

No. **2022-7179**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 1/14/2022

Subject Considered:

Old Republic Insurance Company
307 North Michigan Avenue, Floor 17
Chicago, Illinois 60601-5406

Consent Order
DWC Enforcement File No. 27940

General remarks and official action taken:

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

Waiver

Old Republic acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Old Republic 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. Old Republic 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. Old Republic was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

3. On [REDACTED], Old Republic received a DWC Form-069, *Report of Medical Evaluation* from an injured employee's certifying doctor (CD) in connection with a CD examination.
4. The CD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
5. Old Republic was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD's report. The deadline to pay benefits was [REDACTED].
6. Old Republic issued payment of IIBs on [REDACTED], which was 21 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; 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; and other matters that justice may require, including, but not limited to the size of the company or practice; and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 4. DWC found the following factor 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.
 5. Old Republic 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. Old Republic 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).

3. Old Republic 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 § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
9. Pursuant to 28 TEX. ADMIN. CODE § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when maximum medical improvement is not disputed.
10. Old Republic violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the report.

Order

It is ordered that Old Republic Insurance Company must pay an administrative penalty of \$2,300 within 30 days from the date of this order. Old Republic 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF IL

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COUNTY OF Cook

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Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Deborah J. Matthews. I hold the position of AVP- Compliance and am the authorized representative of Old Republic Insurance Company. My business address is:

307 N. Michigan Ave Chicago Cook IL 60601
(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.

Deborah J. Matthews
Declarant

Executed on January 7, 2022.