



City of Norman, OK

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

Master

File Number: WCC 2007-07274R

File ID: WCC 2007-07274R

Type: Award

Status: Consent Item

Version: 1

Reference: Item No. 22

In Control: City Council

Department: Legal Department

Cost: \$34,680.00

File Created: 12/12/2012

File Name: Kent WCC-2007-07274 R

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$34,680.00 REGARDING WILLIAM SCOTT KENT VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2007-07274 R.

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 \$34,680.00 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 12/18/2012

Agenda Number: 22

Attachments: Table, Order, Requisitions

Project Manager: Jeanne Snider

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 WCC 2007-07274R

Body

BACKGROUND:

William Scott Kent, a Heavy Equipment Operator for Sewer Line Maintenance in the Utilities Department, filed Workers' Compensation Case No. WCC 2007-07274 L on June 27, 2007. Mr. Kent alleged a single incident injury to his back, both shoulders, aggravation of left shoulder with psychological overlay as a result of operating heavy equipment while working for the City of Norman. On July 23, 2010, consequential neck injury was added. The case has proceeded through the normal litigation process. A trial was held on November 26, 2012, and the Court awarded Mr. Kent a total of \$34,680.00. The Court Order is being presented to City Council for consideration. This matter was discussed in Executive Session on December 11, 2012. It is recommended that the City comply with the Order.

DISCUSSION:

Mr. Kent worked for the City of Norman for approximately nineteen and one-half (19½) years. He began his service with the City of Norman on December 4, 1987 as an Equipment Operator. He was promoted to Heavy Equipment Operator on October 4, 2000. Mr. Kent held that position until his separation on June 1, 2007.

Mr. Kent filed four workers' compensation claims on June 27, 2007. In two of those claims, the cases have been tried to the Court and permanent partial disability compensation has been awarded: WCC 2007-07272 J (hearing loss) \$11,253.66; WCC 2007-07273 L (bilateral feet) \$60,343.20. In both of these claims, previously accepted by Council, the awarded compensation has been fully paid. However, continued medical maintenance remains open in both cases.

In addition to the current Order regarding the back, neck and shoulders, one other case remains pending, WCC 2007-07275 Y alleging injury to both hands. All the cases were discussed in Executive Session on December 11, 2012. Although this office continues to explore the possibility of settling all Mr. Kent's cases, WCC 2007-07274 has been litigated resulting in an Order that should be considered by City Council at this time.

WCC 2007-07274 R

Nature of Claim.

Mr. Kent filed this Workers' Compensation claim alleging injuries to his back, both shoulders, aggravation of left shoulder and consequential neck due to years of operating heavy machinery in connection with his duties in the Utilities Department.

Issues for Trial. The City disputed that Mr. Kent suffered any injuries which were work related. Therefore, the issues before the Workers' Compensation Court at trial in this case were whether Mr. Kent suffered an OJI to his back, neck, and shoulders and, if so, the nature and extent of PPD to the various body parts. 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.

Mr. Kent was evaluated by Dr. Hugh G. McClure on July 26, 2012. Dr. McClure opined 28% PPD to the right shoulder, 21% PPD to the left shoulder and 30% PPD to the lumbar spine. This opinion equates to \$104,040, the City's maximum exposure. The City had Mr. Kent evaluated on November 8, 2012 by Dr. Kent Hensley who opined Mr. Kent has 5% PPD to his lumbar spine, 4% PPD to the right shoulder and 6% PPD to the left shoulder. This opinion equates to \$21,675. The Worker's Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial.

Court Award. This case was heard by the Workers' Compensation Court on November 26, 2012. After hearing the claimant's testimony and considering the expert medical evidence, the Court opined that Mr. Kent sustained a 8% PPD to the Back, 8% PPD to the right shoulder, 8% PPD to the left shoulder, 0% PPD to the neck and 0% to psychological overlay. The Court's findings are set out in Paragraph Nos. 3 and 6 of the Order as follows:

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"THAT as a result of said injury, claimant sustained 8 percent permanent partial disability to the BACK, 8 percent permanent partial disability to the RIGHT SHOULDER, 8 percent permanent partial disability to the LEFT SHOULDER, 0% permanent partial disability to the PSYCHOLOGICAL OVERLAY and 0% permanent partial disability to the NECK, for which claimant is entitled to compensation for 120 weeks at \$289.00 per week, or the total amount of \$34,680.00 of which 18 weeks have accrued and shall be paid in a lump sum of \$5,202.00."

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 rate over a period of time. Mr. Kent's weekly wage rate is \$289. However, as noted, only a portion of the award has accrued to be paid in a lump sum and the balance to be paid in weekly payments until paid in full.

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"THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in a lump sum of \$5,202.00 and pay the balance of said award at the rate of \$289.00 per week until the total award of \$34,680.00 (less attorney's fee) has been paid to claimant."

Also, as noted in Paragraphs No. 7 & 8 of the Order, the City will incur additional costs and fees in the amount of \$1,093.70 in addition to filing fee for Cleveland County Court Clerk judgment filing. (See Table attached

hereto) The total cost of this Order to the City would be \$35,899.40.

RECOMMENDATION:

The issues tried on November 26, 2012, were nature and extent of PPD of all the claimed body injuries and psychological overlay. Because the Claimant worked for the City over nineteen (19) years, suffers cumulative and was injured during a single incident, it is doubtful that the City could prevail on an appeal. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. The Order is less than one-third the difference between the doctors' opinions. The award is within the range of the medical evidence provided at trial. Therefore, it is recommended that the City move forward to comply with this Order. As discussed in Executive Session, this office will continue efforts to resolve the other pending case, as well as closing out the other cases.

Acceptance of the Order would require the payments as outlined above and in the attached 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. § 2b, 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.