

No. 2020 6232

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: FEB 12 2020

Subject Considered:

TEXAS MUTUAL INSURANCE COMPANY
2200 Aldrich Street
Austin, Texas 78723

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21794

General remarks and official action taken:

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

WAIVER

Texas Mutual acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Texas Mutual 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. Texas Mutual 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 workers' compensation/employers' liability insurance in Texas.
2. Texas Mutual was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment; and "high" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

FAILURE TO TIMELY PAY ATTORNEY'S FEES ORDERED BY DWC

Instance One

3. On [REDACTED], Texas Mutual received an Order for attorney fees totaling \$ [REDACTED]. The Texas Department of Insurance, Division of Workers' Compensation (DWC) ordered Texas Mutual to pay attorney's fees in the amount of [REDACTED]% of each income benefit payment to the injured employee.
4. On [REDACTED], Texas Mutual issued a check to the injured employee for indemnity benefits. Texas Mutual was, therefore, required to issue payment to the attorney in the amount of [REDACTED] of each income benefit payment to the injured employee the same

day. Texas Mutual issued payment that same day but it was not in the amount of █% of each income benefit payment to the injured employee.

5. Texas Mutual did not issue the full payment of attorney fees until █, which was 39 days late.

Instance Two

6. On █, Texas Mutual received an Order for attorney fees totaling \$█. DWC ordered Texas Mutual to pay attorney's fees in the amount of █% of each income benefit payment to the injured employee.
7. On █, Texas Mutual issued a check to the injured employee for indemnity benefits. Texas Mutual was, therefore, required to issue payment to the attorney in the amount of █% of each income benefit payment to the injured employee the same day.
8. Texas Mutual did not issue payment of attorney fees until █, which was 32 days late.

ASSESSMENT OF SANCTION

9. Timely payment of attorney's fees to injured employees' attorneys is imperative to DWC's goal of ensuring that injured employees have access to a fair and accessible dispute resolution process.
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.

- 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; history of compliance with electronic data interchange requirements; and other matters that justice may require, including the size of the company or practice.
 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: other matters that justice may require, including PBO assessments.
 13. Texas Mutual 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. Texas Mutual 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, 402.00128, 414.002, 414.003, 415.002, and 415.021; and 28 TEX. ADMIN. CODE §§ 152.1 and 180.26.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 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 §§ 415.0035(e) and 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of the commissioner.
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 28 TEX. ADMIN. CODE § 152.1, insurance carriers are required to pay attorney's 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 and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.

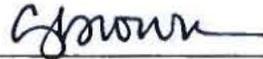
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7. Texas Mutual violated TEX. LAB. CODE §§ 415.0035(e), 415.021(a), and 415.002(a)(20) each time it failed to timely comply with a DWC order to pay attorney's fees.

ORDER

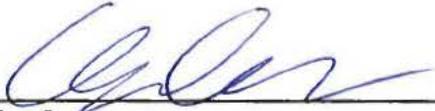
Texas Mutual Insurance Company is ORDERED to pay an administrative penalty of \$4,000 within 30 days from the date of this Order.

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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

