

No. **2022-7361**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/6/2022

Subject Considered:

American Zurich Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order

DWC Enforcement File Nos. 23877, 24478, 24902, 24928, 26160, 26947, 26962, 26963,
27816, 28016, 28412, 28540, and 28908

General remarks and official action taken:

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

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. Respondent 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. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

File No. 28540

3. On [REDACTED], Respondent received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED] impairment rating (IR).
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay was [REDACTED].
6. Respondent issued payment of IIBs on [REDACTED], which was 21 days late.
7. Respondent asserted the delay was caused by the employer's failure to timely provide a wage statement to Respondent.

File No. 24478

8. On [REDACTED], Respondent received a Report of Medical Evaluation (DWC Form-069), from the DD in connection with a DD examination stating that the injured employee was unable to work between [REDACTED], through [REDACTED]. The DD report allowed the injured employee to return to work on light duty on [REDACTED]. Respondent was required to contact the employer on [REDACTED], to determine whether light duty was available to the injured employee. Respondent failed to contact the employer to determine whether light duty work was available.
9. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED].
10. On [REDACTED], Respondent issued a partial payment of [REDACTED] for the period between [REDACTED], which was 41 days late.
11. Although Respondent disputed that the DD report narrative specifically stated that the injured employee's disability was a direct result of the injury which occurred on [REDACTED], the DD included that information on the Designated Doctor Examination Data Report (DWC Form-068) also issued [REDACTED].

12. On [REDACTED], Respondent issued a payment for the weekly period of [REDACTED], through [REDACTED], which was 43 days late.

File No. 24928

13. On [REDACTED], Respondent received a DD report authorizing the injured employee to return to work on light duty from [REDACTED], through [REDACTED]. The DD recommended that the injured employee not work from [REDACTED], through [REDACTED], to allow the injured employee to heal following a surgical procedure. After [REDACTED], the DD advised that the injured employee could return to light duty, sedentary work from [REDACTED], through [REDACTED].

14. Respondent was required to pay accrued TIBs no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].

15. Respondent issued a lump sum payment of [REDACTED] on [REDACTED], which was 31 days late.

16. Respondent offered no explanation or reason for the failure to timely pay benefits.

Failure to timely pay impairment income benefits

File No. 26160

17. The IIBs payment for the weekly period of [REDACTED], through [REDACTED] was due on [REDACTED]. Respondent issued payment on [REDACTED], which was seven days late.

18. From [REDACTED], to [REDACTED], Respondent timely paid IIBs on the injured employee's claim. However, Respondent failed to pay IIBs due on [REDACTED].

19. Respondent offered no explanation or reason for the failure to timely pay IIBs.

File No. 24902

20. The IIBs payment for the weekly period of [REDACTED], through [REDACTED], was due on [REDACTED]. Respondent issued payment on [REDACTED], which was 62 days late.

21. Respondent failed to timely pay subsequent IIBs payments due from [REDACTED], through [REDACTED].

	Weekly Period	Due Date	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	62
b.	[REDACTED]	[REDACTED]	[REDACTED]	55
c.	[REDACTED]	[REDACTED]	[REDACTED]	48
d.	[REDACTED]	[REDACTED]	[REDACTED]	41
e.	[REDACTED]	[REDACTED]	[REDACTED]	34
f.	[REDACTED]	[REDACTED]	[REDACTED]	27
g.	[REDACTED]	[REDACTED]	[REDACTED]	20
h.	[REDACTED]	[REDACTED]	[REDACTED]	13
i.	[REDACTED]	[REDACTED]	[REDACTED]	6

22. Respondent offered no explanation or reason for the failure to timely pay IIBs.

Failure to Timely Act on a Medical Bill

File No. 26947

23. A health care provider provided health care services to an injured employee on [REDACTED]. Respondent received the completed medical bill in the amount of [REDACTED] on June [REDACTED].

24. Respondent was required to act on the medical bill within 45 days of receiving it. The deadline to act was [REDACTED].

25. Respondent issued payment to the health care provider on [REDACTED], which was 83 days late.

26. Respondent offered no explanation or reason for the failure to timely act on the completed medical bill.

File No. 26963

27. A health care provider provided services to an injured employee on [REDACTED]. Respondent received a completed medical bill for [REDACTED] on [REDACTED].

