

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 05-22-2020

Subject Considered:

TRUMBULL INSURANCE COMPANY
One Hartford Plaza T 17 81
Hartford, Connecticut 06155

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17592

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Trumbull Insurance Company (Trumbull).

WAIVER

Trumbull acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Trumbull waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Trumbull 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.
2. Trumbull was classified as "average" tier in the 2016 and 2018 Performance Based Oversight (PBO) assessments. It was not classified in the 2007, 2009, 2010, 2012, or 2014 PBO assessments.

FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. On [REDACTED], Trumbull received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
5. Trumbull was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after Trumbull's written notice of the injury was received or seven days after the accrual date, which in this case was on [REDACTED].

6. Trumbull did not timely file a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) and issued TIBs payments totaling \$ [REDACTED] on [REDACTED], 90 days late, but did not come into full compliance until it issued full payment for TIBs in the amount of \$ [REDACTED] on [REDACTED], which was 151 days late.

FAILURE TO TIMELY PAY TIBS IN ACCORDANCE WITH A DESIGNATED DOCTOR REPORT

7. On [REDACTED], Trumbull received a report from the designated doctor (DD). The DD determined that the injured employee's disability from [REDACTED], to the present was a direct result of the compensable injury and that the injured employee could return to work with restrictions.
8. Trumbull was required to pay the full amount of accrued income benefits no later than five days after receipt of the amended DD report, which in this case was by [REDACTED].
9. Trumbull issued a lump sum payment of [REDACTED] on [REDACTED], which was 44 days late.

FAILURE TO TIMELY COMPLY WITH A DWC ORDER

10. On [REDACTED], a contested case hearing decision and order (CCH D&O) was issued requiring Trumbull to pay benefits.
11. The CCH D&O was received by Trumbull on [REDACTED]. Trumbull had 15 working days from the date of receipt of the CCH D&O to file an appeal or the CCH D&O would become final on the 16th day, or [REDACTED].
12. Trumbull did not file an appeal and was required to comply with the CCH D&O within 20 days of becoming final, or by [REDACTED].
13. Based on the CCH D&O, Trumbull was required to pay accrued, but unpaid income benefits. Trumbull issued payment for accrued TIBs on [REDACTED], in the amount of [REDACTED] but did not fully comply with the CCH D&O until [REDACTED], when it issued payment for accrued interest of [REDACTED], which was 26 days late.

ASSESSMENT OF SANCTION

14. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
15. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
16. In assessing the sanction for this case, DWC found the following factors set forth 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 has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require including the size of the company or practice.
17. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; and the penalty necessary to deter future violations.
18. Trumbull acknowledges that DWC and Trumbull have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
19. Trumbull acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.

2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay. If the insurance carrier files a notice of denial after the 15th day but on or before the 60th day after receipt of written notice of injury, the insurance carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the insurance carrier filed a notice of denial and only then is it permitted to suspend payment of benefits.
7. Trumbull violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 each time it failed to timely initiate payment of TIBs.
8. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute.
9. Trumbull violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the DD during the pendency of a dispute.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
11. Trumbull violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
12. Pursuant to TEX. LAB. CODE § 415.021, an insurance carrier commits an administrative violation by failing to comply with a DWC order.
13. Trumbull violated TEX. LAB. CODE §§ 415.021 and 415.002(a)(22) when it failed to timely comply with a DWC order.

COMMISSIONER'S ORDER
Trumbull Insurance Company
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ORDER

Trumbull Insurance Company is ORDERED to pay an administrative penalty of \$15,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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AFFIDAVIT

STATE OF CONNECTICUT §
 §
 COUNTY OF HARTFORD §

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

“My name is Stephanie Raymond. 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 AVP, and am the authorized representative of Trumbull Insurance Company. I am duly authorized by said organization to execute this statement.

Trumbull Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Trumbull Insurance Company is voluntarily entering into this consent order. Trumbull Insurance Company consents to the issuance and service of this consent order.”

Stephanie W. Raymond

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2020.

(NOTARY SEAL)

 Signature of Notary Public

 Printed Name of Notary Public

 Commission Expiration Date