

Date: November 18, 2009
To: Butch Crawford, President IAFF 2067
From: Chief James Fullingim, Fire Chief
Subject: Mark Castell Grievance

I have received and reviewed a grievance filed on behalf of Fire Captain Mark Castell concerning Castell's request to reopen an OJI claim and to allow him to receive the appropriate medical attention to repair his alleged injury. Mark Castell submitted an injury report form on May 15, 2006 due to a right shoulder injury that occurred when he tripped and fell while fighting a structure fire. Firefighter Castell received medical treatment from the office of the City's designated physician, Dr. Penwell, on May 15, 2006.

Firefighter Castell initially reported to Mr. Wiese at Dr. Penwell's office that on a scale of one to ten his pain level due to the shoulder injury was between one and three. An X-ray was performed and was negative for fracture, dislocation or acute osseous injury. Based upon these results as well as Firefighter Castell's own comments, Mr. Wiese proceeded with an injection, medication and physical therapy. At his last appointment with Dr. Penwell's office on May 22, 2009 Firefighter Castell noted that he was pleased with his progress and felt like his shoulder was 90% better.

For the reasons stated below, this grievance must be denied. First, a determination of whether an employee suffered an OJI is a complex issue over which the court has exclusive jurisdiction. These issues include: 1) whether a worker is in fact injured, 2) whether such injury arose out of and in the course of their duties for an employer, 3) the nature and extent of such an injury, and 4) whether the severity of this injury has created a permanent disability for the employee.

In order to answer these questions, the court serves as a finder of fact and requires evidence in the form of testimony from medical experts, such as orthopedic surgeons, who evaluate the employee; testimony from the employee himself to describe the alleged injury or disability; and testimony from the employee's coworkers and/or the employer. The Union in its approach believes that an arbitrator can adequately determine whether an employee is entitled to OJI leave and OJI benefits. Such an inquiry can not be properly answered or even addressed until the above-noted issues have been resolved through the Court.

Even if the grievance process was the appropriate avenue to resolve this issue, under the Workers' Compensation statutes Firefighter Castell is not entitled to the benefits which he seeks. A change in condition for the worse or a request to reopen is barred unless it is filed within three years. 85 O.S. 1 *et. seq.* Moreover, a claim is dismissed after three years of continuous inactivity. *Id.* Firefighter Castell's claim has been inactive for three years and six months.



office memorandum

As noted above, a determination of whether an employee suffered an OJI is a complex issue over which the court has exclusive jurisdiction. Moreover, even if Firefighter Castell's grievance could be resolved through the grievance process, under the Workers' Compensation statutes he is not entitled to the benefits he seeks.

If you have any additional concerns, please feel free to contact me. If you believe that further action is warranted, please consult the City/IAFF CBA for any additional rights you may have.

cc: Steve Lewis, City Manager
Gala Hicks, Director of Human Resources
Jeff Bryant, City Attorney
Rick Knighton, Assistant City Attorney
R. Blaine Nice, Assistant City Attorney