



Legislation Text

File #: R-1819-48, **Version:** 2

RESOLUTION R-1819-48: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY MICHAEL G. HALE UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *MICHAEL G. HALE V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2015-00702 H; 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.

BACKGROUND: Michael G. Hale was a Building Inspector with Development Services of the Planning and Community Development Department. On January 30, 2015, Mr. Hale filed a workers compensation claim alleging a single incident injury to the left shoulder on November 3, 2014 from falling in a ditch. He then reinjured the left shoulder May 1, 2015 while reaching up to grab a second rung of stairs that fell toward him during an inspection. The City admitted this claim and it proceeded through the normal litigation process. Mediation was held on November 1, 2018 prior to the trial scheduled November 5, 2018. Hale agreed to settle this claim to the left shoulder in the total amount of \$24,305.75 (21.5% permanent partial disability to the body as a whole). Because Mr. Hale is at an age where he is eligible for Medicare, the issue of continuing medical maintenance under this workers compensation claim was submitted to the Workers' Compensation for review. On November 6, 2018, Mr. Hale was denied continuing medical maintenance by Court Order. This settlement offer addressing other aspects of the Workers' Compensation claim is being presented to the City Council for consideration. It is recommended that this settlement be accepted.

DISCUSSION: Mr. Hale was hired by the City of Norman November 15, 1999 as a Building Inspector, performed in that position for almost nineteen years, and retired on January 5, 2018. Following his November 3, 2014 on the job injury to the left shoulder Mr. Hale was initially treated conservatively which included physical therapy; however, his symptoms persisted. Magnetic resonance imaging studies (MRIs) were performed on November 20, 2014 and December 2, 2014 revealing a massive rotator cuff tear. On January 2, 2015, he underwent an open rotator cuff repair, biceps tenodesis and distal clavicle excision by Dr. Bobb followed by postoperative physical therapy and repeat MRI on January 6, 2015. He returned to work on modified duty.

On May 1, 2015, Mr. Hale reinjured the left shoulder reaching up to catch a falling second rung of attic stairs. He was seen by Dr. Bobb May 19, 2015 and underwent an MRI on May 21, 2015 revealing a recurrent tear of the rotator cuff with retraction of the supraspinatus and infraspinatus tendons to the level of the glenoid which was felt to be non-repairable. Mr. Hale completed a course of physical therapy and was released maximum medical improvement (MMI) with restrictions on August 25, 2015.

Mr. Hale's treating physician was changed to Dr. Flesher by Court Order dated October 26, 2015. He was seen by Dr. Flesher on November 24, 2015. Mr. Hale chose not to undergo reverse shoulder prosthesis or conservative care and was released MMI with restrictions. He was authorized for a return evaluation with Dr. Flesher due to increased pain in the left shoulder. On May 23, 2017, he was seen by Dr. Flesher and referred to Dr. Brantley due to his expertise in reverse shoulder arthroscopy. Mr. Hale was seen by Dr. Brantley on January 30, 2018 and a reverse total shoulder arthroplasty recommended. The surgery was authorized by the City; however, Mr. Hale elected not to proceed with further surgery.

Issues for Trial. Since there is no question Mr. Hale's injuries to his 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 Mr. Hale's injuries and whether the injuries to his left shoulder were permanent in nature. Permanent partial disability (PPD) 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 (PPI).

Mr. Hale was rated on April 25, 2018 by Lonnie Litchfield, M.D. who opined 32% (\$36,176) whole person PPI regarding the left shoulder which included a 14% pre-existing impairment to the left shoulder. He also opined entitlements to continuing medical maintenance regarding the left shoulder in the form of pain management benefits and prescription medications or any treatments his treating physician deems necessary in regard to the work related injuries. In addition, Dr. Litchfield opined that Mr. Hale sustained permanent anatomical abnormalities and loss of function and should be sent for vocational rehabilitation if the City is unable to accommodate his impairment.

On September 28, 2016, the medical expert for the City, Dr. Kent Hensley opined 9% (\$10,174.50) impairment to the whole man regarding the left shoulder, including 4% pre-existing, and continuing medical maintenance would not be required as he was already receiving pain management prior to this injury. The City's maximum exposure for total PPD would be \$36,176.

Trial. This case proceeded through the normal litigation process; however, Mr. Hale 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 and re-injury of the left shoulder and award PPD within a range of the doctors' opinions.

Proposed Settlement. The proposed settlement to close this case on a "Compromise Settlement" basis is for a lump sum payment of \$24,305.75 (less attorney fee) representing 21.5% PPD to the body as a whole.

It is felt that this settlement closing the case is fair and reasonable. A Compromise 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 in these Workers' Compensation cases. This settlement is beneficial to Mr. Hale in that it provides certainty for an award. It is also beneficial to Mr. Hale because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the case is settled in this manner, the City would incur additional costs and fees of Workers' Compensation Administration Fund Tax in the amount of \$486.12; Special Occupational Health & Safety Tax in the amount of \$182.29; and Workers Comp Commission Filing fee in the amount of \$140.00. In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$144.14.

These additional costs and fees total \$952.55, which brings the total cost of this settlement to the City to \$25,258.30. Adequate funds are available in the Risk Management Fund, Worker's Compensation Order/Settlements Account (043-3002-415.21-31).

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Hale 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 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.