



City of Norman, OK

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

Master

File Number: R-1314-33

File ID: R-1314-33	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item No. 30	In Control: City Council
Department: Legal Department	Cost: \$31,794.54	File Created: 08/21/2013
File Name: WCC Resolution Willard Stephens	Final Action:	

Title: RESOLUTION NO. R-1314-33: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY WILLARD D. STEPHENS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF WILLARD D. STEPHENS V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2012-07198 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-1314-33; and, if adopted, direct payment of claims in the amount of \$31,794.54 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 09/10/2013

Agenda Number: 30

Attachments: Resolution No. R-1314-33, PR Willard Stephens

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-1314-33

Body

BACKGROUND: Willard D. Stephens is a Heavy Equipment Operator with the Waste Disposal Division of the Utilities Department. He filed Workers' Compensation Case No. WCC 2012-07198A on June 27, 2012 alleging injury on June 12, 2012. The case proceeded through the normal litigation process. Prior to a scheduled trial on August 20, 2013, Mr. Stephens offered to settle his case for \$30,685. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Nature of Claim. Mr. Stephens is a Heavy Equipment Operator with the Waste Disposal Division of the Utilities Department. He was hired on July 12, 1991 as a Sanitation Worker I. His position was reclassified to Transfer Station Attendant on January 5, 1996. He was promoted to Sanitation Worker II on January 30, 2002. On November 20, 2006, he was again promoted to Heavy Equipment Operator. He was injured on June 12, 2012 when he slipped climbing off the top of a truck he had cleaned. He fractured and dislocated his left shoulder (humerus).

Issues for Trial. Should this case proceed to trial, there is no question that Mr. Stephens' 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. Stephens' injury or the Permanent Partial Disability (PPD) to Mr. Stephens' left shoulder due to this incident. 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.

Mr. Stephens was transported to Norman Regional Health System Emergency Room on June 12, 2012. It was determined that he had a broken humerus and dislocation of his left shoulder. Thereafter, he was seen by Dr. David Bobb who, after ascertaining that the shoulder and arm were in good alignment, placed Mr. Stephens in an Ultra sling. On June 21, 2012, he was placed in a "hanging cast" which provided gravity and weight needed for the healing of the broken bones.

An arthrogram performed on November 15, 2012, revealed labral tears which were repaired by arthroscopy on December 12, 2012. After a series of physical therapy, he was at maximum medical improvement on April 16, 2013.

May 26, 2013, Mr. Stephens was evaluated by Dr. Lance E. Rosson, who opined 36% PPD to the whole man for his injuries. This rating equates to \$58,140 PPD. On July 29, 2013, Mr. Stephens was evaluated by the City's doctor, Dr. LeRoy Young, who opined 8% PPD to the whole man. This rating equates to \$12,920. The trial judge is free to make a ruling within the range of the medical evidence presented at the time of trial. Therefore, the City's maximum exposure to compensate Mr. Stephens for his injury is \$58,140.

Settlement. City Staff has negotiated with Mr. Stephens, through his attorney, a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$30,685 which represents 19% PPD to the left shoulder. 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. Moreover, the 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.

Should this case proceed to trial, it is reasonably possible that the City could be ordered to pay more than the settlement offer due to the nature of Mr. Stephens' injury and subsequent casting and arthroscopic surgery. This settlement is beneficial to Mr. Stephens 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. Stephens and his attorney would be paid at PPD rates as set out above which is less than one-half the difference in the medical opinions.

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 \$613.70; Special Occupational Health & Safety Fund Tax in the amount of \$230.14; 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 \$1,109.54, which brings the total cost of this settlement to the City to \$31,794.54.

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. Stephens 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.