



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 9/13/2022

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-33: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY TAMMY LYNN ERICKSEN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *TAMMY L. ERICKSEN V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2021-06871 E AND DISMISSAL WITH PREJUDICE OF THE CLAIM FILED BY TAMMY L. ERICKSEN UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION COURT STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF TAMMY L. ERICKSEN V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. 2022-15003 K; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COMMISSION AND COURT OF EXISTING CLAIMS, 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:

Tammy Ericksen filed Workers Compensation Commission Case 2021-06871 E with the Oklahoma Workers' Compensation Commission on November 19, 2021, alleging a single incident injury to the right hip, right knee, right shoulder, and back from a fall on uneven concrete in the Norman Police Department's parking lot on August 12, 2020. The City admitted this claim.

In addition, Ms. Ericksen filed Workers Compensation Case 2022-15003 K with the Oklahoma Workers' Compensation Court of Existing Claims on January 24, 2022, alleging cumulative trauma of hearing loss to both ears due to exposure to loud noises with date of awareness of July 1, 2012. This claim was denied by the City. Both cases proceeded through the normal litigation process.

Prior to trials being held, Ms. Ericksen has agreed to a settlement in CM-2021-06871 E for the total amount of \$70,000, which represents permanent partial disability to the whole body of 13% (\$16,380) for the right hip, 13% (\$16,380) for the right knee, 12% (\$15,120) for the right shoulder, 15% (\$18,900) for the back and \$3,200 for continued medical maintenance and to a dismissal with prejudice in WCC-2022-15003 K. This settlement is being recommended for consideration by the City Council.

DISCUSSION:

Mr. Ericksen is a former Communications Supervisor for the City of Norman's Emergency Communications Division of the Police Department. She was hired July 13, 1998 as a Communications Officer and promoted to Communications Supervisor June 20, 2008. Ms. Ericksen separated from employment on January 27, 2022.

Medical Treatment.

CM-2021-06871 E (Right Hip, Right Knee, Right Shoulder, and Back)

Due to worsening pain, Ms. Ericksen was seen at the Purcell Municipal Hospital Emergency Room the day following her on the job injury and was treated conservatively. She was then seen by Norman Regional Occupational Medicine on August 18, 2020 and prescribed physical therapy and sent for magnetic resonance imaging (MRIs) of the right knee, right hip, and lumbar spine on September 4, 2020 and right shoulder on November 2, 2020.

Due to MRI findings of the back, she was referred to orthopedic spine surgeon Dr. Hume. She was evaluated by Dr. Hume on September 15, 2020 and treated conservatively to include lumbar and sacroiliac joint focused physical therapy and sent for steroid injections October 27, 2020 and December 22, 2020.

For the right hip and right knee, she was referred to joint reconstructive specialist Dr. Maitino. She was initially evaluated by Dr. Maitino on December 3, 2020 and was sent for a high resolution MRI of the right hip on December 21, 2020. Due to MRI findings, surgical intervention of the right hip was recommended. She underwent right hip arthrotomy with labral repair on January 20, 2021 and was released maximal medical improvement (MMI) by Dr. Maitino on September 16, 2021.

She was referred to orthopedist Dr. Bobb for the right hip, right knee, and right shoulder and was evaluated September 22, 2020. She underwent a repeat MRI of the right knee on November 18, 2020 which revealed no tears in the meniscus or ACL and cartilage. She was treated conservatively to include a playmaker brace and multiple aspirations and steroid injections. Due to continued symptomology of the right knee, she underwent a repeat MRI which revealed chronic partial ACL tear. Due to MRI findings and failed conservative measures, surgical intervention was recommended. She underwent right knee arthroscopy on August 6, 2021 followed by postoperative physical therapy and was released MMI on October 28, 2021. On February 12, 2021, she underwent right shoulder arthroscopic surgery for a labrum tear followed by postoperative physical therapy. Due to continued symptomology of the right shoulder, she underwent a repeat MRI of the right shoulder on September 7, 2021 which revealed no tears. She was released MMI by Dr. Bobb regarding the right shoulder on November 4, 2021.

