



# City of Norman, OK

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

## Master

**File Number: GID-1314-29**

**File ID:** GID-1314-29

**Type:** Court Order

**Status:** ATS Paused

**Version:** 1

**Reference:** Item No. 29

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$3,441.82

**File Created:** 09/03/2013

**File Name:** WCC Richard Hartless

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT AWARD IN THE AMOUNT OF \$3,441.82 REGARDING RICHARD HARTLESS VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2012-12948Q.

**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 \$3,441.82 which will constitute judgment against the City of Norman.

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

**Agenda Date:** 09/10/2013

**Agenda Number:** 29

**Attachments:** Court Order, Requisitions

**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-1314-29

Body

**BACKGROUND:** Richard Hartless, a Firefighter for the Norman Fire Department, filed Workers' Compensation Case No. WCC 2012-12948 Q on November 15, 2012, alleging injury as a result of a single injury incident on August 2, 2011. The case has proceeded through the normal litigation process. A trial was scheduled on August 22, 2013, and the Court awarded Permanent Partial Disability in the amount of \$3,091.11. The Court Award is now being presented to City Council for consideration. It is recommended that the City comply with this Award.

### DISCUSSION:

Nature of Claim. Mr. Hartless was hired by the City on July 22, 1985 as a Firefighter with the Norman Fire Department and has worked in that Department for 28 years. He filed a Workers' Compensation claim alleging an injury to his left great toe on August 2, 2011 while fighting a fire. The injury was timely reported and accepted as occurring on the job.

Mr. Hartless was initially seen at Norman Regional Occupational on August 9, 2011. Diagnostic testing and

x-rays were performed and he was sent to physical therapy. When there was no relief with the PT, he was referred for an MRI which revealed a partial tear at the distal insertion of the extensor hallucis brevis tendon. He was referred to Dr. Vytautas Ringus who placed him in a cast for six weeks. Thereafter, he was placed in a boot for four weeks and began another series of PT. He reached maximum medical improvement and released to return to work with no restrictions on December 8, 2011.

Issues for Trial. There is no question Mr. Hartless' injury arose out of and during the course of his employment with the City. Therefore, the only issue before the Workers' Compensation Court in this case was whether the disability is permanent in nature and if so, to what extent is the permanent disability suffered as a result of Mr. Hartless' on the job injury. This issue is determined by the trial judge based on the claimant's testimony and expert medical evidence. The Workers' Compensation Court Judge is free to accept either doctors' opinion or find anywhere within the range of competent medical evidence presented.

On March 14, 2013, Mr. Hartless was evaluated by Dr. Hugh McClure who opined 45% PPD to the left great toe. It was also Dr. McClure's opinion that Mr. Hartless would continue to experience pain, loss of strength and loss of function in the left great toe in the future. Dr. McClure's rating equates to \$4,796.55 under the workers compensation statutory PPD schedule for the "great toe". The City had Mr. Hartless evaluated on May 2, 2013 by Dr. Kent Hensley who opined 10% PPD to the left great toe. Dr. Hensley stated that continuing medical maintenance would not be required. Dr. Hensley's rating equates to \$1,065.90 under the same statutory PPD schedules. The Workers' Compensation Court trial judge may 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. Hartless for his injuries is 45% PPD or \$4,796.55 and the City's minimum exposure to compensation Mr. Hartless for his injuries is \$1,065.90.

Court Award. This case was heard by the Workers' Compensation Court on August 22, 2013. After hearing the claimant's testimony and considering the medical evidence, the Court issued the attached Award awarding 29% PPD to the left great toe, or \$3,901.11. The Court's findings are set out in Paragraph Nos. 4 and 6 of the Award as follows:

-4- THAT as a result of said injury, claimant sustained 29 percent permanent partial disability to the LEFT GREAT TOE, for which claimant is entitled to compensation for 9.57 weeks at \$323.00 per week, or the total amount of \$3,901.11 of which 9.57 weeks have accrued and shall be paid in a lump sum of \$3,901.11.

-6- THAT respondent or insurance carrier shall pay claimant the award herein in lump sum of \$3,091.11 (less attorney fee).

As can be noted in Paragraph No. 4 of the Court's Award, 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. Hartless' weekly wage PPD rate is \$323.00. In this instance all of the award has long since accrued and the award is being paid in a lump sum.

If this Award is accepted, payment to Mr. Hartless and his attorney would be paid in the lump sum amount of \$3,091.11 which is slightly over one-half the difference in the medical opinion rates.

Furthermore, with this Award, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$61.82; Special Occupational Health & Safety Fund Tax in the amount of \$23.18; 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 \$350.70, which brings the total cost to the City of this Award to \$3,441.81.

The other alternative would be to appeal this matter to the Workers' Compensation Court En Banc to review the award under an "against the clear weight of the evidence" standard; or appeal to the Oklahoma Supreme Court under an "any competent evidence" standard. In either potential appeal, since the award is within the range of the medical evidence presented at trial, it is highly unlikely a positive result could be achieved for the City through the appeal process. Appeal is not recommended.

**RECOMMENDATION:** The issue tried on August 22, 2013, was nature and extent of Permanent Partial

Disability. 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. 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 Award.

Acceptance of the Award would require the above-described payments. The Award 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 Award to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.