



Legislation Text

File #: R-1819-64, **Version:** 2

RESOLUTION R-1819-64: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENTS OF THE CLAIMS FILED BY WILLIAM ATTEBERRY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *WILLIAM ATTEBERRY V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NOS. 2015-06559 Q AND 2016-05332 L; 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: William Atteberry is a former fire captain for the City of Norman Fire Department. He was hired as a firefighter on December 18, 1981, promoted to fire driver engineer January 19, 1990 and fire captain, March 27, 1997. Mr. Atteberry filed a workers' compensation claim with the Workers' Compensation Commission on October 5, 2015, alleging a single incident injury to the neck while fighting a grass and structure fire on February 17, 2014. On August 16, 2016, he filed a second claim alleging a single incident injury to the left shoulder during training on December 14, 2015. Mr. Atteberry medically retired June 11, 2016 after 34 years of employment. The City admitted both claims and they proceeded through the normal litigation process. Prior to a trial being scheduled to determine compensability, Mr. Atteberry has agreed to settle both claims in the total amount of \$23,740.50. The settlement offer is being presented to City Council for consideration. It is recommended that this settlement be accepted.

DISCUSSION:

CM 2015-06559 Q (Neck)

Mr. Atteberry was initially seen at Norman Regional Hospital on February 18, 2014 due to pain and was treated with pain medication and discharged to light duty. On February 20, 2014, he was seen by Dr. Bobb for muscle spasms and treated conservatively with a trigger point injection and medications; however, on February 27, 2014, he returned to the emergency room due to continued pain. A cervical magnetic resonance imaging (MRI) exam was performed March 3, 2014. He was then referred to Dr. Harris for further spine specialist evaluation and on March 12, 2014 underwent an anterior cervical discectomy and fusion at C5-6, followed by post-operative home exercises and continued on medications. Mr. Atteberry returned to work May 10, 2014 and on January 6, 2015 was released, having achieved maximum medical improvement (MMI), with no restrictions.

CM-2016-05332 L (Left Shoulder)

Mr. Atteberry was seen by Dr. Bobb the same date of the injury. He was treated conservatively and discharged to modified duties. After review of a MRI of the left shoulder that was performed December 17, 2015, Dr. Bobb performed a left shoulder rotator cuff repair on December 30, 2015. Mr. Atteberry received a rehabilitative course of physical therapy postoperatively through June 2016 and instructed to continue home exercises. On September 6, 2016, he was released MMI with no restrictions.

Issues for Trial. The primary issues to be tried in these cases before the Workers' Compensation Commission are the extent of Mr. Atteberry's injuries and whether the injuries to his neck and left shoulder 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.

CM 2015-06559 Q (Neck)

Mr. Atteberry was rated on October 28, 2015, by Dr. Lance E. Rosson, D.O., who opined 15% (\$16,957.50) body as a whole permanent partial impairment for the neck and entitlements to continuing medical benefits, in the nature of

prescription medications on an as-needed basis, as well as other treatment that his treating physician or further selected physicians might deem necessary.

On August 27, 2018, the medical expert for the city, Dr. Kent Hensley, M.D., opined 6% (\$6,783) impairment to the whole man regarding the cervical spine and entitlements for continuing medical maintenance would not be required. The City's maximum exposure for total PPD regarding the cervical spine would be \$16,957.50.

CM-2016-05332 L (Left Shoulder)

For the left shoulder, Mr. Atteberry was rated on July 27, 2018 by Dr. Rosson. Dr. Rosson opined 11.1% (\$12,548.55) whole person permanent partial impairment and entitlements to continuing medical benefits.

He was then rated on August 27, 2018 by Dr. Hensley, who opined 7% (\$7,913.50) impairment to the whole man regarding the left shoulder. Continuing medical maintenance was not recommended. The City's maximum exposure for total PPD regarding the left shoulder would be \$12,548.55.

Trial. These cases proceeded through the normal litigation process; however, Mr. Atteberry has agreed to a settlement of these cases as outlined below. If a trial was held in these cases, the Judge could determine nature and extent of the injury of the neck and left shoulder and award permanent partial disability within a range of the doctors' opinions.

Proposed Settlement. The proposed settlement to close both cases on a "Joint Petition" basis is for a lump sum payment of \$23,740.50 (less attorney fee) representing 11% (\$12,435.50) permanent partial disability to the body as a whole for the neck and 10% (\$11,305) permanent partial disability to the body as a whole for the left shoulder.

The settlement closing both cases 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 in these Workers' Compensation cases. This settlement is beneficial to Mr. Atteberry in that it provides certainty for an award.

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

CM 2015-06559 Q (Neck)

Workers' Compensation Administration Fund Tax in the amount of \$248.71; Special Occupational Health & Safety Tax in the amount of \$93.27; and Workers Comp Commission Filing fee in the amount of \$140.

CM-2016-05332 L (Left Shoulder)

Workers' Compensation Administration Fund Tax in the amount of \$226.10; Special Occupational Health & Safety Tax in the amount of \$84.79; 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 \$144.14.

These additional costs and fees total \$1,077.01, which brings the total cost of this settlement to the City to \$24,817.51.

Adequate funds are available in the Order/Settlements Account (043-3002-415.21-31).

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. Atteberry'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. Atteberry 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.* Certifying the order to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.