



## Legislation Text

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CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$16,957.50 REGARDING KYLE L. BERNHARDT V. THE CITY OF NORMAN, WORKERS' COMPENSATION COMMISSION CASE 2018-00235 R (BACK).

**BACKGROUND:** Mr. Bernhardt is a fire driver engineer for the Norman Fire Department. He filed a Worker's Compensation Commission claim on January 12, 2018, alleging a single incident injury to the low back picking up a hose on November 24, 2017. The City admitted the claim and it proceeded through the normal litigation process. A trial was held on June 24, 2019. On June 27, 2019, the Commission awarded Mr. Bernhardt 15 percent permanent partial disability (PPD) to the back in the total amount of \$16,957.50 to be paid at a weekly rate of \$323.00 commencing June 19, 2018, until the entire award is paid. It is recommended that the City comply with these Orders.

**DISCUSSION:** Mr. Bernhardt is a nine (9) year employee of the City of Norman who was hired as a firefighter June 7, 2010, and was promoted to fire driver engineer March 8, 2019.

Medical Treatment. Mr. Bernhardt was initially seen in the emergency room the day of the injury. He followed up with Dr. Stanek and was given restrictions and treated conservatively with medication and physical therapy. An MRI was ordered and revealed a large right L4-L5 disc herniation with L5 nerve root compression. Mr. Bernhardt was referred to neurosurgeon Dr. Hisey and a minimally invasive right L4-L5 decompression and discectomy was recommended. Mr. Bernhardt was seen, by Court Order, for a change of physician, by Dr. Hume on March 6, 2018. On March 16, 2018, Mr. Bernhardt underwent surgery on his back to include a laminectomy at L4-5 with removal of extruded disc fragment followed by an intramuscular steroid injection on April 10, 2018, and postop physical therapy. He was released maximum medical improvement on June 19, 2018, with no restrictions and returned to work the following day.

Issues for Trial. The issues tried on June 24, 2019, before the Workers' Compensation Commission were the extent of Mr. Bernhardt's injury and whether the injury to his back 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. Bernhardt was first rated by Lance Rosson, D.O. on August 23, 2018. Dr. Rosson opined 25% (\$28,262.50) permanent partial impairment to the whole man regarding the back 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 October 16, 2018, the medical expert for the City, Kent Hensley, M.D. opined 7% (\$7,913.50) 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 June 24, 2019. Based on Mr. Bernhardt's testimony and considering the expert medical evidence, the Commission entered its Order on June 27, 2019, awarding 15 percent (\$16,957.50) PPD to the whole man regarding the back.

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 back. 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 \$323.00 commencing June 19, 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. Bernhardt's weekly wage PPD rate is \$323.00. 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. Bernhardt and his attorney will be paid the lump sum amount.

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 \$127.18, Workers' Compensation Administration Fund Tax in the amount of \$339.15, and filing fee to the Workers' Compensation Commission in the amount of \$140.00. In addition, the Cleveland County filing fee will be \$144.14. These costs and fees total \$750.47, which brings the total cost of this Order to \$17,707.97. Adequate funds are available in the Order/Settlements Account (043-3002-415.21-31).

**RECOMMENDATION:** The issues tried on June 24, 2019, were the extent of Mr. Bernhardt's injury and whether the injury to his back was permanent in nature. The Court Award in this case is within the medical evidence submitted. In light of Mr. Bernhardt'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.