



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 7/25/2023

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A COURT ORDER: A RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$33,915.00 REGARDING MALIA JESSIE ADAMS (ROSS) VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2020-01069 Q.

BACKGROUND:

Malia Jessie Adams (Ross) initially filed two Oklahoma Workers Compensation Commission cases. The first case, CM3-2020-01069 Q filed on February 19, 2020, alleges on February 23, 2019, a single incident injury to the right hip, low back with radicular symptoms, and mid-back consequential from a fall in the kennel while breaking up a dog fight. On March 31, 2021, Ms. Adams amended this claim by adding thoracic spine. The second case, CM3-2021-02000 A filed April 7, 2021, alleges on December 10, 2020, a single incident injury to the right ankle, mid and low back while wrangling goats. Both injuries were accepted. A deposition was held in the first case (CM3-2020-01069 Q) on June 11, 2020 and in the second case (CM3-2021-02000 A) on June 7, 2021. On March 9, 2023, the Oklahoma Workers Compensation Commission's Court entered an Order to consolidate the two cases under case number CM3-2020-01069 Q and the case has proceeded through the normal litigation process.

A trial was held July 12, 2023 on the issue of nature and extent of permanent partial disability. On July 14, 2023, the Court awarded 4 percent (\$4,522.00) Permanent Partial Disability to the THORACIC SPINE, 8 percent (\$9,044.00) Permanent Partial Disability to the LUMBAR SPINE, and 18 percent (\$20,349.00) Permanent Partial Disability to the RIGHT HIP for a total award of \$33,915.00, which shall be paid to Ms. Adams weekly at the rate of \$323.00 commencing December 9, 2022, until the entire award is paid in full. It is recommended that the City comply with this Order.

DISCUSSION:

Ms. Adams was hired as an Animal Welfare Officer for the Animal Welfare Division of the Norman Police Department on September 13, 2016.

Medical Treatment. Ms. Adams was initially examined at Norman Regional Occupational Medicine when she first injured her back and right hip on February 23, 2019 and was treated

conservatively to include physical therapy. She underwent a magnetic resonance imaging (MRI) study of the right hip on May 15, 2019. Due to MRI findings, she was sent for orthopedic referral. She was examined by Dr. Padilla on July 25, 2019 due to ongoing right hip and back pain. She underwent MRI studies for the lower back on August 7, 2019 and thoracic spine October 4, 2019. Ms. Adams was treated conservatively to include a steroid injection for her right hip and physical therapy for the back and was released maximum medical improvement (MMI) for the back on January 15, 2020 by Dr. Padilla.

Meanwhile, she began seeing Dr. Moses on October 2, 2019 and underwent a MR arthrogram of the hip October 23, 2019 and physical therapy which worsened her symptoms. On February 18, 2020, she underwent diagnostic right hip arthroscopic surgery by Dr. Moses. She continued to follow-up with Dr. Moses and was released MMI on July 22, 2020.

She was seen by Dr. Hume on April 28, 2020 for continued back pain and was sent for an updated MRI for the lumbar spine on May 8, 2020. She was treated conservatively to include physical therapy. Back surgery was not recommended by Dr. Hume and Ms. Adams was released MMI on July 9, 2020.

Due to continued back pain and right hip pain, Ms. Adams' treating physician was changed to Dr. Cox by court order on July 29, 2020. She was examined by Dr. Cox on September 1, 2020 and back surgery was again not recommended. Under Dr. Cox's care, Ms. Adams underwent a lumbar epidural steroid injection and was released from care on November 2, 2020.

Ms. Adams' treating physician for continued right hip pain was changed to Dr. Taylor by court order on September 10, 2020. She was initially seen by Dr. Taylor on October 6, 2020 and sent for additional imaging. Ms. Adams then had a second injury on December 10, 2020. Treatment options for the hip were discussed which included intra-articular steroid injections, arthroscopic intervention, or be released from care with no further intervention if able to return to work without restrictions. She continued to follow-up with Dr. Taylor.

She returned to Dr. Hume on July 15, 2021 for the thoracic spine and was sent for a MRI on July 28, 2021. Conservative treatment was recommended to include physical therapy. On September 16, 2021, she was released MMI without restrictions by Dr. Hume.

