



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1415-44**

**File ID:** GID-1415-44

**Type:** Court Order

**Status:** Consent Item

**Version:** 1

**Reference:** Item No. 21

**In Control:** City Council

**Department:** Legal Department

**Cost:** \$16,102.80

**File Created:** 11/13/2014

**File Name:** Dale DeBerry WCC Court Order

**Final Action:**

**Title:** CONSIDERATION OF THE CITY ATTORNEY'S RECOMMENDATION FOR APPROVAL OF PAYMENT OF THE REMAINING LUMP SUM INDEMNITY DEATH BENEFIT IN THE ADDITIONAL AMOUNT OF \$16,102.80 RECOGNIZING A SURVIVING SPOUSE REMARRIAGE DATE OF NOVEMBER 13, 2013, IN THE COURT ORDER IN THE CASE OF DALE DEBERRY VS. THE CITY OF NORMAN, WORKERS' COMPENSATION COURT CASE NO. WCC-1999-04367 Q.

**Notes:** ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and if approved, direct the remaining lump sum indemnity death benefit in the amount of \$16,102.80 which will comply with the Workers' Compensation Court Order awarding death benefits.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 11/25/2014

**Agenda Number:** 21

**Attachments:** Text File DeBerry.pdf, Court Order.pdf

**Project Manager:** Jeanne Snider, Assistant City Attorney

**Entered by:** denise.johnson@normanok.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	11/25/2014					

### Text of Legislative File GID-1415-44

Body

**BACKGROUND:** Officer Dale DeBerry was a veteran Police Officer with the City of Norman who died after a heart attack while participating in physical agility testing for the Norman Police Department on December 1, 1998. On April 29, 1999 an Order from the Workers' Compensation Court awarding Death Benefits was entered determining Tonya DeBerry, as surviving spouse, and Lindsey Ann Crawford and Cooper Ellis DeBerry, as minor children of the deceased and dependent heirs-at-law of the deceased. The City has been complying with the Order including providing weekly income benefits to the minor children and surviving spouse. The portion of the Order that provides for weekly income benefits to the surviving spouse also provides for discontinuation upon remarriage and payment of a lump sum indemnity benefit. It has come to the City's attention that Ms. Tonya DeBerry may have remarried thus activating this portion of the Order. There has been some dispute regarding the effective date of remarriage. After very congenial discussions, Ms. DeBerry has offered to settle this part of the Order by recognizing a marriage date of November 16, 2013 which would then require an additional lump sum payment of \$16,102.80 toward full satisfaction of the indemnity benefit

contained in the Order. The matter was discussed with City Council at its November 10, 2014 Executive Session. In accordance with that discussion, the matter is presented to City Council for formal consideration at this time.

**DISCUSSION:** Officer DeBerry was hired by the City of Norman on April 16, 1984 as a Patrol Officer. He had worked for the City for 14 years and had attained the rank of Sergeant. On December 1, 1998, while participating in physical agility testing as a member of the Emergency Response Team for the Norman Police Department, Officer DeBerry suffered a heart attack. The testing was during "on duty time" and occurred at the Norman Police Department physical fitness course located at the firing range. The cause of death indicated on the Death Certificate was "acute coronary insufficiency" and "atherosclerotic coronary artery disease". Officer DeBerry did not quite complete the physical agility course before collapsing. Although an ambulance was immediately called, Officer DeBerry expired the same day at Norman Regional Hospital.

On April 29, 1999, the Court ordered a lump sum of \$5,000 to be paid to each minor child of the deceased, Lindsey Ann Crawford and Cooper Ellis DeBerry. The Court further ordered an accrued lump sum in the amount of \$1,305.39 to each child and weekly income benefits of \$63.90 per week until said child dies, marries or reaches the age of 18 or if over the age of 18 and having qualified as being physically or mentally incapable of self-support or if over age 18 and continually enrolled in any accredited educational institution, ceases to be enrolled or reaches the age of 23 years. The weekly income benefits to Lindsey Ann Crawford ceased on September 25, 2009 under the terms of the Workers Compensation Order. Cooper Ellis DeBerry has reached the age of 18, is enrolled as a senior at Norman High School and will continue to receive the weekly income benefits of \$63.90 per week until one of the termination provisions outlined in the Order have been met.

On April 29, 1999, the Court ordered Tonya Ann DeBerry, as surviving spouse, to receive the lump sum of \$20,000, an accrued sum of income benefits in the amount of \$6,091.80 and \$298.20 per week from April 22, 1999, for her sole use and benefit until she remarries. In that event, the income benefit would cease and the surviving spouse shall be entitled to two (2) years indemnity benefit totaling \$31,012.80, payable in a lump sum upon proper proof of remarriage and notification of the same.

Ms. DeBerry has been receiving \$298.20 per week since April 22, 1999, for an annual income benefit amount of \$15,506.40. The City was made aware this past spring, through a facebook post, that Ms. DeBerry had formally remarried on November 16, 2013. In following up on that report, Ms. DeBerry denied a formal wedding ceremony or marriage certificate, but admitted she had been in an actual, mutual relationship with the same man for a number of years. Although denying a formal remarriage, Ms. DeBerry admitted facts that would likely support a common law marriage as defined under Oklahoma law. Ms. DeBerry was very cooperative, forthcoming and congenial throughout the discussions. Rather than litigate the common law marriage issue to establish a marriage date, Tonya DeBerry has agreed to accept the November 16, 2013 date as her remarriage date.

As noted above, the Workers Compensation Court Order provides an Indemnity benefit of two years of weekly compensation (\$31,012.80) to be paid in a lump sum upon remarriage. While the City discussed this issue with Ms. DeBerry, we continued to pay the weekly income benefit of \$298.20. With the agreed upon remarriage date, Ms. DeBerry has also agreed that weekly income benefits paid by the City from the remarriage date should be credited toward the two year indemnity benefit specified in the Order upon remarriage. Ms. DeBerry agreed to stop the weekly income benefit payments as of the end of October 2014 pending City Council approval of the settlement offer to accept the remarriage date of November 16, 2013. If the settlement offer is approved, considering application to the Indemnity Benefit payment of weekly income benefits paid from November 16, 2013 through the end of October 2014, a balance due of the Indemnity Benefit payment would remain in the amount of \$16,102.80.

The parties agreed to recognize November 16, 2013 as a remarriage date, and the application of the weekly benefit payments made from November 16, 2013 to October 31, 2014, plus an additional lump sum payment of \$16,102.80 fully complied with the surviving spouse two year Indemnity Benefit payment ordered under the Workers' Compensation Court Order in the Dale DeBerry case. No further surviving spouse benefits will be due under this Order. The only remaining portion of the Order left open would be the minor child weekly benefit to Cooper DeBerry of \$63.90 which will continue as long as Cooper remains a student continually enrolled in any accredited educational institution or reaches the age of 23 years, whichever occurs first.

The merits of the settlement offer were discussed during an executive session on November 10, 2014 and is now being brought forward for formal Council consideration.

**RECOMMENDATION:** For the reasons outlined above, it is believed the settlement offer establishing the remarriage date, crediting weekly income benefit payments since November 2013 toward the final two year indemnity payment, and paying the remaining portion of the indemnity benefit in a lump sum is fair, reasonable settlement and in the best interest of the City. It is recommended the settlement of the two year Indemnity benefit upon remarriage in the fashion outline above be approved.