

<p>_____, Petitioner</p> <p>V.</p> <p>TEXAS WORKERS' COMPENSATION COMMISSION, Respondent</p>	<p>§ § § § § §</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

The _____ (the City), which is self-insured, contests the assessment of an administrative penalty against it by the Texas Workers' Compensation Commission (the Commission). The Commission asserts that the City's report of inaccurate data to the Commission through the Electronic Data Interchange (EDI) for temporary income benefit (TIB) initial payment dates in 16 claims from March 15 through April 15, 2004, constitutes an administrative violation for which a penalty of \$50 per claim, for a total of \$800, should be imposed.¹ The Administrative Law Judge (ALJ) concludes the City proved that its inaccurate reporting does not constitute an administrative violation and that no administrative penalty is warranted.

I. PROCEDURAL HISTORY

The State Office of Administrative Hearings (SOAH) has jurisdiction over this matter pursuant to § 415.034 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, as provided in TEX. LAB. CODE ANN. § 415.034.

A hearing in this matter convened and closed on March 21, 2005, before ALJ Sharon Cloninger. The City appeared and was represented by Brandi Prejean, attorney. The Commission appeared and was represented by E. Renee Crenshaw, an attorney in the Commission's APA Litigation Division.

¹ The Commission's Statement of Matters Asserted, dated February 3, 2005, also alleges the City made late initial TIB payments to claimants from March 15 through April 15, 2004. However, the Commission's Notice of Violation(s) letter to the City, dated July 30, 2004, indicates all but one of the payments were timely made. The parties stipulated at hearing that the assessed administrative penalty of \$500 for the one remaining late paid claim has been remitted to the Commission by the City. (*See* Commission's Exh. 2).

II. BACKGROUND

It is undisputed that the City reported to the Commission, between March 15 and April 15, 2004, via the EDI, inaccurate initial TIB payment dates for 16 claims. The inaccurate information in the Date Paid field caused the Commission to believe that the City had made late initial TBI payments. As a result, the Commission sent a letter to the City on May 26, 2004, asking that it review the data provided through EDI for March 15 through April 15, 2004, to confirm whether the initial TIB payments were late as reported.² By the June 16, 2004 deadline to respond to the letter, the City provided the Commission with evidence that 17 of the 18 payments had been timely made. In its Notice of Violation(s) letter dated July 30, 2004, the Commission acknowledged that the City had timely issued payment on 17 claims, but said the City reported inaccurate data for the Date Paid on 16 claims.³

It is also undisputed that the inaccurate data was sent to the Commission as the result of a computer programming error, that is, the Date Paid field was populated with the date of record transmission rather than the date of the initial payment. The uncontroverted evidence is that the City discovered the programming problem either in May or early June 2004, and corrected it by June 18, 2004. The City informed the Commission of its action to correct the program sometime in mid-June 2004. Furthermore, the City made a mass correction on August 12, 2004, indicating the correct initial TIB payment dates.⁴

III. APPLICABLE LAW

A. Texas Labor Code

Pursuant to TEX. LAB. CODE ANN. § 415.021(a), the Commission may assess an administrative penalty against a person who commits an administrative violation.

An insurance carrier or its representative commits an administrative violation if that person willfully or intentionally dates documents to misrepresent the actual date of the initiation of benefits,

² Commission's Exh. 1.

³ Commission's Exh. 2.

⁴ See City's Exh. 1, at 124 and 125.

or willfully or intentionally violates a Commission rule. TEX. LAB. CODE ANN. §§ 415.002(a)(14) and (20). In addition, an insurance carrier commits an administrative violation if that person violates TEX. LAB. CODE ANN. § 415, Subchapter A [Administrative Violations: Prohibited Acts] or a rule, order, or decision of the Commission. TEX. LAB. CODE ANN. § 415.0035(e).

B. Commission Rules

Pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 124.2(e) and (g), the carrier shall notify the Commission by electronic filing of the first payment of indemnity benefits on a claim (Initial Payment) within 10 days of making the first payment.⁵

Under 28 TAC § 124.2(b), the Commission shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the Texas Electronic Data Interchange Implementation Guide, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.

