

No. 2021-6851

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

Date: 06-02-2021

Subject Considered:

New Hampshire Insurance Company
175 Water Street, 18th Floor
New York City, New York 10038

Consent Order
DWC Enforcement File No. 21001

General remarks and official action taken:

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

Waiver

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

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

3. On [REDACTED], New Hampshire mailed a bona fide offer of employment to the injured employee. The offered wage was less than the injured employee's average weekly wage. The injured employee did not accept the bona fide offer of employment.
4. New Hampshire was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED], through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. New Hampshire issued payment on [REDACTED], which was 197 days late.
5. On [REDACTED], New Hampshire mailed a bona fide offer of employment to the injured employee. The offered wage was equal to the injured employee's average weekly wage. The injured employee did not accept the bona fide offer of employment.

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 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; and other matters that justice may require, including, but not limited to: the size of the company or practice; and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules..
6. 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.
5. New Hampshire 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. New Hampshire 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, 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. New Hampshire 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 §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
9. Pursuant to TEX. LAB. CODE § 408.103(e) and 28 TEX. ADMIN. CODE § 129.2(a), an injured employee is entitled to TIBs to compensate the employee for lost wages due to the compensable injury during a period in which the employee has disability and has not reached maximum medical improvement.
10. Pursuant to TEX. LAB. CODE § 408.103(e) and 28 TEX. ADMIN. CODE § 129.2(b), lost wages are the difference between the injured employee's gross average weekly

wage and the injured employee's post-injury earnings. If the injured employee's post-injury earnings equals or exceeds the employee's injured employee's average weekly wage, the employee has no lost wages.

11. Pursuant to 28 TEX. ADMIN. CODE § 129.2(c)(3), the weekly amount of any wages offered as part of a bona fide job offer not accepted by the injured employee may be deemed to be post-injury earnings by the insurance carrier.
12. Pursuant to 28 TEX. ADMIN. CODE § 129.6(g), an insurance carrier may deem the wages offered by an employer through a bona fide offer of employment to be post-injury earnings, as outlined in 28 TEX. ADMIN. CODE § 129.2, on the earlier of the date the injured employee rejects the offer or the seventh day after the injured employee receives the offer of modified duty unless the injured employee's treating doctor notifies the carrier that the offer made by the employer is not consistent with the injured employee's work restrictions.
13. New Hampshire violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.

Order

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



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF Connecticut §

§

COUNTY OF Hartford §

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

"My name is Peter Macdonald. 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 and am the authorized representative of New Hampshire Insurance Company. I am duly authorized by the organization to execute this statement.

New Hampshire 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."



Affiant

SWORN TO AND SUBSCRIBED before me on April 29, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration