



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-95

File ID: R-1415-95	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item 22	In Control: City Council
Department: Legal Department	Cost: \$94,850.00	File Created: 03/17/2015
File Name: WCC Settlement - Joseph Smith vs. City of Norman	Final Action:	

Title: RESOLUTION R-1415-95: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JOSEPH SMITH UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JOSEPH SMITH V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2010-03196F; 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 JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1415-95; and, if adopted, direct payment of claims in the amount of to \$94,850 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/24/2015

Agenda Number: 22

Attachments: Resolution, PR Smith

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 R-1415-95

Body

BACKGROUND: Joseph Smith was a firefighter for the City of Norman Fire Department. On March 17, 2010, he filed a workers' compensation claim for cumulative injury to his back. The case proceeded through the normal litigation process. Mr. Smith has agreed to settle his claim for a total amount of \$94,850. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION: Joseph Smith began his employment with the City of Norman Fire Department on January 3, 1984. He was promoted to driver/engineer in 1999. Mr. Smith retired from the Norman Fire Department on

March 27, 2010, and moved to Arkansas. The City denied the workers' compensation claim for cumulative injury to his back in 2010. A trial was held on December 2, 2010, before Judge Kent Eldridge. On December 6, 2010, Judge Eldridge found the claimant's work activities constituted the major cause of his resulting injuries and stated October 9, 2008, as the date claimant became aware he has sustained injury as a result of cumulative trauma to his back and issued an Order authorizing medical treatment.

Following the December 6, 2010, Order, Mr. Smith moved from Oklahoma to Arkansas after his retirement and the City agreed to have Mr. Smith seek medical care in Arkansas. Mr. Smith was seen by Dr. James B. Blankenship in Fayetteville, Arkansas, on January 11, 2011. Dr. Blankenship advised his options were to continue with conservative treatment or surgical intervention. He did not see Dr. Blankenship again until June 27, 2012. After an MRI, Dr. Blankenship recommended a two-stage surgical procedure (360 degree - 2 level spinal fusion), followed by physical therapy. He had surgery on August 1 and August 8, 2012. In March 2013, Dr. Blankenship referred Mr. Smith to Dr. Canon for an epidural steroid injection to help control continued back and leg pain. He had four injections from March 2013 to October 2013. He returned to Dr. Blankenship on January 30, 2014. At that time there was improvement with his pain and Mr. Smith did not want another injection. Dr. Blankenship advised Mr. Smith to continue with his home exercises and call if he wanted to schedule another injection. Mr. Smith has not returned for further treatment.

Issues for Trial. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Smith suffered due to his cumulative injury to his back ("nature and extent" of permanent disability). Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

Dr. Kent Hensley evaluated Mr. Smith on September 15, 2014, for the City and opined 24% impairment to the whole man regarding the lumbar spine. Dr. Hensley stated that Mr. Smith clearly had two level disc disease in 1998 and opined 8% pre-existing impairment to the lumbar spine and, as a result of his subsequent work related injury and two surgeries, opined Mr. Smith had a 16% (\$23,120) impairment to the whole man regarding the lumbar spine. Dr. Hensley did not believe continued medical maintenance (CMM) would be necessary and Dr. Hensley did not address disfigurement.

Dr. Stephen Wilson also evaluated Mr. Smith on September 15, 2014, and opined a 56% (\$80,920) permanent partial impairment to his lumbar spine over and above any prior injury. Dr. Wilson also recommended disfigurement for the scar and CMM.

Trial. This case proceeded through the normal litigation process. However, Mr. Smith has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury to his back anywhere within the range of the doctors' opinions as stated above.

Temporary Total Disability. Although Mr. Smith was retired from the City of Norman, he was still entitled to receive TTD benefits at seventy percent (70%) of his average weekly wage, but not in excess of the state's average weekly wage. Mr. Smith's TTD rate was \$577 per week. Normally, an employee receives weekly TTD benefits during the course of his treatment. However, in this case, Mr. Smith's TTD entitlement was overlooked and Mr. Smith was not paid TTD throughout the course of his treatment from June 27, 2012 to January 30, 2014, the date he was released from active medical treatment by his treating physician. The total amount of TTD entitlement due Mr. Smith is \$48,055.

Proposed Settlement. The proposed settlement to close this case on a "Compromise Settlement" basis is for a lump sum payment of \$94,850. The offer includes 31% (\$44,795) PPD to the back. Thirty-one percent to the back represents less than one-half of the difference in the medical opinions. It is not uncommon for awards, following trial, to reflect a decision that splits the opinions expressed in the medical evidence in cases where surgical procedures have been performed, especially a "360 fusion" which fuses the front and the back of the spine. In addition, the proposed settlement includes \$2,000 for disfigurement resulting in a permanent scar from the abdomen all the way around his body. In an injury resulting in serious and permanent disfigurement, the maximum exposure is \$20,000. An award for disfigurement is within the Trial Judge's discretion. The proposed settlement also includes the TTD entitlement due Mr. Smith in the amount of \$48,055. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all

claims and closes out any continued medical treatment in these Workers' Compensation cases.

It is felt that this settlement closing this case is fair and reasonable. This settlement is beneficial to Mr. Smith 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.

Furthermore, if the cases are settled in this manner, the City would incur additional costs and fees of:

Workers' Compensation Administration Fund Tax in the amount of \$935.90; Special Occupational Health & Safety Tax in the amount of \$350.96; and Workers Comp Court Filing fee in the amount of \$140.00.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70.

These additional costs and fees total \$1,552.56, which brings the total cost of this settlement to the City to \$96,402.56.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Smith's length of employment with the City, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Smith 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.