



City of Norman, OK

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

Master

File Number: R-1314-38

File ID: R-1314-38	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item No. 31	In Control: City Council
Department: Legal Department	Cost: \$22,169.95	File Created: 08/29/2013
File Name: WCC Gregory Harris		Final Action: 09/05/2013

Title: RESOLUTION NO. R-1314-38: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY GREGORY W. HARRIS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF GREGORY W. HARRIS V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2013-03951 A; 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.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1314-38; and, if adopted, direct payment of claims in the amount of \$15,781.21 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 10/22/2013

Agenda Number: 31

Attachments: Resolution No. R-1314-38, Pr Harris

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: denise.johnson@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 R-1314-38

body

BACKGROUND: Gregory W. Harris is a Maintenance Worker I in the Storm Water Division of Public Works. He alleges a re-injury to the right knee on October 22, 2012. The case proceeded through the normal litigation process and a trial was scheduled on October 14, 2013. At the time of trial, Mr. Harris, through his attorney, negotiated a settlement of this claim in the amount of \$15,100.25. The settlement is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION: Mr. Harris was hired by City of Norman on July 21, 2008 as a Maintenance Worker I in the Storm Water Division of Public Works. After working for about two years, Mr. Harris injured his right knee on

May 5, 2010 while weed eating on a steep incline. Mr. Harris received medical treatment which included arthroscopic surgery to the right knee. He then returned to work. This prior knee case, WCC 2011-0-2806 J, proceeded through the normal litigation process and a trial was held on August 16, 2011. He was awarded 26% PPD which equates to \$32,865.25. This award has been previously fully paid in accordance with that Court Order.

WCC 2013-03951 A

Factual background and extent of medical treatment. On October 22, 2012, Mr. Harris reported a right knee re-injury while carrying rebar to a ditch when the ground gave way. The injury report was filed timely and the re-injury was noted to have occurred as reported. Mr. Harris was initially treated at Norman Regional Occupational Medicine on October 23, 2012. After a period of conservative treatment, Mr. Harris was referred to and had arthroscopic surgery by Dr. Schultz on December 6, 2012. Thereafter, he went through a program of physical therapy from which he was released on December 17, 2012. He returned to full work duty with no work restrictions on December 18, 2012.

Issues for Trial. Should this case proceed to trial, there would be no question that Mr. Harris' injury arose out of and in the course of his employment with the City. Therefore, the issue before the Workers' Compensation Court would be the nature and extent of Mr. Harris' injury or the Permanent Partial Disability (PPD) to Mr. Harris's right knee due to this incident. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and/or medical records regarding the extent of permanent partial impairment.

On May 16, 2013, Mr. Harris was evaluated by Dr. M. Stephen Wilson, who opined 45% PPD to the right knee for his re-injury but attributed only 8% of the impairment to the prior injury, leaving 37% PPD for the most recent knee injury. This rating for the most recent injury equates to \$32,865.25 PPD. The City had Mr. Harris evaluated on July 1, 2013 by Dr. Kent C. Hensley. Dr. Hensley opined 31% PPD to the right knee, but equated the full 26% PPD of the prior adjudicated Award to the first knee injury, thus leaving only 5% PPD for the second knee injury which equates to \$4,441.25.

Settlement Proposal. This case was set for trial on October 14, 2013. Prior to trial a settlement offer was made by Mr. Harris and his attorney. After negotiation, a proposed settlement offer that could be supported by City staff was reached, subject to approval by City Council. The settlement proposes a lump sum payment of \$15,100.25 which represents 17% PPD to the right knee, over and above the previous PPD award of 26%. The total adjudicated disability to the right knee with this settlement would be 43%. This settlement proposal leans toward an agreed finding of PPD from both injuries that is closer to what was opined by the Claimant's doctor, but gives full credit to the prior adjudicated 26% PPD from the first knee injury.

Should this case proceed to trial, it is reasonably possible that the Court could find the full 45% PPD noted by the Claimant's medical expert, but could also find the claimant had achieved a change of condition for the better between the first injury and the second injury, thus reducing the PPD credit attributable to the first injury. This approach, if chosen by the Court, could result in a higher PPD liability for the second knee injury than what is proposed in the settlement offer.

A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims in the Workers' Compensation case that arise out of that particular on the job accident. Moreover, this settlement offer is in keeping with or lower than what the City has been ordered to pay in past years in similar cases by the Workers' Compensation Court. This settlement is beneficial to Mr. Harris in that it provides certainty for an award. It is also beneficial to him because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

If this settlement offer is approved, payment to Mr. Harris and his attorney would be paid in a lump sum rather than at PPD rate as set out above. In addition, the Department of Human Services filed a lien for interest due and owing on child support in this case on April 17, 2013; therefore, the amount of \$172.50 will be paid to the Department of Human Services from the settlement amount. The remainder of settlement, \$14,927.75, will be paid to Mr. Harris and his attorney.

Furthermore, if the case was settled in this manner, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$302.01; Special Occupational Health & Safety Fund Tax in the amount of \$113.25; Workers Comp Court Filing Fee in the amount of \$140.00; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total \$680.96, which brings the total cost of this settlement to the City to \$15,781.21.

RECOMMENDATION: For the reasons outlined above, it is believed this compromise settlement offer is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Harris and his attorney in a lump sum. The Compromise Settlement 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.