



Legislation Text

File #: R-1819-69, **Version:** 2

RESOLUTION R-1819-69: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY DONALD E. PACZOSA UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *DONALD E. PACZOSA V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NO. 2016-08419 F; 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: Donald Paczosa is a Maintenance Worker II with the City of Norman's Parks and Recreation Department. He was hired on August 6, 2013 as a Maintenance Worker I and promoted September 23, 2016. Mr. Paczosa filed a workers compensation claim with the Workers' Compensation Commission on December 23, 2016, alleging a single incident injury to the right shoulder, right arm on April 14, 2016 while lifting a baseball field drag into a Toro. The City admitted this claim and it proceeded through the normal litigation process. In lieu of a trial being held to determine compensability, Mr. Paczosa has agreed to settle this claim in the total amount of \$15,827 (14% permanent partial disability to the whole body). The settlement offer is recommended and is being presented to City Council for consideration.

DISCUSSION: Mr. Paczosa was seen by Dr. Penwell the date of injury. He was then referred for orthopedic evaluation by Dr. Ringus following magnetic resonance imaging (MRI) exams performed on April 15, 2016 for the right humerus and elbow. After Dr. Ringus' review of the MRIs, Mr. Paczosa underwent right shoulder arthroscopy on May 5, 2016 followed by rehabilitative course of post-operative physical therapy and was released, having achieved maximum medical improvement, with no restrictions, on November 30, 2016.

Issues for Trial. The primary issues to be tried in this case before the Workers' Compensation Commission are the extent of Mr. Paczosa's injuries and whether the injuries to his right shoulder and right arm 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. Paczosa was initially rated by J. Arden Blough, M.D. on February 13, 2017 who opined (as a scheduled member) 61% upper extremity permanent partial impairment to the right shoulder and 28% to the right arm/elbow as well as entitlements to continued care in regard to the right shoulder, assigned a board certified orthopedic specialist, and given entitlements for prescription medications or any treatments his treating physician deems necessary with respect to this injury. On October 29, 2018, Lonnie Litchfield, M.D. provided a supplemental report to Dr. Blough's report, who has since retired, and opined (as a scheduled member) 24% upper extremity permanent partial impairment to the right shoulder or (conversion combining multiple impairments within a single region) 24% (\$27,132) whole person impairment.

On May 23, 2017, the medical expert for the City, Dr. Kent Hensley opined 5% (\$5,652.50) impairment to the whole man regarding the right shoulder and 0% impairment to the right arm regarding the right elbow and entitlements to continuing medical maintenance would not be required. Dr. Hensley provided a supplemental report on November 15, 2018 and opined that his rating remained the same as previously set forth in the May 23, 2017 report. He reported that maximum impairment available for a shoulder condition is 60% impairment to the upper extremity, or 36% impairment to the whole man and Dr. Blough's rating would imply total loss of function of the right shoulder which Mr. Paczosa does not demonstrate, since he was released to return to work without restrictions. Dr. Hensley further noted that allowing a combination of methods to be used is inconsistent with the sixth edition of the AMA Guides and inconsistent with the Supreme Court decision. The City's maximum exposure for total PPD would be \$27,132.

Trial. This case proceeded through the normal litigation process; however, Mr. Paczosa 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 to the right shoulder, right arm and award permanent partial disability within a range of the doctors' opinions.

Proposed Settlement. The proposed settlement to close this case on a "Joint Petition" basis is for a lump sum payment of \$15,827 (less attorney fee) representing 14% permanent partial disability to the body as a whole.

It is felt that this settlement closing of the 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 in these Workers' Compensation cases. This settlement is beneficial to Mr. Paczosa in that it provides certainty for an award. It is also beneficial to Mr. Paczosa 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 \$316.54; Special Occupational Health & Safety Tax in the amount of \$118.70; 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 \$719.38, which brings the total cost of this settlement to the City to \$16,546.38.

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. Acceptance of the settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Paczosa 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.