



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1920-95

File ID: R-1920-95

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item 41

In Control: City Council

Department: Legal Department

Cost: \$35,281.80

File Created: 02/17/2020

File Name: Workers Compensation Settlement - Christopher Bozeman

Final Action:

Title: RESOLUTION R-1920-95: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENTS OF THE CLAIMS FILED BY CHRISTOPHER BOZEMAN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *CHRISTOPHER BOZEMAN V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NOS. 2015-08111 R AND 2018-02917 J; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COMMISSION, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COMMISSION JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-95; and, if adopted, direct payment of claims and expenses in the amount of \$35,281.80 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 02/25/2020

Agenda Number: 41

Attachments: R-1920-95 Bozeman

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 R-1920-95

Body

BACKGROUND: Christopher Bozeman is a former (30) thirty-year employee of the City of Norman Utilities Department, Sewer Line Maintenance Division. He began his employment with the City of Norman as a Plant Operator D on July 27, 1987 at the Water Treatment Plant and resigned August 14, 2001. Mr. Bozeman was then rehired as a Tire Repair Tech in the Public Works Department, Fleet Division on March 18, 2002, transferred to Auto Service Tech on February 21, 2003 and Maintenance Worker I in the Utilities Department, Sewer Line Maintenance Division on September 9, 2005, and was promoted to Maintenance Worker II on April 28, 2006. He separated from employment on April 18, 2018.

Mr. Bozeman filed a workers' compensation claim with the Workers Compensation Commission (CM 2015-08111 R) on December 9, 2015, alleging a single incident injury to the back on or about October 7, 2015, while root cutting a city sewer. On May 9, 2018, he filed a second claim (CM 2018-02917 J) alleging a single incident injury to the right arm/right shoulder and left arm/left shoulder on or about January 25, 2018, while he was holding a high-pressure hose during a pump surge.

The City admitted both claims and they proceeded through the normal litigation process. On January 29, 2020, a mediation was held and Mr. Bozeman has agreed prior to a trial being held to settle the claims in the total amount of \$33,915, which represents 16% (\$18,088) permanent partial impairment regarding the back on Case No. CM 2015-08111 R and 14% (\$15,827) permanent partial impairment regarding the right arm/right shoulder and 0%, regarding the left arm/left shoulder on Case No. CM 2018-02917 J. The settlement offer is being recommended and is being presented to the City Council for consideration.

DISCUSSION:

Medical Treatment:

CM 2015-08111 R (Back)

Mr. Bozeman was initially treated at Norman Regional Occupational Medicine. After reviewing the October 12, 2015 magnetic resonance imaging (MRI) images of the lumbar spine, he was referred to Dr. William Harris for orthopedic evaluation. He was diagnosed to have a free fragment at L4-L5 impinging on the nerve root as well as the right central protrusion disc rupture at L5-S1. Dr. Harris sent him to Dr. Leonard and underwent a series of three epidural injections. Due to continued symptomatology, he underwent a laminectomy at L4-5 on November 30, 2015 followed by a course of post-operative physical therapy. Dr. Harris released Mr. Bozeman back to work on February 23, 2016 with no restrictions. On April 27, 2016, Mr. Bozeman was seen by orthopedist Dr. Michael Wright due to recurrent pain radiating down the right leg and numbness to the foot and was sent for a repeat MRI scan of the lumbar spine on May 5, 2016. The MRI scan continued to reveal multilevel degenerative disease most prominent at L4-L5 and L5-S1, mild compromise of the right L5 neural foramen. He was felt to have some residual disc bulging. A second laminectomy procedure was discussed and Mr.

Bozeman chose not to undergo further surgery. To determine lifting restrictions, he was sent for a functional capacity evaluation on May 19, 2019 and was ultimately released back to work with permanent restrictions, 70 pound lifting, 100 pound pushing/pulling, and occasional bending and stooping on June 10, 2016.

