Amguard) informed the undersigned via email that they were not going to file a response to claimant's motion.

Claimant has requested that the arbitration decision be reconsidered and modified in three different areas:

- Medical expenses
- Claimant's weekly rate
- Credit for healing period benefits

Defendants C & I's response resists claimant's request for rehearing concerning claimant's weekly rate. Additionally, C & I assert the credit for healing period benefits is more properly characterized as a request for an order nunc pro tunc.

### **Medical Expenses**

Claimant is requesting that the arbitration decision be modified to hold that the defendants are required to reimburse the claimant directly for the medical expenses in Exhibit 22. These expenses include \$144,171.85 which were paid by claimant's wife's group plan, \$3,522.11 paid directly by claimant and \$10,925.28 for unpaid balances.

The intent of the arbitration decision was to hold that C & I was to pay claimant directly the above expenses pursuant to the holding in Midwest Ambulance Services v. Ruud, 754 N.W.2d 869 (Iowa 2008). The arbitration decision in the order section will be modified to state more clearly that claimant shall be reimbursed these expenses directly.

### **Claimant's weekly rate**

Claimant asserts claimant's production bonus should be included in the claimant's gross earnings. The arbitration decision held:

The claimant was paid a production commission, however, there is not enough evidence in the record to determine whether this was a regular or irregular bonus. There is not enough evidence to determine if it should be included in claimant's customary wage.

Claimant has failed to meet his burden of proof that I should include the production bonus as part of his customary wage. A regular production bonus could be considered part of gross income in some circumstances, however claimant did not prove by a preponderance of the evidence that his production commission was part of his regular wage. Claimant's request for rehearing on this issue is denied.

The next issue concerning claimant's weekly rate is how the calculation was done in the arbitration decision.

The chart on page 22 of the decision only added four weeks of wages and divided the wages by 5 weeks. That was error on my part. It was a scrivener's error. I included the wages for the week of April 22, 2016 in the chart, but failed to carry it over to the total. By dividing by 5 weeks it showed I intended to include the week of April 22, 2016.

Whether the mistake is characterized as one that should be corrected by rehearing or an order nunc pro tunc is not material. It was a mistake and claimant's request for a modification of the decision is granted. Using the applicable rate book in effect at the time of the injury claimant's weekly workers' compensation rate is \$416.95.

The chart on page 22 of the decision is void and the chart below is put in and substituted in its place.

Date	Salary	Wages	Total	Exhibit page
4/29/2016	\$560.00	\$87.30	\$727.30	Ex. 13 pp 54, 55
4/22/2016	\$560.00		\$560.00	Ex. 13, p. 54
4/15/2016	\$560.00	\$107.73	\$747.73	Ex. 13 p. 54
4/8/2016	\$560.00	\$49.13	\$606.13	Ex. 13 p. 53
3/31/2016	\$540.00	\$97.20	\$630.20	Ex. 13 p. 53
5 weeks		<b>Total</b>	\$3,271.36	
		÷ 5 weeks	\$654.27	
		Single 2 exemptions		

		Weekly rate	<b>\$416.95</b>	

Defendants C & I assert the rate should include the payments claimant received when claimant was on call to do snow removal during the winter. Those are not represented wages. Claimant was laid off in the winter. Claimant was receiving unemployment during the winter. While he was on call and expected to work with snow removal, he was laid off most of the winter. The sporadic payments received by claimant in the winter are not reflective of his customary wages. I do not find defendants' argument persuasive.

**Credit for healing period benefits**

Defendants correctly note the credit issue is best handled as an application for an order nunc pro tunc. In the arbitration decision I committed another scrivener's error. I incorrectly put a comma rather than a period. The typo was on page 8 of the decision and was (7,286 weeks). The correct credit is 7.286. This number 7.286 is substituted for the typo on page 8 of the decision.

**Order portion of decision**

The three paragraphs from the Order portion of the arbitration decision found below with strikethrough shall be removed from the arbitration decision and the following three paragraphs shall be substituted.

Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant healing period benefits from September 19, 2017 through February 7, 2018 and from April 11, 2019 through October 16, 2019 at the weekly rate of four hundred sixteen and 95/100 dollars (\$416.95).

Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability commencing on February 8, 2018 at the weekly rate of four hundred sixteen and 95/100 dollars (\$416.95).

Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay the medical expenses as set forth in this decision. Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant one hundred forty-four thousand one hundred seventy-one and 85/100 dollars (\$144,171.85) which was paid by claimant's wife's group plan, three thousand five hundred twenty-two and 11/100 dollars (\$3,522.11) paid directly by claimant and ten thousand nine hundred twenty-five and 28/100 dollars (\$10,925.28) for unpaid balances.

~~Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant healing period benefits from September 19, 2017 through February 7, 2018 and from April 11, 2019 through October 16, 2019 at the weekly rate of three hundred fifty-two and 62/100 dollars (\$352.62).~~

~~Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability commencing on February 8, 2018 at the weekly rate of three hundred fifty-two and 62/100 dollars (\$352.62).~~


~~Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay the medical expenses as set forth in this decision. Defendants A+ Lawn & Landscaping and Commerce and Industry Insurance shall pay claimant directly any out-of-pocket expenses reimbursed by the health insurance claimant had through his wife's policy. The defendants shall receive credit for medical expenses previously paid.~~

ORDER

The claimants' motion for rehearing is granted in part and denied in part as set forth above.

The decision is also modified by order nunc pro tunc.

Signed and filed this 14th day of May, 2020.

  
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JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Kathryn Johnson (via WCES)  
Jean Dickson (via WCES)  
Eric Lanham (via WCES)  
Dennis McElwain (via WCES)