

No. **2023-8105**

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

Date: 7/28/2023

Subject Considered:

Arch Insurance Company
210 Hudson Street, Suite 300
Jersey City, New Jersey 07311-1206

Consent Order
DWC Enforcement File Nos. 31455, 31715, & 31716

General remarks and official action taken:

This is a consent order with Arch 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 "high" tier in the 2007 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 31455

3. Respondent was required to pay temporary income benefits (TIBs) to an 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
a.	[REDACTED]	[REDACTED]	[REDACTED]	14
b.	[REDACTED]	[REDACTED]	[REDACTED]	7

4. Respondent paid [REDACTED] in late TIBs.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

File No. 31715

- 5.iii On [REDACTED] DWC issued a contested case hearing decision and order (CCHiii D&O) requiring Respondent to pay benefits in accordance with the decision.iii Respondent received the CCH D&O on [REDACTED]
- 6.iii Respondent's written request for appeal was required to be filed by the 15thiii working day after receiving the CCH D&O, which was [REDACTED]
7. Respondent filed a request for appeal on [REDACTED]. Respondent was requirediii to comply with the CCD D&O no later than the fifth day after filing the request foriii appeal. The deadline to comply was [REDACTED]
8. Respondent partially paid [REDACTED] in benefits on [REDACTED] which was 134 days late. Respondent paid the remaining [REDACTED] on [REDACTED] which wasiii 141 days late.iii
9. Respondent paid [REDACTED] in interest on [REDACTED] which was seven days late.iii

Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 31716

10. On [REDACTED] Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED]
11. The DD determined the injured employee's period of disability was from [REDACTED] to "present," because of a compensable injury.
12. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report, or by [REDACTED]
13. On [REDACTED] Respondent paid accrued TIBs and interest in a lump sum for all benefit periods between [REDACTED] and [REDACTED] which was 99 days late.
14. Respondent was required to pay temporary income benefits (TIBs) to an 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
a.	[REDACTED]	[REDACTED]	[REDACTED]	97
b.	[REDACTED]	[REDACTED]	[REDACTED]	90
c.	[REDACTED]	[REDACTED]	[REDACTED]	83
d.	[REDACTED]	[REDACTED]	[REDACTED]	76
e.	[REDACTED]	[REDACTED]	[REDACTED]	69
f.	[REDACTED]	[REDACTED]	[REDACTED]	62
g.	[REDACTED]	[REDACTED]	[REDACTED]	55
h.	[REDACTED]	[REDACTED]	[REDACTED]	48
i.	[REDACTED]	[REDACTED]	[REDACTED]	41
j.	[REDACTED]	[REDACTED]	[REDACTED]	34
k.	[REDACTED]	[REDACTED]	[REDACTED]	27
l.	[REDACTED]	[REDACTED]	[REDACTED]	20
m.	[REDACTED]	[REDACTED]	[REDACTED]	13
n.	[REDACTED]	[REDACTED]	[REDACTED]	6

15. Respondent paid all late TIBs and interest in a lump sum totaling [REDACTED] on [REDACTED]

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. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. 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.
4. 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.

5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's prompt and earnest actions to prevent future violations of these types. Respondent has confirmed that adjusters have received, or are scheduled to receive, additional training designed to enhance performance and ensure future compliance. Additionally, Respondent has worked to ensure that its claim handlers understand the impact of DD reports on their claims in order to prevent the reoccurrence of future violations.
6. 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).
7. 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 §§ 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.
6. Pursuant to Tex. Lab. Code §§ 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

7. Pursuant to Tex. Lab. Code §§ 408.081; 408.082, 409.021; and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

9. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
10. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
11. Pursuant to Tex. Lab. Code § 410.202, a party must file a written request for appeal not later than the 15th day after receipt of a administrative law judge's decision. Saturdays, Sundays, and holidays listed in Tex. Gov't Code § 662.003 are not included in the computation of time in which an appeal request must be filed.

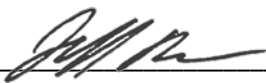
12. Respondent violated Tex. Lab. Code §§ 410.169, 415.002(a)(20) and (22); 415.0035(e); 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Pay Temporary Income Benefits in Accordance with a DD Report

13. Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
14. Pursuant to 28 Tex. Admin. Code § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
15. Respondent violated Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Order

It is ordered that Arch Insurance Company must pay an administrative penalty of \$25,000 within 30 days from the date of this order. Arch Insurance Company 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:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF New Jersey §
§
COUNTY OF Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell. I hold the position of Vice President and am the authorized representative of Arch Insurance Company. My business address is: 210 Hudson Street, Suite 300, Jersey City, Hudson, NJ, 07311.
(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 July 19th, 2023.