



THE CITY OF KEY WEST

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EXECUTIVE SUMMARY

To: The City Commission for the City of Key West
From: Ron Ramsingh, Assistant City Attorney
Date: February 10, 2014
RE: Settlement of worker's compensation case 11-4394DWL Shoulton Tyler v. The City of Key West.

Action Statement:

A proposed settlement to resolve all outstanding worker's compensation case regarding former employee Shoulton Tyler.

Background:

Tyler was hired by the City on 12/9/96 and has worked in Community Services, Port Services, and Parking until his termination date of 5/25/11. Tyler was working as a parking lot attendant at the Caroline St. parking garage on 7/5/09, Tyler states that he was sitting on an office style chair with wheels. He went to lean back and put his feet up on a desk and the chair fell out from underneath him. He states that he fell on the floor, striking the back of his head on the concrete floor. Tyler was reprimanded in writing by Myra Wittenberg the next day and told that only stools are permitted in the parking booths; and only with the expressed permission of Myra; which had not been issued. Tyler testified in deposition that the chair had been in the booth for some time and that he did not bring it in. He denies striking any other part of his body. He reported the incident and filled out a Notice of Injury. At first, compensability was denied as occurring outside of the scope and course of employment but upon further research, compensability was accepted as the facts of this case could reasonably fall under the "Comfort

Doctrine” In short, FL case law indicates that employees are permitted to engage in certain acts to make employment for comfortable (such as leaning back in a reclining office chair). On 12/11/09 Tyler went to the emergency room in KW complaining of numbness and tingling (rt arm). A timely DWC-12 Notice of Denial was filed by EMI on 12/29/09 indicating that no accident occurred within the course and scope of employment.

On 2/22/11 the city received a Petition for Benefits from Attorney Zaldivar in Miami requesting Temporary Partial and Temporary Total Disability Benefits, 91 days sick time, a neurosurgeon Independent Medical Evaluation, orthopedic care, neurologist, pain management, compensability of the lumbar (1st time this came up) and compensability of the cervical spine. The date of injury on the Petition was 7/1/09, so a response was generated indicating that there is no date of injury for that that date on record. An uncontested motion to correct the date of injury was filed and the Judge of Compensation Claims entered an order correcting same on 7/11/11.

Pursuant to FL statutes, Tyler requested a one-time change in physicians and his new neurologist imposed significant permanent work restrictions. As expected, shortly thereafter, the city received a Petition requesting Permanent Total Disability benefits.

Permanent Total Disability can be obtained one of 3 ways with worker’s compensation: 1. An authorized treating physician indicates that the Claimant is not able to work in any capacity due to the industrial accident; 2. The Claimant cannot find appropriate employment within his or her given medical and work restrictions within a 50 mile radius of the place or residence; or 3. The Claimant is on TPD because the employer cannot accommodate the restrictions, and the 104 weeks of indemnity payments have been exhausted. Here, a vocational assessment was conducted, given Tyler’s level of education, physical limitations and criminal history; it was not likely that he would find suitable employment within a 50 mile radius, which is the standard in FL worker’s compensation law. Therefore, unlike the other worker’s compensation case before you for consideration, there stood a respectable chance that the city would not be successful in a trial concerning PTD.

Options:

1. To pass the proposed Resolution authorizing the City Manager to enter into settlement papers ratifying said settlement of this worker's compensation claim.
2. To deny passage of the Resolution authorizing settlement of this worker's compensation case and the City faces the possibility of exposure to further medical care and indemnity.

Recommendation:

To pass the attached Resolution authorizing settlement in this matter

As always, please feel free to contact me with any questions or concerns.



Ronald J. Ramsingh, Esq.
Assistant City Attorney