

No. **2021-6994**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 9/27/2021

Subject Considered:

Zurich American Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order
DWC Enforcement File No. 27187

General remarks and official action taken:

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

Waiver

Zurich American acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Zurich American 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. Zurich American 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. Zurich American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Comply with a DWC Order

3. On [REDACTED] Zurich American received Medical Fee Dispute Resolution (MFDR) Findings and Decision Order No. M4-19-3193-01.
4. This order required Zurich American to pay [REDACTED] plus accrued interest of [REDACTED] by [REDACTED]
5. On [REDACTED] Zurich American issued payment in compliance with the MFDR Order, which was 438 days late.

Assessment of Sanction

1. Failure to timely comply with DWC orders for payment of medical bills is not cost-effective and 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 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 penalty necessary to deter future 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: promptness and earnestness in responding to DWC; Zurich American had the reasonable belief the MFDR Order was a duplicate of another order; the healthcare provider did not contact Zurich American about the unpaid MFDR Order; and Zurich American has paid the amount owed and is now in compliance.
5. Zurich American 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. Zurich American 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, 402.00114, 402.00116, 402.00128, and 414.002.
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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).
3. Zurich American 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 § 413.055, the commissioner may enter an interlocutory order for the payment of all or part of medical benefits. The order may address accrued benefits, future benefits, or both.
6. Pursuant to TEX. LAB. CODE § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
7. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
8. Zurich American violated TEX. LAB. CODE §§ 415.002(a)(17), 415.0035(e), and 415.021(a) when it failed to comply with a DWC order.

Order

It is ordered that Zurich American Insurance Company must pay an administrative penalty of \$3,500 within 30 days from the date of this order. Zurich American 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.



Dan Paschal, J.D.
Deputy Commissioner-Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Unsworn Declaration

STATE OF _____ **§**
§
COUNTY OF _____ **§**

Pursuant to TEX. CIV. PRAC. & REM. CODE § 132.001(a), (b), and (d), my name is Douglas Meyers. I hold the position of Claims Chief Operations Officer and am the authorized representative of Zurich American Insurance Company. My business address is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Douglas P. Meyers

Declarant

Executed on August 23, 2021

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