

No. **2023-7961**

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

**Date: 5/11/2023**

**Subject Considered:**

City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Consent Order  
DWC Enforcement File Nos. 22934, 23100, 23847, & 30028

**General remarks and official action taken:**

This is a consent order with the 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 governmental entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "poor" tier in the 2022 Performance Based Oversight (PBO) assessment, "average" tier in the 2010 PBO assessment, and "high" tier in the 2012, 2014, 2016, 2018, and 2020 PBO assessments. Respondent was not selected to be tiered in the 2007 or 2009 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits (IIBs) Based on a DD Report

*File No. 22934*

3. On [REDACTED] Respondent received a report from a Designated Doctor (DD) in connection with a DD examination.
4. The DD determined that an injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR).
5. Respondent was required to pay accrued IIBs no later than five days after receiving the DD report, or by [REDACTED]
6. Respondent partially paid IIBs on [REDACTED] paid the remaining [REDACTED] in late IIBs on [REDACTED] and paid [REDACTED] in interest on the owed IIBs on [REDACTED] Respondent was 127 days late paying IIBs.

Failure to Comply with a DWC Order

*File No. 23100*

7. On [REDACTED] Respondent received Medical Fee Dispute Resolution (MFDR) Findings and Decision Order No. M4-19-3385-01.
8. The MFDR Order required Respondent to pay [REDACTED] plus any accrued interest by [REDACTED]
9. On [REDACTED] Respondent paid in compliance with the MFDR Order, which was 175 days late.

Failure to Timely Comply with a Benefit Dispute Agreement

*File No. 23847*

10. On [REDACTED] the parties, including Respondent, signed a DWC Form-024, *Benefit Dispute Agreement* (BDA), agreeing to the date of MMI [REDACTED] and an IR [REDACTED] for an injured employee. This agreement required IIBs to be paid to the injured employee for the periods of [REDACTED] through [REDACTED]

11. Respondent was required to pay IIBs to the injured employee five days from executing the BDA, or on [REDACTED]
12. On [REDACTED] Respondent made a payment of IIBs in the amount of [REDACTED] for the period of [REDACTED] through [REDACTED]
13. However, Respondent subsequently ceased making timely IIB payments to the injured employee for the period of [REDACTED] through [REDACTED] in violation of the BDA.
14. On [REDACTED] Respondent paid the remaining IIBs in the amount of [REDACTED] which was 141 days late for the latest payment period.
15. Respondent fully complied by issuing an interest payment for the late IIBs or [REDACTED]

Failure to Pay Weekly Lifetime Income Benefits (LIBs)

*File No. 30028*

16. An Injured employee sustained a compensable injury on [REDACTED]
17. Respondent was required to pay LIBs to the injured employee for the period between [REDACTED] through [REDACTED]. The LIBs payment was due on [REDACTED]. Respondent issued payment on [REDACTED] which was 16 days late.
18. Respondent was required to pay LIBs to the injured employee for the period between [REDACTED] through [REDACTED]. The LIBs payment was due on [REDACTED]. Respondent issued payment on [REDACTED] which was nine days late.
19. Respondent was required to pay LIBs to the injured employee for the period between [REDACTED] through [REDACTED]. The LIBs payment was due [REDACTED]. Respondent issued payment on [REDACTED] which was two days late.<sup>5</sup>

20. The total amount of late LIBs that needed to be paid for the above periods was



### **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. Failure to timely comply with DWC orders for payment of medical bills is not cost effective and 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):
  - a. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - b. the history and extent of previous administrative violations;
  - c. the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
  - d. the penalty necessary to deter future violations;
  - e. whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
  - f. the history of compliance with electronic data interchange requirements;
  - g. to the extent reasonable, the economic benefit resulting from the prohibited act; and
  - h. other matters that justice may require, including, but not limited to:
    - i. PBO assessments;
    - ii. prompt and earnest actions to prevent future violations;
    - iii. self-report of the violation;
    - iv. the size of the company or practice;
    - v. the effect of a sanction on the availability of health care; and
    - vi. 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 after considering the underlying facts in paragraphs 1 through 20 above: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited acts; 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 mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) after considering the underlying facts in paragraphs 1 through 20 above: PBO assessments, and other matters that justice may require, including the fact that Respondent is a self-insured, governmental entity and the penalty would be paid with taxpayer funds.
6. Respondent 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. 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, 402.00111, 402.00114, 402.00116, 402.00128, 409.021, 414.002, and 414.003, 414.004, 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)(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 fails to comply with 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 Pay Accrued IIBs Based on a DD Report

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.
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), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.
10. Respondent violated Tex. Lab. Code §§ 408.0041(f), 409.023, and 415.002(a)(16), (20), & (22), and 28 Tex. Admin. Code § 127.10(h) when it failed to timely pay accrued impairment income benefits in accordance with the DD's report no later than five days after receiving the report.

Failure to Comply with a DWC Order

11. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
12. 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.
13. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) & (22), 415.021(a) and 415.0035(e) when it failed to comply with a DWC order for benefits.

Failure to Comply with a BDA


14. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
15. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement approved by DWC.
16. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) & (22), and 415.010 by failing to timely comply with a BDA.

Failure to Pay Weekly LIBs


17. For injuries prior to January 1, 1991, eligibility criteria and benefits amounts are covered by Texas Workers' Compensation Act, Tex. Rev. Civ. Stat. Ann. Art. 8306, (Vernon Supp. 1993) (1989 Act).
18. Pursuant to Tex. Rev. Civ. Stat. Ann. Art. 8306 §10(a), while the incapacity for work resulting from the injury is total, the association, insurance carrier must pay a weekly compensation to the injured employee.
19. Pursuant to Tex. Rev. Civ. Stat. Ann. Art. 8306 § 18, it is the purpose of the 1989 Act that compensation must be paid from week to week and as it accrues, and the insurance carrier must pay a weekly compensation to the injured employee.
20. Pursuant to Tex. Rev. Civ. Stat. Ann. Art. 8306 § 18a(d), if the insurance carrier suspends payment of weekly indemnity compensation without stating fully in writing the reasons, DWC may issue an order directing the insurance carrier to cease and desist the suspension of payment of weekly indemnity compensation.
21. Respondent violated Tex. Rev. Civ. Stat. Ann. Art. 8306 §§10(a), 18, and 18a (d) when it failed to pay weekly LIBs to the injured employee and to provide a written reason for suspension or non-payment of weekly LIBs.

**Order**

It is ordered that the City of San Antonio must pay an administrative penalty of \$20,000 within 30 days from the date of this order. 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Connor Ambrosini  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation



**Unsworn Declaration**

**STATE OF Texas** §  
§  
**COUNTY OF Bexar** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Josue Sanchez. I hold the position of Interim Claims Administrator and am the authorized representative of the City of San Antonio. My business address is: 100 W. Houston St, 13th Floor, San Antonio, Bexar, Texas, 78205.

(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.



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Declarant

Executed on 05/04, 2023.