



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1617-12

File ID: GID-1617-12	Type: Court Order	Status: Consent Item
Version: 2	Reference:	In Control: City Council
Department: Police Department	Cost: \$15,988.50	File Created: 08/03/2016
File Name: Workers Comp Commission-Order-Sean McKenna v. City of Norman		Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$15,988.50 REGARDING SEAN P. MCKENNA VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE CM-2015-08264X.

Notes: ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and if approved, authorize compliance with the Workers' Compensation Commission Order and direct payment of claims in the amount of \$15,988.50 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 08/09/2016

Agenda Number:

Attachments: McKenna Order, Pymt Schedule, McKenna Reqs

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 GID-1617-12

Body

BACKGROUND: Mr. McKenna is a Master Police Officer with the Norman Police Department who filed Workers Compensation Commission No. CM-2015-08264X on December 16, 2015 alleging a single event injury on December 16, 2014 to the right leg chasing a suspect on foot, jumping a fence. The City admitted this injury. The case proceeded through the normal litigation process. A trial was held on July 18, 2016. On July 29, 2016 the Commission awarded Mr. McKenna 18 percent permanent partial disability to the right knee for the total sum of \$15,988.50. It is recommended that the City comply with this Order.

DISCUSSION: Mr. McKenna is a seven (7) year employee of the City of Norman who was reclassified to Master Police officer on October 14, 2013.

Mr. McKenna's CT scan on December 16, 2015 revealed a comminuted proximal tibial fracture with extension

into the proximal fibula. He underwent two surgeries performed by Dr. Steven Schultz. The first surgery (open reduction internal fixation of the right tibia plateau fracture and diagnostic arthroscopy) was performed December 19, 2014 followed by postoperative physical therapy. He was released to light duty on May 20, 2015; however, on July 7, 2015 an MRI revealed a meniscal tear. Subsequently a second surgery (partial lateral meniscectomy, chondroplasty, and synovectomy) was performed on August 13, 2015. Mr. McKenna received post-operative physical therapy and was released at maximum medical improvement on December 9, 2015 without permanent restrictions.

Issues for Trial. The issues tried on July 18, 2016 before the Workers' Compensation Commission were nature and extent of permanent partial disability, temporary total disability, medical continued medical maintenance, and rehab to the right knee. Permanent partial disability is a factual determination made by the Workers' Compensation court Trial Judge based on doctors' opinions regarding the extent of permanent partial impairment.

Evaluations. Mr. McKenna was evaluated on March 30, 2016 by Lance E. Rosson, D.O. Dr. Rosson reported that Mr. McKenna had reached his maximum medical improvement and opined 41 percent permanent partial impairment to the right knee as well as entitlements to continuing medical benefits, in the nature of prescription medication on an as-needed basis, as well as other treatment that his treating physician or future selected physicians might deem necessary, with respect to this injury. The City's maximum permanent partial impairment exposure would be \$36,418.25.

The City had Mr. McKenna evaluated by Kent Hensley, M.D. on May 9, 2016 who opined 12 percent permanent partial impairment to the right knee and continued medical maintenance would not be required. The Workers' Compensation Commission Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial.

Court Award: The case was heard by the Workers' Compensation Commission on July 18, 2016. Based on Mr. McKenna's testimony and considering the expert medical evidence, the Commission entered its Order on July 29, 2016, awarding 18 percent (\$15,988.50) permanent partial disability to the right knee.

The Commission's findings are set out in Paragraph Nos. 2 through 4 of the Order, as follows:

2. "Claimant has sustained 18% permanent partial disability to the RIGHT KNEE for which the Claimant is entitled to compensation for 49.50 weeks at \$323.00 per week, in the total amount of \$15,988.50 (less attorney fee), beginning December 9, 2015, of which 31 weeks and 6 days have accrued and shall be paid by Respondent to Claimant in a lump sum of \$10,289.86. The balance of the award shall be paid at the rate of \$323.00 per week until the total award of \$15,988.50 (less attorney fee) has been paid to the claimant."

3. "The Respondent shall pay all reasonable and necessary medical expenses incurred by the Claimant as a result of this injury through the date of the order."

4. "The Claimant's request for continuing medical maintenance for anti-inflammatory prescription medication from Dr. Schultz is GRANTED."

As can be noted in Paragraph No. 2 of the Commission's Order, PPD compensation is expressed in terms of "weeks" of compensation with an accompanying "weekly wage rate." Workers' Compensation awards are normally paid at the weekly rates over a period of time. Mr. McKenna's weekly wage PPD rate is \$323.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. McKenna and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional four weeks for processing and council approval in a lump sum of \$14,779.56, with the balance of the award of \$1,208.94 to be paid in weekly payments of \$323.00 until paid in full as set forth in the Payment Schedule attached.

Also, as set out in Paragraph No. 4, the Commission also found that continuing medical maintenance for anti-inflammatory prescription medication should be provided.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 6 through 8. Special Occupational Health and Safety Fund Tax in the amount of \$119.91, Workers' Compensation Administration Fund in the amount of \$319.77, and filing fee to the Workers' Compensation Commission in the amount of \$140.00. In addition, the Cleveland County filing fee will be \$131.64. These costs and fees total \$711.32.

The total cost of this Order is \$16,699.82.

RECOMMENDATION: The issues tried on July 18, 2016 were nature and extent to the right knee due to the December 16, 2014 injury. The Court Award in this case is within the medical evidence submitted in that the PPD award is less than one-third the difference between the medical evaluations. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. It is recommended that the City move forward to comply with this Order.

Acceptance of the Order would require the payments as outlined in the attached Payment Table. The Order 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 85A O.S. § 107, 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.