

No. 2024-8965

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

Date: 11/21/2024

Subject Considered:

Ace American Insurance Company
436 Walnut Street
Philadelphia, Pennsylvania 19106-3703

Consent Order
DWC Enforcement File No. 34940

General remarks and official action taken:

This is a consent order with Ace American 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, 2020, and 2022 Performance Based Oversight (PBO) assessments.

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

3. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
4. The CD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED] % impairment rating.
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
6. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was 67 days late.

Failure to Timely Pay Accrued IIBs

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

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	58
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	52
c.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	46
d.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	38
e.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	32
f.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	25
g.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	18
h.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	11
i.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	3

8. In total, Respondent paid \$ [REDACTED] in IIBs late.

Assessment of Sanction

1. Failure to provide 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 amount at issue and the lateness of the payments; Respondent's disciplinary history; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including, but not limited to: the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

4. DWC considered Respondent's demonstration of good faith as mitigating pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. Respondent 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. 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 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)(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 violates a provision of the Texas Workers' Compensation Act.

Failure to Pay Accrued IIBs Based on a CD Report

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.
8. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after receiving the doctor's report certifying MMI.
9. Pursuant to 28 Tex. Admin. Code § 130.1(a)(1), only an authorized doctor may certify MMI, determine whether there is permanent impairment, and assign an impairment rating if there is permanent impairment.
10. Pursuant to 28 Tex. Admin. Code § 130.1(d)(2), a Report of Medical Evaluation under this rule shall be filed with the division, injured employee, injured employee's representative, and the insurance carrier.
11. Pursuant to 28 Tex. Admin. Code § 130.2(a)(1), a treating doctor who is not authorized to assign impairment ratings as provided in § 130.1, shall make a referral to a doctor who is authorized to do so on behalf of the treating doctor. However, this evaluation shall be considered to be the report of the treating doctor.
12. Pursuant to 28 Tex. Admin. Code § 130.3(a), a doctor, other than a treating doctor, who is authorized to certify that an employee has reached MMI, must do so in accordance with § 130.1. In addition to complying with the filing requirements of § 130.1, the CD shall file a copy of the Report of Medical Evaluation and the narrative with the treating doctor within the same timeframes for filing with the other persons that § 130.1 requires.
13. Pursuant to 28 Tex. Admin. Code § 130.3(c), a treating doctor's agreement or disagreement does not require a separate examination of the employee prior to the issuance of the opinion and shall not be considered a certification as that term is used in § 130.1.
14. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when MMI is not disputed.

15. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Timely Pay Accrued IIBs

16. 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.
17. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches MMI and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
18. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely pay accrued IIBs.

Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$6,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Ace American 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:



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

Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of VP, Claims Compliance and am the authorized representative of Ace American Insurance Company. My business address is: 1 Beaver Valley Road, Wilmington, New Castle DE, 19803.
(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.

Daniel S. Hawthorne
Declarant

Executed on October 24, 2024.