

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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LOUIS BURHANS,

Claimant,

vs.

TURN AROUND WELDING,

Employer,

and

AMERICAN CASUALTY COMPANY  
OF READING, PENNSYLVANIA,

Insurance Carrier,  
Defendants.

**FILED**

JAN 31 2019

WORKERS COMPENSATION

File No. 5062498

ORDER

NUNC PRO TUNC

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On January 9, 2019, the undersigned filed an arbitration decision in this case. On January 23, 2019, claimant filed an application for order nunc pro tunc. The agency file does not yet contain a response or resistance to the application. Regardless, it is clear I made a scrivener's error in the body of the decision that can and should be corrected by an order nunc pro tunc.

In the third and fourth paragraphs on page 18 of the arbitration decision, I referred to the pay period of May 16, 2016 through May 20, 2016. In fact, the pay period in question was *March* 16, 2016 through *March* 20, 2016. This was a scrivener's error.

The phrase, "nunc pro tunc" means "now for then." See Black's Law Dictionary, p. 1218 (Revised 4th Edition 1968). The definition 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. District Court for Washington City, 410 N.W.2d 224, 229 (Iowa 1987); Brinson v. Spee Dee Delivery Serv., 760 N.W.2d 208 (Iowa Ct. App. 2008) (table).

I intended to refer to the pay period of March 16, 2016 through March 20, 2016. I therefore conclude an order nunc pro tunc should be issued to correct the scrivener's errors on page 18 of the arbitration decision.

THEREFORE, IT IS ORDERED:

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

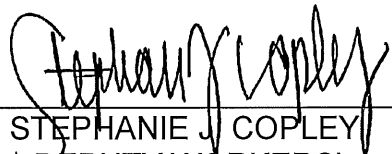
The third paragraph on page 18 of the arbitration decision is amended to state:

That being said, treating the period of March 16, 2016 through March 20, 2016 as a full workweek, as defendants do in their calculation (see Cl. Ex. 9), is also inappropriate because it unfairly deflates claimant's average gross weekly earnings.

The fourth paragraph on page 18 of the arbitration decision is amended to state:

Instead, I conclude the period of March 16, 2016 through March 20, 2016, which is 5 days, should be included in the average calculation but treated as 0.714 of a week.

Signed and filed this 31<sup>st</sup> day of January, 2019.

  
STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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