28. Respondent was required to act on the medical bill within 45 days of receiving it. The deadline to act was [REDACTED].
29. Respondent issued payment to the health care provider on [REDACTED], which was 105 days late.
30. Respondent offered no explanation or reason for the failure to timely act on the completed medical bill.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 28016

31. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED], which was 41 days late.
32. Respondent failed to timely pay subsequent TIBs payments due between [REDACTED] [REDACTED], and [REDACTED], as described below:

	Weekly Period	Due Date	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	41
b.	[REDACTED]	[REDACTED]	[REDACTED]	34
c.	[REDACTED]	[REDACTED]	[REDACTED]	27
d.	[REDACTED]	[REDACTED]	[REDACTED]	20
e.	[REDACTED]	[REDACTED]	[REDACTED]	13
f.	[REDACTED]	[REDACTED]	[REDACTED]	6

33. Respondent provided the following information as mitigation: Respondent utilized an automated system to pay TIBs to the injured employee as they accrued. In early [REDACTED], the injured employee notified Respondent of a changed address. Changing the injured employee's address in Respondent's automated system caused the automated payment system to stop automatically issuing benefit payments. Payments then had to be manually approved for each benefit period. Respondent did not identify the problem until [REDACTED].

DWC Audit No. IP-21-201

File No. 27816

34. On [REDACTED], DWC initiated DWC Audit No. IP-21-201 to determine whether Respondent complied with the Texas Labor Code and DWC rules on the timely payment of initial TIBs and timely and accurate submission of initial payment information to DWC.
35. The audit examined TIBs payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified 50 initial TIBs payments for audit to determine Respondent's compliance.
36. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

37. Respondent failed to timely initiate TIBs for 24% of examined payments (12 out of 50).
38. Specifically, Respondent issued payments to injured employees less than six days late in four instances, between six and 15 days late in four instances, between 16 and 30 days late in two instances, and over 30 days late in one instances.

Failure to Timely or Accurately Report EDI Data to DWC

39. Respondent failed to timely report initial TIBs payments for 8% of examined payments (four out of 50).
40. Respondent failed to accurately report the First Date of Disability for 6% of examined payments (three out of 50).
41. Respondent failed to accurately report the Date of First Written Notice for 16% of examined payments (eight out of 50).

42. Respondent failed to accurately report the initial TIBs from Date for 10% of examined payments (five out of 50).
43. Respondent failed to accurately report the initial TIBs End Date for 4% of examined payments (two out of 50).
44. Respondent failed to accurately report the Initial TIBs Payment Date for 8% of examined payments (four out of 50).

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

File No. 23877

45. On [REDACTED], Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs), for the ninth quarter. The ninth quarter of SIBs began on [REDACTED].
46. Respondent's payment for the first month of the ninth quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the ninth quarter, whichever is later. In this case, the latest date was [REDACTED].
47. Respondent issued a payment for SIBs for the first month of the ninth quarter on [REDACTED], which was seven days late.
48. Respondent's payment for the second month of the ninth quarter was due by the 37th day of the ninth quarter, which was [REDACTED].
49. Respondent issued a payment for SIBs for the second month of the ninth quarter on [REDACTED], which was three days late.
50. Respondent offered no explanation for the failure to timely pay SIBs benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 28908

51. On [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.

52. Respondent issued multiple payments to the injured employee for unpaid income benefits on the following dates:

	Amount Paid	Date Paid
a.	[REDACTED]	[REDACTED]
b.	[REDACTED]	[REDACTED]
c.	[REDACTED]	[REDACTED]
d.	[REDACTED]	[REDACTED]
e.	[REDACTED]	[REDACTED]

53. On each of the dates listed above, Respondent was required to issue payment for attorney fees for 25% of the SIBs paid to the injured employee. Respondent failed to timely issue payment of attorney fees as follows:

	Attorneys Fee Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	34
b.	[REDACTED]	[REDACTED]	27
c.	[REDACTED]	[REDACTED]	20
d.	[REDACTED]	[REDACTED]	13
e.	[REDACTED]	[REDACTED]	6

54. Respondent offered no explanation or reason for the failure to timely pay attorney fees due between [REDACTED], and on [REDACTED].

Failure to Timely Comply with a Final Contested Case Hearing Decision and Order

File No. 28412

55. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED].
56. The CCH D&O became final on [REDACTED]. Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED].
57. Respondent paid benefits and interest on [REDACTED], which was 37 days late.

58. Respondent provided the following information as mitigation: Respondent's adjuster mistakenly believed TIBs had been overpaid due to confusion caused by two certifying exams. The DD submitted his report late, after a report submitted by the treating doctor, which caused confusion regarding the injured employee's actual MMI date.

Failure to Timely Notify of Decision for Preauthorization

File No. 26962

59. On [REDACTED], Respondent received a request from a health care provider for preauthorization for a right shoulder arthroscopy. The requested services required preauthorization per 28 Tex. Admin. Code § 134.600.
60. Respondent was required to contact the requester with the decision to approve or deny the request within three working days of receipt of the request. The deadline to comply was [REDACTED].
61. Respondent's Utilization Reviewer approved the preauthorization request on [REDACTED]. However, Respondent failed to successfully deliver notification of the approval to the health care provider by facsimile. On [REDACTED], Respondent mailed a copy of the approval, which was two days late.

