

No. 2019 6039

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: AUG 09 2019

Subject Considered:

HARTFORD INSURANCE COMPANY OF THE MIDWEST
One Hartford Plaza T 17 81
Hartford, Connecticut 06155

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 19038

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Hartford Insurance Company of the Midwest (Hartford).

WAIVER

Hartford acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Hartford waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Hartford 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Hartford was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment. Hartford was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

FAILURE TO PAY ACCRUED INCOME BENEFITS BASED ON A DESIGNATED DOCTOR REPORT

3. On [REDACTED], Hartford received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee was not at maximum medical improvement; the injured employee's disability from [REDACTED], to [REDACTED], was a direct result of the compensable injury; and that the injured employee was prevented from returning to work from [REDACTED], to the date of the report.
5. Since disability and return to work were issues in dispute, Hartford was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report, or by [REDACTED].
6. Hartford issued payment of TIBs on [REDACTED], which was 120 days late.

ASSESSMENT OF SANCTIONS

7. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
8. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (DWC) appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
9. In assessing the sanction for this case, DWC found the following factors set forth 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 has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.

10. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the promptness and earnestness of actions to prevent future violations and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules, as Hartford has implemented additional staff training to ensure TIBs are paid in a timely manner.
11. Hartford acknowledges that DWC and Hartford have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
12. Hartford acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner of workers' compensation makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(16), (20), and (22), an insurance carrier or its representative commits an administrative violation if that person fails to pay benefits from week to week as and when due directly to the person entitled to the benefits, violates a commissioner rule, and fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE §§ 408.081 and 409.023, an insurance carrier shall pay income benefits weekly as and when the benefits accrue without order from the commissioner.
6. Hartford committed a violation under TEX. LAB. CODE §§ 409.023, 415.002(a)(16), and 415.002(a)(22) when it failed to pay benefits weekly as and when the benefits accrue and without order from the commissioner.
7. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier shall pay benefits based on the opinion of the DD during the pendency of any dispute.

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8. Hartford committed a violation under TEX. LAB. CODE §§ 415.002(a)(22) and 408.0041(f) when it failed to pay benefits on the opinion of the DD during the pendency of a dispute.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.
10. Hartford committed a violation under TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 127.10(h) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.

ORDER

Hartford Insurance Company of the Midwest is ORDERED to pay an administrative penalty of \$10,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *ACTP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

