

No. **2023-7946**

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

Date: 5/8/2023

Subject Considered:

Hartford Accident & Indemnity Company
One Hartford Plaza
Hartford, Connecticut 06155

Consent Order
DWC Enforcement File No. 25551

General remarks and official action taken:

This is a consent order with Hartford Accident & Indemnity 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "high" tier in the 2012 and 2018 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2014, 2016, and 2022 PBO assessments. Respondent was not selected to be tiered in the 2007, 2009, 2010, or 2020 PBO assessments.

Failure to Timely Contact an Employer After Notice of Injury

3. On [REDACTED] an injured employee suffered a work-related injury. The employer was present when the injury occurred.
4. On [REDACTED] the injured employee missed work and provided a medical excuse to her employer.
5. On [REDACTED] the injured employee's attorney filed with DWC a DWC Form-41, *Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease* (DWC-41) reporting that the IE sustained a lower back injury after lifting a child at work on [REDACTED]
6. The DWC-41 reported that the injured employee's first day of missed work was [REDACTED] and that the injured employee had not returned to work.
7. On [REDACTED] Respondent received notice of the injured employee's injury from the employee's attorney. In this notice, the employer was identified by a business entity doing business as, but named differently than, the employer name on Respondent's policy.
8. Respondent was required to contact the employer regarding the injury within seven days of notification, which was [REDACTED]
9. On [REDACTED] Respondent communicated with the employer, confirming coverage and other facts about the claimed injury, and the employee's lost time.
10. On [REDACTED] Respondent issued a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) denying the claim, and stating: "Claim is denied in its entirety. An incident is not the equivalent of an injury. Presence of symptoms in the workplace is not enough to establish a causal connection to the workplace. Carrier has received no medical documentation of any medical treatment at all, therefore there is no medical evidence to establish an injury has ever occurred to the physical structure of the body, and there is no medical documentation establishing causation between an injury and the workplace. Carrier has requested medical records, claim is denied pending further investigation.)"

11. Respondent sent the first notice of injury to DWC on [REDACTED]

Failure to Process a Claim in a Reasonable Manner

12. Although Respondent received the notice of injury on [REDACTED] Respondent did not attempt to contact the injured employee until [REDACTED] when the adjuster spoke with the injured employee's attorney to schedule an initial interview.
13. On [REDACTED] Respondent faxed a request for the injured employee's medical records and work status reports.
14. On [REDACTED] Respondent issued the PLN-1 denying the claim "pending further investigation."
15. On [REDACTED] Respondent obtained an initial statement from the injured employee.
16. On [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) directing Respondent to pay accrued but unpaid benefits in a lump sum to the injured employee. Respondent appealed, but the CCH D&O was upheld in favor of the injured employee on [REDACTED]
17. Between [REDACTED] and [REDACTED] the injured employee used private health insurance to pay for medical services related to the workplace injury and incurred out-of-pocket health care expenses.

Failure to Timely Respond to a Request for Reimbursement

18. On [REDACTED] Respondent received a request for reimbursement of the injured employee's out-of-pocket medical expenses in the amount of \$11,909.47 for medical services provided between [REDACTED] and [REDACTED]. Respondent was required to pay or deny the request for reimbursement within 45 days from receipt of the request, or by [REDACTED]
19. Respondent directed the injured employee's health care providers to submit medical bills to Respondent for payment prior to reimbursing the injured

employee. The health care providers were then expected to reimburse the injured employee for the out-of-pocket health care expenses.

20. Respondent failed to process the reimbursement in a reasonable or prudent manner. A DWC customer service representative managed the medical billing and reimbursement of health care expenses instead of Respondent.
21. The injured employee was finally reimbursed on [REDACTED] or 406 days late.

