

No. **2022-7532**

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

Date: 9/30/2022

Subject Considered:

Dallas County
P.O. Box 541387
Dallas, Texas 75354-1387

Consent Order
DWC Enforcement File No. 28370 and 29227

General remarks and official action taken:

This is a consent order with Dallas County (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 is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with Tex. Lab. Code Ch. 504.
2. Respondent was classified as "average" tier in the 2010 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in any other years.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

Enforcement Case No. 28370

3. Respondent was required to pay partial temporary income benefits (TIBs) to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely issue the TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	1501
b.	[REDACTED]	[REDACTED]	[REDACTED]	1494
c.	[REDACTED]	[REDACTED]	[REDACTED]	1487
d.	[REDACTED]	[REDACTED]	[REDACTED]	1480
e.	[REDACTED]	[REDACTED]	[REDACTED]	1474
f.	[REDACTED]	[REDACTED]	[REDACTED]	1467
g.	[REDACTED]	[REDACTED]	[REDACTED]	1460
h.	[REDACTED]	[REDACTED]	[REDACTED]	1453
i.	[REDACTED]	[REDACTED]	[REDACTED]	1446
j.	[REDACTED]	[REDACTED]	[REDACTED]	1439
k.	[REDACTED]	[REDACTED]	[REDACTED]	1432

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

Enforcement Case No. 29227

4. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
5. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
6. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
7. Respondent issued payment of IIBs on [REDACTED], which was 15 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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 §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
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. 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.
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 Timely Initiate Payment of Accrued Temporary Income Benefits

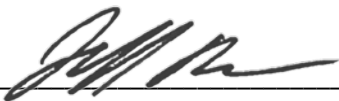
7. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Pursuant to Tex. Lab. Code § 408.103 and Tex. Admin. Code § 129.3, the amount of a temporary income benefit is equal to 70 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage.
9. Respondent violated Tex. Lab. Code §§ 408.081, 409.023, 415.002(a)(16), (20) and (22) each time Respondent failed to timely pay accrued TIBs.

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

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 report for the issues in dispute no later than five days after receiving the report.
12. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.


Order

1. This Consent Order shall constitute a **public reprimand** of Respondent. Respondent is expected to comply with the law, as described above.
2. It is ordered that Dallas County must pay an administrative penalty of \$8,000 within 30 days from the date of this order. Dallas County 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Dallas County
DWC Enforcement File No. 28370 and 29227
Page 7 of 7

Unsworn Declaration

STATE OF Texas §
COUNTY OF Dallas §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is WAY JENKINS. I hold the position of COUNTY JUDGE and am the authorized representative of Dallas County. My business address is:
500 ELM ST, DALLAS, DALLAS, TX, 75202.
(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.


Declarant

Executed on 9-20, 2022.

Rev. 1/11/22
RECEIVED
WHITE ESPEY
09/06/2022

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092