

No. 2021-6708

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

Date: 03-08-2021

Subject Considered:

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

Consent Order
DWC Enforcement File No. 25266

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 workers' compensation/employers' liability insurance in Texas.

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.

Failure to Pay Accrued Impairment Income Benefits Based on a Report of Medical Evaluation

3. On [REDACTED], Accident Fund received a Report of Medical Evaluation from an injured employee's certifying doctor. The certifying doctor was an authorized doctor selected by the injured employee's treating doctor for purposes of addressing the issues of [REDACTED] and impairment rating (IR).
4. The certifying doctor determined that the injured employee reached [REDACTED] on [REDACTED] with an IR of [REDACTED].
5. Accident Fund was required to dispute MMI and IR or pay accrued impairment income benefits (IIBs) based on the Report of Medical Evaluation certifying MMI and IR no later than [REDACTED] or five days after receiving the report. Accident Fund did not dispute MMI and IR or issue payment of IIBs on [REDACTED].
6. Accident Fund disputed the date of MMI and IR on [REDACTED], by requesting a designated doctor (DD) exam, which was 67 days after it was required to initiate payment of accrued IIBs pursuant to the certifying doctor's Report of Medical Evaluation. Accident Fund issued payment for IIBs [REDACTED], following receipt of the DD report.

Assessment of Sanction

1. Failure to provide appropriate 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 taken to rectify the consequences of the prohibited act, as the insurance carrier misunderstood the directions laid out in the rules versus the directions laid out in the statute.
5. 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).
6. 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, 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. 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 §§ 408.081, 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 § 408.121 and 28 TEX. ADMIN. CODE § 130.8, insurance carriers are required to initiate accrued IIBs within five days of receipt of a Report of Medical Evaluation (DWC Form-69) with a valid certification of MMI and IR by a doctor that is not disputed.
9. Accident Fund violated TEX. LAB. CODE §§ 415.002(a)(16), (20), and (22) when, having not disputed the certifying doctor's report, it failed to timely pay accrued

Commissioner's Order
Accident Fund National Insurance Company
DWC Enforcement File No. 25266
Page 5 of 6

IBs in accordance with the certifying doctor's report no later than five days after receiving the report.

Order

It is ordered that Accident Fund National Insurance Company must pay an administrative penalty of \$5,000 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

Affidavit

STATE OF Michigan §

COUNTY OF Ingham §

Before me, the undersigned authority, personally appeared Dean P. Holland, who being by me duly sworn, deposed as follows:

"My name is DEAN P. 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 February 4, 2021.

(NOTARY SEAL)

Karen F. Duffield
Signature of Notary Public

Karen F. Duffield
Printed Name of Notary Public

8/29/2024
Commission Expiration

