

No ~~2019~~ 5870

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: ~~FEB 12 2019~~

Subject Considered:

TEXAS POLITICAL SUBDIVISIONS JOINT SELF INSURANCE FUND
14990 Landmark Boulevard, Suite 300
Dallas, Texas 75254-6758

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 12049

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Texas Political Subdivisions Joint Self Insurance Fund (TPS).

WAIVER

TPS acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TPS waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. TPS is a governmental entity that provides workers' compensation benefits to its employees in accordance with Chapter 504 of the Texas Labor Code.
2. TPS was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment; "average" tier in the 2009, 2010, 2012, 2014, and 2016 PBO assessments; and "high" tier in the 2018 PBO assessment.

FAILURE TO TIMELY PAY INDEMNITY BENEFITS TO INJURED EMPLOYEES

3. On [REDACTED] TPS received a DWC Form-69 from the designated doctor.
4. The designated doctor certified the injured employee at maximum medical improvement on [REDACTED] with a [REDACTED]% impairment rating.
5. TPS timely initiated impairment income benefits (IIBs) but only paid for a [REDACTED]% impairment rating, or [REDACTED] weeks.
6. TPS failed to timely pay IIBs for the periods of [REDACTED] through [REDACTED]. The first week of IIBs was paid 523 days late, and each subsequent week was also late.
7. TPS issued payment to the injured employee in the amount of \$ [REDACTED] on [REDACTED].
8. On [REDACTED] TPS received a DWC Form-69 from the designated doctor.
9. The designated doctor certified the injured employee at maximum medical improvement on [REDACTED] with a [REDACTED]% impairment rating.
10. TPS issued payment for IIBs, in the amount of \$ [REDACTED] on [REDACTED] which was 128 days late.

ASSESSMENT OF PENALTY

11. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
12. In assessing the penalty for this case, the commissioner appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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 division rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
13. In assessing the penalty for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation.
14. In assessing the penalty for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: other matters that justice may require.
15. TPS acknowledges that DWC and TPS have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
16. TPS acknowledges that in assessing the penalty, the commissioner considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, and 504.002.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 402.00128(b)(7) and 415.034, and 28 TEX. ADMIN. CODE § 180.26(h).
3. In accordance with TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner.

7. TPS violated TEX. LAB. CODE §§ 415.002(a)(16) and 415.002(a)(22) each time it failed to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner.
8. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the designated doctor during the pendency of any dispute.
9. TPS violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the designated doctor during the pendency of a dispute.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the designated doctor's report no later than five days after receipt of the report.
11. TPS violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely pay accrued income benefits in accordance with the designated doctor's report no later than five days after receipt of the report.

ORDER

Texas Political Subdivisions Joint Self Insurance Fund is ORDERED to pay an administrative penalty of \$17,500 within 30 days from the date of this consent order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *WCM*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

