



## Legislation Text

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**File #:** R-1819-107, **Version:** 2

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**RESOLUTION R-1819-107:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY JUSTIN BURRIGHT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *JUSTIN BURRIGHT V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NO. 2017-00238 K; 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:** Justin Burright, a firefighter for the City of Norman Fire Department, filed Workers Compensation Commission Case No. 2017-0038 K on January 12, 2017 alleging a single incident injury to the left shoulder stepping off a truck on November 29, 2016. The claim was admitted by the City of Norman and it proceeded through the normal litigation process. Prior to a trial being held, Mr. Burright has agreed to settle this claim in the total amount of \$12,435.50 which represents 11% permanent partial disability to the body as a whole. The settlement offer is being recommended and is being presented to the City Council for consideration.

**DISCUSSION:** Mr. Burright is a 19-year employee of the City of Norman who was hired as a firefighter on October 18, 1999.

**Medical Treatment.** Mr. Burright was initially seen by Kim Wiese, PA-C the date of the injury and was treated conservatively. Due to continued symptomology, he was sent for a magnetic resonance imaging (MRI) exam of the left shoulder on December 15, 2016 which revealed an irregular tear superior labrum at the level of bicipital anchor, representing a tear. Mr. Burright was referred to David Bobb, M.D. and surgery was recommended. He underwent left shoulder arthroscopy surgery on January 6, 2017. Postoperatively he was placed in a shoulder cradle and treated with ongoing medications and physical therapy/home exercise program. Mr. Burright reached maximum medical improvement on March 27, 2017 and was released to regular duty with no restrictions on March 29, 2017.

**Issues for Trial.** Since there is no question Mr. Burright's injury 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. Burright's injury and whether the injury to the left shoulder 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. Burright was rated by Lance Rosson, D.O. on July 11, 2018 who opined under the Fifth Edition of the Guides 37% (\$41,828.50) permanent partial impairment to the body as a whole regarding the left shoulder as well as entitlements to continued 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, with respect to this job-related injury.

On August 28, 2018, the medical expert for the City, Kent Hensley, M.D. opined under the current Sixth Edition of the Guides 6% (\$6,783.00) permanent partial impairment to the whole man. He noted that the maximum impairment available for a shoulder condition under any edition of Guides is 36% impairment to the whole man and this degree of impairment would imply total loss of function in the left shoulder which Mr. Burright does not demonstrate. The City's maximum exposure for total PPD would be \$41,828.50.

**Trial.** This case proceeded through the normal litigation process; however, Mr. Burright 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 left shoulder 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 \$12,435.50 (less attorney fee) representing 11% 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. Burright in that it provides certainty for an award and would be 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 \$248.71; Special Occupational Health & Safety Tax in the amount of \$93.27; 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 \$626.12, which brings the total cost of this settlement to the City to \$13,061.62.

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. Burright 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.