

No. **2025-9306**

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

Date: 5/20/2025

Subject Considered:

ABF Freight System, Inc.
PO Box 10048
Fort Smith, Arkansas 72917-0048

Consent Order
DWC Enforcement File No. 35732

General remarks and official action taken:

This is a consent order with ABF Freight System, Inc. (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 private employer operating in the State of Texas. Respondent holds a certificate of authority issued by DWC to act as a Certified Self Insurer pursuant to Tex. Lab. Code, Chapter 407 and 28 Tex. Admin. Code, Chapter 114.
2. Respondent was not selected to be tiered in the 2020, 2022, or 2024 Performance Based Oversight (PBO) assessments.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

3. From [REDACTED], to [REDACTED], Respondent paid an injured employee weekly temporary income benefits (TIBs) using the maximum TIBs rate of \$ [REDACTED].
4. On [REDACTED], Respondent received a DWC Form-069, *Report of Medical Evaluation* (DWC-69), for a designated doctor's (DD) exam performed on [REDACTED]. The DD found that the injured employee reached maximum medical improvement (MMI) on [REDACTED], and had a [REDACTED] % impairment rating (IR).
5. On [REDACTED], Respondent made a lump sum payment of \$ [REDACTED] in accrued impairment income benefits (IIBs) to the injured employee.
6. On [REDACTED], Respondent sent the injured employee a plain language notice stating that, as of [REDACTED], the injured employee would be receiving \$ [REDACTED] in IIBs each week based on the DWC-69.
7. Between [REDACTED], and [REDACTED], Respondent continued to pay IIBs weekly.
8. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) finding that the injured employee had *not* reached MMI and requiring Respondent to resume paying TIBs.
9. Respondent received the CCH D&O on [REDACTED].
10. The CCH D&O became final on [REDACTED]. Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED].
11. On [REDACTED], Respondent paid \$ [REDACTED] in accrued TIBs by lump sum 30 days late. However, Respondent should have paid \$ [REDACTED]. This miscalculation resulted in an overpayment of \$ [REDACTED].

Failure to Pay IIBs Based on a DD Report

12. On [REDACTED], Respondent received a DD report for a DD exam of the same injured employee that was performed on [REDACTED]. The DD determined that the injured employee reached statutory MMI on [REDACTED], with an [REDACTED] % IR.

13. Due to this, the injured employee was entitled to 33 weeks of IIBs at a rate of \$741 per week.
14. Respondent was required to pay \$ [REDACTED] in IIBs for the benefit period of [REDACTED] through [REDACTED], no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
15. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs by lump sum 21 days late. However, Respondent should have paid \$ [REDACTED] for the period of [REDACTED], through [REDACTED]. Respondent's partial payment left an unpaid balance of \$ [REDACTED].
16. On [REDACTED], DWC notified Respondent of the underpayment. Meanwhile, IIBs continued to accrue.
17. On [REDACTED], Respondent made a \$ [REDACTED] lump sum payment of IIBs 199 days late. However, Respondent should have paid \$ [REDACTED].
18. Respondent underpaid IIBs by \$ [REDACTED]. In total, however, Respondent overpaid \$ [REDACTED] in benefits due to the \$ [REDACTED] overpayment of TIBs.

Improperly Recouping an Overpayment of Income Benefits

19. Respondent reduced the injured employee's remaining accrued IIBs by \$ [REDACTED] after discovering they had already paid \$ [REDACTED] of the \$ [REDACTED] in total benefits due. Thus, Respondent improperly reduced 38.22% of the injured employee's IIBs to offset their previous overpayment of TIBs.
20. Since the injured employee's IIBs were no longer being reduced for attorney's fees, the most Respondent could deduct to recoup any overpayment was 25% of the injured employee's weekly benefits. Furthermore, the recoupment could not begin earlier than the second income benefit payment made after the injured employee received written notice of the recoupment. Therefore, Respondent should have reduced the injured employee's remaining accrued IIBs by no more than [REDACTED].
21. There is no evidence that Respondent notified the injured employee in writing of the intended recoupment.

22. Overall, although Respondent paid the entire \$ [REDACTED] in benefits due, the claims handling was unreasonable and demonstrated compliance issues that present a risk to system participants.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, 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:
 - a. Respondent's non-compliance with a CCH D&O is serious because it is a priority violation under Tex. Lab. Code § 402.0235, and interferes with the efficient regulation of workers' compensation;

- b. Further, Respondent's untimely and irregular benefit payment and recoupment violations involved a large amount of benefits delivered significantly late, which created income insecurity for the injured employee;
 - c. Respondent's conduct negatively impacted the delivery of more than \$20,000 in benefits to an injured employee; and
 - d. Respondent's size and status as one of the nation's largest less-than-truckload carriers presents a risk of future violations if the conduct is not rectified.
4. DWC considered Respondent's overall lack of economic benefit from its conduct and its lack of prior similar violations as mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 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.

Failure to Timely Comply with a CCH D&O

7. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
8. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a final CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, it must be complied with no later than the fifth day after filing a written request for appeal.
9. Respondent violated Tex. Lab. Code §§ 410.169, 415.002(a)(20) & (22), 415.0035(e), and 415.021(a); and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Pay IIBs Based on a DD Report

10. 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.
11. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
12. Pursuant to 28 Tex. Admin. Code § 127.10(i), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.

10. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), & (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Improperly Recouping an Overpayment of Income Benefits

11. Pursuant to 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.
12. Pursuant to 28 Tex. Admin. Code § 126.16(b)(2), if the injured employee's income benefits are not concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 25% of the income benefit payment to which the injured employee is entitled.
13. Respondent violated Tex. Lab. Code § 415.002(a)(20); and 28 Tex. Admin. Code § 126.16(b)(1) by failing to notify the injured employee prior to reducing benefits to recoup an overpayment.
14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 126.16(b)(2) by improperly recouping overpayments of income benefits.

Order

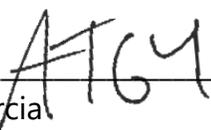
It is ordered that ABF Freight System, Inc. must pay an administrative penalty of \$9,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, ABF Freight System, Inc. 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:



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

Commissioner's Order
ABF Freight System, Inc.
DWC Enforcement File No. 35732
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Unsworn Declaration

STATE OF Arkansas

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COUNTY OF Sebastian

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Tracy Burns. I hold the position of Resolution Administrator II and am the authorized representative of ABF Freight System, Inc. My business address is:

8401 McClure Dr. Fort Smith Sebastian AR 72916
(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.

Tracy Burns
Declarant

Executed on April 29, 2025.