



Legislation Text

File #: GID-1819-36, **Version:** 2

CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER PLUS COURT COSTS IN THE AMOUNT OF \$27,664.45 REGARDING CURTIS GARRETT V. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE 2018-04775 Q.

BACKGROUND: Mr. Garrett is a master police officer-sergeant for the Norman Police Department. He filed a Worker's Compensation Commission claim 2018-04775 Q on July 31, 2018 alleging a single incident injury to the left knee on July 31, 2017 when stepping up on a curb. The City admitted the claim and it proceeded through the normal litigation process. A trial was held on February 25, 2019. On February 27, 2019, the Commission awarded Mr. Garrett 30 percent permanent partial disability (PPD) to the left knee in the amount of \$26,647.50. It is recommended that the City comply with this Order.

DISCUSSION: Mr. Garrett is a nineteen (19) year employee of the City of Norman who was hired as a as a police officer on October 22, 1999 and reclassified as a master police officer-sergeant April 22, 2004.

Medical Treatment. Mr. Garrett was initially seen at Norman Regional Hospital Emergency Room and then Norman Regional Occupational Medicine on the date of his reported injury. It was noted that Mr. Garrett had history of a work related injury to the left knee in 2002 which required surgery for a meniscus tear and steroid injections in 2016. He was sent for an MRI on August 3, 2017 which revealed a tear of the posterior horn of the medial meniscus as well as associated degenerative changes. Mr. Garrett was then referred to Dr. Bobb for orthopedic evaluation and treatment. After failing conservative treatment which included a series of three viscosupplementation injections, he underwent total left knee arthroplasty followed by post-operative physical therapy, run/walk treadmill program, and a home exercise program. Post-operatively, Mr. Garrett required an overnight inpatient stay due to post-operative fever and increased left leg pain. Mr. Garrett was released to modified duty February 15, 2018 and given a full work release April 10, 2018. He was released with maximum medical improvement by Dr. Bobb on July 10, 2018 with no restrictions or continuing medical maintenance.

Issues for Trial. The issue tried on February 25, 2019, before the Workers' Compensation Commission was the extent of Mr. Garrett's injury and whether the injury to his left knee 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. Garrett was first evaluated on September 24, 2018 by Lance Rosson, D.O. Dr. Rosson opined 49% (\$43,524.25) permanent partial impairment to the left knee over and above a preexisting impairment 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 November 7, 2018, the medical expert for the City, Kent Hensley, M.D. opined 25% (\$22,206.25) permanent partial impairment to the left leg which included a preexisting 12% impairment and that 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 \$43,524.25.

Court Award: The case was heard by the Workers' Compensation Commission on February 25, 2019. Based on Mr. Garrett's testimony and considering the expert medical evidence, the Commission entered its Order on February 27, 2019, awarding 30 percent permanent partial disability to the left knee in the total amount of \$26,647.50.

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 30% permanent partial disability to the left knee (over and above pre-existing 12% disability). At Claimant's rate of compensation, this is equal to an award of \$26,647.50, which shall be paid to Claimant weekly at the rate of \$323 commencing February 15, 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. Garrett's weekly wage PPD rate is \$323. In this instance, a portion of the award has accrued.

If approved by Council, Mr. Garrett and his attorney will be paid the accrued lump sum amount and attorney's fee plus an additional five weeks for processing and Council approval in the lump sum of \$24,386.50, with the balance of the award of \$2,261 to be paid in weekly payments of \$323 until paid in full as set forth in the attached Payment Schedule.

Further, in complying with the Order, the City will incur additional costs and fees noted in Nos. 5 through 7 as follows: Special Occupational Health and Safety Fund Tax in the amount of \$199.86, Workers' Compensation Administration Fund Tax in the amount of \$532.95, 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 \$1,016.95, which brings the total cost of this Order to \$27,664.45.

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

RECOMMENDATION: The issues tried on February 25, 2019, were the extent of Mr. Garrett's injury and whether the injury to his left knee was permanent in nature. The Court Award in this case is within the medical evidence submitted. In light of Mr. Garrett'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.