

No. **2022-7548**

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

Date: 10/6/2022

Subject Considered:

American Zurich Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order
DWC Enforcement File Nos. 29796, 29894, and 30021

General remarks and official action taken:

This is a consent order with American Zurich 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 "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Deny the Injured Employee's Eligibility for Lifetime Income Benefits

Enforcement File No. 29796

3. On [REDACTED] Respondent received a written request from an injured employee for Lifetime Income Benefits (LIBs).
4. Respondent was required to initiate LIBs or deny the injured employee's eligibility for LIBs within 60 days from receipt of the injured employee's written request, or by [REDACTED]
5. On [REDACTED] Respondent denied LIBs 190 days late.

Failure to Timely Initiate Payment of Temporary Income Benefits

Enforcement File No. 29894

6. On [REDACTED] Respondent received notice in connection with an injury to an employee.
7. The first day of disability for the injured employee began on [REDACTED] and the-eighth day of disability accrued on [REDACTED]
8. Respondent was required to initiate or dispute payment of temporary income benefits (TIBs) the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was [REDACTED]
9. Respondent initiated TIBs on [REDACTED] which was 128 days late.

Failure to Timely Pay Accrued Temporary Income Benefits

10. Respondent was required to pay TIBs to an injured employee from [REDACTED] to [REDACTED]. TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely issue TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	128
2.	[REDACTED]	[REDACTED]	[REDACTED]	124
3.	[REDACTED]	[REDACTED]	[REDACTED]	117
4.	[REDACTED]	[REDACTED]	[REDACTED]	110
5.	[REDACTED]	[REDACTED]	[REDACTED]	99
6.	[REDACTED]	[REDACTED]	[REDACTED]	97
7.	[REDACTED]	[REDACTED]	[REDACTED]	90
8.	[REDACTED]	[REDACTED]	[REDACTED]	85
9.	[REDACTED]	[REDACTED]	[REDACTED]	78
10.	[REDACTED]	[REDACTED]	[REDACTED]	71
11.	[REDACTED]	[REDACTED]	[REDACTED]	64

11. On [REDACTED] Respondent paid interest for the late TIBs payments paid on [REDACTED] which was two days late.

Failure to Timely Initiate Payment of Temporary Income Benefits

Enforcement File No. 30021

- 12. On [REDACTED] Respondent received notice in connection with an injury to an employee.
- 13. The first day of disability for the injured employee began on [REDACTED] and the-eighth day of disability accrued on [REDACTED]
- 14. Respondent was required to initiate or dispute payment of TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
- 15. Respondent issued the initial TIBs payment on [REDACTED] which was four days late.

Assessment of Sanction

- 1. Failure to provide income benefits and interest in a timely and cost-effective manner is harmful to injured employees and the Texas workers’ compensation system.

<p>Confidential Information Redacted Texas Labor Code §§402.083 and 402.092</p>

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; the history of compliance with electronic data interchange requirements; and other matters that justice may require, including, but not limited to the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including 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 § 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.

Failure to Timely Deny the Injured Employee's Eligibility for Lifetime Income Benefits

7. Pursuant to 28 Tex. Admin. Code § 131.1, (a) the insurance carrier must initiate the payment of LIBs without a final decision, order, or other action of the commissioner

if an injured employee meets the eligibility criteria for LIBs listed under Labor Code § 408.161 because of the compensable injury.

8. Pursuant to 28 Tex. Admin. Code § 131.1(b), an injured employee may submit a written request for LIBs to the insurance carrier. The insurance carrier shall either initiate LIBs or deny the injured employee's eligibility for LIBs considering all of the eligibility criteria listed under Labor Code § 408.161 within 60 days from the receipt of the injured employee's written request.
9. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 131.1(a) and (b) by failing to timely deny the injured employee's eligibility for LIBs.

Failure to Timely Initiate Payment of Temporary Income Benefits

10. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
11. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Pay Accrued Temporary Income Benefits

12. 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.
13. 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.

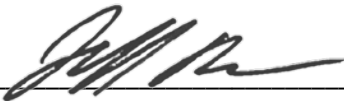
14. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Timely Pay Interest

15. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
16. Respondent violated Tex. Lab. Code § 408.064; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest for accrued but unpaid income benefits.


Order

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$22,000 within 30 days from the date of this order American Zurich Insurance Company 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:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers’ Compensation

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Texas Labor Code §§402.083 and 402.092

Unsworn Declaration

STATE OF IL **§**
§
COUNTY OF Cook **§**

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Joseph Ragonese. I hold the position of Claims Governance & QA Director and am the authorized representative of American Zurich Insurance Company. My business address is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.
(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.

Joseph Ragonese

Declarant

Executed on September 26, 2022.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092