

No. 2020 6231

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: FEB 12 2020

**Subject Considered:**

**TEXAS MUTUAL INSURANCE COMPANY**  
2200 Aldrich Street  
Austin, Texas 78723

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 22734

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Texas Mutual Insurance Company (Texas Mutual).

**WAIVER**

Texas Mutual acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Texas Mutual waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Texas Mutual 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. Texas Mutual was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment; and "high" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

**FAILURE TO TIMELY PAY ACCRUED IMPAIRMENT INCOME BENEFITS**

3. On [REDACTED] Texas Mutual received a *DWC Form-69, Report of Medical Evaluation* (DWC-69) from the injured employee's certifying doctor, which determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED]% impairment rating (IR).
4. Texas Mutual did not dispute the certified MMI or assigned IR in the DWC-69 by filing a request for a designated doctor (DD) examination or a request for a benefit review conference (BRC). Therefore, Texas Mutual was required to pay accrued impairment income benefits (IIBs), in accordance with the assigned IR in the DWC-69, no later than five days after receiving the DWC-69, or by [REDACTED].

5. On [REDACTED], Texas Mutual issued a lump sum payment of accrued IIBs but did not pay the full amount of IIBs owed until it issued a payment for interest on [REDACTED], which was 168 days late.

#### ASSESSMENT OF SANCTION

6. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
7. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (DWC) appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
8. In assessing the sanction for this case, DWC found the following factors set forth 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; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; the history of compliance with electronic data interchange requirements; and other matters that justice may require, including the size of the company or practice.
9. In assessing the sanction for this case, DWC found the following factors set forth 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; and other matters that justice may require, including PBO assessments.

10. Texas Mutual acknowledges that DWC and Texas Mutual have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
11. Texas Mutual acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### CONCLUSIONS OF LAW

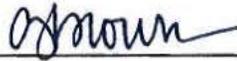
The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
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 commissioner rule.
6. Pursuant to TEX. LAB. CODE § 408.121(b) and 28 TEX. ADMIN. CODE §§ 130.8(b) and 130.12(b)(1), the insurance carrier shall begin payment of IIBs not later than the fifth day after the date on which the insurance carrier receives the DWC-69, unless the insurance carrier has disputed the certified MMI or assigned IR by requesting a DD examination or BRC.
7. Texas Mutual violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) when it failed to timely pay accrued IIBs in accordance with the DWC-69.

**ORDER**

Texas Mutual Insurance Company is ORDERED to pay an administrative penalty of \$7,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Glen Imes  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

