

No. 2023-8395

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

Date: 12/12/2023

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 32171, 32228, 32247, 32289, 32820, 32821, & 32822

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) assessment. Respondent was not chosen to be tiered in any other PBO assessment.

Failure to Timely Initiate Payment of Accrued Income Benefits

File No. 32171

3. 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].
4. Respondent paid \$ [REDACTED] in TIBs on [REDACTED], which was seven days late.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

File No. 32228

5. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED].
6. On [REDACTED], Respondent timely appealed. During the pendency of the appeal, Respondent was required to comply with the CCH D&O within five days of filing the appeal, or by [REDACTED].
7. Respondent paid benefits on [REDACTED], which was six days late.

Failure to Timely Act on a Medical Bill

File No. 32247

8. On [REDACTED], a health care provider (HCP) provided medical services to an injured employee.
9. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the HCP.
10. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].

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11. On [REDACTED], Respondent issued an Explanation of Benefits, paying \$ [REDACTED], which was 44 days late.
12. Respondent paid \$ [REDACTED] in accrued interest to the HCP on [REDACTED].

File No. 32289

13. On [REDACTED], a HCP provided medical services to an injured employee.
14. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the HCP.
15. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
16. On [REDACTED], Respondent issued an Explanation of Benefits to the HCP and paid the HCP \$ [REDACTED], which was 11 days late.

File No 32820

17. On [REDACTED], a designated doctor (DD) provided medical services to an injured employee.
18. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
19. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
20. On [REDACTED], Respondent issued an Explanation of Benefits to the DD and paid \$ [REDACTED], which was 106 days late.
21. On [REDACTED], Respondent paid \$ [REDACTED] in interest to the DD.

File No 32821

22. On [REDACTED], a HCP provided medical services to an injured employee.

23. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the HCP.
24. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
25. On [REDACTED], Respondent issued an Explanation of Benefits to the HCP denying payment, which was 131 days late.
26. On [REDACTED], Respondent ultimately paid \$ [REDACTED] to the HCP.

Failure to Pay Accrued Impairment Income Benefits Based on a DD Report

File No. 32822

27. On [REDACTED], Respondent received a DD report of a DD examination performed on [REDACTED]; the certification was entered on [REDACTED].
28. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] % impairment rating.
29. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report, which was [REDACTED].
30. Respondent paid \$ [REDACTED] in IIBs on [REDACTED], which was one day late.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Finally, prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the 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. Further, one of the late medical bills involved DD services, which do not require preauthorization and are necessary to the Texas Workers' Compensation system. The medical bill violations involve amounts more than \$10,000 or were more than 100 days late.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.

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*File No. 32171*

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. Respondent violated Tex. Lab. Code §§ 408.081, 409.023, 415.002(a)(16), 415.002(a)(22) each time Respondent failed to pay benefits as and when the benefits accrued.

Failure to Timely Comply with a Contested Case Hearing Decision and Order*File No. 32228*

9. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
10. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
11. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Timely Act on a Medical Bill*File Nos. 32247, 32289, 32820, 32821*

12. 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.

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13. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (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 Timely Pay Interest for Medical Benefits

File Nos. 32289 & 32821

14. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code § 134.130(a), an insurance carrier must pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
15. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.

Failure to Pay Accrued Impairment Income Benefits Based on a DD Report

File No. 32822

16. 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.
17. 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.
18. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.


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Order


It is ordered that AIU Insurance Company must pay an administrative penalty of \$12,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, AIU Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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 H. 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.

| Peter Macdonald

Declarant

Executed on December 3, 2023.