



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1516-77**

**File ID:** GID-1516-77

**Type:** Court Order

**Status:** Consent Item

**Version:** 2

**Reference:** Item 20

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$33,042.90

**File Created:** 01/20/2016

**File Name:** Workers Comp Court Order - Derrald Kizzia v. City of Norman

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$33,042.90 REGARDING DERRALD KIZZIA VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2015-05508 F.

**Notes:** ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and if approved, authorize compliance with the Workers' Compensation Order and direct payment of claims in the amount of \$33,042.90 which will constitute judgment against the City of Norman.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 01/26/2016

**Agenda Number:** 20

**Attachments:** Pymt Schedule, Kizzia Order, Requisitions

**Project Manager:** Jeanne Snider, Assistant City Attorney

**Entered by:** deedra.vice@normanok.gov

**Effective Date:**

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File GID-1516-77

Body

**BACKGROUND:** Derrald Kizzia is a heavy equipment operator in the Park Maintenance Division of the Parks and Recreation Department who filed Workers Compensation Case No. 2015-05508 F on August 18, 2015 alleging cumulative injury to both ears (bilateral hearing loss, tinnitus) with the date of awareness on or about January 2014 from exposure to noise from heavy equipment. The City denied this claim. The case proceeded through the normal litigation process. On January 20, 2014 he underwent an audiogram which revealed a total decibel loss of 180 in each ear. A trial was held on December 15, 2015. On December 30, 2015 the Court awarded Mr. Kizzia 31% permanent partial impairment to both ears (bilateral hearing loss, tinnitus) for the total sum of \$33,042.90. It is recommended that the City comply with this Order.

**DISCUSSION:** Mr. Kizzia is a twenty-three (23) year employee of the City of Norman who was hired as a Maintenance Worker I on August 21, 1992 and promoted to Maintenance Worker II on August 6, 1996 and Heavy Equipment Operator on December 27, 2002.

Issues for Trial. The issues tried on December 15, 2015 before the Workers' Compensation Court were

permanent partial disability and continued medical maintenance. 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. Kizzia was evaluated on July 29, 2015 by Dr. Hugh McClure. Dr. McClure reported that Mr. Kizzia had reached his maximum medical improvement and opined 35.9% binaural hearing impairment to include being fitted with hearing aids in order to maintain and improve his present level of hearing as well as continuing medical maintenance in the form of batteries, replacement units, adjustments, etc. The City's maximum permanent partial impairment exposure would be \$38,372.40.

The City had Mr. Kizzia evaluated by Kent Hensley, M.D. on October 8, 2015 who opined 30.0% monaural impairment in the right ear and a 31.9% monaural impairment in the left ear, combining to give a 30.3% (\$32,332.30) binaural impairment. The Workers' Compensation Court 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 Court on December 15, 2015. After considering the expert medical evidence, the Court entered its Order on December 30, 2015, awarding permanent partial impairment of 31% to both ears (bilateral hearing loss, tinnitus) for the total sum of \$33,042.90.

The Court's findings are set out in Paragraph Nos. 3 through 6 of the Order, as follows:

-3- "THAT as a result of said injury, claimant sustained 31 percent permanent partial impairment to the BOTH EARS (BILATERAL HEARING LOSS, TINNITUS), for which claimant is entitled to compensation for 102.3 weeks at \$323.00 per week, or the total amount of \$33,042.90 of which 20 weeks have accrued and shall be paid in a lump sum of \$6,460.00."

-4- "THAT a physician of respondent's choice shall be authorized to provide the claimant an evaluation to determine the need for hearing aids."

-5- "THAT respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury."

-6- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$6,460.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$33,042.90 (less attorney fee) has been paid to claimant."

As can be noted in Paragraph No. 3 of the Court'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. Kizzia'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. Kizzia 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 the lump sum of \$14,360.58, with the balance of the award of \$18,682.32 to be paid in weekly payments of \$323.00 until paid in full as set forth in the Payment Schedule attached.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 7 and 8. Special Occupational Health and Safety Fund Tax in the amount of \$247.82, Workers' Compensation Administration Fund in the amount of \$660.86, filing fee to the Workers' Compensation Court in the amount of \$140.00; and Cleveland County filing fee in the amount of \$125.70. The costs and fees total \$1,174.38.

The total cost of this Order is \$34,217.28.

**RECOMMENDATION:** The issues tried on December 15, 2015 were permanent partial disability and continued medical maintenance due to the cumulative injury to both ears (bilateral hearing loss, tinnitus) with the date of awareness on or about January 2014. The Court Award in this case is within the medical evidence submitted.

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 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.