



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 2/11/25

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A COURT ORDER: A RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE TOTAL AMOUNT OF \$35,742 REGARDING JERRY WILSON VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2024-04699 W.

BACKGROUND:

Jerry Wilson is a former tradesworker hired August 14, 1995 for the City of Norman's Facility Maintenance Division of the Parks and Recreation Department. Mr. Wilson filed claim CM3-2024-04699 W with the Oklahoma Workers' Compensation Commission on August 21, 2024, alleging a single incident injury to the Rib(s), Lumbar Spine, Right Shoulder, Neck, and Head when he slipped and fell off a stepladder while working on a Heating, Ventilation, and Air Conditioning (HVAC) system on November 16, 2023. The claim was accepted and proceeded through the normal litigation process. A trial was held on January 14, 2025. On January 31, 2025, the Court awarded Mr. Wilson 6 percent (\$7,776) Permanent Partial Disability (PPD) to the RIB(S), 12 percent (\$15,552) PPD to the LUMBAR SPINE, 7 percent (PPD) to the RIGHT SHOULDER, 1 percent (\$1,296) PPD to the NECK, and 1 percent (\$1,296) PPD to the HEAD. The PPD award totaled \$34,992 and is to be paid to Mr. Wilson weekly at the rate of \$360 commencing July 25, 2024 until the entire award is paid in full. In addition, the Court awarded serious and permanent disfigurement to the LEFT ARM in the amount of \$750 and is to be paid to Mr. Wilson in a lump sum (less attorney fee). Per the Order, Mr. Wilson is to be authorized a return visit to Dr. Jeffrey Miller to determine the need for continued medical maintenance. It is recommended that the City comply with this order.

DISCUSSION:

Medical Treatment. Mr. Wilson was transported by ambulance to Norman Region Hospital's emergency room and radiographic studies of the thorax and lumbar spine were performed as well as a computed tomography (CT) scans of the head and neck. Imaging revealed mildly displaced fractures of the right transverse process of L1-L4 and non-displaced fractures of right ribs 5-12. He was then transported and admitted at OU Medical Center for observation and pulmonary function and was discharged on November 18, 2023. On January 4, 2024, Mr. Wilson was sent to spine surgeon Dr. Fong for residual middle and lower back pain, treated conservatively to include physical therapy, and released at maximum medical improvement

(MMI) with restrictions from a surgical standpoint. He was then sent to orthopedic surgeon Dr. Bond on January 10, 2024 for the residual right shoulder pain complaints and magnetic resonance imaging (MRI) was recommended. He underwent the MRI on January 19, 2024 which revealed some arthritis and residual inflammation with a partial tear in the rotator cuff. Dr. Bond recommended an ultrasound guided GH joint injection to the right shoulder which was performed on February 6, 2024 by Dr. Boehm. The injection to the right shoulder provided marked relief. He followed up with Dr. Bond on February 28, 2024 and was released at MMI without restrictions. For ongoing ribs and lumbar spine pain, he was sent to Dr. Miller on January 25, 2024. Mr. Wilson was also sent to neurologist Dr. Pitman on February 15, 2024 for an electroencephalogram (EEG). The EEG study was found to be normal and from a brain injury standpoint was released by Dr. Pitman MMI without restrictions. Meanwhile on April 25, 2024 he was sent to general surgeon Dr. Hagood to rule out a hernia due to a protrusion of the abdomen and underwent a CT scan of the abdomen on May 6, 2024. Mr. Wilson continued to follow-up with Dr. Miller and was treated conservatively to include physical therapy and medication management. On June 12, 2024, he returned to Dr. Hagood and was released at MMI without restrictions regarding the abdominal wall. Mr. Wilson was then sent by Dr. Miller for a function capacity evaluation on July 10, 2024 and was released on July 25, 2024 at MMI with permanent restrictions.

