

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-10-2020

Subject Considered:

AMGUARD INSURANCE COMPANY
39 Public Square
P.O. Box AH
Wilkes-Barre, Pennsylvania 18703-0020

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21897

General remarks and official action taken:

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

WAIVER

AmGUARD acknowledges that the Texas Labor Code and other applicable laws provide certain rights. AmGUARD 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. AmGUARD 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.
2. AmGUARD was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO COMPLY WITH AN AGREEMENT APPROVED BY DWC

3. On [REDACTED], the Texas Department of Insurance, Division of Workers' Compensation (DWC) approved a Benefit Dispute Agreement (BDA) signed by AmGUARD and an injured employee. The parties agreed that the injured employee had disability from [REDACTED], through [REDACTED], thereby entitling the injured employee to payment of [REDACTED] for that period. The parties also agreed that the BDA would be fully complied with within five days of receipt of the approved BDA.

4. On [REDACTED], AmGUARD received the approved BDA and, therefore, was required to issue payment of [REDACTED] within five days of receipt of the approved BDA, or by [REDACTED].
5. AmGUARD did not issue payment of [REDACTED] until [REDACTED], which was 44 days late.

ASSESSMENT OF SANCTION

6. Adherence to DWC approved agreements is imperative to minimizing disputes and resolving them promptly and fairly.
7. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
8. 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 electronic data interchange 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.
9. 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 penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company or practice.

10. 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: other matters that justice may require, including the promptness and earnestness of actions to prevent future violations.
11. AmGUARD acknowledges that DWC and AmGUARD have 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).
12. AmGUARD 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, 409.021, 414.002, 414.003, 415.002, and 415.021.
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 § 415.010, a party to an agreement approved by DWC commits an administrative violation if the person breaches a provision of the agreement.
5. AmGUARD violated TEX. LAB. CODE § 415.010 when it failed to issue payment of TIBs within five days of receipt of the approved BDA.

COMMISSIONER'S ORDER
AmGUARD Insurance Company
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ORDER

AmGUARD Insurance Company is ORDERED to pay an administrative penalty of \$7,500 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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

