



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 11/14/23

**REQUESTER:** Jeanne Snider

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

**ITEM TITLE:** CONSIDERATION OF APPROVAL, ACCEPTANCE REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A COURT ORDER: A RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE AMOUNT OF \$19,440.00 REGARDING RICKEY J. GOURLEY II VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2022-06328 E.

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### **BACKGROUND:**

Rickey J. Gourley II was hired October 27, 2014, as a Maintenance Worker I for the City of Norman's Public Works Department Traffic Control Division. Mr. Gourley filed claim number 2022-06328 E with the Workers' Compensation Commission on October 14, 2022, alleging a single incident injury to the left shoulder and left arm while lifting a coin cart off a tailgate on August 18, 2022. The City accepted this injury and the case proceeded through the normal litigation process. A trial was held September 21, 2023. On September 26, 2023, the Court denied alleged injury to the Left Arm and awarded 15 percent (\$19,440.00) Permanent Partial Disability to the Left Shoulder to be paid at a weekly rate of \$360 commencing April 3, 2023, until the entire award is paid in full. Due to a scrivener's error on the Order filed on September 26, 2023, the Court filed an Order Nunc Pro Tunc on October 25, 2023. It is recommended that the City comply with this Order.

### **DISCUSSION:**

Medical Treatment. Mr. Gourley was initially examined at Norman Regional Occupational Medicine the same day of his injury and treated conservatively and placed in a sling. He then underwent a magnetic resonance imaging (MRI) of the Left Shoulder on August 29, 2022. Due to MRI findings, he was referred to orthopedist Dr. Joshua Wilson. He was examined by Dr. Wilson on September 7, 2022 and treated conservatively to include a therapeutic subacromial corticosteroid injection as well as formal physical therapy. Due to failed trial of conservative therapy, surgical intervention was recommended. On October 14, 2022, Mr. Gourley underwent left shoulder arthroscopy and postoperative physical therapy. He continued to follow-up with Dr. Wilson until his full release back to work on April 3, 2023.

Issues for Trial. The issues tried on September 21, 2023, before the Oklahoma Workers' Compensation Commission were the extent of permanent partial disability benefits and continued medical maintenance for the Left Shoulder and Left arm. 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 May 10, 2023, Mr. Gourley was rated by Dr. Lonnie Litchfield. Dr. Litchfield opined 37 percent (\$47,952) permanent partial impairment to the whole man regarding the Left Shoulder over and above any prior injury and 15 percent (\$14,850) permanent partial impairment to the arm regarding the Left Arm over and above any prior injury to include entitlements to continuing medical benefits in the form of pain management for treatment of chronic pain and entitlements for prescription medications or any treatments his treating physician deemed necessary.

The City had Mr. Gourley evaluated by Dr. William Jones on July 11, 2023, who opined 8 percent (\$10,368) permanent partial impairment to the whole man regarding the Left Shoulder and 0 percent permanent partial impairment to the arm regarding the Left Arm as his left shoulder joint was already accounted for in the left shoulder impairment.

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 \$62,802.

Court Award. The case was heard by the Workers' Compensation Commission on September 21, 2023. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on September 26, 2023. The Court found the Left Shoulder compensable, denied and dismissed the alleged injury to the Left Arm, and awarded 15 percent permanent partial disability to the Left Shoulder.

The Court's findings are set out in Paragraph Nos. 4 through 6 of the Order, as follows:

-4. "That as a result of said injury, Claimant has sustained 15% Permanent Partial Disability to the LEFT SHOULDER. At Claimant's rate of compensation, this is equal to an award of \$19,440.00, which shall be paid to Claimant weekly at the rate of \$360.00 commencing April 3, 2023, until the entire award is paid in full. All accrued amounts shall be paid in lump sum."

As can be noted in No. 4 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. Mr. Gourley's weekly wage PPD rate is \$360.00. In this instance, a portion of the award has accrued.

-5. "Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82."

If approved by Council, Mr. Gourley and his attorney would be paid the accrued lump sum amount and attorney's fee, less the Multiple Injury Trust Fund Assessment amount, plus an additional 7 weeks and 2 days for processing and Council approval in the total lump sum amount of \$15,112.80. The balance of the award (\$3,744.00) would then be paid in weekly payments of \$360 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. 6 through 8. Special Occupational Health and Safety Fund Tax in the amount of \$145.80, Workers' Compensation Administration Fund in the amount of \$388.80, 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 \$828.74, which brings the total cost of this Order to \$20,268.74. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-9. "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 \$583.20, representing (3%) of the Claimant's permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent."

**RECOMMENDATION:**

The issues tried on September 21, 2023, were the extent of permanent partial disability benefits to the Left Shoulder, Left arm, and continuing medical maintenance. 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.