

No. **2021-6995**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 9/27/2021

Subject Considered:

Safety National Casualty Corporation
1832 Schuetz Road
Saint Louis, Missouri 63146

Consent Order
DWC Enforcement File Nos. 24927, 25629, 26598, 24977,
25579, and 25386

General remarks and official action taken:

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

Waiver

Safety National acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Safety National 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. Safety National 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. Safety National was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

DWC Enforcement File No. 24927: Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED] Safety National received notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED] The eighth day of disability accrued on [REDACTED]
5. Safety National was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
6. Safety National issued the initial TIBs payment totaling [REDACTED] with interest of [REDACTED] on [REDACTED] which was 85 days late.

DWC Enforcement File No. 25629: Failure to Timely Initiate Payment of TIBs

7. On [REDACTED] Safety National received notice of an injury to an employee.
8. The first day of disability for the injured employee began on [REDACTED] The eighth day of disability accrued on [REDACTED]
9. Safety National was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
10. Safety National issued the initial TIBs payment totaling [REDACTED] on [REDACTED] which was 14 days late.

DWC Enforcement File No. 26598: Failure to Timely Initiate Payment of TIBs

11. On [REDACTED] Safety National received notice of an injury to an employee.
12. The first day of disability for the injured employee began on [REDACTED] The eighth day of disability accrued on [REDACTED]

13. Safety National was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
14. Safety National issued the initial TIBs payment totaling [REDACTED] with interest of [REDACTED] on [REDACTED] which was 75 days late.

DWC Enforcement File No. 24977: Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

15. On [REDACTED] Safety National received a report from a designated doctor (DD) in connection with a DD examination.
16. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
17. Safety National was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED]
18. Safety National issued payment of IIBs on [REDACTED] which was 187 days late.

DWC Enforcement File No. 25579: Failure to Timely Initiate Payment of Accrued TIBs

19. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was five days late.
20. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was 19 days late.

21. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was 12 days late.
22. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was five days late.

DWC Enforcement File No. 25386: Failure to Timely Initiate Payment of Accrued TIBs

23. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was eight days late.
24. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was one day late.
25. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was nine days late.
26. Safety National was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Safety National issued payment on [REDACTED] which was three days late.

Assessment of Sanction

1. Failure to provide appropriate income benefits 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; whether the administrative violation had a 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.

4. 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; for #24927, third-party interference delayed benefits to the injured employee when it reported the injury as a no lost time claim; for #25629 and #25579, Safety National provided training to its adjusters on prompt payment of benefits; for #26598, COVID-19 and switching to a new claims management system impeded efforts to timely pay benefits; for #24977, Safety National had difficulty communicating with the injured employee and the issued checks were not cashed; and, for #25579 and #25386, some benefit payments were made early.
5. Safety National 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. Safety National 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, 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).
3. Safety National 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, 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 a claim, or, as applicable pursuant to §409.021(a-3), file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
7. 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.
8. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 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.

9. Safety National violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.
10. 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.
11. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an 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.
12. Safety National violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Order

It is ordered that Safety National Casualty Corporation must pay an administrative penalty of \$39,000 within 30 days from the date of this order. Safety National Casualty Corporation 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.



Dan Paschal, J.D.
Deputy Commissioner-Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Missouri §
§
COUNTY OF St Louis §

Pursuant to the TEX. CIV. PRAC. REM. § 132.001(a), (b), and (d), my name is Dana L Bailey. I hold the position of AVP Claims Compliance and am the authorized representative of Safety National Casualty Corporation. My business address is:

1832 Schuetz Road, St Louis, St Louis, MO, 63146.
(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.

Dana Lynn Bailey

Declarant

Executed on July 29, 2021

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