



## Legislation Text

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**File #:** GID-1819-30, **Version:** 2

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CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$7,106 REGARDING BARRY GRIPPEN VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE CM-2016-07136 R (RIGHT KNEE).

**BACKGROUND:** Mr. Grippen is a Police Sergeant with the Norman Police Department. He filed a workers compensation claim on October 27, 2016 alleging a single event injury to the right knee from falling on his knee cap while chasing a suspect on August 11, 2016. The City admitted the claim and it proceeded through the normal litigation process. A trial was held on September 11, 2018. On September 19, 2018 the Commission awarded Mr. Grippen 8 percent permanent partial disability (PPD) to the right knee in the total amount of \$7,106.00 to be paid at a weekly rate of \$323.00 commencing October 4, 2017, until the entire award is paid. It is recommended that the City comply with this Order.

**DISCUSSION:** Mr. Grippen is a seventeen (17) year employee of the City of Norman who was hired as a communications officer on March 26, 2001. He was promoted to a police officer on June 10, 2005, reclassified as a master police officer on December 10, 2009, and then promoted to police sergeant on June 10, 2015.

Mr. Grippen was initially seen by Dr. Penwell on the day of his injury and found to have a right patella fracture. He was treated conservatively with a brace and medication. An MRI was ordered and he was referred to Dr. Bobb for orthopedic evaluation on August 15, 2016. The MRI revealed a nondisplaced fracture of the patella as well as edema in the patellar tendon. He was again treated conservatively and placed in a controlled motion knee brace for a closed nondisplaced transverse patella fracture. He was then seen by Dr. Moses on August 26, 2016 and a partial tear of the patellar tendon was ruled out. On October 7, 2016, he was released maximum medical improvement and returned back to work without permanent restrictions on October 11, 2016. Mr. Grippen was seen, by Court Order for a change of physician, by Dr. Bond on December 28, 2016 due to continued pain. He was treated conservatively to include medication, physical therapy, and a cortisone injection. A second MRI was performed on September 28, 2017 which revealed good healing of the patellar fracture. He was released having reached maximum medical improvement without permanent restrictions on October 4, 2017.

**Issues for Trial.** The issues tried on September 11, 2019 before the Workers' Compensation Commission were the extent of Mr. Grippen's injury and whether the injury to his right knee 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. Grippen was first rated by Lance Rosson, D.O. on March 23, 2018. Dr. Rosson opined 25 percent (\$22,206.25) permanent partial impairment to the right knee as well as entitlements to continuing medical benefits in the nature of prescription medication on an as-needed basis, as well as other treatment that his treating physician or future selected physicians might deem necessary, with respect to this injury. On June 18, 2018, the medical expert for the City, C.B. Pettigrew, D.O. opined 5 percent (\$4,441.25) permanent partial impairment to the right leg and entitlements for continuing medical maintenance would not be required. The Workers' Compensation Commission Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial. The City's maximum permanent partial impairment exposure would be \$22,206.25.

**Court Award:** The case was heard by the Workers' Compensation Commission on September 11, 2018. Based on Mr. Grippen's testimony and considering the expert medical evidence, the Commission entered its Order on September 19, 2018, awarding 8 percent (\$7,106.00) PPD to the right knee.

The Commission's findings are set out under "Section II. Findings and Conclusions" of the Order, as follows:

3. "That as a result of said injury, Claimant has sustained 8% permanent partial disability to the right knee. At Claimant's

rate of compensation, this is equal to an award of \$7,106.00, which shall be paid to Claimant weekly at the rate of \$323.00 commencing October 4, 2017, until the entire award is paid.”

As can be noted in No. 3 of the Commission’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. Grippen’s weekly wage PPD rate is \$323.00. In this instance, the entire portion of the award has accrued less the claimant’s attorney fee and is to be paid in a lump sum.

If approved by Council, Mr. Grippen and his attorney will be paid the lump sum amount.

Further, in complying with the Order, the City will incur additional costs and fees noted in Nos. 5 through 8 as follows: Special Occupational Health and Safety Fund Tax in the amount of \$53.30, Workers’ Compensation Administration Fund Tax in the amount of \$142.12, and filing fee to the Workers’ Compensation Commission in the amount of \$140.00. In addition, the Cleveland County filing fee will be \$144.14. These costs and fees total \$479.56, which brings the total cost of this Order to \$7,585.56. Adequate funds are available in the Order/Settlements Account (043-3002-415.21-31).

**RECOMMENDATION:** The issues tried on September 11, 2018, were the extent of Mr. Grippen’s injury and whether the injury to his right knee was permanent in nature. The Court Award in this case is within the medical evidence submitted. In light of Mr. Grippen’s length of employment with the City, 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 above. 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 85A O.S. § 107, 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.