



Legislation Text

File #: GID-1718-70, **Version:** 2

CONSIDERATION OF THE RECOMMENDATION FROM THE CITY ATTORNEY FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$46,835 REGARDING DAVID TEUSCHER VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE WCC 2017-04378 K (LEFT SHOULDER).

BACKGROUND: David Teuscher is a Major for the Norman Police Department who filed Workers Compensation Case 2017-04378 K on July 18, 2017 alleging a single incident injury of the left shoulder while changing a flat tire in December 2013. The case proceeded through the normal litigation process. A trial was held on February 5, 2018 and the Court awarded Mr. Teuscher 29 percent permanent partial disability to the left shoulder in the total amount of \$46,835. It is recommended that the City comply with this Order.

DISCUSSION: Mr. Teuscher is a twenty (20) year employee of the City of Norman Police Department who was hired as a police officer September 15, 1997 and reclassified as a Master Police Officer March 15, 2002. He was then promoted to Lieutenant March 7, 2006, Captain February 24, 2012, and Major April 28, 2017. There is no question that Mr. Teuscher injured his left shoulder while on the job for the City of Norman Police Department.

Medical Treatment. Mr. Teuscher was initially treated conservatively for his left shoulder. Then based on MRI findings, on February 28, 2014 he underwent an arthroscopic rotator cuff repair followed by postoperative therapy. Due to ongoing symptomology, he had a repeat MRI which revealed postsurgical changes. On July 11, 2014 he underwent a second complex shoulder surgery followed again by postoperative therapy and an additional injection in the left shoulder. Mr. Teuscher reached maximum medical improvement for the left shoulder on April 6, 2017.

Issues for Trial. Because there is no question his injury to the left shoulder occurred on the job with the Norman Police Department, the issues tried on February 5, 2018 before the Workers' Compensation Court were the extent of Mr. Teuscher's injury and whether the injury was 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. Teuscher was first evaluated on September 26, 2017 by Lance Rosson, D.O., medical expert for Mr. Teuscher. Dr. Rosson opined a permanent partial impairment of 41 percent to the whole person, based on 7 percent range of motion abnormalities, 12 percent surgeries, 7 percent crepitation, 10 percent motor dysfunction, and 5 percent residual neurosensory injury. Dr. Rosson recommended continuing medical benefits in the form of prescription entitlements or any treatments his treating physician deems necessary in regards to the left shoulder. The City's maximum permanent partial impairment exposure would be \$66,215.00.

The City had Mr. Teuscher evaluated by Kent Hensley, M.D. on December 27, 2017. Dr. Hensley opined a total of 10 percent (\$16,150.00) impairment to the whole man regarding the left shoulder based on 6 percent distal clavicle excision and 4 percent loss of motion and that he had reached maximum medical improvement and no longer needed medical treatment. He reported that Mr. Teuscher's strength and sensation were intact and did not demonstrate total loss of function as he was released without restrictions.

Court Award: The case was heard by the Workers' Compensation Court on February 5, 2018. After considering the expert medical evidence, the Court entered its Order on February 27, 2018, awarding 29 percent permanent partial disability to the left shoulder in the total amount of \$46,835.

The Court's findings are set out in Paragraph Nos. 9 and 10 of the Order, as follows:

-9- "THAT as a result of said injury, claimant sustained 29 percent permanent partial impairment to the LEFT SHOULDER, for which claimant is entitled to compensation for 145 weeks at \$323 per week, or the total amount of \$46,835 of which 44 weeks have accrued and shall be paid in a lump sum of \$14,212."

-10- "THAT respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury."

As can be noted in Paragraph No. 9 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. Teuscher's weekly PPD rate is \$323. In this instance, a portion of the award has accrued and is to be paid in a lump sum.

If approved by Council, Mr. Teuscher and his 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 \$25,517, with the balance of the award of \$21,318 to be paid in weekly payments of \$323 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. 12 and 13. Special Occupational Health and Safety Fund Tax in the amount of \$351.26, Workers' Compensation Administration Fund in the amount of \$936.70, filing fee to the Workers' Compensation Court in the amount of \$140; and Cleveland County filing fee in the amount of \$144.14. The costs and fees total \$1,572.10.

The total cost of this Order is \$48,407.10.

RECOMMENDATION: The issues tried on February 5, 2018, were nature and extent of permanent partial disability to the left shoulder and continuing medical maintenance due to the December 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.