



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1920-98

File ID: R-1920-98

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item 22

In Control: City Council

Department: Legal Department

Cost: \$45,476.50

File Created: 03/16/2020

File Name: Terry Searcy - Workers Compensation Settlement

Final Action:

Title: RESOLUTION R-1920-98: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING SETTLEMENT OF THE CLAIMS FILED BY TERRY SEARCY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *TERRY SEARCY V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2019-00448 Y AND WORKERS' COMPENSATION COURT OF EXISTING CLAIMS 2019-04001 A; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COMMISSION AND WORKERS' COMPENSATION COURT OF EXISTING CLAIMS, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COMMISSION AND COURT OF EXISTING CLAIMS JUDGMENTS FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-98; and, if adopted, direct payment of claims in the amount of to \$45,476.50 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/24/2020

Agenda Number:

Attachments: Searcy Res-1920-98 - 3-24-20 cc

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-1920-98

Body

BACKGROUND: Terry Searcy is a former Heavy Equipment Operator for the City of Norman's Street Maintenance Division of Public Works. On January 23, 2019, he filed Oklahoma Workers Compensation Commission No. 2019-00448 Y, alleging a single incident injury to the left shoulder, left elbow, head, and ribs on or about May 11, 2018, when he fell from his truck after being stung by bees. He then amended the claim on August 23, 2019 to include the back. The claim was accepted and has proceeded through the normal litigation process. Mr. Searcy filed a second claim Oklahoma Workers Compensation Court of Existing Claims Case No. 2019-04001 A on June 21, 2019, alleging cumulative injury of hearing loss and tinnitus with date of awareness of July 2004 and last date of exposure of October 2018 due to continuous exposure to loud noises. The claim was denied and has proceeded through the normal litigation process.

Prior to a trial being held, Mr. Searcy has agreed to settle these claims in the total amount of \$45,476.50, which represents 10% (\$11,305) whole body (back), 9% (\$10,174.50) whole body (Left shoulder), 5% (\$5,652.50) whole body (Head), 2% (\$1,776.50) Left Arm (Left Elbow) on Case No. CM-2019-00448 Y totaling \$28,908.50 and 15% (\$13,068) ears (Hearing Loss, Tinnitus) plus \$3,500 for the cost of hearing aids on Case No. WCC 2019-04001 A totaling \$16,568. The settlement offer is being recommended and is being presented to the City Council for consideration.

DISCUSSION: Mr. Searcy was a thirty-seven (37) year employee of the City of Norman before separating from employment October 25, 2018. He was hired as a Maintenance Worker 1 July 31, 1981, and promoted to Equipment Operator I October 19, 1981, Equipment Operator II January 13, 1986, and Heavy Equipment Operator July 1, 1993.

Medical Treatment.

CM 2019-00448 Y (L. Shoulder, L. Elbow, Head, Ribs, and Back)

Mr. Searcy fell 13 ft. from a Grapple truck after being attached by a swarm of bees on May 11, 2018. He was taken to OU Medical Center the day of his injury and was found to have sustained multiple injuries. CAT scan images were taken revealing fractures to the skull, nose, and multiple ribs. During his four-day stay, he was monitored by appropriate physicians to include a neurosurgeon and surgical intervention was not required. The day following his discharge, he was then admitted to Norman Regional Hospital due to shortness of breath and discharged after the third day. Mr. Searcy was seen multiple times in the emergency room from May 28, 2018 to September 7, 2018 for left sided chest pain, shortness of breath, rib pain, right scapular pain, right hip pain, low back and hip pain secondary to sciatica. In follow-up, he was treated by orthopedist Dr. Vogel for the left elbow/left shoulder and upper back. Magnetic resonance imaging (MRI) images were performed for the left shoulder on July 25, 2015 and September 21, 2018 for the thoracic and lumbar spine. Dr. Vogel elected conservative management to include physical therapy before releasing Mr. Searcy at maximum medical improvement (MMI) on June 26, 2018 for the left elbow and September 11, 2018 for the left shoulder. He was then seen on June 13, 2018 by neurosurgeon Dr. Martin for subarachnoid hemorrhage and released. Mr. Searcy was treated by Dr. Stanek for left rib pain and right

lower back pain with radiculopathy July 17, 2018 to October 25, 2018. He was seen by Dr. Toal, cardiothoracic surgeon, for rib pain from May 29, 2018 to September 25, 2018 and released. On November 13, 2018, Mr. Searcy was evaluated by neurosurgeon Dr. Hume for the spine. After review of MRI images of the left shoulder and thoracic/lumbar spine, Dr. Hume elected conservative treatment to include physical therapy. On January 17, 2019, Dr. Hume released Mr. Searcy at MMI without restrictions.

