



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1516-91

File ID: R-1516-91

Type: Resolution WCC

Status: Consent Item

Version: 2

Reference: Item 22

In Control: City Council

Department: Legal Department

Cost: \$48,985.00

File Created: 03/15/2016

File Name: Workers Compensation Settlement-Scottie Williams
v. City of Norman

Final Action:

Title: RESOLUTION R-1516-91: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENTS OF THE CLAIMS FILED BY SCOTTIE WILLIAMS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF SCOTTIE WILLIAMS V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NOS. 2015-04405 K, 2015-04406 Q, AND 2015-04408 A; 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 R-1516-91; and, if adopted, direct payment of claims in the amount of \$48,985 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 03/22/2016

Agenda Number: 22

Attachments: Williams Resoltn, Williams Reqs

Project Manager: Jeannie 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 R-1516-91

Body

BACKGROUND: Scottie Williams began his employment with the City of Norman Utilities Department on January 23, 1984, as a Sanitation Worker I. He was promoted to Sanitation Worker II in 1995, Utilities Supervisor in 1998 and Utilities Superintendent on July 17, 2013. Mr. Williams was separated from the City of Norman employment on June 23, 2014. He filed three separate workers' compensation claims as outlined below.

The first workers' compensation claim was filed on June 17, 2015 for cumulative injury to the neck from

repetitive work with awareness of September 2002. The second was filed June 18, 2015 for cumulative injury to the back from repetitive work with awareness of October 2006. The third was filed June 22, 2015 for cumulative injury to the left shoulder from repetitive work with awareness of November 2011. The cases proceeded through the normal litigation process. A court ordered Mediation was held on February 16, 2016, wherein a settlement agreement was reached. Prior to a trial being scheduled, Mr. Williams has agreed to settle his claims 2015-04405 K (Neck) in the amount of \$14,220, 2015-04406 Q (back) in the amount of \$20,230, and 2015-04408 A (Left Shoulder) in the amount of \$14,535 for a total amount of \$48,985.

The above settlement offer is being presented to City Council at this time. It is recommended that the settlement be accepted.

DISCUSSION:

WCC 2015-04405 K (Neck)

In 2002 Mr. Williams developed pain in his neck and underwent C5-C6 anterior cervical discectomy and fusion with anterior plating by Jeffrey Nees, M.D April 2004. In 2013 he had increased pain in his neck and was seen by J. Michael Alvis, M.D. in October 2013. He was evaluated and sent for MRI scans which revealed minimal smooth bulging above the surgery and a tiny midline disc bulge. At that time it was recommended Mr. Williams undergo cervical epidural steroid injections. He received two injections in December 2013.

WCC 2015-04406 Q (Back)

In approximately 2004 Mr. Williams developed onset of pain in his low back. He underwent L5-S1 fusion surgery performed by Dr. Nees in August 2006. Mr. Williams subsequently developed an abdominal wall incision cellulites and did not fuse. Dr. Nees performed a second procedure August 2007 for an L5-S1 pseudoarthrosis. He underwent a L5-S1 posterior lateral fusion with placement of hardware. In November 2007, he was involved in an altercation with an employee which resulted in low back, neck and left sided jaw pain. In February 2008, Dr. Nees requested a CT scan of the lumbar spine which revealed a posterior fusion at the lumbosacral junction with prosthetic disc at L5 and associated anterior fixation plate. He had disc bulges at L2, L3 and slightly more prominent at L4. Mr. Williams was also evaluated by Dr. Alvis and an MRI was performed November 2013. The MRI showed good surgical construct and no evidence of any further disc herniations.

WCC 2015-04408 A (Left Shoulder)

In 2011 Mr. Williams developed gradual onset of pain in the left shoulder. He was seen by M. Sean O'Brien, D.O. for evaluation. An MRI revealed a partial thickness rotator cuff tear and he was given an injection, prescribed anti-inflammatories and referred to physical therapy. A second MRI was performed on the left shoulder October 2012 and an EMG on October 2012. Dr. O'Brien noted in November 2012, the MRI revealed AC arthrosis with tendinosis. Mr. Williams was given another injection and sent for additional physical therapy. Dr. O'Brien recommended an arthrogram December 2012; however, Mr. Williams rejected additional treatment from Dr. O'Brien citing personal family issues.

