

No. **2021-7119**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 12/2/2021

Subject Considered:

City of Arlington
101 South Mesquite Street, Suite 790
Arlington, Texas 76010-1117

Consent Order
DWC Enforcement File No. 26772

General remarks and official action taken:

This is a consent order with City of Arlington. The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against City of Arlington.

Waiver

City of Arlington acknowledges that the Texas Labor Code and other applicable laws provide certain rights. City of Arlington 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. City of Arlington 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. City of Arlington was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-21-104

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-104 to determine whether City of Arlington complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that City of Arlington reported issuing between [REDACTED] and [REDACTED]. DWC identified five initial DB claims for audit. A total of three initial DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining two claims were reviewed to determine City of Arlington's compliance.
5. The audit focused on the accuracy of City of Arlington's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Pay Accurate DBs

6. City of Arlington failed to pay accurate DBs for 50% of examined payments (one out of two).
7. Specifically, City of Arlington underpaid beneficiaries' DBs by [REDACTED] per week over the course of 70 weeks. In addition, City of Arlington underpaid beneficiaries' DBs by [REDACTED] for four weeks and six days and failed to pay benefits for four days. The total underpayment was [REDACTED].

Failure to File in the Form and Manner DWC Prescribes

8. City of Arlington failed to file an *Application for Division Approval of Change in Payment Period* (DWC Form-31) which is required for an insurance carrier to issue benefits monthly instead of weekly for 100% of examined payments (one out of one). A DWC Form-31 was not required to be filed in one of the examined payments and thus, was not considered.

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, 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 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.
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 or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including 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: promptness and earnestness in responding to DWC; the carrier has paid the underpaid amounts with interest; City of Arlington is a State of Texas government entity.
5. City of Arlington acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. City of Arlington 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, 414.003, 415.002, and 415.021.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(i).
3. City of Arlington 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 § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of DBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or DB payments in the manner DWC rules prescribe.
8. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
9. City of Arlington violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to pay accurate DBs.
10. Pursuant to 28 TEX. ADMIN. CODE § 132.16(a)(1)-(5), upon the request of the eligible beneficiaries, the insurance carrier and eligible beneficiaries entitled to DBs may agree to change the frequency of DBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and in the form and manner prescribed by the commission.
11. City of Arlington violated TEX. LAB. CODE § 415.002(a)(20) when it failed to file a DWC Form-31 prior to paying DBs to beneficiaries on a monthly schedule.

Order

It is ordered that City of Arlington must pay an administrative penalty of \$1,500 within 30 days from the date of this order. City of Arlington 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF TARRANT §

Pursuant to the requirements of TEX. LABOR CODE §§ 132.001(a), (b), and (f), my name is YOKO MATSUMOTO {full name of declarant}, and I am an employee of the following CITY OF ARLINGTON (name of insurance carrier), (political subdivision) or (health care provider). My business address is:

ARLINGTON, TARRANT TEXAS 76004
(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 July, 6 2021.