

No. **2021-7064**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 11/9/2021

Subject Considered:

Texas Mutual Insurance Company
2200 Aldrich Street
Austin, Texas 78723-3474

Consent Order
DWC Enforcement File No. 26647

General remarks and official action taken:

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

Waiver

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

Failure to Pay Accrued Impairment Income Benefits

3. On [REDACTED] Texas Mutual informed an injured employee it intended to recoup overpaid temporary income benefits from impairment income benefits (IIBs).
4. Texas Mutual was required to pay IIBs for the period of [REDACTED] through [REDACTED]. The IIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Texas Mutual issued payment on August 27, 2020, which was 425 days late.
5. Texas Mutual also issued payment of IIBs on [REDACTED] for the benefit periods beginning [REDACTED] through [REDACTED].
6. The IIBs payments and accrued interest totaled [REDACTED].

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 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 delay in payment did not financially harm the injured employee due to the size of the overpayment.
 5. Texas Mutual 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. Texas Mutual 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).

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3. Texas Mutual 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 28 TEX. ADMIN. CODE § 126.16(b)(2), if the injured employee's income benefits are not concurrently being reduced to pay approved attorney fees or recoup a DWC-approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 25% of the income benefit payment.
9. Texas Mutual violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits.

Order

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$6,250 within 30 days from the date of this order. Texas Mutual 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 TEXAS §
§
COUNTY OF TRAVIS §

Pursuant to the TEX. CIV. PRAC. & REM. CODE § 132.001(a), (b), and (d), my name is **Curtis W. Johnson**. I hold the position of **VP, Claim Operations** and am the authorized representative of Texas Mutual Insurance Company. My business address is:

2200 Aldrich Street, **Austin**, **Travis, TX**, **78723**.
(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.

Curtis W. Johnson
Declarant

Executed on **August 19**, 2021.