

No. 2022-7612

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

Date: 11/14/2022

Subject Considered:

FedEx Ground Package System, Inc.
1000 FedEx Drive
Coraopolis, Pennsylvania 15108-9373

Consent Order
DWC Enforcement File No. 28431

General remarks and official action taken:

This is a consent order with FedEx Ground Package System Inc (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 certified, self-insured, employer that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 407.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "poor" tier in the 2014 PBO assessments. Respondent was not selected to be tiered in the 2012 PBO assessments.

Failure to Timely Pay or Dispute Initial Temporary Income Benefits

3. On [REDACTED] Respondent received the first written notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED] The eighth day of disability accrued on [REDACTED]
5. Respondent 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]
6. Respondent issued the initial TIBs payment on [REDACTED] 58 days late.

Failure to Pay Accrued Temporary Income Benefits

7. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED] The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	51
2.	[REDACTED]	[REDACTED]	[REDACTED]	42
3.	[REDACTED]	[REDACTED]	[REDACTED]	36
4.	[REDACTED]	[REDACTED]	[REDACTED]	29
5.	[REDACTED]	[REDACTED]	[REDACTED]	22
6.	[REDACTED]	[REDACTED]	[REDACTED]	15
7.	[REDACTED]	[REDACTED]	[REDACTED]	8
8.	[REDACTED]	[REDACTED]	[REDACTED]	1

8. On [REDACTED] Respondent paid interest on the late TIBS.

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 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 considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): remedial training for adjusters conducted during a seminar.
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, and 414.003; 415.002; 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. 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 §§ 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.
6. 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.
7. 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 Initiate TIBS

8. 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.

9. Respondent violated Tex. Lab. Code §§ 408.081, 409.021(e), 415.002(a)(16), (20) and (22) and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Pay Accrued TIBS

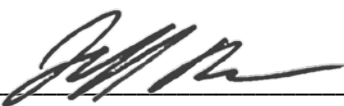
10. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
11. Respondent violated Tex. Lab. Code §§ 408.081, 409.021; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Timely Pay Interest

12. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
13. Respondent violated Tex. Lab. Code §§ 408.064 , 415.002(a)(20) and (22). and 28 Tex. Admin. Code § 126.12(b), each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

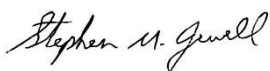
Order

It is ordered that FedEx Ground Package System, Inc. must pay an administrative penalty of \$5,000 within 30 days from the date of this order. FedEx Ground Package System, Inc. 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:




Stephen M. Jewell
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Missouri §
§
COUNTY OF Saint Charles §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Sonya Wilburn. I hold the position of WC & Litigation Advisor and am the authorized representative of FedEx Ground Package System, Inc.. My business address is: 1000 FedEx Drive, Moon Township, Allegheny PA, 15108.
(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.



Declarant

Executed on November 2, 2022.