Issues for Trial. The issues tried on January 14, 2024, before the Oklahoma Workers' Compensation Commission was nature and extent of permanent partial disability benefits to the Rib(s), Lumbar Spine, Right Shoulder, Neck, head, and Left Arm (Disfigurement) as well as rehab and continued medical maintenance. 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 11, 2024, Mr. Wilson was rated by Dr. Lonnie Litchfield who opined 3% (\$3,888) PPI to the occipital nerve, 4% (\$5,184) chronic migraines, 27% (\$34,992) impairment to the lumbar spine due to findings consistent with multiple intervertebral disc herniation with documented signs of residual multiple level bilateral radiculopathy, 7% (\$9,072) PPI to the lumbar spine due to transverse process fractures, 25% (\$32,400) PPI to the right shoulder, and 10% (\$12,960) PPI to the ribs; continued care in the form of pain management in regard to chronic pain, assigned a pain management specialist for treatment, and entitlements for prescription medications or any treatments his treating physician deems necessary; and vocational rehabilitation for training in a job consistent with his physical limitations and help to find suitable employment due to permanent anatomical abnormalities and loss of function. The City then had Mr. Wilson evaluated by Dr. William Jones on November 5, 2024. Dr. Jones opined 0% PPI regarding the head, 0% PPI regarding post-injury headache, 0% PPI regarding occipital nerve 0% PPI regarding vestibular disorder, 2% (\$2,592) PPI regarding the right shoulder, 4% (\$5,184) PPI regarding the ribs, thorax, thoracic spine, and 7% (\$9,072) PPI regarding the lumbar spine. Dr. Jones further opined that future medical treatment including vocational retraining and ongoing palliative and maintenance medications, or physician care was not warranted. The City's maximum PPI exposure would be \$98,496.

Court Award: The case was heard by the Workers' Compensation Commission on January 14, 2025. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on January 31, 2025. The Court found Mr. Wilson's sustained compensable work-related injury to the RIB(S), LUMBAR SPINE, RIGHT SHOULDER, NECK,

and HEAD on November 16, 2023 awarding 6 percent (\$7,776) Permanent Partial Disability (PPD) to the RIB(S), 12 percent (\$15,552) PPD to the LUMBAR SPINE, 7 percent (PPD) to the RIGHT SHOULDER, 1 percent (\$1,296) PPD to the NECK, and 1 percent (\$1,296) PPD to the HEAD. The PPD award totaled \$34,992 and is to be paid to Mr. Wilson weekly at the rate of \$360 commencing July 25, 2024 until the entire award is paid in full. In addition, the Court awarded serious and permanent disfigurement to the LEFT ARM in the amount of \$750 and is to be paid to Mr. Wilson in a lump sum (less attorney fee). Per the Order, Mr. Wilson is to be authorized a return visit to Dr. Jeffrey Miller to determine the need for continued medical maintenance. It is recommended that the City comply with this order.

The Court's findings are set out in Paragraphs 3 through 11 of the Order as follows:

-3.- "That as a result of said injury, Claimant has sustained 6% Permanent Partial Disability to the RIB(S), 12% Permanent Partial Disability to the LUMBAR SPINE, 7% Permanent Partial Disability to the RIGHT SHOULDER, 1% Permanent Partial Disability to the NECK and 1% Permanent Partial Disability to the HEAD. At Claimant's rate of compensation, this is equal to an award of \$34,992.00, which shall be paid to Claimant weekly at the rate of \$360.00 commencing July 25, 2024, until the entire award is paid in full."

As can be noted in paragraph 3 of the Commission's Order, Permanent Partial Disability (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. Wilson's weekly wage PPD rate is \$360.00. In this instance, a portion of the award has accrued.

-4.- "That disability to the neck is due to occipital nerve injury."

-5.- "As a result of the compensable injury, the Claimant suffered serious and permanent disfigurement to the LEFT ARM for which the Claimant is entitled to benefits pursuant to 85A O.S., §45(F) in the amount of \$750.00, which shall be paid by the Respondent to the Claimant in a lump sum. (less attorney fee).

-6.- "The respondent is to authorize return visit to Dr. Jeffrey Miller for determination of Claimant's need for continuing medical maintenance.

-7.- Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82."

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraphs 8 through 10. Special Occupational Health and Safety Fund Tax in the amount of \$268.07, Workers' Compensation Administration Fund in the amount of \$699.84, filing fee to the Workers' Compensation Court in the amount of \$140, and filing fee to Cleveland County in the amount of \$154.14. The costs and fees total \$1,262.05, which brings the total cost of this Order to \$37,004.05. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-11.- "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 \$1,049.76, representing (3%) of the Claimant's

permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent.”

If approved by Council, Mr. Wilson and his attorney would be paid 27 weeks accrued PPD (\$9,720), disfigurement (\$750), and attorney’s fee (\$7,148.40) less the Multiple Injury Trust Fund assessment amount (\$1,049.67), plus an additional 2 weeks of PPD for processing (\$720) for a total lump sum amount of \$17,288.64. The balance of the award would then be paid in weekly payments of \$360 until paid in full as set forth in the attached Payment Schedule. Funds are available in the Risk Management Fund, Orders and Settlements (Account No. 43330102-42131)

RECOMMENDATION:

The issues tried on January 14, 2025, were nature and extent of permanent partial disability benefits to the RIGHT RIB(S), LUMBAR SPINE, RIGHT SHOULDER, NECK, HEAD, and LEFT ARM (DISFIGUREMENT) as well as rehab and continued medical maintenance. 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.