

No. 2021-6659

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

Date: 01-20-21

Subject Considered:

Accident Fund National Insurance Company
P.O. Box 40790
Lansing, Michigan 48901-7990

Consent Order
DWC Enforcement File No. 25591

General remarks and official action taken:

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

Waiver

Accident Fund acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Accident Fund 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. Accident Fund 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. Accident Fund was classified as “average” tier in the 2018 Performance Based Oversight (PBO) assessment. Accident Fund was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

DWC Audit No. IBA-20-101

3. On [REDACTED], DWC initiated DWC Audit No. IBA-20-101 to determine whether Accident Fund complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined initial DBs submitted to DWC between [REDACTED], and [REDACTED]. DWC identified three bills for audit.
5. The audit focused on the accuracy of Accident Fund’s payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Timely Pay Accurate DBs

6. Accident Fund failed to timely pay accurate DBs for 50% of examined payments (four out of eight).
7. Specifically, Accident Fund issued payments to beneficiaries over 30 days late in four instances.

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, 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 or their beneficiaries;
 - the history of compliance with EDI 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 did not find any mitigating factors but 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
4. Accident Fund 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).
5. Accident Fund 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, 409.021, 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Accident Fund 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 § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
8. Accident Fund violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely pay accurate DBs.

Order

It is ordered that Accident Fund National Insurance Company must pay an administrative penalty of \$7,500 within 30 days from the date of this order. Accident Fund National 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:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Commissioner's Order
Accident Fund National Insurance Company
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Affidavit

STATE OF MICHIGAN §
§
COUNTY OF INGHAM §

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

"My name is DEAN HOLLAND. 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 VICE PRESIDENT, CLAIMS and am the authorized representative of Accident Fund National Insurance Company. I am duly authorized by the organization to execute this statement.

Accident Fund National Insurance Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

DPHLL

Affiant

SWORN TO AND SUBSCRIBED before me on DECEMBER 17, 2020.

(NOTARY SEAL)

Patricia J. Herbert

Signature of Notary Public

PATRICIA J. HERBERT

Printed Name of Notary Public

2/22/2022

Commission Expiration