



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1314-131

File ID: R-1314-131

Type: Resolution WCC

Status: Consent Item

Version: 1

Reference: Item No. 27

In Control: City Council

Department: Legal Department

Cost: \$59,539.91

File Created: 04/28/2014

File Name: Resolution authorizing compromise settlement for Jerry Wayne Younts in Workers' Compensation Case

Final Action:

Title: RESOLUTION NO. R-1314-131: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY JERRY WAYNE YOUNTS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JERRY WAYNE YOUNTS V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2013-07227X; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT 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 No. R-1314-131; and, if adopted, direct payment of claims in the amount of \$59,539.91 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 05/13/2014

Agenda Number: 27

Attachments: Resolution R-1314-131, Appeal and Trial Order, PRs

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: denise.johnson@normanok.gov

Effective Date: 05/13/2014

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-1314-131

Body

BACKGROUND: Jerry Wayne Younts is a Heavy Equipment Operator in the Street Maintenance Division of Public Works. He filed Workers' Compensation Claim WCC 2013-07227 X on July 10, 2013, alleging a single incident on May 13, 2013 from lifting bags of concrete mix. The case proceeded through the normal litigation process and, through settlement negotiations, has agreed to settle his claim for the amount of \$57,687.80. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Nature of Claim. Mr. Younts is Heavy Equipment Operator in the Street Maintenance Division of Public Works. He was hired on February 18, 1992 as a Maintenance Worker I in Streets. Thereafter, he was promoted to Maintenance Worker II on October 11, 1996 and then to Heavy Equipment Operator on December 6, 1996. On July 10, 2013 he injured his lumbar back while carrying 80 pound cement bags and digging post holes on Johnson Street.

This case proceeded through the normal litigation process. A trial was held on February 12, 2014. The Court awarded permanent partial disability benefits of 40% for the lumbar spine and 15% for the left foot/ankle equating to a total of \$75,259.00. The City appealed this award to the Court En Banc on March 7, 2014, and oral argument is set before the En Banc Panel on May 30, 2014. However, during the period between March 7, 2014 and April 23, 2014, City Attorney Staff negotiated a settlement with Mr. Younts in the amount of \$57,687.80.

Issues for Trial. There is no question that Mr. Younts' injury arose out of and in the course of employment with the City. Therefore, the issue tried before the Workers' Compensation Court was the nature and extent of Mr. Younts' injury or the Permanent Partial Disability (PPD) to Mr. Younts' lumbar back with left hip and ankle/foot pain. 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.

Mr. Younts had an MRI on May 24, 2013 on his lumbar spine which indicated a possible free fragment rupture and some narrowing of the L3-4, L4-5 and L5-S1 vertebra. These results were reviewed at his initial evaluation with Norman Regional Occupational Medicine on June 7, 2013. He was referred to Dr. William Harris who did an evaluation on June 11, 2013. Another MRI was done on June 12, 2013. The results of this MRI found the same conditions in the lumbar back. It was felt that the lumbar back issue was causing the symptoms in his left hip and foot which would be consistent with the lumbar free fragment rupture. After a period of conservative treatment, Mr. Younts had a left L3-4 microdiscectomy with the use of a microscope and lateral recess decompression. This procedure also corrected his left leg/foot issues. He was placed in a lumbar brace and on a home exercise program. On September 3, 2013, the brace was removed, and he was returned to his regular work duties with no restrictions.

On October 14, 2013, Mr. Younts was evaluated by Dr. J. Arden Blough, who opined 60% PPD to the lumbar spine which equates to \$96,900 and 42% PPD to the left foot/ankle equating to \$29,845.20 for a total of \$126,345.20 PPD. He also opined that Mr. Younts would be in need of continuing medical maintenance. He also opined that Mr. Younts should be fitted with an AFO brace due to his "left foot drop" to wear for an "undetermined period of time."

The City had Mr. Younts evaluated by Dr. LeRoy Young who opined 14% PPD to the lumbar back and 0% to the left foot which equates to \$22,610 PPD. Dr. Young also opined that continued medical maintenance or medical care would not be necessary. The maximum exposure to the City is \$126,345.20.

Trial. A trial was held on February 12, 2014 before Judge Bob Lake Grove. An Order Awarding the Nature and Extent and Permanent Partial Impairment Benefits was filed on February 28, 2014. The Court awarded PPD as follows:

"-3- THAT as a result of said injury, claimant sustained 40 percent permanent partial impairment to the WHOLE MAN LOW BACK (objective medical evidence, loss of range of motion, weakness, and three unoperated disc per MRI with subsequent surgery and resulting permanent anatomical abnormality) and 15 percent permanent partial disability for the LEFT FOOT (DROP) (objective medical evidence, loss of range of motion and neuropathy resulting in permanent anatomical abnormality), for which claimant is entitled to compensation for 233 weeks at \$323 per week, or the total amount of \$75,259 of which 23 weeks have accrued and shall be paid in a lump sum of \$7,429.00."

No continued maintenance or medical treatment was awarded.

Appeal. The City filed an appeal of this award on March 7, 2014 asking for a review and redetermination of the injury and disability and that the Trial Court's decision was contrary to law and against the clear weight of the evidence. It should be noted that Mr. Younts continued to work after his date of injury, May 23, 2013, until the date of his surgery, July 10, 2013, and was cleared to return to work on September 3, 2013. He was off work for a total of 47 days. The Appeal has been set before the Court En Banc for oral argument on Friday, May 30, 2014.

Settlement Offer. On March 26, 2014, the City entered into settlement negotiations with Mr. Younts and his attorney. City Staff has negotiated a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$57,687.80 which represents 30% PPD to the lumbar back and 13% PPD to the left foot/ankle. This proposed settlement reduces the compensation indicated in the Award that is currently on appeal by over 23%. In addition, the proposed settlement will completely close this case. A compromise settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims in the Workers' Compensation case. Moreover, the settlement offer is within the medical evidence.

Mr. Younts responded well to the surgery and the exercise program and was able to return to work within a short length of time. It is felt that this settlement is fair and reasonable. This settlement is beneficial to Mr. Younts in that it provides certainty for an award. It is also beneficial to him because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

If this settlement offer is approved, payment to Mr. Younts and his attorney would be paid at the PPD rate as set out above which is approximately one-third the difference in the medical opinion ratings. And the proposed settlement reduces the overall cost of the Award to the City by a little over 23%.

Furthermore, if the case was settled in this manner, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$1,153.76; Special Occupational Health & Safety Fund Tax in the amount of \$432.66; 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 \$1,852.11, which brings the total cost of this settlement to the City to \$59,539.91.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Younts and his attorney in a lump sum. The Compromise settlement 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.