



## CITY OF NORMAN, OK STAFF REPORT

---

**MEETING DATE:** 1/9/24

**REQUESTER:** Jeanne Snider

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

**ITEM TITLE:** CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-101: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY HOMER PAUL HARVEY, JR. UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *HOMER PAUL HARVEY, JR. V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE 2023-01069 W; 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:**

Homer Paul Harvey, Jr., is a former Fire Driver Engineer for the City of Norman's Suppression Division of the Fire Department. He was hired as a Firefighter Recruit on March 4, 1996 and promoted to Firefighter on July 1, 1997 and Fire Driver Engineer on March 20, 2013. Mr. Harvey filed Workers Compensation Commission Case 2023-01069 W on February 22, 2023, alleging a single incident injury to the right hip and right thigh from a fall exiting a cab on August 21, 2022. The case was accepted and proceeded through the normal litigation process.

Prior to a trial being held, Mr. Harvey has agreed to a settlement in the total amount of \$38,880.00, which represents 30 percent permanent partial impairment (PPI) to the Body as a Whole regarding the Right Hip and zero percent PPI to the Right Thigh. The settlement is recommended for consideration by the City Council.

### **DISCUSSION:**

Medical Treatment. Mr. Harvey was seen initially at Access Medical Center Urgent Care on the day of the injury and the following day at Norman Regional Occupational Medicine and was treated conservatively to include physical therapy. Due to continued symptomatology, he was

sent for a magnetic resonance imaging (MRI) of the right hip with arthrogram on September 20, 2022. Due to MRI results, he was referred to Dr. Bobb and then to Dr. Moses a hip surgeon. Mr. Harvey underwent a recommended intra-articular hip injection on October 12, 2022. He then returned to Dr. Bobb and due to continued symptomatology was sent for a repeat MRI of the right hip on November 2, 2022. Due to MRI findings, he was referred to Dr. Knutson for a second opinion on November 28, 2022. Dr. Knutson recommended total right hip arthroplasty due to a labral tear and significant arthritis, which was performed on January 11, 2023 followed by postoperative physical therapy. He continued to follow-up with Dr. Knutson and on July 27, 2023 was released maximum medical improvement with permanent restrictions to include no lifting greater than 50 lb. and no climbing as well as requiring a 6 month follow-up visit.

Issues for Trial. There is no question Mr. Harvey injured his right hip 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. Harvey's injuries and whether the injuries are 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. Harvey was evaluated by Dr. Lance Rosson, D.O. on August 18, 2023, regarding the above claim and opined a rating of 46 percent (\$59,616.00) PPI to the Body as a Whole regarding the Right Hip. The Right Thigh was not rated. In addition, Dr. Rosson opined Mr. Harvey 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. Harvey would need ongoing and continued yearly follow-up visits for observation and monitoring of his total hip arthroplasty as well as ongoing and continued medical maintenance indefinitely for the implanted medical devices/prosthetic/instrumentation.

He was then rated on November 2, 2023 by William Jones, M.D., MPH, the medical expert for the City. Dr. Jones opined 10 percent (\$12,960.00) PPI to the Body as a Whole regarding the Right Hip. The Right Thigh was not rated. Dr. Jones opined that ongoing palliative and maintenance medications, or physicians care would not be needed. In addition, he opined that Mr. Harvey's right hip prosthesis is not intended to be serviced, refilled, replaced or repaired. The City's maximum exposure for total PPI would be \$59,616.00.

Trial. The case proceeded through the normal litigation process; however, Mr. Harvey 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 2023-01069 W in a lump sum payment of \$38,880.00 (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 \$1,166.40, 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. Harvey 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 \$777.60; Special Occupational Health & Safety Tax in the amount of \$291.60; 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 \$40,243.34. 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. Harvey 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.