



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-92

File ID: R-1415-92	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item 18	In Control: City Council
Department: Legal Department	Cost: \$30,200.50	File Created: 03/04/2015
File Name: Darron Barnes WC Settlement	Final Action:	

Title: RESOLUTION R-1415-92: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIMS FILED BY DARRON BARNES UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *DARRON BARNES V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NOS. WCC 2014-02140 A AND WCC 2014-02142 K; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COURT, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COURT JUDGMENTS FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1415-92; and, if adopted, direct payment of claims in the amount of to \$30,200.50 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/10/2015

Agenda Number: 18

Attachments: Text File R-1415-92 Barnes, Barnes Resolution,
Barnes Purch Req

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: deedra.vice@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1415-92

Body

BACKGROUND: Darron Barnes was a firefighter for the City of Norman Fire Department. He filed two workers' compensation claims on January 31, 2014, as a result of an injury to his right ankle while he was participating in physical training activities on August 20, 2012, and an alleged cumulative trauma to both ears. The cases proceeded through the normal litigation process. Prior to be assigned to Court Ordered mediation, Mr. Barnes has agreed to settle his claims in WCC 2014-02140 A (right ankle) in the amount of \$24,871 and WCC 2014-02142 K (binaural hearing) in the amount of \$5,329.50 for a total amount of \$30,200.50. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be

accepted.

DISCUSSION: WCC 2014-02140 A (right ankle). Mr. Barnes began his employment with the City of Norman Fire Department on March 16, 1998, as a firefighter. As a result of the injury to his right ankle, he retired from the Norman Fire Department on February 26, 2013. There is no question Mr. Barnes injured his right ankle on August 20, 2012, while participating in physical training activities.

After conservative treatment of physical therapy and injections, Dr. Vytautas Ringus performed surgery on his right ankle on March 12, 2013 and he continued with physical therapy. On March 26, 2014, Dr. Ringus released him at MMI and advised he may require a fusion or joint replacement in the future. On May 29, 2014, Mr. Barnes requested a second opinion. Dr. Paul Kammerlocher evaluated him on September 5, 2014, and performed a CT scan revealing two lesions. On September 12, 2014, Dr. Kammerlocher advised Mr. Barnes he was not a candidate for additional surgery.

Issues for Trial. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Barnes suffered due to his injury to his right ankle ("nature and extent" of permanent disability). Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

Mr. Barnes was evaluated by Dr. J. Arden Blough on November 10, 2014, for injury to his right ankle. Dr. Blough opined 49% PPD to the right ankle for a total amount of \$34,819.40. The City had Mr. Barnes evaluated on January 19, 2014, by Dr. Kent Hensley who opined 19% PPD to the right ankle for a total amount of \$13,501.40.

Trial. This case proceeded through the normal litigation process. A pre-hearing conference was scheduled for March 3, 2014, for the Court to consider ordering a Mediation to reach a settlement agreement. However, prior to the pre-hearing conference, Mr. Barnes agreed to a settlement of both this case and the binaural hearing case, as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury to his right ankle anywhere within the range of the doctors' opinions as stated above.

WCC 2014-02142 K (binaural hearing). As noted above, Mr. Barnes also filed a case claiming binaural hearing loss due to cumulative trauma from truck noises and sirens arising out of and in the course of his fifteen years of employment with the City. Mr. Barnes retired from the Fire Department after fifteen years following his ankle injury. It is not uncommon for retiring firefighters to seek compensation under the workers compensation laws claiming cumulative injury to resulting in hearing loss. Neither physician evaluated or rated Mr. Barnes for binaural hearing. However, since Mr. Barnes no longer works for the City and has this case pending, it was felt to be in the City's best interest to explore settlement of the hearing loss case in conjunction with settlement discussions on the ankle case. A review of several prior court Orders for binaural hearing loss cases included the following: 2008 Cecil (firefighter) 7.5% PPD; 2010 Duff (sanitation worker) 9%; 2011 Glover (firefighter) 30%.

Proposed Settlement. The proposed settlement to close both cases on a "Compromise Settlement" basis is for a lump sum payment of \$30,200.50. The offer includes 35% PPD to the right ankle and 5% for the binaural hearing. Thirty-five percent to the right ankle represents one percent over ½ of the difference in the medical opinions. It is not uncommon for awards, following trial, to reflect a decision that splits the opinions expressed in the medical evidence in cases where surgical procedures have been performed. On the binaural hearing loss claim, as noted above on these types of cases that have been pushed through trial, the City Attorney's staff believes 5% for the binaural is a fair settlement for PPD in that case. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims and closes out any continued medical treatment in these Workers' Compensation cases.

It is felt that this settlement closing these two cases is fair and reasonable. This settlement is beneficial to Mr. Barnes in that it provides certainty for an award. It is also beneficial to him because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the cases are settled in this manner, the City would incur additional costs and fees of:

WCC 2014-02140 A (right ankle)

Workers' Compensation Administration Fund Tax in the amount of \$497.42; Special Occupational Health & Safety Tax in the amount of \$186.53; and Workers Comp Court Filing fee in the amount of \$140.00.

WCC 2014-02142 K (binaural hearing)

Workers' Compensation Administration Fund Tax in the amount of \$106.59; Special Occupational Health & Safety Tax in the amount of \$39.97; and Workers Comp Court Filing fee in the amount of \$140.00.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70 for both cases.

These additional costs and fees total \$1,236.21, which brings the total cost of this settlement to the City to \$31,436.71.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Barnes' length of employment with the City, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Barnes and his attorney in a lump sum. The Compromise settlement would be certified to the Cleveland County District Court to be placed on the property tax rolls for collection over the next three years in accordance with 85 O.S. § 313, 51 O.S. § 159, and 62 O.S. § 361, *et seq.* Certifying the order to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.