

No. 2021-6832

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 05-18-2021

Subject Considered:

Arch Insurance Company
210 Hudson Street, Suite 300
Jersey City, New Jersey 07311-1206

Consent Order
DWC Enforcement File No. 26611

General remarks and official action taken:

This is a consent order with Arch Insurance Company (Arch Insurance). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Arch Insurance.

Waiver

Arch Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Arch Insurance waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Arch Insurance holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to TEX. INS. CODE §§ 801.051-801.053 and is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.

2. Arch Insurance was classified as "high" tier in the 2007 Performance Based Oversight (PBO) assessment. Arch Insurance was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

3. On [REDACTED], Arch Insurance received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs) for the eighth quarter. The eighth quarter of SIBs began on [REDACTED].
4. Arch Insurance's payment for the first month of the eighth quarter was due by the 10th day after Arch Insurance received the application for supplemental benefits or the seventh day of the eighth quarter, whichever is later. In this case, the latest date was [REDACTED].
5. Arch Insurance issued a payment for SIBs for the first month of the eighth quarter on [REDACTED], which was 53 days late.

Assessment of Sanction

1. Failure to provide appropriate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. In assessing the sanction for this case, DWC fully considered the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:

- PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the history and extent of previous administrative violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act. In this situation, the insurance carrier has a process in place to ensure dates are met. The process was bypassed when the injured employee sent the DWC 52 directly to DWC. DWC then emailed it directly to the adjuster, thus skipping the checks put in place to ensure deadlines and dates are met.
 5. Arch Insurance acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and the proposed sanction is appropriate, including the factors DWC considered under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
 6. Arch Insurance acknowledges that, in assessing the sanction, DWC considered the factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).

3. Arch Insurance has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
7. Pursuant to TEX. LAB. CODE § 408.144, SIBs are calculated quarterly and paid monthly.
8. Pursuant to TEX. LAB. CODE § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to TEX. LAB. CODE § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
10. Pursuant to 28 TEX. ADMIN. CODE § 130.107, an insurance carrier must make the first payment of SIBs for the eighth quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day and the third payment by the 67th day.
11. Arch Insurance violated TEX. LAB. CODE §§ 408.144, 408.145, 409.023, and 28 TEX. ADMIN. CODE § 130.107 when it issued payment for SIBs for the first month of the eighth quarter on September 15, 2020, which was 53 days late.

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Order

It is ordered that Arch Insurance Company must pay an administrative penalty of \$6,000 within 30 days from the date of this order. Arch Insurance Company must pay the administrative penalty by company check, cashier's check or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

