



City of Norman, OK

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

Master

File Number: GID-1213-87

File ID: GID-1213-87

Type: Court Order

Status: Consent Item

Version: 1

Reference: Item No. 26

In Control: City Council

Department: Legal Department

Cost: \$41,751.01

File Created: 06/13/2013

File Name: WC 2012-11700X Ryan Loveless

Final Action:

Title: CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$41,751.01 REGARDING RYAN LOVELESS VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC 2012-11700 X.

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 \$41,751.01 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 06/25/2013

Agenda Number: 26

Attachments: Text File, Court Award 6-4-13, Payment Schedule
6-13-13, Requisitions

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-1213-87

body

BACKGROUND: Ryan Loveless is a Heavy Equipment Operator in the Line Maintenance Division of the Utilities Department. He filed Workers' Compensation Case No. WCC 2012-11700 X on October 16, 2012, alleging injury as a result of a single injury incident on April 30, 2012. The case has proceeded through the normal litigation process. A trial was held on May 28, 2013, and the Court awarded Mr. Loveless \$40,375. 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. Loveless was hired by the City on February 21, 2003, as a Maintenance Worker I in the Water Line Maintenance Division of the Utilities Department. He was promoted to Maintenance Worker II on July 26, 2006 and to Heavy Equipment Operator on March 28, 2008. He filed a Workers' Compensation claim alleging an injury on April 30, 2012 when he strained his lower back while cleaning a pipe with a chain scraper.

Mr. Loveless was initially seen at Norman Regional Occupational Medicine and was diagnosed with lumbar strain with radicular symptoms on the left side. After a period of conservative treatment, Mr. Loveless had an MRI that indicated a left L5-S1 disc extrusion with compression and displacement of the left S1 nerve root. He was referred to Dr. Kim N. Pratt for further evaluation and treatment. On August 8, 2012, Mr. Loveless underwent a left L5-S1 microdiscectomy. After a period of physical therapy, he reached maximum medical improvement and returned to full work duty with no restrictions effective December 4, 2012.

Issues for Trial. There is no question Mr. Loveless' 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. Loveless' injury 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 12, 2013, Mr. Loveless was evaluated by Dr. Hugh McClure who opined 41% PPD to the lumbar spine. It was also Dr. McClure's opinion that Mr. Loveless would continue to experience pain, loss of normal range of motion, loss of strength and loss of function of the lumbar spine in the future. However, Mr. Loveless returned to work with no restrictions. Dr. McClure's rating equates to \$66,215. The City had Mr. Loveless evaluated on May 10, 2013 by Dr. LeRoy Young who opined 14% PPD to the lumbar back. Dr. Young stated that continuing medical maintenance would not be required. Dr. Young's rating equates to \$22,610. 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. Loveless for his injuries is 41% PPD or \$66,215, plus providing medical maintenance.

Court Award. This case was heard by the Workers' Compensation Court on May 28, 2013. After hearing the claimant's testimony and considering the expert medical evidence, the Court opined that Mr. Loveless sustained 25% PPD to the low back, and is entitled to continuing medical maintenance. The Court's findings are set out in Paragraph Nos. 3 and 5 of the Order as follows:

-3- THAT as a result of said injury, claimant sustained 25 percent permanent partial impairment to the LOW BACK (SURGERY-DISECTOMY - LOSS OF RANGE OF MOTION - LOSS OF SENSATION & DYSESTHESIA - LOSS OF MUSCLE STRENGTH), for which claimant is entitled to compensation for 125 weeks at \$323.00 per week, or the total amount of \$40,375.00 of which 25 weeks have accrued and shall be paid in a lump sum of \$8,075.00.

-5- THAT respondent or insurance carrier shall pay claimant the accrued portion of the award of herein in lump sum of \$8,075.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$40,375.00 (less attorney fee) has been paid to claimant.

As can be noted in Paragraph No. 3 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. Loveless' 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. Loveless and his attorney will be paid the accrued lump sum amount and attorney's fee in the amount of \$17,442. (See Table attached)

The City will incur additional costs and Workers' Compensation filing fee in the total amount of \$1,250.31 as set out in Paragraph Nos. 6 and 7 of the Order, plus Cleveland County filing fee of \$125.70. (See Payment Table attached)

The total cost of this Order to \$41,751.01.

RECOMMENDATION: The issues tried on May 28, 2013, were the nature and extent and continuing medical maintenance. The Award is within the medical evidence submitted in that the PPD award fall half-way between one-half and 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.