



City of Norman, OK

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

Master

File Number: WC 2010-09686

File ID: WC 2010-09686

Type: Minutes

Status: Consent Item

Version: 1

Reference: Item No. 21

In Control: City Council

Department: Legal Department

Cost: \$53,100.25

File Created: 12/12/2012

File Name: Glover 2010-09686 F

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$53,100.25 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 \$53,100.25 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 12/18/2012

Agenda Number: 21

Attachments: Table, Orders, Requisitions

Project Manager: Jeanne Snider

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:
---------------	--------------	-------	---------	----------	-----------	-----------------	---------

Text of Legislative File WC 2010-09686

Body

BACKGROUND:

Harold Glover was a Fire Captain with the Norman Fire Department. He was hired on September 5, 1975 and had been employed with the City for approximately 34 years when he retired on June 20, 2010. Mr. Glover filed Workers' Compensation Claim WCC 2010-0686 F on August 24, 2010, cumulative injury to his left knee, body and consequential depression. The case proceeded through the normal litigation process and a trial was held on October 29, 2012, with a decision rendered on October 31, 2012. Council discussed this case, as well as two others filed by Mr. Glover in executive session on December 11, 2012. The Court Order is being presented to City Council at this time. It is recommended that this Order be accepted.

DISCUSSION:

Mr. Glover was hired by City of Norman on September 5, 1975 as a Firefighter with the City of Norman Fire Department. During the course of his employment, he was promoted to Fire Driver Engineer on January 2, 1981 and finally as Fire Captain on August 1, 1986. He retired on June 20, 2010 as a Fire Captain. Upon retirement, Mr. Glover filed three Workers' Compensation Claims: hearing loss; left knee; and back. The

hearing loss claim has been previously litigated and resolved through acceptance of the Court Order awarding benefits. The back claim is currently pending. The left knee claim is before Council in this item.

WCC 2010-09686 F (Left Knee)

Nature of Claim. On August 24, 2010, Mr. Glover filed this Workers' Compensation Claim for cumulative injury to his left knee and body during his employment. The claim also alleges consequential depression.

Issues for Trial. The City denied Mr. Glover's claim on January 24, 2011. During Mr. Glover's employment, there were no reported on-the-job injuries concerning the left knee. On June 28, 2011, the Court determined that his cumulative injury was compensable and awarded Mr. Glover eight (8) weeks of temporary total disability in the amount of \$5,464 which was paid on July 15, 2011. The Court further instructed the City to "pay all reasonable and necessary medical expenses incurred as a result of said injury."

Thereafter, Mr. Glover was seen by Dr. Thomas Flesher who opined that Mr. Glover suffered from medial compartment osteoarthritis and that he had no "mechanical" symptoms. He was treated with steroid injections. Mr. Glover reached maximum medical improvement, without surgery, on June 18, 2012. However, Dr. Anderson opined that at some point Mr. Glover would need a left knee replacement.

The issues presented at trial were the issues of nature and extent of his cumulative injury to the left knee and whether there is consequential depression (psychological overlay), and whether there is a need for continuing medical maintenance. Permanent Partial Disability ("PPD") is a factual determination made by the Workers' Compensation Court trial judge based upon the evaluating doctors' opinions regarding the extent of permanent partial impairment. The Workers' Compensation Court Judge is free to accept either doctors' opinion or find anywhere within the range of competent medical evidence presented.

On August 2, 2012, Mr. Glover was evaluated by Dr. Stephen Wilson, who opined 33% PPD (35% less 2% pre-existing) to his left knee and 16% PPD for psychological overlay. These ratings total \$62,286.50 PPD. On October 8, 2012, Mr. Glover was evaluated by the City's doctor, Dr. Kent Hensley, who opined 10% PPD (20% less 10% pre-existing) to his left knee and 0% for psychological overlay. These ratings equate to \$9,872.50 to the left knee and \$0 for psychological overlay. The City's maximum exposure to compensate Mr. Glover for his injury is \$62,286.50.

Court Award. This case was heard by the Workers' Compensation Court on October 29, 2012. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on October 31, 2012 awarding 3% PPD for psychological overlay and 23% PPD to the left leg. Because the City initially denied this Claim and the Court found it compensable, temporary total disability was due retroactively. There were some discrepancies in the Order dated October 31, 2012 and an Order Nunc Pro Tunc (correcting the discrepancies only) was filed on December 10, 2012. The Court's findings are set out as follows pursuant to the Orders. (See Orders attached):

-3-

"THAT as a result of said injury, claimant was temporarily totally disabled from JUNE 29, 2011 to APRIL 23, 2012, for which time claimant is entitled to compensation for 42 weeks and 5 days in the total amount of \$30,472.50."

When the Court found the claim compensable, they ordered 8 weeks to TTD to be paid to Mr. Glover. That amount is \$5,464 and was paid to Mr. Glover in July 2011.

-4-

"THAT as a result of said injury, claimant sustained 3 percent permanent partial disability to the PSYCHOLOGICAL OVERLAY (depression), 23 percent permanent partial disability to the LEFT LEG over and above pre-existing 2 percent (meniscal tear, chondral surface injuries, loss of range of motion, weakness, loss of function, surgery eventually required), for which claimant is entitled to compensation for 78.25 weeks at \$359.00 per week, or the total amount of \$28,091.75 of which 22 weeks have accrued and shall be paid in a lump sum of \$7,898.00."

As can be noted in Paragraph No. 4 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 an additional four weeks will accrue for processing and placing on the Council Agenda.

-5-

"THAT it would be to the best interests of claimant that \$7,022.94 (25%) be commuted for economic necessity."

The Court also ordered that Mr. Glover be evaluated by an independent medical examiner to determine the need for continued medical as follows:

-7-

"THAT the court requires the assistance of an independent medical examiner, to determine if claimant is in need of continuing medical maintenance, for which a separate order will be issued."

-8-

"THAT the issue of continuing medical maintenance is RESERVED pending the report of the independent medical examiner."

-10-

"THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$38,370.50, and the amount commuted (\$7,022.94) pay the balance of said award at the rate of \$359 per week until the total award of \$58,464.25 (less attorney fee and credit due respondent) has been paid to claimant."

For clarity, "credit due respondent" is the 8 weeks of TTD (\$5,464) paid to Mr. Glover in July 2011. This amount is deducted from the total amount of TTD awarded in October. (See Table attached)

If approved by Council, Mr. Glover and his attorney will be paid the accrued lump sum amounts, including the commute amount, and attorney's fee. (See Table attached)

The City will incur additional costs and Workers' Compensation filing fees in the total amount of \$912.53 as set out in Paragraph Nos. 11 and 12 of the Order, plus Cleveland County filing fee of \$125.70. (See Payment Table attached)

The total cost of this Order to \$54,138.47.

RECOMMENDATION:

The issues tried on October 29, 2012, were the nature and extent, consequential psychological overlay, commutation and continuing medical maintenance in addition to the award of additional TTD. The Award is within the medical evidence submitted in that the PPD award is slightly higher than one-third the difference between the medical evaluations. In light of the years of service to the City, 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 attached Payment Table. 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.