



# City of Norman, OK

Norman Public Schools -  
Administrative Services  
Center  
131 South Flood Avenue  
Norman, OK 73069

## Master

**File Number: GID-1314-64**

**File ID:** GID-1314-64

**Type:** Court Order

**Status:** Consent Item

**Version:** 1

**Reference:** Item No. 19

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$24,515.70

**File Created:** 02/17/2014

**File Name:** Approval of a Court Order in the amount of  
\$24,515.70 for David R. Qualls vs. the City of  
Norman, WCC Case No. WCC-2013-09919 X

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL  
OF A COURT ORDER IN THE AMOUNT OF \$24,515.70 REGARDING DAVID R. QUALLS  
VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO.  
WCC-2013-09919X

**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 \$24,515.70 which will constitute judgment against the City of Norman.

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

**Agenda Date:** 02/25/2014

**Agenda Number:** 19

**Attachments:** Text File Qualls WCC.pdf, Court Order, Payment  
Schedule Form 2-13-14, PRs

**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 GID-1314-64

Body

**BACKGROUND:** David R. Qualls was a Fire Captain who filed Workers Compensation Claim WCC 2013-09919X on September 17, 2013, alleging bilateral hearing loss with a last date of exposure on July 17, 2013. The case proceeded through the normal litigation process, and a trial was held on January 22, 2014. The Court Award is being presented to City Council at this time. It is recommended that this Order be accepted.

**DISCUSSION:** Mr. Qualls was a 33-year employee of the City of Norman Fire Department who retired on July 17, 2013. He began his service with the City on December 12, 1980 as a firefighter. Thereafter, he was promoted to Fire Driver Engineer on June 29, 1988, and to Fire Captain on June 16, 2000.

**Nature of Claim.** Mr. Qualls filed this Workers' Compensation claim alleging bilateral hearing loss which he attributes to cumulative exposure to sirens, engines and work related noises with a last date of exposure on July 17, 2013.

Issues for Trial. The issues before the Workers' Compensation Court at a trial of this case is the nature and extent of PPD and continued medical maintenance. 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. Qualls was evaluated by Dr. M. Stephen Wilson on October 14, 2013. Dr. Wilson opined 24.6% PPD (over and above a 2% previous hearing loss) and 5% PPD for tinnitus to the bilateral ears which is a total of 29.6% PPD and equates to \$31,530.64. Dr. Wilson also recommended continued medical maintenance for, provision of and maintenance of, hearing aids. This would be the City's maximum exposure.

The City had Mr. Qualls evaluated by Dr. LeRoy Young on December 11, 2013, who opined Mr. Qualls has 16.3% PPD to his bilateral hearing and no tinnitus, which equates to \$17,374.17. Dr. Young did not recommend continued medical maintenance, hearing aids or testing. The Worker's Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial.

Court Award. This case was heard by the Workers' Compensation Court on January 22, 2014. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on February 11, 2014, awarding 23% PPD disability to the bilateral ears. The Court's findings are set out in Paragraph Nos. 5 and 7 of the Order, as follows:

-5- THAT the claimant has permanent anatomical abnormalities to his EARS which are causally related to his accidental personal injury, herein. Therefore, as a result of said injury, claimant sustained 23 percent BINAURAL HEARING LOSS, for which claimant is entitled to compensation for 75.9 weeks at \$323.00 per week, or the total amount of \$24,515.70 of which 15 weeks have accrued and shall be paid in a lump sum of \$4,845.00.

-7- THAT respondent or insurance carrier shall pay claimant the accrued portion of the award of herein in lump sum of \$4,845.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$24,515.70 (less attorney fee) has been paid to claimant.

As can be noted in Paragraph No. 5 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. Qualls' weekly wage PPD rate is \$323.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Qualls and his attorney will be paid the accrued lump sum amount and attorney's fee in the amount of \$11,040.14 plus an additional four weeks for processing and Council approval, as set forth in the Payment Schedule attached.

The City will incur additional costs and Workers' Compensation filing fee in the total amount of \$814.18 as set out in Paragraph Nos. 8 and 9 of the Order, plus Cleveland County filing fee of \$125.70.

**(See attached Payment Table)**

The total cost of this Order to \$25,455.58.

**RECOMMENDATION:** The issues tried on January 22, 2014, were the nature and extent and continuing medical maintenance. The Award is within the medical evidence submitted in that the PPD award is slightly higher than one-half the difference between the medical evaluations. In light of Mr. Qualls' Fire Department position and length of employment with the City, 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 the payments as outlined in 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.

