

No. **2024-8465**

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

Date: 1/11/2024

Subject Considered:

Technology Insurance Company, Inc.
PO Box 89404
Cleveland, Ohio 44101-6404

Consent Order
DWC Enforcement File No. 31369

General remarks and official action taken:

This is a consent order with Technology Insurance Company, Inc. (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 2018 and 2020 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2022 PBO assessment.

Failure to Timely Dispute or Initiate Temporary Income Benefits (TIBs) and Failure to Timely Send a Plain Language Notice (First Instance)

3. On [REDACTED], Respondent received notice of an employee's injury stating the injured employee did not speak English. The injured employee underwent surgery for the compensable injury on the same day.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
5. Respondent was required to initiate or dispute TIBs the later of 15 days after Respondent received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED].
6. On [REDACTED], the injured employee underwent a second surgery for the compensable injury.
7. On [REDACTED], Respondent issued a PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (PLN-11) informing the injured employee that Respondent disputed disability due to a lack of medical documentation. Respondent issued the PLN-11 in English despite knowing the injured employee was a Spanish speaker requiring translation from English. The PLN-11 was seven days late.
8. Due to the untimely denial, Respondent owed TIBs from [REDACTED], through [REDACTED].
9. On [REDACTED], Respondent received information from the employer demonstrating the injured employee had disability because he had not returned to work and was not expected to return to work.
10. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs for the benefit period from [REDACTED] through [REDACTED], which was 38 days late. Respondent failed to send a plain language notice to the injured employee or DWC with notice of the claim action.
11. On [REDACTED], Respondent paid interest, which was 438 days late.

Failure to Timely Send a Plain Language Notice (Second Instance)

12. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs to the injured employee for the benefit period from [REDACTED], through [REDACTED].
13. Respondent was required to file a plain language notice to the injured employee and DWC within 10 days of making the first payment, or by [REDACTED].
14. Respondent failed to send a plain language notice to the injured employee or DWC with notice of the claim action within 10 days of making the first payment.
15. On [REDACTED], Respondent paid interest, which was 438 days late.

Failure to Timely Pay Accrued TIBs (First Instance)

16. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	88
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	81
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	74
d.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	67
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	51
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	44

17. On [REDACTED], Respondent received a DWC-73, *Work Status Report* (DWC-73) dated [REDACTED], stating the injured employee was prevented from working starting [REDACTED], and expected to return to work on [REDACTED].
18. On [REDACTED], Respondent issued a PLN-11 disputing disability and extent of injury. Respondent again issued the PLN-11 in English.

Failure to Timely Send a Plain Language Notice (Third Instance)

19. On [REDACTED], Respondent received DD report of a DD examination performed on [REDACTED].

- 20. The DD report stated that the injured employee had not reached maximum medical improvement (MMI) and was not expected to reach MMI until [REDACTED]. The DD was not ordered to opine on disability.
- 21. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs for the benefit period from [REDACTED] through [REDACTED].
- 22. Respondent was required to file a plain language notice to the injured employee and DWC within 10 days of making the first payment, or by [REDACTED].
- 23. Respondent failed to send a plain language notice to the injured employee or DWC with notice of the claim action within 10 days of making the first payment.
- 24. On [REDACTED], Respondent paid interest, which was 369 days late.

Failure to Timely Pay Accrued TIBs (Second Instance)

- 25. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	14
b.	[REDACTED] to [REDACTED]	[REDACTED]	1 [REDACTED]	7

- 26. On [REDACTED], Respondent paid interest, which was 350 days late.
- 27. On [REDACTED], the injured employee underwent a third surgery for the compensable injury.

Failure to Timely Pay Accrued TIBs (Third Instance)

- 28. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	8
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	1

29. On [REDACTED], Respondent paid interest, which was 224 and 223 days late.

Failure to Timely Pay Interest with Accrued Income Benefits

30. On [REDACTED], Respondent issued a PLN 11 in Spanish, disputing the injured employee's entitlement to TIBs.

31. On [REDACTED], Respondent received DD report of a DD examination performed on [REDACTED].

32. The DD report stated that the injured employee reached MMI on [REDACTED], and assigned an impairment rating of [REDACTED] %.

33. On [REDACTED], Respondent paid TIBs for the benefit period from [REDACTED], through [REDACTED].

34. On [REDACTED], Respondent paid interest, which was 182 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. The timely submission of information and documents to injured employees assists in minimizing the likelihood of disputes and resolving the disputes promptly and fairly when identified.
3. The timely submission of information and documents to DWC is imperative for DWC to implement and enforce the Texas Workers' Compensation Act.
4. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and

DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.

5. Providing notice information in language understandable to the injured employee helps ensure that each employee shall be treated with dignity and respect when injured on the job and that each injured employee shall have access to a fair and accessible dispute resolution process.
6. 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.
7. 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; to the extent reasonable, the economic benefit resulting from the prohibited act; 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 Act and DWC rules. Respondent paid the accrued interest late on the late benefits.

8. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
9. 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).
10. 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 Initiate Payment of TIBs

7. 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.
8. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 124.3 by failing to timely initiate TIBs.

Failure to Timely Pay Accrued TIBs

9. 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.
10. 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.
11. Respondent violated Tex. Lab. Code §§ 409.021 and 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

12. 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.

13. Respondent violated Tex. Lab. Code §§ 408.064, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 126.12(b), by failing to timely pay interest with accrued but unpaid income benefits.


Failure to Timely Report a Claim Action to DWC and Injured Employee

14. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (d), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a) and (d) by failing to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Order


It is ordered that Technology Insurance Company, Inc. must pay an administrative penalty of \$10,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Technology Insurance Company, Inc. 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:



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

Unsworn Declaration

STATE OF OHIO §
§
COUNTY OF CUYAHOGA §

Pursuant to the Texas Civil Prac. and Rem Code § 12.00 (a), (b), and (d), my name is Barry W. Moses. I hold the position of Vice President, Senior Regulatory Counsel and am the authorized representative of Technology Insurance Company, Inc. My business address is 100 Superior Ave., E., 21st Floor Cleveland Cuyahoga County, OH 44122.

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.

Barry W. Moses

Declarant

Executed on December 19, 2023.