

No. **2023-8384**

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

Date: 12/8/2023

Subject Considered:

City of Houston
PO Box 4945
Houston, Texas 77210-4945

Consent Order
DWC Enforcement File No. 32996

General remarks and official action taken:

This is a consent order with the City of Houston (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 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Death Benefits Weekly as and When They Accrue

3. Respondent was required to make weekly death benefits payments to an injured employee's beneficiary from [REDACTED], through [REDACTED]. Respondent failed to timely pay \$ [REDACTED] in death benefits to the beneficiary as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	67
b.	[REDACTED]	[REDACTED]	[REDACTED]	60
c.	[REDACTED]	[REDACTED]	[REDACTED]	53
d.	[REDACTED]	[REDACTED]	[REDACTED]	46
e.	[REDACTED]	[REDACTED]	[REDACTED]	39
f.	[REDACTED]	[REDACTED]	[REDACTED]	32
g.	[REDACTED]	[REDACTED]	[REDACTED]	25
h.	[REDACTED]	[REDACTED]	[REDACTED]	18
i.	[REDACTED]	[REDACTED]	[REDACTED]	11
j.	[REDACTED]	[REDACTED]	[REDACTED]	4

Assessment of Sanction

1. Failure to provide accurate death 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;

Confidential Information Redacted Texas
 Labor Code §§402.083 and 402.092

- 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 4. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's PBO assessments, Respondent's status as a self-insured governmental entity, and Respondent's prompt and earnest actions to prevent future violations by having the adjusters utilize repetitive payment reports to monitor all death benefit payments, with additional oversight from supervisors.
 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 §§ 408.081, 408.181, 409.023, and 415.002(a)(16), an insurance carrier is required to pay death benefits weekly, as and when benefits accrue, without order from the commissioner.
6. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
7. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it violates a provision of the Texas Workers' Compensation Act.
8. Respondent violated Tex. Lab. Code §§ 408.081; 408.181; 409.023; and 415.002(a)(5), (16), and (22) each time Respondent failed to timely pay death benefits.

Order

It is ordered that the City of Houston must pay an administrative penalty of \$7,500 within 30 days from the Commissioner signs the order.

After receiving an invoice, the City of Houston 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:



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