

No. **2022-7348**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 6/21/2022**

**Subject Considered:**

Liberty Insurance Corporation  
175 Berkley Street  
Boston, Massachusetts 02116-5066

Consent Order

DWC Enforcement File Nos. 22062, 23852, 23996, 24151, 24281, 24760, 25521, 26593

**General remarks and official action taken:**

This is a consent order with Liberty Insurance Corporation (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 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. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

File No. 23996

3. On [REDACTED] Respondent received a designated doctor (DD) report in connection with a DD examination. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR).
4. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report, or by [REDACTED]
5. On [REDACTED] Respondent made a partial IIBs payment that was seven days late.
6. Respondent fully complied by paying the interest owed on the IIBs payment on [REDACTED] which was 91 days late.

File No. 24151

7. On [REDACTED] Respondent received a DD report in connection with a DD examination. The DD determined that disability existed from [REDACTED] through [REDACTED] Respondent was required to pay accrued benefits no later than five days after receiving the DD report, or by [REDACTED]
8. Respondent issued payment of temporary income benefits (TIBs) on [REDACTED] which was 46 days late.

File No. 23852

9. On [REDACTED] a Benefit Review Conference was held. The Benefit Review Officer ordered the injured employee to submit to a DD exam.
10. On [REDACTED] the injured employee completed the DD exam.
11. On [REDACTED] Respondent received the DD report, which stated that disability existed from [REDACTED] through [REDACTED] Respondent was required to pay accrued benefits no later than five days after receiving the DD report, or by [REDACTED]
12. Respondent issued payment of TIBs on [REDACTED] which was 93 days late.

File No. 24760

13. On [REDACTED] Respondent received a DD report stating that the injured employee's injury was work related and that the injured employee could return to work with restrictions on [REDACTED]
14. Respondent was required to pay accrued benefits no later than five days after receipt of the DD report, or by [REDACTED]
15. Respondent issued payment of TIBs on [REDACTED] which was 25 days late.
16. Respondent provided the following information as mitigation: The injured employee began working for a new employer after the date of injury but before the DD exam delayed providing Respondent with a current wage statement.

File No. 26593

17. On [REDACTED] Respondent received a report from a certifying doctor in connection with a certifying examination. The certifying doctor determined that the injured employee reached MMI on [REDACTED] with a [REDACTED] IR. Respondent was required to pay accrued IIBs benefits on [REDACTED]
18. Respondent issued payment of IIBs on [REDACTED] which was 24 days late.

Failure of Insurance Carrier to Adjust the Average Weekly Wage

File No. 25521

19. Respondent was required to pay TIBs to an injured employee for the periods of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period.
20. Between [REDACTED] and [REDACTED] Respondent failed to correctly calculate the payment it made on [REDACTED]. Respondent paid [REDACTED] based on an estimated average weekly wage (AWW) of [REDACTED]. On [REDACTED] Respondent received an updated employer's wage statement that showed the correct AWW was [REDACTED]. Thus, the correct weekly benefit amount was [REDACTED].
21. On [REDACTED] Respondent issued the correct payment 14 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 22062*

22. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee in the amount of 25% of each income benefit payment made to the injured employee.
23. On [REDACTED] the injured employee requested a lump sum payment for the remaining benefits due between [REDACTED] through [REDACTED]. Respondent issued a lump sum payment to the injured employee on [REDACTED].
24. Respondent was required to issue payment for attorney fees in the amount of [REDACTED] on the same date as the payments issued to the injured employee.
25. On [REDACTED] Respondent miscalculated and paid the attorney [REDACTED].
26. On [REDACTED] Respondent issued the outstanding payment of [REDACTED] to the injured employee's attorney, which was 16 days late.

Failure to Timely Comply with a Benefit Dispute Agreement

*File No. 24281*

27. On [REDACTED] the parties signed a DWC Form 024, or Benefit Dispute Agreement (BDA) for IIBs.
28. Respondent was required to pay IIBs to the injured employee five days from executing the BDA, or on [REDACTED].
29. On [REDACTED] Respondent issued a partial payment IIBs, which was eight days late.
30. Respondent fully complied by issuing an interest payment of IIBs on [REDACTED], which was 64 days late.

### **Assessment of Sanction**

1. Violations of the statutes and rules governing the Texas workers' compensation system have significant consequences on workers' compensation claims, the benefits delivered to injured employees and the services provided by attorneys and health care providers. DWC relies on insurance carriers to comply with the statutes and rules to provide a fair and balanced 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; 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.

4. DWC found the following factors 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, but not limited to circumstances outside Respondent's control in File No. 24760, where the delay by the injured employee in providing a current wage statement contributed to the delay in Respondent issuing IIBs. An additional mitigating factor is the Respondent's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act. In File No. 22062, Respondent made a partial payment within seven days of the deadline. The payment made 91 days later was for \$11.47 in interest. In File No. 24281, Respondent also made a partial payment eight days after the deadline. The payment made 64 days late was for \$2.96 in interest.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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. 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 414.003.
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 the Texas Workers' Compensation Act or a DWC rule.
7. 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.

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

8. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
10. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely and accurately pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure of Insurance Carrier to Adjust the Average Weekly Wage

11. Pursuant to 28 Tex. Admin. Code § 128.1(e), if an insurance carrier is notified that the employee's AWW is different than what the carrier had previously determined (either as a result of subsection (c)(2) of this section, receipt of an updated wage statement, or by operation of other adjustments permitted/required under this title), the carrier shall adjust the AWW and begin payment of benefits based upon the adjusted AWW no later than the first payment due at least seven days following the date the carrier receives the new information regarding the AWW.
12. Respondent violated Tex. Lab. Code §408.081 and 28 Tex. Admin. Code § 128.1(e) by failing to timely and accurately pay accrued income benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC

13. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
14. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney 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. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
15. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.021(a), and 415.0035(e) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Comply with a Benefit Dispute Agreement

16. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
17. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement approved by DWC.
18. Respondent violated Tex. Lab. Code §§ 415.002(a)(17), (20), and (22) and 415.010 by failing to timely comply with a BDA.



**Order**

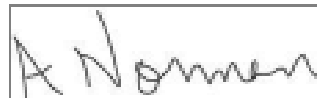
It is ordered that Liberty Insurance Corporation must pay an administrative penalty of \$20,000 within 30 days from the date of this order. Liberty Insurance Corporation must pay the administrative penalty by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



---

Dan Paschal, J.D.  
Deputy Commissioner  
Policy & Customer Services  
TDI, Division of Workers' Compensation

Approved Form and Content:



---

Amy Norman  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** Texas

§

§

**COUNTY OF** Collin

§

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Michael Potter. I hold the position of Complex Director and am the authorized representative of Liberty Insurance Corporation. My business address is: 7900 Windrose Ave, Plano, Collin, Texas, 75024.  
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

*Michael Potter*

Declarant

Executed on June 20th, 2022.