

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PEGGY OTTERPOHL,

Claimant,

vs.

ARAMARK UNIFORM & CAREER  
APPAREL, LLC,

Employer,

and

ACE INDEMNITY INS. CO.,

Insurance Carrier,  
Defendants.

**FILED**  
APR 26 2019  
WORKERS COMPENSATION

File Nos. 5058096, 5058097

NUNC PRO TUNC ORDER

AND RULING ON MOTION

FOR REHEARING

On April 11, 2019, the undersigned filed an arbitration decision in this case. On April 15, 2019, claimant filed a motion for order nunc pro tunc and/or request for rehearing. Defendants have not yet filed a response to the claimant's motion. It is clear that the undersigned made a scrivener's error in the arbitration decision that can and should be corrected by nunc pro tunc order.

The hearing date in this matter was March 22, 2018. Any reference to another date was a scrivener's error.

On page 4, in the findings of fact, the undersigned mistakenly stated that the Siouxland Medical Education Foundation records were not in evidence. In fact, they were in evidence. For clarification, I initially did not find those records and began writing the decision as though they were not in evidence. It is clear from the body of the decision and my multiple references to those records that I did learn they were properly in evidence. All of those records were thoroughly reviewed and considered. Apparently, I failed to properly edit page four the decision. This was an oversight. This caused me to review the entire decision again upon receiving this motion. No other changes are necessary in this regard.

In addition, the following sentence, which was mistakenly omitted, shall be included in the order section: "Defendants are responsible for the medical expenses set forth on page 12 of the decision."

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, the decision contained three scrivener’s errors which are appropriately corrected through an order nunc pro tunc as set forth above.

The claimant also seeks rehearing as governed by 876 IAC Section 4.24. In her motion, claimant requests that the claimant’s left hip condition associated with her January 9, 2015, work injury be included in the order of the decision. In my opinion, the current order already covers the claimant’s request, however, I understand the claimant to be seeking a clarification in order to resolve any potential disputes on this subject in advance.

To be clear, the medical evidence in the record does not establish any left hip condition at this time. Rather, the greater weight of evidence supports a finding that claimant’s left hip symptoms were likely caused by her back condition. In any event, the claimant is correct that Dr. Durward should be authorized to provide treatment for all of her conditions, including her left hip, which are causally connected to her January 9, 2015, work injury. If Dr. Durward determines that claimant needs medical care or diagnostic testing for the diagnosis or treatment of her left hip symptoms, this treatment should be authorized by the defendants.

THEREFORE, IT IS ORDERED:

Claimant’s motion for order nunc pro tunc is sustained.

The second paragraph of the first page of the arbitration decision is amended to read:

“The matter came on for hearing on March 22, 2018 . . .”

The third paragraph of page 4 (last sentence) shall strike the phrase,

“whose records are not in evidence.”

The order section is amended to include the following order:

“Defendants are responsible for medical expenses as set forth on page 12 of the decision.”


The last sentence on page 13 is amended to say:

“All further treatment for claimant’s conditions related to the January 9, 2015 work injury, shall be directed by Dr. Durward based upon his medical judgment.”

The order section (5<sup>th</sup> paragraph under File No. 5058096) is further amended to state as follows:

“Claimant is entitled to alternate medical care. Dr. Durward is claimant’s treating physician at this time and shall direct all medical care for her low back condition including any left hip condition or symptoms.”

Signed and filed this 26<sup>th</sup> day of April, 2019.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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