

No. **2022-7220**

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

Date: 2/10/2022

Subject Considered:

Deep East Texas Self-Insurance Fund
P.O. Box 960
Jasper, Texas 75951-0037

Consent Order
DWC Enforcement File No. 26069

General remarks and official action taken:

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

Waiver

Deep East Texas acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Deep East Texas 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. Deep East Texas 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Deep East Texas was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment. Deep East Texas was classified as "average" tier in

the 2009, 2016, and 2018 PBO assessments. Deep East Texas was classified as "high" tier in the 2010, 2012, 2014 and 2020 PBO assessments.

DWC Audit No. IP-20-105

3. On [REDACTED] DWC initiated DWC Audit No. IP-20-105 to determine whether Deep East Texas complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) and timely and accurately submitting initial payment information to DWC.
4. The audit examined TIBs payments that Deep East Texas reported issuing between [REDACTED] and [REDACTED]. DWC identified 23 initial TIBs payments for audit. A total of three initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 20 payments were reviewed to determine Deep East Texas' compliance.
5. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and 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

6. Deep East Texas failed to timely initiate TIBs for 25% of examined payments (five out of 20).
7. Specifically, Deep East Texas issued late payments to injured employees between one and five days late in one instance, between six and 15 days late in two instances, and over 30 days late in one instance.

Failure to Timely or Accurately Report EDI Data to DWC

8. Deep East Texas failed to timely report initial TIBs payments for 5% of examined payments (one out of 20).
9. Deep East Texas failed to accurately report the First Date of Disability for 10% of examined payments (two out of 20).

10. Deep East Texas failed to accurately report the Date of First Written Notice for 25% of examined payments (five out of 20).
11. Deep East Texas failed to accurately report the Initial TIBs Payment Date for 10% of examined payments (two out of 20).

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. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.
3. 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.
4. 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 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.
5. 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; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
 6. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the economic benefit resulting from the prohibited act. The audit revealed late payments on two cases but the amounts were small. One case, #20 on the audit, the audit revealed that partial TIBs payment was issued during the weeks in question but the full TIBs payment was issued 97 days late. However, the total amount at issue in this matter was \$24 late after 97 days. In the second case, #7 on the audit, the audit revealed that partial payment was issued for the weeks in question, but the full amount was not paid for 14 days for a total amount of \$66. Additionally, the carrier was able to provide evidence that TIBs payments were issued to two of the cases on the audit, #17 and #6, and those cases were dropped from the sample.
 7. Deep East Texas 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).
 8. Deep East Texas 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Deep East Texas 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 § 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.
8. Deep East Texas violated TEX. LAB. CODE §§ 415.002(a)(20) and (a)(22) each time it failed to timely initiate payment of TIBs.
9. 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.

10. Deep East Texas violated TEX. LAB. CODE § 415.002(a)(20) each time it 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.

Order

It is ordered that Deep East Texas Self-Insurance Fund must pay an administrative penalty of \$5,000 within 30 days from the date of this order. Deep East Texas Self-Insurance Fund 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.
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Approved Form and Content:



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