



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 8/27/2024

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2425-33: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF TWO CLAIMS FILED BY DAVID L. FAUGHT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASES OF *DAVID L. FAUGHT V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASES 2023-03668 L AND 2023-03669 R; 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:

David Faught is a 24 year firefighter for the City of Norman's Suppression Division of the Fire Department. He was hired on October 18, 1999. He filed workers compensation case CM3-2023-03668 L with the Oklahoma Workers' Compensation Commission on June 26, 2023, alleging a single incident injury to the chest and pectoral/tricep tendon while lifting heavy equipment on April 14, 2023. On June 27, 2023, he filed a second workers compensation case CM3-2023-03669 R, alleging cumulative injury of binaural hearing loss with date of awareness of April 14, 2023. The City admitted the first case and denied the second. The cases proceeded through the normal litigation process.

Prior to a trial being held, Mr. Faught has agreed to settle both cases in the total amount of \$45,504, which represents 18% (\$23,328) permanent partial impairment (PPI) to the Body as a Whole regarding the right shoulder and 8% (\$7,920) PPI to the Arm regarding the right arm in case CM3-2023-03668 L and 12% (\$14,256) PPI to the ears in case CM3-2023-03669 R. The settlement offer is being presented to City Council for consideration. It is recommended that the settlement be accepted.

DISCUSSION:

Medical Treatment.

CM3-2023-03668 L (Chest and Pectoral/Tricep Tendon) -

Mr. Faught was seen by Norman Regional Occupational Medicine the same date of his injury and was sent for magnetic resonance imaging (MRIs) of the Right Humerus on April 20, 2023 and Chest on April 28, 2023. Due to MRI findings, Mr. Faught was referred to orthopedic surgeon Dr. Espinoza-Ervin and surgery was recommended. He underwent Right Shoulder Open Pectoralis Major Tendon Repair on June 14, 2023 followed by postoperative physical therapy. Mr. Faught continued to follow-up with Dr. Espinoza-Ervin and was released at maximum medical improvement (MMI) without restrictions on November 28, 2023.

CM3-2023-03669 R (Binaural Hearing Loss) -

Since this claim was denied by the City due to it being an unreported injury, Mr. Faught has not received treatment. On July 16, 2023, Mr. Faught was examined by Dr. Rosson and underwent audiometry assessment, which revealed sensorineural hearing loss bilaterally. Dr. Rosson found the major cause of Mr. Faught's binaural hearing loss to be work related due to cumulative and repetitive exposure to loud environmental noises, to include sirens, air horns, radios, chainsaws, Sawzalls, generators, pumps, and diesel engines.

Issues for Trial. Since there is no question Mr. Faught's injuries occurred while in the course of his employment with the City, the primary issues to be tried in these cases before the Workers' Compensation Commission are the extent of his 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 PPI.

Evaluations.

CM3-2023-03668 L (Chest and Pectoral/Tricep Tendon) -

Mr. Faught was evaluated by Lance Rosson, D.O., on March 7, 2024, regarding the Chest and Pectoral/Tricep Tendon and opined a rating of 25% (\$32,400) PPI to the whole body regarding the right upper extremity and 20% (\$19,800) PPI to the right arm. In addition, Dr. Rosson opined that Mr. Faught would need continued medical benefits in the nature of prescription medication on an as needed basis, as well as other treatment his treating physician or further selected physicians might deem necessary. He further opined Mr. Faught would need ongoing and continued medical maintenance indefinitely for the implanted medical devices/prosthetic/instrumentation. On June 20, 2024, Mr. Faught was then evaluated by the City's medical expert, William Jones, M.D., MPH, and opined 6% (\$7,776) whole body PPI regarding the right shoulder and 0% PPI regarding the right arm, and ongoing palliative and maintenance medications or physician care would not be needed. In addition, Dr. Jones opined that Mr. Faught's pectoral tendon anchors are bioabsorbable and not medical devices or prosthetic devices and are not intended to be repaired, replaced, or removed. The City's maximum exposure for total PPI would be \$52,200.

CM3-2023-03669 R (Binaural Hearing Loss) -

On July 26, 2023, Mr. Faught was rated by Dr. Lance Rosson and opined 29.4% (\$34,749) PPI regarding binaural hearing loss and 5% (\$5,940) PPI regarding bilateral tinnitus. He also opined Mr. Faught would need entitlements to continued medical benefits in the nature of prescription medications and/or hearing aids, on an as-needed basis, as well as other treatment that his treating physician or further selected physicians might deem necessary. Results of Mr. Faught's audiogram were reported above. Mr. Faught was then evaluated on October 31, 2023 by Dr. Jones and underwent an audiogram. Dr. Jones opined the major cause of Mr. Faught's hearing loss as presbycusis (age-related) and not initiated, accelerated, or significantly aggravated by employment with the City of Norman; therefore, sustained 0% PPI binaural hearing loss over, over and above his pre-existing hearing loss. He also opined no objective evidence to warrant future medical treatment, vocational retraining, ongoing palliative, maintenance medications, or physicians care. The City's maximum PPI exposure would be \$40,689.

Trial. These cases proceeded through the normal litigation process; however, Mr. Faught has agreed to settlement of both cases as outlined below. If trials were held, the Judge could determine nature and extent to his injuries and award permanent partial disability as well as continued medical maintenance.

Proposed Settlement. The proposed settlement to close both cases on a "Joint Petition" basis is for a lump sum payment of \$45,504 (less 20% attorney fee) representing the settlement amounts 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 total amount of \$1,365.12, representing (3%) of the permanent partial disability awards shall be deducted and paid to the Oklahoma Tax Commission.

It is felt that the settlement to close both cases is fair and reasonable. Settlements are beneficial to the City in that it is a full, final and complete settlement of any and all cases and closes out any continued medical treatment. The settlement is beneficial to Mr. Faught 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 both cases were settled in this manner, the City would incur additional costs and fees of:

CM3-2023-03668 L (Chest and Pectoral/Tricep Tendon) –

Workers' Compensation Administration Fund Tax in the amount of \$624.96; Special Occupational Health & Safety Tax in the amount of \$234.36; and Workers Comp Commission Filing fee in the amount of \$140.00.

CM3-2023-03669 R (Binaural Hearing Loss) –

Workers' Compensation Administration Fund Tax in the amount of \$285.12; Special Occupational Health & Safety Tax in the amount of \$106.92; and Workers Comp Commission Filing fee in the amount of \$140.00.

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 \$1,685.50, which brings the total cost of the settlement to the City to \$47,189.50.

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 payments as outlined above. If approved, the settlement amount for both cases would be paid to Mr. Faught 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.