III. EVIDENCE

A. The City's Evidence and Argument

1. Documentary evidence

The City's documentary evidence establishes that the inaccuracies in its EDI reporting to the Commission were the result of a computer error. An e-mail from Chris Jung of DAVID Corporation to Nazir Khimji, dated June 11, 2004, indicates that DAVID Corp.'s programmer had identified that a component of the EDI program is not correctly populating the DN03 position of the SROI [Subsequent Report of Injury] extract file. It placed the date of record transmission rather than the date of the initial payment. We will correct this component and install it on your production database. This correction should be effective no later than June 18, 2004.⁶

⁵ Failure to follow this rule might be construed as a violation of Tex. Lab. Code Ann. § 415.002(a)(14) or (20), but again, the statute requires that a prohibited act be committed willfully or intentionally for it to constitute an administrative violation.

⁶ City's Exh. 1, at 3.

The City presented an affidavit from Asuncion Rapadas, DAVID Corporation, San Francisco, California, dated January 3, 2005, that states, In June 2004, it was discovered that an incorrect payment date was inserted in the Subsequent Report of Injury extract, due to a programming error in the DAVID Renaissance software. DAVID Corporation promptly corrected the error once it was identified by Ward North America.⁷

The City also presented an affidavit from Nazirhussein Khimji, dated January 4, 2005, which states, I am the person responsible for the support and maintenance of Ward North America's claim system called Renaissance.' Said system is programmed and owned by the DAVID Corporation and license for usage is granted to Ward. I also assist in troubleshooting system issues and report glitches to DAVID Corporation for resolution; which is the case with the EDI problem in question, *i.e.* I attest that the EDI problem did not result from the regular course of maintenance or work process, but rather due to a programming error as certified by attached affidavit from DAVID Corporation [referring to Mr. Rapadas' affidavit]. Details: It came to our notice in late May, early June 2004 that TWCC's auditing process uses the data in the field called DN03 of the SROI (Subsequent Report of Injury) EDI file, as the date the initial payments were actually issued and mailed to the injured workers. Upon further investigation, Ward realized that Field DN03 was being populated by date record was created/transmitted, rather than the issue date of the initial payments. Ward notified DAVID Corporation that confirmed the programming glitch. DAVID Corporation corrected the flawed component and the new program was put into production on June 18, 2004. This action was noted in Ward's response to the audit by TWCC on June 16, 2004. Furthermore, DAVID Corporation assisted Ward in making a mass correction on prior transmitted Initial Payment data on August 12, 2004, indicating the correct paid dates of initial TIBs.⁸

2. The City's argument

The City argued that it did not willfully or intentionally inaccurately report the Date Paid information to the Commission, so did not commit an administrative violation under the law.

⁷ City's Exh. 1, at 124. Ward North America apparently operates the City's computer system for reporting information to the Commission.

⁸ City's Exh. 1, at 125.

B. The Commission's Evidence and Argument

1. Testimony of Delfino Serna

Delfino Serna, an enforcement program manager in the Commission's Compliance and Practices Division, testified that there is no Commission rule that specifically states inaccurate reporting is an administrative violation, but that 28 TAC § 124.2(b) sets out how a carrier must file claims information with the Commission.

2. The Commission's argument

The Commission argues that TEX. LAB. CODE ANN. § 415.0035 does not require the City's action to be willful or intentional as a prerequisite to finding that the City committed an administrative violation by inaccurately reporting claims information to the Commission.

IV. ANALYSIS AND CONCLUSION

A. Analysis

The City and Commission agreed at hearing that the City had timely paid the initial TIB payments in 17 of the 18 claims at issue and that the City had paid the \$500 administrative penalty for the one claim that was, in fact, paid late. Therefore, the ALJ concludes the Commission's assertion that the City violated TEX. LAB. CODE ANN. § 409.021 and 28 TAC § 124.2 by failing to timely issue payment on initial TIB payments has been resolved.

