

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERTO BAUTISTA,

Claimant,

vs.

IOWA PREMIUM BEEF,

Employer,

and

AMERICAN ZURICH INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 1643891.01

ORDER NUNC PRO TUNC

On June 18, 2021, defendants filed a motion for nunc pro tunc. There is no resistance on file. The basis of the motion is that there are two scrivener's errors in the original arbitration decision.

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).

Defendants' motion is granted. A scrivener's error was made on page 2 of the decision in the stipulations wherein defendants had paid permanent partial disability benefits at the rate of \$668.55 per week. The hearing report reflected payment at the rate of \$688.55. The decision should be modified to reflect the correct compensation rate of \$688.55 per week and shall read as follows:

Prior to the hearing the claimant was paid 52 weeks of permanent partial disability benefits at the rate of \$688.55 per week.

The second error is in the number of weeks awarded in the order section. It was found that claimant had sustained a functional disability to the left shoulder of 16 percent. This represents 64 weeks of compensation and not 40 weeks as was written in the order.

The Order section shall be modified to read as follows:

That defendants' employer and insurer are to pay unto claimant sixty-four (64) weeks of permanent partial disability benefits at the rate of seven hundred sixteen and 22/100 dollars (\$716.22) per week from March 21, 2019.

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

Signed and filed this 7th day of July, 2021.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Peter Thill (via WCES)