



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 07/13/2021

**REQUESTER:** Jeanne Snider, Assistant City Attorney

**PRESENTER:** Jeanne Snider, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2122-13: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM REOPENED FOR A CHANGE IN CONDITION FOR THE WORSE FILED BY ROBERT PACK UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *ROBERT PACK V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NO. 2017-06285 K, 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.

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**BACKGROUND:** Robert Pack was injured September 28, 2015, and filed an Oklahoma Workers Compensation Commission claim on February 27, 2017, alleging a single incident injury to the low back from shoveling and scooping sand. The City admitted the claim and it proceeded through the normal litigation process. A Trial was held on February 5, 2019 and on February 19, 2019, the Commission awarded Mr. Pack 15 percent permanent partial disability (PPD) to the whole man regarding the lumbar spine in the amount of \$16,957.50 and an additional \$1,500.00 due to disfigurement for a total amount of \$18,457.50. On March 12, 2019, the Court Order was approved by the City Council.

On July 31, 2019, the City received a request for hearing to reopen Mr. Pack's claim for a change in condition for the worse. An evaluation was provided by Dr. Rosson dated July 5, 2019, reporting the change in condition and that Mr. Pack had been receiving pain management on his own for this injury. On February 24, 2020, Mr. Pack was sent to Dr. Kent Hensley, the medical expert for the City, for evaluation and opined a change in condition for the worse over time, representing adjacent level disease. The claim has proceeded through the normal litigation process.

Prior to a trial being held, Mr. Pack has agreed to settle this claim in the amount of \$10,174.50, which represents 9% PPD to the whole man regarding the low back over and above the 15



percent impairment previously awarded. The settlement offer is being recommended and is being presented to the City Council for consideration.

**DISCUSSION:** Mr. Pack is a Crew Chief in the Street Maintenance Division of Public Works. He was hired on February 5, 2002 as a Maintenance Worker I and promoted to a heavy equipment operator November 15, 2002 and Crew Chief on October 21, 2019.

#### Medical Treatment.

Mr. Pack was initially seen on September 28, 2015 by Dr. Penwell and treated conservatively to include medications and physical therapy. A magnetic resonance imaging (MRI) exam of the lumbar spine was ordered and he was referred to Dr. Harris for orthopedic evaluation and treatment on January 14, 2016. The MRI on October 9, 2015 revealed multilevel degenerative disc disease more prominent at L4-L5. Dr. Harris referred Mr. Pack to Dr. Guerra for interventional pain management and underwent a series of lumbar epidural steroid injections and a lateral recess block without significant improvement. On September 19, 2016, he was sent for an electromyography (EMG) testing, which revealed right L5 radiculopathy and on December 2, 2016 sent for a MRI of the lumbar/sacral spine, which revealed multilevel degenerative disc disease of the lumbosacral spine, more prominent at L4-L5. He was then referred to Dr. Spence for neurosurgical evaluation and management and was sent for a discogram on May 10, 2017 and underwent an anterior lumbar interbody fusion on September 6, 2017 followed by physical therapy postoperatively. Mr. Pack returned to work on December 12, 2017 without restrictions and was released maximum medical improvement on January 8, 2018.

On April 23, 2020 Mr. Pack was sent to Dr. Hume due to the change in condition for the worse and was sent for an updated MRI on April 4, 2020. Due to MRI findings, Mr. Pack underwent a fusion at L3-4 on June 19, 2020 followed by physical therapy postoperatively. In addition, he continued to follow-up with Dr. Maitino for pain management. On March 4, 2021, Mr. Pack was released back to regular work by Dr. Hume with no restrictions, continuing medical maintenance, or vocational rehabilitation.

Issues for Trial. Since there is no question Mr. Pack's injury to the low back on September 28, 2015, reopened for a condition for the worse, occurred while in the course of his employment with the City, the primary issues to be tried in this case before the Workers' Compensation Commission are the extent of his 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.

Mr. Pack was rated by Dr. Rosson on April 16, 2021, regarding the above claim and opined 12 percent (\$13,566) permanent partial impairment to the whole man regarding the low back over and above the 15 percent impairment previously awarded. In addition, Dr. Rosson opined Mr. Pack should be given continued medical maintenance/pain management under the direction of Dr. Maitino.

On May 25, 2021, Mr. Pack was rated by Dr. Pettigrew, the medical expert for the City, and opined 7% (\$7,913.50) permanent partial impairment to the whole man regarding the lumbar spine as a result of a change of condition for the worse over and above the previously award.



He also opined that Mr. Ragland was in no further need of medical care, continuing medical maintenance, pain management, an evaluation by a pain management specialist, prescription medications, or continuing medical maintenance for an implanted medical device. The City's maximum exposure for total PPD would be \$13,566.

Trial. The case proceeded through the normal litigation process; however, Mr. Pack has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent to his injuries and award permanent partial disability.

Proposed Settlement. The proposed settlement closes the case in a lump sum payment of \$10,174.50 (less 20% attorney fee).

It is felt that the settlement to close this case 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. Pack 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 this case is settled in this manner, the City would incur additional costs and fees of:

Workers' Compensation Administration Fund Tax in the amount of \$203.49; Special Occupational Health & Safety Tax in the amount of \$76.31; 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 \$573.94, which brings the total cost of this settlement to the City to \$10,748.44.

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

**RECOMMENDATION:** For the reasons outlined above, it is believed this 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. Pack 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.