

No. **2023-8428**

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

Date: 12/21/2023

Subject Considered:

City of Fort Worth
200 Texas Street
Fort Worth, Texas 76102-6314

Consent Order
DWC Enforcement File No. 32827

General remarks and official action taken:

This is a consent order with the City of Fort Worth (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 Ch. 504.
2. Respondent was classified as "high" tier in the 2018 and 2022 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2020 PBO assessment.

Failure to Timely Pay Death Benefits Weekly as and When They Accrue

3. Respondent was required to make weekly death benefits payments to an injured employee's beneficiary from [REDACTED], through [REDACTED]. Respondent failed to timely pay death benefits to the beneficiary as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	42
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	35
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	28
d.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	21
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	15
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	8
g.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	1

4. On [REDACTED], Respondent paid death benefits to the beneficiary for the dates above in the amount of \$ [REDACTED].

Assessment of Sanction

1. Failure to provide accurate death 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements. Specifically, Respondent has a significant disciplinary history of underpaid or untimely paid benefits, including cases 29884, 29851, 29115, 28531, 28121, 27600, and 27394.
 4. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): PBO assessments and Respondent's status as a self-insured governmental entity.
 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 §§ 408.181; 409.023; 415.002(a)(16); and 28 Tex. Admin. Code § 132.16, an insurance carrier is required to pay death benefits weekly, as and when benefits accrue, without order from the commissioner, unless the legal beneficiary and the insurance carrier have entered into an agreement approved by DWC for the benefits to be paid monthly.
6. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
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.
8. Respondent violated Tex. Lab. Code §§ 408.181; 409.023; 415.002(a)(5), (16), (20), and (22); and 28 Tex. Admin. Code § 132.16 each time Respondent failed to timely pay death benefits.

Order


It is ordered that the City of Fort Worth must pay an administrative penalty of \$2,000 within 30 days from the Commissioner signs the order.

After receiving an invoice, the City of Fort Worth must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



Connor Ambrosini
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

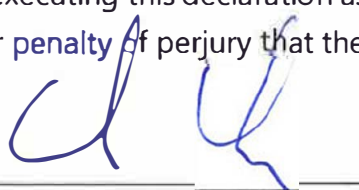
Commissioner's Order
 City of Fort Worth
 DWC Enforcement File No. 32827
 Page 6 of 6

Unsworn Declaration

STATE OF Texas §
 COUNTY OF Tarrant §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Chris Lam. I hold the position of WC Manager and am the authorized representative of the City of Fort Worth. My business address is:
200 Texas St, Fort Worth, Tarrant TX 76102
 (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.



Declarant

Executed on 12-7-, 2023.

Confidential Information Redacted Texas Labor Code §§402.083 and 402.092