

No. 2020-6605

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

Date: 12-10-2020

Subject Considered:

Everest National Insurance Company
P.O. Box 830
Liberty Corner, New Jersey 07938-0830

Consent Order
DWC Enforcement File Nos. 19757 and 19917

General remarks and official action taken:

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

Waiver

Everest acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Everest 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. Everest 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.

- Everest was classified as "high" tier in the 2018 Performance Based Oversight (PBO) assessment. Everest was not selected to be tiered in 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

DWC Enforcement File No. 19757: Failure to Comply with a DWC Order

- On [REDACTED], Everest received Medical Fee Dispute Resolution Findings and Decision Order No. M4-17-2769.
- This order required Everest to pay [REDACTED] plus accrued interest by [REDACTED].
- On [REDACTED], Everest issued payment of the principal amount but did not issue payment of accrued interest until [REDACTED], which was 26 days late.

DWC Enforcement File No. 19917: Failure to Comply with a DWC Order

- On [REDACTED], Everest received Medical Fee Dispute Resolution Findings and Decision Order No. M4-17-3216-01.
- This order required Everest to pay \$ [REDACTED] plus accrued interest by [REDACTED].
- On [REDACTED], Everest issued payment of the principal amount but did not issue payment of accrued interest until [REDACTED], which was 86 days late.

Assessment of Sanction

- Failure to timely comply with DWC orders for payment of medical bills is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
- 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 history and extent of previous administrative violations; and the penalty necessary to deter future violations.
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.
5. Everest 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. Everest 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, and 414.002.
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. Everest 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)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
6. 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.
7. 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.
8. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Everest violated TEX. LAB. CODE §§ 415.021(a) and 415.0035(e) when it failed to comply with a DWC order.

Order

It is ordered that Everest National Insurance Company must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Everest National 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:



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