

No. **2021-6948**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/28/2021

Subject Considered:

XL Insurance America, Inc.
P.O. Box 636
505 Eagleview Boulevard
Exton, Pennsylvania 19341-0636

Consent Order
DWC Enforcement File Nos. 24445, 24447, 24696, 26448

General remarks and official action taken:

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

Waiver

XL Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. XL Insurance 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. XL Insurance 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. XL Insurance was classified as "average" tier in the 2016 and 2018 Performance Based Oversight (PBO) assessments.

DWC Enforcement File No. 24445: Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

3. XL Insurance was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was one day late.
4. XL Insurance was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was six days late.
5. XL Insurance was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was one day late.

DWC Enforcement File No. 24447: Failure to Timely Initiate Payment of Accrued TIBs

6. XL Insurance was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was eight days late.
7. XL Insurance was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was 15 days late.
8. XL Insurance was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. XL Insurance issued payment on [REDACTED] which was six days late.

DWC Enforcement File No. 26448: Failure to Timely Initiate Payment of TIBs

9. [REDACTED] XL Insurance received notice of an injury to an employee.
10. The first day of disability for the injured employee began on [REDACTED]. The eighth day of disability accrued on [REDACTED].
11. XL Insurance was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
12. XL Insurance issued the initial TIBs payment totaling [REDACTED] on [REDACTED] [REDACTED] which was 56 days late.

DWC Enforcement File No. 24696: Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

13. On [REDACTED] XL Insurance received a report from a designated doctor (DD) in connection with a DD examination.
14. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with an [REDACTED] impairment rating.
15. XL Insurance was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
16. XL Insurance issued a lump sum payment of IIBs on [REDACTED] in the amount of [REDACTED] which was 16 days late. XL Insurance issued the interest payment of [REDACTED] on the outstanding IIBs on [REDACTED] which was 46 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 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; training has been provided to XL Insurance's adjusters for timely payment of income benefits; corrective action has been taken to rectify XL Insurance's repetitive pay schedule system.
5. XL Insurance 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. XL Insurance 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, 414.003, 415.002, 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. XL Insurance 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 fails to comply with a provision of the Texas Workers' Compensation Act.

6. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
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 §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
9. XL Insurance violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.
10. 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.
11. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
12. XL Insurance 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 DD's report no later than five days after receiving the report.

Order

It is ordered that XL Insurance America, Inc. must pay an administrative penalty of \$17,000 within 30 days from the date of this order. XL Insurance America, Inc. 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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

Affidavit

STATE OF Illinois §
§
COUNTY OF Cook §

Before me, the undersigned authority, personally appeared _____,
who being by me duly sworn, deposed as follows:

"My name is Lynn Munson. 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 V.P. Claims Regulatory and am the authorized representative of
XL Insurance America, Inc. I am duly authorized by the organization to execute this
statement.

XL Insurance America, Inc. has knowingly and voluntarily entered into this consent order
and agrees with and consents to the issuance and service of this consent order."

Lynn Munson
Affiant

SWORN TO AND SUBSCRIBED before me on June 29, _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

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