

No. 2022-7444

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

Date: 8/18/2022

Subject Considered:

Norguard Insurance Company
16 South River Street
Wilkes-Barre, Pennsylvania 18703

Consent Order
DWC Enforcement File Nos. 22129, 22132, 25846, and 26360

General remarks and official action taken:

This is a consent order with Norguard 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 workers' compensation/employers' liability insurance in Texas.

2. Respondent was classified as "average" tier in the 2020 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 PBO assessments.

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

Enforcement File No. 22129

3. On [REDACTED] Respondent received a designated doctor (DD) report in connection with a DD examination. The DD determined that disability existed from [REDACTED] through [REDACTED]
4. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED] Respondent did not issue payment until [REDACTED] which was 166 days late.
5. Respondent provided the following information as mitigation: Respondent argued that the DD report stated that the injured employee was already working for another employer.

Failure to Timely Pay Attorney Fees Ordered by DWC

Enforcement File No.22132

6. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee in the amount of 25% of each income benefit payment to the injured employee.
7. On [REDACTED] Respondent issued a payment of [REDACTED] to the injured employee for unpaid income benefits. Respondent was required to issue the attorney fee to the injured employee's attorney the same day. However, Respondent did not issue payment until [REDACTED] which was 23 days late.
8. Respondent acknowledged that the attorney fee payment was untimely but did not provide an explanation for the untimely payment.

Enforcement File No. 26360

9. Between [REDACTED] through [REDACTED] DWC ordered Respondent to pay attorney fees to the injured employee's attorney in the amount of 25% of each income benefit payment to the injured employee.
10. [REDACTED] Respondent issued a payment of [REDACTED] to the injured employee for unpaid income benefits. Respondent was required to issue the attorney fee to the injured employee's attorney the same day. However, Respondent did not issue payment until [REDACTED] which was 382 days late.
11. On [REDACTED] Respondent issued a payment of [REDACTED] to the injured employee for unpaid income benefits. Respondent was required to issue the attorney fee to the injured employee's attorney the same day. However, Respondent did not issue payment until [REDACTED] which was 374 days late.
12. Respondent did not provide an explanation for the late attorney fees payment.

DWC Audit No. IP-20-108

Enforcement File No. 25846

13. On [REDACTED] DWC initiated DWC Audit No. IP-20-108 to determine whether Respondent complied with the Texas Labor Code and DWC rules on the timely payment of initial TIBs and timely and accurate submission of initial payment information to DWC.
14. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified 16 initial TIBs payments for audit. A total of two initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 14 payments were reviewed to determine Respondent's compliance.
15. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

16. Respondent failed to timely initiate TIBs for 57% of examined payments (eight out of 14).
17. Specifically, Respondent issued payments to injured employees less than six days late in two instances, between six and 15 days late in one instance, between 16 and 30 days late in four instances, and more than 30 days late in one instance.

Failure to Timely or Accurately Report EDI Data to DWC

18. Respondent failed to timely report initial TIBs payments for 7% of examined payments (one out of 14).
19. Respondent failed to accurately report the First Date of Disability for 42% of examined payments (six out of 14).
20. Respondent failed to accurately report the Date of First Written Notice for 78% of examined payments (11 out of 14).
21. Respondent failed to accurately report the initial TIBs End Date for 14% of examined payments (two out of 14).
22. Respondent failed to accurately report the Initial TIBs Payment Date for 7% of examined payments (one out of 14).

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. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
3. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.

4. 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.
5. 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.
6. 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.
7. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith,

including actions it took to rectify the consequences of the prohibited act. Specifically, in Enforcement File No. 22129, Respondent in good faith believed that the injured employee was working for another employer.

8. 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).
9. 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), 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.

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

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 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.
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. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Failure to Timely Pay Attorney Fees Ordered by DWC

11. 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.
12. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
13. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22), 415.021(a), and 415.0035(e) by failing to timely comply with a DWC order to pay attorney fees.

DWC Audit No. IP-20-108


14. 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 TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual

date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.

15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) by failing to timely initiate payment of TIBs.
16. 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.
17. Respondent violated Tex. Lab. Code § 415.002(a)(20) by failing 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 Norguard Insurance Company must pay an administrative penalty of \$19,000 within 30 days from the date of this order. Norguard 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:



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

Unsworn Declaration

STATE OF PA §
§
COUNTY OF Luzerne §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Gregory Orrson. I hold the position of VP of Internal Audit and am the authorized representative of NorGUARD Insurance Company. My business address is:

39 Public Sq, Wilkes Barre, Luzerne, PA, 18703.
(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.



Declarant

Executed on August 3, 2022.