

No. **2022-7688**

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

Date: 12/13/2022

Subject Considered:

City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6312

Consent Order
DWC Enforcement File Nos. 29115 and 29884

General remarks and official action taken:

This is a consent order with City of Fort Worth (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 "average" tier in the 2020, 2016, and 2014 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2018, 2012, 2010, and 2007 Performance Based Oversight (PBO) assessments. Respondent was not tiered in the 2009 PBO.

Failure to Timely Pay Supplemental Income Benefits

File No. 29115

3. On [REDACTED] Respondent received a DWC Form-52 for the fifth quarter of SIBs. The fifth quarter of SIBs began on [REDACTED]
4. Respondent's payment for the first month of the fifth quarter was due by the 10th day after Respondent received the DWC Form-52 or the seventh day of the fifth quarter, whichever is later. In this case, the latest date was [REDACTED]
5. Respondent issued a partial payment for SIBs for the first month of the fifth quarter on [REDACTED]
9. Respondent issued the remaining payment for SIBs for the first month of the fifth quarter on [REDACTED] which was 85 days late.

File No. 29884

10. On [REDACTED] Respondent received a DWC Form-052 for the sixth quarter of SIBs. The sixth quarter of SIBs began on [REDACTED]
11. Respondent's payment for the second month of the sixth quarter was due by the 37th day of the sixth quarter. In this case, Respondent's payment for the second month of the sixth quarter was due on [REDACTED]
12. Respondent issued a payment for SIBs for the second month of the sixth quarter on [REDACTED] which was six days late.
13. Respondent's payment for the third month of the sixth quarter was due by the 67th day of the sixth quarter. In this case, Respondent's payment for the third month of the sixth quarter was due on [REDACTED]
14. Respondent issued a payment for SIBs for the third month of the sixth quarter on [REDACTED] which was five 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: 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; and other matters that justice may require such as evidence of a heightened awareness of the legal duty to comply with the Act and DWC rules.
4. DWC considered the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent is a governmental entity and municipality.

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

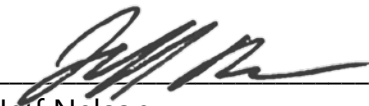
1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 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 § 408.144, SIBs are calculated quarterly and paid monthly.

8. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
10. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for subsequent quarters of SIBs by the 10th day after receiving the application for supplemental income benefits or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
11. Respondent violated Tex. Lab. Code §§ 408.145, 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 each time Respondent failed to timely pay SIBs.

Commissioner's Order
City of Fort Worth
DWC Enforcement File Nos. 29115 and 29884
Page 6 of 7


Order

It is ordered that City of Fort Worth must pay an administrative penalty of \$5,500 within 30 days from the date of this order. City of Fort Worth 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

