

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HARLAN SIEMENS,

Claimant,

vs.

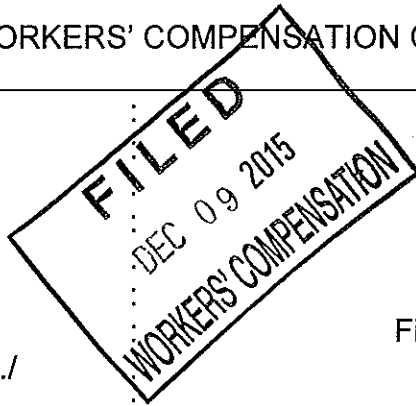
FISHER CONTROLS INT'L, INC./  
EMERSON ELECTRIC CO.,

Employer,

and

OLD REPUBLIC INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.



File No. 5050079

ORDER

NUNC PRO TUNC

On November 5, 2015, the undersigned filed an arbitration decision in this case. On December 4, 2015, claimant filed a motion for order nunc pro tunc. On December 4, 2015, defendants filed a response wherein they resisted the application for the order nunc pro tunc.

It is clear that the undersigned made a scrivener's error related to the commencement date of permanent partial disability benefits in this matter that can and should be corrected by nunc pro tunc order.

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. 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). "[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).

Based on the definition of a nunc pro tunc order, I believe an application for order nunc pro tunc is applicable in this situation to make the order in the arbitration decision conform to my original intent.

Specifically, the undersigned listed an incorrect commencement date for payment of permanent partial disability benefits. This commencement date is not consistent with the stipulations of the parties in the hearing report. On the hearing report the parties stipulated to the temporary and permanent disability payments that had been made to claimant to date. The undersigned approved the hearing report and accepted the stipulations of the parties. I did not intend to ignore the stipulations of the parties. If I had intended to ignore the stipulations of the parties I would have been required to provide notice to the parties. See Indianola Community School Dist. v. Allen, No. 05-0038 (Iowa Ct. App., Feb. 1, 2006). See also Robinson v. City of Des Moines, File No. 5035076 (App. January 25, 2013). Clearly, it was my intent that the parties be bound by their stipulations, as noted in the hearing report. Therefore, it is appropriate to grant the claimant's motion for order nunc pro tunc.

THEREFORE IT IS ORDERED:

Claimant's motion for order nunc pro tunc is sustained.

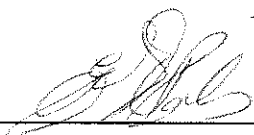
The arbitration decision filed November 5, 2015, is amended by striking the last two sentences of the third paragraph on page 7 and inserting the following:

Pursuant to the stipulation of the parties as shown in the hearing report, the commencement date for PPD should be November 26, 2012, interrupted by the TTD/HP paid from December 10, 2013 through January 6, 2014 and then commence anew on January 7, 2014.

Additionally, on page 9 of the decision the first paragraph of the order should be amended to state: Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on November 26, 2012, interrupted by the TTD/HP paid from December 10, 2013 through January 6, 2014 and then commence anew on January 7, 2014, at the stipulated weekly rate of seven hundred forty and 55/100 dollars (\$740.55).

The remainder of the November 5, 2015 arbitration decision stands as issued.

Signed and filed this 9<sup>th</sup> day of December, 2015.

  
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ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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