



City of Norman, OK

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

Master

File Number: GID-1314-28

File ID: GID-1314-28	Type: Court Order	Status: ATS Paused
Version: 1	Reference: Item No. 28	In Control: City Council
Department: Legal Department	Cost: \$10,013.00	File Created: 09/03/2013
File Name: WCC Joel Bolenbaugh	Final Action:	

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$10,013 REGARDING JOEL BOLENBAUGH VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2012-13808 Y

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 \$10,013 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 09/10/2013

Agenda Number: 28

Attachments: Payment Schedule 9-3-13, Court Order, PR Bolenbaugh

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-1314-28

Body

BACKGROUND: Joel Bolenbaugh, a Sanitation Worker II in the Commercial Sanitation Division of Utilities, filed Workers' Compensation Case No. WCC 2012-13808 Y on December 7, 2012, alleging cumulative injury to his right knee. The case has proceeded through the normal litigation process. A trial was held on August 22, 2013. The Court Order is now being presented to City Council for consideration. It is recommended that the City comply with this Order.

DISCUSSION:

Nature of Claim. Mr. Bolenbaugh was hired by the City on June 28, 1982, as a Sanitation Worker in the Sanitation Division of Utilities. He was promoted to Sanitation Worker II on July 2, 1984. He filed a Workers' Compensation claim alleging cumulative injury to his right knee with a date of last occurrence on November 26, 2012. The Court found this claim compensable on April 29, 2013 "due to his 31 years of repetitive bending, stooping, squatting and climbing arising out of and in the course and scope of his employment."

Mr. Bolenbaugh was initially seen by Dr. Steven C. Schultz. An MRI showed a grade 3 chondral defect and chondromalacia. Conservative treatment by injection was elected to treat. If problems persisted, then arthroscopy would be indicated. He returned to work on December 26, 2012.

Issues for Trial. It was determined by the Court that Mr. Bolenbaugh' 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 the nature and extent of Mr. Bolenbaugh' 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 May 10, 2013, Mr. Bolenbaugh was evaluated by Dr. J. Arden Blough who opined 44% PPD to the right knee. It was also Dr. Blough's opinion that Mr. Bolenbaugh would require continued care for pain management in regard to his chronic right knee pain in the form of prescriptions medications or treatments his treating physician deems necessary. However, Mr. Bolenbaugh returned to work with no restrictions. Dr. Blough's rating equates to \$71,060. The City had Mr. Bolenbaugh evaluated on July 16, 2013 by Dr. LeRoy Young who opined 10% PPD to the right knee. Dr. Young stated that continuing medical maintenance would not be required. Dr. Young's rating equates to \$16,150. 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. Bolenbaugh for his injuries is 44% PPD or \$71,060.

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 testimony, the Court awarded 20% PPD to the right knee. 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 20 percent permanent partial impairment to the RIGHT KNEE (SURGERY - LOSS OF RANGE OF MOTION - WEAKNESS - LOSS OF FUNCTION), for which claimant is entitled to compensation for 55 weeks at \$323.00 per week, or the total amount of \$17,765.00 of which 17 weeks have accrued and shall be paid in a lump sum of \$5,491.

-5- THAT respondent or insurance carrier shall pay claimant the accrued portion of the award of herein in lump sum of \$5,491 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$17,765 (less attorney fee) has been paid to claimant.

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. Bolenbaugh' weekly wage PPD rate is \$323.00.

If this Award is approved, payment to Mr. Bolenbaugh and his attorney would be paid the accrued lump sum amount and attorney's fee in the amount of \$9,044. In addition to an additional three weeks at \$323 for finance processing bringing the total lump sum payable to claimant and attorney of \$10,013. The remainder of the award will be paid in weekly payments of \$323 until paid in full. (See Payment Schedule attached)

RECOMMENDATION: The issues tried on August 15, 2013, was nature and extent. The Award is within the medical evidence submitted in that the PPD award is less than one-third the difference between the medical evaluations. As, Mr. Bolenbaugh was only off for one month, 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 Agreed Order would require the payments as outlined in 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.