Assessment of Sanction

1. Violations of the statutes and rules governing the Texas workers' compensation system have significant consequences on workers' compensation claims, the benefits delivered to injured employees and the services provided by attorneys and health care providers. DWC relies on insurance carriers to comply with the statutes and rules to provide a fair and balanced 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):
 - a. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - b. the history and extent of previous administrative violations;
 - c. the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - d. the penalty necessary to deter future violations;

- e. whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - f. the history of compliance with electronic data interchange (EDI) requirements;
 - g. to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - h. other matters that justice may require, including, but not limited to:
 - i. PBO assessments;
 - ii. prompt and earnest actions to prevent future violations;
 - iii. self-report of the violation;
 - iv. the size of the company or practice;
 - v. the effect of a sanction on the availability of health care; and
 - vi. 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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited acts; the history and extent of previous administrative violations; 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 EDI requirements; the economic benefit resulting from the prohibited acts; and other matters that justice may require, including the size of the company or practice 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 factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, including, but not limited to evidence of a good faith. For example, the mistake in file 28016 was related to an issue with automatic payment system errors. In file 27818, Respondent was able to provide a benefit dispute agreement stating that no benefits were owed under audit file no. 22. In file 26947, the injured employee himself did not suffer harm. The issue in this case was with the healthcare provider. In all cases, Respondent has initiated additional training in both claims handling and the benefit payment procedure.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative

violation(s) occurred; and that 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. Respondent 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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225.
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, 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent 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 or who violates an order or decision of the commissioner.
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.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

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), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16) and (22) by failing to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Failure to timely pay impairment income benefits

10. Pursuant to Tex. Lab. Code §§ 415.002(a)(16) and (22), 409.023, and 408.081, insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner unless the employee and the insurance carrier have entered into an agreement under 28 Tex. Admin. Code §130.11, in which case IIBs are to be paid monthly.
11. Respondent violated Tex. Lab. Code §§ 415.002(a)(16), (20), and (22), 409.021, and 409.023 by failing to timely pay IIBs as and when the benefits accrue, without order from the commissioner.

Failure to Timely Act on a Medical Bill

12. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
13. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22) by failing to take action on a completed medical bill within 45 days of receiving the bill.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

14. 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.
15. 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.
16. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(20) and (22) by failing to timely initiate payment of TIBs.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

17. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
18. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
19. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
20. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the numbered quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
21. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 130.107 by failing to timely issue payment for SIBs for the months and quarters for which the injured employee was entitled.

Failure to Timely Pay Attorney Fees Ordered by DWC

22. Pursuant to Tex. Lab. Code §§ 415.021(a) 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.
23. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance 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 insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
24. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22), 415.021(a), and 415.0035(e) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Comply with a Final or Binding Contested Case Hearing Decision and Order

25. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
26. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party 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 party must comply no later than the fifth day after filing a written request for appeal.
27. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.002(a)(22), 415.0035(e), and 415.021 by failing to timely comply with a DWC order for benefits.

Failure to Timely Notify of Decision for Preauthorization

28. Pursuant to 28 Tex. Admin. Code § 134.600(f), a healthcare provider shall submit a request for preauthorization for medical services in the form and manner required by DWC.

29. Pursuant to 28 Tex. Admin. Code § 134.600(h), an insurance carrier shall either approve or issue an adverse determination on each request based solely on the medical necessity of the health care required to treat the injury.
30. Pursuant to 28 Tex. Admin. Code § 134.600(i), an insurance carrier shall contact the requestor with the decision to approve the request; issue an adverse determination on a request; or deny a request under subsection (g) of this section within three working days of receipt of a request for preauthorization.
31. Pursuant to 28 Tex. Admin. Code § 134.600(k), the failure to comply with this section constitutes an administrative violation.
32. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.600(f)-(k), by failing to act on and deliver notice of approval of a preauthorization request.

Order

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$72,000 within 30 days from the date of this order. American Zurich 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, MC AO-9999, P.O. Box 12030, Austin, Texas, 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF IL §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is
Doug Meyers. I hold the position of Claims Chief Operations Officer and am the
authorized representative of American Zurich Insurance Company. My business address
is:

1299 Zurich Way, Schaumburg, Cook, IL, 60196.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare
under penalty of perjury that the facts stated in this document are true and correct.

Douglas P. Meyers
Declarant

Executed on June 30, 2022.