On June 27, 2022, she underwent right hip arthroscopic revision surgery by Dr. Taylor with assistance of Dr. German followed by postoperative physical therapy. Ms. Adams was released by Dr. Taylor at MMI on December 9, 2022.

Issues for Trial. The issue tried on July 14, 2023, before the Oklahoma Workers' Compensation Commission were nature and extent of permanent partial disability benefits to the thoracic spine, lumbar spine and right hip. 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. On February 4, 2023, Ms. Adams was rated by Dr. Lance Rosson. Dr. Rosson opined 12 percent (\$13,566.00) impairment to the thoracic spine, 15 percent (\$16,957.50) impairment to the lumbar spine, and 25 percent (\$28,262.50) impairment to the right hip to include entitlements to ongoing medical benefits in the nature of prescription medications on an

as-needed basis as well as other treatment that her treating physician or further selected physicians might deem necessary with respect to this job-related injury.

The City had Ms. Adams evaluated by Dr. William Jones on April 6, 2023 who opined 2 percent (\$2,261.00) impairment to the thoracic spine, 2 percent (\$2,261.00) impairment to the lumbar spine, 5 percent (\$5,652.50) impairment to the right hip.

The Workers' Compensation Commission Trial Judge is free to make a ruling within the range of medical evidence presented at the time of trial. The City's maximum permanent partial impairment exposure would be \$58,786.00.

Court Award: The case was heard by the Workers' Compensation Commission on July 12, 2023. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on July 14, 2023. The Court found compensable injuries to the lumbar spine, thoracic spine, and right hip.

The Court's findings are set out in Paragraph Nos. 3 through 7 of the Order, as follows:

-3.- "That as a result of said injury, Claimant has sustained 4% Permanent Partial Disability to the THORACIC SPINE, 8% Permanent Partial Disability to the LUMBAR SPINE, and 18% Permanent Partial Disability to the RIGHT HIP. At Claimant's rate of compensation, this is equal to an award of \$33,915.00, which shall be paid to Claimant weekly at the rate of \$323.00 commencing December 9, 2022, until the entire award is paid in full."

As can be noted in No. 3 of the Commission's Order, PPD compensation is expressed in terms of "weeks" of compensation with an accompanying "weekly wage rate." Workers' Compensation awards are normally paid at the weekly rates over a period of time. Ms. Adams' weekly wage PPD rate is \$323.00. In this instance, a portion of the award has accrued.

-4.- "Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82."

If approved by Council, Ms. Adams' and her attorney would be paid the accrued lump sum amount and attorney's fee, plus an additional 3 weeks for processing and Council approval in the total lump sum amount of \$17,765.00. The balance of the award (\$16,150.00) would then be paid in weekly payments of \$323.00 until paid in full as set forth in the attached Payment Schedule.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 5 through 7. Special Occupational Health and Safety Fund Tax in the amount of \$254.36, Workers' Compensation Administration Fund in the amount of \$678.30, filing fee to the Workers' Compensation Court in the amount of \$140.00; and filing fee to Cleveland County in the amount of \$154.14. The costs and fees total \$1,226.80, which brings the total cost of this Order to \$35,141.80. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-5.- "That pursuant to Title 85A O.S., §118, a final award fee of one hundred forty dollars (\$140.00) is taxed as a cost in this matter, and shall be paid by respondent to the Workers' Compensation Commission if not previously paid."

-6.- "Pursuant to 40 O.S., §418, the Respondent-Insurer shall pay to the Oklahoma Tax Commission the Special Occupational Health and Safety tax in the amount of \$254.36, representing three-fourths of one percent of the total workers' compensation losses ordered herein, excluding medical payments and temporary total disability compensation."

-7.- "Pursuant to 85A O.S., §122(B)(2), Respondent, if OWN RISK, shall pay a workers' compensation assessment in the amount of \$678.30 to the Oklahoma Tax Commission, representing two percent (2%) of the (Permanent disability benefits) herein."

RECOMMENDATION:

The issues tried on July 12, 2023, were nature and extent of permanent partial disability benefits to the thoracic spine, lumbar spine, and right hip. The Court Award in this case is within the medical evidence submitted. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. It is recommended that the City move forward to comply with this Order.

Acceptance of the Order would require payments as outlined above. The Order 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 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.