

No. 2020-6401 _____

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

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

Date: 07-21-2020 _____

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 23850, 24192, and 24299

General remarks and official action taken:

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

Waiver

Old Republic acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Old Republic 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. Old Republic 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 workers' compensation/employers' liability insurance in Texas.
2. Old Republic was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

DWC Enforcement File Nos. 23850 and 24192: Failure to Timely Comply with a Final or Binding Contested Case Hearing Decision and Order

3. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Old Republic to pay benefits in accordance with the decision. Old Republic received the CCH D&O on [REDACTED].
4. The CCH D&O became final on [REDACTED]. Old Republic was required to comply with the CCH D&O within 20 days, which was [REDACTED].
5. Old Republic issued payments to the health care provider in the amount the CCH D&O required on [REDACTED], which was 69 days late, and [REDACTED], which was 71 days late. Old Republic issued payments for interest on:
 - [REDACTED], which was 78 days late;
 - [REDACTED], which was 260 days late; and
 - [REDACTED], which was 262 days late.

DWC Enforcement File No. 24299: Failure to Timely Pay Attorney Fees Ordered by DWC

6. On [REDACTED], DWC ordered Old Republic to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Old Republic to pay attorney fees in the amount of [REDACTED] of each income benefit payment to the injured employee.
7. On [REDACTED], Old Republic issued a payment to the injured employee for unpaid income benefits. Old Republic also issued a payment for attorney fees to the injured employee's attorney for [REDACTED], which was less than [REDACTED] of each income benefit payment to the injured employee. Old Republic did not make a full payment for attorney fees until [REDACTED], which was 54 days late.
8. Old Republic issued a payment to the injured employee for unpaid income benefits on the following dates:

- [REDACTED]

Old Republic was required to issue payment for attorney fees on these dates but did not issue any payments until [REDACTED]. The payments for attorney fees were late because they were:

- 47 days past [REDACTED];
- 42 days past [REDACTED];
- 33 days past [REDACTED];
- 26 days past [REDACTED];
- 19 days past [REDACTED]; and
- 12 days past [REDACTED].

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require.
 5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith.
 6. Old Republic 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).
 7. Old Republic 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, and 402.00128.
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. Old Republic 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 §§ 415.021 and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
8. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a person 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 person must comply no later than the fifth day after filing a written request for appeal.
9. Old Republic violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), 415.0035(e), and 415.021 when it failed to timely comply with a DWC order regarding benefits.
10. 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.
11. Pursuant to TEX. LAB. CODE §§ 415.021 and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
12. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
13. Old Republic violated TEX. LAB. CODE §§ 415.002(a)(20), 415.021(a), and 415.0035(e) when it failed to timely comply with a DWC order to pay attorney fees.

Order

It is ordered that Old Republic Insurance Company must pay an administrative penalty of \$7,000 within 30 days from the date of this order. Old Republic Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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