

No. 2021-6676

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

Date: 02-04-2021

Subject Considered:

Hartford Fire Insurance Company
One Hartford Plaza T 17 81
Hartford, Connecticut 06155

Consent Order
DWC Enforcement File No. 21156

General remarks and official action taken:

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

Waiver

Hartford Fire acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Hartford Fire 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. Hartford Fire 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. Hartford Fire was classified as "average" tier in the 2007, 2009, 2014, and 2016 Performance Based Oversight (PBO) assessments and "high" tier in the 2010, 2012, and 2018 PBO assessments.

Failure to Pay Accrued Temporary Income Benefits in accordance with a Designated Doctor Report

3. On [REDACTED], Hartford Fire received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined the injured employee had not reached maximum medical improvement, and the injured employee had disability from [REDACTED], to [REDACTED].
5. Hartford Fire was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED]. Although the injured employee was not taken off work before the DD's exam, a subsequent contested case hearing decision and order determined the insurance carrier did not issue a bona fide job offer on [REDACTED]. Therefore, the insurance carrier owed TIBs based on the disability determined by the DD.
6. Hartford Fire issued payment for all TIBs owed plus interest on [REDACTED], which was 130 days late.

Failure to Properly Evaluate an Offer of Employment

7. On [REDACTED] Hartford Fire received an offer of employment from an employer for evaluation.
8. In its evaluation, Hartford Fire was required to give preference to the opinions of the injured employee's treating doctor.
9. Hartford Fire improperly evaluated the offer of employment by not giving preference to the injured employee's treating doctor.
10. Hartford Fire's improper evaluation delayed payment of TIBs to the injured employee by 130 days.

Assessment of Sanction

1. Failure to provide 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 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 it took to rectify the consequences of the prohibited act, as the insurance carrier believed the rule allowed carrier to wait for a ruling on the validity

of the job offer prior to issuing payment of benefits to the injured employee. Carrier promptly paid after the CCH ruling.

5. Hartford Fire 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. Hartford Fire 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. Hartford Fire 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 §§ 408.081, 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 § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the 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.
10. Hartford Fire 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.
11. Pursuant to 28 TEX. ADMIN. CODE § 129.6(f), when evaluating an offer of employment, the insurance carrier must use the proper order of preference. The order of preference requires that the insurance carrier give preference to the opinion of:
 - a doctor selected by DWC to evaluate the injured employee's work status, if any;
 - the treating doctor;
 - a referral doctor providing regular treatment based on a treating doctor's referral;
 - a doctor who evaluated the employee as a consulting doctor based on the treating doctor's request; and
 - any other doctor based on an actual physical examination of the employee performed by that doctor.
12. Hartford Fire violated TEX. LAB. CODE § 415.002(a)(16), (20), and (22) when it failed to give preference to the injured employee's treating doctor in its evaluation of an offer of employment.

Commissioner's Order
Hartford Fire Insurance Company
DWC Enforcement File No. 21156
Page 6 of 7

Order

It is ordered that Hartford Fire Insurance Company must pay an administrative penalty of \$5,000 within 30 days from the date of this order. Hartford Fire 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

