



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 02/13/2024

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-114: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY DAN ATTAWAY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *DAN ATTAWAY V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2022-06389 G; 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:

Dan Attaway is a Fire Captain for the City of Norman's Suppression Division of the Fire Department. He was hired as a Firefighter December 5, 2005 and promoted to Fire Driver Engineer in 2014 and Fire Captain in 2017. Mr. Attaway filed Workers Compensation Commission Case 2022-06389 G on October 18, 2022, alleging a single incident injury to the right knee from a boat rescue on May 31, 2022. The case was accepted and proceeded through the normal litigation process.

Prior to a trial being held, Mr. Attaway has agreed to a settlement in the total amount of \$27,720.00, which represents 28 percent permanent partial impairment (PPI) to the Leg regarding the Right Knee. The settlement is recommended for consideration by the City Council.

DISCUSSION:

Medical Treatment. Mr. Attaway was seen initially at Norman Regional Occupational Medicine the day following the injury and a magnetic resonance imaging (MRI) was performed on June 6, 2022. He was referred for orthopedic evaluation. He was assessed by Dr. Ringus on June 15, 2023. Dr. Ringus recommended right knee arthroscopy and due to severe chondral erosion a cartilage biopsy for Matrix-Induced Autologous Chondrocyte Implantation (MACI) which was

performed on June 30, 2022. Postoperatively he developed a blood clot and was diagnosed and treated for a Duplex Venous Thrombosis (DVT). On November 22, 2022, he underwent right knee arthrotomy with MACI grafting of the trochlea and medial femoral condyle followed by postoperative physical therapy. He returned to work on June 2, 2023 and was released maximum medical improvement without restrictions on July 31, 2023.

Issues for Trial. There is no question Mr. Attaway injured his right knee 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. Attaway'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. Attaway was evaluated by Dr. Lance Rosson, D.O. on August 9, 2023, regarding the above claim and opined a rating of 43 percent (\$42,570.00) PPI to the leg regarding the Right Knee. In addition, Dr. Rosson opined Mr. Attaway 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.

He was then rated on November 14 2023 by William Jones, M.D., MPH, the medical expert for the City. Dr. Jones opined 9 percent (\$8,910.00) PPI to the leg regarding the Right Knee. The City's maximum exposure for total PPI would be \$42,570.00.

Trial. The case proceeded through the normal litigation process; however, Mr. Attaway 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 2022-06389 G in a lump sum payment of \$27,720.00 (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 \$831.60, 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. Attaway 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 \$554.40; Special Occupational Health & Safety Tax in the amount of \$207.90; 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 \$1,056.44, which brings the total cost of this settlement to the City to \$28,776.44. 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. Attaway 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.