

No. 2023-7825

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

Date: 2/28/2023

Subject Considered:

Arch Insurance Company
210 Hudson Street, Suite 300
Jersey City, New Jersey 07311-1206

Consent Order
DWC Enforcement File No. 30565

General remarks and official action taken:

This is a consent order with Arch 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 "high" tier in the 2007 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Pay Supplemental Income Benefits

3. On [REDACTED] Respondent received an DWC-52, *Application for Supplemental Income Benefits* (SIBs), for the 14th quarter. The 14th quarter of SIBs began on [REDACTED]
4. Respondent's payment for the first month of the 14th quarter was due by the 10th day after Respondent received the application for SIBs or the 7th day of the 14th quarter, whichever is later. In this case, the latest date was [REDACTED]
5. Respondent issued a payment for SIBs for the first month of the 14th quarter on [REDACTED] which was two days late.
6. Respondent's payment for the second month of the 14th quarter was due on or before the 37th day of the 14th quarter. In this case, the latest date was [REDACTED]
7. Respondent issued a payment for SIBs for the second month of the 14th quarter on [REDACTED] which was 68 days late.
8. Respondent's payment for the third month of the 14th quarter was due on or before the 67th day of the 14th quarter. In this case, the latest date was [REDACTED]
9. Respondent issued a payment for SIBs for the third month of the 14th quarter on [REDACTED] which was 38 days late.
10. Respondent paid the second and third months' late SIBs on [REDACTED] with a lump sum of [REDACTED]

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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including a heightened awareness of the legal duty to comply with the law.
4. DWC considers the following factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the history and extent of previous violations and the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act. Specifically, Respondent chose not to contest SIBs when they received an incomplete DWC-52, Respondent paid benefits promptly upon notification of error, and Respondent has had no recent SIBs violations.
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, 402.00111, 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.
7. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
8. 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.

9. 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.
10. Pursuant to 28 Tex. Admin. Code § 130.107(b)(1), for SIBs payments after the first quarter, an insurance carrier must make the first payment of SIBs on or before the tenth day after the day on which the insurance carrier received the Application for Supplemental Income Benefits, or the seventh day of the quarter, whichever is later.
11. Pursuant to 28 Tex. Admin. Code § 130.107(b)(2) and (3), for subsequent TIBs, the second payment shall be made on or before the 37th day of the quarter; and the last payment of the quarter shall be made on or before the 67th day of the quarter.
12. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107(b)(1)-(3), each time it failed to timely pay SIBs.

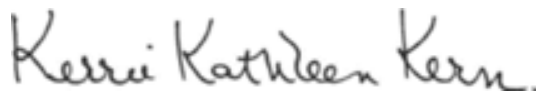
Order

It is ordered that Arch Insurance Company must pay an administrative penalty of \$10,000 within 30 days from the date of this order. Arch 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 Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF New Jersey §
§
COUNTY OF Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell. I hold the position of Vice President and am the authorized representative of Arch Insurance Company. My business address is:

210 Hudson Street, Suite 300, Jersey City, Hudson, NJ, 07311.

(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 February 27, 2023.