

No. 2024-8517

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

Date: 2/7/2024

Subject Considered:

Commerce & Industry Insurance Company
PO Box 201329
Austin, Texas 78720-1329

Consent Order
DWC Enforcement File No. 32697

General remarks and official action taken:

This is a consent order with Commerce & Industry Insurance Company (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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2018 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in the 2020 or 2022 PBO assessments.

Failure to Timely Pay Death Benefits

3. Respondent was required to make weekly death benefits payments to an injured employee's beneficiaries from [REDACTED], through [REDACTED]. Respondent failed to timely pay \$ [REDACTED] in death benefits to the beneficiaries as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	129
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	126
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	119
d.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	112
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	105
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	98
g.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	91
h.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	84

4. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 267 days late.

Assessment of Sanction

1. Failure to provide accurate death benefits in a timely and accurate manner is harmful to the injured employee's beneficiaries 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 penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to the beneficiaries, and to the extent reasonable, the economic benefit resulting from the prohibited act;
 4. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
 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, and 414.002.
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 a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Death Benefits

6. Pursuant to Tex. Lab. Code §§ 408.181; 409.023; 415.002(a)(16); and 28 Tex. Admin. Code § 132.16, an insurance carrier is required to pay death benefits weekly, as and when benefits accrue, without order from the commissioner, unless the legal beneficiary and the insurance carrier have entered into an agreement for the benefits to be paid monthly.
7. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
8. Respondent violated Tex. Lab. Code §§ 408.181; 409.023; 415.002(a)(5), (16), (20), and (22); and 28 Tex. Admin. Code § 132.16 each time Respondent failed to timely pay death benefits.


Failure to Timely Interest on Late Death Benefits

9. Pursuant to Tex. Lab. Code § 408.064, accrued but unpaid death benefits and interest shall be paid in a lump sum.
10. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(22) by failing to timely pay interest on late death benefit payments.

Order


It is ordered that Commerce & Industry Insurance Company must pay an administrative penalty of \$1,900 within 30 days from the Commissioner signs the order.

After receiving an invoice, Commerce & Industry Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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