



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Master

File Number: GID-1314-59

File ID: GID-1314-59 **Type:** Court Order **Status:** Consent Item

Version: 1 **Reference:** Item No. 22 **In Control:** City Council

Department: Legal Department **Cost:** \$37,965.00 **File Created:** 01/28/2014

File Name: Workers Comp Court Order Harold Glover **Final Action:**

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$37,965 REGARDING HAROLD D. GLOVER VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2010-09518H.

Notes: ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and if approved, authorize compliance with the Workers' Compensation Court Order and direct payment of claims in the amount of \$37,965 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 02/11/2014

Agenda Number: 22

Attachments: Text File Workers Comp Glover.pdf, Orders, PRS Glover.pdf

Project Manager: Jeanne Snider, Assistant City Attorney

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Effective Date: 02/11/2014

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-1314-59

body

BACKGROUND: Harold Glover was a Fire Captain with the Norman Fire Department. He was hired on September 5, 1975 and had been employed with the City for approximately 34 years when he retired on June 20, 2010. Mr. Glover filed Workers' Compensation Claim WCC 2010-09518 H on August 20, 2010, for cumulative injury to his back, body and depression. The case proceeded through the normal litigation process and a trial was held on September 25, 2013 with a decision rendered on October 4, 2013. The City appealed that decision and oral arguments were heard on January 10, 2014. The Order on Appeal was issued on January 23, 2014. The Order on Appeal is being presented to City Council at this time. It is recommended that this Order be accepted.

DISCUSSION: Mr. Glover was hired by City of Norman on September 5, 1975 as a Firefighter with the City of Norman Fire Department. During the course of his employment, he was promoted to Fire Driver Engineer on January 2, 1981 and finally as Fire Captain on August 1, 1986. He retired on June 20, 2010 as a Fire Captain.

Upon retirement, Mr. Glover filed the following Workers' Compensation Claims:

WCC 2011-00538 R (Bilateral Hearing)

On January 18, 2011, Mr. Glover filed this claim for cumulative bilateral hearing loss. A trial was held on June 27, 2011 in which Mr. Glover was awarded 32.5% bilateral hearing loss which equated to \$38,502.75. Council approved this award on July 26, 2011.

WCC 2010-09686 F (Left Knee)

On August 24, 2010, Mr. Glover filed this claim for cumulative injury to his left knee and body during his employment. The claim also alleged consequential depression. A trial was held on October 29, 2012. Mr. Glover was awarded 3% PPD for psychological overlay and 23% PPD to the left leg which equated to \$28,091.75. Council approved this award on November 27, 2012.

WCC 2010-09518 H (Back)

Nature of Claim. On August 20, 2010, Mr. Glover filed this claim for cumulative injury to his lumbar back, body and for depression. Mr. Glover was treated conservatively with lumbar epidural injections and physical therapy. No surgery was performed. He was considered at maximum medical rehabilitation on or around December 20, 2010.

Issues for Trial. There is no question that Mr. Glover suffered some lumbar back sprain during his tenure with the City of Norman. The issues presented at trial were the issues of nature and extent of his lumbar sprain and continuing medical maintenance in the form of pain management. The claimant also requested a portion of Award be commuted to a lump sum. Nature and extent is determined by the trial judge based on the claimant's testimony and expert medical evidence. The Workers' Compensation Court Judge is free to accept either doctors' opinion or find anywhere within the range of competent medical evidence presented. Permanent Partial Disability ("PPD") is a factual determination made by the Workers' Compensation Court trial judge based upon the evaluating doctors' opinions regarding the extent of permanent partial impairment.

Mr. Glover had several evaluations for his back injury. Dr. M. Stephen Wilson evaluated him on December 20, 2010 at which time he was MMI. Dr. Wilson opined disability of 45% PPD and recommended continued medical maintenance in the way of pain management. Dr. Kent Hensley, the City's doctor, evaluated Mr. Glover on March 21, 2011. Dr. Kent opined disability of 0% PPD and further opined that his back pain was caused from a prior injury with a gradual development of multilevel degenerative disc disease.

