

No. 2024-8792

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

Date: 8/15/2024

Subject Considered:

Old Republic Insurance Company
307 North Michigan Avenue, 17th Floor
Chicago, Illinois 60601

Consent Order
DWC Enforcement File Nos. 33422, 33558, & 33851

General remarks and official action taken:

This is a consent order with Old Republic 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 Performance Based Oversight (PBO) assessments between the years of 2018 and 2022.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

File No. 33422

1. On [REDACTED], an injured employee suffered a workplace injury.
2. On [REDACTED], the injured employee was laid off during a workforce reduction.
3. On [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
4. The DD determined that the injured employee suffered a disability as a direct result of the workplace injury from [REDACTED], through [REDACTED].
5. Per the DD's findings, the eighth day of disability was [REDACTED].
6. Respondent was required to pay accrued income benefits no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
7. On [REDACTED], Respondent filed a plain language notice (PLN-11), disputing the issue of disability, four months after receiving the DD report, or 124 days late.
8. On [REDACTED], Respondent paid \$ [REDACTED] in accrued income benefits in accordance with the DD report, or 128 days late. Accrued interest was paid a day later.

File No. 33851

9. On [REDACTED], Respondent received a DD report of an examination performed on [REDACTED].
10. The DD determined that the injured employee reached MMI on [REDACTED], with an impairment rating of [REDACTED] percent.
11. Respondent was required to pay accrued income benefits no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
12. Respondent paid \$ [REDACTED] in benefits on [REDACTED], which was 36 days late.

File No. 33558

13. On [REDACTED], Respondent received a DD report of an examination performed or [REDACTED].
14. The DD determined that the injured employee suffered a disability from [REDACTED], through [REDACTED].
15. Respondent was required to pay accrued income benefits no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
16. Respondent paid \$ [REDACTED] in accrued income benefits 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 history and extent of previous administrative violations; 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 found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require; specifically, Respondent terminated the adjuster and the supervisor involved in file 33558.
 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.
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 §§ 408.082(b), if the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report


File Nos. 33422, 33558, & 33851

8. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 Tex. Admin. Code § 127.10(i), an 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 and 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 two DD reports no later than five days after receiving the reports.

Order


It is ordered that Old Republic Insurance Company must pay an administrative penalty of \$20,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Old Republic 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:



Dan Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Illinois §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Deborah J. Matthews. I hold the position of Asst. Vice President and am the authorized representative of Old Republic Insurance Company. My business address is: 307 N. Michigan Ave., Chicago, Cook, IL, 60601.
(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 17, 2024.