

No. 2024-8626

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

Date: 4/25/2024

Subject Considered:

Sherwin Williams Company
101 West Prospect Avenue
Cleveland, Ohio 44115

Consent Order
DWC Enforcement File Nos. 32390 and 32567

General remarks and official action taken:

This is a consent order with Sherwin Williams 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 is a private employer operating in the State of Texas. Respondent holds a certificate of authority issued by DWC to act as a Certified Self-Insurer pursuant to Tex. Lab. Code, Chapter 407 and 28 Tex. Admin. Code, Chapter 114.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

File No. 32390

2. On [REDACTED], a designated doctor (DD) completed a DWC Form-69, *Report of Medical Evaluation and Narrative Report*, in connection with a DD exam. The DD certified that the injured employee was not at maximum medical improvement (MMI) but would reach statutory MMI on [REDACTED]. However, DWC and Respondent did not receive this report until [REDACTED].
3. On [REDACTED], prior to receiving the DD report, DWC sent a letter to the injured employee's treating doctor requesting certification of MMI and assignment of an IR.
4. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation and Narrative Report*, from the certifying doctor (CD), acting in place of the treating doctor, in connection with a CD examination.
5. The CD determined that the injured employee reached MMI on [REDACTED], with a [REDACTED] % Impairment Rating (IR).
6. Respondent was required to pay accrued impairment income benefits (IIBs), or dispute the MMI, no later than five days after receiving the CD report. The deadline to pay benefits or dispute the MMI was [REDACTED].
7. On [REDACTED], Respondent disputed the MMI 32 days late and unilaterally assigned an [REDACTED] % IR, based on its claim that the CD report lacked the required narrative report. Respondent also requested another DD examination.
8. On [REDACTED], Respondent received a DWC Form-69 from a different DD in connection with a DD examination conducted on [REDACTED]. This DD determined that the injured employee reached MMI on [REDACTED], with a [REDACTED] % IR.
9. On [REDACTED], Respondent initiated \$ [REDACTED] in IIBs, which was 72 days late.

Failure to Timely Comply with a Request for Reimbursement for Travel Expenses

File No. 32567 - First Instance

10. On [REDACTED], Respondent received a written request for reimbursement of travel expenses from an injured employee for the dates of service between [REDACTED] through [REDACTED].
11. On [REDACTED], the claims adjuster sent an email to the injured employee stating that the insurance carrier would be sending a denial of the injured employee's mileage, but otherwise failed to act. Respondent was required to act on the request no later than the 45th day after the receipt of the request, which was [REDACTED].
12. On [REDACTED], Respondent denied in part and paid part of the reimbursement requests totaling \$ [REDACTED], which was 214 days late.

File No. 32567 - Second Instance

13. On [REDACTED], Respondent received a second written request for reimbursement of travel expenses from the injured employee for the dates of service between [REDACTED], through [REDACTED]. Respondent was required to act on the request no later than the 45th day after the receipt of the request, which was [REDACTED].
14. On [REDACTED], Respondent denied the request in part and paid part of the reimbursement requests totaling \$ [REDACTED], which was 87 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. Failure to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers' compensation system and the roles of its system participants.
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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. Since 2022, Respondent has received three warning letters and two Consent Orders for the failure to timely act on a reimbursement request (File Nos. 32519, 31595, 31241, 30228, and 29621).
5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. 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).

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 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Pay Accrued IIBs Based on a CD Report

File No. 32390

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 § 408.121(b), an insurance carrier must pay or dispute IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.

8. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay or dispute benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report.
9. Respondent violated Tex. Lab. Code §§ 408.121(b); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely pay or dispute accrued income benefits within five days of receiving the CD report.

Failure to Timely Comply with a Request for Reimbursement for Travel Expenses


File No. 32567

10. Pursuant to 28 Tex. Admin. Code § 134.110, an insurance carrier shall pay or deny an injured employee's properly completed request for reimbursement within 45 days of receipt. If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason for the reduction or denial.
11. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.110 each time Respondent failed to timely act on a request for reimbursement for travel expenses.

Order

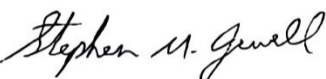
It is ordered that Sherwin Williams Company must pay an administrative penalty of \$8,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Sherwin Williams 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Stephen Jewell
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