

No. 2020-6575

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

Date: 11-23-2020

Subject Considered:

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, Massachusetts 02116-5066

Consent Order
DWC Enforcement File No. 22534

General remarks and official action taken:

This is a consent order with Liberty Mutual Insurance Company (Liberty Mutual). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Liberty Mutual.

Waiver

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

Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED], Liberty Mutual received notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED]. The injured employee returned to work. The injured employee began accruing days again in [REDACTED]. The eighth day of disability accrued on [REDACTED].
5. Liberty Mutual was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
6. On [REDACTED], Liberty Mutual filed Form PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (Form PLN-11) denying benefits. Liberty Mutual filed Form PLN-11 52 days late.
7. On [REDACTED], Liberty Mutual initiated TIBs by paying a lump sum of [REDACTED].

Assessment of Sanction

1. Failure to provide appropriate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. 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.
3. 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; 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 the size of the company or practice.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: none were provided.
 5. Liberty Mutual 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).
 6. Liberty Mutual 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, 414.003, 415.002, 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

3. Liberty Mutual 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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.
7. 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.
8. Pursuant to 28 TEX. ADMIN. CODE § 124.3(a), the insurance carrier is liable for and must pay all benefits that accrued and were payable before the date the insurance carrier filed a Notice of Denial on the compensability of a claim.
9. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
10. Liberty Mutual violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate TIBs.

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Texas Labor Code §§402.083 and 402.092

Order

It is ordered that Liberty Mutual Insurance Company must pay an administrative penalty of \$8,500 within 30 days from the date of this order. Liberty Mutual Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

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Texas Labor Code §§402.083 and 402.092

Affidavit

STATE OF _____

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COUNTY OF _____

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

"My name is _Sean Doody_____. 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 _Claims Team Manager_____ and am the authorized representative of Liberty Mutual Insurance Company. I am duly authorized by the organization to execute this statement.

Liberty Mutual Insurance Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2020.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

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