

No. 2023-7737

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

**Date:** 1/17/2023

**Subject Considered:**

Employers Preferred Insurance Company  
P.O. Box 32036  
Lakeland, Florida 33802-2036

Consent Order  
DWC Enforcement File Nos. 29551, 29613 & 29050

**General remarks and official action taken:**

This is a consent order with Employers Preferred 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, or 2012 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2014 and 2020 PBO assessments. Respondent was classified as "high" tier in the 2016 and 2018 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

*File No. 29551*

3. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with [REDACTED] impairment rating.
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED]
6. Respondent paid [REDACTED] in IIBs on [REDACTED] which was 19 days late.

Failure to Timely Pay or Dispute Temporary Income Benefits; Failure to Accurately Pay Temporary Income Benefits

*File No. 29613 & 29050*

7. On [REDACTED] the injured employee reached the eighth day of disability.
8. Respondent received a properly completed *Employer's Wage Statement* (DWC Form-003) on [REDACTED] and incorrectly calculated a weekly temporary income benefits (TIBs) rate at [REDACTED]
9. For the period of [REDACTED] through [REDACTED] Respondent incorrectly paid TIBs at a weekly rate of [REDACTED] instead of the required amount, which was [REDACTED]
10. On [REDACTED] Respondent issued a deficit payment of [REDACTED] in TIBs which were underpaid for six months.
11. Respondent issued the deficit payment on [REDACTED] which was 181 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. 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 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; and other matters 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: prompt and earnest actions to prevent future

violations. Respondent has implemented several changes to ensure compliance with the Texas Labor Code and Division Rules including the conducting of an internal audit program, the implementation of further supervisory oversight of adjusters, the reassignment of claims to adjusters with more experience relevant to Texas, a reduction in the overall number of claims handled by each adjuster. Respondent has also provided additional training to Texas adjusters and reviewed the specific claims in this matter with the handling adjusters to ensure their knowledge of Texas rules.

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 § 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.

#### Failure to Pay Accrued Impairment Income Benefits Based on a DD Report

8. Pursuant to Tex. Lab. Code § 408.0041(f), an 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), an insurance carrier must pay all benefits in accordance with the 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) when it failed to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

#### Failure to Accurately Pay Temporary Income Benefits

12. Pursuant to Tex. Lab. Code § 408.103 and 28 Tex. Admin. Code § 129.3, the insurance carrier is required to pay the correct amount of TIBs.
13. Respondent violated Tex. Lab. Code §§ 408.103, 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 129.3 each time Respondent failed to accurately pay TIBs.

#### Failure to Timely Pay or Dispute Temporary Income Benefits

14. 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.


15. 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, as applicable pursuant to §409.021(a-3), file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
16. Respondent violated Tex. Lab. Code §§ 408.103, 409.021, 415.002(a)(20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay TIBs.

Failure to Timely Pay Interest

17. 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.
18. 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.

**Order**

It is ordered that Employers Preferred Insurance Company must pay an administrative penalty of \$11,000 within 30 days from the date of this order. Employers Preferred 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** Nevada §  
§  
**COUNTY OF** Clark §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kelly Spina. I hold the position of Claim Director and am the authorized representative of Employers Preferred Insurance Company. My business address is:

2340 Corporate Circle, Suite 200, Henderson, Clark, NV, 89074.  
(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.

Kelly Spina  
Declarant

Executed on January 3, 2023.