

No. 2023-7875

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

Date: 3/30/2023

Subject Considered:

City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

Consent Order
DWC Enforcement File No. 29300

General remarks and official action taken:

This is a consent order with City of Beaumont (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 a self-insured government entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ann. Ch. 504.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020 or 2022 Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-22-105

3. On [REDACTED] DWC initiated DWC Audit No. IBA-22-105 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefit claims with Respondent with dates of injury between [REDACTED] and [REDACTED] DWC identified four initial death benefit claims for audit. A total of two initial death benefit claims failed to meet selection criteria and were dropped from the audit sample. The remaining two claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 50% of examined payments (one out of two).
7. Specifically, Respondent issued 104 weeks of timely and accurate death benefit payments to the eligible beneficiaries. Respondent was required to issue the remaining 260 weeks' worth of death benefit payments to the Subsequent Injury Fund (SIF) no later than the seventh day after the day that all previously eligible beneficiaries were no longer eligible to receive death benefits, which was July 6, 2013.
8. Respondent issued payment of [REDACTED] to the SIF on [REDACTED] which was 3,076 days late.

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.

2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
3. 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 or their beneficiaries;
 - the history of compliance with EDI 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.
4. 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 (Order No. 5808 issued December 27, 2018); the penalty necessary to deter future violations; and other matters that justice may require.
5. DWC considered as mitigating the following factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent is a self-insured government entity funded by Texas taxpayers; there was no economic harm to an

injured employee or beneficiary; and Respondent has no prior disciplinary history on this violation.

6. 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).
7. 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, 409.021, 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 §§ 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.
6. Pursuant to Tex. Lab. Code § 415.002(a)(16), an insurance carrier or its representative commits an administrative violation each time the carrier fails or refuses to pay benefits from week to week as and when due.

7. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Accurate Death Benefits

8. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
9. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
10. Pursuant to Tex. Lab. Code § 408.184(c) and 28 Tex. Admin. Code §§ 132.10(b) and (c), if after a carrier has paid death benefits to all legal beneficiaries, those beneficiaries cease to be eligible to receive death benefits prior to the carrier paying a full 364 weeks of benefits, the carrier shall pay the remainder of the 364 weeks of death benefits to the administrator of the SIF. Payment to the administrator of the SIF must be made no later than the seventh day after the day that all previously eligible beneficiaries cease being eligible to receive death benefits.
11. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resurreptions, or terminations involving death benefits.
12. Respondent violated Tex. Lab. Code §§ 408.184(c); 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.2(e)(4)-(6) and 132.10(b) and (c) when Respondent failed to notify DWC of a termination of death benefits and failed to timely pay accurate death benefits to the SIF.

Order

It is ordered that City of Beaumont must pay an administrative penalty of \$15,000 within 30 days from the date of this order. City of Beaumont 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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