

No. 2023-7811

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

Date: 2/21/2023

Subject Considered:

City of Corpus Christi
1201 Leopard Street
Corpus Christi, Texas 787401-2120

Consent Order
DWC Enforcement File Nos. 26978 and 28204

General remarks and official action taken:

This is a consent order with City of Corpus Christi (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 providing workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "poor" tier in the 2009 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in the 2007, 2010, 2012, 2014, 2016, 2018, 2020 or 2022 PBO assessments.

DWC Audit No. IBA-21-105

File No. 26978

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-105 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified three initial death benefit claims for audit. The claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on the timely reporting of death benefit terminations.

Failure to Pay Accurate Death Benefits

6. Respondent failed to pay accurate death benefits for 67% of examined payments (2 out of 3).
7. For Audit File #2, Respondent underpaid beneficiaries' death benefits by [REDACTED] per week for 504 weeks. Respondent further underpaid beneficiaries' death benefits by [REDACTED] per week for 72 weeks. The total underpayment was [REDACTED]
8. For Audit File #3, Respondent underpaid three beneficiaries' death benefits by [REDACTED] per week for six months. The total underpayment was [REDACTED]

Failure to Obtain Approval for a Change in Payment Period from DWC and Beneficiaries

9. For 67% of the death benefit claims reviewed (2 out of 3), Respondent improperly paid death benefits monthly without prior approval from DWC and election by the beneficiaries of the injured employee.

10. In Audit File #2, the beneficiary requested monthly payments from Respondent, but Respondent failed to request DWC approval of the monthly payment schedule in the form and manner prescribed, as described below.

Failure to File in the Form and Manner Prescribed by the Commission

11. In 100% of examined payments (2 out of 2), Respondent failed to timely file an *Application for Division Approval of Change in Payment Period* (DWC Form-31) which is required in order to issue benefits monthly instead of weekly.¹

Failure to Timely or Accurately Report EDI Data to DWC

12. Respondent failed to timely report the total number of death benefit terminations for 33% of examined payments (1 out of 3).
13. Specifically, Respondent failed to timely report the true death benefit termination for 33% of examined payments (1 out of 3).

DWC Audit No. IP-21-204

File No. 28204

14. On [REDACTED] DWC initiated DWC Audit No. IP-21-204 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) and timely and accurate submission of initial payment information to DWC.
15. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified 12 initial TIBs payments for audit. One initial TIBs payment failed to meet selection criteria and was dropped from the audit sample. The remaining 11 payments were reviewed to determine Respondent's compliance.
16. The audit focused on the timely payment of initial TIBs and EDI reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and

¹ A DWC Form-31 was not required to be filed in one of the examined payments and thus was not considered.

accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

17. Respondent failed to timely initiate TIBs for 27.27% of examined payments (3 out of 11).
18. Specifically, Respondent issued payments to injured employees between six and 15 days late in one instance, between 16 and 30 days late in one instance, and more than 30 days late in one instance.

Failure to Timely or Accurately Report EDI Data to DWC

19. Respondent failed to accurately report the First Date of Disability for 18.18% of examined payments (2 out of 11).
20. Respondent failed to accurately report the Date of First Written Notice for 18.18% of examined payments (2 out of 11).

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. Failure to timely submit information and documents to DWC hinders DWC's ability to implement and enforce the Texas Workers' Compensation Act.
4. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.

5. 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 or their beneficiaries;
 - the history of compliance with EDI 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.
6. 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 or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including Respondent's heightened awareness of its duty to comply with the law.
7. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's status as a municipality.
8. Respondent 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).

9. 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, 409.021, 414.002, 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 § 415.002(a)(16), an insurance carrier or its representative commits an administrative violation each time it fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits.
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 Pay Accurate Death Benefits

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8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Under Tex. Lab. Code § 408.061, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
10. Pursuant to Tex. Lab. Code § 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. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants.
12. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(16), (20) and (22), 408.181(a) and (b), and 28 Tex. Admin. Code § 124.3, 124.7, and 132.17(f), each time Respondent failed to pay accurate death benefits.

Failure to Obtain Approval for a Change in Payment Period from DWC and Beneficiaries

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13. Pursuant to 28 Tex. Admin. Code § 132.16(a)(1)-(5), upon the request of the eligible beneficiaries, the insurance carrier and eligible beneficiaries entitled to death benefits may agree to change the frequency of death benefits payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and in the form and manner prescribed by the commission.

14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 132.16(a)(1)-(5), each time Respondent failed to obtain prior approval for monthly payment of death benefits from DWC or election by beneficiaries of the injured employee.

Failure to File in the Form and Manner Prescribed by the Commission

File No. 26978

15. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
16. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a) and (b), each time Respondent failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed. Specifically, Respondent failed to file the required Form DWC-31 when it changed the death benefit pay schedule from weekly to monthly.

Failure to Timely Pay Initial TIBs

File No. 28204

17. Pursuant to Tex. Lab. Code § 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.
18. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.


Failure to Timely or Accurately Report EDI Data to DWC

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19. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
20. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a), (b) and (e)(6), each time Respondent failed timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

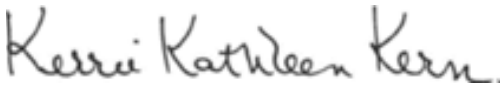
Order

It is ordered that City of Corpus Christi must pay an administrative penalty of \$14,000 within 30 days from the date of this order. City of Corpus Christi 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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