

No. 2022-7644

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

Date: 11/29/2022

Subject Considered:

Liberty Insurance Corporation
P.O. Box 259015
Plano, Texas 75025-9015

Consent Order
DWC Enforcement File Nos. 28325 & 28494

General remarks and official action taken:

This is a consent order with that Liberty Insurance Corporation (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 Accurately Pay Temporary Income Benefits

File No. 28325

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED], through [REDACTED]
4. Respondent failed to calculate and issue the correct amount of TIBs to the injured employee, resulting in an underpayment of [REDACTED] per week.
5. On [REDACTED] Respondent issued a restitution payment, including interest, to the injured employee in the amount of [REDACTED]
6. Respondent's restitution payment was 994 days late from when the benefits accrued and 657 days late from when the benefits ended.

File No. 28494

7. On [REDACTED], DWC ordered Respondent to pay [REDACTED] in attorney fees to be paid in the amount of 15 percent from the injured employee's benefits.
8. On [REDACTED] the parties agree to and Respondent received a DWC Form-42, *Benefit Dispute Agreement* (BDA). In the BDA, the injured employee's attorney agreed to receive a reduced fee of [REDACTED]
9. Beginning [REDACTED] Respondent deducted [REDACTED] in attorney fees pursuant to the DWC order dated [REDACTED]
10. Respondent did not cease deducting attorney fees from the injured employee's income benefits despite the fact that the attorney fees were paid in full. By M [REDACTED] [REDACTED], Respondent had underpaid TIBs to the injured employee by [REDACTED]
11. On [REDACTED] the injured employee's attorney issued a refund check to the injured employee in the amount of [REDACTED]

Assessment of Sanction

1. Failure to issue appropriate attorneys fees or to provide income benefits in a timely and accurate 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 penalty necessary to deter future violations; the history and extent of previous violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; the economic benefit resulting from the prohibited act; and other factors that justice may require such as a lack of prompt and earnest actions to prevent future violations; the size of the company; and the heightened awareness of the legal duty to comply with the Act and DWC rules.

4. DWC considered the mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): corrective training to prevent future violations.
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, 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. 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 § 408.081(a), an injured employee is entitled to timely and accurate income benefits.
6. 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.
7. 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.

8. 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.

9. Respondent violated Tex. Lab. Code §§ 408.081(a), 408.103, 415.002(a) (20) and (22); and 28 Tex. Admin. Code § 129.3 each time Respondent failed to accurately pay accrued income benefits.

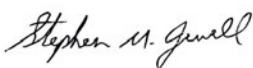
Order

It is ordered that Liberty Insurance Corporation must pay an administrative penalty of \$12,000 within 30 days from the date of this order. that Liberty Insurance Corporation 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:



Stephen M. Jewell
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Collin §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Michael Potter . I hold the position of Complex Director and am the authorized representative of that Liberty Insurance Corporation . My business address is: 7900 Windrose Avenue , Plano , Collin , TX , 75024 .
(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.

Michael Potter
Declarant

Executed on November 17th , 2022.