

No. 2023-8019

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

Date: 06/13/2023

Subject Considered:

City of Baytown
PO Box 424
Baytown, Texas 77522-0424

Consent Order
DWC Enforcement File No. 31845

General remarks and official action taken:

This is a consent order with the City of Baytown (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 not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, or 2022 Performance Based Oversight (PBO) assessments.

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

4. On [REDACTED] Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
5. The CD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
6. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED]
7. Respondent paid [REDACTED] in IIBs and interest on [REDACTED] which was 59 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 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 mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): other matters that justice may require, including that Respondent is a self-insured governmental entity.
 5. 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).
 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 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 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.
8. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
9. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when maximum medical improvement is not disputed.
10. Respondent violated Tex. Lab. Code §§ 408.121(b); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

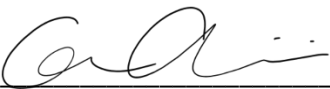
Order

It is ordered that the City of Baytown must pay an administrative penalty of \$9,000 within 30 days from the date of this order. The City of Baytown must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



Connor Ambrosini
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