



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1516-78

File ID: R-1516-78	Type: Resolution WCC	Status: Consent Item
Version: 2	Reference: Item 21	In Control: City Council
Department: Legal Department	Cost: \$71,060.00	File Created: 01/20/2016
File Name: Workers Compensation Settlement - Marcus Cochran v. City of Norman		Final Action:

Title: RESOLUTION R-1516-78: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY MARCUS WAYNE COCHRAN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *MARCUS WAYNE COCHRAN V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE WCC 2013-13012F; 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 JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1516-78; and, if adopted, direct payment of claims in the amount of to \$71,060 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 01/26/2016

Agenda Number: 21

Attachments: Cochran Resolution 1516-78, Cochran Reqs 1-26-16.pdf

Project Manager: Jeannie 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-1516-78

Body

BACKGROUND: Marcus Wayne Cochran was a firefighter for the City of Norman Fire Department who filed Workers Compensation Case No. 2013-13012 F on December 3, 2013, alleging a single incident injury to the left shoulder, left hip and back on October 20, 2013. The City denied treatment to the neck. The case proceeded through the normal litigation process. An Order was filed by the Court on March 13, 2015 determining injury compensability to the low back, left shoulder and neck. Prior to a Trial being scheduled, Mr. Cochran has agreed to settle his claim in the amount of \$71,060.00. The settlement offer is being presented to

City Council at this time. It is recommended that this settlement be accepted. Trial has since been scheduled for February 9, 2016.

DISCUSSION: Mr. Cochran began his employment with the City of Norman Fire Department on August 11, 1986. On October 20, 2013, he was injured when he was knocked down when moving a 3 inch hose line that was being charged. Mr. Cochran did retire after 28 years of service on November 18, 2014. He received the following medical treatment for the injury sustained on October 20, 2013:

Left Shoulder

Mr. Cochran was initially treated conservatively for the left shoulder to include physical therapy. An MRI conducted November 22, 2013 indicated two muscle tears and a ligament tear. Following review of the MRI, surgery was recommended. Mr. Cochran's treating physician was changed per an Order filed on December 16, 2013. He was then again treated conservatively to include prescribed medication, additional physical therapy and a steroid injection without improvement. Mr. Cochran underwent arthroscopic surgery on his left shoulder April 22, 2014 and was released at maximum medical improvement on October 15, 2014 without restrictions.

Back

Mr. Cochran was seen on December 16, 2013 with back complaints. An MRI for the back was conducted on December 20, 2013 which revealed a disc bulge. Mr. Cochran was then seen by his treating physician on January 21, 2014 who released him without treatment or restrictions.

Neck

A Trial was held on March 3, 2015 for compensability of the neck. The Court found the neck injury was job related and ordered medical treatment. Mr. Cochran was evaluated and received treatment by his treating physician. He was released at maximum medical improvement on July 2, 2015 without restrictions as he felt his symptoms were livable and tolerable.

Issues for Trial. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Cochran suffered due to his injury to his low back, left shoulder, hip, and neck, continuing medical maintenance, and rehab. 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.

Evaluations. On December 30, 2015, Dr. Kent C. Hensley opined 13% (\$20,995) impairment to the whole man for his neck, 10% (\$16,150) impairment to the whole man for his left shoulder, 0% impairment to the whole man over and above a preexisting 7% impairment to the whole man as a result of longstanding spondylolisthesis (lumbar spine - soft tissue strain injury), and 0% impairment to the whole man for his left hip. Continuing medical maintenance and vocational rehabilitation not required. The combined total rating from Dr. Hensley is \$37,145.

On November 11, 2015, Dr. Lonnie Litchfield opined 47.5% (\$76,712.50) impairment to the whole man for his cervical spine, 48% (\$77,520) impairment to the whole man for his lumbar spine, 32% (\$51,680) impairment to the whole man for his left shoulder, 30% (\$48,450) impairment to the whole man for his left hip, continuing medical maintenance in the form of pain management, assignment of a pain management specialist for treatment, and entitlements for prescription medications, and vocational rehabilitation. Although the percentage of PPD for all body parts total 157.5%, under 85 O.S. §22 provides that the sum of all permanent partial disability awards shall not exceed 100%. Although the total of the dollar figures associated with the Permanent Partial Impairment ratings would be \$254,362.50, under the statutory provision cited, the City's maximum exposure for permanent partial disability arising from this case would be \$161,500, or 100% to the PPD to the Body.

Trial. This case proceeded through the normal litigation process. However, Mr. Cochran 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 back, left shoulder, left hip, and neck anywhere within the range of the doctors' opinions as stated above.

Proposed Settlement. The proposed settlement to close this case on a "Compromise Settlement" basis is for a lump sum payment of \$71,060.00.

The offer includes 22% (\$35,530) PPD to the left shoulder, 7% (\$11,305) to the back, 3% (\$4,845) to the left hip, and 12% (\$19,380) to the neck. When considering Dr. Hensley's combined ratings of 23% contrasted with the maximum allowable under 85 O.S. §22 of 100%, the settlement offer, combined ratings of 44% to the body, is less than one-third of the difference in the minimum and maximum exposure if the case were presented at trial.

It is felt that this settlement closing of this case 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. Cochran 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.

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

Workers' Compensation Administration Fund Tax in the amount of \$1,421.20; Special Occupational Health & Safety Tax in the amount of \$532.95; 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.

These additional costs and fees total \$2,219.85, which brings the total cost of this settlement to the City to \$73,279.85.

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. Cochran'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 settlement amount would be paid to Mr. Cochran 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.