



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 7/12/2022

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-11: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY KEITH NELSON UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *KEITH NELSON V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2022-01836 F; 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:

Keith Nelson was injured while on the job on September 15, 2021. On March 30, 2022, he filed an Oklahoma Workers Compensation Commission Case CM-2022-01836 F alleging a single incident injury to the Right Shoulder while cleaning equipment. The claim was admitted by the city of Norman and it proceeded through the normal litigation process.

Prior to a trial being held, Mr. Nelson has agreed to settle his claim for a total amount of \$25,920 which represents 20 percent permanent partial disability to the whole body regarding the right shoulder/arm. This settlement is being recommended and is being presented to the City Council for consideration.

DISCUSSION:

Mr. Nelson is a former Fire Training Officer for the City of Norman's Suppression Division of the Fire Department. He was hired March 15, 1995 as a firefighter recruit and promoted to firefighter March 13, 1996, Health Safety Coordinator August 27, 2002, and Fire Training Officer May 25, 2011, and retired from the Fire Department on October 31, 2021.

Medical Treatment. Mr. Nelson was seen the day following his injury at Norman Regional

Occupational Medicine for his right shoulder and was treated conservatively. On October 19, 2021, he was sent for magnetic resonance imaging (MRI) of the right shoulder due to continued symptomology without improvement. Due to MRI findings, he was referred to orthopedic surgeon, Mark Moses, M.D. and surgery was recommended. Mr. Nelson underwent arthroscopy with rotator cuff repair, subacromial decompression, distal clavicle excision, and biceps tenodesis on November 30, 2021 and postoperative physical therapy. He returned to full duty without restrictions on March 28, 2022.

Issues for Trial. Since there is no question Mr. Nelson's injury to the shoulder/arm 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 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. Nelson was evaluated by Lance Rosson, D.O. on April 21, 2022, regarding the above claim and opined a total rating of 28 percent permanent partial disability to the body as a whole regarding the right shoulder. In addition, he opined 30 percent permanent partial disability to the right arm due to limited mobility, pain, and weakness. He also opined 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 to include ongoing and continued medical maintenance indefinitely for retained hardware/instrumentation/ prosthetic/medical device.

Mr. Nelson was then scheduled to be evaluated by William Jones, M.D. on August 30, 2022, the medical expert for the City. Prior to this evaluation, both parties agreed to this settlement and have agreed to stipulate that medical reports would support the settlement. The City's maximum exposure for total PPD would be \$65,988.

Trial. The case proceeded through the normal litigation process; however, Mr. Nelson 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 to his injuries and award permanent partial disability.

Proposed Settlement. The proposed settlement closes the case in a lump sum payment of \$25,920 (less 20% 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 to close this 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. This settlement is beneficial to Mr. Nelson 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 this case is 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 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. Nelson 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.