

No. 2022-7677

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

Date: 12/9/2022

Subject Considered:

City of San Antonio
PO Box 839966
San Antonio, Texas 78283-3966

Consent Order
DWC Enforcement File No. 30388

General remarks and official action taken:

This is a consent order with City of San Antonio (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 "average" tier in the 2010 Performance Based Oversight (PBO) assessment. Respondent was classified as "high" tier in the 2012, 2014, 2016, 2018, and 2020 PBO assessments. Respondent was not selected to be tiered in any other year.

Failure to Timely Pay Accrued Death Benefits

3. Respondent was required to pay death benefits to the beneficiary of a deceased injured employee from [REDACTED] through [REDACTED]. The death benefit payments were to be paid weekly, as they accrue. Respondent failed to timely issue the death benefit payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	38
b.	[REDACTED]	[REDACTED]	[REDACTED]	31
c.	[REDACTED]	[REDACTED]	[REDACTED]	24
d.	[REDACTED]	[REDACTED]	[REDACTED]	17
e.	[REDACTED]	[REDACTED]	[REDACTED]	10
f.	[REDACTED]	[REDACTED]	[REDACTED]	3

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employee's beneficiaries 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other factors that justice may require.
 4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent is a governmental entity, therefore, any sanction imposed would be paid with taxpayer dollars.
 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, 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 § 408.181(a), an insurance carrier shall pay death benefits to a legal beneficiary if a compensable injury to the employee results in death
6. Pursuant to Tex. Lab. Code §§ 409.023, and 415.0 02(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
7. Pursuant to Tex. Lab. Code §§ 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.
8. Pursuant to Tex. Admin. Code 132.16, death benefits shall be paid weekly unless otherwise agreed to in the form and manner proscribed by, and subject to the approval of, the division.
9. Respondent violated Tex. Lab. Code §§ 408.181(a), 409.023, 415.002(a)(16), (20) and (22), and Tex. Admin. Code § 132.16 each time Respondent failed to timely pay accrued death benefits.


Order

It is ordered that the City of San Antonio must pay an administrative penalty of \$3,000.00 within 30 days from the date of this order. The City of San Antonio 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
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