

No. **2023-7980**

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

Date: 5/23/2023

Subject Considered:

City of McAllen
1501 Pecan Boulevard
McAllen, Texas 75801-4275

Consent Order
DWC Enforcement File No. 29838

General remarks and official action taken:

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

DWC Audit No. IBA-22-107

3. On [REDACTED] DWC initiated DWC Audit No. IBA-22-107 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefits payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified three initial death benefits claims for audit. These three claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefits terminations.

Failure to Timely Pay Accurate DBs

6. Respondent failed to accurately pay death benefits for 33.33% of examined payments (1 out of 3).
7. Specifically for this one claim, Respondent underpaid beneficiaries by [REDACTED] over the course of 100 weeks.
8. The injured employee passed away on [REDACTED]
9. Respondent was required to pay the maximum death benefit rate of [REDACTED] per week.
10. For the period of [REDACTED] through [REDACTED] the insurance carrier paid [REDACTED] resulting in an underpayment of [REDACTED]
11. On [REDACTED] the checks to the beneficiaries were voided for the period of [REDACTED] through [REDACTED] resulting in an underpayment of [REDACTED]
12. For the period of [REDACTED] through [REDACTED] (79 weeks), Respondent paid [REDACTED] to the widow, instead of [REDACTED] resulting in an underpayment of [REDACTED]

13. For the period of [REDACTED] through [REDACTED] (20 weeks), Respondent underpaid benefits by [REDACTED] per week, resulting in an underpayment of [REDACTED]
14. In total, Respondent underpaid the beneficiaries [REDACTED]

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, 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 or their beneficiaries;
 - the history of compliance with EDI 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 or their beneficiaries; the history of compliance with EDI requirements; and to the extent reasonable, the economic benefit to Respondent resulting from the prohibited act.

4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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, 409.021, 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 violates a DWC rule or a provision of the Texas Workers' Compensation Act.
7. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code § 124.7, an insurance carrier is required to initiate death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date.
10. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
11. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.7 and 132.17 each time Respondent failed to pay accurate death benefits to eligible beneficiaries.

Order

It is ordered that City of McAllen must pay an administrative penalty of \$3,000 within 30 days from the date of this order. City of McAllen 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:



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