

No. 2023-7783

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

Date: 2/9/2023

Subject Considered:

Fort Worth ISD
100 North University Drive, Suite 170
Fort Worth, Texas 76107-1360

Consent Order
DWC Enforcement File No. 30950

General remarks and official action taken:

This is a consent order with Fort Worth ISD (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 2007, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2009 PBO assessment.

Failure to Pay Temporary Income Benefits Based on a Designated Doctor Report

3. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination of an injured employee, a teacher who was assaulted by a student.
4. The DD report determined that the injured employee's disability was the direct result of a compensable injury from [REDACTED] and that the employee could return to work with restrictions.
5. Respondent disputed the nature of the disability. However, Respondent was still required to pay accrued temporary income benefits (TIBs) during the pendency of the dispute no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED]
6. Respondent paid TIBs in the amount of [REDACTED] including interest, on [REDACTED], which was 55 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 Respondent's lack of demonstration of good faith; 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 economic benefit resulting from the prohibited act.
 4. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): PBO assessments, Respondent's status as a governmental entity, and good faith efforts to expeditiously correct the violation and negotiate with DWC.
 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 § 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 § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 Tex. Admin. Code § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
10. Respondent violated Tex. Lab. Code §§ 408.0041(f), 409.023, and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

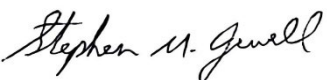
Order

It is ordered that Fort Worth ISD must pay an administrative penalty of \$2,000 within 30 days from the date of this order. Fort Worth ISD 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Stephen M. Jewell
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF TX §
 §
COUNTY OF Tarrant §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Alex Schopp. I hold the position of Exec Director and am the authorized representative of Fort Worth ISD. My business address is:

100 N. University Dr. (Street) Ft Worth (City) Tarrant TX (County) TX (State) 76107 (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.

Alex Schopp
Declarant

Executed on Feb 6, 2023.