

No. _____

2019 5892

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **MAR 11 2019**

Subject Considered:

AMERICAN ZURICH INSURANCE COMPANY
1299 Zurich Way
Schaumburg, Illinois 60196-5870

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17179

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against American Zurich Insurance Company (American Zurich).

WAIVER

American Zurich acknowledges that the Texas Labor Code and other applicable laws provide certain rights. American Zurich waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. American Zurich 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. American Zurich was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

DWC AUDIT IP-18-101

3. On [REDACTED] the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-18-101 to determine whether American Zurich was complying with the Texas Labor Code and related rules regarding the timely payment of initial temporary income benefits (TIBs) and the timely and accurate submission of initial payment information to DWC.

4. The audit examined TIBs payments reported to have been issued between [REDACTED] and Se [REDACTED] DWC identified 100 initial TIBs payments for audit. Five of the initial TIBs payments were dropped from the audit sample. The remaining 95 initial TIBs payments were reviewed to determine American Zurich's compliance.
5. The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial TIBs payments and the accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs From Date, TIBs End Date, and Initial TIBs Payment Date).

Failure To Timely Pay Initial Temporary Income Benefits

6. American Zurich failed to timely initiate TIBs for 27% of payments examined (26 out of 95).
7. Specifically, American Zurich issued payments to injured employees less than six working days late in eight instances, between six and 15 working days late in 10 instances, between 16 and 30 working days late in four instances, and 31 or more working days late in four instances (35, 37, 51, and 116 days late, respectively).

Failure To Submit Timely And Accurate Information Regarding The Initiation Of Temporary Income Benefits To DWC

8. American Zurich failed to timely report initial TIBs payment data to DWC for 2% of payments examined (2 out of 95).
9. American Zurich failed to accurately report the First Date of Disability for 39% of payments examined (37 out of 95).
10. American Zurich failed to accurately report the First Written Notice Date for 17% of payments examined (16 out of 95).
11. American Zurich failed to accurately report the TIBs From Date for 3% of payments examined (3 out of 95).
12. American Zurich failed to accurately report the TIBs End Date for 4% of payments examined (4 out of 95).
13. American Zurich failed to accurately report the Date of Initial Payment for 4% of payments examined (4 out of 95).

FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

14. On [REDACTED] American Zurich received notice of injury to an injured employee.
15. The first day of disability for the injured employee was on [REDACTED] and the eighth day of disability accrued on [REDACTED].

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16. American Zurich was required to initiate or dispute TIBs the later of 15 days after American Zurich's receipt of written notice of injury or seven days after the accrual date, which in this case was on [REDACTED]
17. American Zurich did not file a dispute of disability with DWC and issued the initial TIBs payment on [REDACTED] which was 79 days late.

**FAILURE TO TIMELY PAY ATTORNEY'S FEES
ORDERED BY DWC**

18. Between [REDACTED] and [REDACTED] American Zurich received a sequence of three attorney fee orders from DWC totaling \$[REDACTED]. DWC ordered American Zurich to pay attorney's fees in the amount of 25% of each income benefit payment to the injured employee.
19. On [REDACTED] American Zurich issued a payment to the injured employee for TIBs. American Zurich was required to issue payment to the attorney the same day but did not issue payment until [REDACTED] which was seven days late.

ASSESSMENT OF SANCTION

20. Compliance with DWC orders is imperative to minimizing disputes and resolving them promptly and fairly. Additionally, failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
21. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with EDI requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
22. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; history of compliance with EDI requirements; the penalty necessary to deter future violations; and other matters that justice may require, including the size of the company or practice.
23. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; the promptness and earnestness of actions to prevent future violations.
24. American Zurich acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
25. American Zurich acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following 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, 414.003, 415.002, and 415.021; 28 TEX. ADMIN. CODE §§ 152.1 and 180.26.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it violates a provision of the Texas Workers' Compensation Act.
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 §§ 415.0035(e) and 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of the commissioner.
7. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
8. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. American Zurich violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 415.021(a) each time it failed to timely initiate payment of TIBs.
10. Pursuant to 28 TEX. ADMIN. CODE § 124.2(b), insurance carriers are required to notify DWC and the injured employee of actions taken on or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
11. American Zurich violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to accurately notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.
12. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney's fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
13. American Zurich violated TEX. LAB. CODE §§ 415.002(a)(20), 415.0035(e), and 415.021(a) when it failed to timely comply with DWC orders to pay attorney's fees.

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ORDER

American Zurich Insurance Company is ORDERED to pay an administrative penalty of \$45,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *MS*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Van B. Moreland
Staff Attorney, DWC Enforcement
Texas Department of Insurance

