



Legislation Text

File #: GID-1617-61, **Version:** 3

CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR ACCEPTANCE OF A COURT ORDER IN THE AMOUNT OF \$24,225 REGARDING TABITHA NATION VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE WCC-2014-04282 L.

BACKGROUND: Tabitha Nation was a Parking Service Officer in the Patrol Division of the Norman Police Department who filed Workers Compensation Case No. 2014-04282 L on April 14, 2014 alleging a single incident injury to the left shoulder on February 2, 2011 from slipping on ice. The case proceeded through the normal litigation process. A trial was held on February 15, 2017 and the Court awarded Ms. Nation 15% permanent partial disability to the left shoulder for a total sum of \$24,225.00. It is recommended that the City accept this Order and comply with the same.

DISCUSSION: Ms. Nation was a five (5) year employee of the City of Norman who was hired as a Communications Officer on June 14, 2005 and moved to a Parking Service Officer on February 29, 2008. She separated from employment September 23, 2013.

Ms. Nation was seen by Dr. Bond and found to have possibly sustained a SLAP lesion to the left shoulder. She was approved for surgery in May of 2011; however, was unable to proceed due to pregnancy. She continued to see Dr. Bond intermittently and on July 7, 2014 surgery was again discussed. On August 28, 2014, the Court ordered treatment with Dr. Bond including surgery; however, due to child care needs she was unable to come to an agreement regarding the timing of surgery. On October 14, 2015, Ms. Nation returned to Dr. Bond; however, she did not make her return appointment scheduled December 28, 2015.

Issues for Trial. 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. Ms. Nation was evaluated on February 24, 2016 by Lonnie Litchfield, M.D. Dr. Litchfield opined 32% whole person permanent partial impairment due to loss of range of motion, instability and weakness resulting in permanent anatomical abnormalities of loss of function. Dr. Litchfield recommended continuing medical benefits in the form of pain management, assignment of a pain management specialist for treatment, and prescription entitlements or any treatments her treating physician deems necessary in regards to the left shoulder. The City's maximum permanent partial impairment exposure would be \$51,680.00.

The City had Ms. Nation evaluated by Dr. Kent Hensley, M.D. on February 2, 2017 who opined 5% (\$8,075.00) impairment to the whole person and given the lack of objective findings of internal derangement to the left shoulder. Dr. Hensley did not recommend continued medical maintenance. 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 March 6, 2017, awarding 15% permanent partial disability to the left shoulder for a total amount of \$24,225.00.

The Court's findings are set out in Paragraph Nos. 7 and 9 of the Order, as follows:

-7- "THAT as a result of said injury, claimant sustained 15 percent permanent partial disability to the LEFT SHOULDER, for which claimant is entitled to compensation for 75 weeks at \$323.00 per week, or the total amount of \$24,225.00 of which 51 weeks have accrued and shall be paid in a lump sum of \$16,473.00.

-9- "THAT respondent or insurance carrier shall pay claimant the accrued portion of the award herein in lump sum of

\$16,473.00 and pay the balance of said award at the rate of \$323.00 per week until the total award of \$24,225.00 (less attorney fee) has been paid to claimant.”

As can be noted in Paragraph No. 7 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. Ms. Nation’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, Ms. Nation and her attorney will be paid the accrued lump sum amount and attorney’s fee plus an additional six weeks for processing and Council approval in the lump sum of \$23,256.00, with the balance of the award of \$969.00 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 No. 10 of the Order Nunc Pro Tunc and Paragraph No. 11 of the Order. Special Occupational Health and Safety Fund Tax in the amount of \$181.69, Workers’ Compensation Administration Fund in the amount of \$484.50, 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 \$937.83.

The total cost of this Order is \$25,162.83.

RECOMMENDATION: The issues tried on February 15, 2017 were nature and extent of permanent partial disability to the left shoulder and continued medical maintenance due to the February 2, 2011 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.