

No. **2023-7911**

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

Date: 4/26/2023

Subject Considered:

Bexar County
101 West Nueva, Suite 901
Paul Elizondo Tower
San Antonio, Texas 78205-3446

Consent Order
DWC Enforcement File No. 29038

General remarks and official action taken:

This is a consent order with Bexar County (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 providing workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "average" tier in the 2009, 2014, and 2016 Performance Based Oversight (PBO) assessments and "high" tier in the 2012, 2018 PBO assessments. Respondent was not selected to be tiered in the 2007, 2010, 2020, or 2022 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

3. Between [REDACTED] and [REDACTED] DWC issued orders to Respondent to pay a total of [REDACTED] in attorney's fees in connection with legal services provided to an injured employee. The DWC Orders are deemed received on the day following the issuance of the order. Respondent received the following orders:

	Date of Order	Order Number	Amount of Order
a.	[REDACTED]	10	[REDACTED]
b.	[REDACTED]	11	[REDACTED]
c.	[REDACTED]	12	[REDACTED]
d.	[REDACTED]	13	[REDACTED]
e.	[REDACTED]	14	[REDACTED]
f.	[REDACTED]	15	[REDACTED]
g.	[REDACTED]	21	[REDACTED]
h.	[REDACTED]	22	[REDACTED]
i.	[REDACTED]	20	[REDACTED]
		TOTAL	[REDACTED]

4. The orders required Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee. The attorney fees were due each time Respondent paid accrued income benefits to the injured employee. Respondent failed to timely pay the attorney fees, as follows:

	Date Paid Beneficiary	Benefits Paid	Attorney Fees Due	Attorney Fees Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	21
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	19
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	12
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	5
	Totals		[REDACTED]	[REDACTED]	

5. On [REDACTED] Respondent fully complied by paying remaining attorney's fees due in a lump sum.

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to 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; and the penalty necessary to deter future violations.
4. DWC considers the follow factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the history and extent of previous administrative violations; Respondent's demonstration of good faith; actions Respondent took to rectify the consequences of the prohibited act; and that Respondent is a county

municipality. Specifically, Respondent cooperated with DWC, and issued payment in full to the injured employee's attorney.

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 §§ 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.
8. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
9. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22), 415.021(a), 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

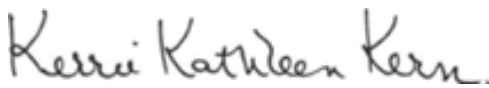
Order

It is ordered that Bexar County must pay an administrative penalty of \$1,500 within 30 days from the date of this order. Bexar County 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:



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

Unsworn Declaration

STATE OF Texas §

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COUNTY OF Bexar §

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Veronica Guevara. I hold the position of Risk Management & Compliance Director and am the authorized representative of Bexar County. My business address is:

101 W. Nueva St., Suite 901, San Antonio, Bexar, Texas 78205
(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.



Declarant

Executed on April 17, 2023.