



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 6/14/2022

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2122-133: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENTS OF TWO CASES FILED BY CHRISTOPHER KOSCINSKI UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *CHRISTOPHER KOSCINSKI V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASES 2020-06955 J AND 2021-04927 L; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENTS 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:

Christopher Koscinski filed a workers compensation case with the Oklahoma Workers' Compensation Commission (CM-2020-06955J) on December 10, 2020, alleging a single incident injury to the right shoulder and right arm from lifting a medical bag on September 12, 2019. On August 20, 2021, he filed a second case (CM-2021-04927L) alleging a single incident injury to the back from lifting a patient on January 9, 2021. The City admitted both cases and they proceeded through the normal litigation process.

Prior to a trial being held, Mr. Koscinski has agreed to settle both cases in the total amount of \$35,052.50, which represents 12% (\$15,120) permanent partial impairment to the Body as a Whole regarding the right shoulder and 5% (\$4,812.50) permanent partial impairment to the Arm regarding the right arm (2020-06955 J) and 12% (\$15,120) permanent partial impairment to the Body as a Whole regarding the back less an overpayment of temporary total disability (TTD) of \$8,311.77 (CM-2021-04927 L). The final settlement amount less the overpayment of TTD is \$26,740.73. The settlement offers are being recommended and are being presented to the City Council for consideration.

DISCUSSION:

Mr. Koscinski is a former 21 year firefighter for the City of Norman Fire Department and medically retired August 2, 2021.

Medical Treatment.

CM-2020-06955 J (Right Shoulder/Right Arm) -

Mr. Koscinski was treated at an urgent care the day of the injury, September 12, 2019. He continued to follow-up at the urgent care until directed to Norman Regional Occupational Medicine for continued care on October 2, 2019. Mr. Koscinski was sent for a magnetic resonance imaging (MRI) of the right shoulder which revealed a tear of the right supraspinatus tendon and orthopedic referral was recommended. On October 23, 2019, he was seen by Dr. Moses and rotator cuff surgery recommended. Mr. Koscinski underwent right shoulder arthroscopy on November 21, 2019 and postoperative physical therapy. Dr. Moses ordered a second MRI following a reinjury that reportedly occurred while Mr. Koscinski was doing home exercises four weeks post-op. On January 3, 2020, the second MRI performed revealed a rupture or displacement of tenodesis site of the proximal biceps and Mr. Koscinski underwent additional physical therapy. On May 6, 2020, he was released by Dr. Moses at maximal medical improvement (MMI) without restrictions. Mr. Koscinski requested a change of physician. He was seen by Dr. Bond on April 28, 2021 and released with no further recommendations.

CM-2021-04927L (Back) -

On January 9, 2021, Mr. Koscinski was treated at an urgent care for his injury. He then followed up with Norman Regional Occupational Medicine on January 18, 2021 and was treated conservatively to include physical therapy. Due to continued symptomology, he was sent for a MRI of the lumbar spine and epidural steroid injections were recommended. Mr. Koscinski was then referred to Dr. Hume and was seen on March 29, 2021 and lumbar epidural steroid injections and physical therapy were recommended. Mr. Koscinski underwent bilateral transforaminal lumbar epidural steroid injections (TFESI) at L5-S1 on May 12, 2021 and June 17, 2021 by Dr. Stidham. Mr. Koscinski requested a change in pain management physician and underwent bilateral TFESI at L4 on August 6, 2021 and TFESI at L4-5 on September 21, 2021 by Dr. Miller. Mr. Koscinski was released by Dr. Hume on November 2, 2021 at MMI with permanent restrictions of no lifting over 40 lbs. and no pushing/pulling over 80 lbs.

Issues for Trial. Since there is no question that Mr. Koscinski's injuries occurred while in the course of his employment with the City, the primary issues to be tried in these cases before the Workers' Compensation Commission are the extent of his injuries and whether the injuries are 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. Both parties have agreed to settle the cases prior to obtaining medical ratings and have agreed to stipulate that medical reports would support the settlements.

Trial. These cases proceeded through the normal litigation process; however, Mr. Koscinski has agreed to settlement of the cases as outlined below. If a trial was held in the cases, the Judge

could determine nature and extent to his injury and award permanent partial disability.

Proposed Settlements. The proposed settlements to close both cases on a “Joint Petition” basis is for a lump sum payment of \$35,052.50 (less 20% attorney fee) representing the settlement amounts 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 total amount of \$1,051.58, representing (3%) of the permanent partial disability awards shall be deducted and paid to the Oklahoma Tax Commission.

It is felt that the settlements to close both cases is fair and reasonable. The settlements are beneficial to the City in that it is a full, final and complete settlement of any and all cases and closes out any continued medical treatment. The settlements are beneficial to Mr. Kosciński 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 both cases are settled in this manner, the City would incur additional costs and fees of:

CM-2020-06955J (Right Shoulder/Right Arm) -

Workers’ Compensation Administration Fund Tax in the amount of \$398.65; Special Occupational Health & Safety Tax in the amount of \$149.49; and Workers Comp Commission Filing fee in the amount of \$140.00.

CM-2021-04927L (Back) -

Workers’ Compensation Administration Fund Tax in the amount of \$302.40; Special Occupational Health & Safety Tax in the amount of \$113.40; and Workers Comp Commission Filing fee in the amount of \$140.00.

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 \$1,398.08, which brings the total cost of the settlements to the City to \$28,138.81.

Adequate funds are available in the Order/Settlements Account (43330102-42131).

RECOMMENDATION:

For the reasons outlined above, it is believed the settlements are fair, reasonable, and in the best interest of the City. Acceptance of the settlements would require payments as outlined above. If approved, the settlement amount for both cases would be paid to Mr. Kosciński and his attorney in a lump sum. The settlements 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.