



Legislation Text

File #: R-1718-26, **Version:** 2

RESOLUTION R-1718-26: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JEREMY RANEY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *JEREMY RANEY V. THE CITY OF NORMAN*, WORKERS' COMPENSATION CASE NO. 2015-05518 L; 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 JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

BACKGROUND: Jeremy Raney was a Heavy Equipment Operator in the Street Maintenance Division of Public Works. He filed Workers Compensation Case No. 2015-05518 L on August 17, 2015, alleging cumulative injury to the lumbar spine as result of repetitive lifting, shoveling, and operating heavy equipment with the date of awareness of February 13, 2009. He separated from employment on September 28, 2016, due to restrictions. The case has proceeded through the normal litigation process. In lieu of a trial, Mr. Raney has agreed to settle his claim in the total amount of \$55,510. The settlement offer is being presented to City Council at this time for consideration. City Attorney's office recommends the settlement offer be accepted.

DISCUSSION: Mr. Raney began his employment with the City of Norman Street Maintenance Division of Public Works on August 3, 1998 as a Maintenance Worker I. He was promoted to MWII September 22, 2000, HEO July 23, 2001, Crew Chief in Streets June 23, 2003, and demoted to HEO Streets on April 1, 2009. He separated from employment on September 28, 2016, due to restrictions. There is no question that Mr. Raney's lumbar spine was injured on the job while working for the City of Norman.

Medical Treatment. Mr. Raney was initially diagnosed with broad-based disc bulges at L4-L5 and L5-S1 February 2009. He underwent a successful course of conservative treatment of physical therapy. On June 26, 2015, after jackhammering and also shoveling asphalt Mr. Raney subsequently experienced increased low back pain which radiated into both legs. He again received conservative treatment in the form of medication and physical therapy. Mr. Raney was then treated with a series of three epidural injections followed by a discogram on October 28, 2015. Surgery was recommended and on March 9, 2016 Mr. Raney underwent an anterior lumbar discectomy followed by fusion and placement of a plate, L4-L5 posterolateral fusion with non-segmental instrumentation and had L4-L5 decompressive laminectomy, bilateral lateral recess decompression and foraminotomies as well. Following a course of physical therapy, he was released as having reached maximum medical improvement on September 8, 2016.

Issues for Trial. The primary issue to be tried in this case before the Workers' Compensation Court are the extent of Mr. Raney's injury and whether the injury is permanent in nature. 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.

On September 19, 2016, the medical expert for Mr. Raney, Dr. Litchfield opined 64% (\$109,440) whole person permanent partial impairment to the lumbar spine and recommended vocational rehabilitation and continued care in the form of pain management for chronic pain.

On October 18, 2016, the medical expert for the City, Dr. Hensley opined 17% (\$29,070) whole person impairment regarding the lumbar spine. Continued medical maintenance and vocational rehabilitation were not recommended.

Trial. This case proceeded through the normal litigation process; however, prior to a trial, Mr. Raney has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury to his lumbar spine anywhere within the range of the doctors' opinions as stated above.

Proposed Settlement. As noted above the maximum exposure for permanent partial disability is \$109,440 along with the possibility of CMM, vocational rehabilitation, and possibly disfigurement. It is not unusual on a case involving a surgical procedure for an award to be granted that is one-half of the difference of the medical opinions. One-half of the difference in the medical opinions for the lumbar spine is \$69,255. However, with such a wide disparity in the medical opinions, it is also a reasonable expectation for the Court to award one-third of the difference in the medical evidence for each body part to be presented at trial. The settlement offer consists of the following:

Lumbar Spine 31% - \$53,010.00
Disfigurement \$ 2,500.00
CMM - \$ 0.00
Voc-Rehabilitation - 0

Total - \$55,510.00 (Less Attorney Fees)

Furthermore, the City would incur additional costs totaling \$1,729.42 if the case were settled for taxes, fees, and filing costs all as imposed by Statute, Special Occupational Health and Safety Fund Tax (\$1,729.42), Workers' Compensation Administration Fund (\$397.58), Workers' Compensation Court Filing Fee (\$140), and Cleveland County Filing Fee (\$131.64). The total settlement cost would be \$57,239.42.

It is felt that the settlement closing this case is fair and reasonable. The settlement is beneficial to Mr. Raney because it provides certainty for the PPD award, and it will be paid in a lump sum rather than in weekly payments over a period of time. The settlement offer is advantageous to the City in that it is a full, final, and complete settlement of any and all claims and closes out any continued medical treatment in this Workers' Compensation case.

RECOMMENDATION: For the reasons outlined above, it is believed this settlement is fair, reasonable, and in the best interest of the City. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the settlement for Mr. Raney would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Raney 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.