

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL W. HEMMINGER,

Claimant,

vs.

LENNOX INDUSTRIES, INC.,

Employer,

and

INDEMNITY INS. CO. OF N. AMERICA,

Insurance Carrier,
Defendants.

File Nos. 5068459, 5068460

ORDER NUNC PRO TUNC

On December 28, 2020, claimant filed a motion for nunc pro tunc. There is no resistance on file. The basis of the motion is that the order section erroneously states that the rate is \$458.76 rather than the stipulated figure of \$492.42.

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. Dist. Court for Washington Cty., 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. November 13, 2008).

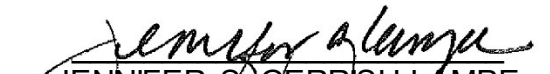
Claimant's motion is granted. A scrivener's error was made in the Order section of the arbitration decision and the hearing decision should be amended to accurately reflect the stipulated benefit rate of \$492.42.

THEREFORE IT IS ORDERED, the claimant's application for Order Nunc Pro Tunc is granted.

The Order section shall read as follows:

That defendants employer and insurer are to pay unto claimant thirty-six (36) weeks of permanent partial disability benefits at the rate of four hundred ninety-two and 42/100 dollars (\$492.42) per week from August 16, 2019.

Signed and filed this 11th day of January, 2021.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)

Robert Gainer (via WCES)