



# City of Norman, OK

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

## Text File

File Number: R-1213-59

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Title

RESOLUTION NO. R-1213-59: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF TWO CLAIMS FILED BY LUTHER F. WILSON, JR. UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE TWO CASE OF LUTHER F. WILSON, JR. V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NOS. WCC-2011-10687 A AND WCC 2012-02028 K; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT 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.

ACTION NEEDED: Motion to adopt or reject Resolution No. R-1213-59; and, if adopted, direct payment of claims in the amount of \$69,445 which will constitute judgment against the City of Norman.

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

Body

**BACKGROUND:** Luther F. Wilson, Jr. was a Firefighter who filed Workers' Compensation Cases WCC 2011-10687A and WCC 2012-02028K on October 3, 2011 and February 22, 2012, respectively, alleging right rotator cuff injury and cumulative back injury. The cases have proceeded through the normal litigation process. The Claimant has made a settlement offer to resolve all issues for a lump sum payment of \$69,445. It is recommended that this settlement offer be accepted.

**DISCUSSION:** Mr. Wilson was hired as a Firefighter on July 30, 1979. He retired on April 1, 2012. He filed Workers' Compensation Claim WCC 2011-10687A on October 3, 2011, claiming a right rotator cuff injury on September 1, 2011 when he fell off a truck and landed on his right shoulder. He filed Workers' Compensation Claim WCC 2012-02028K on February 22, 2012 alleging cumulative spine injury from repetitive use in the performance of his Firefighter duties with a last date of exposure on September 1, 2011.

WCC 2011-10687 A (right rotator cuff). This case was filed as a result of a single incident on September 1, 2011. Mr. Wilson fell off a fire truck and landed on his right shoulder injuring his rotator cuff. Arthroscopic surgery was performed on November 1, 2011. After a period of physical therapy, Mr. Wilson was released at maximum medical improvement on June 8, 2012. At that time, Mr. Wilson had retired effective April 1, 2012; and, therefore, returning to the workforce was not an issue. Mr. Wilson was evaluated by his doctor, Dr. Hugh G. McClure,

who opined 46% permanent partial impairment (PPD) to the right shoulder. This rating equates to \$74,290, the maximum exposure to the City. He was then evaluated by the City's doctor, Dr. LeRoy Young, who opined 6% PPD to the right shoulder. This rating equates to \$9,690.

WCC 2012-02028 K (spine). This case was filed for cumulative injury to the spine on February 22, 2012 as a result of repetitive duties performed as a Firefighter. Throughout his employment with the City, he had minimal treatment to his back. Review of his medical records indicated a ruptured disc in 2005 that was treated conservatively with injections and therapy. Mr. Wilson refused surgical intervention at that time. Mr. Wilson had another medical consultation in 2008 for back and neck pain which also did not result in surgical intervention. These medical treatments to the back and neck were filed through the City's health insurance carrier, not as on the job injuries. Mr. Wilson's deposition was taken on July 31, 2012 concerning this case.

Case evaluations. Mr. Wilson is a long term public safety employee serving 33 years. The claim for the shoulder injury is an admitted injury, with a documented anatomical change that required surgical intervention. It is anticipated that the primary issue would be the nature and extent of permanent partial disability. These issues are a factual determination made by the Workers' Compensation Court based on the doctor's opinions submitted in the case, as outlined above. Therefore the maximum exposure for PPD in the shoulder case is \$74,290. The minimum exposure in the shoulder case is \$9,690. Once a percentage of permanent partial disability (PPD) is determined either by trial or settlement agreement, compensation is set considering a statutory compensation schedule and the average weekly wage of the employee. Mr. Wilson's weekly compensation rate for PPD is \$323. If the case is tried, compensation will be paid over time considering the weekly rate. If the case is settled, the compensation is normally paid in a lump sum.

The spine case is a more complex evaluation. As noted above, Mr. Wilson did receive medical treatment on his neck during his tenure as a firefighter. Because settlement was pending in the right rotator cuff claim, the City had Mr. Wilson evaluated for his spine claims as well. It was opined by Dr. LeRoy Young that Mr. Wilson had 7% permanent impairment to the cervical spine (\$11,305) and 6% permanent impairment to the lumbar spine (\$9,690), but that both of these impairments were degenerative disc disease and opined that the disease is pre-existing. Therefore, there were no work related PPD ratings given. A complete denial of the claim would be considered the minimum exposure. A more likely result of minimum PPD exposure, if the Court finds the spine claims compensable, is the combination of the cervical and lumbar permanent comparisons noted by the City's medical expert of \$20,995.

The Workers' Compensation Court has generally been empathetic to claims of long term public safety employees. The claim for compensation for his spine, although it could be argued is not work related or barred by the statute of limitations, does include medical documentation of an anatomical changes (spurring in the cervical and lumbar areas). It is not likely that the City would be successful in contesting the compensability of this case. One reason the case was filed as "cumulative trauma" was to avoid a statute of limitations defense. On a cumulative trauma case, the statute of limitations only begins to run after the Claimant is made aware the injury was work related. In addition, Mr. Wilson has not yet produced an opinion from his medical expert that considers permanent partial disability to the spine. It is anticipated that the Claimant's medical expert would have an opinion that exceeds the 6% to the cervical spine and

the 7% to the lumbar spine that the City's medical expert felt was not work related.

Settlement offers. The Claimant, through his attorney, offered to settle these cases on a Compromise Settlement basis for a lump sum payment of \$69,445. This settlement offer contemplates 25% PPD to the right shoulder (\$40,375), 9% PPD to the cervical spine (\$14,535) and 9% PPD to the lumbar spine (\$14,535). As noted in the attached Settlement Table, Claimant originally offered 22% to the cervical spine (\$35,530) and 20% to the lumbar spine (\$32,300).

The settlement offer represents a reasonable determination of permanent partial disability on these injuries. The shoulder offer is less than ½ the difference in the medical opinions submitted in the case, and is consistent with what could be expected at trial. The offers on the spine case are just a little above the permanent impairment ratings found by the City's medical expert if the Court were to determine these impairments were job related. The settlement offer is beneficial to Mr. Wilson because it provides certainty for the PPD award and it will be paid in a lump sum rather than in weekly payments. The settlement offer is beneficial to the City in that it is a full, final, and complete settlement of any claims that may arise out of these particular injuries. The City will be insulated from future claims arising out of this injury. If the settlement offer is accepted then payment to the Claimant and his attorney would be as set out in the Settlement Table attached hereto.

**RECOMMENDATION:** For the reasons outlined above, it is believed that the settlement offer is fair, reasonable and in the best interest of the City. If approved, the settlement offer will be paid to Mr. Wilson and his attorney in a lump sum. However, once the settlement is filed with the Workers' Compensation Court, it will constitute a judgment against the City of Norman that will be certified to the Cleveland County District Court. The judgment will then be placed on the property tax rolls for collection over the next three-year period in accordance with 85 O.S. § 2B, 51 O.S. § 159, and 62 O.S. § 361, *et seq.* This will reimburse the City's Risk Management Fund over the next three-year period. If you have questions or need additional information, please let me know.