



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 8/27/24

REQUESTER: Jeanne Snider

PRESENTER: Jeanne Snider, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A COURT ORDER: A RECOMMENDATION FOR APPROVAL OF A COURT ORDER IN THE TOTAL AMOUNT OF \$22,032 REGARDING CASEY WILLIAM KRAEGER VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2023-00969 R

BACKGROUND:

Casey William Kraeger is a Sanitation Worker II for the Utilities Department Sanitation and Waste Division. He was hired as a Sanitation Worker I on February 10, 2020 and promoted to Sanitation Worker II on August 13, 2021.

Mr. Kraeger filed claim CM-2023-00969 R with the Oklahoma Workers' Compensation Commission on February 16, 2023, alleging a single incident injury to the head, upper back, lower back, left hip and left knee from a motor vehicle collision on February 7, 2023. The claim was accepted and proceeded through the normal litigation process. A trial was held July 16, 2024 on the issue of nature and extent of permanent partial disability. On August 6, 2024, the Court awarded Mr. Kraeger 12 percent (\$15,552) Permanent Partial Disability (PPD) to the LUMBAR SPINE (with radicular symptoms to the LEGS) and 5 percent (\$6,480) PPD to the HEAD for a total award of \$22,032 to be paid to Mr. Kraeger weekly at the rate of \$360 commencing August 28, 2023 until the entire award is paid in full. It is recommended that the City comply with the Order. Further, because only a couple months would be left in the PPD payout, it is recommended that the total award be paid in full.

DISCUSSION:

Medical Treatment. Mr. Kraeger was initially examined at Norman Regional Occupational Medicine the day of his injury for a concussion and taken off work. Upon follow-up, he was assessed with a closed head injury and strain of thoracic and lumbar back region with left sided sciatica. He was treated conservatively to include prescriptions (muscle relaxers and steroid pack). Due to continued symptomatology, he was sent for a head CT on February 8, 2023 and magnetic resonance imaging (MRI) on February 15, 2023. The head CT imaging showed no acute intracranial abnormality. The MRI study revealed minimal L4-5 annular tear with no evidence of any acute structural or anatomic abnormalities or disk extrusions. After review of

the CT and MRI study, Mr. Kraeger was referred for a neurological evaluation for the concussion symptoms and pain management for lumbar epidural injections as well as physical therapy. Mr. Kraeger was seen by Dr. Jason Leonard for chronic left lower back pain and concussion. He underwent a series of epidural anti-inflammatory steroid injections at L4-5 which provided modest relief. Dr. Leonard then recommended a referral to neurosurgery. On March 7, 2023, Mr. Kraeger was seen by neurologist Dr. Gabriel Pitman and underwent occipital nerve blocks which reportedly provided improvement and an electroencephalography (EEG) study which was found to be within normal limits. A cervical MRI study performed on April 17, 2023 was also found to be within normal limits. On April 20, 2023, he was placed at maximum medical improvement (MMI) by Dr. Pitman from a neurology standpoint. Mr. Kraeger was seen by neurosurgeon Dr. Joseph Cox on May 16, 2023 for complaints of radiating back pain. He continued to follow-up with Dr. Cox and treated conservatively as surgery was not recommended. Physical therapy and bilateral lower extremities EMG were recommended. He was then seen by Dr. Hancock on May 18, 2023 and underwent the EMG nerve conduction studies for the lumbar spine and lower extremities and results were found to be within normal limits. He continued to follow-up with Dr. Cox. On June 12, 2023, he was released back to work and on August 28, 2023 released at MMI from a neurosurgical perspective. In addition, Mr. Kraeger was seen by Dr. Anil Dinu Patel on September 12, 2023 for post-injury blurry vision which resulted in a normal neuro op exam.

Issues for Trial. The issue tried on July 16, 2024, before the Oklahoma Workers' Compensation Commission was nature and extent of permanent partial disability benefits to the head, upper and lower back, and left hip and knee. 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. On November 1, 2023, Mr. Kraeger was rated by Dr. Lance Rosson who opined 14% (\$18,144) impairment to the back, 16% (\$20,736) impairment to the head, and given entitlements to 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 physicians might deem necessary. The City then had Mr. Kraeger evaluated by Dr. William Jones on February 7, 2023. Dr. Jones opined 0% impairment for post injury headaches, 0% impairment to the head, and 7% (\$9,072) impairment to the lumbar spine. The Workers' Compensation Commission 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 \$38,880.

Court Award: The case was heard by the Workers' Compensation Commission on July 16, 2024. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on August 6, 2024. The Court found Mr. Kraeger's sustained compensable work-related injury to the HEAD and LUMBAR SPINE (with radicular symptoms to the LEGS) on February 7, 2023.

The Court's findings are set out in the Order as follows:

-3.- "That as a result of said injury, Claimant has sustained 12% Permanent Partial Disability to the LUMBAR SPINE (with radicular symptoms to the LEGS) and 5% Permanent Partial Disability to the HEAD. At Claimant's rate of compensation, this is equal to an award of \$22,032, which

shall be paid to Claimant weekly at the rate of \$360.00 commencing August 28, 2023, until the entire award is paid in full. All accrued amounts shall be paid in lump sum.”

As can be noted in No. 3 of the Commission’s Order, Permanent Partial Disability (PPD) compensation is expressed in terms of “weeks” of compensation with an accompanying “weekly wage rate.” Workers’ Compensation awards are normally paid at the weekly rates over a period of time. Mr. Kraeger’s weekly wage PPD rate is \$360.00. In this instance, the majority of the award has accrued.

-4.- “Maximum attorney fees of 20% of the permanent partial disability benefits are awarded herein, pursuant to 85A O.S., §82.”

If approved by Council, Mr. Kraeger and his attorney would be paid the accrued lump sum amount and attorney’s fee; however, because only a couple months would be left in the Permanent Partial Disability payout, it is recommended that the total award be paid in full.

Further, in complying with the Order, the City will incur additional costs and fees as set out in Paragraph Nos. 5 through 7. Special Occupational Health and Safety Fund Tax in the amount of \$165.24, Workers’ Compensation Administration Fund in the amount of \$440.64, 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 \$900.02, which brings the total cost of this Order to \$22,932.02. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-8.- “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 \$660.96, representing (3%) of the Claimant’s permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent.

RECOMMENDATION:

The issues tried on July 16, 2024, were nature and extent of permanent partial disability benefits to the HEAD and LUMBAR SPINE (with radicular symptoms to the LEGS). 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.