



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 02/27/2024

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-118: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY CARL TOMCZAK UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *CARL TOMCZAK V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2022-07388 P; 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:

Carl Tomczak is a firefighter for the City of Norman's Suppression Division of the Fire Department hired on January 1, 2015. Mr. Tomczak filed Workers Compensation Commission Case 2022-07388 P on December 8, 2022, alleging a single incident injury to the left shoulder, left upper arm, and left arm from a lifting injury on July 18, 2021. The case was accepted and proceeded through the normal litigation process.

Prior to a trial being held, Mr. Tomczak has agreed to a settlement in the total amount of \$25,920.00, which represents 20 percent permanent partial impairment (PPI) to the whole body regarding the left shoulder, zero percent regarding the left upper arm, and zero percent regarding the left arm. The settlement is recommended for consideration by the City Council.

DISCUSSION:

Medical Treatment. Mr. Tomczak was seen initially at Access Medical Center the day of his injury. He then followed up with Norman Regional Occupational Medicine on July 23, 2021 and was treated conservatively to include a steroid injection and underwent a magnetic resonance imaging (MRI) on August 19, 2021. Due to lack of improvement and MRI findings, he was referred for orthopedic evaluation. On September 13, 2021 he was seen by Dr. Moses and

prescribed physical therapy. He continued to follow-up with Dr. Moses receiving conservative treatment to include steroid injection, dryneedling in physical therapy, and a Platelet-Rich Plasma (PRP) injection before surgical intervention was recommended. He underwent left shoulder arthroscopic labral repair on February 11, 2022 followed by postoperative physical therapy. He was released MMI without restrictions on May 20, 2022. On January 31, 2023, a change of physician was requested to Dr. Bond. He was seen by Dr. Bond on February 15, 2023 and left shoulder manipulation was recommended and was performed on March 20, 2023. Mr. Tomczak returned to Dr. Bond on September 11, 2023 and was released MMI without restrictions.

Issues for Trial. There is no question Mr. Tomczak injured his left shoulder in the course of his employment with the City. The primary issues to be tried before the Workers' Compensation Commission are the extent of Mr. Tomczak's 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. Tomczak was evaluated by Dr. Lance Rosson, D.O. on October 19, 2023, regarding the above claim and opined a rating of 29 percent (\$37,584.00) PPI to the whole body regarding the left upper extremity. In addition, Dr. Rosson opined Mr. Tomczak should be given entitlement 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, and ongoing and continued medical maintenance indefinitely for the implanted medical devices/prosthetic/instrumentation.

He was then rated on January 9, 2023 by William Jones, M.D., MPH, the medical expert for the City of Norman. Dr. Jones opined 8 percent (\$10,368) PPI to the whole body regarding the left shoulder. He also opined that the anchor hardware is not a prosthetic device or medical device, and is not intended to be serviced, refilled, replaced or repaired.

Trial. The case proceeded through the normal litigation process; however, Mr. Tomczak 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 Case 2022-07388 P in a lump sum payment of \$25,920.00 (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 \$777.60, 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. Tomczak 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 \$518.40; Special Occupational Health & Safety Tax in the amount of \$194.40; 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 \$1,006.94, which brings the total cost of this settlement to the City to \$26,926.94. 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. Tomczak 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.