

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

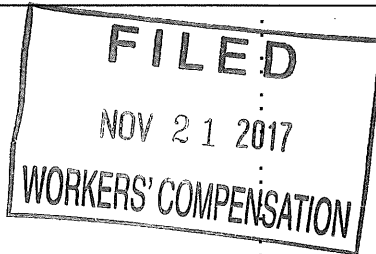
FAUSTINO MENDEZ,

Claimant,

vs.

TYSON FRESH MEATS,

Employer,  
Self-Insured,  
Defendant.



File No. 5052962

RULING ON MOTION

FOR NUNC PRO TUNC RULING

The undersigned issued an arbitration decision on November 13, 2017. On November 21, 2017, defendant filed a motion for nunc pro tunc ruling.

Defendant points out that the undersigned found that claimant proved a two percent permanent impairment of the right upper extremity as a result of the claimant's January 27, 2014 work injury. The undersigned also correctly noted that arm injuries are compensated on a 250-week schedule pursuant to Iowa Code section 85.34(2)(m). However, the undersigned erroneously multiplied two percent by 250 weeks.

Instead of concluding that two percent of the right arm entitled claimant to five weeks of permanent partial disability benefits, the undersigned erroneously noted that claimant was entitled to ten weeks of permanent partial disability benefits. Obviously, this was a scrivener's error, as the explanation within the findings of fact and conclusions of law demonstrates that the undersigned intended to award two percent of the right arm.

As noted by defendant's motion for a nunc pro tunc ruling, it was the undersigned's intention to award two percent of the right arm, or five weeks of permanent partial disability benefits. Therefore, I conclude that the defendant's motion for a nunc pro tunc ruling is appropriate so the award in this case accurately reflects the intention of the undersigned when entering the November 13, 2017 arbitration decision.

THEREFORE, IT IS ORDERED:

The fifth paragraph on page seven of the arbitration decision is amended to read as follows:

I found that claimant sustained a two percent permanent loss of function in his right arm as a result of the January 27, 2014 work injury. The Iowa

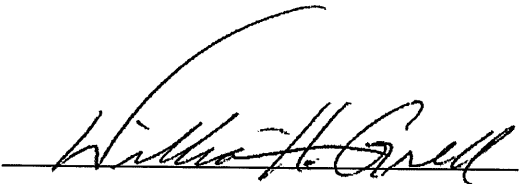
legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his arm. Iowa Code section 85.34(2)(v). Two percent of 250 weeks equals five (5) weeks. Claimant is, therefore, entitled to an award of five (5) weeks of permanent partial disability benefits against the employer at the stipulated weekly rate of compensation. Iowa Code section 85.34(2)(m), (v); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969).

The first paragraph of the order section for File No. 5052962 is amended to read as follows:

Defendant shall pay claimant five (5) weeks of permanent partial disability benefits commencing on November 20, 2014 at the stipulated rate of four hundred twenty-four and 22/100 dollars (\$424.22) per week.

All other portions of the November 13, 2017 arbitration decision remain as filed.

Signed and filed this 21<sup>st</sup> day of November, 2017.



WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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