

No. **2021-6942**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/28/2021

Subject Considered:

Valley Forge Insurance Company
9500 Arboretum Boulevard, Suite 145
Austin, Texas 78759-6307

Consent Order
DWC Enforcement File No. 27070

General remarks and official action taken:

This is a consent order with Valley Forge Insurance Company (Valley Forge Insurance). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Valley Forge Insurance.

Waiver

Valley Forge Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Valley Forge Insurance 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. Valley Forge Insurance 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. Valley Forge Insurance was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED] Valley Forge Insurance received notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED]. The eighth day of disability accrued on [REDACTED].
5. Valley Forge Insurance was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
6. Valley Forge Insurance issued the initial TIBs payment totaling [REDACTED] including interest, on [REDACTED] which was 369 days late.

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; 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.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; a concurrent claim administered by Valley Forge Insurance for the same injured employee led to the erroneous belief that benefits were being timely paid; for approximately 109 days of the missed payments; Valley Forge Insurance had a reasonable belief that the injured employee was eligible to obtain and retain employment at his previous Average Weekly Wage; delay by the employer in providing wage statements contributed to the late payment; Valley Forge Insurance has followed up with training for its adjusters on timely and accurately paying TIBs; and Valley Forge Insurance has a low violation history.
 5. Valley Forge Insurance acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).
 7. Valley Forge Insurance 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, 415.002, 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Valley Forge Insurance 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 § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
7. Valley Forge Insurance violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) each time it failed to timely initiate payment of TIBs.

Order

It is ordered that Valley Forge Insurance Company must pay an administrative penalty of \$18,500 within 30 days from the date of this order. Valley Forge 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF IL

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COUNTY OF Cook

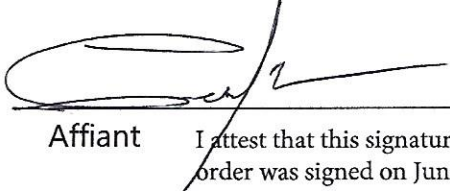
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Before me, the undersigned authority, personally appeared PETER McCARRON
who being by me duly sworn, deposed as follows:

"My name is PETER McCARRON. I am of sound mind, capable of making this
statement, and have personal knowledge of these facts which are true and correct.

I hold the office of SUP CLAIMS and am the authorized representative of
Valley Forge Insurance Company. I am duly authorized by the organization to execute this
statement.

Valley Forge Insurance Company has knowingly and voluntarily entered into this consent
order and agrees with and consents to the issuance and service of this consent order."



Affiant I attest that this signature is valid and confirm that the
order was signed on June 22, 2021.

SWORN TO AND SUBSCRIBED before me on JUNE 22, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

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