

No. **2021-6953**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 8/5/2021

Subject Considered:

MasTec, Incorporated
800 South Douglas Road
Coral Gables, Florida 33134-3125

Consent Order
DWC Enforcement File No. 25638

General remarks and official action taken:

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

Waiver

MasTec acknowledges that the Texas Labor Code and other applicable laws provide certain rights. MasTec 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. MasTec 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. MasTec was classified as "average" tier in the 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. MasTec was not selected to be tiered in the 2007, 2009, or 2010 PBO assessments.

DWC Audit No. IBA-20-114

3. On [REDACTED] DWC initiated DWC Audit No. IBA-20-114 to determine whether MasTec complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that MasTec reported issuing between [REDACTED] and [REDACTED] DWC identified five initial DB claims for audit. The five claims were reviewed to determine MasTec's compliance. The third-party administrator for the claims was ESIS.
5. The audit focused on the accuracy of MasTec's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Timely Pay Accurate DBs

6. MasTec, through its third-party administrator, ESIS, failed to timely pay accurate DBs for 40% of examined payments (two out of five).
7. Specifically, MasTec, through its third-party administrator, ESIS, issued payments to beneficiaries over 30 days late in two instances.

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.

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 or their beneficiaries;
 - the history of compliance with EDI 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 penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; and other matters that justice may require, including the size of the company or practice.
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, including actions it took to rectify the consequences of the prohibited act. Specifically, MasTec addressed the root cause of the untimely payments with its third-party administrator, ESIS, and implemented procedures to prevent recurrent violations.

6. MasTec 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. MasTec 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, 409.021, 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. MasTec 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 § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.

8. MasTec violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely pay accurate DBs.

Order

It is ordered that MasTec, Incorporated must pay an administrative penalty of \$23,500 within 30 days from the date of this order. MasTec, Incorporated 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:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Affidavit

STATE OF FLORIDA

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COUNTY OF MIAM-DADE

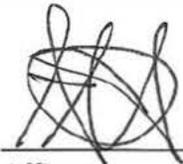
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Before me, the undersigned authority, personally appeared Andy Llop
who being by me duly sworn, deposed as follows:

"My name is ANDY LLOP. 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 Sr. DIRECTOR, CORPORATE RISK and am the authorized representative of MasTec, Incorporated. I am duly authorized by the organization to execute this statement.

MasTec, Incorporated has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on July 6, 2021.

(NOTARY SEAL)

Susan Borroto

Signature of Notary Public

Susan Borroto

Printed Name of Notary Public

Commission Expiration

