

No. **2024-8969**

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

**Date: 11/25/2024**

**Subject Considered:**

City of San Antonio  
PO Box 839966  
San Antonio, Texas 78283-3966

Consent Order  
DWC Enforcement File No. 34853

**General remarks and official action taken:**

This is a consent order with the City of San Antonio (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 is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "average" tier in the 2024 Performance Based Oversight (PBO) assessment, as "poor" in the 2022 PBO assessment, and as "high" in the 2020 PBO assessment.

DWC Audit No. IBA-24-108

3. On [REDACTED], DWC initiated DWC Audit No. IBA-24-108 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits as well as timely submitting claim data to DWC.
4. The audit examined death benefit and lifetime income benefit payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified one lifetime income benefit claim and 10 death benefit claims for audit. These 11 claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of lifetime income benefits and death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting of lifetime income benefit and death benefit terminations and lifetime income benefit annual increases.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 30% of examined claims (3 out of 10).
7. Specifically, Respondent issued inaccurate payments for a total of 317 weeks, resulting in underpayments of \$ [REDACTED] to beneficiaries.

Failure to Timely Pay Accurate Lifetime Income Benefits

8. Respondent failed to timely pay accurate LIBs for 100% of examined claims (1 out of 1).
9. Specifically, Respondent failed to timely apply a 3% annual increase for 20 weeks, resulting in an underpayment of \$ [REDACTED] to an injured employee.

Failure to Timely Report Claim Data to DWC

10. Respondent failed to timely report the total number of death benefit terminations for 100% of examined claims involving terminations (2 out of 2). Specifically,

Respondent was 662 and 2,620 days late in reporting the true death benefit terminations of the two examined claims.

11. Respondent failed to timely report the annual LIBs increase for 100% of examined claims (1 out of 1). Specifically, Respondent failed to timely report four annual LIBs increases for the one claim examined.

### **Assessment of Sanction**

1. Failure to provide death benefits or lifetime income benefits in a timely and cost-effective manner is harmful to injured employees or beneficiaries under particularly stressful circumstances and increases the likelihood of disputes in the Texas workers' compensation system.
2. DWC relies on the claims information insurance carriers submit for many purposes, including protecting beneficiaries, providing required information and reports to the Legislature, ensuring compliance with the Texas Labor Code and DWC rules, and detecting patterns and practices in claim handling that provoke improvements in 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 or their beneficiaries;
  - the history of compliance with EDI 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; the history and extent of previous administrative violations, including violations involving both death and lifetime income benefits in the recent past; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to multiple injured employees or their beneficiaries.
  5. As a matter of justice, DWC considered as mitigating the fact that this matter results from a DWC audit and not a system participant complaint, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e). DWC also considered Respondent's status as a self-insured governmental entity.
  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, 409.021, 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 §§ 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.
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 violates a DWC rule or a provision of the Texas Workers' Compensation Act.

*Failure to Timely Pay Accurate LIBs*

7. Pursuant to Tex. Lab. Code § 408.161(a) and (b), an insurance carrier must pay accurate LIBs to the employee until his or her death. Under Tex. Lab. Code § 408.161(c), the amount of LIBs is equal to 75% percent of the employee's average weekly wage and increased 3% each year.
8. Pursuant to 28 Tex. Admin. Code § 131.1(a) and (c), the insurance carrier must initiate the payment of LIBs without a final decision or order from the commissioner if the employee is eligible. The insurance carrier must initiate the first payment of LIBs on or before the 15th day after the date it reasonably believes the injured employee is eligible.
9. Respondent violated Tex. Lab. Code §§ 408.161, 409.023, and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 131.1 when it failed to timely pay accurate LIBs.

*Failure to Timely Pay Accurate Death Benefits*

10. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.

11. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
12. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 132.17(f), an insurance carrier is required to initiate payment of death benefits to eligible claimants no later than the 15th day after it receives the claim for death benefits.
13. Respondent violated Tex. Lab. Code §§ 408.181; 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 132.17 each time Respondent failed to timely pay accurate death benefits.

*Failure to Timely Report Claim Data to DWC*

14. Pursuant to 28 Tex. Admin. Code § 124.2(a), (b), & (d), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2 each time it failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

**Order**

It is ordered that the City of San Antonio must pay a \$14,500 administrative penalty within 30 days from the date the Commissioner signs the order.

After receiving an invoice, the City of San Antonio 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, P.O. Box 12030, Austin, Texas 78711-2030.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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Connor Ambrosini  
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