



office memorandum

Date: May 29, 2007
To: Butch Crawford, President IAFF Local
For: James Fullingim, Fire Chief
From: James Bailey, Deputy Fire Chief
Subject: Grievance – Denial of Injury on the Job Leave

On May 22, 2007, I received a written grievance from you regarding alleged denial of on the job injury leave to Mark Helm, Firefighter. In your grievance, you state that Firefighter Helm was denied “On the Job accident leave pay and benefits.” The solution you request is return of all leave and benefits used that relate to “this Injury Leave issue and to compensate all back pay due in accordance with applicable State Laws and place the above mentioned Firefighter on the appropriate leave until such time that he may be released back to active duty.” I assume that the “injury” to which you refer is Post Traumatic Stress Disorder following exposure to the death two (2) boys on August 28, 2005.

In addition to your written grievance, I have reviewed the leave taken by Firefighter Helm from August 28, 2005 through the present, a letter dated April 23, 2007 from Kathy H. Thomas, Ph.D. to Chief James Fullingim, and relevant City/IAFF Collective Bargaining Agreement (CBA) provisions. For the reasons stated below, your grievance is denied.

Under Article 24 of the City/IAFF CBA, injury leave is the necessary absence of an employee from the regularly assigned duties of the employee's position because of an accidental injury suffered while properly performing the duties of the position without negligence or misconduct on the part of the employee. An “injury” is defined as “violence to the physical structure of the body and such disease or infection as naturally results therefrom.” The definition of “injury” also includes diseases which qualify as occupational diseases under the Workers' Compensation Laws of the State of Oklahoma.

The problems referred to by Dr. Thomas, Post Traumatic Stress Disorder and Substance Abuse, do not qualify as an injury under Article 24 of the City/IAFF CBA because they do not involve “violence to the physical structure of the body” and they do not qualify as an occupational disease under the Workers' Compensation Laws of the State of Oklahoma – i.e., they are not accompanied by any physical injury. See *Fenwick v. Oklahoma State Penitentiary*, 1990 OK 47, ¶ 8, 792 P.2d 60, 62 (“This Court has consistently held that physical injury must be present for a disability to be compensable. Just as physical symptoms such as pain, tingling of the limbs, and nausea do not constitute accidental injury, neither does mental stress. Because there is no evidence in the present case that Claimant suffered any physical injury, he has not shown that he suffered an accidental injury. Therefore, his disability is not compensable under the

[Workers' Compensation] Act.”). Consequently, Firefighter Helm is not entitled to injury leave for the Post Traumatic Stress Disorder and Substance Abuse.¹

Please consult the City/IAFF CBA for further rights that Firefighter Helm may have.

cc: Gala Hicks, Director of Human Resources
Rickey J. Knighton II, Assistant City Attorney

¹ The City reserves the right to raise the issue of timeliness regarding this grievance.