

No. 2023-7777

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

Date: 2/8/2023

Subject Considered:

Luba Casualty Insurance Company
2351 Energy Drive, Suite 2000
Baton Rouge, Louisiana 70808-2600

Consent Order
DWC Enforcement File No. 29541

General remarks and official action taken:

This is a consent order with Luba Casualty 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 not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay or Dispute Accrued Impairment Income Benefits

3. On [REDACTED] Respondent received a DWC Form-069 from a certifying doctor (CD) selected by the treating doctor acting in place of a treating doctor for an injured employee.
4. The CD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR). Respondent did not dispute the date of MMI or the IR.
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DWC Form-069. The deadline to pay benefits was [REDACTED]
6. Respondent issued payment of IIBs on [REDACTED] which was 215 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:
- a. Pursuant to Tex. Lab. Code § 415.021(c)(1)(A), Respondent's non-compliance is serious. Non-payment and late payment of income benefits directly affects beneficiaries economically and emotionally. Respondent failed to pay \$41,496 in income benefits to the injured employee and ultimately paid the late amount 215 days late. The injured employee was denied benefits for more than seven months.
 - b. Pursuant to Tex. Lab. Code § 415.021(c)(1)(B) and (F), Respondent has a history of previous administrative violations, including order number 6991 for failure to timely pay medical bills and report Electronic Data Interchange (EDI) data.
 - c. Pursuant to Tex. Lab. Code § 415.021(c)(1)(D), Respondent's significant non-compliance of \$41,496 demonstrates the need for a penalty necessary to deter future violations by Respondent.
 - d. Pursuant to Tex. Lab. Code § 415.021(c)(1)(E), Respondent's administrative violations had a negative impact on the delivery of benefits to the injured employee in this matter. Specifically, Respondent was 215 days late paying \$41,496.
 - e. Pursuant to Tex. Lab. Code § 415.021(c)(2), Respondent's administrative violations were particularly severe in this matter and Respondent gained an economic benefit of \$41,496 for more than seven months.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent ultimately paid the late IIBs and has no prior consent orders on this particular issue. Respondent has conducted additional training with its adjusters regarding payment deadlines for initiating IIBs

payments and has discussed with its adjusters the importance of timely paying all income benefits.

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 § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
10. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely dispute or initiate IIBs.

Order

It is ordered that Luba Casualty Insurance Company must pay an administrative penalty of \$12,750 within 30 days from the date of this order. Luba Casualty 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

Unsworn Declaration

STATE OF Louisiana §
COUNTY OF East Baton Rouge Parish §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Christina Elliott. I hold the position of Claims Supervisor and am the authorized representative of Luba Casualty Insurance Company. My business address is:
PO BOX 98082, Baton Rouge, East Baton Rouge Parish, LA, 70898.
(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.

Christina Elliott
Declarant

Executed on January 31, 2023.