



her back, from an altered gait, and is entitled to a general body work disability. Nature and extent of disability is the only issue on appeal.

In the second appeal, claimant contends the ALJ erred when he refused to enter a nunc pro tunc order changing the finding on average weekly wage. The ALJ found he had no jurisdiction to enter a nunc pro tunc while the case was pending on appeal before the Board.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds the decision to limit claimant's award to the scheduled lower extremity should be affirmed. The Board also agrees with and affirms the finding that the impairment to the lower extremity is 13.33 percent based on an approximate average of the ratings by the three physicians who testified. The Board so finds for the reasons provided in the findings of fact and conclusions of law in the Award by the Administrative Law Judge. Those findings and conclusions are adopted by the Board as its own.

Because he considered an appeal likely, the Administrative Law Judge also made findings regarding work disability. These findings would be significant only if claimant's injury were found to be a whole body injury. The findings by the Administrative Law Judge on work disability, which include a finding that claimant made a good faith effort to find employment, are not adopted by the Board. The Board has found permanent injury to the lower extremity only and the Board makes no findings regarding work disability.

After filing this appeal, claimant asked the ALJ to enter a nunc pro tunc order changing the finding on average weekly wage. The ALJ had found a \$300 average weekly wage. The \$300 was claimant's base pay without overtime. The record, in fact, contained no evidence of the amount of overtime paid. The finding did not amount to a clerical error; it accurately reflected the evidence in the record. Claimant did not appeal the finding on wage. Instead, claimant requested that the ALJ enter a nunc pro tunc order. At the hearing on the request, claimant's counsel advised the Court that respondent's counsel had, off the record, offered to stipulate to a wage of \$375.94. At that time, claimant's counsel believed the wage to be even higher and did not agree to the stipulation. No stipulation was entered on the record and the evidence in the record only showed claimant's base wage. Claimant did not offer evidence of the amount of overtime.

An order nunc pro tunc is not for the purpose of changing the substance of an order previously entered. It is intended to enter now in the order what was intended at the time originally entered. It corrects what by virtue of clerical error was incorrectly entered. *In re Appeal of Angle*, 11 Kan. App. 2d 62, 713 P.2d 962, *rev. denied* 239 Kan. 627 (1986). In this case, claimant's request is for a change in the original finding. The request is not properly for a nunc pro tunc. The request should, for that reason, be denied.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict on October 11, 1999, should be, and the same is hereby, affirmed.

**WHEREFORE**, the Order dated November 24, 1999, denying claimant's request for an order nunc pro tunc should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

**DISSENT**

I respectfully disagree with the majority and find that claimant permanently injured her back as a direct and natural consequence of the January 17, 1998 accident.

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BOARD MEMBER

- c: George H. Pearson, Topeka, KS
- Rex W. Henoach, Lenexa, KS
- Bryce D. Benedict, Administrative Law Judge
- Philip S. Harness, Director