

No. 2024-8772

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

Date: 8/7/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 33539, 34632, & 34734

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 "average" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

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

File No. 33539

3. On [REDACTED], Respondent received a report of a designated doctor (DD) examination performed on [REDACTED].
4. The DD determined the injured employee had disability from [REDACTED], to [REDACTED], because of a compensable injury.
5. The DD also determined that the injured employee had not reached maximum medical improvement (MMI) and was not expected to reach MMI until [REDACTED].
6. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED].
7. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs and interest 73 days late.

Failure to Timely Act on a Request for Reimbursement of Medical Expenses

File No. 34632

8. On [REDACTED], Respondent received a request for reimbursement of \$ [REDACTED] in out-of-pocket medical expenses incurred by the injured employee on [REDACTED].
9. Respondent was required to pay or deny the reimbursement request by the 45th day from receipt, or by [REDACTED].
10. On [REDACTED], Respondent reimbursed \$ [REDACTED] to the employee 125 days late.

Failure to Timely Pay Accrued TIBs

File No. 34734

11. Respondent was required to pay 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 pay \$ [REDACTED] in TIBs, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	██████████	to ██████████	██████████	██████████	9
b.	██████████	to ██████████	██████████	██████████	2

12. Respondent paid \$ ██████████ in late TIBs.

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. Failing to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers’ compensation system and the roles of its system participants.
3. 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.

4. 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 a pattern of paying injured employees late, the amount at issue, and the lateness of the payments; the penalty necessary to deter future violations and Respondent's prior history of late benefit and reimbursement 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 but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. 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).
7. 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, and 414.002.
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 Pay TIBs in Accordance with a DD Report

File No. 33539

7. Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
8. 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.
9. Pursuant to 28 Tex. Admin. Code § 127.10(i), the 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.
10. Respondent violated Tex. Lab. Code §§ 408.0041(f); 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 TIBs

File No. 33734

11. 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.

12. 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.
13. Respondent violated Tex. Lab. Code §§ 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 initiate payment of TIBs.

Failure to Timely Act on a Request for Reimbursement of Medical Expenses


File No. 34632

14. Pursuant to 28 Tex. Admin. Code § 133.270, an insurance carrier shall pay or deny an injured employee's request for reimbursement within 45 days of the request. Reimbursement shall be made in accordance with 28 Tex. Admin. Code § 134.1.
15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.270 by failing to timely act on a request for reimbursement of medical expenses.

Order


It is ordered that Arch Insurance Company must pay an administrative penalty of \$5,000 within 30 days from the Commissioner signs the order.

After receiving an invoice, Arch 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
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 July 18th, 2024.