

No. 2023-8104

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

Date: 7/28/2023

Subject Considered:

Continental Insurance Company
PO Box 8317
Chicago, Illinois 60680-8317

Consent Order
DWC Enforcement File Nos. 30393, 32005, & 32006

General remarks and official action taken:

This is a consent order with Continental 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 not selected to be tiered in any year's Performance Based Oversight (PBO) assessments.

DWC Audit No. IP-22-102

File No. 30393

3. On [REDACTED] DWC initiated DWC Audit No. IP-22-102 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) and timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified 13 initial TIBs payments for audit. These 13 payments were reviewed to determine Respondent's compliance.
5. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

6. Respondent failed to timely initiate TIBs for 54% of examined payments (7 out of 13).
7. Specifically, Respondent paid injured employees less than six days late in two instances, between six and 15 days late in two instances, between 16 and 30 days late in one instance, and over 30 days late in two instances.

Failure to Timely or Accurately Report EDI Data to DWC

8. Respondent failed to accurately report the First Date of Disability for 31% of examined payments (4 out of 13).
9. Respondent failed to accurately report the Date of First Written Notice for 15% of examined payments (2 out of 13).
10. Respondent failed to accurately report the Initial TIBs Payment Date for 15% of examined payments (2 out of 13).

Failure to Timely Act on a Medical Bill

File No. 32005

11. On [REDACTED] a designated doctor (DD) performed a DD examination on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
12. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
13. On [REDACTED] Respondent paid [REDACTED] which was 74 days late.
14. On [REDACTED] Respondent paid [REDACTED] in interest on the late payment to the DD, which was 24 days late.

File No. 32006

15. On [REDACTED] a health care provider provided medical services to an injured employee. The medical services were related to a DD examination performed on [REDACTED]. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the health care provider.
16. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
17. On [REDACTED] Respondent took action on the medical bill 85 days late by issuing an explanation of benefits denying payment.
18. On [REDACTED] Respondent paid the [REDACTED] medical bill in full.
19. On [REDACTED] Respondent issued payment of interest on the medical bill payment in the amount of [REDACTED], which was 72 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. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.
3. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.
4. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
5. 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 EDI 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.
6. 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; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice. Further, the late medical bill payment in file number 32005 was more than 70 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system. Action on the medical bill in file number 32006 was taken more than 80 days late and involved medical services related to a DD examination.
 7. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's prompt and earnest actions to prevent future violations of this type. Specifically, Respondent has modified its protocol regarding which fax number is provided to vendors to submit bills. Respondent's previous protocol was to provide vendors with fax numbers specific to each claim professional and that fax number was only accessible by that specific claim professional. Respondent has implemented a new protocol which centralizes the submission of all medical bills sent via fax to a single fax number.
 8. 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).
 9. 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, 409.021, 414.002, and 414.003.
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 Initial TIBs

7. Pursuant to Tex. Lab. Code § 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.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate TIBs.

Failure to Timely or Accurately Report EDI Data to DWC

9. Pursuant to 28 Tex. Admin. Code §§ 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code §§ 124.2(a) and (b) each time Respondent failed to timely or accurately notify DWC and the injured employee of actions Respondent took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Failure to Timely Act on a Medical Bill

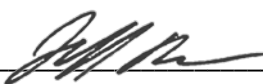
11. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
12. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest

13. Pursuant to Tex. Lab. Code § 413.019 and 28 Tex. Admin. Code § 134.130, an insurance carrier is required to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
14. Respondent violated Tex. Lab. Code §§ 413.019, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 134.130 each time Respondent failed to timely issue payment of due interest on late medical bill payments.

Order

It is ordered that Continental Insurance Company must pay an administrative penalty of \$8,500 within 30 days from the date of this order. Continental Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Illinois **§**
COUNTY OF Cook **§**

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter McCarron. I hold the position of SVP Claims Property & Casualty Claimand and am the authorized representative of Continental Insurance Company. My business address is:
151 N Franklin Street, Chicago, Cook, Illinois, 60606.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Peter McCarron
Declarant

Executed on July 24, 2023.