

No. 2024-8577

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

Date: 3/21/2024

Subject Considered:

Texas Mutual Insurance Company
2200 Aldrich Street
Austin, Texas 78723-3474

Consent Order
DWC Enforcement File Nos. 32943 & 33272

General remarks and official action taken:

This is a consent order with Texas Mutual 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 classified as "high" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32943

3. On [REDACTED], DWC ordered Respondent to pay \$ [REDACTED] in attorney fees for legal services provided to an injured employee. The legal services were in connection to a dispute related to supplemental income benefits in which the injured employee prevailed. DWC ordered Respondent to pay attorney fees within seven days of receipt of the attorney's fee order. The deadline for payment was [REDACTED].
4. On [REDACTED], Respondent paid \$ [REDACTED] to the attorney 51 days late.

File No. 33272

5. On [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
6. Between [REDACTED], and [REDACTED], Respondent made payments to the injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	42
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	42

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to 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):

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092

- 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; to the extent reasonable, the economic benefit resulting from the prohibited act; the penalty necessary to deter future violations; other matters that justice may require, including, but not limited to: the size of the company or practice.
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's "high" tier PBO assessments and actions it took to rectify the consequences of the prohibited act.
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 § 408.147, if an insurance carrier disputes the commissioner's determination that an employee is entitled to supplemental income benefits (SIBs) or the amount of the supplemental benefits due, and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the dispute and for supplemental benefits accrued but not paid and interest on that amount. In accordance with Tex. Lab. Code § 408.064.
5. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
6. 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.
7. 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.

8. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Pursuant to Tex. Lab. Code § 408.147(c), if an insurance carrier disputes the commissioner's determination that an injured employee is entitled to SIBs or the amount of SIBs due and the injured employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the injured employee as a result of the insurance carrier's dispute, and for SIBs accrued, but not paid, and interest on that amount.
10. Pursuant to 28 Tex. Admin. Code § 130.108(e), an insurance carrier who unsuccessfully contests a DWC determination of entitlement to SIBs is liable for all accrued, unpaid supplemental income benefits, and any interest on that amount, and all reasonable and necessary attorney's fees incurred by the injured employee as a result of the insurance carrier's dispute which have been ordered by the division or court.
11. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
12. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Order


It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$2,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Texas Mutual Insurance Company 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, PO 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 Texas §
§
COUNTY OF Travis §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peppia Sherrouse. I hold the position of VP Claims Operation and am the authorized representative of Texas Mutual Insurance Company. My business address is: 2200 Aldrich Street, Austin, Travis, Tx, 78723.
(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.

Peppia Sherrouse
Declarant

Executed on March 5, 2024, 2024.