

No. **2022-7171**

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

Date: 1/10/2022

Subject Considered:

Texas Council Risk Management Fund
PO Box 26655
Austin, Texas 78755-0655

Consent Order
DWC Enforcement File No. 27466

General remarks and official action taken:

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

Waiver

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

tier in the 2012 and 2018 PBO assessments. TCRMF was not selected to be tiered in the 2010 or 2014 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

3. On [REDACTED] DWC ordered TCRMF to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered TCRMF to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
4. On [REDACTED] TCRMF issued a payment to the injured employee for unpaid income benefits in the amount of [REDACTED]. On [REDACTED] TCRMF was required to issue a payment for attorney fees in the amount of [REDACTED] or 25% of the supplemental income benefit paid to the injured employee. TCRMF did not issue payment to the injured employee's attorney for the [REDACTED] payment, until [REDACTED] which was 30 days late.

Assessment of Sanction

1. 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.
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 history and extent of previous administrative violations; and the penalty necessary to deter future violations.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: matters that justice may require, such as the prompt and earnest actions taken to prevent future violations. The October 5, 2020, attorney fee payment was missed due to Covid processing delays and inadequate board representation which caused the bill to be missed. As soon as TCRMF realized the payment was missed, they immediately entered the information for processing in the next round of payments, which occurred November 4, 2020. The board also took immediate steps to correct the representation issue.
 5. TCRMF 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. TCRMF 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, and 414.002.
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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).

3. TCRMF 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 a provision of the statute.
6. 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.
7. 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.
8. TCRMF violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), 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 Texas Council Risk Management Fund must pay an administrative penalty of \$2,000 within 30 days from the date of this order. Texas Council Risk Management Fund 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
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Approved Form and Content:



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