



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-100

File ID: R-1415-100

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item 43

In Control: City Council

Department: Legal Department

Cost: \$55,394.00

File Created: 04/08/2015

File Name: WCC Settlement - Leonard Pelfrey v. City of Norman

Final Action:

Title: RESOLUTION R-1415-100: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIMS FILED BY LEONARD PELFREY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF LEONARD PELFREY V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NOS. WCC 2012-13572F, WCC 2012-13565 J, WCC 2013-13409 A, AND WCC 2013-12958 X; 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-1415-100; and, if adopted, direct payment of claims in the amount of to \$55,394 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 04/14/2015

Agenda Number: 43

Attachments: Pelfrey Resolution, Pelfrey Requisitions

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-1415-100

Body

BACKGROUND: Leonard Pelfrey was a firefighter for the City of Norman Fire Department. He began his employment on September 2, 1983. He retired from the City of Norman Fire Department on April 26, 2014. Mr. Pelfrey filed four workers' compensation claims: for a single injury to his left shoulder on December 12, 2012; an aggravated injury to his right shoulder on November 20, 2013; hearing loss due to repeated exposure to loud truck noises and sirens over the course of his career; and injury to his low back also to due repetitive bending, lifting, pulling of hose over the course of his career. The left shoulder case has proceeded through the normal litigation process. He received a Permanent Partial Disability (PPD) award for the single injury to his left

shoulder on February 6, 2014. Council accepted that award on February 25, 2014. The final PPD payment for the left shoulder was on January 15, 2015.

Mr. Pelfrey has received medical treatment to his right shoulder which included a surgery on January 20, 2014. He was released from medical treatment on October 14, 2014. The right shoulder case has proceeded through the normal litigation process although a trial date has not yet been set. The two remaining cases for hearing loss and low back injury due to cumulative trauma over his career with the Norman Fire Department are still pending.

Mr. Pelfrey has agreed to settle all four claims as follows: WCC 2013-13482 F (left shoulder) the additional amount of \$3,230 (2% PPD) to close out future claims if he suffered a change of condition for the worse; WCC 2013-13409 A (right shoulder) the amount of \$35,530 (22% PPD); WCC 2012-13465 J (bilateral hearing loss) the amount of \$5,329 (5% PPD); and WCC 2013-12958 X (low back) the amount of \$11,305 (7% PPD) for a total amount of \$55,394. The settlement offer is being presented to City Council for consideration at this time.

DISCUSSION:

WCC 2013-13409A (right shoulder). The primary case that has worked its way through the litigation process that has prompted settlement discussions for all four cases is the right shoulder. On November 20, 2013, while participating in a work-related physical activity, Mr. Pelfrey claims to have injured his right shoulder. Medical review of the case shows degenerative changes in the right shoulder that would not be consistent with a single event injury. Accordingly, Mr. Pelfrey workers compensation claim alleges a cumulative injury to his right shoulder with last date of exposure as November 20, 2013; the date of the work related injury which he claims aggravated the injury to the right shoulder that has occurred over time. This type of theory of injury is routinely accepted by the Workers Compensation Court, particularly in cases involving firefighters.

The medical treatment included right shoulder surgery on January 20, 2014. He was released from active medical treatment on October 14, 2014. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Pelfrey suffered due to his injury to his right shoulder ("nature and extent" of permanent partial disability - PPD). PPD 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. Mr. Pelfrey was evaluated by Dr. Litchfield for his right shoulder on October 29, 2014 who opined 35% (\$56,525) impairment to the whole man and continuing medical maintenance (CMM). Dr. Young evaluated Pelfrey on December 16, 2014, and opined 6% (\$9,690) impairment with no CMM. In a case involving a surgical procedure, it is not unusual for the Court to award one-half of the difference in the doctors' opinions. One-half of the difference in the doctors' opinions in this case is 20.5% (\$33,107.50). However, if a PPD award is entered following trial, the case will remain "open" for a period of time to allow the claimant the opportunity to seek additional workers compensation benefits should he suffer a change of condition or the worse. For that reason, and to insulate the City from future liability in this case, and additional 1.5% was added to the likely award in the case to arrive at a settlement amount of 22% (\$35,530) for the right shoulder.

WCC 2012-13572F (left shoulder). This was a single injury to his left shoulder on December 12, 2012. Claimant received an 18% PPD (\$29,070) award on February 6, 2014. The final PPD payment was on January 15, 2015. With an "open" PPD award, the claimant may Petition the Workers' Compensation Court within a certain period of time (three years from the date of the last order of a shoulder PPD Award) to reopen the case if the injured employee has suffered a change of condition for the worse. If the case is reopened, the Court may order temporary total disability, additional permanent partial impairment, permanent total disability, and medical benefits. Although the prior PPD Award in the left shoulder case has been fully paid, the settlement offer includes \$3,230 (2%) for any and all future medical expenses, temporary total disability and permanent partial disability forever barring the claimant from reopening this claim.

