



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1617-38

File ID: R-1617-38

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item 18

In Control: City Council

Department: Legal Department

Cost: \$92,225.79

File Created: 10/04/2016

File Name: Workers Comp-Compromise Settlement-Jason
Simpson v. City of Norman

Final Action:

Title: RESOLUTION R-1617-38: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JASON SIMPSON UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *JASON SIMPSON V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NO. 2013-05574 J; 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-1617-38; and, if adopted, direct payment of claims in the amount of to \$90,000 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 10/11/2016

Agenda Number: 18

Attachments: R-1617-38, PR-Jason Simpson

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 R-1617-38

Body

BACKGROUND: Jason Simpson was a (14) year employee of the City of Norman who was hired as a police officer on October 22, 1999 and promoted to Master Police Officer (MPO) on April 22, 2004. He filed a Workers' Compensation Case No. 2013-05574 J on May 23, 2013, for a single event injury to the back, neck, and head which occurred on September 19, 2012 and then added consequential psychological overlay on November 22, 2013. He medically retired from the City of Norman Police Department on September 19, 2013.

A court ordered mediation was held on September 12, 2016, wherein Mr. Simpson agreed to settle his claim in the total amount of \$90,000. City Council discussed the merits of the settlement proposal in Executive Session on September 27, 2016. Based on Council feedback at that time, the settlement offer is being presented to the City Council at this time for formal consideration. It is recommended that this settlement be accepted.

DISCUSSION: On September 19, 2012, MPO Simpson was injured on the job when his patrol unit was rear-ended by a drunk driver on I-35 while he was shutting down an exit ramp.

Medical Treatment. Mr. Simpson has undergone surgeries to his neck and back. Dr. Hisey performed a cervical disc replacement at C3-4 and C5-6 on October 4, 2013, lumbar disc replacement at L5-S1 on April 27, 2014, and lumbar posterior fusion at L5-S1 with non-segmental fixation bilaterally and harvest of right iliac crest back on April 24, 2015. He reached maximum medical improvement on February 16, 2016.

Issues for Trial. The primary issues to be tried in this case before the Workers' Compensation Court are the extent of Mr. Simpson's injuries and whether those injuries were permanent in nature. 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 March 30, 2016, the medical expert for Mr. Simpson, Dr. Rosson opined 48% (\$77,520) whole person impairment as a result of his back injury based on range of motion abnormalities, multiple surgeries, motor dysfunction, and residual neurosensory injury, 47% (\$75,905) whole person impairment as a result of his neck injury based on range of motion abnormalities, multi-level surgery, motor dysfunction, and residual neurosensory injury, 17% (\$27,455) whole person impairment as a result of the psychological overlay, 14% (\$22,610) as a result of head injury and ongoing post traumatic cephalgia, and 100% permanently and totally disabled unless and until he is vocationally retrained. The City's maximum exposure for total PPD would be \$203,490. Dr. Rosson recommended consideration for disfigurement and felt continuing medical maintenance was appropriate.

On May 25, 2016, the medical expert for the City, Dr. Hensley opined 19% (\$30,685) as a result of his back injury, 17% (\$27,455) as a result of his neck injury, 5% (\$8,075) for psychological overlay and 0% as a result of a head injury for total PPD in the amount of \$66,215. Dr. Hensley opined that Mr. Simpson was not permanently totally disabled, did not recommend payment for disfigurement, and felt continuing medical maintenance was not warranted.

On June 10, 2016, Mr. Simpson underwent a vocational evaluation at LDH Consultants, Inc. to determine his rehabilitation potential and employability. Vocational training was recommended.

Finally, as discussed in Council's prior executive session, there is a scenario, if the Court were to find Permanent Total Disability, award the maximum for disfigurement, and award vocational rehabilitation, the exposure to the City at trial could approach one million dollars, while leaving the case open for additional medical treatment expenses over the next 10 to 15 years.

Trial. This case proceeded through the normal litigation process; however, Mr. Simpson 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, neck, head, and consequential psychological overlay 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 \$90,000.

The settlement offer includes 19% (\$30,685) PPD to the Back, 17% (\$27,455) PPD to the Neck, 5% (\$8,075) PPD for Psychological Overlay, 3% (\$4,845) PPD to the Head, and \$18,940 for disfigurement to completely close the case. It is not unusual on a case involving a surgical procedure for an award to be granted that is one-half of the difference of the medical opinions. However, with such a wide disparity in the medical opinions, it is also a reasonable expectation for the Court to award one-third of the difference in the medical evidence for each body part to be presented at trial.

It is not uncommon for awards, following trial, to reflect a decision that splits the opinions expressed in the medical evidence in cases where surgical procedures have been performed, especially a "360 fusion" which fuses the front and the back of the spine. In an injury resulting in serious and permanent disfigurement, the maximum exposure is \$50,000. An award for disfigurement is within the Trial Judge's discretion.

It is felt that the settlement closing 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 this Workers' Compensation case. This settlement is beneficial to Mr. Simpson in that it provides certainty for the PPD 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 \$131.64.

These additional costs and fees total \$2,225.79, which brings the total cost of this settlement to the City to \$92,225.79.

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