

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DANE GRIFFIN</b>	)	
Claimant	)	
	)	
VS.	)	
	)	Docket No. 175,244
<b>DALE WILLEY PONTIAC-CADILLAC-GMC TRUCK, INC</b>	)	
Respondent / Self-Insured	)	

**ORDER**

A Motion For Order Nunc Pro Tunc was filed by the claimant in the above-referenced matter on December 30, 1998.

**ISSUES**

Claimant requests an Order Nunc Pro Tunc to correct a mathematical error in the Board's June 30, 1997 Order issued in this matter. Claimant specifically requests that the Board change the mathematical calculation of claimant's average weekly wage from \$361.62 to \$431.62.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In an unpublished Court of Appeals opinion in the above-referenced matter, filed on December 24, 1998, the Court of Appeals noted that claimant's correct average weekly wage was \$361.52, and that the Board's Order listing the average weekly wage as \$361.62 could be corrected by a nunc pro tunc order since it was a typographical error.

The Board has held in the past and continues to hold that it can issue an order nunc pro tunc to correct errors of a clerical nature.<sup>1</sup> However, claimant's Motion For Order Nunc Pro Tunc asks the Board to make an entirely new finding that claimant's average weekly

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<sup>1</sup> See Parsons v. Attica Long Term Care Facility, Appeals Board Docket No. 196,412 (June 1997).

wage be increased to \$431.62. That sum is approximately \$70 more than both the Board's original finding as well as the Court of Appeals' wage finding in this case. The purpose of an order nunc pro tunc is to provide a means for entering the actual judgment of the trial court which for one reason or another was not properly recorded.<sup>2</sup> It may not be used to correct a judicial error involving the merits, to enlarge the judgment originally rendered, to supply a judicial omission or to show what the court should have decided, as distinguished from what it actually did decide.<sup>3</sup> Therefore, claimant's Motion requesting that the Board issue a new average weekly wage finding is not a proper request subject to an order nunc pro tunc.

**WHEREFORE**, the Appeals Board finds that claimant's Motion For Order Nunc Pro Tunc filed December 30,1998, should be, and is hereby, denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Judy A. Pope, Topeka, Kansas  
Jeffrey Slattery, Kansas City, Missouri  
Michael T. Harris, Special Administrative Law Judge  
Philip S. Harness, Director

<sup>2</sup> See Wallace v. Wallace, 214 Kan. 344, 520 P.2d 1221 (1974) .

<sup>3</sup> See Book v. Everitt Lumber Co., Inc., 218 Kan. 121, 542 P.2d 669 (1975); See also Cushenberry v. Wal-Mart, Appeals Board Docket No. 199,674 (June 1997).