

No. 2023-7925

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

Date: 5/2/2023

Subject Considered:

Harris Health System
2525 Holly Hall St., #100
Houston, Texas 77054-4124

Consent Order
DWC Enforcement File No. 28252

General remarks and official action taken:

This is a consent order with Harris Health System (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 governmental entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was not selected to be tiered in any year's Performance Based Oversight (PBO) assessment.

Failure to Timely Pay Temporary Income Benefits Pursuant to a Designated Doctor Report

3. On [REDACTED] an employee sustained a workplace injury to his [REDACTED] while working for Respondent.
4. Respondent accepted as a condition of the injury a [REDACTED] but denied that any other condition was caused by the workplace injury.
5. Respondent accepted that the injured employee had a disability as a direct result of the compensable injury and paid temporary income benefits (TIBs) from [REDACTED] through [REDACTED].
6. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination to determine the extent of injury, maximum medical improvement (MMI), and the impairment rating (IR) for the injured employee.
7. The report included two Reports of Medical Evaluation (DWC-069). One DWC-069 showed the MMI and IR for the accepted conditions, and the other the MMI and IR for the accepted and included conditions. Both DWC-069s included [REDACTED] as conditions of the workplace injury.
8. As indicated on the DWC-069s, the DD determined that the injured employee had reached MMI on [REDACTED] with an IR of [REDACTED] for the accepted and for the accepted and included conditions.
9. In response to this report, Respondent suspended TIBs and reclassified TIBs already paid from [REDACTED] to [REDACTED] to impairment income benefits (IIBs).
10. Respondent continued paying IIBs from [REDACTED] through [REDACTED].
11. On [REDACTED] Respondent received a corrected DWC-069 and report from the DD in connection with the DD examination.
12. In the corrected DWC-069 and report, the DD determined the injured employee was not at MMI and no IR was assigned for the accepted and included conditions.

13. Respondent was required to pay accrued TIBs no later than five days after receiving the corrected DWC-069 and report. The deadline to pay TIBs was [REDACTED]
14. Respondent paid TIBs with interest in the amount of [REDACTED] on [REDACTED] which was 142 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

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 factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent does not have recent history of administrative violations. Respondent consented to DWC Order 4452, which was entered May 9, 2016, for Respondent's failure to timely process and accurately report medical bill payment data in DWC Audit MBP-15-207. Respondent was assessed an administrative penalty of \$18,708.
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).

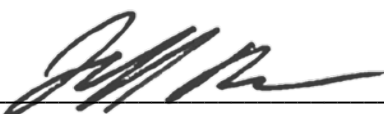
Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, and 414.002.
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)(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), the 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), the 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. Respondent violated Tex. Lab. Code §§ 408.0041(f), 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) when it failed to timely pay accrued TIBs in accordance with the DD's report no later than five days after receiving the report.


Order

It is ordered that Harris Health System must pay an administrative penalty of \$7,500.00 within 30 days from the date of this order. Harris Health System 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:



Connor Ambrosini
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Harris §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Tangela Williams-Smith. I hold the position of W/C Claims Coordinator and am the authorized representative of Harris Health System. My business address is:

4800 Fournace Place, Ste. 1W, Bellaire, Harris, TX, 77401
(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.

Tangela Williams-Smith
Declarant

Executed on 04/24, 2023.