



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Text File

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Title

RESOLUTION NO. R-1213-130: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JUSTIN BURRIGHT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JUSTIN BURRIGHT V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC 2012-14093Y; 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.

body

BACKGROUND: Justin Burright is a Fire Fighter for the Norman Fire Department who injured his right shoulder on May 21, 2012 while assisting a patient from a wheelchair to a vehicle. Mr. Burright filed a workers' compensation case regarding his injury. The case has proceeded through the normal litigation process. Mr. Burright, through his attorney, has approached this office concerning settlement of his Workers' Compensation claim against the City of Norman. A settlement offer for this claim in the amount of \$39,576.50 was discussed with Council in Executive Session on May 5, 2013. The settlement offer is being presented to City Council for consideration at this time.

DISCUSSION:

Nature of Claim. Mr. Burright was hired on October 18, 1999, as a Fire Fighter. His injury is due to a single event on May 21, 2012 when he was assisting a patient in a wheelchair into a vehicle when the patient lost his balance and fell on Mr. Burright's right shoulder. The occurrence of the accidental injury was confirmed and is undisputed.

Medical Treatment. Mr. Burright was initially seen at Norman Regional Health System Emergency Department. X-rays revealed no fracture or acute osseous injury. However, it did reveal hypertrophic AC joint. An MRI was requested. Although Mr. Burright's MRI found no rotator cuff tear, it did reveal impingement/bursitis and chronic inferior labrum.

Mr. Burright was evaluated by Dr. David W. Bobb on June 19, 2012 who diagnosed strain of the superior glenoid labrum lesion. Surgery on the right shoulder was performed on July 6, 2012. The arthroscopic procedure included 1) biceps tenodesis, 2) acromioplasty, 3) distal clavical resection, and 4) extensive debridement. After a regimen of physical therapy, Mr. Burright obtained maximum medical improvement on December 10, 2012 and was released to full duty.

Issues for Trial. As noted, there is no question that Mr. Burright's injury arose out of and in the course of his employment with the City. Therefore, should this case proceed to trial, the issue before the Workers' Compensation Court would be the nature and extent of Mr. Burright's injury or the Permanent Partial Disability (PPD) to Mr. Burright's right shoulder due to this incident. 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. On February 12, 2013, Mr. Burright was evaluated Dr. Hugh G. McClure, who opined 14% PPD to his head/nose and 34% to his bilateral wrists. This rating equates to \$77,520 to the body as a whole. This rating is the maximum exposure to the City.

On April 2, 2013, Mr. Burright was evaluated by the City's doctor, LeRoy E. Young, who opined 0% PPD to his head/nose, 10% PPD to the right wrist and 5% to the left wrist which equates to \$10,659. This is the City's minimum exposure to the City.

The Worker's Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial. Therefore, the City's maximum exposure to compensate Mr. Burright for his injury is a total of 48% PPD to the head/nose, left wrist and right wrist or \$77,520.

Settlement Offer. City Staff has negotiated with Mr. Burright, through his attorney, a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$34,754.80 which represents 7% PPD to the head/nose, 22% PPD to the right wrist and 11% PPD to the left wrist. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims in the Workers' Compensation case. Moreover, the settlement offer is in keeping with or is lower than what the City has been ordered to pay in past years in similar cases by the Workers' Compensation Court.

Should this case proceed to trial, it is reasonably possible that the City could be ordered to pay more than the settlement offer due to the Mr. Burright's nature of the injury and surgery. This settlement is beneficial to Mr. Burright 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 case was settled in this manner, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$696.10; Special Occupational Health & Safety Fund Tax in the amount of \$260.66; Workers Comp Court Filing Fee in the amount of \$140.00; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total \$1,221.46 which brings the total cost of this settlement to the City to \$35,976.26.

RECOMMENDATION: For the reasons outlined above, it is believed this compromise settlement offer is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Burright and his attorney in a lump sum. The Compromise 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 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.