



Legislation Details (With Text)

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On agenda: 2/23/2021 **Final action:** 2/23/2021
Title: RESOLUTION R-2021-97: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY TRAVIS S. ADAMS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF TRAVIS S. ADAMS V. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE NO. 2018-06545A; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COMMISSION, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COMMISSION JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

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Attachments: 1. City Council Staff Report, 2. Travis Adams - Res-2021-97 - 2-23-21 cc

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BACKGROUND: Travis S. Adams was injured on May 1, 2016, and filed an Oklahoma Workers Compensation Commission Case 2018-06545A, on October 12, 2018, alleging a single incident injury to his left shoulder, back and neck when he was turning on a stuck hub value. The claim was accepted and has proceeded through the normal litigation process.

Prior to a trial being held, Mr. Adams has agreed to settle this claim in the total amount of \$55,394.50, which represents 19% (\$21,479.50) neck; 16% (\$18,088) lumbar back; 14% (\$15,827) left shoulder and 0% left arm. The settlement offer is being recommended and is being presented to the City Council for consideration.

DISCUSSION: Mr. Adams is a 24-year employee of the City of Norman. Mr. Adams was hired as a Maintenance Worker I in the Parks and Recreation Department on September 15, 1997; promoted to

Maintenance Worker II on April 5, 2007; promoted to Heavy Equipment Operator on August 9, 2013; and transferred on October 24, 2014, as an Irrigation Technician.

Medical Treatment.

Mr. Adams was initially seen at Norman Regional Occupational Medicine the same day of this injury and treated conservatively. Due to symptomology and previous surgery to the shoulder, he was sent on June 14, 2016, for a Magnetic Resonance (MR) arthrogram. Mr. Adams was referred to Dr. Bobb as the MR arthrogram revealed tendonitis to the rotator cuff without definite full thickness tear. On 6/27/16, Mr. Adams underwent left shoulder arthroscopy by Dr. Bobb followed by postoperative physical therapy. A lumbar MRI was performed on July 19, 2016 and revealed an asymmetrical right bulging L5-S1. He underwent an LESI and multiple CESI and TFESI injections by Dr. Stidham. Dr. Bobb released Mr. Adams Maximum Medical Improvement (MMI) on October 31, 2016, for the left shoulder; however, due to right foot pain and numbness was referred to Dr. Cochran for further evaluation. He was initially treated conservatively; however, he continued to have pain and numbness. A repeat lumbar MRI on June 1, 2017 revealed a new disc herniation eccentric to the rt. and trapping the rt. S1 nerve root as it traverses at L5-S1. On July 27, 2017, Mr. Adams underwent L5-S1 microendoscopic discectomy by Dr. Cochran followed by an ESI due to persistent neck pain and arm tingling. He was then released MMI by Dr. Cochran on August 24, 2017, and returned back to regular work with no restrictions or continuing medical maintenance.

Mr. Adams was seen by Dr. Litchfield on January 23, 2019, and further evaluation and treatment of the cervical spine, lumbar spine, and left shoulder was recommended. Mr. Adams was sent for a court-ordered IME on May 7, 2019, by Dr. Hume as well as updated MRIs of the cervical spine and lumbar spine. Dr. Hume recommended neck surgery. He underwent an anterior cervical discectomy and three level fusion C5-6, 5-6, 6-7 procedure on September 6, 2019, followed by postoperative physical therapy. Mr. Adams was released September 3, 2020, at MMI for the cervical spine.

Issues for Trial. Since there is no question Mr. Adam's' injuries to the neck, lumbar spine and left shoulder occurred while in the course of his employment with the City, the primary issues to be tried in this case before the Workers' Compensation Commission are the extent of his injuries and whether the injuries were permanent in nature. Permanent partial disability is a factual determination made by the Workers' Compensation Commission Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

Mr. Adams was rated by Dr. Lonnie Litchfield on October 14, 2020, regarding the above claim who opined 27% (\$30,523.50) permanent partial impairment to the whole body regarding the neck; 27% (\$30,523.50) permanent partial impairment to the whole body regarding the lumbar spine; 37% (\$41,828.50) permanent partial impairment to the whole body regarding the left shoulder; and 15% (\$13,323.75) permanent partial impairment whole body regarding the left arm. He also opined continued care in the form of pain management in regards to chronic pain, assigned a pain management specialist for treatment, entitlements for prescription medications or any treatments his treating physician deems necessary in regards to this work related injury.

On January 12, 2021, the medical expert for the City, Dr. C.B. Pettigrew, opined 7% (\$7,913.50) permanent partial impairment to the whole body regarding the neck; 7% (\$7,913.50) permanent partial impairment to the whole body regarding the lumbar spine; 2.3% (\$2,601.50) permanent partial impairment to the whole body regarding the left shoulder; and 0% permanent partial impairment to the whole body regarding the left arm. He opined that continuing medical maintenance was not

recommended. The City's maximum exposure for total PPD would be \$116,199.25.

Trial. The case proceeded through the normal litigation process; however, Mr. Adams 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 to his injuries and award permanent partial disability.

Proposed Settlement. The proposed settlement closes the case in a lump sum payment of \$55,394.50 (less 20% attorney fee) representing the settlement amount discussed above.

It is felt that the settlement to close this case is fair and reasonable. A settlement is beneficial 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. This settlement is beneficial to Mr. Adams in that it provides certainty for an award and would be paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if this case is settled in this manner, the City would incur additional costs and fees of:

Workers' Compensation Administration Fund Tax in the amount of \$1,107.89; Special Occupational Health & Safety Tax in the amount of \$415.46; and Workers Comp Commission Filing fee in the amount of \$140.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$154.14.

These additional costs and fees total \$1,817.49, which brings the total cost of this settlement to the City to \$57,211.99.

Adequate funds are available in the Risk Management Fund, Order/Settlements Account (43330102-42131).

RECOMMENDATION: For the reasons outlined above, it is believed this settlement is fair, reasonable, and in the best interest of the City. In light of Mr. Adam's length of employment with the City, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Adams and his attorney in a lump sum. The 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 85A O.S. § 107, 51 O.S. § 159, and 62 O.S. § 361, *et seq* and 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.