



City of Norman, OK

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

Text File

File Number: R-1213-52

Introduced: 9/6/2012

Current Status: Consent Item

Version: 1

Matter Type: Resolution WCC

Title

RESOLUTION NO. R-1213-52: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY BRENTON WADE PORTER UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF BRENTON WADE PORTER V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2011-13850K; 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.

ACTION NEEDED: Motion to adopt or reject Resolution No. R-1213-52; and, if adopted, direct payment of claims in the amount of \$32,300 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

body

BACKGROUND: Brenton Wade Porter is a Fire Fighter for the Norman Fire Department who injured his left shoulder on December 10, 2011 while fighting a fire. Mr. Porter, through his attorney, has approached this office concerning settlement of his Workers' Compensation claim against the City of Norman. A settlement offer for this claim in the amount of \$32,300 is being presented to City Council for consideration.

DISCUSSION:

Nature of Claim. Mr. Porter was hired on January 7, 1985 as a Firefighter. His injury is due to a single event on December 10, 2011 when he was pulling siding from a structure fire and strained his left shoulder.

Medical Treatment. Mr. Porter was initially seen at Immediate Care of Oklahoma by Dr. Meghan Scears. An x-ray of the shoulder found no evidence of fracture or dislocation. However, an MRI taken on December 14, 2011 revealed tearing of the rotator cuff. On January 10, 2012, Mr. Porter was seen by Dr. Carlan Yates at the McBride Orthopedic Hospital at which time it was decided to proceed with arthroscopy to repair the rotator cuff. The procedure was performed on January 23, 2012. After a period of physical therapy, Mr. Porter was released to return to work with no restrictions on April 25, 2012. Mr. Porter was off work for a little over 4 months. He received full wage compensation during that time period in accordance with

state statutes and union contract provisions. Medical treatment for this on the job injury was paid from the City's risk management fund.

Issues for Trial. Should this case proceed to trial, there is no question that Mr. Porter's injury arose out of and in the course of his employment with the City. Mr. Porter has received medical care, temporary wage compensation, and is back to work as a firefighter. Therefore, the only issue before the Workers' Compensation Court would be the nature and extent of Mr. Porter's injury or the Permanent Partial Disability (PPD) to Mr. Porter's left shoulder due to this injury. 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.

PPD Evaluations. On December 14, 2011, Mr. Porter was evaluated by Dr. Hugh G. McClure, who opined 44% PPD (body as a whole) to his left shoulder. This rating equates to \$71,060 to the body as a whole. On July 10, 2012, Mr. Porter was evaluated by the City's doctor, LeRoy E. Young, who opined 6% PPD to the left shoulder which equates to \$9,690.

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. Therefore, the City's maximum exposure to compensate Mr. Porter for his injury is 44% PPD to the left shoulder or \$71,060. The lowest PPD Award possible in the case is 6% or \$9,690.

Settlement Offer. City Staff has negotiated with Mr. Porter, through his attorney, a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$32,300 which represents 20% 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 Mr. Porter's surgery and length of employment. This settlement is beneficial to Mr. Porter 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 Compromise Settlement offer is approved, payment to Mr. Porter and his attorney would be paid at 20% PPD to the left shoulder or \$32,300 which is slightly more than one-third 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 \$646.00; Special Occupational Health & Safety Fund Tax in the amount of \$242.25; Workers Comp Court Filing Fee in the amount of \$140; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total \$1,153.95 which brings the total cost of this settlement to the City to \$33,453.95.

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. Porter 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.