CM 2018-02917 J (Right Arm/Shoulder & Left Arm/Shoulder)

Mr. Bozeman was seen at Norman Regional Occupational Medicine on the day of his injury. He was sent for a magnetic resonance imaging (MRI) exam of the right shoulder on February 12, 2018 and found to have mild supraspinatus tendinitis and mild to moderate degenerative changes. Mr. Bozeman was treated conservatively to include an injection on February 1, 2018 and a course of physical therapy. He was released at maximum medical improvement on March 20, 2018 and returned to work without restrictions.

Due to ongoing right shoulder pain, Mr. Bozeman's treating physician was changed to Dr. David Bobb per Court Order on July 24, 2018. He was seen by Dr. Bobb on July 31, 2018 for orthopedic evaluation and sent for an MRI on August 3, 2018. Surgery was recommended after comparison of his MRIs. He underwent surgery on November 16, 2018 for an open repair of the chronic complete tear of the rotator cuff, open biceps tenodesis, open distal clavicle resection, and open acromioplasty followed by a lengthy postoperative course of physical therapy. Mr. Bozeman was sent for a repeat MRI on February 22, 2019 before being released on July 25, 2019 without restrictions.

Issues for Trial. The primary issues to be tried in these cases before the Workers' Compensation Commission are the extent of Mr. Bozeman's injuries to his back and right and left arm/shoulder and if 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.

CM 2015-08111 R (Back)

For the back, Mr. Bozeman was rated on September 27, 2019 by Dr. Lance Rosson. Dr. Rosson opined 29 percent (\$32,784.50) permanent partial impairment to the whole man regarding the back and given entitlement to continuing medical benefits, in the nature of prescription medications on an as-needed basis, as well as other treatment that his treating physician or further selected physicians might deem necessary, with respect to this job-related injury.

On November 14, 2019, the medical expert for the city, Dr. Kent Hensley opined 9 percent (\$10,174.50) permanent partial impairment to the whole body regarding the back and continuing medical maintenance would not be required. The City's maximum exposure for total PPD regarding the back would be \$32,784.50.

CM 2018-02917 J (Right Arm/Shoulder; Left Arm/Shoulder)

Mr. Bozeman was rated on September 27, 2019, by Dr. Rosson who opined 27 percent

(\$30,523.40) permanent partial impairment to the whole body regarding the right shoulder, 30 percent (\$26,647.50) permanent partial impairment to the right arm, and entitlements to continuing medical benefits in the nature of prescription medications on an as-needed basis, as well as other treatment that his treating physician or further selected physicians might deem necessary, with respect to this job-related injury. The left arm/shoulder was not addressed.

He was then rated on November 14, 2019 by Dr. Hensley, who opined 7 percent (\$7,913.50) permanent partial impairment to the whole body regarding the right shoulder and 0 percent permanent partial impairment to the whole body regarding the right arm, left arm/shoulder. Continuing medical maintenance was not recommended. The City's maximum exposure for total PPD regarding the right arm/right shoulder would be \$57,170.90.

Trial. Both cases proceeded through the normal litigation process; however, Mr. Bozeman has agreed to a settlement of these cases as outlined below. If a trial was held in these cases, the Judge could determine nature and extent of the injury to the back and right and left arm/shoulder and award permanent partial disability.

Proposed Settlement. The proposed settlement to close both cases on a "Joint Petition" basis is for a lump sum payment of \$33,915 (less 20% attorney fee) representing the settlement amount discussed above.

It is felt that the settlement to close both 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 cases. This settlement is beneficial to Mr. Bozeman 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 both cases are settled in this manner, the City would incur additional costs and fees of:

CM 2015-08111 R (Back)

Workers' Compensation Administration Fund Tax in the amount of \$361.76; Special Occupational Health & Safety Tax in the amount of \$135.66; and Workers Comp Commission Filing fee in the amount of \$140.00.

CM 2018-02917 J (Right Arm/Shoulder and Left Arm/Shoulder)

Workers' Compensation Administration Fund Tax in the amount of \$316.54; Special Occupational Health & Safety Tax in the amount of \$118.70; 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 \$1,366.80, which brings the total cost of this settlement to the City to \$35,281.80.

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. Bozeman'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. Bozeman 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.* Certifying the order to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.