

No. 2019 6006

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JUL 02 2019

Subject Considered:

LIBERTY MUTUAL FIRE INSURANCE COMPANY
175 Berkley Street
Boston, Massachusetts 02116-5066

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NOS. 18253 and 18740

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Liberty Mutual Fire Insurance Company (Liberty Mutual Fire).

WAIVER

Liberty Mutual Fire acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Liberty Mutual Fire waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Liberty Mutual Fire 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, including workers' compensation/employers' liability.
2. Liberty Mutual Fire was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY COMPLY WITH A TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION (DWC) ORDER**

3. Liberty Mutual Fire received a Contested Case Hearing Decision & Order (CCH D&O) on [REDACTED]. The CCH D&O determined that the injured employee had disability resulting from the compensable injury from [REDACTED] through the date of the hearing.
4. Liberty Mutual Fire did not file an appeal. Liberty Mutual Fire was required to comply with the order within 20 days of the order becoming final, which was [REDACTED].

5. Liberty Mutual Fire issued timely payment in the amount of \$ [REDACTED] on [REDACTED] [REDACTED], but did not come into full compliance until issuing an interest payment of \$ [REDACTED] on [REDACTED], which was 121 days late.

**FAILURE TO TIMELY COMPLY WITH A BENEFIT
DISPUTE AGREEMENT (BDA) APPROVED BY DWC**

6. On [REDACTED], DWC approved a BDA between the injured employee and Liberty Mutual Fire. The parties agreed that the injured employee's average weekly wage (AWW) was \$ [REDACTED].
7. Liberty Mutual Fire received the DWC approved BDA on [REDACTED]. Liberty Mutual Fire was required to comply with the BDA within five business days of receipt, or by [REDACTED].
8. Based on the agreed, higher AWW, Liberty Mutual Fire issued payment 53 days late on [REDACTED].

ASSESSMENT OF SANCTION

9. Failure to provide appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
10. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.

11. In assessing the sanction for this case, DWC found the following factors set forth 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 has a negative impact on the delivery of benefits to the injured party.
12. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.
13. Liberty Mutual Fire acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
14. Liberty Mutual Fire acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under 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. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation when it fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 415.021(a), an insurance carrier commits an administrative violation by failing to comply with a DWC order.
6. Liberty Mutual Fire violated TEX. LAB. CODE §§ 415.002(a)(22) and 415.021(a) when it failed to timely comply with a DWC Order.
7. Pursuant to TEX. LAB. CODE ANN. § 415.010, a party to an agreement approved by DWC commits an administrative violation if the person breaches a provision of the agreement.

8. Liberty Mutual Fire violated TEX. LAB. CODE ANN. §§ 415.002(a)(22), 415.021(a), and 415.010 when it failed to timely pay impairment income benefits in accordance with the BDA.

ORDER

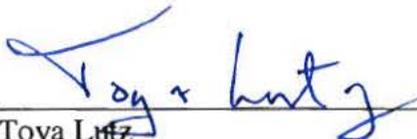
Liberty Mutual Fire Insurance Company is ORDERED to pay an administrative penalty of \$3,500 within 30 days from the date of this consent Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *NCM*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

