

No. **2023-8015**

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

Date: 6/8/2023

Subject Considered:

XL Insurance America Incorporated
505 Eagleview Boulevard
P.O. Box 636
Exton, Pennsylvania 19341-1120

Consent Order
DWC Enforcement File Nos. 30332, 31074 & 31373

General remarks and official action taken:

This is a consent order with XL Insurance America Incorporated (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 not selected to be tiered in the 2007, 2009, 2010, 2012, or 2014 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Pay or Dispute Initial Temporary Income Benefits Payment

File No. 30332

3. On [REDACTED] Respondent received a notice of injury for an employee.
4. The first day of disability accrued on [REDACTED] and the eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
6. On [REDACTED] Respondent issued a PLN-1 disputing compensability and refusing to pay benefits, which was 42 days late.

Failure to Timely Comply with a Contested Case Hearing (CCH) Order or Decision

File No. 31074

7. On [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED]
8. The CCH D&O became final on [REDACTED] Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED] 2.
9. On [REDACTED] Respondent paid [REDACTED] by lump sum for the accrued benefit periods of [REDACTED] through [REDACTED] which was 124 days late.
10. On [REDACTED] Respondent paid the outstanding interest of [REDACTED] for the accrued benefits periods of [REDACTED] through [REDACTED] which was 28 days late.

Failure to Timely Comply with a Benefit Dispute Agreement Approved by the Division

File No. 31373

11. On [REDACTED] Respondent received a properly completed medical bill for health care services provided to an injured employee on [REDACTED]
12. On [REDACTED] Respondent denied the bill received on [REDACTED] stating that the injured employee was not entitled to benefits.
13. On [REDACTED] the parties agreed in a Benefit Dispute Agreement (BDA) that the injured employee had sustained a compensable injury on [REDACTED]. The parties further agreed that the injured employee had a disability from [REDACTED] through [REDACTED]
14. Respondent received the approved BDA on [REDACTED]. Respondent was required to comply with the BDA within five days of receipt, or by [REDACTED]
15. On [REDACTED] Respondent again received a bill for the healthcare services provided to the injured employee on [REDACTED]. On [REDACTED] Respondent denied this bill on the same grounds.
16. On [REDACTED] Respondent paid [REDACTED] by lump sum for outstanding medical expenses due to the compensable injury, which was 363 days late.
17. On [REDACTED] Respondent paid [REDACTED] in interest on the late payment of outstanding medical expenses, which was one day 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. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, 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 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: prompt and earnest actions to prevent future violations of this type. Specifically, Respondent has instituted a new procedure designed to avoid untimely BDA compliance in the future, whereby all approved BDA's are placed on an internal time sensitive log which alerts the compliance supervisor.
6. 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).

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, 402.00114, 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 §§ 408.081, 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.
6. 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.

Failure to Timely Pay or Dispute the Initial Temporary Income Benefits Payment

7. 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.

8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 when Respondent failed to timely pay or dispute the initial payment of TIBs.

Failure to Timely Comply with a Contested Case Hearing (CCH) Order or Decision

9. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
10. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e); 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Timely Comply with a Benefit Dispute Agreement Approved by the Division


11. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement that DWC approved.
12. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and 415.010 by failing to timely comply with a BDA.

Failure to Timely Pay Interest on Late Medical Bill Payments

13. Pursuant to 28 Tex. Admin. Code § 134.130, insurance carriers are required to pay interest on medical bills paid on or after the 60th day after originally receiving the complete medical bill.
14. Respondent violated Tex. Lab. Code § 415.002(a)(22) and 28 Tex. Admin. Code § 134.130 by failing to timely pay interest on a medical bill paid on or after the 60th day after receipt of the bill.

Order

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



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

Unsworn Declaration

STATE OF Illinois §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Lynn Munson. I hold the position of V.P. Claims Regulatory and am the authorized representative of XL Insurance America Incorporated. My business address is: 111 S. Wacker Dr., Ste. 4000, Chicago, Cook, IL, 60606.
(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.

Lynn Munson
Declarant

Executed on May 31st, 2023.