



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1516-60

File ID: R-1516-60

Type: Settlement

Status: Consent Item

Version: 2

Reference: Item No. 18

In Control: City Council

Department: Legal Department

Cost: \$102,193.70

File Created: 11/17/2015

File Name: Workers' Compensation Settlement - Hugh Crawford

Final Action:

Title: **RESOLUTION R-1516-60:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY HUGH CRAWFORD UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *HUGH CRAWFORD V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NO. WCC 2011-11741 Q; 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-1516-60; and, if adopted, direct payment of claims in the amount of \$102,193.70 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 11/24/2015

Agenda Number: 18

Attachments: Crawford Resolution 1516-60.pdf, Crawford Reqs [cc 11-24-15].pdf

Project Manager: Jeanne Snider

Entered by: deedra.vice@normanok.gov

Effective Date:

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1516-60

Body

BACKGROUND:

Hugh Crawford was a firefighter for the City of Norman Fire Department. On October 31, 2011 he filed a workers' compensation claim for cumulative injury to his spine, neck, and left arm and the left shoulder was added on August 2, 2013. The case proceeded through the normal litigation process. Mr. Crawford has agreed to settle his claim for a total amount of \$99,200. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Mr. Crawford began his employment with the City of Norman Fire Department on January 2, 1990. He resigned from the City of Norman Fire Department on April 30, 2012.

Mr. Crawford has undergone surgeries to his neck and back. On February 14, 2013, Dr. Odor performed a C5-C6 and C6-C7 anterior discectomy and fusion with placement of instrumentation. On November 5, 2013, Dr. Odor performed an anterior lumbar decompression and interbody fusion at L4-L5 and L5-S1 with placement of instrumentation. He then had bilateral posterolateral fusion from L4 to S1 via two incisions posteriorly. Dr. Odor released him with permanent restrictions of no repetitive bending, twisting, or lifting greater than 25 pounds on June 19, 2014. A trial is scheduled for December 3, 2015.

Issues for Trial. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Crawford suffered due to his cumulative injury to his spine, neck, left arm, and left shoulder, temporary total disability, and continuing medical maintenance. 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.

On November 13, 2014, Dr. Kent C. Hensley opined 19% impairment to the whole man for his cervical spine with a 9% pre-existing degenerative disease for which he had a total of six epidural steroid injections for a total permanent partial rating of 10% (17,950). Dr. Hensley opined Mr. Crawford had a 21% impairment to the lumbar spine with a 5% pre-existing impairment due to preexisting degenerative disease for a total rating of 16% (\$28,720). The combined total rating from Dr. Hensley is \$46,670.

On July 28, 2014, Dr. Stephen Wilson opined 55% permanent partial impairment to his cervical spine with a pre-existing 5% impairment which would yield a 50% (\$89,750) permanent partial disability. Dr. Wilson opined Mr. Crawford sustained a 58% whole person permanent partial disability to his lumbar spine with a 2% pre-existing impairment which would yield a 56% (\$100,520) permanent partial disability. Consequently, Mr. Crawford's own PPD medical does not rate the left shoulder. The City's maximum exposure for permanent partial disability would be \$190,270.

Trial. This case proceeded through the normal litigation process. However, Mr. Crawford 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 his spine and neck anywhere within the range of the doctors' opinions as stated above.

Proposed Settlement. The proposed settlement to close this case on a "Compromise Settlement" basis is for a lump sum payment of \$99,200.

The offer includes 28% (\$50,260) PPD to the neck and 29% (\$52,055) to the back. It is not unusual on a case involving a surgical procedure for an award to be granted that is one-half of the difference of medical opinions. One-half of the difference in the medical opinions for the neck is 30% (\$53,850) PPD and 36% (\$64,620) for the back. The settlement offer is less than one-half of the difference in the medical evidence for each body part to be presented at trial.

It is not uncommon for awards, following trial, to reflect a decision that splits the opinions expressed in the medical evidence in cases where surgical procedures have been performed, especially a “360 fusion” which fuses the front and the back of the spine. The proposed settlement also includes \$2,000 for disfigurement resulting in a permanent scar from the abdomen all the way around his body. In an injury resulting in serious and permanent disfigurement, the maximum exposure is \$20,000. An award for disfigurement is within the Trial Judge’s discretion.

In addition, the proposed settlement includes continuing medical maintenance in the amount of \$1,500. An award for CMM could result in pain management treatment and/or any other medications authorized by a physician to maintain Mr. Crawford’s condition for an unspecified amount of time.

The total settlement offer proposes a reduction in the amount of \$6,615 for an overpayment of temporary total disability. This overpayment involved another injury to Mr. Crawford’s back on January 29, 2012 which he did not file for a separate workers compensation claim. For this injury, Mr. Crawford received TTD payments; however, the TTD termination date should have ended the day he failed to return to his treating physician which resulted in an overpayment of \$6,615.

It is felt that this settlement closing of this case is fair and reasonable. 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. This settlement is beneficial to Mr. Crawford 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 is settled in this manner, the City would incur additional costs and fees of:

Workers’ Compensation Administration Fund Tax in the amount of \$1,984; Special Occupational Health & Safety Tax in the amount of \$744; and Workers Comp Court 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 \$125.70.

These additional costs and fees total \$2,993.70, which brings the total cost of this settlement to the City to \$102,193.70.

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. Crawford’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. Crawford 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.

