

No. **2024-8586**

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

**Date: 3/26/2024**

**Subject Considered:**

City of Austin  
PO Box 1088  
Austin, Texas 78767-1088

Consent Order  
DWC Enforcement File No. 33660

**General remarks and official action taken:**

This is a consent order with City of Austin (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 is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "high" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

3. DWC reviewed a death benefits claim filed by three beneficiaries of a deceased firefighter in accordance with the statutory cancer presumption established under Tex. Gov't. Code § 607.055 (cancer presumption) where Respondent issued multiple Notices of Denial of Compensability/Liability and Refusal to Pay Benefits or Plain Language Notice-1 (PLN-1s) for the beneficiaries.
4. On [REDACTED], the firefighter filed a claim for benefits for [REDACTED] under the cancer presumption. Respondent investigated the claim, determined the cancer presumption applied, accepted the condition as compensable, and paid benefits.
5. The firefighter died due to the [REDACTED] on [REDACTED], and Respondent was notified of the death on the same day.

Failure to Timely Pay or Dispute Death Benefits

6. On [REDACTED], one of the firefighter's beneficiaries filed a DWC-42, Claim for Workers' Compensation Death Benefits (DWC-42) with Respondent.
7. Respondent was required to initiate payment of death benefits or file a notice of dispute no later than the 15th day after the latest of:
  - a) receiving the claim for death benefits;
  - b) final adjudication of the carrier's denial of compensability or liability (this only applies if the denial was filed before the expiration of the carrier's right to deny compensability); or
  - c) the expiration of the carrier's right to deny compensability (60 days from notification of the death).
8. The latest date that Respondent could pay death benefits or file a notice of dispute was [REDACTED]. Respondent filed the PLN-1 disputing compensability for the death benefits claim of the beneficiary on [REDACTED], which was 29 days late.
9. On [REDACTED] and [REDACTED], two other beneficiaries filed DWC-42s with Respondent.
10. The latest date that Respondent could pay death benefits or file a notice of dispute was [REDACTED] and [REDACTED]. Respondent filed the PLN-1s disputing compensability for the death benefits claims of these beneficiaries on [REDACTED], which was 13 and 14 days late, respectively.

11. Subsequently, on [REDACTED], Respondent paid \$ [REDACTED] in death benefits to the beneficiaries.

Refusal to Pay Benefits Without Reasonable Grounds

12. Respondent filed multiple PLN-1s denying compensability for the three beneficiaries' claims on [REDACTED] and [REDACTED], more than 100 days after receiving notice of the firefighter's death.
13. Respondent stated in the PLN-1s that it disputed compensability and refused to pay benefits based on "newly discovered evidence" that the firefighter's death was related to other exposures to toxic chemicals or cancer-causing agents not associated with the firefighter's job duties with Respondent. Specifically, that the firefighter was involved in [REDACTED] as a part of the [REDACTED] [REDACTED] which could have been a producing cause of the firefighter's fatal [REDACTED] diagnosis.
14. This rationale for denial is based on evidence that could reasonably have been discovered during the initial investigation and acceptance of the firefighter's claim for [REDACTED] in [REDACTED], 10 months before the PLN-1s were filed. The information was known to the firefighter's employer since the firefighter's participation in the [REDACTED].
15. Respondent, at the time it issued the PLN-1s, failed to establish any reasonable grounds for its refusal to pay benefits. First, Respondent previously determined the cancer presumption applied and accepted the firefighter's [REDACTED] claim. Second, Respondent waived its right to contest the compensability of the firefighter's beneficiaries' death benefit claims when it filed the PLN-1s more than 60 days after being notified of the firefighter's death. Finally, Respondent based its denial on evidence that could reasonably have been discovered earlier.

### **Assessment of Sanction**

1. Failure to provide death benefits in a timely and cost-effective manner and denying benefits without reasonable grounds 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
4. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's status as a self-insured governmental entity and Respondent's 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, and 414.002.
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 each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

#### Failure to Timely Pay or Dispute Death Benefits

6. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code § 132.17(f), an insurance carrier is required to initiate payment of death benefits or file a notice of dispute no later than the 15th day after the latest of: a) receiving the claim for death benefits; b) final adjudication of the carrier's denial of compensability or

liability under §124.2 and subsection (b) of 28 Tex. Admin. Code § 132.17; or c) the expiration of the carrier's right to deny compensability/liability under subsection (a) of 28 Tex. Admin. Code § 132.17.

7. Pursuant to 28 Tex. Admin. Code § 132.17(a), upon being notified of a death resulting from an injury, the insurance carrier (carrier) shall: investigate whether the death was a result of the injury and, if the carrier has not already done so in compliance with §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) due to the injury being reported separately, conduct an investigation relating to the compensability of the death, the carrier's liability for the death, and the accrual of benefits. The carrier shall have 60 days from notification of the death or from written notice of the injury that resulted in the death (whichever is greater) to conduct its investigation.
8. Pursuant to 28 Tex. Admin. Code § 132.17(b), if the carrier believes that it is not liable for the death or that the death was not compensable, the carrier shall file the notice of denial of a claim (notice of denial) in the form and manner required by §124.2 of this title (relating to Carrier Reporting and Notification Requirements). If the notice of denial is not filed by the 60th day as required, the carrier may not raise an issue of compensability or liability and is liable for any benefits that accrued and shall initiate benefits in accordance with this section.
9. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 132.17 when Respondent failed to timely pay or dispute death benefits.

#### Refusal to Pay Benefits Without Reasonable Grounds


10. Pursuant to Tex. Lab. Code § 409.022(c), an insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner.
11. Pursuant to Tex. Lab. Code § 409.021(c), if an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability.

12. Pursuant to Tex. Lab. Code § 409.021(d), an insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.
  
13. Respondent violated Tex. Lab. Code §§ 409.021, 409.022(c), 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 132.17 when it issued PLN-1s that failed to establish any reasonable grounds for its refusal to pay death benefits because the PLN-1s were issued after the 60-day deadline to contest compensability and were based on evidence that could reasonably have been discovered earlier.

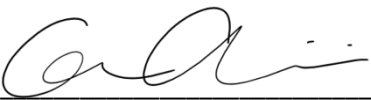
**Order**

It is ordered that City of Austin must pay an administrative penalty of \$7,500 within 30 days from the Commissioner signs the order.

After receiving an invoice, City of Austin must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:

  
\_\_\_\_\_  
Connor Ambrosini  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation



Commissioner's Order  
City of Austin  
DWC Enforcement File No. 33660  
Page 9 of 9

Unsworn Declaration

STATE OF Texas §  
§  
COUNTY OF Travis §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Leslie Melro. I hold the position of Risk Manager and am the authorized representative of City of Austin. My business address is:

5202 E. Ben White # 500, Austin, Travis, Tx, 78741  
(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.

Leslie Melro  
Declarant

Executed on March 12, 2024.