At Ms. Ericksen's request, she was then referred to neurosurgeon Dr. Nees for a second opinion regarding the back. She was evaluated by Dr. Nees on April 16, 2021 and surgical intervention was recommended. Ms. Ericksen underwent L4-5 lateral extraforaminal laminotomy, foraminotomy and discectomy on May 5, 2021 followed by postoperative home exercises and was released MMI on June 22, 2021.

WCC-2022-15003 K (Both Ears)

There were no medical records for this claim.

Issues for Trials.

In CM-2021-06871 E, there is no question Ms. Ericksen's injuries to right hip, right knee, right shoulder and back occurred while in the course of her employment with the City. In WCC-2022-15003 K, the City denied the injury to the ears. The primary issues to be tried before the Workers' Compensation Commission are the extent of Ms. Ericksen'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.

CM-2021-06871 E (Right Hip, Right Knee, Right Shoulder, and Back)

Ms. Ericksen was evaluated by Lance Rosson, D.O. on December 29, 2021, regarding the above claim and opined a rating of 27 percent (\$34,020) permanent partial disability to the whole body regarding the back, 29 percent (\$36,540) permanent partial disability to the whole body regarding the right shoulder, 25 percent (\$31,500) permanent partial disability to the whole body regarding the right hip, 39 percent (\$37,537.50) permanent partial disability to the right knee as well as 30 percent (\$28,875) to the right arm/elbow and entitlements to continuing 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 and ongoing and continued medical maintenance due to implanted medical devices/prosthetic/instrumentation as part of her right hip surgery and rotator cuff repair that could potentially result in future issues and the need for additional surgical intervention.

She was then rated on April 18, 2022 by C.B. Pettigrew, D.O., the medical expert for the City. Dr. Pettigrew opined 7 percent (\$8,820) permanent partial disability to the lumbar spine, 2.3 percent (\$2,898) permanent partial disability to the right shoulder, 1.5 percent (\$1,890) permanent partial disability to the right hip, 2 percent (\$1,925) permanent partial disability to the right knee, 0 percent to the right arm. Continuing medical maintenance was not recommended. The City's maximum exposure for total PPD would be \$168,472.50.

WCC-2022-15003 K (Both Ears)

Both parties have agreed to a dismissal with prejudice prior to obtaining a medical rating for the ears.

Trials. Both cases proceeded through the normal litigation process; however, Ms. Ericksen has agreed to a settlement of the cases as outlined below. If trials were held in these cases, the Judge could determine nature and extent to her injuries and award permanent partial disability.

Proposed Settlement. The proposed settlement closes CM-2021-06871 E in a lump sum payment of \$70,000 (less attorney fee) representing the settlement amount discussed above and dismisses WCC-2022-15003 K with prejudice. 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 \$2,100.00, representing (3%) of the permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission for CM-2021-06871.

It is felt that the settlement is fair and reasonable. A settlement in CM-2021-06871 E 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 Ms. Ericksen 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. Dismissing WCC-2022-15003 K with prejudice is beneficial to the City in that it closes out the claim.

Furthermore, if the cases are settled in this manner, the City would incur additional costs and fees of:

CM-2021-06871 E (Right Hip, Right Knee, Right Shoulder, and Back)

Workers' Compensation Administration Fund Tax in the amount of \$1,400.00; Special Occupational Health & Safety Tax in the amount of \$525.00; 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.

CM-2022-15003 K (Both Ears)

Workers Compensation Court of Existing Claims filing fee in the amount of \$140.00.

These additional costs and fees total \$2,359.14, which brings the total cost of this settlement to the City to \$72,359.14. Adequate funds are available in the Order/Settlements Account (43330102-42131).

RECOMMENDATION:

For the reasons outlined above, it is believed the settlement and dismissal with prejudice 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 Ms. Ericksen and her 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.