

No. **2023-7910**

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

Date: 4/26/2023

Subject Considered:

Dallas Area Rapid Transit
1401 Pacific Avenue
Dallas, Texas 75202-2713

Consent Order
DWC Enforcement File No. 30860

General remarks and official action taken:

This is a consent order with Dallas Area Rapid Transit (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 classified as "poor" tier in the 2007, and 2009 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2010, 2012, 2014, 2016, 2018, and 2022 PBO assessments. Respondent was classified as "average" tier in the 2020 PBO assessments.

Failure to Timely Pay Temporary Income Benefits Weekly As and When They Accrue

3. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined the injured employee had not yet reached maximum medical improvement (MMI) and was not expected to reach MMI until [REDACTED]
5. On [REDACTED] Respondent received a DWC-073, *Texas Workers' Compensation Work Status Report*, indicating that the injured employee was able to work with restrictions from [REDACTED] through [REDACTED]
6. On [REDACTED] Respondent received a DWC-073 indicating that the injured employee was able to work with restrictions from [REDACTED] through [REDACTED]
7. On [REDACTED] Respondent received a DWC-073 indicating that the injured employee was able to work with restrictions from [REDACTED], through [REDACTED]
8. On [REDACTED] Respondent received a DWC-073 indicating that the injured employee was able to work with restrictions from [REDACTED] through [REDACTED]
9. There is no evidence of a bona fide offer of employment by the employer indicating the employer's ability to meet the restrictions.
10. On [REDACTED] Respondent received another DD report based on a DD examination.
11. The DD determined the injured employee had not yet reached MMI and was not expected to reach MMI until [REDACTED]
12. On [REDACTED] Respondent issued a PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits*, disputing the existence, duration, or extent of disability.
13. Respondent was required to pay temporary income benefits (TIBs) to the 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 pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.				71
b.				64
c.				57
d.				50
e.				43
f.				36
g.				29
h.				22
i.				15
j.				8
k.				1

14. Respondent paid [REDACTED] in accrued TIBs by lump sum on [REDACTED]

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 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: Respondent is a governmental entity which enjoys no profit motive or economic benefit from withholding benefits from an injured employee. Respondent was classified as "high" tier in every PBO assessment prior those issued in 2020, and again was classified as "high" tier in the most recent PBO assessments.
 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, 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. 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 §§ 408.081; 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.
8. Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. 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.
10. 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 initiate payment of TIBs.

Order

It is ordered that Dallas Area Rapid Transit must pay an administrative penalty of \$4,000 within 30 days from the date of this order. Dallas Area Rapid Transit 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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