

No. 2019 6005

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JUL 02 2019

Subject Considered:

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
175 Water Street Floor 18
New York, New York 10038-4976

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 18941

General remarks and official action taken:

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

WAIVER

Pennsylvania acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Pennsylvania 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. Pennsylvania 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, including workers' compensation/employers' liability.
2. Pennsylvania was classified as "high" tier in the 2012 Performance Based Oversight (PBO) assessment, and "average" tier in the 2007, 2009, 2010, 2014, 2016, and 2018 PBO assessments.

FAILURE TO TIMELY PAY ACCRUED INCOME BENEFITS

3. Pennsylvania was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Pennsylvania issued payment of TIBs for the period of [REDACTED] through [REDACTED] on [REDACTED], which was 32 days late.

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4. Pennsylvania was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Pennsylvania issued payment of TIBs for the period of [REDACTED] through [REDACTED] on [REDACTED] which was 25 days late.
5. Pennsylvania was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Pennsylvania issued payment of TIBs for the period of [REDACTED] through [REDACTED] on [REDACTED] which was 18 days late.
6. Pennsylvania was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Pennsylvania issued payment of TIBs for the period of [REDACTED] through [REDACTED] on [REDACTED] which was 11 days late.
7. Pennsylvania was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Pennsylvania issued payment of TIBs for the period of [REDACTED] through [REDACTED] on [REDACTED] which was four days late.

ASSESSMENT OF SANCTION

8. 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, 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.
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; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company.
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: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; and the promptness of actions taken to prevent future violations.
12. Pennsylvania 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. Pennsylvania 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, 409.021, 414.002, and 414.003.
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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. 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.

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6. 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.
7. Pennsylvania violated TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16) and (22) each time it failed to timely initiate payment of TIBs.
8. Pennsylvania violated TEX. LAB. CODE §§ 409.022 and 409.024 when it failed to timely pay income benefits without reasonable grounds for doing so.

ORDER

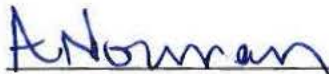
The Insurance Company of the State of Pennsylvania is ORDERED to pay an administrative penalty of \$3,000 within 30 days from the date of this Order.

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 *NCW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

AFFIDAVIT

