

No. **2024-8519**

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

Date: 2/8/2024

Subject Considered:

AIU Insurance Company
PO Box 201329
Austin, Texas 78720-1329

Consent Order
DWC Enforcement File Nos. 33537 and 33538

General remarks and official action taken:

This is a consent order with AIU 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2022 Performance Based Oversight (PBO) assessment. Respondent was not chosen to be tiered in the 2020 or 2018 PBO assessments.

Failure to Timely Comply with a Medical Fee Dispute Resolution (MFDR) Order

File No. 33537

3. On [REDACTED], Respondent received MFDR Findings and Decision Order No. M4-22-2476-01, which became final on [REDACTED].
4. The MFDR decision required Respondent to pay \$ [REDACTED] plus accrued interest within 30 days of receipt, or by [REDACTED].
5. On [REDACTED], Respondent paid the principal amount, which was 33 days late.
6. On [REDACTED], Respondent paid the interest in compliance with the MFDR Decision, which was 35 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 33538

7. On [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
8. Between [REDACTED], and [REDACTED], Respondent issued multiple benefit payments to the injured employee (IE). Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	59
b)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	55
c)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	45
d)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	38
e)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	34
f)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	24

g)										17
h)										10
i)										4

9. In total, Respondent paid \$ [REDACTED] in attorney fees late.

Assessment of Sanction

1. Refusal or failure to comply with a MFDR decision or DWC order is harmful to the Texas workers compensation system and disrupts the timely payment of medical fees. Further, failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to 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; the penalty necessary to deter future violations, and the economic benefit to Respondent at the expense of other system participants.

4. DWC found the following factors 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.
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), 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 §§ 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.

Failure to Timely comply with a Medical Fee Dispute Resolution (MFDR) Order

File No. 33537

8. Respondent violated Tex. Lab. Code §§ 415.002(a) (22); 415.0035(e); and 415.021(a); by failing to timely comply with a MFDR decision.

Failure to Timely Pay Attorney Fees Ordered by DWC


File No. 33538

9. 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.
10. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Order

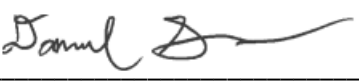
It is ordered that AIU Insurance Company must pay an administrative penalty of \$2,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, AIU 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:



Dan Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation


Unsworn Declaration

STATE OF NEW JERSEY §
§
COUNTY OF HUDSON §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter H. Macdonald. I hold the position of Vice President and am the authorized representative of AIU Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ, 07302.
(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.

DocuSigned by:

D382ΔFΔD7R07ΔΔC

Declarant

Executed on January 26, 2024.