

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARI STELTZER,

Claimant,

vs.

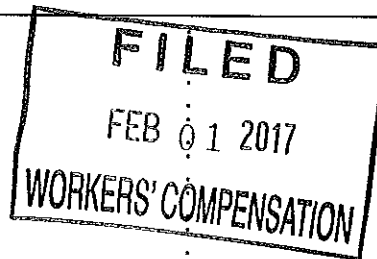
HOUGHTON AND ASSOCIATES, LLC,;

Employer,

and

WESCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5050626

NUNC PRO TUNC ORDER

On December 28, 2016, the undersigned filed an arbitration decision in this case. On January 13, 2017, 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 that the undersigned made a scrivener's error both in the body of the decision and in the order section of the arbitration decision that can and should be corrected by nunc pro tunc order.

On page 15 of the arbitration decision, the undersigned stated, "I conclude that it is reasonable to assess claimant's filing fee pursuant to 876 IAC 4.33(7) and her deposition transcript charges totaling \$227.30 pursuant to 876 IAC 4.33(2)." Claimant's filing fee was \$100.00. However, the arbitration decision erroneously stated that claimant's deposition charges totaled \$227.30. The undersigned recited the same error in the order section of the arbitration decision at page 16 assessing costs totaling \$337.30.

In fact, the deposition charges totaled \$277.30. (Claimant's Exhibit 3) The arbitration decision contained an error that was a scrivener's error. The undersigned clearly intended to assess the entirety of claimant's deposition charges, or \$277.30. In total, the undersigned intended to assess claimant's costs totaling \$377.30.

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. 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. 11/13/2008) (Iowa App., 2008).

In this instance, my intention was to assess the entirety of claimant’s filing fee (\$100.00) and the entirety of claimant’s deposition transcript fee (\$277.30). My original intention was to assess costs against defendants totaling \$377.30. The errors contained on pages 15 and 16 were scrivener’s errors. I conclude that a nunc pro tunc order should be issued to correct the scrivener’s errors.

THEREFORE, IT IS ORDERED:

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

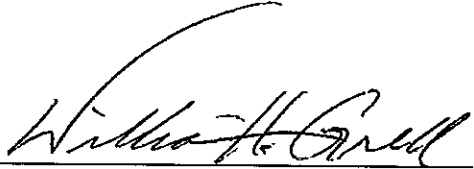
The final paragraph on page 15 of the arbitration decision is amended to read:

The parties obtained mixed results in this litigation, but claimant required the exercise of this agency’s jurisdiction to obtain payment of past medical expenses and to secure future medical care to which she was entitled. Therefore, I conclude that it is reasonable to assess claimant’s filing fee pursuant to 876 IAC 4.33(7) and her deposition transcript charges totaling \$277.30 pursuant to 876 IAC 4.33(2). All other requests for costs are denied.

The second to the last paragraph of the order section on page 16 of the arbitration decision is amended to read:

Defendants shall reimburse claimant’s costs totaling three hundred seventy-seven and 30/100 dollars (\$377.30).

Signed and filed this 1st day of February, 2017.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

James Neal
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324-1655
jneal@smalaw.net

Andrew T. Tice
Attorney at Law
100 Court Ave., Ste. 600
Des Moines, IA 50309
atice@ahlerslaw.com

WHG/kjw