



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 10/10/23

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 TOTAL AMOUNT OF \$21,726.00 REGARDING SEAN MICHAEL TUSCHMANN VS. THE CITY OF NORMAN, OKLAHOMA WORKERS' COMPENSATION COMMISSION CASE 2022-04310 H.

BACKGROUND:

Sean Michael Tuschmann is a Lieutenant for the City of Norman's Police Department Patrol Division. Mr. Tuschmann filed claim CM-2022-04310 H with the Oklahoma Workers' Compensation Commission on July 19, 2022, alleging a single incident injury on February 25, 2022 to the Left Shoulder, Left Elbow, and Left Hand when he slipped on ice and landed on his left shoulder/side. The case proceeded through the normal litigation process. A trial was held September 19, 2023 on the issue of nature and extent of permanent partial disability. On September 21, 2023, the Court awarded 16 percent (\$20,736.00) Permanent Partial Disability to the LEFT SHOULDER, 1 percent (\$990.00) Permanent Partial Disability to the LEFT ARM (ELBOW), and 0 percent Permanent Partial Disability to the LEFT HAND for a total award of \$21,726.00 to be paid to Mr. Tuschmann weekly at the rate of \$360.00 commencing August 27, 2022 until the entire award is paid in full. It is recommended that the City comply with the Order. Further, because only two weeks would be left in the Permanent Partial Disability payout, it is recommended that the total award be paid in full.

DISCUSSION:

Mr. Tuschmann is a 13 year employee of the City of Norman who was hired as a Police Officer on October 9, 2009 and was promoted to Master Patrol Officer on April 9, 2014 and Lieutenant on April 29, 2016.

Medical Treatment. Mr. Tuschmann was initially examined at the Emergency Room at Norman Regional Hospital on the day of his injury and treated conservatively. He then followed up with Norman Regional Occupational Medicine and was sent for a magnetic resonance imaging (MRI) study on March 3, 2022. Mr. Tuschmann was then referred to orthopedic surgeon Dr. Moses. Due to MRI findings, he underwent arthroscopic debridement of the left rotator cuff with distal clavicle excision on April 1, 2022 followed by postoperative physical therapy. He continued to follow-up with Dr. Moses and was released Maximum Medical Improvement without restrictions on August 24, 2022.

Issues for Trial. The issue tried on September 19, 2023, before the Oklahoma Workers' Compensation Commission was nature and extent of permanent partial disability benefits to the Left Shoulder, Left Elbow, and Left Hand. 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 February 13, 2023, Mr. Tuschmann was rated by Dr. Lance Rosson who opined 27 percent (\$34,992.00) impairment to the Left Shoulder, 18 percent (\$17,820.00) impairment to the Left Arm/Elbow, and 17 percent (\$13,464.00) impairment to the Left Hand to include entitlement 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 with respect to this job-related injury. He further noted that Mr. Tuschmann had implanted medical devices, to include four anchors for his rotator cuff repair and this retained hardware/instrumentation/prosthetic/medical device could potentially result in future issues and the need for additional surgical intervention.

The City had Mr. Tuschmann evaluated by Dr. William Jones on June 5, 2023. Dr. Jones opined 9 percent (\$11,664.00) impairment to the Left Shoulder and 0 percent impairment to the Left Arm and Left Hand based on normal physical and range of motion of those body parts. He reported that the rotator cuff anchors are bioabsorbable and are not intended to be replaced or repaired, there is no specific or consequential injury to the left arm or left hand, and ongoing palliative and maintenance medications, continuing medical maintenance, or physicians care would not be needed.

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 \$66,276.

Court Award: The case was heard by the Workers' Compensation Commission on September 19, 2023. After hearing the Claimant's testimony and considering the expert medical evidence, the Court entered its Order on September 21, 2023. The Court found compensable work-related injury to the Left Shoulder and Left Arm (Elbow).

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

-3.- "That as a result of said injury, Claimant has sustained 16% Permanent Partial Disability to the LEFT SHOULDER, 1% Permanent Partial Disability to the LEFT ARM (ELBOW), and 0% Permanent Partial Disability to the LEFT HAND. At Claimant's rate of compensation, this is equal to an award of \$21,726.00, which shall be paid to Claimant weekly at the rate of \$360.00 commencing August 27, 2022, until the entire award is paid in full."

As can be noted in No. 3 of the Commission's Order, 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. Tuschmann's weekly wage PPD rate is \$360.00. In this instance, the majority of the award has accrued.

-5.- "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. Tuschmann and his attorney would be paid the accrued lump sum amount and attorney's fee; however, because only two weeks 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. 6 through 8. Special Occupational Health and Safety Fund Tax in the amount of \$162.95, Workers' Compensation Administration Fund in the amount of \$434.52, 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 \$891.61, which brings the total cost of this Order to \$22,617.61. Adequate funds are available in the Order/Settlements Account (43330102-42131).

-9.- "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 \$651.78, 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 September 19, 2023, were nature and extent of permanent partial disability benefits to the Left Shoulder, Left Arm (Elbow), and Left Hand. 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.