

No. **2021-6905**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/8/2021

Subject Considered:

Protective Insurance Company
111 Congressional Boulevard, Suite 500
Carmel, Indiana 46032-5663

Consent Order
DWC Enforcement File Nos. 19471 and 19935

General remarks and official action taken:

This is a consent order with Protective Insurance Company (Protective Insurance). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Protective Insurance.

Waiver

Protective Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Protective Insurance 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. Protective Insurance 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.

2. Protective Insurance was classified as "poor" tier in the 2016 Performance Based Oversight (PBO) assessment and "average" tier in the 2018 PBO assessment. Protective Insurance was not selected to be tiered in the 2007, 2009, 2010, 2012, or 2014 PBO assessments.

DWC Enforcement File No. 19471: Failure to Timely Pay Attorney Fees Ordered by DWC

3. On the following dates, DWC ordered Protective Insurance to pay attorney fees in connection with legal services provided to an injured employee:
 - [REDACTED];
 - [REDACTED]; and
 - [REDACTED].

DWC ordered Protective Insurance to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.

4. On [REDACTED], a balance of [REDACTED] in attorney fees was outstanding.
5. On [REDACTED], Protective Insurance issued a payment to the injured employee for unpaid supplemental income benefits. Protective Insurance was required to issue a payment for attorney fees to the injured employee's attorney the same day but did not issue payment until [REDACTED], which was 112 days late.
6. On [REDACTED], Protective Insurance issued a payment to the injured employee for unpaid supplemental income benefits. Protective Insurance was required to issue a payment for attorney fees to the injured employee's attorney the same day but did not issue payment until [REDACTED], which was 34 days late.

DWC Enforcement File No. 19935: Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

7. On [REDACTED], Protective Insurance received a report from a designated doctor (DD) in connection with a DD examination.
8. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] impairment rating.

9. Protective Insurance was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
10. Protective Insurance issued payment of IIBs on [REDACTED], which was 45 days late.

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. 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.

4. 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.
5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; Protective Insurance substantially complied with TEXAS ADMIN CODE § 130.2(e)(3) in determining a 'reasonable assessment' of impairment rating; and Protective Insurance, via retained counsel, has provided ongoing training to its adjusters regarding income benefit deadlines.
6. Protective Insurance 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).
7. Protective Insurance 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Protective Insurance 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
8. Protective Insurance violated TEX. LAB. CODE §§ 415.002(a)(20), 415.021(a), and 415.0035(e) when it failed to timely comply with a DWC order to pay attorney fees.
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 § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
11. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
12. Protective Insurance 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 DD's report no later than five days after receiving the report.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Order

It is ordered that Protective Insurance Company must pay an administrative penalty of \$8,500 within 30 days from the date of this order. Protective 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

