



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1516-76**

**File ID:** GID-1516-76

**Type:** Court Order

**Status:** Consent Item

**Version:** 2

**Reference:** Item 17

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$53,103.75

**File Created:** 01/05/2016

**File Name:** Workers Compensation Court Order-Gary Cecil v.  
City of Norman

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$53,103.75 REGARDING GARY DEAN CECIL VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE WCC 2007-04745 A.

**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 \$53,105.75, which will constitute judgment against the City of Norman.

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

**Agenda Date:** 01/12/2016

**Agenda Number:** 17

**Attachments:** Pymt Schedule, Court Order, Court Order Appeal,  
Purchase Requisitions

**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-1516-76

Body

**BACKGROUND:** Gary Dean Cecil was a firefighter who filed Workers' Compensation Case No. 2007-04745 A on April 25, 2007 alleging a work related single incident injury to the right knee, aggravation of pre-existing injury, and depression on March 22, 2007 and later amended to include back, consequential injury to left shoulder/arms/knee, consequential injury to left foot, low back, both hips, and neck. Mr. Cecil underwent an initial course of physical therapy. He underwent a total knee replacement on June 13, 2007 followed by post-operative physical therapy. Subsequently he also experienced pain in the right hip, left knee, and low back. Found to have arthrofibrosis of the right knee, Mr. Cecil underwent a surgical revision of the right total knee arthroplasty with resurfacing of the patella and polyethylene exchange with synovectomy and manipulation on January 19, 2009, followed by post-operative physical therapy and steroid injection. On September 16, 2009, Mr. Cecil underwent repeat surgery of the right knee for adhesions and manipulation for arthrofibrosis followed by post-operative physical therapy. Mr. Cecil was at maximum medical improvement on January 5, 2010. He continued to have right knee and subsequent pain in both hips, back, left leg, left knee, left ankle,

and neck. MRI scans of the lumbar spine, both hips, and left knee and MR arthrogram of the left and right hip were obtained. Recommendations were nonsurgical treatment for the left knee and conservative treatment for the right hip. In January 2013, Mr. Cecil underwent a steroid injection for the right hip followed by a repeat MR arthrogram. Total hip arthroplasty was subsequently recommended, which Mr. Cecil has declined.

A Trial was held on September 9, 2015. On September 18, 2015 the Court awarded Mr. Cecil 0% left hip, 12% right hip, 5% low back, 20% right knee, and 5% left knee permanent partial disability for the total sum of \$44,433.75; however, this Order was appealed by the claimant. A hearing before a panel of Judges was held on November 20, 2015 and on December 11, 2015 the Court awarded Mr. Cecil 0% left hip, 18% right hip, 5% low back, 20% right knee, and 5% left knee permanent partial disability for the total sum of \$53,103.75.

**DISCUSSION:** Mr. Cecil was a twenty seven (27) year employee of the City of Norman who was hired as a firefighter on October 22, 1979. He retired from the City of Norman on May 31, 2007.

**Issues for Trial.** The issues tried on September 9, 2015 before the Workers' Compensation Court were permanent partial disability. 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. Cecil was evaluated on February 17, 2014 by J. Arden Blough, M.D. Dr. Blough opined 22% (\$31,790) whole person permanent partial impairment due to emotional and behavioral disorders; 36% (\$52,020) whole person permanent partial impairment to the cervical spine; 48% (\$69,360) whole person permanent partial impairment to the lumbar spine over and above 3% pre-existing impairment; 37% (\$53,465) whole person permanent partial impairment to the right hip; 27% (\$39,015) whole person permanent partial impairment to the left hip; 28% (\$22,253) permanent partial impairment to the right leg/knee over and above 50% pre-existing impairment; 32% (\$25,432) permanent partial impairment to the left leg/knee over and above 10% pre-existing impairment; continued care in the form of pain management in regard to the cervical spine and lumbar spine, assigned a pain management specialist for treatment, and entitlements for prescription medications or any treatments his treating physician deems necessary in regard to this work related injury; continued care in regard to the bilateral hips and bilateral knees to also include future joint replacements, assigned a board-certified orthopedic specialist for continued care, entitlements for prescription medications or any treatments his treating physician deems necessary in regard to this work related injury; and continued care in regard to his condition of depression, assigned a board-certified psychiatrist for continued care, and entitlements for prescription medications, counseling, or any treatments his treating physician deems necessary in regard to this work-related injury. The City's maximum permanent partial impairment exposure would be \$293,335.

