

No. 2022-7594

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

Date: 11/4/2022

Subject Considered:

El Paso County
800 East Overland Avenue, Suite 223
El Paso, Texas 79901-2510

Consent Order
DWC Enforcement File No. 29841

General remarks and official action taken:

This is a consent order with El Paso County (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 "average" tier in the 2007 and 2014 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2010 PBO assessment. Respondent was not selected to be tiered in the 2009, 2012, 2016, 2018, or 2020 PBO assessments.

Failure to Timely Initiate Payment of Impairment Income Benefits

3. On [REDACTED] a doctor selected by the treating doctor certified an injured employee's maximum medical improvement (MMI) and impairment rating (IR).
4. On [REDACTED] Respondent received a properly completed medical evaluation report. Respondent did not dispute the MMI.
5. Respondent was required to initiate impairment income benefits (IIBs) within five days of receiving the medical evaluation report, or by [REDACTED]
6. Respondent initiated payment of IIBs on [REDACTED] which was eight 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 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, 414.002, 414.003, 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. 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 § 415.002(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 § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
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) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches MMI and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
9. Respondent violated Tex. Lab. Code § 408.121(b), 415.002(a)(16), (20) and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely initiate payment of IIBs.

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Order

It is ordered that El Paso County must pay an administrative penalty of \$1,500.00 within 30 days from the date of this order. El Paso County 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:



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

Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF EL PASO §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Ric ardoA. Samaniego . I hold the position of County Jud ge and am the authorized representative of El Paso County. My business address is:

500 E. San Antonio , El Paso , County , TX , 79901 .
(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.

Ric ardo A. Samaniego
Ric ardoA. Samaniego, County Judge
Declarant

Executed on October 31 , 2022.