



City of Norman, OK

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

Master

File Number: R-1314-74

File ID: R-1314-74

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item No. 35

In Control: City Council

Department: Legal Department

Cost:

File Created: 10/21/2013

File Name: WCC Settlement Hamman

Final Action:

Title: RESOLUTION NO. R-1314-74: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF CLAIMS FILED BY KENNETH HAMMAN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF KENNETH HAMMAN V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NOS. WCC-2011-06613 L AND WCC-2011-05712 Q; 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 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 \$66,765.39 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 11/26/2013

Agenda Number: 35

Attachments: Resolution R-1314-74, Settlement Schedule, Court Orders, PR

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:

Text of Legislative File R-1314-74

body

BACKGROUND: Kenneth Hamman was a Maintenance Worker I with Water Line Maintenance of the Utilities Department who filed workers' Compensation Case Nos. WCC 2011-06613 L on June 11, 2011 and WCC 2011-05712 Q on June 1, 2011 alleging injuries to his right shoulder and head, respectively.

The cases have proceeded through the normal litigation process. A trial was held on October 11, 2013 in case WCC 2011-06613 L and the Court awarded \$33,915 PPD for the right shoulder. Although the Court ordered an

award, the City Attorney's office continued settlement negotiations for not only this case but Case WCC 2011-05712 Q. A settlement offer in both cases has been made that should be considered by City Council at this time.

DISCUSSION: Mr. Hamman was hired by the City on August 4, 2008 as a Maintenance Worker I in the Water Line Division of Utilities. He will not be returning to his job with the City.

WCC 2011-06613 L (Right Shoulder)

Nature of Claim. Mr. Hamman filed a Workers' Compensation claim alleging injury to his right shoulder from repetitive movements with a date of last occurrence in February, 2011.

The case was tried on the issue of compensability and the Court found this claim compensable on September 28, 2012. Thereafter, Mr. Hamman was evaluated and treated by Dr. David W. Bobb. An MRI of the right shoulder was obtained. Arthroscopic surgery was performed on November 2, 2012 on the right shoulder. After a prescribed period of physical therapy, Mr. Hamman reached maximum medical improvement on May 30, 2013.

Issues for Trial. Since the Court determined that Mr. Hamman's injury arose out of and in the course of his employment with the City, the only issues before the Workers' Compensation Court in this case were the nature and extent of Mr. Hamman's injury. These issues are 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 14, 2013, Mr. Hamman was evaluated by Dr. Andrew C. John who opined 39% impairment to the right shoulder to the body as a whole. Dr. John's rating equates to \$62,985. However, it should be noted that Dr. John was not aware of a pre-existing condition and, therefore, did not apportion a percentage for the pre-existing condition. The City had Mr. Hamman evaluated on July 9, 2013 by Dr. Kent Hensley who opined 12% PPD to the right shoulder. Dr. Hensley apportioned 6% to the pre-existing condition leaving 6% PPD apportioned to this injury. Dr. Hensley's rating equates to \$9,690. 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. Hamman for his injury is 39% PPD or \$62,985. The City's minimum exposure for this injury is 6% or \$9,690.

Court Award. This case was heard by the Workers' Compensation Court on October 11, 2013. After hearing the claimant's testimony and considering the medical testimony, the Court awarded 21% PPD (\$33,915) to the right shoulder in addition to setting out the usual costs and fee. Prior to moving forward to comply with this Court Order settlement negotiations ensued that considered a second case that was pending. The second case is outlined below.

WCC 2011-05712 Q (Head)

Nature of Claim. Mr. Hamman filed this claim on June 1, 2011 alleging head and brain injury on March 25, 2011 when a boomer pipe slipped, and the pipe hit him in the head.

Mr. Hamman was evaluated by his physician, Dr. Andrew C. John on July 18, 2013 who opined 51% PPD impairment to the body as a whole for injury to the head and brain, psychological overlay and headaches. He further felt that he had some degree of disfigurement from the scar on the right frontal part of his face. This percentage equates to \$82,365, the City's maximum exposure.

Mr. Hamman was evaluated by the City's physician, Dr. Kent Hensley on July 9, 2013. Dr. Hensley opined 0% regarding his head and central nervous system and 0% for psychological overlay. He also opined that Mr. Hamman had minor disfigurement of his forehead at the site of the laceration. This case has not been set for trial.

MEDIATION

A mediation to settle the referenced cases was held on Monday, November 18, 2013. The settlement figures are delineated on the attached Mediation Statement. The negotiated settlement includes an additional sum of \$2,500 for future medical expense for the right shoulder, over and above the 21% PPD Court Award, bringing

the final negotiated settlement to \$36,415. The negotiated settlement amount for the head injury is 20% PPD (\$32,300), disfigurement (\$1,000) and vocational rehabilitation (\$3,000), for a total settlement amount of \$36,300. Deducted from this amount is overpayment of TTD in the amount of \$8,301.92, bringing the final negotiated settlement in the head case to \$27,998.08. The combined settlement amount for both cases, after credit for TTD overpayment, is \$64,413.08.

This Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims in these Workers' Compensation cases. Should the remaining case proceed to trial, it is reasonably possible that the City could be ordered to pay more than the settlement offer due to the nature and extent of his injuries and subsequent continued medical maintenance. This settlement is beneficial to Mr. Hamman 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.

In addition, costs and fees are payable in the total amount of \$2,352.31. (See Mediation Statement.)

RECOMMENDATION: The issues tried regarding the right shoulder on October 11, 2013, was nature and extent of permanent disability. The Award was within the medical evidence submitted in that the PPD award is one-half the difference between the medical evaluations. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. Further, if the head injury case were to go to trial, it is anticipated that, due to the nature of Mr. Hamman's medical issues, the Court could perhaps award a greater PPD percentage than what is offered in the settlement package. It is recommended that the Council move forward with settlement of these two cases.

Acceptance of the settlement would require a lump sum payment to Mr. Hamman and his attorney in addition to the costs and fees set out on the Mediation Schedule. The settlements 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.