



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 2/28/2023

**REQUESTER:** Jeanne Snider

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

**ITEM TITLE:** CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A WORKERS' COMPENSATION COMMISSION COURT ORDER IN THE AMOUNT OF \$38,167.50 REGARDING JERRY WAYNE YOUNTS VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2020-06911 F.

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**BACKGROUND:**

Jerry Younts is a Heavy Equipment Operator for the City of Norman's Street Maintenance Division of the Public Works Department. Mr. Younts filed claim number 2020-06911F with the Workers' Compensation Commission on December 3, 2020, alleging a single incident injury on January 1, 2020 to the Left Shoulder and Neck while picking up wood. City records reported injury to the left shoulder only; therefore, injury to the Neck was denied. The case proceeded through the normal litigation process. A trial was held January 30, 2023. On February 3, 2023, the Court denied alleged injury to the neck and awarded 28 percent (\$35,280) Permanent Partial Disability to the Left Shoulder and added 3 percent (\$2,887.50) Permanent Partial Disability to the Left Arm for a total award of \$38,167.50 to be paid at a weekly rate of \$350 commencing January 29, 2022, until the entire award is paid in full. In addition, the Court awarded Mr. Younts continuing medical maintenance for the Left Shoulder and Left Arm in the form of annual x-rays with Dr. James Bond. It is recommended that the City comply with this Order.

**DISCUSSION:**

Mr. Younts is a thirty-one (31) year employee of the City of Norman who was hired as a Maintenance Worker I on February 18, 1992 and promoted to Maintenance Worker II on October 11, 1996 and Heavy Equipment Operator on December 6, 1996.

Mr. Younts was initially examined at Norman Regional Occupational Medicine on January 17, 2020, for his injury and treated conservatively to include a subacromial steroid injection to the left shoulder and physical therapy. On February 17, 2020, he was sent for magnetic resonance imaging (MRI) and referred to Dr. Bobb due to findings. On February 20, 2020, he was examined by Dr. Bobb and surgical intervention was recommended. Mr. Younts underwent left shoulder arthroscopic surgery on March 6, 2020, followed by postoperative physical therapy. On August 10, 2020, he was released back to work by Dr. Bobb with no restrictions or continuing medical maintenance. Mr. Younts' treating physician was changed to Dr. Bond by Court Order on February 25, 2021. On March 31, 2021, he was examined by Dr. Bond and referred to

Dr. Boehm for an ultrasound guided intra-articular steroid injection, which he underwent on April 26, 2021. Due to continued symptomology, Mr. Younts underwent left total shoulder arthroplasty on August 17, 2021, by Dr. Bond followed by postoperative physical therapy. He was released by Dr. Bond at maximum medical improvement without restrictions on May 19, 2022, and instructed to return yearly for x-rays.

Issues for Trial. The issues tried on January 30, 2023, before the Oklahoma Workers' Compensation Commission were the extent of permanent partial disability benefits to the neck, left shoulder and left arm, continuing medical maintenance for the left shoulder and left arm, ongoing service for medical hardware in left shoulder and left arm, maintenance for a prosthetic device used in left shoulder injury repair, and mileage reimbursement reserved for future determination. 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.

On July 6, 2022, Mr. Younts was rated by Dr. Lance Rosson. Dr. Rosson opined injury to the left arm, 3 percent (\$3,780) permanent partial impairment to the whole man regarding the neck, 35 percent (\$44,100) permanent partial impairment to the whole man regarding the left shoulder, and 30 percent (\$28,875) permanent partial impairment to the arm regarding the left arm, to include entitlements to continuing 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 and retained hardware/instrumentation/prosthetic/medical device could potentially result in future issues and the need for additional surgical intervention.

The City had Mr. Younts evaluated by Dr. William Jones on October 12, 2022 who opined no objective evidence to warrant future medical treatment, 0 percent permanent partial impairment to the whole man regarding the cervical spine as the alleged neck strain resolved without treatment or objective findings, 14 percent (\$17,640) permanent partial impairment to the whole man regarding the left shoulder, and 0 percent permanent partial impairment to the left arm regarding the left arm/elbow as replacement/repair would not be required based on normal physical and range of motion and left shoulder prosthesis being well-aligned and solidly healed.

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 \$76,755.

Court Award: The case was heard by the Workers' Compensation Commission on January 30, 2023. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on February 3, 2022. The Court found compensable injuries to the Left Shoulder and Left Arm, denied and dismissed alleged injury to the Neck, awarded 28 percent permanent partial disability to the Left Shoulder, 3 percent permanent partial disability to the Left Arm, as well as granted continuing medical maintenance for the Left Shoulder and Left Arm in the form of annual x-rays with Dr. Bond.

The Court's findings are set out in Paragraph Nos. 4 through 6 of the Order, as follows:

-4.- "As a result of said compensable injuries, claimant has sustained 28% Permanent Partial Disability to the LEFT SHOULDER and 3% Permanent Partial Disability to the LEFT ARM. At claimant's rate of compensation, this is equal to an award of \$38,167.50, which shall be paid to claimant weekly at the rate of \$350.00 commencing January 29, 2022, until the entire award is paid in full."

As can be noted in No. 4 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. Younts' weekly wage PPD rate is \$350.00. In this instance, a portion of the award has accrued.

-5.- "Respondent shall provide continuing medical maintenance for Claimant's left shoulder and left arm, in the form of annual x-rays, with Dr. James Bond."

-6.- "Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82."

If approved by Council, Mr. Younts and his attorney would be paid the accrued lump sum amount and attorney's fee, less the Multiple Injury Trust Fund Assessment amount, plus an additional 9 weeks for processing and Council approval in the total lump sum amount of \$26,483.47. The balance of the award (\$11,729.03) would then be paid in weekly payments of \$350 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 as set out in Paragraph Nos. 7 through 9. Special Occupational Health and Safety Fund Tax in the amount of \$286.26, Workers' Compensation Administration Fund in the amount of \$763.35, filing fee to the Workers' Compensation Court in the amount of \$140.00; and filing fee to Cleveland County in the amount of \$154.14. The costs and fees total \$1,343.75, which brings the total cost of this Order to \$39,511.25. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-10.- "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 \$1,145.03, representing (3%) of the Claimant's permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent."

#### **RECOMMENDATION:**

The issues tried on January 30, 2023, were the extent of permanent partial disability benefits to the neck, left shoulder and left arm, continuing medical maintenance for the left shoulder and left arm, ongoing service for medical hardware in left shoulder and left arm, maintenance for a prosthetic device used in left shoulder injury repair, and mileage reimbursement reserved for future determination. The Court Award in this case is within the medical evidence submitted. 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 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 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.