



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 9/26/2023

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 \$23,512.50 PLUS COSTS REGARDING RICHARD NEWELL VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COURT OF EXISTING CLAIMS CASE 2022-15014 H.

BACKGROUND:

Richard Newell is a former Sergeant for the City of Norman's Narcotics Division of the Police Department. Mr. Newell filed Oklahoma Workers' Compensation Court of Existing Claims Case 2022-15014 H on April 1, 2022 alleging a single incident on the job injury to the right knee from a twisting injury exiting his SWAT vehicle on July 17, 2009. The City denied the claim as Mr. Newell had returned to work May 21, 2013 without restrictions, only seeing his treating physician preventatively until his last appointment held September 13, 2021. On September 7, 2023, the Court denied the statute of limitations defense, awarded 25 percent Permanent Partial Disability to the right knee (total knee replacement over and above pre-existing 6 percent due to injuries and surgeries in 1980 and 1995) in the amount of \$23,512.50 as well as granted continuing medical maintenance in the form of annual office visits and x-rays with Dr. McGinnis. It is recommended that the City comply with this Order.

DISCUSSION:

Mr. Newell was hired September 18, 1989 as a Master Police Officer/Sergeant and separated from employment on May 31, 2022.

Medical Treatment.

Mr. Newell was examined the day of his injury at Norman Regional Occupational Medicine and diagnosed with internal derangement and referred to an orthopedic for further care. He had a history of prior injuries and surgeries to the right knee in 1980 and 1995. Mr. Newell was referred to his previous knee surgeon, Donald McGinnis, M.D. at McBride Orthopedic Clinic. He was treated conservatively and returned to work with no restrictions and instructed to return for follow-up as needed. Due to continued symptomology, he returned to Dr. McGinnis and a right knee arthroscopy was recommended followed by postoperative physical therapy. He underwent the right knee arthroscopy on February 4, 2010 followed by several knee aspirations and rounds of Orthovisc and steroid injections. On April 26, 2010, he was released back to work without restrictions. Due to continued symptomology, he returned to Dr. McGinnis and underwent total

right knee arthroscopy on December 18, 2012 followed by postoperative physical therapy. He was released back to work without restrictions on May 20, 2013 and continued to follow-up with Dr. McGinnis. On December 7, 2015, Dr. McGinnis instructed him to return for follow-up on a yearly basis preventatively. As recommended, Mr. Newell continued to follow-up with Dr. McGinnis annually. On September 13, 2021, his right knee was aspirated due to mild swelling. He was then released back to work without restrictions and instructed to return as needed.

Issues for Trial. The issue tried on September 5, 2023, before the Oklahoma Workers' Compensation Court of Existing Claims were nature and extent of permanent partial disability benefits to the right knee. Permanent partial disability is a factual determination made by the Workers' Compensation Court of Existing Claims Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

Evaluations. On June 23, 2022, Mr. Newell was rated by Dr. Lance Rosson. Dr. Rosson opined 55 percent (\$51,727.50) impairment to the right knee, over and above any pre-existing condition/impairment to include entitlements for continuing 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 physician might deem necessary with respect to this job-related injury.

The City had Mr. Newell evaluated by Dr. William Jones on March 7, 2023 who opined 6 percent (\$5,643) impairment to the right knee, over and above any pre-existing condition based on medical meniscal tear with arthroscopic debridement and therapy. Dr. Jones further recommended Mr. Newell continue daily home exercise program which he recommends to all adult patients.

The Workers' Compensation Court of Existing Claims 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 \$51,727.50.

Court Award: The case was heard by the Workers' Compensation Court of Existing Claims on September 5, 2023. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on September 7, 2023.

The Court's findings are set out in the following Paragraphs of the Order:

-4.- "THAT as a result of said injury, Claimant sustained 25% Permanent Partial Disability to the RIGHT KNEE, (total knee replacement over and above pre-existing 6 percent due to injuries and surgeries in 1980 and 1995) for which Claimant is entitled to compensation in the amount of \$23,512.50."

-5.- "THAT continuing medical maintenance in the form of annual office visits and x-rays is authorized with Dr. McGinnis."

-9.- "THAT Respondent's statute of limitations defense is denied."

-11.- "THAT Respondent or Insurance Carrier shall pay Claimant the award herein in lump sum of \$23,512.50 (less attorney fee)."

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 12 and 13. Special Occupational Health and Safety Fund Tax in the amount of \$176.34, Workers' Compensation Administration Fund in the amount of \$470.25, 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 \$786.59, which brings the total cost of this Order to \$24,453.23. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-12.- "THAT pursuant to Title 85 O.S. Section 368, 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."

-13.- "THAT Respondent shall pay court costs: Special Occupational Health and Safety Fund Tax of three-fourths of one percent (0.75%) of the amounts paid in lump sum of \$176.34 is levied against the Respondent; three-fourths of one percent of the continuing benefits awarded in this case shall be computed and paid as the same comes due. Pursuant to 85 O.S., Section 407, as amended by Laws 2013, HB 2201, c. 254, Section 49, eff. January 1, 2015, Respondent, if Own Risk, shall pay \$470.25 to the Workers' Compensation Administration Fund created by 85 O.S. Section 407, to be used for the costs of administering the Workers' Compensation Code as applicable to the Oklahoma Workers' Compensation Court of Existing Claims, representing two percent (2%) of the permanent disability award herein."

-14.- "Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein."

RECOMMENDATION:

The issues tried on September 5, 2023 were nature and extent of permanent partial disability benefits to the right knee. 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.