



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1415-2**

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**File ID:** GID-1415-2                      **Type:** Court Order                      **Status:** Consent Item

**Version:** 1                                      **Reference:** Item No. 20                      **In Control:** City Council

**Department:** Legal Department                      **Cost:** \$100,320.00                      **File Created:** 06/25/2014

**File Name:** WC-2007-07137A                      **Final Action:**

<p><b>Title:</b> CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$100,320 REGARDING MARK HELM VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2017-07137 A</p>
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**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 \$100,320, which will constitute judgment against the City of Norman.

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

**Agenda Date:** 07/08/2014

**Agenda Number:** 20

**Attachments:** Court Order, PRs

**Project Manager:** Jeanne Snoider, Assistant City Attorney

**Entered by:** denise.johnson@normanok.gov

**Effective Date:**

### History of Legislative File

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Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File GID-1415-2

Body

**BACKGROUND:** Mark Helm was a Firefighter with the Norman Fire Department who filed Workers' Compensation Case No. WCC-2007-07137A on June 25, 2007, alleging cumulative injuries as a result of performing his job related duties. The case has proceeded through the normal litigation process. A trial was held on June 4, 2014, and the Court filed its Order on June 10, 2014 awarding Mr. Helm \$100,320. This claim was discussed with Council in Executive Session on December 11, 2012 and further updated by an Attorney/Client Privilege Memorandum dated June 25, 2014. The Court Order is now being presented to Council for consideration. It is recommended that the City comply with this Order.

### **DISCUSSION:**

Nature of Claim. Mr. Helm was hired by the City on September 16, 1991 as a firefighter for the Norman Fire Department. Mr. Helm filed this Workers' Compensation claim alleging cumulative injuries to his head, neck, right and left shoulders, right hip and low back with a last date of exposure on August 28, 2005. Mr. Helm separated from employment on September 10, 2008.

Issues for Trial. The trial regarding compensability was held on August 25, 2009. The City argued the case was not compensable on issues of notice, pre-existing degenerative conditions, and work with the Norman Fire Department not being a major cause of the disability or need for treatment. On August 31, 2009, the court found claimant sustained accidental personal injury to cervical spine, thoracic spine, lumbar spine, left shoulder, right shoulder, and right hip due to cumulative trauma with the major cause being his 18 year employment with the City of Norman. The order authorized medical treatment to these body parts. Based on this ruling it has been determined that Mr. Helm's cumulative injuries arose out of and in the course of his many years of employment with the City.

After completion of medical treatment, as noted above, the issue tried before the Workers' Compensation Court on June 4, 2014 was the nature and extent of Mr. Helm's cumulative injuries or the Permanent Partial Disability (PPD). 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.

At the trial of this case, Mr. Helm entered an oral request to add a consequential left hip injury. The Court denied there was consequential injury to the left hip. In addition, the Court denied Mr. Helm's request for continuing medical maintenance.

Evaluations. Mr. Helm was evaluated by Dr. J. Arden Blough who opined impairment to Mr. Helm for chronic headaches, cervical, thoracic and lumbar spine, left and right shoulders and left and right hips in PPD percentages that totaled \$308,220.

The City had Mr. Helm evaluated by Dr. Kent Hensley who opined impairment to Mr. Helm for cervical and lumbar spine, left and right shoulder and right hip in PPD percentages that totaled \$77,880.

Court Order.

This case was heard by the Workers' Compensation Court on June 4, 2014. After hearing the Claimant's testimony and considering the expert medical evidence, the Court opined that Claimant sustained permanent partial impairment as set out in paragraph 4 of the Order:

"THAT as a result of said injury, claimant sustained 16 percent permanent partial disability to the CERVICAL SPINE over and above 2 percent pre-existing permanent partial disability and 4 percent permanent partial disability to the THORACIC SPINE and 16 percent permanent partial disability to the LUMBAR SPINE over and above 2 percent pre-existing permanent partial disability and 18 percent permanent partial disability to the LEFT SHOULDER over and above 2 percent pre-existing permanent partial disability and 16 percent permanent partial disability to the RIGHT SHOULDER and 6 percent permanent partial disability to the RIGHT HIP, for which claimant is entitled to compensation for 380 weeks at \$264.00 per week, or the total amount of \$100,320.00 of which 380 weeks have accrued and shall be paid in a lump sum of \$100,320.00."

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. Helm's weekly wage PPD rate is \$264. In this instance, all of the award is payable in a lump sum.

Further, in complying with the Order, the City will incur additional costs and fees: Special Occupational Health and Safety Fund Tax in the amount of \$752.40; Workers' Compensation Administration Fund in the amount of \$2,006.40; 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 \$3,024.50.

The total cost of this Order is \$103,344.50.

**RECOMMENDATION:** Acceptance of this Order would require the payments as outlined above. Further, in light of Mr. Helm's length of employment with the City, it is not anticipated a more favorable ruling for the City

could be achieved by further litigation. If approved, the entire order would be paid to Mr. Helm and his attorney 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.