

No. 2022-7659

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

Date: 12/6/2022

Subject Considered:

New Hampshire Insurance Company
175 Water Street, Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File Nos. 28123, 29058, 29090, and 29121

General remarks and official action taken:

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

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. Respondent 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. Respondent was classified as "poor" tier in 2007 Performance Based Oversight (PBO) assessment, and "average" in 2009, 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Timely Pay Accrued Temporary Income Benefits

File No. 28123

3. Respondent was required to pay temporary income benefits (TIBs) to the injured employee (IE) for the four-week period from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	24
2.	[REDACTED]	[REDACTED]	[REDACTED]	18
3.	[REDACTED]	[REDACTED]	[REDACTED]	11
4.	[REDACTED]	[REDACTED]	[REDACTED]	4

File No. 29058

4. Respondent was required to pay TIBs to the IE for the five-week period from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	70
2.	[REDACTED]	[REDACTED]	[REDACTED]	63
3.	[REDACTED]	[REDACTED]	[REDACTED]	56
4.	[REDACTED]	[REDACTED]	[REDACTED]	49
5.	[REDACTED]	[REDACTED]	[REDACTED]	42

Failure to Accurately Pay Accrued Income Benefits

File No. 29090

5. Beginning [REDACTED] Respondent deducted [REDACTED] in attorney fees from the IE's TIBs pursuant to an order by DWC. Respondent continued to deduct [REDACTED] from the IE's TIBs after the attorney fee order was paid in full. Respondent owed [REDACTED] in attorney fees, but paid [REDACTED] resulting in an underpayment to the IE of [REDACTED].

6. On [REDACTED] Respondent informed the IE that it would begin paying impairment income benefits (IIBs) starting [REDACTED]. Respondent underpaid income benefits by [REDACTED] as of the date of the notice. Respondent continued to improperly deduct attorney fees from each income benefit payment.
7. Respondent ceased deducting for attorney fees on [REDACTED].
8. Respondent paid the deficit of [REDACTED] in income benefits to the IE on [REDACTED] and the remaining deficit of [REDACTED] on [REDACTED].

Failure to Process a Claim Promptly in a Reasonable and Prudent Manner

File No. 29121

9. On [REDACTED] an IE timely reported to the scheduled location for a Designated Doctor (DD) examination. However, the DD canceled the DD examination without notifying the IE or rescheduling the DD examination.
10. On [REDACTED] Respondent filed a *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (PLN-11), notifying the IE that Respondent was discontinuing income benefits based on the IE failing to attend the DD examination on [REDACTED].
11. After receiving the PLN-11, the IE provided documentation to the carrier that the IE reported to the DD examination location.
12. Respondent failed to investigate the matter in a reasonable and prudent manner prior to suspending income benefits and did not reinstate benefits.

Assessment of Sanction

1. Failure to provide income benefits in an accurate, 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 considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the replacement of the Third Party Administrator, and the efforts made to rectify the late payments, when notified.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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. Respondent 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 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)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent 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.

Failure to Timely Pay Accrued Temporary Income Benefits

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. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Accurately Pay Accrued Income Benefits


10. Pursuant to Tex. Lab. Code § 408.081(a), an injured employee is entitled to timely and accurate income benefits.
11. Pursuant to Tex. Lab. Code § 408.103 and 28 Tex. Admin. Code § 129.3, the insurance carrier is required to pay the correct amount of TIBs.
12. Pursuant to Tex. Lab. Code § 408.126, the insurance carrier is required to pay the correct amount of IIBs.
13. Respondent violated Tex. Lab. Code §§ 408.081(a), 408.103, 408.126, and 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 129.3 each time Respondent failed to accurately pay accrued income benefits.

Failure to Process a Claim Promptly in a Reasonable and Prudent Manner

14. Pursuant to Tex. Lab. Code § 409.022(c), an insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for refusal to pay benefits.
15. Pursuant to Tex. Lab. Code § 415.002(a)(11), an insurance carrier commits an administrative violation if it fails to process the suspension of TIBs for the failure to attend a DD examination in a reasonable and prudent manner.
16. Respondent violated Tex. Lab. Code §§ 409.022(c) and 415.002(a)(11) by failing to process a claim promptly in a reasonable and prudent manner.

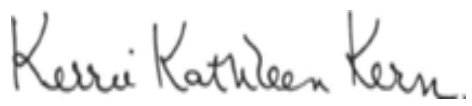
Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$40,000 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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