

No. 2020-6504

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

Date: 10-13-2020

Subject Considered:

Eastguard Insurance Company
39 Public Square
P.O. Box A-H
Wilkes-Barre, Pennsylvania 18703-0020

Consent Order
DWC Enforcement File No. 22290

General remarks and official action taken:

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

Waiver

Eastguard acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Eastguard 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. Eastguard 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. Eastguard was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED], Eastguard received notice of an injury to an employee.
4. The first day of disability for the injured employee was [REDACTED].
5. Eastguard was required to initiate or dispute temporary income benefits (TIBs) either 15 days after the insurance carrier received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED], [REDACTED].
6. Eastguard issued the initial TIBs payment on [REDACTED], which was 64 days late.

Assessment of Sanction

1. Failure to provide appropriate TIBs in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. 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; 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.
 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 taken to rectify the consequences of the prohibited act. The adjuster initially relied on the injured employee's work status report dated February 25, 2019, which indicated the injured employee had been released to return to work with no disabilities. However, when the February 26, 2019, report was submitted, taking the injured employee off work and ordering additional therapy, the insurance carrier issued TIBs payment plus interest to the injured employee as soon as it was made aware of the issue. The insurance carrier also instituted additional training for adjusters to ensure this type of mistake will not occur again.
 5. Eastguard 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. Eastguard 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. Eastguard 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 § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of the claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
8. Eastguard violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), 415.002(a)(22), and 415.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7 when it failed to timely initiate payment of TIBs.

Order

It is ordered that Eastguard Insurance Company must pay an administrative penalty of \$5,500 within 30 days from the date of this order. Eastguard 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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