The City concedes that it inaccurately reported the Date Paid information on 16 claims from March 15 through April 15, 2004. However, the ALJ finds that the City's action was not intentional or willful, but rather the result of a computer error that was corrected as soon as practicable. Because the City's action was neither willful nor intentional, it was not an administrative violation under TEX. LAB. CODE ANN. § 415.002 or under any Commission rule. The Commission's argument that TEX. LAB. CODE ANN. § 415.0035(e) contains no intent requirement is not persuasive to the ALJ, because that section of the statute simply states that a person commits an administrative violation if he violates TEX. LAB. CODE ANN. § 415, Subchapter A, or a rule, order, or decision of the Commission. Intent is explicitly required under TEX. LAB. CODE ANN. § 415.002, the section of

TEX. LAB. CODE ANN. § 415, Subchapter A, that specifically enumerates the type of actions constituting administrative violations. Therefore, the City's lack of intent demonstrates that it did not commit an administrative violation.

B. Conclusion

The City made 17 of the 18 allegedly late payments on time and has already paid an administrative penalty of \$500 for the remaining disputed payment. The City did not willfully or intentionally make inaccurate Date Paid reports to the Commission. Therefore, the City has not committed an administrative violation related to reporting inaccurate data, and no further administrative penalty is warranted.

V. FINDINGS OF FACT

1. The _____ (the City) is self-insured and is the carrier for workers' compensation claims made by its employees.
2. Between March 15 and April 15, 2004, the City reported inaccurate data to the Texas Workers' Compensation Commission (the Commission) for temporary income benefits (TIB) initial payment dates on 16 claims, via the Electronic Data Interchange (EDI).
3. The City's inaccurate information in the Date Paid field caused the Commission to believe the City had made 18 late initial TIB payments between March 15 and April 15, 2004.
4. On May 26, 2004, the Commission sent the City a letter asking that it confirm whether or not the 18 initial TIB payments had been made late.
5. By the June 16, 2004, response deadline, the City showed the Commission that 17 of the 18 initial TIB payments at issue had been timely paid.
6. The City remitted a \$500 administrative penalty to the Commission for the one initial TIB claims payment that was made late.
7. The inaccurate information in the Date Paid field was the result of a computer programming error that was discovered in May or early June 2004 and corrected by June 18, 2004.
8. By August 2004, the City had re-transmitted all data to the Commission to ensure that the Commission has the proper data on file.
9. The City did not willfully or intentionally send incorrect Date Paid information to the Commission.
10. On July 30, 2004, the Commission sent the City a Notice of Violation(s) letter, stating that Respondent had reported inaccurate data for the Date Paid on 16 claims from March 15

through April 15, 2004. Carrier received the notice on August 2, 2004.

11. On August 23, 2004, the City requested a hearing before the State Office of Administrative Hearings to contest the Commission's finding.
12. Notice of the hearing was mailed to the City on October 19, 2004. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. Administrative Law Judge (ALJ) Sharon Cloninger convened and closed the hearing on March 21, 2005. The City appeared and was represented by Brandi Prejean, attorney. The Commission appeared and was represented by E. Renee Crenshaw, an attorney in the Commission's APA Litigation division.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 415.034.
2. Pursuant to the provisions of TEX. LAB. CODE ANN. § 415.032, the Commission served the City with Notice of Violation(s) dated July 30, 2004, alleging a violation of 28 TEX. ADMIN. CODE § 124.2.
3. The City timely filed a written request for a hearing contesting the Notice of Violation(s) as provided by TEX. LAB. CODE ANN. §§ 415.032 and 415.034.
4. The City violated TEX. LAB. CODE ANN. § 409.021 by failing to timely issue the initial Temporary Income Benefits payment in one claim between March 15 and April 15, 2004, and remitted the resulting \$500 administrative penalty to the Commission.
5. The City did not violate TEX. LAB. CODE ANN. § 415.002 or § 415.0035, or any Commission rule, when it inaccurately reported information in the Date Paid field to the Commission for claim information reported from March 15 through April 15, 2004.
6. Based on the above Findings of Fact and Conclusions of Law, the City has not committed an administrative violation by willfully or intentionally reporting inaccurate claims data to the Commission, and the requested administrative penalty of \$800 is not warranted.

ORDER

IT IS ORDERED that the _____ is not subject to the \$800 administrative penalty requested by the Texas Workers' Compensation Commission.

SIGNED May 19, 2005.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**