

No. **2023-8034**

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

**Date: 6/21/2023**

**Subject Considered:**

Liberty Mutual Insurance Corporation  
175 Berkeley Street  
Boston, Massachusetts 02116-5066

Consent Order  
DWC Enforcement File No. 31510

**General remarks and official action taken:**

This is a consent order with Liberty Mutual Insurance Corporation (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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, and 2014 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in any other year.

Improperly Recouping an Overpayment of Income Benefits

3. On [REDACTED] Respondent identified an overpayment of Temporary Income Benefits (TIBs) to an injured employee.
4. On [REDACTED] Respondent reduced the injured employee's TIBs payments from [REDACTED] per week to [REDACTED] per week, or a decrease of 99.87%.
5. On August 29, 2022, Respondent notified the injured employee, via plain language notice (PLN-8), that the injured employee's TIBs were being reduced from [REDACTED] to [REDACTED] per week.
6. Respondent continued to pay [REDACTED] per week, until [REDACTED]
7. Respondent reduced the TIBs amount by greater than 25% without DWC authorization from [REDACTED] per week to [REDACTED] per week. Furthermore, Respondent reduced the amount of TIBs before the second income benefit payment made after the written notice was sent to the injured employee.
8. On [REDACTED] Respondent notified the injured employee, via PLN-8, that the TIBs amount would increase to [REDACTED] starting [REDACTED]

Misrepresentation of the Law to an Injured Employee

9. On [REDACTED] the injured employee contacted Respondent to request that the reduced [REDACTED] TIBs payments be amended.
10. Respondent advised the injured employee that the overpayment had constituted an advance of benefits and there was no way to amend the [REDACTED] TIBs payments.
11. The injured employee did not request advanced payment of benefits, nor did DWC grant issuance of advance payments of benefits.

**Assessment of Sanction**

1. Improper attempts to recoup an overpayment harms injured employees and abrogates a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.

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; 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 size of Respondent's company or practice; and the economic benefit of the violations to Respondent.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, specifically, the adjuster responsible for the reduction has been provided with training on the appropriate method for recouping overpayment of income benefits.

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)(2), an insurance carrier or its representative commits an administrative violation each time it terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law.
6. 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.
7. 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.

Improperly Recouping an Overpayment of Income Benefits


8. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.
9. Pursuant 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.
10. Pursuant 28 Tex. Admin. Code § 126.16(b)(2), if the injured employee's income benefits are not concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 25% of the income benefit payment to which the injured employee is entitled. The insurance carrier may not begin recoupment of the overpayment earlier than the second income benefit payment made after the written notice has been sent to the injured employee.
11. Respondent violated Tex. Lab. Code §§ 415.002(a)(2); 415.002(a)(20); and 28 Tex. Admin. Code § 126.16(b)(1) and (2) by failing to follow the procedures for recouping overpayments of income benefit.

Misrepresentation of a Provision of the Texas Labor Code to an Injured Employee


12. Pursuant to Tex. Lab. Code § 415.002(a)(1), an insurance carrier or its representative commits an administrative violation if that person misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary.
13. Respondent violated Tex. Lab. Code § 415.002(a)(1) by misrepresenting the overpayment as an advance payment as justification for not amending the TIBs amount, and stating there was nothing Respondent could do when the injured employee challenged the improper [REDACTED] TIBs payments.

**Order**

It is ordered that Liberty Mutual Insurance Corporation must pay an administrative penalty of \$6,250 within 30 days from the date of this order Liberty Mutual Insurance Corporation 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.

  
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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

**Unsworn Declaration**

STATE OF     Texas     §  
          §  
COUNTY OF     Tarrant     §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Stacy Reber. I hold the position of     Claims Team Manager     and am the authorized representative of Liberty Mutual Insurance Corporation. My business address is:

7900 Windrose Ave.                      Plano                      Collin    TX                      75024  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(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     06/09/2023    

**Confidential Information Redacted Texas  
Labor Code §§402.083 and 402.092**