

No. **2021-7121**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 12/8/2021

Subject Considered:

Texas Municipal League Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78714-9194

Consent Order
DWC Enforcement File No. 27615

General remarks and official action taken:

This is a consent order with Texas Municipal League Intergovernmental Risk Pool (TMLIRP). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against TMLIRP.

Waiver

TMLIRP acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TMLIRP 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. TMLIRP is a joint fund for self-insured governmental entities that provide workers' compensation benefits to their employees in accordance with TEX LAB. CODE CH. 504.

2. TMLIRP was classified as "average" tier in the 2007 and 2009 Performance Based Oversight (PBO) assessments. TMLIRP was classified as "high" tier in the 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Treating Doctor MMI/IR Examination

3. On [REDACTED] TMLIRP received a report from a treating doctor in connection with an examination to certify MMI/IR.
4. The treating doctor determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
5. TMLIRP was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the treating doctor's report. The deadline to pay benefits was [REDACTED]
6. TMLIRP issued payment of IIBs on [REDACTED] which was 252 days late.

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: 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; other matters that justice may require, including, but not limited to, PBO assessments and prompt and earnest actions to prevent future violations.
 5. TMLIRP 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. TMLIRP 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 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).

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3. TMLIRP 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 408.121(b), the insurance carrier shall begin to pay impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement.
9. Pursuant to 28 TEX. ADMIN. CODE § 130.8(b)(1), an insurance carrier must pay all benefits in accordance with the treating doctor's MMI/IR certification for the issues in dispute no later than five days after receiving the report.
10. TMLIRP violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the treating doctor's MMI/IR certification no later than five days after receiving the report.

Order

It is ordered that Texas Municipal League Intergovernmental Risk Pool must pay an administrative penalty of \$5,500 within 30 days from the date of this order. Texas Municipal League Intergovernmental Risk Pool 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:



Van Moreland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

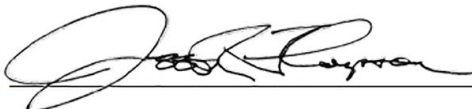
Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is JEFFREY R. THOMPSON. I hold the position of EXECUTIVE DIRECTOR and am the authorized representative of Texas Municipal League Intergovernmental Risk Pool. My business address is:

1821 RUTHERFORD LANE #100 AUSTIN , TRAVIS TEXAS 78754 .
(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 OCTOBER 26, 2021.