

No. 2020-6606

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

Date: 12-10-2020

Subject Considered:

National Liability & Fire Insurance Company
1314 Douglas Street, Suite 1400
Omaha, Nebraska 68102-1944

Consent Order
DWC Enforcement File No. 22732

General remarks and official action taken:

This is a consent order with National Liability & Fire Insurance Company (National). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against National.

Waiver

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

Failure to Pay Accrued Impairment Income Benefits based on a Designated Doctor Report

3. On [REDACTED], National received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a 10% impairment rating.
5. National was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits [REDACTED].
6. National issued payment of IIBs on [REDACTED], which was 131 days late.

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. 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 penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 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 and the history and extent of previous administrative violations.
 5. National acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. National 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 415.021.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. National 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.
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. 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.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
10. National violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Order

It is ordered that National Liability & Fire Insurance Company must pay an administrative penalty of \$12,000 within 30 days from the date of this order. National Liability & Fire Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Affidavit

STATE OF _____

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COUNTY OF _____

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

"My name is Ed Henrikus. 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 Director of Claims and am the authorized representative of
National Liability & Fire Insurance Company. I am duly authorized by the organization to
execute this statement.

National Liability & Fire Insurance Company has knowingly and voluntarily entered into
this consent order and agrees with and consents to the issuance and service of this
consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on November 19th, 2020.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration