

No. 2021-6701

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

Date: 02-28-2021

Subject Considered:

Liberty Insurance Corporation
175 Berkeley Street
Boston, Massachusetts 02116-5066

Consent Order
DWC Enforcement File Nos. 18410, 21008, 21649, and 21650

General remarks and official action taken:

This is a consent order with Liberty Insurance Corporation (Liberty). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Liberty.

Waiver

Liberty acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Liberty 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. Liberty 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 Texas.
2. Liberty was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

DWC Enforcement File No. 18410: Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

3. On [REDACTED], Liberty received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a 5% impairment rating (IR).
5. Liberty was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
6. Liberty issued payment of IIBs on [REDACTED], which was 98 days late.

DWC Enforcement File No. 21008: Failure to Timely Initiate Payment of Temporary Income Benefits

7. On [REDACTED], Liberty received notice of an injury to an employee.
8. The first day of disability for the injured employee began on [REDACTED]. The eighth day of disability accrued on [REDACTED].
9. Liberty was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
10. Liberty issued the initial TIBs payment totaling [REDACTED] on [REDACTED], which was 17 days late.

DWC Enforcement File No. 21649: Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

11. On [REDACTED], Liberty received a report from a designated doctor (DD) in connection with a DD examination.
12. The DD determined that the injured employee reached MMI on [REDACTED], with a [REDACTED] IR.

13. Liberty was required to pay accrued IIBs no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
14. Liberty issued payment of IIBs on [REDACTED], which was 66 days late.

DWC Enforcement File No. 21650: Failure to Timely Initiate Payment of Temporary Income Benefits

15. On [REDACTED], Liberty received notice of an injury to an employee.
16. The first day of disability for the injured employee began on [REDACTED]. The [REDACTED] of disability accrued on [REDACTED].
17. Liberty was required to initiate or dispute TIBs either [REDACTED] days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
18. Liberty issued the initial TIBs payment totaling [REDACTED] on [REDACTED], which was [REDACTED] 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 history and extent of previous administrative violations; 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 factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations.
 5. Liberty 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. Liberty 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).

3. Liberty 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 § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
10. Liberty violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) each time it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.
11. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.

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12. Liberty violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.

Order

It is ordered that Liberty Insurance Corporation must pay an administrative penalty of \$14,000 within 30 days from the date of this order. Liberty Insurance Corporation must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Van B. Moreland
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

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Affidavit

STATE OF Texas

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COUNTY OF Collin

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

"My name is Joel Tokin. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

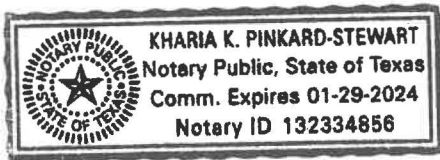
I hold the office of Claims Team Manager and am the authorized representative of Liberty Insurance Corporation. I am duly authorized by the organization to execute this statement.

Liberty Insurance Corporation has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Joel Tokin
Affiant

SWORN TO AND SUBSCRIBED before me on Jan 28, 2021.

(NOTARY SEAL)



Kharia K. Pinkard-Stewart
Signature of Notary Public

Kharia K. Pinkard-Stewart
Printed Name of Notary Public

01/29/2024
Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092