



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1314-132

File ID: R-1314-132 **Type:** Resolution WCC **Status:** Consent Item

Version: 1 **Reference:** Item No. 28 **In Control:** City Council

Department: Legal Department **Cost:** \$26,257.27 **File Created:** 04/30/2014

File Name: Resolution authorizing compromise settlement for James M. Canary - Workers' Compensation Settlement **Final Action:**

Title: RESOLUTION NO. R-1314-132: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY JAMES M. CANARY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JAMES M. CANARY V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2011-12030K; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT 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 No. R-1314-132; and, if adopted, direct payment of claims in the amount of \$26,257.27 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 05/13/2014

Agenda Number: 28

Attachments: R-1314-132, Purchase Requisitions Canary.pdf

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 R-1314-132

Body

BACKGROUND: James M. Canary is a Maintenance Worker II in the Traffic Control Division of Public Works. He filed Workers' Compensation Claim WCC 2011-12030 K on November 7, 2011, alleging a single incident on December 10, 2010, when, as stepping from a truck, caught his foot on a curb twisting both his left knee and ankle. The case proceeded through the normal litigation process and, through settlement negotiations, Mr. Canary has agreed to settle his claim for the amount of \$25,429.75. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Nature of Claim. Mr. Canary was hired on September 18, 2000 as a Maintenance Worker I in the Traffic Division of Public Works. On February 16, 2011, he was promoted to Maintenance Worker II and has worked in that position since that time.

On December 10, 2010, he injured his left knee and ankle when he stepped out of a work vehicle. The injury was reported timely. Mr. Canary was initially seen by Dr. Penwell who diagnosed Mr. Canary with left knee and left ankle sprain with preexisting left knee osteoarthritis. He was released to work with restrictions. Mr. Canary continued to have pain issues. An MRI was performed on December 17, 2010 to the left knee which indicated an internal derangement of the left knee with a posterior cruciate ligament tear. The MRI also found that Mr. Canary had preexisting degenerative/meniscal findings. On January 20, 2011, Mr. Canary had left knee arthroscopy which included: partial medial meniscectomy; partial lateral meniscectomy; chondroplasty medial femoral condyle; chondroplasty patellofemoral articulation; and chondroplasty lateral femoral condyl. Thereafter, Mr. Canary was treated with several series of physical therapy sessions and injections replacing knee fluid. Although he received a full work release on April 12, 2011, he continued to have issues with the knee and continued injections through September 2012. His treating doctor advised that at some point he may require a total knee replacement. Thereafter, he was advised to continue with his home exercise program.

Issues for Trial. There is no question that Mr. Canary's injury arose out of and in the course of employment with the City. Therefore, the issue to be tried before the Workers' Compensation Court was the nature and extent of Mr. Canary's injury or the Permanent Partial Disability (PPD) to Mr. Canary's left knee and ankle. 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 February 3, 2014, Mr. Canary was evaluated by Dr. M. Stephen Wilson, who opined 39% (42% less 3% preexisting) PPD to the left knee which equates to \$34,641.75. He also opined that Mr. Canary would be in need of continuing medical maintenance. The City had Mr. Canary evaluated by Dr. Kent Hensley who opined 10% (27% less 17% preexisting) PPD to the left knee which equates to \$8,882.50 PPD. Dr. Hensley also opined that continued medical maintenance or medical care would not be necessary. The maximum exposure to the City is \$34,641.75. If a trial was held in this case, the Judge could determine nature and extent of the injury anywhere within the range of the doctors' opinions.

Settlement. This case proceeded through the normal litigation process. A trial was scheduled for April 30, 2014. However, City Attorney Staff negotiated a settlement with Mr. Canary prior to the trial in the amount of \$25,429.75. The proposed settlement consists of a lump sum payment of \$20,429.75 which represents 23% PPD and \$5,000 for future medical to the left knee. 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 this Workers' Compensation case. The settlement offer is within the range of the medical evidence filed in the case.

It is felt that this settlement is fair and reasonable. This settlement is beneficial to Mr. Canary in that it provides certainty for an award. It is also beneficial to him because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

If this settlement offer is approved, payment to Mr. Canary and his attorney would be paid as set out above which is slightly under one-half the difference in the medical opinion rates and the settlement rates.

Furthermore, if the case was settled in this manner, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$408.60; Special Occupational Health & Safety Fund Tax in the amount of \$153.22; Workers Comp Court Filing Fee in the amount of \$140.00; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total \$125.70, which brings the total cost of this settlement to the City to \$26,257.27.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the

payments as outlined above. If approved, the settlement amount would be paid to Mr. Canary 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.