

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IRIS RIVERA,
Claimant,

vs.

SMITHFIELD FOODS, INC.,
Employer,

and

SAFETY NATIONAL CASUALTY
CORP.,
Insurance Carrier,
Defendants.

File No. 5066964
ORDER NUNC PRO TUNC

On April 24, 2020, claimant filed a Nunc Pro Tunc motion requesting that the order section be modified to match the percentage disability stated in the conclusions of law. Defendants resist on the grounds that the original finding was erroneous given the 2017 statutory change limiting functional disabilities to the impairment guidelines in the American Medical Association. Defendants have appealed on this basis, among other things. Iowa Code section 85.34(2)(x) (2019)

Both parties are correct. There is a scrivener's error in the order section. It should read,

That defendants are to pay unto claimant one hundred sixty (160) weeks of permanent partial disability benefits at the rate of six hundred sixty-two and 74/100 dollars (\$662.74) per week from July 18, 2019.

However, the defendants are also correct that a functional disability is subject to Iowa Code section 85.34(2)(x) (2019). Claimant was found to have suffered a functional disability rather than an industrial one and therefore,

[W]hen determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter

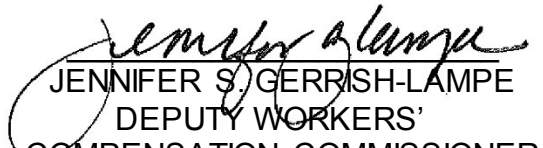
17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity.

Iowa Code § 85.34(2)(x) (2019).

The defendants' resistance states that the erroneous finding is but one of the issues that is the subject of an appeal and have not filed a motion for rehearing. With the appeal filed, the undersigned must defer this issue to the Commissioner. Thus, the motion for Nunc Pro Tunc shall be granted to correct the scrivener's error.

THEREFORE IT IS ORDERED, the claimant's motion for Nunc Pro Tunc is granted. The order section shall read "that Defendants are to pay unto claimant one hundred sixty (160) weeks of permanent partial disability benefits at the rate of six hundred sixty-two and 74/100 dollars (\$662.74) per week from July 18, 2019."

Signed and filed this 13th day of May, 2020.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Michael Miller (via WCES)