

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 22 2019

Subject Considered:

TEXAS MUTUAL INSURANCE COMPANY
2200 Aldrich Street
Austin, Texas 78723

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 20918

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Texas Mutual Insurance Company (TMIC).

WAIVER

TMIC acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TMIC waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. TMIC 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 workers' compensation/employers' liability insurance in the state of Texas.
2. TMIC was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment. TMIC was classified as "high" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. On [REDACTED], TMIC received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day accrued on [REDACTED].
5. TMIC was required to initiate or dispute temporary income benefits (TIBs) no later than the later of 15 days after the insurance carrier received written notice of the injury or seven days after the accrual date, or by [REDACTED]; and TMIC would be liable for all

benefits that had accrued and were payable prior to the date TMIC filed a notice of dispute or denial.

6. TMIC did not initiate TIBs payments by [REDACTED], and did not file a notice of dispute or denial with the Texas Department of Insurance, Division of Workers' Compensation (DWC) until [REDACTED]. Therefore, TMIC was required to pay benefits that had accrued and were payable between [REDACTED], and [REDACTED].
7. TMIC issued payment for the initial TIBs on [REDACTED], which was 166 days late.

ASSESSMENT OF SANCTION

8. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
9. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
10. In assessing the sanction for this case, DWC found the following factors set forth 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 has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.

11. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act as additional training has been instituted as an attempt to avoid future late payments; and the prompt payment of the full amount, including interest, as soon as the error was discovered.
12. TMIC acknowledges that DWC and TMIC have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
13. TMIC acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021, and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs no later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay. Pursuant to 28 TEX. ADMIN. CODE § 124.3(a), the insurance carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the insurance carrier filed a notice of denial.
7. TMIC violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) when it failed to timely initiate payment of TIBs or file a notice of dispute or denial with DWC by December 28, 2017.

ORDER

Texas Mutual Insurance Company is ORDERED to pay an administrative penalty of \$7,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *WCTP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

AFFIDAVIT

STATE OF Texas §

§

COUNTY OF Travis §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is CURTIS W. JOHNSON. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VICE PRESIDENT, and am the authorized representative of Texas Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

Texas Mutual Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

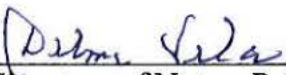
Texas Mutual Insurance Company is voluntarily entering into this consent order. Texas Mutual Insurance Company consents to the issuance and service of this consent order.”



Affiant

SWORN TO AND SUBSCRIBED before me on October 3, 2019.

(NOTARY SEAL)



Signature of Notary Public

Delma Vela

Printed Name of Notary Public

9/29/2023

Commission Expiration Date

