

No. 2024-8637

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

Date: 4/30/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 33518, 33543, 33636, and 33637

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 "average" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

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

File No. 33518

3. On [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
4. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED] % impairment rating (IR).
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report, or by [REDACTED].
6. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was 53 days late.
7. On [REDACTED], Respondent paid [REDACTED] in interest, which was 18 days late.

Failure to Pay Accrued IIBs Based on a Certifying Doctor Report

File No. 33543

8. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
9. The CD determined that the injured employee reached MMI on [REDACTED], with a [REDACTED] % IR.
10. Respondent was required to pay accrued IIBs no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
11. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was 14 days late.

Failure to Pay Accrued Temporary Income Benefits Based on a DD Report

File No. 33636

12. On [REDACTED], a CD certified that an injured employee reached MMI on [REDACTED], with a [REDACTED] % IR. Respondent suspended income benefit payments based on this certification.
13. On [REDACTED], a second CD certified that the injured employee reached MMI on [REDACTED], with a [REDACTED] % IR. Respondent stopped paying IIBs on [REDACTED].
14. On [REDACTED], Respondent received a DD report of a DD examination performed on [REDACTED].
15. The DD determined that the injured employee reached MMI on [REDACTED], with a [REDACTED] % IR.
16. Respondent was required to pay accrued temporary income benefits (TIBs) for the period of [REDACTED], through [REDACTED], no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
17. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs and interest, which was 66 days late.

Improperly Recouping an Overpayment of Income Benefits

File No. 33637

18. On [REDACTED], Respondent paid IIBs to the injured employee in File No. 33636. Respondent was required to deduct attorney fees from the injured employee's IIBs.
19. Prior to the payment of IIBs, Respondent incorrectly determined that it had overpaid the injured employee.
20. Because the injured employee's IIBs were being reduced for attorney fees, the most Respondent could deduct to recoup an overpayment was [REDACTED]%. Furthermore, the recoupment could not begin earlier than the second income benefit payment made after the injured employee received written notice of the deduction.

21. However, on [REDACTED], Respondent reduced the injured employee's benefits by an additional [REDACTED]%, in the amount of \$ [REDACTED], from the benefits checks issued to the injured employee due to the alleged overpayment.
22. On [REDACTED], Respondent sent the injured employee a plain language notice stating benefits would be reduced due to an overpayment.
23. Respondent improperly reduced benefits for nine weeks leading to an underpayment of \$ [REDACTED].
24. On [REDACTED], Respondent paid \$ [REDACTED] to the injured employee and ceased further deductions after discovering that no overpayment actually occurred.

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. Improper attempts to recoup an overpayment harm injured employees and abrogates a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.
3. 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.
4. 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 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.
 5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 6. 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).
 7. 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, and 414.003.
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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.
6. 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.

Failure to Pay Accrued IIBs Based on a DD Report

File Nos. 33518

7. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
8. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
9. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Pay Accrued IIBs Based on a CD Report

File No. 33543

10. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the CD's report certifying MMI.

11. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when MMI is not disputed.
12. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Pay Accrued TIBs on a DD Report

File No. 33636

13. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
14. Pursuant to 28 Tex. Admin. Code § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
15. Respondent violated Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Improperly Recouping an Overpayment of Income Benefits

File No. 33637

16. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.
17. Pursuant 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.

18. Pursuant 28 Tex. Admin. Code § 126.16(b)(2), if the injured employee's income benefits are concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 10% of the income benefit payment to which the injured employee is entitled. The insurance carrier may not begin recoupment of the overpayment earlier than the second income benefit payment made after the written notice has been sent to the injured employee.
19. Respondent violated Tex. Lab. Code §§ 415.002(a)(20); and 28 Tex. Admin. Code § 126.16(b)(1) and (2) by failing improperly recouping overpayments of income benefit.

Failure to Timely Pay Interest

File No. 33518

20. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
21. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$10,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, New Hampshire Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Stephen Jewell
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 H. 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
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Declarant

Executed on March 10, 2024.

**Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092**