

No. ~~2019~~ 5907

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAR 20 2019

Subject Considered:

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
P.O. Box 1000
Philadelphia, Pennsylvania 19105-1000

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17452

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Indemnity Insurance Company of North America (IICNA).

WAIVER

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

FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. IICNA failed to timely initiate payment of temporary income benefits (TIBs) to an injured employee in three instances.
4. Specifically, the TIBs payments issued to injured employees were initiated 12 days late, 33 days late, and 45 days late, respectively.

2019 5907

**FAILURE TO TIMELY COMPLY WITH A FINAL OR BINDING
CONTESTED CASE HEARING DECISION AND ORDER**

5. On [REDACTED], a contested case hearing decision and order (CCH D&O) was issued requiring IICNA to pay attorney's fees in a lump sum. IICNA received the CCH D&O on [REDACTED].
6. The CCH D&O became final on [REDACTED]. IICNA was required to comply with the CCH D&O within 20 days of its finality, or by [REDACTED].
7. IICNA issued payment of the attorney's fees owed in compliance with the CCH D&O on [REDACTED], which was 52 days late.

ASSESSMENT OF SANCTION

8. Compliance with DWC orders is imperative to minimizing disputes and resolving them promptly and fairly. Additionally, failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
9. In assessing the sanction for this case, 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.

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 aggravating: the seriousness of the violation; the history and extent of previous administrative violations; and the penalty necessary to deter future violations.
11. 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: None.
12. IICNA acknowledges that it has communicated with DWC 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).
13. IICNA 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 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, 402.00128, 414.002, 414.003, 415.002, and 415.021; 28 TEX. ADMIN. CODE §§ 152.1 and 180.26.
2. The commissioner has authority to informally dispose of this matter as set forth 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)(22), an insurance carrier or its representative commits an administrative violation each time it violates a provision of the Texas Workers' Compensation Act.
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 § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of the commissioner.
7. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.

8. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. IICNA violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 415.021(a) each time it failed to timely initiate payment of TIBs.
10. Pursuant to TEX. LAB. CODE § 410.208, a person commits an administrative violation if the person fails or refuses to comply with a final order or decision of the commissioner within 20 days after the date the order or decision becomes final.
11. IICNA violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), 415.021(a), and 410.208 and when it failed to timely comply with a final CCH D&O.

ORDER

Indemnity Insurance Company of North America is ORDERED to pay an administrative penalty of \$8,000 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 *WCTA*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Van B. Moreland
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

