

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAYNE BURRETT,	FILED	
	JAN 14 2019	
Claimant,	:	
	WORKERS' COMPENSATION	
vs.	:	
	:	File No. 5061046
WINDRIDGE IMPLEMENTS, LLC,	:	
	:	ORDER NUNC PRO TUNC
Employer,	:	
	:	
and	:	
	:	
TECHNOLOGY INSURANCE	:	
COMPANY,	:	
	:	
Insurance Carrier,	:	
Defendants.	:	

Claimant filed a motion for order nunc pro tunc. Defendants resist the motion and filed a cross motion. The motions are considered.

Claimant contends the proper weekly benefit rate for claimant should be \$548.41.

Defendants resist the motion maintaining the proper weekly rate should be either \$509.98 or \$504.41 per week.

The arbitration decision used the period from October 15, 2015 through January 31, 2016 to calculate claimant's average weekly wage (AWW). (Arbitration Decision, page 6) Defendants correctly point out this period of time covers 15.286 weeks. Claimant's total average hourly earnings for this period were \$12,816.69. That figure was divided by 14 weeks to arrive an AWW for claimant in the arbitration decision.

As noted, the period of October 15, 2015 through January 31, 2016, is actually 15.286 weeks' long. As a result, the total earnings figure of \$12,816.69 should be divided by 15.286 weeks. Using these figures, claimant's average weekly wage for the 15.286 weeks before his injury was \$838.46 per week ($\$12,816.69 \div 15.286$ weeks). Claimant was single with one exemption. Claimant's rate is \$509.98 per week.

Given this change in rate, the language on pages 11, and 13 through 15 of the arbitration decision concerning a penalty should change to reflect a recalculation of claimant's AWW and rate. As noted, claimant's rate is \$509.98 per week.

Based on this change in the calculation of rate, penalty also needs to be recalculated. As detailed in the arbitration decision, defendants underpaid claimant for three weeks at the beginning of his period of receiving temporary total disability benefits (TTD). Defendants are liable for a penalty of \$101.34 for penalty for underpayment during this period ($\$509.98 - 442.42 \times 3 \text{ weeks} \times 50 \text{ percent}$).

As noted in the arbitration decision, defendants are also liable for a penalty of \$1,784.93 for the 7 weeks of delays in benefit payments ($\$509.98 \times 7 \text{ weeks} \times 50 \text{ percent}$).

In total, defendants are liable for a penalty of \$1,886.27 ($\$1,784.93 + \101.34).

ORDER

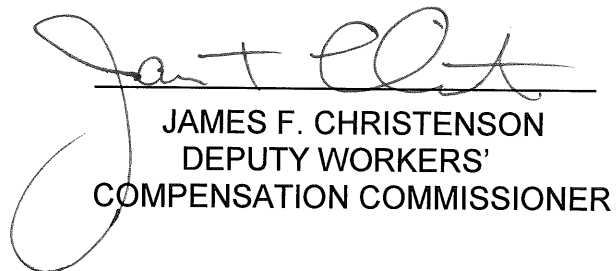
Therefore it is ordered that both motions for order nunc pro tunc are granted, in part, and denied, in part.

The arbitration decision is changed to reflect claimant's AWW is \$838.46 per week and that claimant's rate is \$509.98 per week.

The arbitration decision is also changed to reflect that defendants shall pay claimant a penalty of \$1,886.27.

The decision remains the same in all other respects.

Signed and filed this 14th day of January, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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