

No. 2023-7852

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

Date: 3/22/2023

Subject Considered:

New Hampshire Insurance Company
175 Water Street, Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File Nos. 28545

General remarks and official action taken:

This is a consent order with New Hampshire 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 "poor" tier in 2007 Performance Based Oversight (PBO) assessment, and "average" in 2009, 2010, 2012, 2014, 2016, 2018, 2020 and 2022 PBO assessments.

Failure to Notify a Potential Beneficiary of their Rights to Pursue Benefits

3. On [REDACTED] Respondent electronically filed *First Report of Injury* (FROI) with DWC, reporting the illness and death of an employee. That FROI reported the date of injury (DOI) as [REDACTED] and the date of death (DOD) of that employee as [REDACTED]
4. DWC sent a *Notice to Potential Beneficiary* to the potential beneficiary and Respondent on [REDACTED] which was received by Respondent on [REDACTED]
5. On [REDACTED] Respondent was in possession of the name and address of a potential beneficiary for the injured employee. Specifically, the potential beneficiaries were the widow and disabled child of the deceased employee.
6. Respondent was required to notify the potential beneficiary of their potential entitlement to death benefits using a *Notice of Potential Entitlement to Workers' Compensation Death Benefits* (PLN-12) within seven days of the date Respondent was made aware of the identity and means of contacting the potential beneficiary, which was by [REDACTED]
7. Respondent sent a PLN-12 to the potential beneficiary on [REDACTED] which was 21 days late.

Assessment of Sanction

1. Failure to contact a potential beneficiary of death benefits harms the survivors of the injured employee when said benefits are arguably needed most. The death of an injured employee is a permanent loss of income for a survivor or family and carriers are required to respond promptly when potential beneficiaries are known.
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;

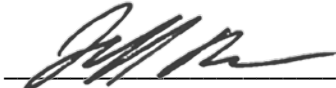
- whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice 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 mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, and prompt and earnest actions to prevent future violations. Specifically, Respondent sent the PLN-12 upon contact from DWC, and provided training for the adjusters involved to prevent future errors.
5. 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).
6. 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, 414.002, 414.003, 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)(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 fails to comply with the DWC rules or a provision of the Texas Workers' Compensation Act.
6. Pursuant to 28 Tex. Admin. Code § 132.17(d), an insurance carrier that identifies or becomes aware of a potential beneficiary shall notify the potential beneficiary of potential entitlement to death benefits, using a plain language notice containing language and content prescribed by DWC. This notice shall be sent within seven days of the date the carrier identified or was otherwise made aware of the identity and means of contacting the potential beneficiary.
7. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 132.17(d), when it failed to notify a potential beneficiary of their possible entitlement to death benefits within seven days of identification.

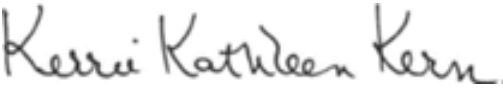
Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$3,000 within 30 days from the date of this order. New Hampshire Insurance Company must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Kathleen Kern
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 Peter Macdonald. I hold the position of Vice President and am the authorized representative of New Hampshire Insurance Company. My business address is:
30 Hudson Street, Jersey City, Hudson, NJ, 07302.
(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.

DocuSigned by:
Peter Macdonald
D382AEAD7B074AC...

Declarant

Executed on March 6, 2023.