



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 8/13/24

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2425-29: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY CARL SHANON SMITH UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *CARL SHANON SMITH V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2023-00163 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:

Carl Shanon Smith is a former Firefighter for the City of Norman's Suppression Division of the Fire Department. He was hired on December 5, 2005, and after 17 years of employment, retired on December 16, 2022. Mr. Smith filed Workers Compensation Commission Case 2023-00163 Q on January 10, 2023, alleging a single incident injury to the Lower Back on June 7, 2022 from slipping on a wet floor. The claim was accepted and has proceeded through the normal litigation process. On July 11, 2024, the claim was amended to add Abdomen and Left Groin, Abdomen for disfigurement purposes only.

Prior to a trial being held, a court ordered mediation was held July 15, 2024 and Mr. Smith agreed to a settlement in the total amount of \$27,032, which represents 17 percent (low back), 0 percent (abdomen), and 0 percent (left groin, abdomen) permanent partial disability (PPD) to the whole body and \$5,000 for disfigurement to the abdomen. The settlement is recommended for consideration by the City Council.

DISCUSSION:

Medical Treatment. Mr. Smith was examined at Norman Regional Occupational Medicine the day of his injury and was treated conservatively to include physical therapy. He reportedly had

a previous back injury in 2019 and since that time had continued intermittent low back pain with left sciatica. He was sent for a magnetic resonance imaging (MRI) and due to findings was referred for orthopedic evaluation. At Mr. Smith's request, he was seen on August 18, 2022 by Dr. Padilla, his orthopedist from the 2019 back injury. After comparing MRI studies, Dr. Padilla placed him on total temporary disability and prescribed a conservative course of care to include a corset back brace and additional physical therapy. Due to continued symptomatology, Dr. Padilla referred him for orthopedic spine evaluation and treatment. He was initially seen by Dr. Nees on November 4, 2022 and surgical intervention of a two-level fusion at L4-5 and L5-S1 was recommended. Mr. Smith underwent a discogram on December 20, 2022 confirming damage to the L4-5 and L5-S1 discs. On February 13, 2023, he underwent a L4-5 and L5-S1 total disc arthroplasty using Aesculap artificial discs followed by postoperative physical therapy. Preventatively, he was sent for serum cobalt and chromium level testing and results were found to be within normal limits. He continued to follow-up with Dr. Nees and was released at maximum medical improvement without restrictions on January 2, 2024.

Issues for Trial. There is no question Mr. Smith injured his low back 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. Smith's injury and whether the injury was 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 PPD.

Evaluations. Mr. Smith was evaluated by Lonnie Litchfield, M.D. on January 24, 2024, regarding the above claim and opined a rating of 27 percent (\$34,992) permanent partial impairment (PPI) to the whole body regarding the low back over and above any prior injury. In addition, Dr. Litchfield opined that Mr. Smith would need continued care in the form of pain management to include assignment of a pain management specialist for treatment as well as given entitlements for prescription medication or any treatments his treating physician would deem necessary. Dr. Litchfield further opined that Mr. Smith had sustained permanent anatomical abnormalities and loss of function and should be sent for vocational rehabilitation if the City is unable to accommodate his impairment. Mr. Smith was then evaluated by the City's medical expert, William Jones, M.D., MPH. Dr. Jones opined 7 percent (\$9,072) whole man PPI regarding the back over and above his prior back injury; ongoing palliative and maintenance medications or physicians care would not be needed; and no objective evidence to warrant future medical treatment, including vocational retraining. In addition, he opined that Mr. Smith's artificial disk hardware is not a medical device or prosthetic device and is not intended to be repaired, replaced, or removed. The City's maximum exposure for total PPI would be \$34,992.

Trial. The case proceeded through the normal litigation process; however, Mr. Smith has agreed to a settlement of the case as outlined below. If a trial was held, the Judge could determine nature and extent to Mr. Smith's injury and award PPD.

Proposed Settlement. The City of Norman received Child Support Court Orders from the State of Oklahoma. The Orders would reduce the net settlement for Mr. Smith by \$7,914.96. The proposed settlement to close Workers' Compensation Commission Case 2023-00163 Q in a lump sum payment of \$27,032 (less attorney fee and court ordered child support) representing the settlement amount described 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 \$660.96,

representing (3%) of the PPD 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. Smith 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 \$440.64; Special Occupational Health & Safety Tax in the amount of \$202.74; and Workers Compensation 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 \$937.52, which brings the total cost of this settlement to the City to \$27,969.52. 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. Smith 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. Certifying the order to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.