



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-20

File ID: R-1415-20

Type: Resolution WCC

Status: Consent Item

Version: 1

Reference:

In Control: City Council

Department: Legal Department

Cost: \$123,349.40

File Created: 08/18/2014

File Name: WCC Compromise Settlement Resolution for
Rodney Burton

Final Action:

Title: RESOLUTION NO. R-1415-20: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF CLAIMS FILED BY RODNEY BURTON UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF RODNEY BURTON V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NOS. WCC-2010-10900F, 2010-11090J, 2011-06594Y AND 2011-11026R; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS 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 JUDGMENTS FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1415-20; and, if adopted, direct payment of claims in the amount of to \$123,349.40 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 08/26/2014

Agenda Number:

Attachments: Table 1, Table 2, R-1415-20.pdf, Burton Purchase Reqs.pdf

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: denise.johnson@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1415-20

Body

BACKGROUND: Rodney Burton was a Maintenance Worker I employee with the Line Maintenance Division of Utilities Department who filed four (4) Workers' Compensation Cases. The cases have proceeded through the normal litigation process. These claims were mediated on August 8, 2014, and a settlement was reached for a lump sum payment of \$92,811 in permanent partial disability (PPD) and \$27,189 to closeout continued medical maintenance (CMM). This matter was discussed by City Council in Executive Session on August 19, 2014. The settlement offer is being presented to City Council at this time for formal consideration. It is recommended that

this settlement be accepted.

DISCUSSION: Mr. Burton was hired on August 18, 2008 and separated from employment on March 16, 2012. During his employment with the City, he filed four (4) Workers' Compensation Claims which are discussed in detail below.

WCC 2010-10900F (left side, ribs, body, depression). Mr. Burton filed this claim as a result of a single incident on May 28, 2010, alleging multiple injuries when he was yanked by a pressure hose causing injury to his left shoulder, left elbow, right ribs, with consequential depression. A trial was held on July 8, 2011, and the Workers' Compensation Court awarded PPD in the amount of \$53,010 which consisted of 29% to the left shoulder, 2% to the right ribs, and no additional PPD to other body parts, with continued medical maintenance. The PPD award has been paid in full. Pursuant to the Court's Award, the City has continued to pay for continued medical maintenance for doctor appointments and prescriptions. These continued medical maintenance costs have run around eight thousand seven hundred dollars per year.

Mr. Burton negotiated a settlement of continued medical maintenance in the amount of \$27,189 which equates to a little over three (3) years of the average cost of maintenance paid by the City to date. As required under Federal law, this amount will be designated as a Self-Administered Medicare Set Aside and be administered by Mr. Burton. Further, this settlement would be a full, final and complete settlement of this case and would foreclose any future claims.

WCC 2010-11090J (back, body, depression). Mr. Burton filed this claim as a result of a single incident on September 27, 2010 claiming injury to his back, body and depression when he fell into a 6' sink hole on December 6, 2008. Mr. Burton received conservative treatment including epidural injections and physical therapy. He was released at maximum medical improvement with a permanent 50-pound weight restriction.

Mr. Burton negotiated a settlement of this claim for 10% PPD to his back which equates to \$17,100. This settlement would be a full, final and complete settlement of this case and would foreclose any future claims.

WCC 2011-06594Y (head, neck, body, depression) Mr. Burton filed this claim as a result of a single incident on June 22, 2011 claiming injury to his head, neck and body when an airlock failed that caused the machinery to strike him, knocking him to the ground and hitting his head on a curb on March 15, 2011. Medical records indicate there are no significant changes in the cervical spine.

Mr. Burton negotiated a settlement of this claim as follows: 4% PPD to the head, 5% PPD to the neck and 2% PPD to the left wrist/hand. These percentages equate to \$15,956. This settlement would be a full, final and complete settlement of this case and would foreclose any future claims.

WCC 2011-11026R (left/right shoulders, body, depression). Mr. Burton filed this claim as a result of a single incident on October 11, 2011 alleging reinjury to his left shoulder on September 9, 2011, when he stepped off a platform while holding a piece of fence and his left arm was yanked. Medical records indicate that he had one surgery on his left shoulder. He added a right shoulder injury as a consequential injury on February 14, 2012 due to overuse of that shoulder because of lack of strength in the left shoulder. The City denied the right shoulder consequential claim. However, the Court found the right shoulder compensable on September 9, 2012. Two (2) surgeries were also performed on the right shoulder.

Mr. Burton negotiated a settlement of this claim for 13% PPD to the left shoulder, over and above the prior adjudicated 29% PPD, and 24% PPD to the right shoulder which equates to \$59,755.

Mr. Burton had a psychological evaluation and attending counseling sessions. He was released at MMI from a psychological standpoint on April 25, 2014. The proposed settlement also closes any future claims for psychological overlay.

Settlement offers. The Claimant, through his attorney, offered to settle the three (3) remaining open cases on a Compromise Settlement basis for a lump sum PPD payment of \$92,811 and to close out the previously adjudicated case for continuing medical maintenance for \$27,189. (See Table 1 attached). This brings the total negotiated PPD and closeout of the continued medical maintenance amount to \$120,000.

If these settlements are approved, the City will incur additional costs and fees as follows: Workers' Compensation Administrative Fund in the amount of \$1,856.22; Occupational & Health Trust Fund in the amount of \$696.08; Workers' Compensation Filing Fees of \$420.00; and Cleveland County District Court Filing Fees in the amount of \$377.10.

The total amount of these settlements is \$120,000 and costs and fees of \$3,349.40 is \$123,349.40. (See Table 2 attached).

The settlement reached during mediation represents a reasonable determination of permanent partial disability on the open injuries. The settlement is beneficial to Mr. Burton because it provides certainty for the PPD award, and it will be paid in a lump sum rather than in weekly payments. The settlement offer is beneficial to the City in that it is a full, final, and complete settlement of any claims that may arise out of these particular injuries. The City will be insulated from future claims arising out of these injuries.

RECOMMENDATION: For the reasons outlined above, it is believed that these settlements are fair, reasonable and in the best interest of the City. If approved, the settlements will be paid to Mr. Burton and his attorney as set out in Table 1. However, once the settlements are filed with the Workers' Compensation Court, it will constitute a judgment against the City of Norman that will be certified to the Cleveland County District Court. The judgment will then be placed on the property tax rolls for collection over the next three-year period in accordance with 85 O.S. § 301, 51 O.S. § 159, and 62 O.S. § 361, *et seq.* This will reimburse the City's Risk Management Fund over the next three-year period. If you have questions or need additional information, please let me know.