

No. **2022-7324**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 5/9/2022

Subject Considered:

Paul W. Klinger, Jr.
15141 Lakeview Drive
Baytown, Texas 77523-9357

Consent Order
DWC Enforcement File No. 28321

General remarks and official action taken:

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

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. Respondent is an attorney who provides legal services to injured employees within the Texas workers' compensation system. Respondent holds Texas Bar License No. [REDACTED] which was issued by the State of Texas on [REDACTED]

Taking or Billing an Amount in Excess of Approved Attorney Fees

2. On [REDACTED] the insurance carrier mistakenly issued the benefits owed to the injured employee to Respondent, the injured employee's attorney. Respondent deposited the payment in a trust account.
3. On [REDACTED] Respondent issued payment in the amount of [REDACTED] to the injured employee.
4. Between [REDACTED] and [REDACTED] the insurance carrier continued issuing the payments totaling [REDACTED] to Respondent, not the injured employee.
5. On [REDACTED] and [REDACTED] Respondent issued payments totaling [REDACTED] to the injured employee. Respondent transferred all sums sent to him by the insurance carrier to the injured employee with the exception of [REDACTED] which Respondent improperly withheld.
6. Respondent improperly withheld [REDACTED] to pay for a medical exam for the injured employee. [REDACTED] Respondent issued payment of [REDACTED] to the injured employee.

Assessment of Sanction

1. Timely submitting accurate billing information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
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;

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

- 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:
 - Performance Based Oversight 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and the penalty necessary to deter future violations.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: to the extent reasonable, the economic benefit resulting from the prohibited act. Respondent did not benefit economically from withholding the funds from the injured employee. He did not charge attorney fees for any work performed on behalf of the injured employee and reimbursed the injured employee the \$350 withheld to pay the health care provider fees. The appointment was made at the request of the injured employee because he wanted a second opinion on his medical treatment and the \$350 withheld to pay the fee was paid directly to the provider. Funds were not given to the injured employee to pay the provider directly.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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. Respondent 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, 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which Respondent 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 § 408.221, except as provided by subsection (c) or Section 408.147(c), an attorney's fee, including a contingency fee, for representing an injured employee before the division or court must be approved by the commissioner and paid for from the injured employee's recovery.
5. Pursuant to TEX. LAB. CODE § 415.001(4), (6), (10), and (11), a representative of an employee or legal beneficiary commits an administrative violation if the person takes a fee or withholds from the injured employee's or legal beneficiary of the injured employee's weekly benefits or from advances amounts not authorized to be withheld by the division; expenses in excess of the amounts authorized by the division; violates a commissioner rule; or fails to comply with the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 415.007, an attorney who represents a claimant before the division may not lend money to the claimant during the pendency of the workers' compensation claim.
7. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation

8. Pursuant to 28 TEX. ADMIN. CODE § 152.2(d), the total amount that the commissioner approves for the attorney's time and expenses constitutes the fee and shall not exceed 25% of the injured employee's recovery.
9. Respondent violated TEX. LAB. CODE § 415.001(4), (6), (10), and (11) when Respondent took a fee or withheld sums from the injured employee's weekly benefits amounts not authorized to be withheld by the division.

Order

It is ordered that Paul W. Klinger, Jr. must pay an administrative penalty of \$1,000 within 30 days from the date of this order. Paul W. Klinger, Jr. 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:



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

Unsworn Declaration

STATE OF Texas §
COUNTY OF Chambers §

Pursuant to the TEX. CIV. PRAC & REM. CODE § 132.001(a), (b), and (d), my name is Paul W. Klinger, Jr. I hold the position of Attorney at Law and am the authorized representative of Paul W. Klinger, Jr. My business address is:

15141 Lakewood Dr. Beach Chambers TX. 77523.
(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.

Paul Wesley Klinger Jr.
Declarant

Executed on April 20, 2022.