

No. **2021-6923**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 7/15/2021**

**Subject Considered:**

Texas Mutual Insurance Company  
2200 Aldrich Street  
Austin, Texas 78723-3474

Consent Order  
DWC Enforcement File No. 26479

**General remarks and official action taken:**

This is a consent order with Texas Mutual Insurance Company (Texas Mutual). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Texas Mutual.

**Waiver**

Texas Mutual acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Texas Mutual 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. Texas Mutual 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. Texas Mutual was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment. Texas Mutual was classified as "high" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Treating Doctor MMI/IR Examination

3. [REDACTED] Texas Mutual received a report from treating doctor in connection with an examination to certify MMI/IR.
4. The treating doctor determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR). However, Texas Mutual relied on the statutory MMI date of [REDACTED]. As a result, the rating was not increased from a [REDACTED] to [REDACTED] IR until [REDACTED] interrupting the impairment income benefits (IIBs) payments between [REDACTED] and [REDACTED].
5. Texas Mutual was required to pay accrued IIBs no later than five days after receiving the treating doctor's MMI/IR. The deadline to pay benefits was [REDACTED].
6. Texas Mutual issued payment of IIBs as required by the MMI/IR certification until [REDACTED]. Payment was resumed on [REDACTED] which was 80 days late from the accrual date of [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. 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;

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- 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: promptness and earnestness in responding to DWC; Texas Mutual is a "high" tier performer since 2009 on past PBO Assessments; Texas Mutual is now in compliance with all IIBs payments including those in arrears, with interest, to the injured employee; Texas Mutual has established training of its adjusters on an ongoing basis on initiation of benefits in accordance with MMI/IR certifications.
5. Texas Mutual acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. Texas Mutual 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 415.021.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Texas Mutual 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 §§ 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.
8. Pursuant to TEX. LAB. CODE § 408.0041(f-2)(1-2), an employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another doctor to whom the employee is referred by the treating doctor if the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating the employee is not satisfied with the designated doctor's opinion.

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9. Pursuant to 28 TEX. ADMIN. CODE § 130.8(b)(1), an insurance carrier must pay all benefits in accordance with the treating doctor's MMI/IR certification for the issues in dispute no later than five days after receiving the report.
  
10. Texas Mutual violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the treating doctor's MMI/IR certification no later than five days after receiving the report.

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**Order**

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$5,000 within 30 days from the date of this order. Texas Mutual 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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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Mackenzie Arthur  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

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**Affidavit**

**STATE OF** Texas

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**COUNTY OF** Travis

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Before me, the undersigned authority, personally appeared Curtis W. Johnson Jr  
who being by me duly sworn, deposed as follows:

"My name is Curtis W. Johnson Jr. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

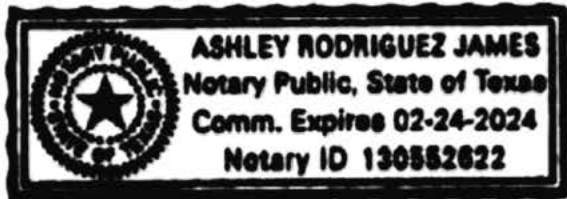
I hold the office of Vice President of Claims Operations and am the authorized representative of Texas Mutual Insurance Company. I am duly authorized by the organization to execute this statement.

Texas Mutual Insurance Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

*Curtis W. Johnson Jr*  
Affiant

SWORN TO AND SUBSCRIBED before me on May 18, 2021.

(NOTARY SEAL)



*A.R.J.*  
Signature of Notary Public

Ashley R. James  
Printed Name of Notary Public

02/24/2024  
Commission Expiration

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