Second evaluations were done in 2013. Dr. M. Stephen Wilson again evaluated Mr. Glover on January 24, 2013. He opined disability of 44%, over and above any previous injury, and recommended continued medical maintenance in the way of pain management. This rating equates to \$78,980. The City's doctor, Dr. Kent Hensley, reevaluated Mr. Glover on May 1, 2013. Dr. Hensley opined 9% PPD due to previous injury and disability of 9% PPD due to cumulative trauma from his City employment. This rating equates to \$16,155. Dr. Hensley also pointed out that Dr. Wilson opined 21% impairment due to "weakness". Dr. Hensley could identify no "weaknesses" in his testing.

Court Award. This case was heard by the Workers' Compensation Court on September 25, 2013. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on October 4, 2013 awarding 36% PPD disability to the lumbar back. The Court's findings are set out in Paragraph No. 3 of the Order, as follows:

-4- "THAT as a result of said injury, claimant sustained 36 percent permanent partial disability to the WHOLE MAN LUMBAR SPINE (objective medical evidence, loss of range of motion, weakness, neuropathy, four unoperated disc lesions and per MRI resulting in permanent anatomical abnormality)(over and above 1995 lumbar injury; pain in low back; four months of treatment; epidural steroid injection; no rating), for which claimant is entitled to compensation for 180 weeks at \$359.00 per week, or the total amount of \$64,620.00 of which 84 weeks have accrued and shall be paid in a lump sum of \$30,156.00."

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. Glover's weekly wage PPD rate is \$359. In this instance, a portion

of the award has accrued and an additional four weeks would accrue for processing and placing on the Council Agenda.

The City appealed this award to the Workers' Compensation Court En Banc on October 14, 2013. The City contended that the award was contrary to law and against the clear weight of the evidence. Mr. Glover had no surgery, and the award by the trial court is representative of past awards in which claimants had surgery. The City asked for a redetermination of the injury issue and the disability award.

On January 10, 2014, the City presented its argument to the Court En Banc. On January 23, 2014, the Court En Banc issued its Order on Appeal Affirming in Part and Modifying in Part the Decision of the Trial Court. The Court En Banc modified the following trial court paragraphs as follows:

-3- THAT as a result of said injury, claimant sustained 21 percent permanent partial disability to the WHOLE MAN LUMBAR SPINE (**over and above 9% pre-existing disability**), for which claimant is entitled to compensation for 105 weeks at \$359.00 per week, or the total amount of \$37,695.00 of which 99 weeks have accrued and shall be paid in a lump sum of \$35,541.00.

-4- THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$35,541.00 and pay the balance of said award at the rate of \$359.00 per week until the total award of \$37,695.00 (less attorney fee) has been paid to claimant.

Paragraph 6 of the Order reduces the amount of court costs and paragraph 8 reduces the amount of attorney's fee.

All other paragraphs of the October 4, 2013 Order, remain in full force and effect. That Order did not award continued medical maintenance nor additional psychological overlay as that was previously awarded in the Court's Order dated October 31, 2012 in the knee case.

The modified order represents slightly one-third of the difference in the medical opinions (\$37,098.66).

If Council approves this modified Order, the entire award of \$37,965 would be paid in a lump sum to Mr. Glover and his attorney as the remaining weeks for payout of the PPD balance are already past. Further, the City will incur the following costs and filing fees: Special Occupational Health and Safety Fund Tax in the amount of \$282.71; Workers' Compensation Administration Fund in the amount of \$753.90; Workers' Comp filing fee in the amount of \$140.00; and Cleveland County filing fee of \$125.70.

The total award, costs and fees is \$38,997.31.

RECOMMENDATION: The issues tried on September 25, 2013 and January 10, 2014, were the nature and extent of Mr. Glover's injuries and continuing medical maintenance. The Award is within the medical evidence submitted in that it is slightly higher 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 payments as outlined above. 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. § 2b, 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.