

No. **2022-7485**

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

Date: 9/6/2022

Subject Considered:

Old Republic Insurance Company
307 North Michigan Avenue
Chicago, Illinois 60601

Consent Order
DWC Enforcement File No. 28278

General remarks and official action taken:

This is a consent order with Old Republic Insurance Company (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 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. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Initial Supplemental Income Benefits

3. On [REDACTED] Respondent received a *Notice of Entitlement to Supplemental Income Benefits* (SIBs) for the first quarter. The first quarter of SIBs began on [REDACTED]
4. Respondent's payment for the first quarter was due by the 10th day after Respondent received DWC's determination of entitlement, which was [REDACTED]
5. On [REDACTED] Respondent received notice from the injured employee that SIBs were not properly received for the first, second and third quarters. The injured employee provided proof that the applications for SIBs were properly submitted. However, Respondent requested resubmission of the information.
6. Respondent paid SIBs for the first quarter on [REDACTED] which was 64 days late.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

7. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* for the second quarter. The second quarter of SIBs began on [REDACTED]
8. Respondent's payment for the second quarter was due by the 10th day after Respondent received the DWC Form-052, which was [REDACTED]
9. Respondent paid SIBs for the second quarter on [REDACTED] which was 64 days late.
10. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* for the third quarter. The third quarter of SIBs began on [REDACTED]
11. Respondent's payment for the first month of third quarter was due by the 10th day after Respondent received the DWC Form-052, which was [REDACTED]
12. Respondent paid SIBs for the first month of third quarter on [REDACTED] which was 64 days late.

13. Respondent's payment for the second month of third quarter was due by the 37th day of the third quarter, which was [REDACTED]
14. Respondent issued payment for SIBs for the second month of third quarter on [REDACTED] which was 53 days late.
15. Respondent's payment for the third month of third quarter was due by the 67th day of the third quarter, which was [REDACTED]
16. Respondent issued payment for SIBs for the third month of third quarter on [REDACTED] was 22 days late.

Assessment of Sanction

1. Failure to provide 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 (the 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; the size of the company or practice; and evidence of heightened awareness of the legal duty to comply with the Act and DWC rules.
 4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations. Respondent has changed its internal control methods regarding the delivery of mail from its board representative.
 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, 402.00111, 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)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent 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.

Failure to Pay Initial Supplemental Income Benefits

10. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the first 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 of the quarter and the third payment by the 67th day of the quarter.
11. Respondent violated Tex. Lab. Code §§ 408.144, 408.145, 409.023, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 130.107 by failing to timely pay SIBs for the first quarter.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

12. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the subsequent quarter by the 10th day after receiving a Application for Supplemental Income Benefits or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
13. Respondent violated Tex. Lab. Code §§ 408.144, 408.145, 409.023, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 130.107 by failing to timely pay SIBs for subsequent quarters.

Order

It is ordered that Old Republic Insurance Company must pay an administrative penalty of \$7,000 within 30 days from the date of this order. Old Republic 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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