



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 11/26/2024

**REQUESTER:** Jeanne Snider

**PRESENTER:** Jeanne Snider, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2425-66: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY NICHOLAS TERHUNE UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *NICHOLAS TERHUNE V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2024-03394 E; 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.

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### **BACKGROUND:**

Nicholas Terhune, a Fire Captain for the City of Norman's Suppression Division of the Fire Department, was hired December 5, 2005 as a firefighter recruit. He was promoted to firefighter December 6, 2006, Fire Driver Engineer March 20, 2013, and Fire Captain September 30, 2016. Mr. Terhune filed Workers Compensation Commission Case 2024-00394 E on June 19, 2024, alleging a single incident injury to the Left Bicep Tendon (arm) and Chest when lifting a hose on December 1, 2023. The case was accepted and proceeded through the normal litigation process.

Prior to a trial being held, Mr. Terhune has agreed to a settlement in the total amount of \$17,820, which represents 18 percent permanent partial impairment (PPI) to the Arm regarding the left bicep tendon and 0 percent PPI to the Whole Man regarding the chest. The settlement is recommended for consideration by the City Council.

### **DISCUSSION:**

Medical Treatment. Mr. Terhune was seen at an urgent care a couple days following injury to the left arm and was treated conservatively with medication. He was then seen at Norman Regional Occupational Medicine on December 4, 2023, placed on restrictions, and a magnetic

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resonance imaging (MRI) of the left elbow was ordered. Due to MRI results showing a traumatic rupture of the left biceps tendon, he was referred for orthopedic evaluation. Mr. Terhune was seen by Dr. James Bond on December 15, 2023 and surgery was recommended. On January 18, 2024, he underwent left distal biceps repair followed by physical therapy postoperatively. Mr. Terhune continued to follow-up with Dr. Bond remaining off work with temporary restrictions. On June 19, 2024, he was released by Dr. Bond at maximum medical improvement (MMI) with no restrictions returned to work June 25, 2024.

Issues for Trial. There is no question Mr. Terhune injured his left bicep tendon in the course of his employment with the City. The primary issues to be tried before the Workers' Compensation Commission are the extent of his injury and whether the injury is 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.

Evaluations. Mr. Terhune was evaluated by Dr. Lance Rosson on July 1, 2024, regarding the above claim and opined a rating of 39 percent (\$38,610) PPI to the left arm. The chest was not rated separately. Dr. Rosson also opined that Mr. Terhune should be given 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 further selected physicians might deem necessary.

He was then rated on August 22, 2024 by Dr. William Jones, the medical expert for the City. Dr. Jones opined 12 percent (\$11,880) PPI to the left arm. The City's maximum exposure for total PPI would be \$38,610.

Trial. The case proceeded through the normal litigation process; however, Mr. Terhune has agreed to a settlement of the case as outlined below. If a trial was held, the Judge could determine nature and extent to his injuries and award permanent partial disability.

Proposed Settlement. The proposed settlement closes Workers' Compensation Commission Case 2024-03394 E in a lump sum payment of \$17,820 (less attorney fee) representing the settlement amount discussed above. Pursuant to 85A O.S. § 31(7), for injuries occurring on or after July 1, 2019, a Multiple Injury Trust Fund assessment in the amount of \$534.60, representing (3%) of the permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission.

It is felt that the settlement 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. This settlement is beneficial to Mr. Terhune 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 was settled in this manner, the City would incur additional costs and fees of:

Workers' Compensation Administration Fund Tax in the amount of \$356.40; Special Occupational Health & Safety Tax in the amount of \$133.65; and Workers Comp Commission Filing fee in the amount of \$140. In addition, the City would incur an additional cost and fee for

the Cleveland County Court Filing Fee in the amount of \$154.14.

These additional costs and fees total \$784.19, which brings the total cost of this settlement to the City to \$18,604.19. Adequate funds are available in the Order/Settlements Account (43330102-42131).

**RECOMMENDATION:**

For the reasons outlined above, it is believed the 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. Terhune 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* and 85 O.S. § 313, 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.