

2019 5903
No. _____

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: ~~MAR 18 2019~~

Subject Considered:

TEXAS MUTUAL INSURANCE COMPANY
2200 Aldrich Street
Austin, Texas 78723

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 13071

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 multiple lines of insurance, including workers' compensation/employers' liability.
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 INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. Texas Mutual failed to timely initiate payment of temporary income benefits (TIBs) in two instances.
4. Specifically, Texas Mutual initiated TIBs payments to injured employees seven days late in one instance, and 316 days late in the other.

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FAILURE TO TIMELY PAY ACCRUED INCOME BENEFITS

5. Texas Mutual was required to pay TIBs to an injured employee for the periods of [REDACTED], through [REDACTED], and [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED] and [REDACTED], respectively.
6. Texas Mutual issued payment of TIBs for both periods on [REDACTED], which was 43 days late and 36 days late, respectively.

**FAILURE TO PAY INCOME BENEFITS IN ACCORDANCE
WITH A DESIGNATED DOCTOR REPORT**

7. In three instances, Texas Mutual was required to pay accrued income benefits no later than five days after receiving a designated doctor's (DD) report.
8. In each of the three instances, Texas Mutual was late in issuing payment of accrued income benefits. Respectively, the payments were 28, 42, and 122 days late.

**FAILURE TO PROVIDE DWC AND INJURED EMPLOYEE SUFFICIENT
EXPLANATION FOR ACTION TAKEN ON CLAIM**

9. On [REDACTED] Texas Mutual filed a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) with DWC to dispute extent of injury.
10. The PLN-11 stated in part, "Texas Mutual Insurance Company disputes that the compensable injury of [REDACTED] extends to include the current medical condition."
11. This statement did not sufficiently identify what condition the insurance carrier was disputing.

**FAILURE TO PROVIDE REASONABLE GROUNDS TO TERMINATE, REDUCE, OR
REFUSE TO PAY BENEFITS**

12. On [REDACTED] Texas Mutual filed a Notification of Suspension of Indemnity Payment (PLN-9) with DWC.
13. The PLN-9 stated "We have suspended payment of Impairment Income Benefits effective [REDACTED] because the [REDACTED]% impairment rating has been paid in full."
14. On [REDACTED] a DD determined the injured employee was not at maximum medical improvement for the conditions the DD determined the injury extended to include. Therefore, Texas Mutual did not have reasonable grounds to suspend income benefits.

**FAILURE TO COMPLY WITH A FINAL OR BINDING CONTESTED CASE
HEARING ORDER OR DECISION**

15. A contested case hearing decision & order (CCH D&O) which required Texas Mutual to pay benefits to an injured employee was received by Texas Mutual on [REDACTED]
16. The CCH D&O ordered Texas Mutual to pay benefits to the injured employee for the period from [REDACTED] through [REDACTED]
17. Texas Mutual timely filed an appeal on [REDACTED] but was still required to comply with the order during the appeals process within five days of filing the appeal, or by [REDACTED]
18. Texas Mutual had previously issued payment for the period of [REDACTED] through [REDACTED] and issued payment for the period of [REDACTED] through [REDACTED] on [REDACTED]. Texas Mutual issued partial payment for the period of [REDACTED] through [REDACTED] on [REDACTED] but did not fully comply with the CCH D&O until it issued additional payment plus interest on [REDACTED] which was 523 days late.

ASSESSMENT OF SANCTION

19. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
20. Timely submission of information and documentation to DWC and compliance with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
21. DWC relies on claims information submitted by the insurance carriers for a variety of purposes including, but not limited to, providing required information and reports to the legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
22. The parties' adherence to DWC approved agreements is imperative to minimizing disputes and resolving them promptly and fairly. Additionally, it serves to assure that injured employees have access to prompt dispute resolution processes and prompt, high quality medical care.
23. 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.
24. 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; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company.
25. 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; the promptness and earnestness of actions to prevent future violations; and PBO assessments.
26. 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).
27. 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, 409.021, 414.002, 414.003, 415.002, and 415.021.

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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 § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Texas Mutual violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely initiate and/or continue payment of TIBs.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receipt of the report.
10. Texas Mutual violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely pay accrued income benefits in accordance with the DD report no later than five days after receipt of the report.
11. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
12. Texas Mutual violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to accurately notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

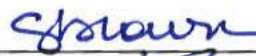
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13. Pursuant to TEX. LAB. CODE §§ 409.022 and 409.024, an insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, terminate benefits, or reduce benefits.
14. Texas Mutual violated TEX. LAB. CODE §§ 409.022 and 409.024 when it suspended income benefits without reasonable grounds for doing so.
15. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a person 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, it must be complied with no later than the fifth day after filing a written request for appeal.
16. Texas Mutual violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) when it failed to comply with a CCH D&O within five days of appeal.

ORDER


Texas Mutual Insurance Company is ORDERED to pay an administrative penalty of \$23,500 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 *NCTW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Van Moreland
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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AFFIDAVIT

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STATE OF Texas

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COUNTY OF Travis

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is CURTIS W. JOHNSON. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VP of CLAIMS, and am the authorized representative of Texas Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

Texas Mutual Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

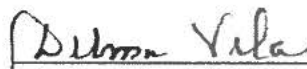
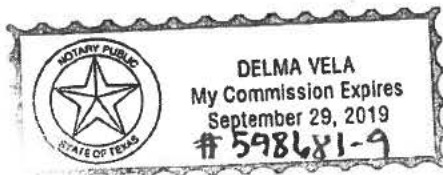
Texas Mutual Insurance Company is voluntarily entering into this consent order. Texas Mutual Insurance Company consents to the issuance and service of this consent order."



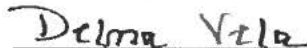
Affiant

SWORN TO AND SUBSCRIBED before me on February 25, 2019.

(NOTARY SEAL)



Signature of Notary Public



Printed Name of Notary Public

My Commission Expires: 9/29/19

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