



City of Norman, OK

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

Text File

File Number: R-1213-100

Agenda Date: 2/26/2013

Version: 1

Status: Consent Item

In Control: City Council

File Type: Resolution WCC

Title

RESOLUTION NO. R-1213-100: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY KIM STEPHENS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *KIM STEPHENS V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NO. WCC 2010-02282 J; 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: Kim Stephens was a Plant Operator "D" with the Water Treatment Plant Division of the Utilities Department who filed Workers' Compensation Claim WCC 2010-02282 J on March 2, 2010 for lower back and right side injuries after falling over a pipe. He also alleged consequential depression. The case proceeded through the normal litigation process and a mediation was held on January 30, 2013. Council discussed this case in Executive Session on February 12, 2013. The settlement reached in mediation is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION: Mr. Stephens was hired on March 13, 1989 as a part time custodial worker and through promotions as a Plant Operator "D". He had been employed with the City for approximately 23 years. His injuries are due to a single event on February 16, 2010 when he tripped and fell over a pipe during his shift at the water treatment plant. He landed primarily on his right side, low back, and he also hit his head. He had multiple injuries as a result of the fall: right shoulder (with surgery), neck (with surgery), right hand/wrist (with surgery), right elbow (conservative treatment), back (treated with injections) and post-concussion treatment to his head. Mr. Stephens was initially seen at Norman Regional Occupational Medicine and was conservatively treated. Beginning on March 30, 2010, he continued conservative treatment through Dr. Dennis E. Foster. As indicated above, Mr. Stephens has had several surgeries and other conservative treatment in addition to periods of physical therapy. He has reached maximum medical improvement on all related multiple body injuries. Mr. Stephens separated from employment on March 14, 2012 as permanent restrictions were issued by his treating physician rendering him unable to perform his job duties with the City.

Issues for Trial. Should this case proceed to trial, the issue before the Workers' Compensation Court would be the nature and extent of Mr. Stephen's injury to Mr. Stephen's right side, back and head injuries due to this incident.

Permanent Partial Disability (PPD). On August 3, 2012, Mr. Stephens was evaluated Dr. M. Stephen Wilson, who opined permanent partial disability percentages to the multiple body injuries that totaled \$334,911.35. He also recommended continued medical treatment. This rating is the maximum exposure to the City. On October 12, 2012, the City had Mr. Stephens evaluated Dr. Leroy E. Young who opined permanent partial disability percentages to the multiple body injuries that totaled \$41,644. 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.

PPD is normally paid out on a weekly basis beginning from the date the claimant reached maximum medical improvement. If awarded PPD, Mr. Stephens would be entitled to weekly payments of \$359

(pursuant to the State average weekly wage and maximums), until paid in full. If this option is awarded and the maximum PPD is found (\$344,911.35), Mr. Stephens would receive \$359/week for approximately 18 years. Should the claimant die as a result of a compensable injury or an occupational disease, any unaccrued portions of an award or order shall terminate. If death is by other causes, the payments would continue to the beneficiary. (See O.S. 85 §345(D)).

Permanent Total Disability. In the alternative of permanent partial disability (PPD), Mr. Stephens has also requested permanent "total" disability (PTD). PTD is an option, if awarded, whereby a claimant is paid 70% of his average weekly wages, in this case \$605.12, until such time as the employee reaches the age of maximum Social Security retirement benefits or for a period of 15 years, whichever is longer. In this instance, the City's liability for PTD would be \$605.12/weekly for 15 years, or \$471,993.60.

Mediation and Settlement Offer. Because this case included a potential claim for Permanent Total Disability (PTD), City Staff and Mr. Stephens, with his attorney, attended a court-ordered mediation held on January 30, 2013. Through the mediation process, the Mr. Stephens agreed to settle this claim on a permanent "partial" disability basis in the amount of \$152,575, subject to City Council approval. This settlement amount closes his claim with no continued medical maintenance or future medical expenses nor the possibility of reopening the claim at a later date. He further agreed to be responsible for obtaining an estimate of future medical costs and to set aside that amount for payment thereof and reporting of same to Medicare.

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. Stephens' surgeries and length of employment. This settlement is beneficial to Mr. Stephens 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. The 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.

If this settlement offer is approved, payment to Mr. Stephens and his attorney would be paid in a lump sum of \$152,575. The settlement offer was fully discussed by Council in its executive session held on March 12, 2013.

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 \$3,051.50; Special Occupational Health & Safety Fund Tax in the amount of \$1,144.31; 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 \$4,465.06 which brings the total cost of this settlement to the City to \$157,036.51.

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. Stephens 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.