

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JOSE MENDEZ-MARQUEZ,

Claimant,

vs.

CRAMER & ASSOCIATES,

Employer,

and

THE TRAVELERS INSURANCE CO.  
OF CT.,

Insurance Carrier,  
Defendants.

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File No. 5058544.01

ORDER NUNC PRO TUNC

FOR ORDER NUNC PRO TUNC, the undersigned states:

On March 1, 2022, claimant filed a motion for order nunc pro tunc. Defendants have not filed a resistance to the motion. In the motion for order nunc pro tunc claimant states:

1. In the arbitration Decision filed on October 25, 2021, Deputy Gerrish-Lampe awarded the costs itemized in Claimant's Exhibits 1, 2 and 3, which are the filing fees and a deposition transcript. Those costs total \$350.00.
2. In the Appeal Decision filed on February 8, 2022, Commissioner Cortese ordered the Defendants to pay the Claimant's costs of \$205.00.
3. That Claimant believes this is a typographical error.

Claimant is correct. This is a scrivener's error which appears in two places in the appeal decision filed on February 8, 2022. The scrivener's error appears in the last sentence of the second paragraph on page one of the appeal decision, and it also appears in the fifth paragraph of the order section on page four of the appeal decision.

The last sentence of the second paragraph on page one of the appeal decision currently reads:

The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$205.00.

The undersigned actually intended the last sentence of the second paragraph on page one of the appeal decision to read:

The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$305.00.

The fifth paragraph of the order section on page four of the appeal decision currently reads:

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred five and 00/100 dollars (\$205.00), and parties shall split the costs of the appeal, including the cost of the hearing transcript.

The undersigned actually intended the fifth paragraph of the order section on page four of the appeal decision to read:

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred five and 00/100 dollars (\$305.00), and parties shall split the costs of the appeal, including the cost of the hearing transcript.

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. 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. November 13, 2008).

In this instance, my intent was to state in both the last sentence of the second paragraph on page one of the appeal decision, and in the fifth paragraph of the order section on page four of the appeal decision, that defendants costs of the arbitration proceeding are \$305.00. It is therefore appropriate to correct my scrivener's error in those two places in the appeal decision.

ORDER

IT IS THEREFORE ORDERED:

The last sentence of the second paragraph on page one of the appeal decision filed in this matter on February 8, 2022, is amended to read:

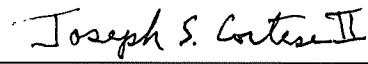
The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$305.00.

The fifth paragraph of the order section on page four of the appeal decision filed in this matter on February 8, 2022, is amended to read:

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred five and 00/100 dollars (\$305.00), and parties shall split the costs of the appeal, including the cost of the hearing transcript.

There are no other changes to the appeal decision filed in this matter on February 8, 2022.

Signed and filed on this 15<sup>th</sup> day of March, 2022.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Greg Egbers (via WCES)

Julie Burger (via WCES)