



# City of Norman, OK

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

## Master

**File Number: GID-1314-53**

**File ID:** GID-1314-53

**Type:** Court Order

**Status:** Consent Item

**Version:** 2

**Reference:** Item No. 24

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$29,070.00

**File Created:** 12/03/2013

**File Name:** WCC Court Order Starkey

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$29,070 REGARDING WILLIAM BRIAN STARKEY VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2012-09890 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 \$29,070 which will constitute judgment against the City of Norman.

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

**Agenda Date:** 12/10/2013

**Agenda Number:** 24

**Attachments:** PPI ORDER 11-21-13, PR

**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 GID-1314-53

body

**BACKGROUND:** William "Brian" Starkey is a Fire Captain with the Norman Fire Department. He filed Workers' Compensation Case No. WCC-2012-09890 L on August 29, 2012, alleging injury to his left shoulder on April 16, 2012. The case proceeded through the normal litigation process. A trial was set on November 19, 2013. Prior to trial, through settlement negotiations, Mr. Starkey offered to settle his claim for the amount of \$29,070, and the agreed settlement was presented and approved by the Court. The Court Award is being presented to City Council at this time. It is recommended that this Court Award be accepted.

**DISCUSSION:** Nature of Claim. Mr. Starkey is a Fire Captain with the Norman Fire Department. He was hired on January 2, 1990 as a firefighter. He was promoted on March 1, 1999 to Fire Driver Engineer and to his current position as Fire Captain on December 5, 2003. He alleges a single incident injury to his left shoulder on April 16, 2012 while lifting a patient.

Issues for Trial. There is no question that Mr. Starkey's injury arose out of and in the course of his employment with the City. Therefore, the issue before the Workers' Compensation Court was the nature and extent of Mr. Starkey's injury or the Permanent Partial Disability (PPD) to Mr. Starkey's left shoulder due to this incident.

Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and/or medical records regarding the extent of permanent partial impairment.

Medical Treatment. Mr. Starkey was initially treated at Norman Regional Occupational Medicine on April 19, 2012. After a period of conservative treatment, Mr. Starkey had arthroscopic surgery by Dr. David Bobb on June 18, 2012. Thereafter, he went through a program of physical therapy. He changed physicians on December 11, 2012. After a period of further treatment, he was released to maximum medical improvement on April 30, 2013, with no permanent work restrictions.

Evaluations. On June 21, 2013, Mr. Starkey was evaluated by Dr. Lance E. Rosson, who opined 35% PPD to the left shoulder for his injury. This rating equates to \$56,525 PPD, the maximum exposure to the City. The City's doctor, Kent Hensley, evaluated Mr. Starkey on August 13, 2013, who opined 11% PPD to the left shoulder, which equates to \$17,765, the minimum exposure to the City.

The Worker's Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial. Therefore, the City's maximum exposure to compensate Mr. Starkey for his injury is a total of 35% PPD to the left shoulder or \$56,525.

On November 19, 2013, the case was tied before the Workers Compensation Court, primarily through the submission of medical evidence and arguments to the Court.

Court Order. The Court entered its Order on November 21, 2013. The Court's Order sets out as follows:

-4- THAT as a result of said injury, claimant sustained 18 percent permanent partial impairment to the LEFT SHOULDER, for which claimant is entitled to compensation for 90 weeks at \$323.00 per week, or the total amount of \$29,070.00 (of which 29 weeks have accrued and shall be paid in a lump sum of \$9,367.00 [sic])

The Court Order is in keeping with or lower than what the City has been ordered to pay in past years in similar cases by the Workers' Compensation Court which is lower than one-third the difference in the medical opinions.

Furthermore, the Order specifies that the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$581.40; Special Occupational Health & Safety Fund Tax in the amount of \$218.03; Workers Comp Court Filing Fee in the amount of \$140.00; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total \$1,065.13, which brings the total cost of this settlement to the City to \$30,135.13.

**RECOMMENDATION:** For the reasons outlined above, it is believed the Court Order is fair, reasonable, and in the best interest of the City. Acceptance of the Court Order would require the payments as outlined above. If approved, the Court 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.