



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1516-13**

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<b>File ID:</b> GID-1516-13	<b>Type:</b> Court Order	<b>Status:</b> Consent Item
<b>Version:</b> 2	<b>Reference:</b> Item No. 33	<b>In Control:</b> City Council
<b>Department:</b> Legal Department	<b>Cost:</b> \$53,850.00	<b>File Created:</b> 07/08/2015
<b>File Name:</b> Workers Comp Court Order - Kent Mosley v. City of Norman		<b>Final Action:</b>

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$53,850 REGARDING KENT D. MOSLEY VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2014-09203 A.

**Notes:** ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and, if approved, authorize compliance with the Workers' Compensation Court Order and direct payment of claims totaling \$53,850 which will constitute judgment against the City of Norman.

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

**Agenda Date:** 07/14/2015

**Agenda Number:** 33

**Attachments:** Court Order - Mosley, Ck Reqs - Mosley 7-14-15 CC,  
Payment Schedule - Mosley 7-14-15 CC

**Project Manager:** Jeanne Snider

**Entered by:** deedra.vice@normanok.gov

**Effective Date:**

### History of Legislative File

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Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File GID-1516-13

Body

**BACKGROUND:**

Kent D. Mosley is a police officer who filed Workers' Compensation Case No. 2014-09203 A on September 25, 2014 alleging a work related cumulative injury to the low back on or about November 6, 2009 and continuing. He underwent physical therapy, a series of epidural steroid injections and a root block. Mr. Mosley had a L4-5 laminectomy and discectomy July 6, 2011. Following surgery he underwent a post-operative course of physical therapy. Due to continued symptoms, a second surgery a lumbar fusion at L4-5 was required on December 12, 2013. He then underwent an additional course of post-operative physical therapy. The case proceeded through the normal litigation process. A trial was held on June 18, 2015. On July 6, 2015 the Court awarded Mr. Mosley 30% permanent partial impairment benefits to the low back for the total sum of \$53,850.00.

**DISCUSSION:**

Mr. Mosley is an eight (8) year employee of the City of Norman who was hired as a police officer on July 5, 2007.

Issues for Trial. The primary issue for trial on June 18, 2015 before the Workers' Compensation court was whether Mr. Mosley suffer disability from his work with the City of Norman, whether the disability, if any was permanent, and what was the extent of the disability (referred to as a "nature and extent" or "permanent partial disability" case). 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 as reflected by the opinions from medical testimony from medical experts presented at trial.

Evaluations. Mr. Mosley was evaluated on October 9, 2014 by Dr. Wilson. Dr. Wilson opined 53% whole person permanent partial impairment to his lumbar spine, continued care in the form of pain management in regard to his chronic back pain, and entitlements for prescription medications or any treatments his treating physician deems necessary in regard to his work related injury. The City's maximum permanent partial impairment exposure would be \$95,135.00.

The City had Mr. Mosley evaluated by Dr. Young on November 25, 2014 who opined 20% (\$35,900.00) permanent partial impairment to the body as a whole for injuries to the lumbar spine, attributable to 12% fusion, 2% second surgery, 1% additional level, and 5% decreased range of motion. The Workers' Compensation Court Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial.

Court Award: The case was heard by the Workers' Compensation Court on June 18, 2015. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on July 6, 2015, awarding 30% (\$53,850.00) permanent partial disability to the Low Back (injections, surgeries - 1st - L4-5 laminectomy and discectomy; 2nd - posterior interbody fusion at L4-5 and repeat decompression of left L4-5 with resection of scar tissue, range of motion loss, weakness, neuropathy). 30% to the body as a whole represents less than one-third the difference in medical opinions.

The Court's findings are set out in Paragraph Nos. 4 through 7 of the Order, as follows:

-4- "THAT as a result of said injury, claimant sustained 30 percent permanent partial disability to the LOW BACK (injections, surgeries- 1st - L4-5 laminectomy and discectomy; 2nd- posterior interbody fusion at L4-5 and repeat decompression of left L4-5 with resection of scar tissue, range of motion loss, weakness, neuropathy), for which claimant is entitled to compensation for 150 weeks at \$359.00 per week, or the total amount of \$53,850.00 of which 46 weeks have accrued and shall be paid in a lump sum of \$16,514.00."

-5- "THAT the Court finds claimant's need for prescription medication is due to a subsequent injury and not as a result of this injury."

-6- "THAT respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury."

-7- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$16,514.00 and pay the balance of said award at the rate of \$359.00 per week until the total award of \$53,850.00 (less attorney fee) has been paid to claimant."

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 rates over a period of time. Mr. Mosley's weekly wage PPD rate is \$359.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Mosley and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional two weeks for processing and Council approval in the lump sum of \$28,002.00, with the balance of the award of \$25,848 to be paid in weekly payments of \$359.00 until paid in full as set forth in the Payment Schedule attached.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 8

and 9. Special Occupational Health and Safety Fund Tax in the amount of \$403.88, Workers' Compensation Administration Fund in the amount of \$1,077.00, 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 \$1,746.58.

The total cost of this Order is \$55,596.58.

**RECOMMENDATION:** The primary issue tried on June 18, 2015 was nature and extent of permanent partial disability to the low back due to the November 6, 2009 injury. The Court Award in this case is within the medical evidence submitted in that the PPD award is less than one-third 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 Order.

Acceptance of the Order would require the payments as outlined in the attached Payment Table. 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.