

No. 2021-6781

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

Date: 04-07-2021

Subject Considered:

Great West Casualty Company
1100 West 29th Street
South Sioux City, Nebraska 68776-3130

Consent Order
DWC Enforcement File No. 26677

General remarks and official action taken:

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

Waiver

Great West acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Great West 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. Great West 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. Great West was classified as "average" tier in the 2009 and 2018 Performance Based Oversight (PBO) assessments. Great West was classified as "high" tier in the 2014

and 2016 PBO assessments. Great West was not selected to be tiered in the 2007, 2010, or 2012 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

3. On [REDACTED], Great West received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED]% impairment rating.
5. Great West 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].
6. Great West issued payment of IIBs on [REDACTED], which was 18 days late.

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 history and extent of previous administrative violations, as the insurance carrier does not have a large history of PBO violations. In addition, the insurance carrier had previously overpaid temporary income benefits by \$3,483.73, or \$938 per week for three weeks and five days, to the injured employee and the insurance carrier's attorney erroneously advised that the overpayment would partially compensate for the IIBs late payment of \$1,312, or \$656 per week.
 5. Great West 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. Great West 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, 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. Great West 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), an 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), 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.
10. Great West 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.

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Order

It is ordered that Great West Casualty Company must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Great West Casualty 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 Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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

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Affidavit

STATE OF NEBRASKA §

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COUNTY OF DAKOTA §

§

Before me, the undersigned authority, personally appeared Craig A. Posson who being by me duly sworn, deposed as follows:

"My name is Craig A. Posson. 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 General Counsel + Secretary and am the authorized representative of Great West Casualty Company. I am duly authorized by the organization to execute this statement.

Great West Casualty Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

CAP
Affiant

SWORN TO AND SUBSCRIBED before me on March 24, 2021.

(NOTARY SEAL)



Laurie B. Alesch
Signature of Notary Public

Laurie B. Alesch
Printed Name of Notary Public

May 25, 2022
Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092