Assessment of Sanction

1. Failing to timely contact an employer after receiving a report of injury places undue burden on the injured employee, the employer and the Texas Workers compensation system, delaying treatment, investigation, and resolution of injury claims.
2. Failure to provide reasonable and transparent claims processing increases the likelihood of disputes in the Texas workers' compensation system, fails to promote payment of appropriate income and medical benefits, and does not ensure that each injured employee is treated with dignity and respect.
3. Failing to provide requested reimbursement to an injured employee imposes an undue financial burden on the injured employee and circumvents the Texas workers' compensation system and the roles of its system participants.
4. 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):
 - a. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - b. the history and extent of previous administrative violations;
 - c. the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - d. the penalty necessary to deter future violations;
 - e. whether the administrative violation had a negative impact on the delivery of benefits to an injured employee ;
 - f. the history of compliance with electronic data interchange requirements;
 - g. to the extent reasonable, the economic benefit resulting from the prohibited act; and

- h. other matters that justice may require, including, but not limited to:
 - o PBO assessments;
 - o prompt and earnest actions to prevent future violations;
 - o self-report of the violation;
 - o the size of the company or practice;
 - o the effect of a sanction on the availability of health care; and
 - o evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

- 5. 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 other matters that justice may require, including the size of the company or practice.

- 6. DWC also considered that Respondent's staff demonstrated a lack of knowledge of the legal requirements for reimbursement. Respondent stated that the injured employee's health care providers had to reimburse the private health insurer and then bill Respondent prior to Respondent reimbursing the injured employee. Respondent's insistence that the injured employee seek reimbursement only after the health care providers acted misstated Respondent's duty under 28 Tex. Admin. Code § 133.270(c) and resulted in harmful and expensive delay to the injured employee.

- 7. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's contact with the employer was delayed because the injured employee failed to identify the employer using its proper legal name; instead, the injured employee used an assumed name for the employer. Moreover, the reporting of the injury to the insurance carrier occurred during the Christmas holiday season, exacerbating the delay in communicating with the injured employee.

- 8. Respondent 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).

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, 414.003, 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. 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 Timely Communicate Notice of Injury to an Employer

7. Pursuant to 28 Tex. Admin. Code § 124.1(f), insurance carriers are required to contact an employer regarding an injury within seven days of notification if it is notified of an injury for which it has not received an Employer's First Report of Injury from the employer.
8. Respondent violated Tex. Lab. Code § 415.002(a)(20); and 28 Tex. Admin. Code § 124.1(f) by failing to contact an employer regarding an injury within seven days of notification of an injury.

Failure to Process a Claim in a Reasonable and Prudent Manner

9. Pursuant to Tex. Lab. Code §§ 409.022 and 409.024, an insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, terminate benefits, or reduce benefits.
10. Pursuant to Tex. Lab. Code § 415.002(a)(11), an insurance carrier or its representative commits an administrative violation when it fails to process claims promptly in a reasonable and prudent manner.
11. Respondent violated Tex. Lab. Code §§ 409.022, 409.024, and 415.002(a)(11) and (22) by failing to adequately investigate the injured employee's claim and by failing to state reasonable grounds for a refusal to pay benefits, terminate benefits, or reduce benefits.

Failure to Timely Respond to a Request for Reimbursement

12. Pursuant to 28 Tex. Admin. Code § 133.270, an insurance carrier shall pay or deny the injured employee's request for reimbursement within 45 days of receipt.
13. Respondent violated Tex. Lab. Code § 415.002(a)(11), (20) and (22); and 28 Tex. Admin. Code 133.270(c) by failing to respond to a request for reimbursement for out-of-pocket medical expenses within 45 days of receipt and failing to process the injured employee's request for reimbursement promptly and in a reasonable and prudent manner.

Order

It is ordered that Hartford Accident and Indemnity Company must pay an administrative penalty of \$14,000 within 30 days from the date of this order. Hartford Accident and Indemnity 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, MC AO-9999, P.O. Box 12030, Austin, Texas, 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Michelle A. McFaddin
Lead Attorney, Enforcement
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF CALIFORNIA §
COUNTY OF SACRAMENTO §
§

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Julie Riddle. I hold the position of Assistant Director, Claim Compliance and am the authorized representative of Hartford Accident & Indemnity Company. My business address is:

4245 Meridian Parkway, Suite 200, Aurora, Du Page , IL, 60504.
(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

Julie Riddle

Declarant

Executed on May 3, 2023.