

No. **2022-7323**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 5/9/2022**

**Subject Considered:**

Texas Mutual Insurance Company  
2200 Aldrich Street  
Austin, Texas 78723-3474

Consent Order  
DWC Enforcement File Nos. 27610 and 27611

**General remarks and official action taken:**

This is a consent order with Texas Mutual 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 workers' compensation/employers' liability insurance in Texas.

2. Respondent was classified as "average" tier in the 2007 PBO assessment. Respondent was classified as "high" tier in the 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Termination of Benefits without Reasonable Grounds

*First Instance: Enforcement Case No. 27610*

3. On [REDACTED] Respondent received a DWC Form-073, *Work Status Report* (DWC-073), that stated the injured employee could return to work with restrictions from an injury on [REDACTED]
4. On [REDACTED] the injured employee informed Respondent he planned to return to work on [REDACTED]. Also on [REDACTED] the employer informed Respondent of a Bona Fide Job Offer.
5. On [REDACTED] Respondent issued a DWC Form PLN-11, *Notice of Disputed Issues and Refusal to Pay Benefits* (PLN-11). The PLN-11 cited a lack of documentation that the injured employee had experienced reduced wages as a result of the compensable injury.
6. On [REDACTED] Respondent requested a wage statement from the employer. On [REDACTED] Respondent received a DWC Form-003, *Employer's Wage Statement* (DWC-003) from the employer.
7. The DWC-003 indicated the injured employee did not make the average weekly wage (AWW) for the weeks of [REDACTED] through [REDACTED] and [REDACTED] through [REDACTED]. Additionally, the injured employee did not make the AWW for the week of [REDACTED] through [REDACTED]
8. On [REDACTED] Respondent initiated temporary income benefits (TIBs).

*Second Instance: Enforcement Case No. 27611*

9. On [REDACTED] Respondent received a DWC Form-001, *Employer's First Report of Injury* (DWC-001), for a date of injury of [REDACTED]. The DWC-001 stated the injured employee lost time beginning on [REDACTED].
10. On [REDACTED] the injured employee informed Respondent he lost time between [REDACTED] and [REDACTED] and returned to work on [REDACTED].
11. On [REDACTED] Respondent issued a PLN-11. The PLN-11 stated, "neither the employee nor the employer report that the compensable injury resulted in a loss of wages in excess of the seven-day waiting period. Further, there is insufficient medical documentation to support disability beyond the seven-day waiting period."
12. On [REDACTED] the injured employee again informed Respondent he lost time between [REDACTED] and [REDACTED] and returned to work on [REDACTED].
13. On [REDACTED] the employer confirmed to Respondent that the injured employee lost time between [REDACTED] and [REDACTED] and returned to work on [REDACTED].
14. On [REDACTED] Respondent initiated TIBs.

**Assessment of Sanction**

1. Failure to provide appropriate 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 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; and other matters that justice may require, including the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Act and DWC rules.
4. 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 violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and other matters that justice may require, including, but not limited to PBO assessments.
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) 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 terminate or reduce benefits.
7. Respondent violated TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2) and (22) when it terminated benefits without reasonable grounds.
8. 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.

9. 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.
10. Respondent violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.

**Order**

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$5,500 within 30 days from the date of this order. Texas Mutual 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.



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

Approved Form and Content:



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