



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 1/28/25

**REQUESTER:** Jeanne Snider

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

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2425-85: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY JOSHUA L. RAYBURN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *JOSHUA L. RAYBURN V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2023-00845 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.

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### **BACKGROUND:**

Joshua L. Rayburn is a former Utility Distribution Worker I for the City of Norman's Line Maintenance Division of Utilities hired December 21, 2021 and separated from employment October 18, 2024. Mr. Rayburn filed Workers Compensation Commission Case 2023-00845 J on February 13, 2023, alleging a single incident injury to the back on August 8, 2022 when he was tightening bolts installing a new water meter. The claim was accepted and has proceeded through the normal litigation process.

Prior to a trial being held, Mr. Rayburn agreed to a settlement in the total amount of \$32,400, which represents 25 percent permanent partial disability (PPD) to the whole body regarding the back. The settlement is recommended for consideration by the City Council.

### **DISCUSSION:**

Medical Treatment. Mr. Rayburn was initially treated by Norman Regional Occupational Medicine (NROM) and prescribed physical therapy. Due to continued symptomatology, he was sent for lumbar and thoracic magnetic resonance imaging (MRI) on October 3, 2022. He was referred to Dr. Leonard and underwent a series of epidural injections without relief. Mr. Rayburn continued to follow-up with NROM and due to continued symptomatology was referred to

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orthopedist Dr. Wiley. On January 20, 2023, he was seen by Dr. Wiley and sent for updated MRIs on January 25, 2023. Dr. Wiley recommended a right L4-5 & left L5-S1 transforaminal epidural steroid injection (TESI) which was performed on March 2, 2023. Due to continued symptomatology, Dr. Wiley recommended surgical intervention. On April 26, 2023, Mr. Rayburn underwent a L4-5 transforaminal lumbar interbody fusion/posterior spinal fusion with left L5-S1 micro discectomy. Additionally, Mr. Rayburn was sent for a lumbar spine MRI August 21, 2023 and referred to Dr. Miller for pain management. Mr. Rayburn was initially seen by Dr. Miller on September 22, 2023 and was treated conservatively with medication management targeting neuropathic pain while continuing his temporary total disability due to restrictions. He continued to follow-up with Dr. Wiley and was sent for an electromyography (EMG) on October 10, 2023 which reported electro diagnostics of the lower extremities were within normal limits. While under Dr. Miller's care, Mr. Rayburn underwent right sided sacroiliac joint injections, ablation, and right TESIs. After undergoing a function capacity evaluation (FCE) on April 8, 2024, Mr. Rayburn was released at maximum medical improvement (MMI) with permanent restrictions by Dr. Wiley on May 1, 2024.

Issues for Trial. There is no question Mr. Rayburn injured his 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. Rayburn'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. Rayburn was evaluated by Lance Rosson, D.O. on May 21, 2024, regarding the above claim and opined a rating of 29 percent (\$37,584) permanent partial impairment (PPI) to the whole body regarding the back. In addition, Dr. Rosson opined that Mr. Rayburn would need continued medical benefits in the nature of prescription medications on an as needed basis as well as other treatment his treating physician or further selected physicians might deem necessary, ongoing and continued medical maintenance for the implanted medical devices/prosthetic/instrumentation to include repair or replacement, and vocational rehabilitation to learn more sedentary type employment. Mr. Rayburn was then evaluated by the City's medical expert, William Jones, M.D., MPH. Dr. Jones opined zero percent whole body PPI regarding the thoracic spine and 8 percent (\$10,368) whole body PPI regarding the lumbar spine. He further opined that the injury had resolved and had not impaired the ability to earn wages at pre-injury level; therefore, ongoing palliative and maintenance modifications or physician care would not be needed. Dr. Jones reported that fusion hardware is not a medical or prosthetic device and are not intended to be repaired, replaced, or removed. The City's maximum exposure for total PPI would be \$37,584.

Trial. The case proceeded through the normal litigation process; however, Mr. Rayburn 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. Rayburn's injury and award PPD.

Proposed Settlement. The City of Norman received a Child Support Court Order from the State of Oklahoma. The Order would reduce the net settlement for Mr. Rayburn by \$9,456.26. The proposed settlement to close Workers' Compensation Commission Case 2023-00845 J in a lump sum payment of \$32,400 (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 \$972, 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. Rayburn 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 \$648; Special Occupational Health & Safety Tax in the amount of \$243; 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 \$1,185.14, which brings the total cost of this settlement to the City to \$33,585.14. 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. Rayburn 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.