

No. **2023-8103**

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

Date: 7/28/2023

Subject Considered:

AIU Insurance Company
P.O Box 201329
Austin, Texas 78720-1329

Consent Order
DWC Enforcement File Nos. 31341, 31580, 31581, 31843, 31881,
31998, 31999, 32110, and 32111.

General remarks and official action taken:

This is a consent order with AIU 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 "average" tier in the 2022 Performance Based Oversight (PBO) assessments. Respondent was not chosen to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 PBO assessments.

Failure to Timely Take Final Action on a Reconsideration of a Medical Bill

File No. 31341

3. On [REDACTED] Respondent received a complete request for reconsideration of a medical bill from a health care provider for medical services rendered to an injured employee on [REDACTED]
4. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED]
5. Respondent acted on the medical bill on [REDACTED] which was 86 days late.

Failure to Timely Pay or Dispute Initial Temporary Income Benefits (TIBs)

File No. 31580

6. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
7. On [REDACTED] Respondent received an employee's notice of a workplace injury.
8. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
9. On [REDACTED] Respondent initiated TIBs in the amount of [REDACTED] which was 18 days late.

File No. 31998

10. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
11. On [REDACTED] Respondent received an employee's first notice of a workplace injury.

12. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
13. On [REDACTED] Respondent initiated TIBs in the amount of [REDACTED] which was seven days late.

File No. 31999

14. On [REDACTED] Respondent received an employee's first notice of a workplace injury.
15. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
16. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
17. On [REDACTED] Respondent initiated TIBs in the amount of [REDACTED], which was 14 days late.

Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 31581

18. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
19. The DD determined that the injured employee's inability to obtain and retain employment at wages equivalent to the pre-injury wage was a direct result of the compensable injury.
20. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD's report. The deadline to pay TIBs was [REDACTED]
21. On [REDACTED] Respondent paid benefits six days late.

22. Respondent complied fully by paying interest on [REDACTED]

Failure to Timely Pay Accrued Temporary Income Benefits

File No. 31843

23. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED].

24. Respondent paid [REDACTED] in TIBs on [REDACTED] which was five days late.

File No. 31999

25. In addition to the conduct described above in paragraphs 14-17, Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent paid TIBs on [REDACTED] which was 63 days late.

Failure to Timely Act on a Medical Bill

File No. 31881

26. On [REDACTED] a health care provider (HCP) provided medical services to an injured employee.

27. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.

28. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].

29. On [REDACTED] Respondent paid the HCP, which was 91 days late.

File No. 32110

30. On [REDACTED] a health care provider (HCP) provided medical services to an injured employee.
31. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.
32. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
33. On [REDACTED] Respondent paid the HCP, which was 68 days late.

Failure to Provide Sufficient Contact Information to System Participants

File No. 32111

34. On [REDACTED] the HCP provided medical services to an injured employee.
35. On [REDACTED] the HCP submitted a medical bill, via fax, based on a prior DWC-32 form, Request for Designated Doctor (DWC-32,) filed with DWC by Respondent's counsel.
36. Respondent contends that the fax number is not associated with them.
37. Respondent did not provide a sufficient means of contact for the system participant HCP.

Assessment of Sanction

1. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Additionally, 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 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; and other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
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; 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 Take Final Action on a Reconsideration of a Medical Bill

File No. 31341

7. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.

8. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) by failing to act on the request for reconsideration within 30 days of receipt of the request.

Failure to Timely Pay or Dispute Initial Temporary Income Benefits (TIBs)

File Nos. 31580, 31998, and 31999

9. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
10. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate TIBs.

Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 31581

11. 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.
12. 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.
13. Pursuant to 28 Tex. Admin. Code § 127.10(i), 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.
14. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Timely Pay Accrued Temporary Income Benefits

File Nos. 31843 and 31999

15. 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.
16. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
17. Respondent violated Tex. Lab. Code §§ 408.081; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Timely Act on a Medical Bill

File Nos. 31881, and 32110

18. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
19. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20); 415.002(a)(22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Provide Sufficient Contact Information to a System Participant


File No. 32111

20. Pursuant to 28 Tex. Admin. Code § 102.4(d), insurance carriers providers must provide telephone numbers, fax numbers, and email addresses sufficient to service the volume of business for receiving required verbal and written communications on workers' compensation claims.

21. Respondent violated 28 Tex. Admin. Code § 102.4(d) by failing to provide a sufficient means of contact for the system participant HCP.


Order

It is ordered that AIU Insurance Company must pay an administrative penalty of \$14,000 within 30 days from the date of this order. AIU 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:



Dan Garcia
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 Peter Macdonald. I hold the position of Vice President and am the authorized representative of AIU Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ 07302.
(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.

DocuSigned by:
Peter Macdonald
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Declarant

Executed on July 17, 2023.