

No. **2022-7407**

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

Date: 7/27/2022

Subject Considered:

Liberty Insurance Corporation
P.O. Box 259015
Plano, Texas 75025-9015

Consent Order
DWC Enforcement File Nos. 28426, 28996, 29119, and 29266

General remarks and official action taken:

This is a consent order with Liberty Insurance Corporation (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 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. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018 and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay or Dispute the Initial Temporary Income Benefits Payment

File No. 28426

3. On [REDACTED] Respondent received notice of an injury to an employee.
4. The date of the injury for the injured employee was [REDACTED] and the eighth day 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. On [REDACTED] Respondent issued the initial TIBs payment 66 days late.

File No. 29119

7. On [REDACTED] Respondent received notice of an injury to an employee.
8. The date of the injury for the injured employee was [REDACTED] and the eighth day accrued on [REDACTED]
9. Respondent was required to initiate or dispute 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]
10. On [REDACTED] Respondent disputed the claim, which was 19 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 28996

11. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
12. Respondent issued multiple payments to the injured employee for unpaid income benefits on the following dates:

	Amount Paid	Date Paid
a.		
b.		
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		
k.		
l.		
m.		
n.		
o.		
p.		
q.		
R		
s.		

13. On each of the dates listed above, Respondent was required to issue payment for attorney fees for 25% of the benefits paid to the injured employee. Respondent failed to timely issue payment of attorney fees as follows:

	Attorneys Fee Due	Date Paid	Days Late
a.			135
b.			119
c.			112
d.			106
e.			97
f.			89
g.			84
h.			77
i.			70
j.			63
k.			57

(cont.)	Attorneys Fee Due	Date Paid	Days Late
l.	[REDACTED]	[REDACTED]	50
m.	[REDACTED]	[REDACTED]	43
n.	[REDACTED]	[REDACTED]	36
o.	[REDACTED]	[REDACTED]	29
p.	[REDACTED]	[REDACTED]	22
q.	[REDACTED]	[REDACTED]	15
r.	[REDACTED]	[REDACTED]	8
s.	[REDACTED]	[REDACTED]	1

14. Respondent issued payment for attorney fees due between [REDACTED] and [REDACTED] on [REDACTED] and attorney fees due on [REDACTED] on [REDACTED]. Respondent mistakenly paid attorney fees to the injured employee rather than his attorney.

Failure to Pay Initial Supplemental Income Benefits.

File No. 29266

15. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs) for the first quarter. The first quarter of SIBs began on [REDACTED].
16. Respondent's payment for the first month of the first quarter was due by the 10th day after Respondent received DWC's determination of entitlement or the seventh day of the first quarter, whichever is later. In this case, the latest date was [REDACTED].
17. Respondent issued a payment for SIBs for the first month of the first quarter on [REDACTED] which was 25 days late.

Assessment of Sanction

1. Failure to provide appropriate 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. 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).
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, 414.003, 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. 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or the Texas Workers' Compensation Act.

Failure to Timely Pay or Dispute the Initial Temporary Income Benefits Payment

6. 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.
7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021(e) 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. Pursuant to 28 Tex. Admin. Code § 124.3(a)(2), if the insurance carrier files a Notice of Denial after the 15th day but on or before the 60th day after receipt of written notice of injury, the insurance carrier is liable for and shall pay all income benefits

that had accrued and were payable prior to the date the insurance carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits.

9. Respondent violated Tex. Lab. Code §§ 409.021(e), 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely initiate payment of TIBs.

Failure to Timely Pay Attorney Fees Ordered by DWC

10. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
11. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
12. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22), 415.021(a), and 415.0035(e) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

13. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
14. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
15. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
16. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the numbered quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance

carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.

17. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 130.107 by failing to timely issue payment for SIBs for the months and quarters for which the injured employee was entitled.

Order

It is ordered that Liberty Insurance Corporation must pay an administrative penalty of \$12,000 within 30 days from the date of this order. Liberty Insurance Corporation 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:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Collin §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Michael Potter. I hold the position of Complex Director and am the authorized representative of Liberty Insurance Corporation. My business address is:

7900 Windrose Ave, Plano, Collin, TX, 75024.
(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.

Michael Potter

Declarant

Executed on July 26th, 2022.