



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-2021-9**

**File ID:** GID-2021-9      **Type:** Court Order      **Status:** Consent Item

**Version:** 2      **Reference:** Item 19      **In Control:** City Council

**Department:** Legal Department      **Cost:** \$9,240.00      **File Created:** 07/31/2020

**File Name:** Workers' Comp Commission Order - James Darin Morgan      **Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$9,240 REGARDING JAMES DARIN MORGAN VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2019-07496 L.

**Notes:** ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and if approved, authorize compliance with the Workers' Compensation Order and direct payment of claims in the amount of \$9,240, which will constitute judgment against the City of Norman.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 08/11/2020

**Agenda Number:** 19

**Attachments:** -7-27-20 Filed Order - Morgan

**Project Manager:** Jeanne Snider, Assistant City Attorney

**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:
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### Text of Legislative File GID-2021-9

Body

**BACKGROUND:** James Darin Morgan is a police sergeant for the City of Norman's Narcotics Division of the Police Department. Mr. Morgan filed Oklahoma Workers Compensation Commission Case 2019-07496 L on November 26, 2019 alleging cumulative trauma to the bilateral ears with a date of awareness of August 16, 2019 and last date of exposure of September 4, 2019 from repetitive injurious exposure to K-9 barking, SWAT training with firearms, and police vehicle with sirens/radio. The City denied this claim. The case proceeded through the normal litigation process. A trial was held July 20, 2020. On July 27, 2020 the

Court found Mr. Morgan hearing loss compensable and awarded 8% permanent partial disability to the bilateral ears for the total sum of \$9,240 as well as continuing medical maintenance. It is recommended that the City comply with this Order.

**DISCUSSION:** Mr. Morgan is a twenty-one (21) year employee of the City of Norman who was hired as a police officer March 12, 1999, reclassified to master police officer September 12, 2003, and police sergeant March 22, 2010.

Due to noticeable hearing changes at work and home the summer of 2019, Mr. Morgan was seen at Oklahoma Otolaryngology Associates on August 23, 2019 and an audiogram dated August 16, 2019 was reviewed revealing bilateral sensorineural hearing loss with left asymmetry, total decibel loss of 35% on the right and 65% on the left. Hearing aids were recommended as well as a magnetic resonance imaging (MRI) of the internal auditory canals due to the asymmetry in hearing loss and bilateral tinnitus. The MRI was performed on September 4, 2019. Mr. Morgan returned to Oklahoma Otolaryngology Associates on September 11, 2019 and it was reported that the MRI study revealed no acute or suspicious findings. Hearing aids were again recommended.

Issues for Trial. The issues tried on July 20, 2020, before the Oklahoma Workers' Compensation Commission were compensability, nature and extent of permanent partial disability benefits, and continuing medical maintenance. 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.

Evaluations. On September 2019, Mr. Morgan was rated by Dr. Lonnie Litchfield. Dr. Litchfield reported that Mr. Morgan had reached his maximum medical improvement and opined 34.5% permanent partial impairment to the binaural hearing system. He also opined continued care to include being assigned to a board-certified otorhinolaryngologist and audiologist, entitlements for hearing aids, periodic testing, or any treatment his treating physicians deems necessary. Mr. Morgan returned to Dr. Litchfield on November 6, 2019 due to an updated audiogram and updated his permanent partial impairment benefit from 34.5% to 13.8%. The City's maximum permanent partial impairment exposure would be \$15,939.

The City had Mr. Morgan evaluated by Dr. Kent Hensley on February 13, 2020 who opined 0% binaural impairment and no additional impairment for tinnitus. The Workers' Compensation Commission Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial.

Court Award: The case was heard by the Workers' Compensation Commission on July 20, 2020. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on July 27, 2020, awarding 8% (\$9,240) permanent partial impairment to the bilateral ears.

The Court's findings are set out in Paragraph Nos. 2 through 4 of the Order, as follows:

-1- "Claimant sustained compensable cumulative trauma injuries to the LEFT EAR and RIGHT

EAR of which the major cause was the combined effect of repetitive physical activities extending over a period of time in the course and scope of claimant's employment as a police officer of the City of Norman."

-2- "Claimant has sustained an 8% permanent partial disability to the BILATERAL EARS (due to bilateral hearing loss and tinnitus) as a result of cumulative trauma injuries with a date of awareness of August 16, 2019. At the claimant's rate of compensation, this is equal to an award of \$9,240, which has accrued in its entirety and shall be paid to claimant in a lump sum."

-3- "Claimant's attorney is entitled to an attorney fee not to exceed 20% of the permanent partial disability awarded herein."

-4- "Claimant is entitled to and respondent shall provide continuing medical maintenance for claimant's BILATERAL EARS with an audiologist or otolaryngologist to be designated by respondent. Continued medical maintenance shall be limited to evaluation of the need for hearing aids, the providing of hearing aids, and the maintenance of hearing aids."

As can be noted in Paragraph No. 2 of the Court's Order, PPD compensation is expressed in terms of "weeks" of compensation with an accompanying "weekly wage rate." Workers' Compensation awards are normally paid at the weekly rates over a period of time. Mr. Morgan's weekly wage PPD rate is \$350. In this instance, the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Morgan and his attorney will be paid the accrued lump sum of \$9,240.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 5 through 8. Special Occupational Health and Safety Fund Tax in the amount of \$69.30, Workers' Compensation Administration Fund in the amount of \$184.80, filing fee to the Workers' Compensation Court in the amount of \$140; and Cleveland County filing fee in the amount of \$154.14. The costs and fees total \$548.24, which brings the total cost of this Order to \$9,788.24. Adequate funds are available in the Order/Settlements Account (43330102-42131).

**RECOMMENDATION:** The issues tried on July 20, 2020, were compensability, the extent of Mr. Morgan's injury and whether this injury to his bilateral ears was permanent in nature, and continued medical maintenance. The Court Award in this case is within the medical evidence submitted. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. It is recommended that the City move forward to comply with this Order.

Acceptance of the Order would require the award to be paid in a lump sum. The Order 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.