



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 4/25/2023

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-126: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY DARIN HIETT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *DARIN HIETT V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2022-01014 Q; 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:

Darin Hiett is a Heavy Equipment Operator for the City of Norman's Streets Division in the Public Works Department. He filed Workers Compensation Commission Case 2022-01014 Q on February 22, 2022, alleging a single incident injury to the neck, right shoulder, and right hand on May 25, 2021 when pulling on a rod board. The case proceeded through the normal litigation process.

Prior to a trial being held, Mr. Hiett has agreed to a settlement in the total amount of \$38,027.50, which represents 2 percent (\$2,520) permanent partial impairment to the whole body regarding the neck, 21 percent (\$26,460) permanent partial impairment to the whole body regarding the right shoulder, 5 percent (\$4,812.50) permanent partial impairment to the right arm, and 5.5 percent (\$4,235) permanent partial impairment to the right hand. This settlement is being recommended for consideration by the City Council.

DISCUSSION:

Mr. Hiett is a ten (10) year employee of the City of Norman's Street Division in the Public Works Department. He was hired March 11, 2013 as a Maintenance Worker I and promoted December 9, 2016 to Maintenance Worker II and April 13, 2018 to Heavy Equipment Operator.

Medical Treatment. Mr. Hiatt was initially examined at Norman Regional Occupational Medicine for his injury due to neck pain into the right shoulder and was treated conservatively to include physical therapy and was placed on modified duty. Mr. Hiatt was sent for a cervical magnetic resonance imaging (MRI) on June 2, 2021, which revealed diffuse degenerative joint and disk disease. Reportedly, he began experiencing electricity, numbness and a tingling type pain radiating down his right arm with right hand numbness. With Mr. Hiatt's continued radiating right shoulder symptomology, he was referred to Dr. Padilla for orthopedic evaluation and underwent a right shoulder MRI on July 13, 2021. The right shoulder MRI revealed some rotator cuff and labral fraying with acromion-clavicle joint arthritis. Due to MRI findings, right shoulder arthroscopy and rotator cuff repair was performed on August 2, 2021 and was followed by postop physical therapy. Mr. Hiatt was also sent for neck and right upper extremity electromyography (EMG) nerve conduction studies on December 28, 2021 due to continued persistent numbness affecting grip strength. The EMG study confirmed carpal tunnel syndrome, which was then addressed in physical therapy. For the neck, Mr. Hiatt was sent to neurosurgeon, Dr. Hume, for evaluation. After review of the cervical MRI, Dr. Hume added cervical to Mr. Hiatt's physical therapy. He continued to follow-up with Dr. Padilla. Due to continued right shoulder pain, Dr. Padilla sent Mr. Hiatt for a repeat MRI on January 13, 2022, which revealed postoperative changes as well as a recurrent rotator cuff tear and labral fraying. On February 21, 2022, Mr. Hiatt underwent a right shoulder arthroscopy revision to include manipulation, extensive debridement, right open carpal tunnel release and was followed by post op physical therapy. Dr. Padilla released Mr. Hiatt back to work without restrictions on April 5, 2022 and at maximum medical improvement (MMI) on June 7, 2022. He was released MMI by Dr. Hume on October 6, 2022.

Issues for Trials. There is no question Mr. Hiatt's injuries to the neck, right shoulder, right arm, and right hand occurred while 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. Hiatt's injuries and whether the injuries were 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. Hiatt was evaluated by Dr. Lance Rosson, D.O. on September 9, 2022, regarding the above claim and opined a rating of 3 percent (\$3,780) permanent partial impairment (PPI) to the whole body regarding the neck, 31 percent (\$39,060) PPI to the whole body regarding the right shoulder, 38% (\$29,260) PPI to the right hand. Dr. Rosson also opined 30% (\$28,875) PPI rating for the right arm, 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 with respect to this job-related injury, and continued medical maintenance indefinitely for the implanted medical devices/prosthetic/instrumentation.

He was then rated on January 5, 2023 by William Jones, M.D., MPH, the medical expert for the City. Dr. Jones opined zero percent whole man PPI regarding the cervical spine, 11% percent (\$13,860) whole man PPI regarding the right shoulder, and 7% (\$5,390) right hand PPI. In addition, he also opined that continuing medical maintenance was not warranted and zero percent right arm PPI. The City's maximum exposure for total PPI would be \$100,975.

Trial. The case proceeded through the normal litigation process; however, Mr. Hiatt 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 CM-2022-01014 Q in a lump sum payment of \$38,027.50 (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 \$1,140.83, 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. Hiatt 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 is settled in this manner, the City would incur additional costs and fees of:

Workers' Compensation Administration Fund Tax in the amount of \$760.55; Special Occupational Health & Safety Tax in the amount of \$285.21; 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 \$1,339.90, which brings the total cost of this settlement to the City to \$39,367.40. 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. Hiatt 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.