



City of Norman, OK

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

Master

File Number: GID-1314-34

File ID: GID-1314-34

Type: Court Order

Status: Consent Item

Version: 2

Reference: Item No. 27

In Control: City Council

Department: Legal Department

Cost: \$59,387.95

File Created: 08/27/2013

File Name: WCC Court Order William Scott Kent

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$59,387.95 REGARDING WILLIAM SCOTT KENT VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2007-07275Y.

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 \$59,387.95 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 09/10/2013

Agenda Number: 27

Attachments: Text File Kent, Payment Schedule 8-26-13, Court Order, PR Kent

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-1314-34

body

BACKGROUND: William Scott Kent was a Heavy Equipment Operator for Sewer Line Maintenance in the Utilities Department, filed Workers' Compensation Case No. WCC 2007-07275 Y on June 27, 2007. Mr. Kent alleged cumulative injury to his hands with psychological overlay as a result of operating heavy equipment while working for the City of Norman. The case has proceeded through the normal litigation process. A trial was held on August 20, 2013, and the Court awarded Mr. Kent a total of \$57,539.90. The Court Order is being presented to City Council for consideration. It is recommended that the City comply with the Order.

DISCUSSION:

Nature of Claim. Mr. Kent worked for the City of Norman for approximately nineteen and one-half (19½) years. He began his service with the City of Norman on December 4, 1987 as an Equipment Operator. He was promoted to Heavy Equipment Operator on October 4, 2000. Mr. Kent held that position until his separation on June 1, 2007.

Mr. Kent filed this Workers' Compensation claim alleging cumulative injuries to both hands along with psychological overlay due to years of operating heavy machinery in connection with his duties in the Utilities Department.

Issues for Trial. The City disputed that Mr. Kent suffered any injury to his hands which was work related. On December 7, 2010, the Court found that the cumulative injuries to both hands, both arms and right shoulder were job-related and compensable. Therefore, the issues for trial were the nature and extent of the injuries and whether Mr. Kent was entitled to continuing medical maintenance.

Mr. Kent was treated by Dr. R. Brad Vogel for his hands (carpel tunnel) and Dr. David W. Bobb for bilateral elbow pain (moderate to severe cubital tunnel syndrome) and right shoulder pain. After a period of treatment, Mr. Kent was sent to an independent medical examiner appointed by the court, Dr. Richard A. Ruffin. Dr. Ruffin opined that Mr. Kent suffers from persistent pain syndrome and medical treatment may include right wrist and thumb arthrotomy, synovectomy, debridement, and possible chonroplasty. He observed degenerative changes, which he opined were possibly posttraumatic or post repetitive motion degenerative changes from overuse of the right wrist scaphotrapezotrapezoidal joint and to a lesser extent the right thumb trapeziometacarpal joint. He also had residual pain from a previous carpel tunnel syndrome and subsequent carpal tunnel release including some post condition and postsurgical median neuritis. Further surgeries were considered, but did not follow through on that option.

Mr. Kent was evaluated by Dr. J. Arden Blough on March 25, 2013. Dr. Blough opined 43% PPD to the right arm/elbow, 41% PPD to the left arm/elbow, 49% PPD to the right hand/wrist and 43% PPD to the left hand/wrist. These ratings equate to \$125,312, the maximum exposure to the City. He further recommended continued medical treatment in the form of prescription medications or any treatments his treating physician deems necessary.

Mr. Kent was evaluated by the City's doctor, Kent C. Hensley on May 22, 2013. Dr. Hensley opined 5% PPD to the right arm/elbow, 5% PPD to the left arm/elbow, 15% PPD to the right hand and 10% PPD to the left hand. These ratings equate to \$23,842.50.

The issues before the Workers' Compensation Court at trial in this case were the nature and extent of PPD of the bilateral hands and elbows. 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.

Court Award. This case was heard by the Workers' Compensation Court on August 20, 2013. After hearing the claimant's testimony and considering the expert medical evidence, the Court opined that Mr. Kent sustained 26% PPD to his right hand, 22% to his left hand, 16% to the right elbows, and 18% to the left hand. The Court's findings are set out in Paragraph Nos. 4, 6 and 7 of the Order as follows:

-4- THAT, as a result of said injury, claimant sustained 26 percent permanent partial disability to the RIGHT HAND (pain, numbness, weakness, reduced dexterity); 22 percent permanent partial disability to the LEFT HAND (swollen sensation, some weakness, minor pain and numbness); 16 percent permanent partial disability to the RIGHT ARM (weakness, pain with extension) and 18 percent permanent partial disability to the LEFT ARM (numbness, weakness, reduced range of motion), for which claimant is entitled to compensation for 199.1 weeks at \$289.00 per week, or the total amount of \$57,539.90 of which 21 weeks have accrued and shall be paid in a lump sum of \$6,069.00.

As can be noted in Paragraph No. 4 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 rate over a period of time. Mr. Kent's weekly wage rate is \$289. However, as noted, only a portion of the award has accrued to be paid in a lump sum and the balance to be paid in weekly payments until paid in full. No continued medical maintenance was awarded.

In complying with the Order, Claimant and his attorney will be paid in a lump sum of \$18,732.98 with the remainder of the Order paid in weekly installments of \$289, until paid. Also, as noted in Paragraphs No. 7 & 8

of the Order, the City will incur additional costs and fees in the amount of \$1,722.35 and filing fee to Cleveland County District Court in the amount of \$125.70.) The total cost of this Order to the City would be \$59,387.95. (See attached Payment Schedule)

Mr. Kent is currently receiving weekly PPD payments from the Award in Case No. WCC 2007-07273 L. The last payment will be June 5, 2014. The weekly PPD payments in this case will begin June 6, 2014 and end on December 31, 2016.

RECOMMENDATION: The issues tried on August 20, 2013 nature and extent of PPD of the bilateral wrists and bilateral elbows and whether Mr. Kent was entitled to continued medical treatment. Because the Claimant worked for the City over nineteen (19) years and was exposed to cumulative use of his hand/wrists and arms/elbows in the operation of heavy equipment along with supporting medical evidence, it is doubtful that the City could prevail on an appeal.

It is not anticipated a more favorable ruling for the City could be achieved by further litigation. The Order is slightly more than one-half of the difference between the doctors' opinions. The award is within the range of the medical evidence provided at trial. Therefore, it is recommended that the City move forward to comply with this Order.

Acceptance of the Order would require the payments as outlined above and in the attached payment schedule. 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. § 2b, 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.