

No. 2022-7613

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

Date: 11/14/2022

Subject Considered:

Berkshire Hathaway Direct Insurance Company
1314 Douglas Street, Suite 1400
Omaha, Nebraska 68102-1944

Consent Order
DWC Enforcement File No. 29886

General remarks and official action taken:

This is a consent order with Berkshire Hathaway Direct 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED] Respondent received notice in connection with an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
6. Respondent issued the initial TIBs payment on [REDACTED] which was 155 days late.

Failure to Timely Pay Accrued Temporary Income Benefits

7. Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely issue the TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	155
b.	[REDACTED]	[REDACTED]	[REDACTED]	148
c.	[REDACTED]	[REDACTED]	[REDACTED]	141
d.	[REDACTED]	[REDACTED]	[REDACTED]	134
e.	[REDACTED]	[REDACTED]	[REDACTED]	127
f.	[REDACTED]	[REDACTED]	[REDACTED]	120
g.	[REDACTED]	[REDACTED]	[REDACTED]	130
h.	[REDACTED]	[REDACTED]	[REDACTED]	123
i.	[REDACTED]	[REDACTED]	[REDACTED]	116
j.	[REDACTED]	[REDACTED]	[REDACTED]	109
k.	[REDACTED]	[REDACTED]	[REDACTED]	102
l.	[REDACTED]	[REDACTED]	[REDACTED]	95
m.	[REDACTED]	[REDACTED]	[REDACTED]	88

n.	[REDACTED]	[REDACTED]	[REDACTED]	81
o.	[REDACTED]	[REDACTED]	[REDACTED]	74
p.	[REDACTED]	[REDACTED]	[REDACTED]	64
q.	[REDACTED]	[REDACTED]	[REDACTED]	60
r.	[REDACTED]	[REDACTED]	[REDACTED]	53
s.	[REDACTED]	[REDACTED]	[REDACTED]	46
t.	[REDACTED]	[REDACTED]	[REDACTED]	36
u.	[REDACTED]	[REDACTED]	[REDACTED]	32
v.	[REDACTED]	[REDACTED]	[REDACTED]	25
w.	[REDACTED]	[REDACTED]	[REDACTED]	18
x.	[REDACTED]	[REDACTED]	[REDACTED]	11
y.	[REDACTED]	[REDACTED]	[REDACTED]	4
z.	[REDACTED]	[REDACTED]	[REDACTED]	5

Failure to Timely Pay Interest

8. Respondent failed to timely pay interest on the late TIBs as described above.
9. As of [REDACTED] Respondent had paid interest for the late TIBs payments.

Assessment of Sanction

1. Failure to provide income benefits and interest 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 seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; 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. Specifically, Respondent's conduct resulted in an underpayment of benefits to the injured employee in an amount exceeding \$27,000 ranging from five to 155 days late.
4. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and Respondent has no prior disciplinary history.
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 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.

Failure to Timely Initiate Payment of Temporary Income Benefits

7. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Pay Accrued Temporary Income Benefits

9. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.


10. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
11. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Timely Pay Interest

12. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
13. Respondent violated Tex. Lab. Code §§ 408.064; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.


Order

It is ordered that Berkshire Hathaway Direct Insurance Company must pay an administrative penalty of \$15,000 within 30 days from the date of this order. Berkshire Hathaway Direct 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:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Pennsylvania §
§
COUNTY OF Luzerne §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Lauren Langan. I hold the position of Claims Supervisor and am the authorized representative of Berkshire Hathaway Direct Insurance Company. My business address is:

1314 Douglas Street, Omaha, Douglas NE, 68102.
(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.

Lauren Langan

Declarant

Executed on October 14, 2022.