

No. 2020-6307

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 04-02-2020

Subject Considered:

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA
One Tower Square
Hartford, Connecticut 06183

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NOS. 21642 and 22304

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Travelers Casualty Insurance Company of America (Travelers Casualty).

WAIVER

Travelers Casualty acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Travelers Casualty 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. Travelers Casualty 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, including workers' compensation/employers' liability insurance in the state of Texas.
2. Travelers Casualty was classified as "average" tier in the 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. Travelers Casualty was not selected to be tiered in the 2007 and 2009 PBO assessments.

**FAILURE TO TIMELY INITIATE OR DISPUTE
 INITIAL TEMPORARY INCOME BENEFITS**

3. On [REDACTED] Travelers Casualty received notice of an injury to an injured employee.
4. The first day of disability for the injured employee was on [REDACTED]
5. Travelers Casualty was required to initiate or dispute temporary income benefits (TIBs) no later than the 15th day after the date on which Travelers Casualty received written notice of the injury, or the seventh day after the accrual date, unless Travelers Casualty had notified the Texas Department of Insurance, Division of Workers' Compensation (DWC) and the injured employee in writing of its refusal to pay, which, in this case, was [REDACTED]
6. Travelers Casualty issued the initial TIBs payment 115 days late on [REDACTED]

DWC AUDIT IP-19-211

7. On [REDACTED] DWC initiated DWC Audit No. IP-19-211 to determine whether Travelers Casualty was complying with the Texas Labor Code and related rules regarding the timely payment of initial TIBs and the timely and accurate submission of initial payment information to DWC.
8. The audit examined TIBs payments reported to have been issued between [REDACTED] and [REDACTED]. DWC identified 21 initial TIBs payments for audit. Two of the initial TIBs payments were dropped from the audit sample. The remaining 19 initial TIBs payments were reviewed to determine Travelers Casualty's compliance.
9. 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 Initiate or Dispute Initial TIBs

10. Travelers Casualty failed to timely initiate TIBs for 16% of payments examined (3 out of 19).
11. Specifically, Travelers Casualty issued payments to injured employees less than six working days late in two instances and between six and 15 working days late in one instance.

**Failure to Submit Timely and Accurate
 Information Regarding the Initiation of TIBs to DWC**

12. Travelers Casualty failed to timely report initial TIBs payment data to DWC for 11% of payments examined (2 out of 19).

13. Travelers Casualty failed to accurately report the First Date of Disability for 5% of payments examined (1 out of 19).
14. Travelers Casualty failed to accurately report the Date of First Written Notice for 5% of payments examined (1 out of 19).

ASSESSMENT OF SANCTION

15. Failure to provide appropriate TIBs in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
16. 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.
17. 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, 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
18. 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 (Travelers Casualty had previously identified the issue and was working on correcting employee behaviors).

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19. Travelers Casualty acknowledges that DWC and Travelers Casualty communicated 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).
20. Travelers Casualty 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, and 402.00128.
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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 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.
7. Travelers Casualty violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) when it failed to timely initiate payment of TIBs.
8. 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.
9. Travelers Casualty 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.

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10. 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.
11. Travelers Casualty 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.
12. 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.
13. Travelers Casualty 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.

ORDER


Travelers Casualty Insurance Company of America is ORDERED to pay an administrative penalty of \$12,700 within 30 days from the date of this consent 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
 Commissioner of Workers' Compensation

Approved as to Form and Content:



 Toya Lutz
 Staff Attorney, DWC Enforcement
 Compliance & Investigations
 Division of Workers' Compensation
 Texas Department of Insurance

Confidential Information Redacted
 Texas Labor Code §§402.083 & 402.092

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AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is ALANA WIRKMAN. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VICE PRESIDENT, and am the authorized representative of Travelers Casualty Insurance Company of America. I am duly authorized by said organization to execute this statement.

Travelers Casualty Insurance Company of America waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers’ compensation.

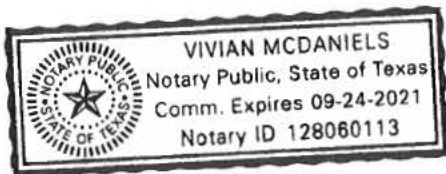
Travelers Casualty Insurance Company of America is voluntarily entering into this consent order. Travelers Casualty Insurance Company of America consents to the issuance and service of this consent order.”



Affiant

SWORN TO AND SUBSCRIBED before me on FEBRUARY 18, 2020.

(NOTARY SEAL)



Vivian McDaniels

Signature of Notary Public

Vivian McDaniels

Printed Name of Notary Public

9/24/2021

Commission Expiration Date