

No. 2022-7709

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

**Date:** 12/22/2022

**Subject Considered:**

Zurich American Insurance Company  
1299 Zurich Way  
Schaumburg, Illinois 60196-1091

Consent Order  
DWC Enforcement File No. 30231 and 30309

**General remarks and official action taken:**

This is a consent order with Zurich American 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 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.

*File No. 30231*

Failure to Comply with a DWC Order

1. On [REDACTED] Respondent received Medical Fee Dispute Resolution (MFDR) Findings and Decision Order No. M4-22-0042-01.
2. This order required Respondent to pay [REDACTED] plus accrued interest, by [REDACTED]
3. Respondent issued payment in accordance with the MFDR Order, on [REDACTED] which was 16 days late.

*File No. 30309*

Failure to Timely Dispute Temporary Income Benefits (TIBs)

4. On [REDACTED] Respondent received notice of an injury to an employee. The date of injury was [REDACTED] with a date of accrual for TIBs on [REDACTED]
5. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was [REDACTED]
6. Respondent filed a dispute on [REDACTED] which was 17 days late.

Failure to Timely Initiate TIBs

7. Due to the untimely dispute for the same injured employee, Respondent was required to pay TIBs to the injured employee from [REDACTED] through [REDACTED]. Respondent failed to timely pay TIBs, as follows:

	<b>Payment Period</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.	[REDACTED]	[REDACTED]	[REDACTED]	47
b.	[REDACTED]	[REDACTED]	[REDACTED]	47
c.	[REDACTED]	[REDACTED]	[REDACTED]	47
d.	[REDACTED]	[REDACTED]	[REDACTED]	47

e.	[REDACTED]	[REDACTED]	[REDACTED]	47
f.	[REDACTED]	[REDACTED]	[REDACTED]	47
g.	[REDACTED]	[REDACTED]	[REDACTED]	47

Failure to Timely Pay Accrued TIBs

8. Respondent was also required to pay accrued TIBs to the injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

Payment Period	Date Due	Date Paid	Days Late
[REDACTED]	[REDACTED]	[REDACTED]	40
[REDACTED]	[REDACTED]	[REDACTED]	33
[REDACTED]	[REDACTED]	[REDACTED]	26

9. Respondent paid initial and accrued TIBs in the amount of [REDACTED] with interest, on [REDACTED].

**Assessment of Sanction**

1. Failure to provide income benefits in a timely manner, or to timely comply with DWC orders for payment of medical bills, is not cost-effective and is harmful to injured employees, health care providers, 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.
  4. DWC finds the following factors mitigating pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
  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.

Failure to Comply with a DWC Order

7. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
8. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Respondent violated Tex. Lab. Code §§ 415.002(a)(17); 415.021(a); and 415.0035(e) by failing to comply with a DWC order.

Failure to Timely Dispute TIBs

10. 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.

11. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 by failing to timely dispute payment of TIBs.

Failure to Timely Initiate TIBs


12. 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.
13. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 by failing to timely initiate TIBs.

Failure to Timely Pay Accrued TIBs


14. 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.
15. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to pay accrued TIBs no later than the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
16. Pursuant to 28 Tex. Admin. Code § 124.3(a)(1), if the insurance carrier does not file a Notice of Denial by the 15th day after receipt of the written notice of injury or does not file a Notice of Continuing Investigation as described under Labor Code §409.021(a-3) (relating to Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation), the insurance carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this section.
17. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay accrued TIBs.

**Order**

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

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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Kathleen Kern  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** IL §  
§  
**COUNTY OF** Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Joseph Ragonese. I hold the position of Claims Governance and QA Director and am the authorized representative of Zurich American Insurance Company. My business address is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.  
(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.

Joseph Ragonese  
Declarant

Executed on 12 / 8, 2022.