



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1718-36

File ID: GID-1718-36 **Type:** Court Order **Status:** Consent Item

Version: 2 **Reference:** Item 19 **In Control:** City Council

Department: Legal Department **Cost:** \$4,986.86 **File Created:** 01/02/2018

File Name: Workers' Comp Commission Court Order-Curtis
Garrett **Final Action:**

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$4,986.86 REGARDING CURTIS W. GARRETT VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE CM-2017-03730A.

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 in the amount of \$4,986.86, which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 01/09/2018

Agenda Number: 19

Attachments: Order - Garrett - Filed 12-19-17, Garrett Reqs

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-1718-36

Body

BACKGROUND: Mr. Garrett is a Master Police Officer with the Norman Police Department who filed Workers Compensation Commission No. CM-2017-03730A on June 14, 2017 alleging a single event injury on June 1, 2016 to the left index finger with consequential disfigurement to the left hand (palm) when pulling a rifle magazine with his left index finger. The City admitted this injury. The case proceeded through the normal litigation process. A trial was held on November 27, 2017. On December 19, 2017 the Commission awarded Mr. Garrett 38 percent permanent partial disability to the left index finger for \$4,786.86 as well as \$200 for disfigurement to the left hand (palm) for a total sum of \$4,986.86. It is recommended that the City comply with this Order.

DISCUSSION: Mr. Garrett is an eighteen (18) year employee of the City of Norman who was reclassified to Master Police officer on April 22, 2004.

Mr. Garrett was initially seen by Mr. Wiese, PA-C on July 1, 2016 and was felt to have a strain of the index finger. He was treated conservatively with anti-inflammatories and physical therapy. Due to the length of symptoms, he

was referred to Dr. Vogel on August 19, 2016. Mr. Garrett underwent two surgeries performed by Dr. Vogel. A MRI on August 26, 2016 revealed a torn A2 pulley with mild arthrosis of the second and third metacarpophalangeal joints. The first surgery (tenosynovectomy of the flexor digitorum profundus and flexor digitorum superficialis) was performed on September 7, 2016. Mr. Garrett received a course of post-operative physical therapy. Due to post-operative ongoing pain and mechanical symptoms, a second MRI was performed on November 16, 2016. He then required a second surgery (reconstruction of the left index finger A2 pulley using allograft tendon) which was performed on December 26, 2016. Mr. Garrett received additional post-operative physical therapy and was released at maximum medical improvement on April 6, 2017 without permanent restrictions.

Issues for Trial. The issues tried on November 27, 2017 before the Workers' Compensation Commission were the nature and extent of permanent partial disability to the left hand/left index finger. 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. Garrett was evaluated on July 28, 2017 by Lance E. Rosson, D.O. Dr. Rosson reported that Mr. Garrett had reached his maximum medical improvement and opined 32 percent permanent partial impairment to the left hand and stated this would be inclusive of 49 percent to the left index finger as well as entitlements to continuing medical benefits, in the nature of prescription medication on an as-needed basis, as well as other treatment that his treating physician or future selected physicians might deem necessary, with respect to this injury. The City's maximum permanent partial impairment exposure would be \$22,739.20.

The City had Mr. Garrett evaluated by Kent Hensley, M.D. on September 5, 2017 who opined (\$3,149.26) 25 percent permanent partial impairment to the left index finger and 0 percent impairment to the left hand. The Workers' Compensation Commission 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 Commission on November 27, 2017. Based on Mr. Garrett's testimony and considering the expert medical evidence, the Commission entered its Order on December 19, 2017, awarding 38 percent (\$4,786.86) permanent partial disability to the left index finger as well as \$200 for disfigurement to the left hand (palm).

The Commission's findings are set out in Paragraph Nos. 3 and 4 of the Order, as follows:

3. "That as a result of said injury, claimant has sustained 38% permanent partial disability to the left index finger. At claimant's rate of compensation, this is equal to an award of \$4,786.86, which shall be paid to claimant weekly at the rate of \$323.00 commencing April 6, 2017, until the entire award is paid."
4. "That the Claimant is awarded \$200.00 for disfigurement to the left hand (palm)."

As can be noted in Paragraph No. 3 of the Commission'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. Garrett's weekly wage PPD rate is \$323.00. In this instance, the entire portion of the award has accrued less the claimant's attorney fee and is to be paid in a lump sum.

If approved by Council, Mr. Garrett and his attorney will be paid the lump sum amount to include the award for disfigurement.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 6 through 8. Special Occupational Health and Safety Fund Tax in the amount of \$37.40, Workers' Compensation Administration Fund in the amount of \$95.74, and filing fee to the Workers' Compensation Commission in the amount of \$140.00. In addition, the Cleveland County filing fee will be \$144.14. These costs and fees total \$417.28.

The total cost of this Order is \$5,404.14.

RECOMMENDATION: The issues tried on November 27, 2017 were nature and extent to the left index finger with consequential disfigurement to the left hand (palm) due to the June 1, 2016 injury. 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.

Acceptance of the Order would require the payments as outlined above. 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 85A O.S. § 107, 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.