

~~2019~~ 5932

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: APR 11 2019

Subject Considered:

TRAVELCENTERS OF AMERICA. LLC
24601 Center Ridge Road, Suite 200
Westlake, Ohio 44145-5677

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17460

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Travelcenters of America, LLC (Travelcenters).

WAIVER

Travelcenters acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Travelcenters 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. Travelcenters is an employer participating in the Texas workers' compensation system.

FAILURE TO TIMELY FILE WAGE STATEMENT

2. On [REDACTED], Travelcenters received a request for an Employer's Wage Statement, (DWC Form-03) from the Texas Department of Insurance, Division of Workers' Compensation (DWC).
3. Travelcenters was required to timely file a complete wage statement with DWC within seven working days of receiving the request from DWC, or by [REDACTED].
4. Travelcenters did not respond to the request for information.

**FAILURE TO TIMELY RESPOND TO A DWC ORDER
TO PRODUCE INFORMATION**

5. On [REDACTED], Travelcenters received an Order to Produce from DWC and was required to produce the requested information to DWC by [REDACTED].
6. Travelcenters failed to respond to the Order to Produce.

7. DWC obtained the DWC Form-03 from Travelcenters' insurance company on [REDACTED]. The DWC Form-03 that the insurance carrier provided to DWC was dated [REDACTED].

ASSESSMENT OF SANCTION

8. Failure to provide a timely wage statement has the potential to have a negative impact on the delivery of income benefits to an injured employee and is harmful to the injured employee and to the workers' compensation system of the state of Texas.
9. In assessing the sanction for this case, DWC 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 EDI 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 DWC rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
10. In assessing the sanction 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee (Travelcenters provided payroll information but not the DWC Form-03 which would include non-pecuniary wages. Consideration of non-pecuniary wages could have affected the amount of income benefits paid to the injured employee but did not in this case).
11. In assessing the sanction 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: the history and extent of previous administrative violations.

12. Travelcenters acknowledges that DWC and Travelcenters 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).
13. Travelcenters acknowledges that, in assessing the sanction, DWC 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, 414.002, and 414.003.
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 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to 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 § 415.0035(e), a person regulated by DWC under this title commits an administrative violation if the person violates the Texas Workers' Compensation Act, a DWC rule, 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 28 TEX. ADMIN. CODE § 120.4(a)(3), the employer is required to timely file a complete wage statement in the form and manner prescribed by DWC. The wage statement shall be filed with DWC within seven days of receiving a request from DWC.
7. Pursuant to 28 TEX. ADMIN. CODE § 102.9(a), DWC shall require those subject to the Texas Workers' Compensation Act to provide information at such times and in such manner as necessary to effectively and efficiently administer the Texas Workers' Compensation Act or DWC rules.
8. Travelcenters violated TEX. LAB. CODE §§ 415.002(a)(20) and § 415.0035(e); 28 TEX. ADMIN. CODE §§ 120.4(a)(3), and 102.9(a) when it failed to timely file a DWC Form-03 and failed to produce the DWC Form-03 when requested.
9. Pursuant to TEX. LAB. CODE § 415.021(a) and 28 TEX. ADMIN. CODE § 102.9(e), a person that fails to provide information as ordered commits an administrative violation.

10. Travelcenters violated TEX. LAB. CODE § 415.021(a) and 28 TEX. ADMIN. CODE § 102.9(e) when it failed to comply with a DWC order.

ORDER

Travelcenters is ORDERED to pay an administrative penalty of \$2,000 within 30 days from the date of this 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 *NCIP*
Commissioner of Workers' Compensation

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Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

AFFIDAVIT

STATE OF OHIO §
 §
COUNTY OF CUYAHOGA §

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

"My name is TINA DONALDSON. 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 CLAIMS MANAGER, and am the authorized representative of Travelcenters of America, LLC. I am duly authorized by said organization to execute this statement.

Travelcenters of America, LLC waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Travelcenters of America, LLC is voluntarily entering into this consent order. Travelcenters of America, LLC consents to the issuance and service of this consent order."

Tina Donaldson

Affiant

SWORN TO AND SUBSCRIBED before me on 4/2, 2019.

(NOTARY SEAL) Will Knuckles

Signature of Notary Public

Will Knuckles

Printed Name of Notary Public

JUNE 26, 2022

Commission Expiration Date



Will Knuckles
Notary Public
State of Ohio
My Commission Expires
June 26, 2022