The City had Mr. Cecil evaluated by Kent Hensley, M.D. on March 26, 2014 who opined an 12% (\$9,537) impairment to the right leg over and above 50% pre-existing impairment; 0% impairment to the whole man regarding the cervical spine, thoracic spine, lumbar spine, and both hips; 0% impairment to the left leg regarding the left knee; non-work related degenerative disease of both hips resulting in 10% impairment to the whole man regarding the right hip and 5% impairment to the whole man regarding the left hip; 9% pre-existing impairment to the whole man regarding the lumbar spine; and 0% impairment to the whole man regarding psychological overlay. 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 appeal was heard by the Workers' Compensation Court en banc on November 20, 2015. After reviewing the record in this case, and being fully informed in the premises, the panel of Judges found that parts of the September 18, 2015 order were contrary to law and against the clear weight of the evidence and was, therefore, modified awarding permanent partial disability of 0% to the left hip, 18% to the right hip over and above 0 percent pre-existing permanent partial disability (originally awarded at 12% over and above 10% pre-existing permanent partial disability in the initial Order), 5% to the low back over and above 9% pre-existing permanent partial disability, 20% to the right knee over 50% pre-existing permanent partial disability, and 5% to the left knee over and above 10% pre-existing permanent partial disability for the total sum of \$53,103.75.

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 0 percent permanent partial disability to the LEFT HIP and 18 percent permanent partial disability to the RIGHT HIP over and above 0 percent pre-existing permanent partial disability and 5 percent permanent partial disability to the LOW BACK over and above 9 percent pre-existing permanent partial disability, 20 percent permanent partial disability to the RIGHT KNEE over and above 50 percent pre-existing permanent partial disability and 5 percent permanent partial disability to the LEFT KNEE over and above 10 percent pre-existing permanent partial disability, for which claimant is entitled to compensation for 183.75 weeks at \$289.00 per week, or the total amount of \$53,103.75 of which 46 weeks have accrued and shall be paid in a lump sum of \$13,294.00."

-4- "THAT respondent or insurance carrier shall furnish claimant with continuing medical maintenance of said condition as a result of claimant's injury with RIGHT KNEE for maintenance of prosthetic until further order of this Court pursuant to the Physicians Advisory Committee Guidelines."

-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 \$13,294.00 and pay the balance of said award at the rate of \$289.00 per week until the total award of \$53,103.75 (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. Cecil's weekly wage PPD rate is \$289.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Cecil and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional five weeks for processing and Council approval in the lump sum of \$25,359.75, with the balance of the award of \$27,744.00 to be paid in weekly payments of \$289.00 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 \$398.28, Workers' Compensation Administration Fund in the amount of \$1,062.08, 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 \$1,726.06.

The total cost of this Order is \$54,829.81.

**RECOMMENDATION:** The issues tried on September 9, 2015 were permanent partial disability due to the March 22, 2007 injury. The Court Award in this case is within the medical evidence submitted. Further appeal of the decision by the City would require appeal to the Oklahoma Supreme Court. The standard of review by the Supreme Court of an Award modified by the Workers' Compensation Court en banc a more stringent review requiring a finding that the modified Order is "contrary to law". Under the facts of this case it is highly unlikely that a more favorable ruling for the City could be achieved by appealing the decision to the Oklahoma Supreme Court. 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.