

No. 2022-7606

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

Date: 11/8/2022

Subject Considered:

Ace American Insurance Company
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File Nos. 29515 & 29527

General remarks and official action taken:

This is a consent order with Ace 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 Comply with a Request for Reimbursement for Travel Expenses

File No. 29515

3. On [REDACTED] Respondent received written requests for reimbursement of travel expenses from an injured employee for dates of service from [REDACTED] through [REDACTED]. Respondent was required to either issue payment or denial of the injured employee's reimbursement requests no later than the 45th day after the receipt of the request, which was [REDACTED].
4. Respondent issued payment for the reimbursement requests on [REDACTED] [REDACTED] which was 273 days late.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 29527

5. Respondent was required to pay temporary income benefits (TIBs) to an injured employee weekly from [REDACTED] through [REDACTED]. Each TIBs payment was due seven days after the first day of the pay period. Respondent issued payment of TIBs late as follows:

	Weekly Period	Due Date	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	28
b.	[REDACTED]	[REDACTED]	[REDACTED]	21
c.	[REDACTED]	[REDACTED]	[REDACTED]	14
d.	[REDACTED]	[REDACTED]	[REDACTED]	7
e.	[REDACTED]	[REDACTED]	[REDACTED]	13

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. Failing to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers' compensation system and the roles of its system participants.
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: prompt and earnest actions to prevent future violations of this type. Regarding File No. 29527, Respondent has implemented improved processes to ensure repetitive payment errors do not reoccur. A Respondent employee with managerial responsibilities now runs a daily task report for the region which identifies all tasks related to repetitive payments and relays that report to supervisors and staff to ensure these specific tasks are handled daily and repetitive payments are not interrupted or delayed.
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 Request for Reimbursement for Travel Expenses

7. Pursuant to 28 Tex. Admin. Code § 134.110, an insurance carrier shall pay or deny an injured employee's properly completed request for reimbursement within 45 days of receipt. If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason for the reduction or denial.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and 28 Tex. Admin. Code § 134.110 by failing to timely act on a request for reimbursement for travel expenses.


Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

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; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

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Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$7,500 within 30 days from the date of this order. Ace 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

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Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Ace American Insurance Company. My business address is:

1 Beaver Valley Road Wilmington New Castle Delaware 19803
(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.



Declarant

Executed on October 2, 2022.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092