

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD SHERIFF, Claimant, vs. ARCHER DANIELS MIDLAND, Employer, Defendants.	File No. 1642813.01 ORDER FOR NUNC PRO TUNC
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The agency issued an arbitration decision in this case. The defendant applied for nunc pro tunc regarding parts of that decision. The claimant did not resist.

The phrase, “nunc pro tunc” means “now for then.” See Black’s Law Dictionary, 1218 (rev. 4th ed. 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.” Id 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. Iowa District Court for Washington County, 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. 2008). “[T]he intent of the trial judge is crucial to the determination of whether a nunc pro tunc order is appropriate to ‘correct’ a record.” Freeman v. Ernst & Young, 541 N.W.2d 890, 893 (Iowa 1995), citing McVay v. Kenneth E. Montz Implement Co., 287 N.W.2d 149, 151 (Iowa 1980).

Page 6 of the arbitration decision notes the parties disputed the rate of workers’ compensation benefits and recites their respective positions on gross earnings. The claimant contended average weekly earnings of \$1,753.50 and the defendant \$1,728.40. The decision also concluded the correct average weekly wage rate was \$1,728.40, but identified this amount as the weekly rate of workers’ compensation benefits. Based on the finding regarding average weekly earnings, the workers’ compensation benefit amount should be \$1,042.78. Further, Page 11 contains a scrivener’s error identifying the commencement date for benefits as April 1, 2017, when it should be April 1, 2018. Therefore, nunc pro tunc is appropriate.

Page 6 of the decision is amended to read as follows:

As found above, there is an insufficient basis in the evidence from which to conclude ADM did not properly include Sheriff's holiday and vacation pay in its most recent calculation of his gross earnings for workers' compensation purposes. Sheriff has failed to meet his burden of proof on rate. Therefore, Sheriff's gross earnings are \$1,728.40. Based on this and the parties' stipulations, Sheriff's workers' compensation rate is \$1,042.78 dollars per week.

Paragraph 1 on Page 11 is amended to read as follows:

ADM shall pay to Sheriff fifteen (15) weeks of permanent partial disability benefits at the rate of one thousand forty-two and 78/100 dollars (\$1,042.78) per week from the commencement date of April 1, 2018.

THEREFORE, IT IS ORDERED:

- 1) The application is GRANTED.
- 2) The arbitration decision is amended as set forth above.

Signed and filed this 6th day of July, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Gary B. Nelson (via WCES)

Peter J. Thill (via WCES)