

No. **2024-8488**

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

Date: 1/24/2024

Subject Considered:

AIU Insurance Company
P.O Box 201329
Austin, Texas 78720-1329

Consent Order
DWC Enforcement File Nos. 33187, 33254, and 33256

General remarks and official action taken:

This is a consent order with AIU Insurance Company (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 classified as "average" tier in the 2022 Performance Based Oversight (PBO) assessment. Respondent was not chosen to be tiered in the 2020 or 2018 PBO assessments.

Failure to Timely Take Final Action on a Request for Reconsideration of a Medical Bill

File No. 33187

3. [REDACTED], Respondent received a complete request for reconsideration of a \$ [REDACTED] medical bill from a health care provider for medical services rendered to an injured employee on [REDACTED].
4. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED].
5. Respondent acted on the request by paying \$ [REDACTED] plus interest on [REDACTED], which was 144 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC and
Failure to Timely Comply with a Benefit Dispute Agreement

File No. 33254

6. Between [REDACTED], and [REDACTED], DWC ordered Respondent to pay \$ [REDACTED] in attorney fees in connection with legal services provided to an injured employee. The orders specified that the attorneys fees were to be paid in the amount of 25% of each income benefit payment to the injured employee.¹
7. On [REDACTED], the parties entered into a Benefit Dispute Agreement (BDA), approved by DWC on [REDACTED], wherein Respondent agreed to pay Temporary Income Benefits (TIBs) for the period between [REDACTED], and [REDACTED]. Respondent also agreed to pay an additional 15 weeks of Impairment Income Benefits.
8. Respondent was required to issue payment to the injured employee within five days of DWC approving the agreement and furnishing it to the parties. In this case, the deadline to issue payment was [REDACTED].
9. On [REDACTED], Respondent complied with the terms of the BDA and paid the injured employee \$ [REDACTED], which was nine days late.

¹ Attorney Fee Orders (AFO) Sequence Nos. 7, 8, 9, 13, & 16

10. On [REDACTED], Respondent partially paid the attorney \$ [REDACTED], which was 12 days late, leaving an unpaid balance of \$ [REDACTED].
11. On [REDACTED], Respondent paid the remaining \$ [REDACTED] in attorney's fees, which was 164 days late.

Failure to Timely Act on a Medical Bill

File No. 33256

12. On [REDACTED], a Designated Doctor (DD) provided medical services to an injured employee.
13. On [REDACTED], Respondent received a completed medical bill in the amount of \$ [REDACTED] from the DD.
14. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
15. On [REDACTED], Respondent paid the bill and interest in the amount of \$ [REDACTED] to the DD, which was 83 days late.

Assessment of Sanction

1. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process, and hinders the division's goal of ensuring timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity.
2. Failure to timely pay attorney's fees ordered by DWC increases the likelihood of disputes; affects an injured employee's rights and access to a fair and accessible dispute resolution process; and is harmful to the workers' compensation system of the state of Texas.
3. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

4. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system. It is a serious violation to fail to timely act on a medical bill involving DD services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a DD's participation in the system.

5. 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.

6. 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; and other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

7. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
8. 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).
9. 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; 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.

Failure to Timely Take Final Action on a Reconsideration of a Medical Bill

File No. 33187

7. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.
8. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) by failing to act on the request for reconsideration within 30 days of receipt of the request.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 33254

9. 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.
10. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
11. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Comply with a Benefit Dispute Agreement

File No. 33254

12. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement that DWC approved.

13. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) and (22) and 415.010 by failing to timely comply with a BDA.

Failure to Timely Act on a Medical Bill

File No. 33256

14. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
15. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20); 415.002(a)(22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Order

It is ordered that AIU Insurance Company must pay an administrative penalty of \$8,000 within 30 days from the date of this order. AIU Insurance Company 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:



Dan Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF NEW JERSEY §
§
COUNTY OF HUDSON §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of AIU Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ, 07302.
(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.

DocuSigned by:
Peter Macdonald
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Declarant

Executed on January 3, 2024.