

No. 2023-8308

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

Date: 10/30/2023

Subject Considered:

Arch Indemnity Insurance Company
300 Plaza Three
Jersey City, New Jersey 07311-1107

Consent Order
DWC Enforcement File Nos. 32426 & 32624

General remarks and official action taken:

This is a consent order with Arch Indemnity 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 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Comply with a Benefit Dispute Agreement

File No. 32426

3. On [REDACTED] the parties entered into a Benefit Dispute Agreement (BDA) which stipulated that the injured employee's average weekly wage (AWW) from [REDACTED] through [REDACTED] was [REDACTED], and after [REDACTED] the AWW was [REDACTED].
4. On [REDACTED] Respondent received the DWC-approved BDA.
5. Respondent was required to issue payment of accrued Temporary Income Benefits (TIBs) for all benefit periods beginning [REDACTED], at the AWW agreed to in the BDA within five days of receiving the BDA. In this case, the deadline to issue payment was [REDACTED].
6. From [REDACTED], through [REDACTED], Respondent issued partial payments of TIBs.
7. On [REDACTED], Respondent paid [REDACTED] in outstanding accrued TIBs and interest in compliance with the BDA, which was 30 days late.

Failure to Timely Pay Accrued Temporary Income Benefits

File No. 32624

8. 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 pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	45
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	38
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	31
d.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	24
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	17
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	10
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	3

9. On [REDACTED], Respondent paid [REDACTED] in late TIBs.

Assessment of Sanction

1. Failure to timely comply with a DWC-approved BDA to pay TIBs is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
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. 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.
4. 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; and other matters that justice

may require, including but not limited to 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 mitigating: Respondent's actions taken in good faith to rectify the consequences of the violation. In file no. 32426, an internal file review uncovered a payment error which was corrected as soon as it was discovered. Respondent also has taken prompt and earnest actions to prevent future violations of the type in file no. 32624. Specifically, Respondent has corrected a coding error which prevented the subject claim from being automatically placed on a repetitive payment schedule.
6. 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).
7. 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 Comply with a Benefit Dispute Agreement

6. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement that DWC approved.
7. Respondent violated Tex. Lab. Code §§ 415.002(a)(22) and 415.010 by failing to timely comply with a BDA.

Failure to Timely Initiate Payment of Accrued 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 §§ 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.
10. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Order

It is ordered that Arch Indemnity Insurance Company must pay an administrative penalty of \$8,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Arch Indemnity Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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

Unsworn Declaration

STATE OF New Jersey §
§
COUNTY OF Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell. I hold the position of Vice President and am the authorized representative of Arch Indemnity Insurance Company. My business address is: 210 Hudson Street, Suite 300, Jersey City, Hudson, NJ, 07311.
(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 October 23rd, 2023.