



Legislation Text

File #: GID-1819-59, **Version:** 2

CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$19,249.22 REGARDING ROBERT PACK V. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE 2017-06285 R (LUMBAR SPINE).

BACKGROUND: Mr. Pack is a heavy equipment operator in the Street Maintenance Division of the Public Works Department. He filed a Worker's Compensation Commission claim on February 27, 2017 alleging a single incident injury to the low back from shoveling sand and scooping on September 28, 2015. The City admitted the claim and it proceeded through the normal litigation process. A trial was held on February 5, 2019. On February 19, 2019, the Commission awarded Mr. Pack 15 percent permanent partial disability (PPD) to the lumbar spine in the amount of \$16,957.50 to be paid at a weekly rate of \$323 commencing January 8, 2018, until the entire award is paid and an additional \$1,500 due to disfigurement for a total amount of \$18,457.50. On February 27, 2019, an Order Nunc Pro Tunc was filed due to scrivener's error in Paragraph II #2. It is recommended that the City comply with these Orders.

DISCUSSION: Mr. Pack is a seventeen (17) year employee of the City of Norman who was hired as a Maintenance Worker I on February 5, 2002 and was promoted to a heavy equipment operator November 15, 2002.

Medical Treatment. Mr. Pack was initially seen by Dr. Penwell and treated conservatively to include medications and physical therapy. A magnetic resonance imaging (MRI) exam of the lumbar spine was ordered and he was referred to Dr. Harris for orthopedic evaluation and treatment on January 14, 2016. The MRI on October 9, 2015 revealed multilevel degenerative disc disease more prominent at L4-L5. Dr. Harris referred Mr. Pack to Dr. Guerra for interventional pain management and underwent a series of lumbar epidural steroid injections and also a lateral recess block without significant improvement. On September 19, 2016, he was sent for an electromyography (EMG) testing which revealed right L5 radiculopathy and on December 2, 2016 sent for a MRI of the lumbar/sacral spine which revealed multilevel degenerative disc disease of the lumbosacral spine, more prominent at L4-L5. He was then referred to Dr. Spence for neurosurgical evaluation and management and was sent for a discogram on May 10, 2017 and underwent an anterior lumbar interbody fusion on September 6, 2017 followed by postop physical therapy. Mr. Pack returned to work on December 12, 2017 without restrictions and was released maximum medical improvement on January 8, 2018.

Issues for Trial. The issue tried on February 5, 2019, before the Workers' Compensation Commission was the extent of Mr. Pack's injury and whether the injury to his lumbar spine was 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. Pack was first rated by Lance Rosson, D.O. on December 21, 2017. Dr. Rosson opined 25% (\$28,262.50) permanent partial impairment to the whole man regarding the lumbar spine 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 March 29, 2018, the medical expert for the City, Kent Hensley, M.D. opined 8% (\$9,044) permanent partial impairment to the whole man regarding the lumbar spine 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 \$28,262.50.

Court Award: The case was heard by the Workers' Compensation Commission on February 5, 2019. Based on Mr. Pack's testimony and considering the expert medical evidence, the Commission entered its Order on February 19, 2019, awarding 15 percent (\$16,957.50) PPD to the whole man regarding the lumbar spine and an additional \$1,500 due to disfigurement, resulting in a permanent 7 inch scar.

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 15% permanent partial disability to the lumbar spine. At Claimant's rate of compensation, this is equal to an award of \$16,957.50, which shall be paid to Claimant weekly at the rate of \$323 commencing January 8, 2018, 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. Pack's weekly wage PPD rate is \$323. 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. Pack and his attorney will be paid the lump sum amount.

4. "That Claimant sustained disfigurement on his stomach due to surgery. The seven (7) inch scar entitles Claimant to \$1,500 in disfigurement."

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 \$138.43, Workers' Compensation Administration Fund Tax in the amount of \$369.15, and filing fee to the Workers' Compensation Commission in the amount of \$140. In addition, the Cleveland County filing fee will be \$144.14.

These costs and fees total \$791.72, which brings the total cost of this Order to \$19,249.22.

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

RECOMMENDATION: The issues tried on February 5, 2019, were the extent of Mr. Pack's injury and whether the injury to his lumbar spine was permanent in nature. The Court Award in this case is within the medical evidence submitted. In light of Mr. Pack'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.