

No. 2020 6206

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JAN 17 2020

Subject Considered:

OHIO SECURITY INSURANCE COMPANY
175 Berkeley Street
Boston, Massachusetts 02116-5066

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19713

General remarks and official action taken:

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

WAIVER

Ohio Security acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Ohio Security 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. Ohio Security 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 including workers' compensation/employers' liability insurance in Texas.
2. Ohio Security was not selected to be classified in the 2007, 2009, 2010, 2012, 2014, or 2016 Performance Based Oversight (PBO) assessments. Ohio Security was classified as "average" tier in the 2018 PBO assessment.

**FAILURE TO TIMELY COMPLY WITH AN INTERLOCUTORY ORDER
ISSUED BY DWC**

3. On [REDACTED], an Interlocutory Order (Order) was issued by the Texas Department of Insurance, Division of Workers' Compensation (DWC) ordering the insurance carrier to pay the injured employee temporary income benefits (TIBs), including interest, beginning [REDACTED], and continuing through the date of receipt of the

designated doctor's report or the Decision and Order, whichever came first, within five days of receipt of the Order.

4. Ohio Security received the Order on [REDACTED]. Ohio Security was required to make a payment to the injured employee for TIBs payments within five days, or by [REDACTED].
5. Ohio Security issued TIBs payments to the injured employee on [REDACTED], which was 15 days late. The TIBs payments did not include payment for interest.
6. Ohio Security did not fully comply with the Order until payment for the interest was issued on [REDACTED], which was 67 days late.

ASSESSMENT OF SANCTION

7. 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.
8. 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.
9. 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; 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.

10. 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, as the insurance carrier has instituted new training programs aimed at increasing understanding of Interlocutory Orders and communication skills to ensure the errors do not occur again.
11. Ohio Security acknowledges that it has communicated with DWC 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).
12. Ohio Security 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, and 414.003.
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 §§ 415.0035(e), 415.021(a), and 415.002(a)(17), an insurance carrier or its representative commits an administrative violation each time it fails to pay an order awarding benefits.
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 28 TEX. ADMIN. CODE § 142.20, the insurance carrier shall comply with an Interlocutory Order by issuing and delivering payment of accrued and unpaid income benefits no later than the fifth day after receiving the interlocutory order to pay accrued and unpaid benefits, and shall pay benefits in accordance with the interlocutory order as and when they accrue.
7. Ohio Security violated TEX. LAB. CODE §§ 415.0035(e), 415.021(a), 415.002(a)(17), and 415.002(a)(20) when it failed to timely comply with the Order issued by DWC ordering it to pay TIBs to the injured employee within five days of receipt of the Order.

ORDER

Ohio Security Insurance Company is ORDERED to pay an administrative penalty of \$2,500 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.

C. Brown

Cassie Brown *not*
Commissioner of Workers' Compensation

Approved as to Form and Content:

A. Norman

Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

