



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1415-38

File ID: GID-1415-38

Type: Court Order

Status: Consent Item

Version: 2

Reference: Item 15

In Control: City Council

Department: Legal Department

Cost: \$21,719.50

File Created: 03/04/2015

File Name: GID-1415-37 Harold D. Glover WC Order

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$21,719.50 REGARDING HAROLD D. GLOVER VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2010-09686 F.

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 \$21,719.50, which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/10/2015

Agenda Number: 15

Attachments: Payment Schedule Glover DOA 2-25-15, Glover - Order, PR Glover.pdf

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-1415-38

Body

BACKGROUND: Harold D. Glover was a firefighter who filed Workers' Compensation Case No. 2010-09686 F on August 24, 2010 alleging a work related cumulative injury to his left knee on June 29, 2010. The case proceeded through the normal litigation process. A trial was held on October 31, 2012, awarding Mr. Glover 23% permanent partial disability (non-operational) to his left leg.

On July 19, 2013, Mr. Glover filed for authorization of left knee surgery. The City questioned whether the requested surgery was reasonable and necessary and whether Mr. Glover had sustained a change of condition for the worse since the prior Order on October 31, 2012. On March 18, 2014, the Court sustained a change of physical condition for the worse to his left knee and on April 1, 2014, Mr. Glover had knee replacement surgery. A trial was held on February 20, 2015 and on February 25, 2015 the Court awarded Mr. Glover the sum of \$21,719.50 in additional permanent partial disability benefits. This item is presented to Council to consider acceptance of this Court Order in this case.

DISCUSSION: Mr. Glover is a 34 year employee of the City of Norman who was hired on September 5, 1975

and retired as Captain for the Fire Department on June 29, 2010.

Issues for Trial. The issues to be tried before the Workers' Compensation Court was the nature and extent of additional PPD due to the previous adjudicated change of condition for the worse. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions regarding the extent of permanent partial impairment.

Evaluations. Mr. Glover was evaluated on July 10, 2014 by Dr. Wilson. Dr. Wilson opined 54% with 23% preexisting to his left leg for a total permanent partial impairment of 29% (\$28,630.25) and continued medical maintenance. Dr. Wilson advised 0% psychological overlay. This would be the City's maximum exposure. The City had Mr. Glover evaluated by Dr. Hensley on August 14, 2014, who opined 37% with 25% preexisting to his left leg for a total permanent partial impairment of 12% (\$11,847), no continued medical maintenance and 0% psychological overlay. The Workers' Compensation Court 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 Court on February 20, 2015. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on February 25, 2015, awarding 22% permanent partial disability to the left leg. The Court's findings are set out in Paragraph Nos. 5 and 7 of the Order, as follows:

-5- "THAT as a result of said change of condition, claimant has sustained 22 percent permanent partial disability to the LEFT LEG, over and above the 23 percent previously awarded (FOR A TOTAL OF 45% FOR THIS INJURY ALONE), for which claimant is entitled to compensation for 60.5 weeks at \$359.00 per week or a total of \$21,719.50 of which 38 weeks have accrued and shall be paid in lump sum of \$13,642.00."

-7- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$13,642.00 and pay the balance of said award at the rate of \$359.00 per week until the total award of \$21,719.50 (less attorney fee) has been paid to claimant."

As can be noted in Paragraph No. 5 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. Glover's weekly wage PPD rate is \$359. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If accepted by Council, Mr. Glover and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional three weeks that will have elapsed for processing to allow for Council consideration. The total accrued portion of the award to be paid in a lump sum is \$19,062.90. The balance of the award of \$2,656.60 to be paid in weekly payments of \$359 until paid in full as set forth in the Payment Scheduled attached.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 8 and 9: Special Occupational Health and Safety Fund Tax in the amount of \$162.90; Workers' Compensation Administration Fund in the amount of \$434.39; filing fee to the Workers' Compensation Court in the amount of \$130.00; and Cleveland County filing fee in the amount of \$125.70. The costs and fees total \$852.99. The total cost of this Order is \$22,572.49.

The City's other option would be to appeal the ruling of the trial judge. The standard of review would require the City to prove the order was against the clear weight of the evidence. Given the trial judge's ruling in within the range of the medical evidence presented at trial, any additional relief through appeal is highly unlikely.

RECOMMENDATION:

The issues tried on February 20, 2015, were how much additional permanent partial disability, if any, was sustained by Mr. Glover due to his change of condition for the worse and subsequent medical treatment required therefrom. 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 payments as outlined in the attached Payment Schedule. 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.