



## Legislation Text

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**File #:** GID-1718-10, **Version:** 2

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CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$82,080 REGARDING RICK BLALOCK VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE WCC 2009-08466 H.

**BACKGROUND:** Rick Blalock was Sanitation Worker I in the Sanitation Division of the Utilities Department. He filed Workers Compensation Case No. WCC 2009-08466 H on July 6, 2009 alleging injuries to his back and neck and depression from cumulative trauma with the date of awareness of April 10, 2009. Mr. Blalock then added consequential injury to his hips to the claim on June 30, 2010. The case proceeded through the normal litigation process. A trial was held on July 25, 2017 and the Court awarded Mr. Blalock permanent partial disability in the total sum of \$82,080 which represented 22% neck, 9% back, 6% right hip, 6% left hip, and 5% psychological overlay. The court order was discussed in Executive Session held August 15, 2017 and is being presented to the City Council at this time for formal consideration. The City Attorney's office recommends the Court Order be accepted by City Council.

**DISCUSSION:** Mr. Blalock was a thirty (30) year employee of the City of Norman who was hired as a Sanitation Worker I on July 9, 1979. During his employment with the City of Norman, Mr. Blalock had additional on the job injuries that resulted in awards. He separated from employment with the City of Norman on July 6, 2009.

Medical Treatment. Mr. Blalock was initially treated conservatively for his neck and back. Then based on MRI findings, underwent cervical facet injections bilaterally at C5/6 and C6/7 on March 2, 2015 and an anesthetic discogram on April 6, 2015. He was evaluated in April 2015 and it was determined that Mr. Blalock was not a surgical candidate for the neck. Mr. Blalock reached maximum medical improvement for the neck and back on April 16, 2015.

During the course of treatment for the injury to his neck, back and psychological overlay, he was diagnosed with bilateral SI joint arthritis.

Issues for Trial. The issues tried on July 25, 2017 before the Workers' Compensation Court were the extent of Mr. Blalock's injuries and whether those injuries were permanent in nature. 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.

Mr. Blalock was evaluated by Dr. Blough, the medical expert for Mr. Blalock, on June 22, 2015, April 18, 2016, and February 13, 2017. On June 22, 2015, Dr. Blough opined 20% (\$34,200) emotional and behavioral disorders, 51% (\$87,210) cervical spine, 36% (\$61,560) lumbar spine, recommended continuing medical maintenance regarding the cervical, lumbar spine and depression, and a candidate for vocational rehabilitation. On April 18, 2016, Dr. Blough opined 22% (\$37,620) right hip, and 22% (\$37,620) left hip, and recommended continuing medical maintenance regarding the bilateral hips. On February 13, 2017, Dr. Blough recommended that Mr. Blalock be referred to a board certified spine specialist for evaluation and treatment. On February 13, 2017, Dr. Blough opined that Mr. Blalock is temporarily totally disabled and has been temporarily totally disabled (TTD) since June 23, 2015, and recommended further medical evaluation and treatment, referred to a board certified spine specialist for further evaluation, additional diagnostic testing. The City's maximum permanent partial impairment exposure would be \$258,210. The City's exposure for TTD is approximately \$50,283 (\$465.59/week for 108 weeks).

Dr. Hensley, the medical expert for the City, evaluated Mr. Blalock on September 8, 2015 and May 23, 2016. On September 8, 2015, Dr. Hensley opined 7% (\$11,970) cervical spine, 0% to the lumbar spine and 0% psychological overlay. Vocational rehabilitation and continued medical maintenance were not recommended. On May 23, 2016, Dr. Hensley opined 0% right and left hip due to chronic arthritic pain. Dr. Hensley opined, Mr. Blalock had reached maximum medical improvement and no longer needed medical treatment.

Court Award: The case was heard by the Workers' Compensation Court on July 25, 2017. After considering the expert

medical evidence, the Court entered its Order on August 3, 2017, awarding permanent partial disability in the total amount of \$82,080. (\$37,620 - 22% neck; \$15,390 - 9% back; \$10,260 - 6% right hip; \$10,260 - 6% left hip; and \$8,550 - 5% psychological overlay.

The Court's findings are set out in Paragraph Nos. 4 and 5 of the Order, as follows:

-4- "THAT as a result of said injury, claimant sustained 22 percent permanent partial disability to the NECK, 9 percent permanent partial disability to the BACK and 6 percent permanent partial disability to the RIGHT HIP and 6 percent permanent partial disability to the LEFT HIP and 5 percent permanent partial disability to the PSYCHOLOGICAL OVERLAY, for which claimant is entitled to compensation for 240 weeks at \$342.00 per week, or the total amount of \$82,080.00 of which 119 weeks have accrued and shall be paid in a lump sum of \$40,698.00."

-5- "THAT claimant's request for continuing medical maintenance is denied."

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. Blalock's weekly wage PPD rate is \$342.00. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Blalock 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 \$58,482.00, with the balance of the award of \$23,598.00 to be paid in weekly payments of \$342.00 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. 8 and 9. Special Occupational Health and Safety Fund Tax in the amount of \$615.60, Workers' Compensation Administration Fund in the amount of \$1,641.60, 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 \$2,528.84.

The total cost of this Order is \$84,608.84.

**RECOMMENDATION:** The issues tried on July 25, were nature and extent of permanent partial disability to the back, neck, psychological overlay and hips and continuing medical maintenance due to the cumulative trauma with the date of awareness of April 10, 2009. 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.