

No. **2022-7484**

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

**Date: 9/6/2022**

**Subject Considered:**

Texas Mutual Insurance Company  
2200 Aldrich Street  
Austin, Texas 78723

Consent Order  
DWC Enforcement File Nos. 23991 and 23995

**General remarks and official action taken:**

This is a consent order with Texas Mutual 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.

2. Respondent was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2009, 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 23991

3. On [REDACTED] Respondent received a DWC068 *Designated Doctor Examination Data Report* (DWC068) and a DWC069 *Report of Medical Evaluation* (DWC069) from a designated doctor (DD) in connection with a DD examination.
  - a. The DWC069 addressed Maximum Medical Improvement (MMI) and Impairment Ratings (IR) and assigned an MMI of [REDACTED] with [REDACTED] IR, to the injured employee.
  - b. The DWC068 addressed extent of injury. The DD determined that the injured employee's disability existed from [REDACTED] until the date of the exam, on [REDACTED]
4. Disability was at issue in the dispute, so Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED]
5. On [REDACTED] Respondent issued payment of TIBs and interest seven days late. Respondent stopped paying TIBs on [REDACTED] because the injured employee went out of town for approximately two weeks on vacation. Respondent did not explain why TIBs were issued late.

Failure to Timely Initiate Payment of Accrued Income Benefits

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6. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which was [REDACTED]

7. Respondent issued payment on [REDACTED] nine days late. Respondent did not explain why payment was issued late.

### **Assessment of Sanction**

1. Failure to provide appropriate 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 penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the history and extent of previous administrative violations and other matters that justice may require, including PBO assessments. Respondent was classified as high tier in the 2020 PBO assessment and has been classified as high tier in each PBO assessment since 2009. Respondent does not have a significant disciplinary history of the specific issues in this matter. Concerning File No. 23991, the injured employee missed scheduled doctor's appointments as a result of prolonged international travel.
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.

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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 a DD report for the issues in dispute no later than five days after receiving the report.
10. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely pay accrued income benefits in accordance with a DD report no later than five days after receiving the report.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

11. 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 must 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.
12. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(20) and (22) each time Respondent failed to timely initiate payment of TIBs.

**Order**

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$3,500 within 30 days from the date of this order. Texas Mutual 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.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:



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Austin Southerland  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** Texas §  
§  
**COUNTY OF** Travis §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Curtis Johnson. I hold the position of VP of Claims Operations and am the authorized representative of Texas Mutual Insurance Company. My business address is:

2200 Aldrich Street, Austin, Travis, TX, 78723.  
(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.

Curtis Johnson  
signed with permission  
Declarant

Executed on September 2, 2022.

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092