Cumulative Trauma Cases and Date of Last Exposure. Cumulative trauma cases are different than single event injuries. They are micro injuries which are repetitive in nature and engaged in over a period of time from employment activities. Although Mr. Williams' neck surgery was in 2004, with injections in 2013, low back treatment in 2006 and left shoulder treatment in 2011, he was last exposed to the hazard of the occupation cumulative trauma for which the claims are made as of the last day of his employment with the City in 2014.

Issues for Trial. The issue to be tried in this case before the Workers' Compensation Court is how much, if any, permanent disability Mr. Williams suffered due to his cumulative trauma of the neck and continuing medical maintenance. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

On June 10, 2015, Andrew John, M.D. opined Mr. Williams sustained 41% (\$48,585) permanent partial impairment to his cervical spine, 47% (\$67,915) permanent partial disability to his lumbar spine and 23% (\$37,415) permanent partial disability to his left shoulder. Maximum exposure to the City would be \$153,645.

On October 5, 2015, Kent Hensley, M.D. opined Mr. Williams sustained 16% (\$18,960) permanent partial impairment to his cervical spine, 20% (\$28,900) permanent partial disability to his lumbar spine and 5% (\$6,460) permanent partial disability to his left shoulder. Dr. Hensley also opined none of the alleged cumulative trauma was work related. It is very unlikely that the court would award 0% permanent partial disability.

Trial. The cases proceeded through the normal litigation process. However, Mr. Williams has agreed to a settlement of the cases as outlined below. If trials were held, the Judge could determine nature and extent of the injuries to anywhere within the range of the doctors' opinions as stated above.

Proposed Settlement. The proposed settlement to close the three cases on a "Compromise Settlement" basis is for a lump sum of \$48,985.

The offer includes 12% (\$14,220) PPD for the Neck, 14% (\$20,230) PPD for the Low Back and 9% (\$14,535) PPD for the Left Shoulder. As noted above the maximum exposure for permanent partial disability is \$48,585 for the neck, \$67,915 for the low back and \$37,415 for the left shoulder for a total of \$153,645. It is not unusual on a case involving a surgical procedure for an award to be granted that is one-half of the difference of the medical opinions. The settlement offer is less than one-half of the difference in the medical evidence for each body part to be presented at trial.

It is felt that the settlement closing the three cases is fair and reasonable. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims and closes out any continued medical treatment in these Workers' Compensation cases. This settlement is beneficial to Mr. Williams in that it provides certainty for an award. It is also beneficial to him because the settlement amounts are being paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the case is settled in this manner, the City would incur additional costs and fees of:

WCC 2015-04405 K (Neck)

Workers' Compensation Administration Fund Tax in the amount of \$284.40; Special Occupational Health & Safety Tax in the amount of \$106.65; and Workers Comp Court Filing fee in the amount of \$140.00.

WCC 2015-04406 Q (Back)

Workers' Compensation Administration Fund Tax in the amount of \$404.60; Special Occupational Health & Safety Tax in the amount of \$151.73; and Workers Comp Court Filing fee in the amount of \$140.00.

WCC 2015-04408 A (Left Shoulder)

Workers' Compensation Administration Fund Tax in the amount of \$290.70; Special Occupational Health & Safety Tax in the amount of \$109.01; and Workers Comp Court Filing fee in the amount of \$140.00.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70 for the three cases.

These additional costs and fees total \$1,892.79, which brings the total cost of this settlement to the City to \$50,877.79.

RECOMMENDATION: For the reasons outlined above, it is believed the Compromise Settlements are fair, reasonable, and in the best interest of the City. Mr. Williams served the City Sanitation Department for over thirty years. In light of Mr. Williams' length of employment with the City, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the Compromise Settlements would require the payments as outlined above. If approved, the settlements amount would be paid to Mr. Williams and his attorney in a lump sum. The Compromise settlements 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.