



Legislation Details (With Text)

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**Title:**           CONSIDERATION OF THE CITY ATTORNEY’S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$27,002.80 REGARDING THOMAS J. GRADY VS. THE CITY OF NORMAN, WORKERS’ COMPENSATION COURT CASE 2014-05405 A.

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3/14/2017	2	City Council		

CONSIDERATION OF THE CITY ATTORNEY’S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$27,002.80 REGARDING THOMAS J. GRADY VS. THE CITY OF NORMAN, WORKERS’ COMPENSATION COURT CASE 2014-05405 A.

**BACKGROUND:** Thomas J. Grady is a Sanitation Worker II in the Sanitation Division of the Utilities Department who filed Workers Compensation Case No. 2014-05405 A on May 21, 2014 alleging a single incident injury to the right foot on September 2, 2013. This injury reportedly occurred while he was on the sanitation truck packing boards he slipped and fell into the hopper. The case proceeded through the normal litigation process. A trial was held on February 15, 2017 and the Court awarded Mr. Grady 38% permanent partial disability to the right foot for a total sum of \$27,002.80. It is recommended that the City accept this Order and proceed to comply with the same.

**DISCUSSION:** Mr. Grady is a thirty-two (32) year employee of the City of Norman who was hired as a Sanitation Worker I on July 16, 1984 and promoted to Sanitation Worker II on July 19, 2002.

Mr. Grady sustained an oblique comminuted mid-shaft tibia fracture and a comminuted fibular fracture. On September 2, 2013, he underwent a closed reduction with interlocking intramedullary nail of the tibia. Mr. Grady’s healing was slow due to contributing factors. Additional surgeries were required due to ongoing pain and nonunion of his fracture to include dynamization with intramedullary nail on November 13, 2013, removal of distal locking screws on January 31, 2014, removal of deep hardware with revision interlocking intramedullary nail as well as ostectomy of the fibula on June 18, 2014, and open reduction and internal fixation of the right tibia nonunion with autograft as well as surgical removal of the nail and two locking bolts on June 3, 2015. Mr. Grady reached maximum medical improvement and was released February 16, 2016. He has returned to work with the Sanitation Division, doing the same job as he did prior to the injury. His supervisor reports he is a very hard worker and is doing a good job since his return.

**Issues for Trial.** Because there was no question the accident that caused Mr. Grady’s injuries occurred on the job, the issues tried on February 15, 2017 before the Workers’ Compensation Court were permanent partial disability and continuing medical maintenance. Permanent partial disability is a factual determination made by the Workers’ Compensation court Trial Judge based on doctors’ opinions regarding the extent of permanent partial impairment.

**Evaluations.** Mr. Grady was evaluated on April 7, 2016 by Dr. Lance E. Rosson, D.O. Dr. Rosson opined 52% permanent partial impairment to the right foot. Dr. Rosson recommended continuing medical benefits, in the nature of prescription medications on an as-needed basis, as well as other treatment that his treating physician or further selected physicians might deem necessary, with respect to this job-related injury. The City’s maximum permanent partial

impairment exposure would be \$36,951.20.

The City had Mr. Grady evaluated by Dr. Kent Hensley, M.D. on May 3, 2016 who opined 17% (\$12,080.20) impairment to the right foot. Dr. Hensley did not recommend continued medical maintenance as Mr. Grady has no current symptomatology. The Workers' Compensation Court Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial.

Court Award: The case was heard by the Workers' Compensation Court on February 15, 2017. After considering the expert medical evidence, the Court entered its Order on February 24, 2017, awarding 38% permanent partial disability to the right foot for a total amount of \$27,002.80.

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 0 percent permanent partial impairment to the RIGHT LEG, 38 percent permanent partial disability to the RIGHT FOOT, for which claimant is entitled to compensation for 83.6 weeks at \$323.00 per week, or the total amount of \$27,002.80 of which 52 weeks have accrued and shall be paid in a lump sum of \$16,796.00."

-5- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of \$16,796.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$27,002.80 (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. Grady's weekly wage PPD rate is \$323.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Grady and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional four weeks for processing and Council approval in the lump sum of \$23,488.56, with the balance of the award of \$3,514.24 to be paid in weekly payments of \$323.00 until paid in full as set forth in the Payment Schedule attached.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 6 and 7. Special Occupational Health and Safety Fund Tax in the amount of \$202.52, Workers' Compensation Administration Fund in the amount of \$540.06, filing fee to the Workers' Compensation Court in the amount of \$140.00; and Cleveland County filing fee in the amount of \$131.64. The costs and fees total \$1,014.22.

The total cost of this Order is \$28,017.02.

**RECOMMENDATION:** The issues tried on February 15, 2017 were nature and extent of permanent partial disability to the right foot and continued medical maintenance due to the September 2, 2013 on the job injury. 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 the 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.