WCC 2019-04001 A (Hearing Loss, Tinnitus)

Due to gradual decreased hearing over the last two years of employment, Mr. Searcy underwent an audiogram on April 15, 2019 at Pioneer Hearing Aid Center and hearing aids were recommended to address his hearing loss.

Issues for Trial. Since there is no question Mr. Searcy's injuries to the Left Shoulder, Left Elbow, Head, Ribs, and Back occurred while in the course of his employment with the City, the primary issues to be tried in this case before the Workers' Compensation Commission are the extent of his injuries and whether the injuries were permanent in nature. Permanent partial disability is a factual determination made by the Workers' Compensation Commission Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment. The City denied the hearing loss and tinnitus claim; therefore, the primary issues to be tried before the Workers' Compensation Court is compensability. In lieu of a Trial, both parties have agreed to settle both cases.

CM 2019-00448 Y (L. Shoulder, L. Elbow, Head, Ribs, and Back)

Mr. Searcy was rated by Dr. Lonnie Litchfield on March 31, 2019 regarding the above claim who opined 7% (\$7,913.50) permanent partial impairment to the whole body regarding the head/skull, 5% (\$5,652.50) permanent partial impairment to the whole body regarding the nose, 4% (\$4,522) permanent partial impairment to the whole body regarding the ribs, 4% (\$4,522) permanent partial impairment whole body due to chronic migraines, 27% (\$30,523.50) permanent partial impairment to the whole body regarding lumbar spine, 15% (\$16,957.50) permanent partial impairment to whole body regarding the left shoulder, 31% (\$27,535.75) permanent partial impairment to the arm regarding the left arm/elbow. He also opined continued care in the form of pain management in regards to chronic pain, assigned a pain management specialist for treatment, entitlements for prescription medications or any treatments his treating physician deems necessary in regards to this work related injury.

On December 16, 2019, the medical expert for the City, Dr. Kent Hensley, opined 0% permanent partial impairment to the whole body regarding migraine headaches, 5% (\$5,652.50) permanent partial impairment to the whole body regarding the brain, 7% (\$7,913.50) permanent partial impairment to the whole body regarding the lumbar spine, 1% (\$1,130.50) permanent partial impairment to the whole body regarding the left shoulder, 0% permanent partial impairment to the arm regarding the left elbow, and 0% permanent partial impairment to the whole body regarding the rib cage. The City's maximum exposure for total PPD would be \$97,626.75.

WCC 2019-04001 A (Hearing Loss, Tinnitus)

Dr. Lonnie Litchfield then rated Mr. Searcy regarding the above claim on March 31, 2019. Dr. Litchfield opined 52.5% (\$45,738) permanent partial impairment to the ears regarding the binaural hearing system and given continued care by an assigned board-certified otorhinolaryngologist and audiologist and entitlements for hearing aids, periodic testing, or any treatment his physician deems necessary in regard to the work related injury.

On December 16, 2019, the medical expert for the city, Dr. Kent Hensley opined 4.1% (\$3,572) permanent partial impairment to the ears regarding binaural impairment and 0% regarding tinnitus. The City's maximum exposure for the total PPD would be \$45,738 plus the cost of hearing aids.

Trial. Both cases proceeded through the normal litigation process; however, Mr. Searcy has agreed to a settlement of cases as outlined below. If a trial was held in these cases, the Judge could determine nature and extent to his injuries and award permanent partial disability and determine if the hearing and tinnitus claim was work related.

Proposed Settlement. The proposed settlement to close both cases in a lump sum payment of \$45,476.50 (less 20% attorney fee) representing the settlement amount discussed above.

It is felt that the settlement to close these cases is fair and reasonable. A 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 on both Workers' Compensation cases. This settlement is beneficial to Mr. Searcy in that it provides certainty for an award and would be paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if these cases are settled in this manner, the City would incur additional costs and fees of:

CM 2019-00448 Y (L. Shoulder, L. Elbow, Head, Ribs, and Back)

Workers' Compensation Administration Fund Tax in the amount of \$578.17; Special Occupational Health & Safety Tax in the amount of \$216.81; and Workers Comp Commission Filing fee in the amount of \$140.00.

WCC 2019-04001 A (Hearing Loss, Tinnitus)

Workers' Compensation Administration Fund Tax in the amount of \$331.36; Special Occupational Health & Safety Tax in the amount of \$124.26; and Workers Comp Commission 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 \$154.14.

These additional costs and fees total \$1,684.74, which brings the total cost of this settlement to

the City to \$47,161.24.

Adequate funds are available in the Order/Settlements Account (43330102-42131).

RECOMMENDATION: For the reasons outlined above, it is believed this settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Searcy'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 settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Searcy and his attorney in a lump sum. The 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 85A O.S. § 107, 51 O.S. § 159, and 62 O.S. § 361, *et seq* and 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.