



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1415-52

File ID: GID-1415-52	Type: Court Order	Status: Consent Item
Version: 2	Reference: Item 24	In Control: City Council
Department: Legal Department	Cost: \$19,541.50	File Created: 03/17/2015
File Name: WCC Court Order - Derrald R. Kizzia vs. City of Norman		Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$19,541.50 REGARDING DERRALD R. KIZZIA VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2014-06995 K.

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 \$19,541.50, which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/24/2015

Agenda Number: 24

Attachments: Kizzia Order - DOA 3-6-15, Purchase Req - Kizzia

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 GID-1415-52

Body

BACKGROUND: Derrald R. Kizzia is a heavy equipment operator in Park Maintenance who filed Workers' Compensation Case No. 2014-06995K alleging injury to his right knee on December 20, 2013. The case proceeded through the normal litigation process. A trial was held on March 3, 2015 and on March 6, 2015 the Court awarded Mr. Kizzia the sum of \$19,541.50 in permanent partial disability benefits. This item is presented to the Council to consider acceptance of the Court Order in this case.

DISCUSSION: Mr. Kizzia is a 22 year employee of the City of Norman who was hired on August 21, 1992 as a Maintenance Worker I in the Park Maintenance Division of the Parks and Recreation Department. He was promoted on August 6, 1996 to Maintenance Worker II with a final promotion to Heavy Equipment Operator on December 27, 2001.

Nature of Claim. Mr. Kizzia filed this Workers' Compensation claim on July 15, 2014, alleging an injury to the right knee while kneeling down to work on cement forms on December 20, 2013. Mr. Kizzia had arthroscopy for a medial meniscal tear on February 6, 2014. He was released by his physician on March 19, 2014. In

addition, Mr. Kizzia injured his left knee in 2008 and in 2009 the court awarded 31% permanent partial disability for that injury and injured his right shoulder in 2011 and in 2012 the court awarded 24% permanent partial disability for the right shoulder and 5% permanent partial disability due to psychological overlay as it related to that injury.

Issues for Trial. The issues to be tried before the Workers' Compensation Court was the nature and extent of PPD. 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. Kizzia was evaluated by Dr. Hugh McClure on September 2, 2014. Dr. McClure opined 42% (\$37,306.50) impairment to the right leg/knee (8% - chronic pain, 12% - decreased strength, 12% - chondromalacia, and 10% - surgery) in regard to this work related injury. This would be the City's maximum exposure.

The City had Mr. Kizzia evaluated by Dr. Hensley on October 6, 2014, who opined 10% (\$8,882.50) impairment to the right leg due to partial medial and lateral meniscectomy over and above a preexisting 12% impairment to the right leg due to degenerative chondromalacia which had developed in association with the known risk factor of exogenous obesity. Dr. Hensley did not recommend continued medical maintenance. The Workers' 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 Worker's Compensation Court on March 3, 2015. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on March 6, 2015, awarding 22% (\$19,541.50) permanent partial disability to the right leg. Twenty two percent to the right leg represents a little more than one-half the difference of the medical opinions. It is not unusual on a case involving a surgical procedure for an award to be granted that is one-half or more of the difference of the medical opinions. The Court's findings are set out in Paragraph Nos. 3 and 5 of the Order, as follows:

-3- "THAT as a result of said injury, claimant sustained 22 percent permanent partial impairment to the RIGHT LEG (PARTIAL MEDICAL AND LATERAL MENISCECTOMIES, CHONDROPLASTY AND LIMITED SYNOVECTOMY; QUADRICEPS ATROPHY), for which claimant is entitled to compensation for 60.5 at \$323.00 per week, or the total amount of \$19,541.50 of which 50 weeks have accrued and shall be paid in a lump sum of \$16,150.00."

-5- "THAT respondent or insurance carrier shall pay claimant the award herein in lump sum of \$19,541.50 (less attorney fee)."

As can be noted in Paragraph No. 3 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. Kizzia's weekly wage PPD rate is \$323. In this instance, the entire portion of the award has been accrued and is to be paid in a lump sum.

If approved by Council, Mr. Kizzia and his attorney will be paid the full amount of the award of \$19,541.50 which includes the amount accrued and his attorney fees.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 6 and 7: Special Occupational Health and Safety Fund Tax in the amount of \$146.56; Workers' Compensation Administration Fund in the amount of \$390.83; filing fee to the Workers' Compensation Court in the amount of \$140.00; and Cleveland County filing fee in the amount of \$125.70. The costs and fees total \$803.09.

The total cost of this Order is \$20,344.59.

RECOMMENDATION: The issues tried on March 3, 2015, were the level of disability to the right leg, if any, due to the December 20, 2013, injury and whether that disability is permanent.

The Court Award in this case is within the medical evidence submitted. 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. 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.