

No. 2024-8753

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

Date: 7/25/2024

Subject Considered:

Space Exploration Technologies, Corp.
1 Rocket Road
Hawthorne, California 90250-6844

Consent Order
DWC Enforcement File No. 34271

General remarks and official action taken:

This is a consent order with Space Exploration Technologies, Corp. (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 certified, self-insured, employer that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 407.
2. Respondent was not selected to be tiered in the 2018, 2020, or 2022 Performance Based Oversight (PBO) assessments.

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

3. On [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
4. The DD determined the injured employee had disability from [REDACTED], through [REDACTED] (date of examination) because of a compensable injury. The DD also determined that the injured employee had not reached maximum medical improvement.
5. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED].
6. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs, which was seven 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.
 4. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): this is the first violation of this type for Respondent and Respondent's prompt and earnest actions to prevent future violations.
 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, and 414.002.
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 § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
6. 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.
7. 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.
8. 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.
9. Pursuant to 28 Tex. Admin. Code § 127.10(i), 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.
10. Respondent violated Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) 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 Space Exploration Technologies, Corp. must pay an administrative penalty of \$1,100 within 30 days from the Commissioner signs the order.

After receiving an invoice, Space Exploration Technologies, Corp. 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF California §
§
COUNTY OF Los Angeles §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Jane Malubag. I hold the position of Sr. Manager, Benefits and am the authorized representative of Space Exploration Technologies, Corp. My business address is:

1 Rocket Road, Hawthorne, LA, CA, 90250.
(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.

Jane Malubag
Declarant

Executed on July 03, 2024.