



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1516-76

File ID: R-1516-76	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item 18	In Control: City Council
Department: Legal Department	Cost: \$80,750.00	File Created: 01/05/2016
File Name: Workers Compensation Settlement fo Tim Suchy	Final Action:	

Title: RESOLUTION R-1516-76: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENTS OF THE CLAIMS FILED BY TIM SUCHY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *TIM SUCHY V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NOS. WCC 2013-11624 J AND WCC 2013-13117 X; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS 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.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1516-76; and, if adopted, direct payment of claims in the amount of to \$80,750 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 01/12/2016

Agenda Number: 18

Attachments: Resolution R-1516-76, PR Suchy

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 R-1516-76

Body

BACKGROUND: Tim Suchy was a firefighter for the City of Norman Fire Department who was hired on March 18, 1985. He resigned from the City of Norman Fire Department on October 10, 2014. Mr. Suchy has filed two worker's compensation claims as outlined below.

The first workers' compensation claim was filed on October 24, 2013 for cumulative injury to the right and left lungs for RADS (Restrictive Airways Dysfunction Syndrome) and COPD (Chronic Obstructive Pulmonary Disease) from repetitive exposure to smoke and toxic fumes with the last date of awareness of October 20, 2013, and amended to include Peripheral Neuropathy to the right and left arms, hands, legs and feet on

January 21, 2014. The second claim was filed on December 5, 2013, as a result of an injury to the back on February 7, 2011, from lifting a heavy patient on a medical call. The cases proceeded through the normal litigation process. Prior to a trial being scheduled, Mr. Suchy has agreed to settle his claims WCC 2013-11624 J (RADS/COPD) in the amount of \$27,455 and (Peripheral Neuropathy) in the amount of \$4,845 and WCC 2013-13117 X (Back) in the amount of \$48,450 for a total amount of \$80,750.

The above settlement offer is being presented to City Council at this time. It is recommended that the settlement be accepted.

DISCUSSION:

WCC 2013-11624 J (RADS/COPD and Peripheral Neuropathy)

Mr. Suchy developed a gradual onset of shortness of breath. Pulmonary function evaluations were conducted in March 2012, October 2013, and January 2014. In April 2012 he was diagnosed with early COPD and in March 2013 with small airways RADS. An electromyogram (EMG) was then conducted on September 2013. Mr. Suchy was diagnosed with peripheral neuropathy and released at maximum medical improvement October 2013 with no restrictions. As it relates to his pulmonary system, he continues taking prescription medications.

Issues for Trial. The issue to be tried in this case before the Workers' Compensation Court is how much, if any, permanent disability Mr. Suchy suffered due to his cumulative conditions of RADS/COPD lung disease and Peripheral Neuropathy and continuing medical maintenance. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

On March 26, 2014, Dr. Kent C. Hensley opined 0% body as a whole permanent partial impairment for the COPD/RADS, 0% body as a whole permanent partial impairment for Peripheral Neuropathy.

On January 30, 2014, Dr. Stephen Wilson opined 25% (\$40,375) body as a whole permanent partial impairment for the COPD/RADS and 25% (\$40,375) body as a whole permanent partial impairment for the Peripheral Neuropathy. The City's maximum exposure for permanent partial disability would be \$80,750.

Trial. This case proceeded through the normal litigation process. However, Mr. Suchy has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury to his lungs from COPD/RADS and arms, hands, legs and feet from Peripheral Neuropathy anywhere within the range of the doctors' opinions as stated above.

WCC 2013-13117 X (Back)

As noted above, Mr. Suchy also filed on December 5, 2013 a workers' compensation case claiming an injury to the back on February 7, 2011. He was initially treated conservatively to include three steroid injections, physical therapy, prescription medication, and two MRI scans. He was released October 15, 2013 at maximum medical improvement. Following an Order from the Court for a change in treating physicians, Mr. Suchy had a steroid injection at L-4-5 and L-5, S-1; however, surgical intervention was then required. Mr. Suchy underwent *two level anterior/posterior lumbar decompression and fusion with instrumentation* on September 2, 2014. On December 7, 2015, he was released at maximum medical improvement with modified work, permanent restrictions, and vocational rehabilitation indicated on December 7, 2015.

Issues for Trial. The issue to be tried in this case before the Workers' Compensation Court is how much, if any, permanent disability Mr. Suchy suffered due to his injury to the back and continuing medical maintenance. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment. However, Mr. Suchy has agreed to settle this claim, as outlined below, prior to being medically evaluated for permanent partial impairment.

Proposed Settlement. The proposed settlement to close both cases on a "Compromise Settlement" basis is for a total lump sum payment of \$80,750. The offer includes 17% (\$27,455) PPD for COPD/RADS, 3% (\$4,845) PPD for Peripheral Neuropathy and 30% (\$48,450) PPD for the back. The 30% PPD to the back considered the documented surgical treatment that included a multilevel fusion of the lumbar vertebrae. Experience with

past cases indicated a minimum award by the Workers' Compensation Court would not be less than 15% per lumbar fusion, as indicated by the Guides to Permanent Impairment issued by the American Medical Association ("AMA Guides"). Consideration of permanent impairment is the required under the AMA Guides. The settlement offer represents the minimum award anticipated under the AMA Guides considering the documented medical treatment in this case.

It is felt that the settlement closing the two cases is fair and reasonable. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims and closes out any continued medical treatment in these Workers' Compensation cases. This settlement is beneficial to Mr. Suchy in that it provides certainty for an award. It is also beneficial to him because the settlement amounts are being paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the case is settled in this manner, the City would incur additional costs and fees of:

WCC 2013-11624 J (RADS/COPD and Peripheral Neuropathy)

Workers' Compensation Administration Fund Tax in the amount of \$646.00; Special Occupational Health & Safety Tax in the amount of \$242.25; and Workers Comp Court Filing fee in the amount of \$140.00.

WCC 2013-13117 X (Back)

Workers' Compensation Administration Fund Tax in the amount of \$969.00; Special Occupational Health & Safety Tax in the amount of \$363.38; and Workers Comp Court Filing fee in the amount of \$140.00.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70 for both cases.

These additional costs and fees total \$2,626.33, which brings the total cost of this settlement to the City to \$83,376.33.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Suchy's length of employment with the City, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlements amount would be paid to Mr. Suchy 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.