



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1415-41**

**File ID:** GID-1415-41

**Type:** Court Order

**Status:** Consent Item

**Version:** 2

**Reference:** Item 23

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$9,690.00

**File Created:** 03/17/2015

**File Name:** WCC Court Order - David Awbrey vs. City of Norman

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$9,690 REGARDING DAVID AWBREY VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2013-10572 Q.

**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 \$9,690, which will constitute judgment against the City of Norman.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 03/24/2015

**Agenda Number:** 23

**Attachments:** Awbrey Order - Filed 2-27-15, Awbrey Req 3-24-15  
Council

**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:
---------------	--------------	-------	---------	----------	-----------	-----------------	---------

### Text of Legislative File GID-1415-41

Body

**BACKGROUND:** David Awbrey is a firefighter who filed Workers' Compensation Case No. 2013-10572 Q on October 2, 2013 alleging a work related single incident injury to the lungs (pulmonary embolism) and deep vein thrombosis on July 26, 2013. The City denied the claim. A trial was held on June 4, 2014 to determine compensability. On June 13, 2014, the Court found that the claimant's injury arose out of and in the course and scope of his employment. Thereafter, the case proceeded through the normal litigation process. A trial was held February 26, 2015. On February 27, 2015, the Court awarded 6% permanent partial impairment benefits to the body as a whole attributable to the lungs (occasional left-sided chest pain, mild and intermittent shortness of breath even when at rest) and 0% permanent partial disability to the body as a whole attributable to deep vein thrombosis for the total sum of \$9,690.

**DISCUSSION:** Mr. Awbrey is a 15 year employee of the City of Norman who was hired on October 18, 1999 as a Firefighter for the Fire Department. He was promoted to Fire Driver Engineer on December 17, 2010.

Issues for Trial. The issues to be tried February 26, 2015, before the Workers' Compensation Court were

whether Mr. Awbrey suffered disability due to the July 26, 2013, accident, if any, and if so, what was the extent of the disability. This is commonly referred to as a "nature and extent" case. 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.

Evaluations. Mr. Awbrey was evaluated on July 18, 2014 by Dr. J. Arden Blough. Dr. Blough opined 25% (\$40,375) whole person permanent partial impairment. In addition, Dr. Blough opined that Mr. Awbrey would need continued care in regard to his respiratory condition, board certified pulmonologist and prescription medications or any treatments his treating physician deems necessary in regard to this work related injury. This would be the City's maximum exposure.

The City had Mr. Awbrey evaluated by Dr. Hensley on September 3, 2014, who opined 0% impairment to the whole man regarding his pulmonary system, 0% impairment to the left leg regarding his deep venous thrombosis, and no continued medical maintenance. The Workers' Compensation Court Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial.

Court Award: The case was heard by the Workers' Compensation Court on February 26, 2015. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on February 27, 2015, awarding 6% permanent partial disability to the body as a whole attributable to the lungs and 0% to the body as a whole attributable to deep vein thrombosis. In a case such as this where no surgical procedure is indicated, it is not unusual for an award to be between ½ and 1/3 of the difference in the doctor's opinions. The actual award following trial was Six percent to the body as a whole attributable to the lungs represents less than one-third the difference in the medical opinions.

The Court's findings are set out in Paragraph Nos. 3 and 5 of the Order, as follows:

-3- "THAT as a result of said injury, claimant sustained 6 percent permanent partial impairment to the BODY AS A WHOLE ATTRIBUTABLE TO THE LUNGS (OCCASIONAL LEFT-SIDED CHEST PAIN, MILD AND INTERMITTENT SHORTNESS OF BREATH EVEN WHEN AT REST); and 0 percent permanent partial disability to the BODY AS A WHOLE ATTRIBUTABLE TO DEEP VEIN THROMBOSIS, for which claimant is entitled to compensation for 30 weeks at \$323.00 per week, or the total amount of \$9,690.00 of which 30 weeks have accrued and shall be paid in a lump sum of \$9,690.00."

-5- "THAT respondent or insurance carrier shall pay claimant the award herein in lump sum of \$9,690.00 (less attorney fee)."

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 rates over a period of time. Mr. Awbrey's weekly wage PPD rate is \$323. In this instance, the entire portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Awbrey and his attorney will be paid the accrued lump sum of \$9,690.00.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 6 and 7: Special Occupational Health and Safety Fund Tax in the amount of \$72.68; Workers' Compensation Administration Fund in the amount of \$193.80; filing fee to the Workers' Compensation Court in the amount of \$140.00; and Cleveland County filing fee in the amount of \$125.70. The costs and fees total \$432.18.

The total cost of this Order is \$10,222.18.

**RECOMMENDATION:** The issues tried on February 26, 2015, were the level of disability to the lungs, if any, due to the July 26, 2013, injury and whether that disability is permanent. The Court Award in this case is within the medical evidence submitted. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. It is recommended that the City move forward to comply with this Order. Acceptance of the Order would require the award to be paid in a lump sum. 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. § 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.