

No. **2022-7540**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 9/30/2022

Subject Considered:

Midwest Employers Casualty Company
14755 North Outer 40 Road, Suite 300
Chesterfield, Missouri 63017-6050

Consent Order
DWC Enforcement File No. 29278

General remarks and official action taken:

This is a consent order with Midwest Employers Casualty Company (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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2007, 2009, and 2012 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2010, 2014, 2016, 2018, or 2020 PBO assessments.

Failure to Timely Pay Impairment Income Benefits As and When They Accrue

3. Respondent was required to pay impairment income benefits (IIBs) to an injured employee from [REDACTED] through [REDACTED]. The IIBs payments were due seven days after the first day of each pay period. Respondent failed to timely issue the IIBs payments as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	216
a.	[REDACTED]	[REDACTED]	[REDACTED]	14
b.	[REDACTED]	[REDACTED]	[REDACTED]	7

4. On [REDACTED] Respondent paid the outstanding IIBs balance of [REDACTED]

Failure to Timely Pay Interest

5. On [REDACTED] Respondent paid interest for the late IIBs payments paid on [REDACTED] which was 17 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 factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the history and extent of previous administrative violations and the violator's demonstrations of good faith, including actions it took to rectify the consequences of the prohibited act. Respondent does not have an extensive disciplinary history, with this consent order being the first concerning a delivery of benefits issue. Respondent promptly resolved its payment error upon being made aware of an issue which arose when the injured employee's file changed adjusters.
 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, 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)(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

Failure to Timely Pay Impairment Income Benefits As and When They Accrue

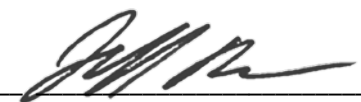
7. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
9. Respondent violated Tex. Lab. Code §§ 408.021; 415.002(a)(16), (20) and (22) and 28 Tex. Admin. Code § 130.8 each time it failed to timely initiate payment of IIBs.

Failure to Timely Pay Interest

10. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
11. Respondent violated Tex. Lab. Code § 408.064, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest for accrued but unpaid income benefits.

Order

It is ordered that Midwest Employers Casualty Company must pay an administrative penalty of \$4,500 within 30 days from the date of this order. Midwest Employers Casualty 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Commissioner's Order
 Midwest Employers Casualty Company
 DWC Enforcement File No. 29278
 Page 7 of 7

Unsworn Declaration

STATE OF Missouri §
 COUNTY OF ST LOUIS §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is STEPHANIE WILMOTTE I hold the position of ASST. SECRETARY and am the authorized representative of Midwest Employers Casualty Company. My business address is:

STE 300
14755 N. OUTER FORTY DR, CHESTERFIELD ST LOUIS, MO, 63017
 (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.

Stephanie Wilmotte
 Declarant

Executed on 9/28, 2022.

Confidential Information Redacted
 Texas Labor Code §§402.083 and 402.092