WCC 2012-13565J (bilateral hearing loss). Mr. Pelfrey's bilateral hearing loss workers' compensation claim was filed in November of 2012. Mr. Pelfrey is claiming bilateral hearing loss due to cumulative trauma from truck noises and sirens arising out of and in the course of his 31 years of employment with the City. Mr. Pelfrey retired from the Fire Department following his shoulder injury. It is not uncommon for retiring firefighters to seek compensation under the workers compensation laws claiming cumulative injury to the ears resulting in hearing loss. Since Mr. Pelfrey no longer works for the City and has four cases pending, it was felt to be in the

City's best interest to explore settlement of the hearing loss in conjunction with settlement discussions on the shoulder cases. A review of several prior court Orders for bilateral hearing loss cases after trial revealed the following: 2008 Cecil (firefighter) 7.5% PPD; 2010 Duff (sanitation worker) 9%; 2011 Glover (firefighter) 30%. Although Mr. Pelfrey has not been evaluated or rated for bilateral hearing loss, the offer includes 5% (\$5,329) for the bilateral hearing. It is felt this offer represents an amount lower than what has been awarded following trial of these type of cumulative exposure cases, and also served to close this case out as well, insulating the City from future liability on this claim.

WCC 2013-12958X (low back). Mr. Pelfrey's workers' compensation claim for injury to his low back was due to bending, lifting and pulling of hose, and physical activities extending over a period of time arising out of and in the course of his 31 years of employment with the City. As previously noted, Mr. Pelfrey retired from the Fire Department after 31 years following his shoulder injury. It is not uncommon for retiring firefighters to seek compensation under the workers compensation laws claiming cumulative injury to the low back. Medical records indicate he saw Dr. De la Garza on February 21, 2012, for an evaluation on his lower back. Dr. De la Garza recommended epidural steroid injections (ESI's) which were performed on February 22, 2012 and March 7, 2012. No further treatment has been requested since that time. Mr. Pelfrey has not been evaluated or rated for PPD for his lower back. Although no PPD rating has been obtained, because of the likelihood of some level of a PPD Award when ESIs and medical treatment has been documented, the offer includes 7% PPD (\$11,305) for the low back to completely close the case out and insulate the City from a possible future Motion to "reopen" that case.

Proposed Settlement. Prior to a trial being scheduled for the right shoulder, Mr. Pelfrey agreed to a settlement of all four cases as set out above. The proposed settlement to close all cases on a "Compromise Settlement" basis is for a lump sum payment of \$55,394. The offer includes:

\$35,530 - (22% PPD to the right shoulder)
\$ 3,230 - (2% PPD to the left shoulder)
\$ 5,329 - (5% for the bilateral hearing loss)
\$11,305 - (7% for the low back)
\$55,394 - Combined settlement amount to close all four cases

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 these Workers' Compensation cases. It is felt that this settlement closing these cases is fair and reasonable. This settlement is beneficial to Mr. Pelfrey in that it provides certainty for an 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 cases are settled in this manner, the City would incur additional costs and fees of:

WCC 2013-13409 A (right shoulder)

\$710.60 - Workers' Compensation Administration Fund Tax;
\$266.48 - Special Occupational Health & Safety Tax;
\$140.00 - Workers Comp Court Filing fee.

WCC 2012-13572 F (left shoulder)

\$ 64.60 - Workers' Compensation Administration Fund Tax;
\$ 24.23 - Special Occupational Health & Safety Tax;
\$140.00 - Workers Comp Court Filing fee.

WCC 2012-13565 J (bilateral hearing loss)

\$106.58 - Workers' Compensation Administration Fund Tax;
\$ 39.97 - Special Occupational Health & Safety Tax;
\$140.00 - Workers Comp Court Filing fee.

WCC 2013-12958 X (low back)

\$226.10 - Workers' Compensation Administration Fund Tax;
\$ 84.79 - Special Occupational Health & Safety Tax;

\$140.00 - Workers Comp Court Filing fee.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70 for all cases.

These additional costs and fees total \$2,209.05, which brings the total cost of this settlement to the City to \$57,603.05.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Pelfrey'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 Compromise Settlement would require the payments as outlined above.

If approved, the settlement amount would be paid to Mr. Pelfrey and his attorney in a lump sum. The Compromise settlement would then 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.