

No. **2024-8890**

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

Date: 10/4/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 34467 & 34692

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) assessments. Respondent was not selected to be tiered in the 2020 or 2018 PBO assessments.

Failure to Timely Pay Benefits Based on an Adjusted Average Weekly Wage (AWW)

File No. 34467

3. On [REDACTED], Respondent received a designated doctor (DD) report which found that the injured employee had a disability from [REDACTED], through the date of the exam, which was [REDACTED]. The DD report also found that the injured employee had reached maximum medical improvement (MMI) on [REDACTED], with a permanent impairment rating (IR) of [REDACTED] %.
4. On [REDACTED], Respondent timely paid \$ [REDACTED] in accrued impairment income benefits (IIBs).
5. On [REDACTED], Respondent received wage documentation from the injured employee's attorney, documenting the injured employee's post-injury earnings from a second employer between [REDACTED], and [REDACTED].
6. Respondent was required to adjust the AWW and begin payment of temporary income benefits (TIBs) based on the adjusted AWW within seven days after the new information was received, or by [REDACTED].
7. On [REDACTED], Respondent paid \$ [REDACTED] in accrued TIBs based on the adjusted AWW, which was 37 days late.

Failure to Timely Initiate Payment of Accrued TIBs

File No. 34692

8. Respondent was required to pay TIBs to an injured employee from [REDACTED] 22, through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	1
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	7
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	3

Assessment of Sanction

1. Failure to pay benefits after receiving correct wage information increases the likelihood of disputes, has a negative impact on the injured employee, and is abrogation of a carrier's responsibilities under Texas Workers' Compensation Act and DWC Rules.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. 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.
4. 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; the economic benefit resulting from the prohibited act; and

whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

5. DWC considered mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e). In case 34467, Respondent came into compliance before the investigation in this matter, which indicates good faith. Further, although Respondent has discipline on other benefits-related violations, this was Respondent's first violation involving an adjusted AWW. In case 34692, DWC considered that the benefits were paid seven days late.
6. 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).
7. 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 § 408.081, an injured employee is entitled to timely and accurate income benefits.

5. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
6. Pursuant to Tex. Lab. Code §§ 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Benefits Based on an Adjusted Average Weekly Wage (AWW)

File No. 34467

7. Pursuant to 28 Tex. Admin. Code § 128.1(e), if an insurance carrier determines or is notified that the employee's AWW is different than what the insurance carrier had previously determined, the insurance carrier shall adjust the AWW and begin payment of benefits on the next payment due and within seven days following the date the insurance carrier received the new information regarding the AWW.
8. Respondent violated Tex. Lab. Code §§ 408.081; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 128.1(e) by failing to adjust the AWW and begin payment of benefits based upon the adjusted AWW.

Failure to Timely Initiate Payment of Accrued TIBs

File No. 34692

9. 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.
10. 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.
11. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Order

It is ordered that AIU Insurance Company must pay an administrative penalty of \$8,000 within 30 days from when 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:



Connor Ambrosini
Lead Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

