

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONNA BAKER,

Claimant,

vs.

WAL-MART, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 19006945.01

ORDER NUNC PRO TUNC

On September 2, 2022, claimant filed a motion for nunc pro tunc. There is no resistance on file and defendants have conveyed via email that no resistance will be forthcoming. The basis of the motion is that the order section erroneously states that claimant is entitled to 52.5 weeks of permanent partial disability. The claimant was found to have sustained a twenty-one (21) percent impairment to the right shoulder. Injuries to the shoulder are calculated based on four hundred weeks for a full one hundred (100) percent loss. 52.5 weeks of permanent partial disability is based on an injury to an upper extremity at a maximum loss of 250 weeks.

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. Dist. Court for Washington Cty., 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. November 13, 2008).

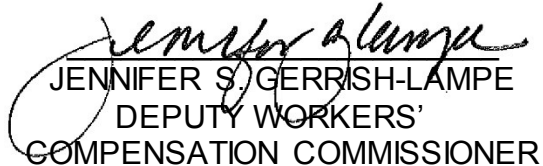
Claimant's motion is granted. A scrivener's error was made in the ORDER section of the arbitration decision and the hearing decision should be amended to accurately reflect the loss of twenty-one (21) percent of the right shoulder which is eighty-four (84) weeks of permanent partial disability benefits.

THEREFORE IT IS ORDERED, the claimant's application for Order Nunc Pro Tunc is granted.

The Order section shall read as follows:

That defendant employer and insurer are to pay unto claimant eighty-four (84) weeks of permanent partial disability benefits at the rate of two hundred sixty-two and 10/100 dollars (\$262.10) per week from July 18, 2020.

Signed and filed this 12<sup>th</sup> day of September, 2022.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gabriela Navarro (via WCES)

Alison Stewart (via WCES)

Sarah Timko (via WCES)