



City of Norman, OK

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

Master

File Number: GID-1213-86

File ID: GID-1213-86

Type: Court Order

Status: Consent Item

Version: 1

Reference: Item No. 27

In Control: City Council

Department: Legal Department

Cost: \$37,145.00

File Created: 06/13/2013

File Name: WCC 2012-12849A Richard Hartless

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$37,145 REGARDING RICHARD HARTLESS VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-2012-12849A.

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 \$37,145 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 06/25/2013

Agenda Number: 27

Attachments: Court Order 6-6-13, Payment Schedule 6-13-13, Pr Hartless

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-1213-86

body

BACKGROUND: Richard Hartless, a Firefighter for the Norman Fire Department, filed Workers' Compensation Case No. WCC 2012-12849 A on November 14, 2012, alleging injury as a result of a single injury incident on August 25, 2012. The case has proceeded through the normal litigation process. A trial was held on May 30, 2013, and the Court awarded Mr. Hartless \$37,145. The Court Order is now being presented to City Council for consideration. It is recommended that the City comply with this Order.

DISCUSSION: Nature of Claim. Mr. Hartless was hired by the City on July 22, 1985 with the Norman Fire Department. He filed a Workers' Compensation claim alleging an injury to his right shoulder on August 25, 2012 while lifting a patient.

Mr. Hartless was initially seen at Access Medical Center on August 31, 2012. Thereafter, he was seen at Norman Regional Occupational Medicine and was diagnosed with right rotator and biceps strain. An MRI was taken on September 21, 2012 before being referred to Dr. David Bobb for further evaluation and treatment.

Arthroscopic surgery was performed on October 17, 2012 for biceps tenodesis repair, larger superior labral tear repair and resection of the distal clavical. After a period of physical therapy, he reached maximum medical improvement and he was released to full work duty with no restrictions effective January 22, 2013.

Issues for Trial. There is no question Mr. Hartless' injury arose out of and during the course of his employment with the City. Therefore, the only issues before the Workers' Compensation Court in this case were the nature and extent of Mr. Hartless' injury, commutation of the award, and continuing medical maintenance. These are determined by the trial judge based on the claimant's testimony and expert medical evidence. The Workers' Compensation Court Judge is free to accept either doctors' opinion or find anywhere within the range of competent medical evidence presented.

On March 14, 2013, Mr. Hartless was evaluated by Dr. Hugh McClure who opined 45% PPD to the right shoulder or whole man. It was also Dr. McClure's opinion that Mr. Hartless would continue to experience pain, loss of strength and loss of function in the right shoulder in the future. However, Mr. Hartless returned to work with no restrictions. Dr. McClure's rating equates to \$72,675. The City had Mr. Hartless evaluated on May 2, 2013 by Dr. Kent Hensley who opined 12% PPD to the right shoulder or whole man. Dr. Hensley stated that continuing medical maintenance would not be required. Dr. Hensley's rating equates to \$19,380. The Workers' Compensation Court trial judge may 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. Hartless for his injuries is 45% PPD or \$72,675, plus providing medical maintenance.

Court Award. This case was heard by the Workers' Compensation Court on May 30, 2013. After hearing the claimant's testimony and considering the expert medical evidence, the Court opined that Mr. Hartless sustained 23% PPD to the right shoulder, and is entitled to continuing medical maintenance. Commutation was not awarded. The Court's findings are set out in Paragraph Nos. 4 and 6 of the Order as follows:

-4- THAT as a result of said injury, claimant sustained 23 percent permanent partial impairment to the RIGHT SHOULDER, for which claimant is entitled to compensation for 115 weeks at \$323.00 per week, or the total amount of \$37,145.00 of which 19 weeks have accrued and shall be paid in a lump sum of \$6,137.00.

-6- THAT respondent or insurance carrier shall pay claimant the accrued portion of the award of herein in lump sum of \$6,137.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$37,145.00 (less attorney fee) has been paid to claimant.

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. Hartless' weekly wage PPD rate is \$323.00. In this instance, a portion of the award has accrued and was to be paid in a lump sum.

If approved by Council, Mr. Hartless and his attorney will be paid the accrued lump sum amount and attorney's fee in the amount of \$14,858. (See Table attached)

The City will incur additional costs and Workers' Compensation filing fee in the total amount of \$1,161.49 as set out in Paragraph Nos. 7 and 8 of the Order, plus Cleveland County filing fee of \$125.70. (See Payment Table attached)

The total cost of this Order to \$38,432.19.

RECOMMENDATION: The issues tried on May 30, 2013, were the nature and extent and continuing medical maintenance. 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. 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.