

No. **2021-6899**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/1/2021

Subject Considered:

Continental Casualty Co.
9500 Arboretum Boulevard, Studio 145
Austin, Texas 78759-6307

Consent Order
DWC Enforcement File No. 25642

General remarks and official action taken:

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

Waiver

Continental acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Continental 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. Continental 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. Continental was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment and "high" tier in 2009 and 2014 PBO assessments.

DWC Audit No. IBA-20-107

3. On [REDACTED], DWC initiated DWC Audit No. IBA-20-107 to determine whether Continental complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined LIB and DB payments that Continental reported issuing between [REDACTED], and [REDACTED]. DWC identified 10 initial LIB and DB claims for audit. A total of five initial LIB and DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining five claims were reviewed to determine Continental's compliance.
5. The audit focused on the accuracy of Continental's payment of LIBs and DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Pay Accurate LIBs

6. Continental failed to pay accurate LIBs for 100% of examined payments (one out of one).
7. Between [REDACTED], through [REDACTED], Continental underpaid LIBs in the amount of [REDACTED].
8. Continental paid [REDACTED] in weekly LIBs instead of the required amount, which was [REDACTED].
9. On the following dates, Continental issued lump sum payments plus interest on the unpaid amounts, totaling [REDACTED]:
 - [REDACTED];
 - [REDACTED]; and
 - [REDACTED].

Failure to Pay Accurate DBs

10. Continental failed to accurately pay DBs for 25% of examined payments (one out of four).

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11. Between [REDACTED], through [REDACTED], Continental underpaid DBs in the amount of [REDACTED].
12. Continental paid [REDACTED] in weekly DBs instead of the required amount, which was [REDACTED].
13. At the time of the audit, Continental had not issued the underpayment plus interest to the beneficiaries nor filed a suspension of DBs.

Failure to Timely Report Claim Data to DWC

14. Continental failed to timely report the total number of DB terminations for 66% of examined payments (two out of three).
15. Specifically, Continental failed to timely report the true DB termination of examined payments in two instances.

Failure to Accurately Report Claim Data to DWC

16. Continental inaccurately reported five claims, which were mistakenly selected and later dropped from the audit because they failed to meet selection criteria.

Assessment of Sanction

1. Failure to provide LIBs and DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
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):

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- 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 or their beneficiaries;
 - the history of compliance with EDI 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; third party delay in notifying Continental Casualty of the employment status of the injured employee; Continental Casualty has implemented new training for its claim handlers on DB and LIB claims; Continental Casualty has reviewed and improved its procedures on following up with employers for information required to pay benefits; and Continental Casualty has switched vendors in an effort to more accurately calculate and pay indemnity payments.

6. Continental 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).
7. Continental 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, 409.021, 414.002, 414.003, 415.002, 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. Continental 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 § 408.161(a) and (b), an insurance carrier must pay accurate LIBs to the employee until his or her death. Under TEX. LAB. CODE § 408.161(c), the amount of LIBs is equal to 75% of the employee's average weekly wage, increased 3% a year.

8. Pursuant to 28 TEX. ADMIN. CODE § 131.1(a) and (c) the insurance carrier must initiate the payment of LIBs without a final decision or order from the commissioner if the employee is eligible. The insurance carrier must initiate the first payment of LIBs on or before the 15th day after the date it reasonably believes the injured employee to be eligible.
9. 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.
10. Continental violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16) and (20) when it failed to pay accurate LIBs.
11. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
12. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e)(4)-(6) the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving DBs.
13. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of DBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or DB payments in the manner DWC rules prescribe.
14. Continental violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely pay accurate DBs.
15. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
16. Continental violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Order

It is ordered that Continental Casualty Co. must pay an administrative penalty of \$25,000 within 30 days from the date of this order. Continental Casualty Co. 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

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Affidavit

STATE OF IL §
§
COUNTY OF KANE §

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

"My name is PETER MCGARRON. 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 SUP CLAIM and am the authorized representative of Continental Casualty Co. I am duly authorized by the organization to execute this statement.

Continental Casualty Co. has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."



Affiant I attest this signature is valid and confirm that the order was signed on May 11, 2021.

SWORN TO AND SUBSCRIBED before me on MAY 11th, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration