

No. **2022-7294**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 4/11/2022

Subject Considered:

Zurich American Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order
DWC Enforcement File Nos. 26594 and 29114

General remarks and official action taken:

This is a consent order with Zurich 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 26594

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 32 days late.
4. The TIBs payment to an injured employee for the period of [REDACTED], through [REDACTED] was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 25 days late.
5. The TIBs payment to an injured employee for the period of [REDACTED] through [REDACTED] was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 18 days late.
6. The TIBs payment to an injured employee for the period of [REDACTED] through [REDACTED] was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 11 days late.
7. The TIBs payment to an injured employee for the period of [REDACTED] through [REDACTED] was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 3 days late.

Failure to Timely Initiate Payment of Temporary Income Benefits

File No. 29114

8. On [REDACTED] Respondent received notice of an injury to an employee.
9. The first day of disability for the injured employee began on [REDACTED]
The eighth day of disability accrued on [REDACTED]
10. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
11. Respondent issued the initial TIBs payment on [REDACTED] The payment was 13 days 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 nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act. In the first issue, the adjuster confused the doctors' reports. A designated doctor's (DD) exam was requested and held August 15, 2020. The DD, Dr. Agana, submitted his report on August 28, 2020, found that the injured employee had a closed head concussion and contusions but had not reached maximum medical improvement (MMI) and thus did not have an impairment rating (IR). The DD also did not include a discussion of MMI and IR in the narrative of his report. The insurance carrier returned the DD report to Dr. Agana and requested he include the information in the narrative. Before Dr. Agana submitted his corrected report, a second report, from Dr. Cheemeh was received on September 15, 2020, certifying that the injured employee had reached MMI on July 15, 2020, with an IR of 23%. The adjuster believed Dr. Cheemeh's report was the corrected DD report and stopped all TIBs benefits at that point. The examination which Dr. Cheemeh's report was based on occurred prior to Dr. Agana's DD exam. When Dr. Agana's corrected DD report was submitted on November 6, 2020, the insurance carrier realized the error, reinstated TIBs, and issued payment for the benefit periods between September 28, 2020, and November 28, 2020, with interest, the same day. In the second issue, the third-party administrator experienced unexpected issues during the pandemic.
 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.
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 §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.

9. Pursuant to TEX. LAB. CODE § 408.103 and 28 TEX. ADMIN. CODE § 129.3, the insurance carrier is required to pay the correct amount of TIBs.
10. Pursuant to 28 TEX. ADMIN. CODE § 128.1(e), if a carrier determines or is notified that the employee's AWW is different than what the carrier had previously determined (either as a result of subsection (c)(2) of this section, receipt of an updated wage statement, or by operation of other adjustments permitted/required under this title), the carrier shall adjust the AWW and begin payment of benefits based upon the adjusted AWW no later than the first payment due at least seven days following the date the carrier receives the new information regarding the AWW.
11. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
12. Respondent violated TEX. LAB. CODE §§ 408.103, 408.081, 409.021, 415.002(a)(20) and (22), and 28 TEX. ADMIN. CODE §§ 124.3, 124.7, and 128.1(e), each time it failed to timely initiate payment of TIBs, adjust and pay an AWW, and accurately pay TIBs.

Order

It is ordered that Zurich American Insurance Company must pay an administrative penalty of \$7,000 within 30 days from the date of this order. Zurich American Insurance Company 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

Unsworn Declaration

STATE OF Illinois

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COUNTY OF Cook

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Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Joseph Ragonese. I hold the position of Head of Claims Governance and am the authorized representative of Zurich American Insurance Company. My business address is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.

(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.

Joseph Ragonese

Declarant

Executed on March 29, 2022.