

No. **2022-7265**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 3/14/2022

Subject Considered:

TASB Risk Management Fund
PO Box 26300
Austin, Texas 78755-0300

Consent Order
DWC Enforcement File No. 28326

General remarks and official action taken:

This is a consent order with TASB Risk Management Fund (TASB). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against TASB.

Waiver

TASB acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TASB 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. TASB is a joint fund for self-insured, political subdivisions that provides workers' compensation benefits to employees in accordance with TEX. LAB. CODE, Ch. 504.
2. TASB was classified as "high" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Termination of Benefits without Reasonable Grounds

3. On [REDACTED] an injured employee and TASB entered into a benefit dispute agreement (BDA). The BDA stated that the parties agreed that the compensable injury of [REDACTED] included a [REDACTED] [REDACTED]
4. DWC approved the BDA on [REDACTED]
5. TASB received the BDA on [REDACTED]. TASB was required to comply with the BDA within five days of receipt, or by [REDACTED]
6. On [REDACTED] the injured employee visited her treating doctor who stated, "based on a careful exam of the patient, as well as information obtained about his [sic] job duties and mechanism of injury, it does not appear that the presenting complaints arose out of his [sic] job duties in the course of the patient performing those duties. There is a [REDACTED] injury, but I do not see a compelling causal relationship to the current symptoms."
7. TASB issued a PLN-11, *Notice of Disputed Issues and Refusal to Pay Benefits* (PLN-11) on [REDACTED] stating it did not agree "that some of your medical conditions were caused by your work-related injury (extent of injury)." The PLN-11 stated, "based on a review of the medical documentation from your treating physician dated [REDACTED] TASB Risk Management contends that the current complaints and symptoms are not due, nor directly related to the compensable injury."

Assessment of Sanction

1. Failure to provide the appropriate 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 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 had a 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.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating including whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. The confusion caused by the new doctor's diagnosis has not caused the injured employee injury because she has not requested further treatment at this point.
5. TASB 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. TASB 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, 414.003, 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. TASB 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) and (22), an insurance carrier or its representative commits an administrative violation if they violate a DWC rule or fail to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2), an insurance carrier commits an administrative violation if it does not have reasonable grounds to dispute or reduce benefits.
7. TASB violated TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2) and (22) when it disputed or reduced benefits without reasonable grounds.

Order

It is ordered that TASB Risk Management Fund must pay an administrative penalty of \$3,000 within 30 days from the date of this order. TASB Risk Management Fund must pay the administrative penalty by 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.



Dan Paschal, J.D.
Deputy Commissioner,
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

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Unsworn Declaration

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Dubravka Romano. I hold the position of Associate Executive Director of TASB Risk Management Services and am the authorized representative of TASB Risk Management Fund. My business address is: 12007 Research Blvd, Austin, Texas, 78759-2439.

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.

Dubravka Romano

Declarant

Executed on February 18, 2022