

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ESMA LULIC,

Claimant,

vs.

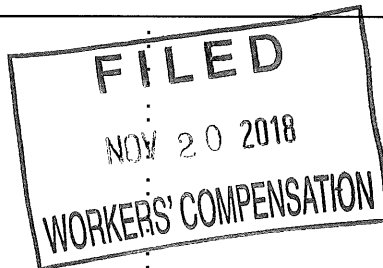
WATERLOO COMMUNITY SCHOOL
DISTRICT,

Employer,

and

UNITED WISCONSIN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5057597

ORDER NUNC PRO TUNC

An arbitration decision was issued by the undersigned on November 13, 2018. On November 20, 2018 defendants filed an application for a nunc pro tunc order.

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. 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) “[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).

The power of the court to make a nunc pro tunc order is inherent and is not lost by the mere lapse of time. Freeman at 893, citing, Lochner v. Livingston, 168 Iowa 457, 459; 150 N.W. 614, 615 (1915). The court has the power to correct an evident mistake. Murnan v. Schuldt, 221 Iowa 242, 249; 264 N.W. 369 373 (1936).

The application pointed out an apparent inconsistency between the Findings of Fact and Order sections of the decision. The decision held:

On January 17, 2017 Dr. Zdilar began providing mental health treatment to claimant. Dr. Zdilar's history of the claimant stated, "Previous notes do have documentation that she has suffered from depression relating to her injury." (JEx. 8, p. 8) Dr. Zdilar's assessment was depression and chronic pain. His diagnosis was depression and to rule out major depressive disorder, single episode. (JEx. 8, p. 12) On April 17, 2017 Dr. Zdilar saw claimant and recommended additional therapy, which claimant declined. (JEx. 8, p. 16) I find that this is the date of the claimant being at MMI. I find that permanent disability benefits commence on April 17, 2017. (Emphasis supplied)

(Arb. Dec. p. 6)

Defendants shall pay claimant permanent total disability at the weekly rate of three hundred five and 05/100 dollars (\$305.05) for so long as she remains permanently disabled commencing on October 2, 2015 (Emphasis supplied)

(Arb. Dec. p. 15)

There is some inconsistency in the above two paragraphs. The claimant was injured on October 5, 2015 and did not return to work. She was found to be permanently total disabled. The October 2, 2015 date is the correct date for the start of the permanent total benefits.

The April 17, 2017 date would be the date of starting permanent partial disability benefits, if claimant had not been found to be permanently total disabled.

The reference in the decision to April 17, 2017 is confusing, and the intent of the undersigned was to have permanent total disability benefits start on October 2, 2015.

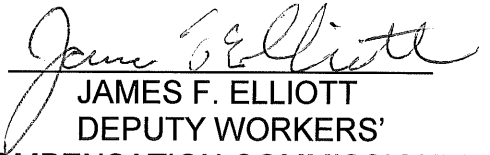
Defendants' application for a nunc pro tunc order is granted.

The Findings of Fact in the November 13, 2018 arbitration decision, page 6, are amended by striking the sentence, "~~I find that permanent disability benefits commence~~

~~on April 17, 2017.~~ and replacing the sentence with, "I find that permanent total benefits commence on October 2, 2015."

SO ORDERED.

Signed and filed this 20th day of November, 2018.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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