



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 11/14/23

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-78: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY JONATHAN C. STAMPER UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *JONATHAN C. STAMPER V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2022-03706 J; 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:

Jonathan Stamper is a former Firefighter for the City of Norman's Suppression Division of the Fire Department. He was hired on March 4, 1996 and after 26 years of employment, retired on March 31, 2022. Mr. Stamper filed Workers Compensation Commission Case 2022-03706 J on June 21, 2022, alleging a single incident injury to the Lower Back and Right Knee on September 30, 2021 when he slipped on a cross-tie while transporting a patient on a cot. The case was accepted and proceeded through the normal litigation process.

Prior to a trial being held, Mr. Stamper has agreed to a settlement in the total amount of \$25,920.00, which represents 20 percent permanent partial impairment (PPI) to the whole body regarding the Low Back and zero percent PPI to the right leg regarding the Right Knee, over and above a prior award. The settlement is recommended for consideration by the City Council.

DISCUSSION:

Medical Treatment. Mr. Stamper was examined at Norman Regional Occupational Medicine the same day of his injury and was prescribed a course of conservative care to include knee bracing and physical therapy, which resolved his right knee pain. Mr. Stamper reportedly had a previous

back injury and fusion at L4-5 in 2009; however, had no current issues prior to this injury. Due to a plateau in improvement of Mr. Stamper's low back, he was sent for a magnetic resonance imaging (MRI) on November 19, 2021, which showed mostly chronic, degenerative changes of the lumbar spine and reportedly may have caused acute exacerbation to an underlying condition. He was referred to Dr. Hume and a work hardening program was recommended. Mr. Stamper's treating physician was then changed to Dr. de la Garza, the spine surgeon who had performed his previous fusion. He was seen by Dr. de la Garza on February 1, 2022 for low back and radicular pain and was treated conservatively. Due to continued symptomatology, he was referred to Dr. Porter and underwent a lumbar epidural steroid injection on May 3, 2022 and lumbar transforaminal epidural steroid injection on July 19, 2022. Mr. Stamper continued to follow-up with Dr. de la Garza and due to continued symptomatology, surgical management was recommended. On September 14, 2022, he underwent surgical intervention to include posterior hardware removal at L4-5 with exploration of fusion at L4-5 as well as full central laminectomy and bilateral medial facetectomy at L3-4 with posterior fusion and instrumentation at L3-4 with reinstrumentation at L4-5 followed by a home exercise program. On April 27, 2023, Mr. Stamper was released at maximum medical improvement by Dr. de la Garza.

Issues for Trials. There is no question Mr. Stamper injured his low back and right knee 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. Stamper'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. Stamper was evaluated by Dr. Lance Rosson, D.O. on May 17, 2023, regarding the above claim and opined a rating of 29 percent (\$37,584.00) PPI to the whole body regarding the low back over and above any pre-existing condition/impairment. The right knee was not rated. In addition, Dr. Rosson opined Mr. Stamper should be given entitlement to continued 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. He also opined Mr. Stamper be given ongoing and continued medical maintenance indefinitely for implanted medical devices/prosthetic/ instrumentation.

He was then rated on August 29, 2023 by William Jones, M.D., MPH, the medical expert for the City. Dr. Jones opined 7 percent (\$9,072.00) PPI to the whole man regarding the lumbar spine and zero percent PPI to the right leg regarding the right knee. In addition, he opined that the fusion hardware is not a prosthetic or medical device and is not intended to be serviced, refilled, replaced or repaired. The City's maximum exposure for total PPI would be \$37,584.00.

Trial. The case proceeded through the normal litigation process; however, Mr. Stamper 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 Workers' Compensation Case 2022-03706 J in a lump sum payment of \$25,920.00 (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 \$777.60, 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. Stamper 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 \$518.40; Special Occupational Health & Safety Tax in the amount of \$194.40; 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 \$1,006.94, which brings the total cost of this settlement to the City to \$26,926.94. 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. Stamper 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.