

No. 2023-7747

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

Date: 1/20/2023

Subject Considered:

Ace American Insurance Company
115 Wild Basin Road, Ste. 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File Nos. 30522, 30564, 30675, 30684, & 30685

General remarks and official action taken:

This is a consent order with Ace American Insurance 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, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Take Final Action on a Reconsideration of a Medical Bill

File No. 30522

3. On [REDACTED] Respondent received a complete request for reconsideration of a medical bill from a health care provider for medical services rendered to an injured employee between [REDACTED] through [REDACTED]
4. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED]
5. Respondent acted on the medical bill on [REDACTED] which was 64 days late.

Failure to Timely Pay Temporary Income Benefits

File No. 30564

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

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	22
b.	[REDACTED]	[REDACTED]	[REDACTED]	15
c.	[REDACTED]	[REDACTED]	[REDACTED]	8
d.	[REDACTED]	[REDACTED]	[REDACTED]	1

File No. 30685

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

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	176
b.	[REDACTED]	[REDACTED]	[REDACTED]	176

c.				172
d.				165
e.				157
f.				151
g.				144
h.				137
i.				130
j.				122
k.				116
l.				109
m.				102
n.				95
o.				88
p.				81
q.				74
r.				67
s.				60
t.				53
u.				46
v.				39
w.				32
x.				25
y.				18
z.				11
aa.				3

Failure to Timely Comply with a Contested Case Hearing Decision and Order

File No. 30675

8. On [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED]

9. The CCH D&O became final on [REDACTED] Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED]
[REDACTED]

10. Respondent failed to pay benefits timely in accordance with the CCH D&O. Respondent was ordered to pay an injured employee accrued unpaid income benefits at an average weekly wage (AWW) of [REDACTED]. Respondent did not pay at the correct rate and underpaid the injured employee. Respondent did not pay the total unpaid income benefits with interest until [REDACTED] which was 221 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 30684

11. On September [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 percent of each income benefit payment to the injured employee.
12. Respondent issued a payment to the injured employee for unpaid income benefits on [REDACTED] in the amount of [REDACTED]. Respondent was required to issue payment for attorney fees in the amount of [REDACTED] on that date.
13. Respondent did not issue payment to the injured employee's attorney until September [REDACTED] which was 304 days late.

Assessment of Sanction

1. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

4. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.
5. 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.
6. 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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited acts; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violations had a negative impact on the delivery of benefits to an injured employee.
7. DWC found the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations.

8. 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).
9. 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, and 414.003.
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) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Take Final Action on a Request for Reconsideration of a Medical Bill

6. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.

7. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) when Respondent failed to act on the request for reconsideration within 30 days of receipt of the request.

Failure to Timely Pay Temporary Income Benefits

8. 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.
9. Pursuant to Tex. Lab. Code §§ 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.
10. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 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.
11. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay TIBs.

Failure to Timely Comply with a CCH D&O

12. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
13. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a CCH D&O becomes final on the sixteenth day after the date a party receives it, and the party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal if one is filed.


14. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), and 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC

15. 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.
16. 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.
17. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.021(a), 415.0035(e), and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

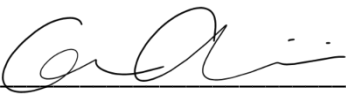
Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$69,750 within 30 days from the date of this order. Ace American 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.



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

Commissioner's Order
Ace American Insurance Company
DWC Enforcement File Nos. 30522, 30564, 30675, 30684, & 30685
Page 10 of 10

Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Ace American Insurance Company. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, DE, 19803.
(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.



Declarant

Executed on January 7, 2023.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092