



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1415-34

File ID: GID-1415-34

Type: Court Order

Status: Consent Item

Version: 2

Reference: Item 24

In Control: City Council

Department: Legal Department

Cost: \$35,530.00

File Created: 02/16/2015

File Name: WCC Court Order Grant Wesley Deason

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$35,530 REGARDING GRANT WESLEY DEASON VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2012-10668 H.

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 \$35,530, which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 02/24/2015

Agenda Number: 24

Attachments: Payment Schedule, Court Order, Purchase Req

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-1415-34

Body

BACKGROUND: Grant Wesley Deason is an Assistant Fire Chief who filed Worker's Compensation Case No. 2012-10668 H on September 18, 2012 alleging injury to his spine on June 1, 2012. The case proceeded through the normal litigation process. A trial was held on January 21, 2015 and on February 2, 2015 the Court awarded Mr. Deason the sum of \$35,530.00 in permanent partial disability benefits. This item is presented to Council to consider acceptance of the Court Order in this case.

DISCUSSION: Mr. Deason is a 29 year employee of the City of Norman who was hired on January 7, 1985 as a firefighter for the Fire Department. He was promoted several times with a final promotion on September 1, 2006 as Assistant Fire Chief.

Nature of Claim. Mr. Deason filed this Workers' Compensation claim on September 18, 2012, alleging an accidental injury to the low back while lifting heavy boxes on June 1, 2012. The injury occurred at the fire administration building, was witnessed by other firefighters, and was reported timely. There is no question the injury occurred on the job with the Norman Fire Department. Deason had surgery on July 13, 2012. However,

he continued to experience pain, which resulted in another surgery on January 10, 2014. He was released by his physician on May 7, 2014.

Issues for Trial. The issues to be tried before the Workers' Compensation Court was the nature and extent of PPD. 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. Deason was evaluated by Dr. Wilson on May 27, 2014. Dr. Wilson opined 56% impairment with 14% pre-existing to his lumbar spine for 42% whole person permanent partial impairment to his lumbar spine. Dr. Wilson recommended continued care in the form of pain management and entitlements for 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. Deason evaluated by Dr. Hensley on July 16, 2014, who opined Mr. Deason has 12% impairment over and above a prior award in 1994 of 30%. Deason had injured his back in 1993 and in 1994 and the Court had awarded him 30% permanent partial disability for that injury. Dr. Hensley did not recommend continued medical maintenance. The Workers' Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial.

Court Award: This case was heard by the Worker's Compensation Court on January 21, 2015. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on February 2, 2015, awarding 22% PPD disability to the whole man low back. The Court's findings are set out in Paragraph Nos. 4 and 6 of the Order, as follows:

-4- "THAT as a result of said injury, claimant sustained 22 percent permanent partial impairment to the LOW BACK (surgeries- 1st -right discectomy with decompression with a lateral recess decompressed at L3-4, 2nd - repeat discectomy and L5 hemilaminectomy with resection of lateral recess, range of motion loss, weakness) over and above 30 percent pre-existing permanent partial disability, for which claimant is entitled to compensation for 110 weeks at \$323.00 per week, or the total amount of \$35,530.00 of which 37 weeks have accrued and shall be paid in a lump sum of \$11,951.00."

-6- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in a lump sum of \$11,951.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$35,530 (less attorney fee) has been paid to claimant."

As can be noted in Paragraph No. 4 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. Deason's weekly wage PPD rate is \$323. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Deason and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional four weeks for processing and Council approval in the lump sum of \$20,349, with the balance of the award of \$15,181 to be paid in weekly payments of \$323 until paid in full as set forth in the Payment Schedule attached.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 7 and 8: Special Occupational Health and Safety Fund Tax in the amount of \$266.48; Workers' Compensation Administration Fund in the amount of \$710.60; 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 \$1,242.78.

The total cost of this Order is \$36,772.78.

RECOMMENDATION: The issues tried on January 22, 2015, were the nature and extent of the claimant's disability (permanent partial disability) from the June 1, 2012 on the job injury. 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 payments as outlined in the attached Payment Schedule. 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.