



City of Norman, OK

Master

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

File Number: R-1920-93

File ID: R-1920-93	Type: Resolution WCC	Status: Consent Item
Version: 3	Reference: Item 40	In Control: City Council
Department: Legal Department	Cost: \$30,744.36	File Created: 02/17/2020
File Name: Workers Comp Settlement - Darin Hiett	Final Action:	
Title: <u>RESOLUTION R-1920-93: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY DARIN L. HIETT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF DARIN L. HIETT V. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE NO. 2017-00909 Q; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT 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.</u>		

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1920-93; and, if adopted, direct payment of claims and expenses in the amount of \$30,744.36 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 02/25/2020

Agenda Number: 40

Attachments: R-1920-93 Hiett

Project Manager: Jeanne Snider

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-1920-93

Body

BACKGROUND: Darin L. Hiett is a (7) seven year employee of the City of Norman Public Works Department, Street Division. He was hired as a Maintenance Worker I on March 11, 2013 and promoted to Maintenance Worker II on December 9, 2016 and Heavy Equipment Operator on April 13, 2018. Mr. Hiett filed Workers' Compensation Case No. 2017-00909 Q on February 13, 2017 alleging a single incident injury to the left shoulder, spine/neck, left arm, left wrist on August 29, 2016. The claim was admitted by the City of Norman and it proceeded through the normal litigation process. Prior to a trial being held, Mr. Hiett has agreed to settle his claim in the total amount of \$29,635.25, which represents (\$11,305) 10 percent permanent partial disability to the whole body regarding the left shoulder, (\$6,783) 6 percent permanent partial disability to the whole body regarding the cervical spine, (\$11,547.25) 13 percent permanent partial disability to the left arm/wrist. This settlement offer is being recommended and is being presented to the City Council for consideration.

DISCUSSION: On August 29, 2016, Mr. Hiett, a Maintenance Worker I at the time, was injured on the job when he slipped and fell off a breakdown roller causing his left arm to be caught between the railing and the machine.

Medical Treatment. Mr. Hiett was initially seen at Norman Regional Occupational Medicine and was treated conservatively. On September 8, 2016, he was sent for a magnetic resonance imaging (MRI) exam of both the left shoulder and cervical spine. Imaging for the left shoulder revealed a partial tearing of the anterior margin of the supraspinatus tendon and for the cervical spine, degenerative disc disease at C6-C7 with disc bulge producing ventral impingement on the thecal sac. For the left shoulder and left arm pain, he was referred to orthopedist Dr. David Bobb and underwent left shoulder surgery on September 23, 2016 for a large symptomatic SLAP tear and impingement. He was sent for physical therapy initially for his cervical spine and then post-operatively for his left shoulder. Due to continued symptomatology of pain from the left elbow radiating into the hand, he was sent for an EMG nerve conduction study on December 7, 2016, which revealed minimal left carpal tunnel syndrome and possible ulnar neuropathy. On December 12, 2016, a repeat cervical MRI was conducted which revealed mild disc bulging, most prominent at C6-7 with central bulging and annular tear. Mr. Hiett was referred to neurosurgeon Dr. Daniel Cochran and on April 20, 2017 underwent a left ulnar nerve release. He was released by Dr. Cochran maximum medical improvement from a neurosurgical standpoint May 19, 2017 with no restrictions. He was referred to Dr. Jason Leonard for pain management and continued medication maintenance. Mr. Hiett underwent a left C7 selective nerve root block on December 22, 2016; a series of cervical epidural steroid injections (CESIs) on January 26, 2017, February 9, 2017, and February 23, 2017; and a series of C7-T1 CESIs on April 19, 2018, May 17, 2018, and May 31, 2018. He was released by Dr. Leonard's care October 3, 2018.

Issues for Trial. Since there is no question Mr. Hiett's injuries occurred while in the course of his employment with the City, the primary issues to be tried in this case before the Workers' Compensation Commission are the extent of Mr. Hiett's injuries and whether those 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.

Mr. Hiett was rated by Dr. M. Stephen Wilson on June 24, 2019 who opined 21% (\$23,740.50) permanent partial impairment to the whole body regarding the cervical spine, 19% (\$21,479.50) permanent partial impairment to the whole body regarding the left shoulder, 39% (\$34,641.75) permanent partial impairment to the left arm/elbow. He also opined continued care in the form of conservative pain management in regards to his chronic cervical spine, left shoulder, and left arm/elbow pain; assigned a pain management specialist for conservative treatment; and given entitlements for prescription medications or any treatments his treating physician deems necessary in regard these work related injuries. He clarified that Mr. Hiett's left hand/wrist was actually radicular from the cervical spine and left arm/elbow; therefore, the left hand/wrist was not rated. In addition, Mr. Hiett underwent treatment for the cervical spine, but not the thoracic spine or lumbar spine; therefore, the impairment rating was only provided for the cervical spine.

On March 6, 2019, the medical expert for the City, Dr. Kent Hensley opined 6% (\$6,783) permanent partial impairment to the whole body regarding the cervical spine, 7% (\$7,913.50) permanent partial impairment to the whole body regarding the left shoulder, and 10% (\$8,882.50) permanent partial impairment to the left arm. He also opined that continuing medical maintenance would not be required. The City's maximum exposure for total PPD would be \$79,861.75.

Trial. This case proceeded through the normal litigation process; however, Mr. Hiett has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury to the left shoulder, spine/neck, left arm, and left wrist and award permanent partial disability within a range of the doctors' opinions.

Proposed Settlement. The proposed settlement to close this case on a "Joint Petition" basis is for a lump sum payment of \$29,635.25 (less attorney fee).

The settlement offer includes 10% (\$11,305) PPD to the whole body regarding the left shoulder, 6% (\$6,783) PPD to the whole body regarding the cervical spine, and 13% (\$11,547.25) PPD to the left arm/wrist to close the case. It is not unusual on a case involving surgical procedures for an award to be granted that is one-half of the difference of the medical opinions. However, with such wide disparity in the medical opinions, it is also a reasonable expectation for the Court to award one-third of the difference in the medical evidence for each body part to be presented at trial.

It is felt that this settlement closing of the case 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 in the Workers' Compensation case. It is also beneficial to Mr. Hiett in that it provides certainty for a PPD award and would be paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the case is settled in this manner, the City would incur additional costs and fees of Workers' Compensation Administration Fund Tax in the amount of \$592.71; Special Occupational Health & Safety Tax in the amount of \$222.26; and Workers Comp Commission Filing fee in the amount of \$140. 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 \$1,109.11, which brings the total cost of this settlement to the City to \$30,744.36.

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. Acceptance of the settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Hiett 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.