

No. **2022-7249**

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

Date: 2/23/2022

Subject Considered:

State National Insurance Co.
3 Park Avenue, Floor 38
New York, New York 10016-5918

Consent Order
DWC Enforcement File Nos. 27625 and 28491

General remarks and official action taken:

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

Waiver

State National acknowledges that the Texas Labor Code and other applicable laws provide certain rights. State National 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. State National 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. State National was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Comply with a Final or Binding Contested Case Hearing Decision and Order

3. On [REDACTED] issued a contested case hearing decision and order (CCH D&O) requiring State National to pay benefits in accordance with the decision. State National received the CCH D&O on [REDACTED]
4. The CCH D&O became final on [REDACTED] State National was required to comply with the CCH D&O within 20 days. The deadline to comply was: [REDACTED]
5. State National paid benefits on [REDACTED] which was one day late. However, State National came into full compliance when it issued a payment for interest on [REDACTED] which was 34 days late.

Failure to Accurately Pay Temporary Income Benefits

6. The injured employee was awarded benefits in a DWC Contested Case Hearing Order dated [REDACTED] for the benefit periods of [REDACTED] through [REDACTED] and from [REDACTED] through [REDACTED]
7. State National miscalculated the injured employee's average weekly wage (AWW) for those benefit periods, which resulted in a reduction of the injured employees' true benefit rate (TBR). Based on a complete wage statement, State National incorrectly determined an AWW of [REDACTED] instead of [REDACTED] and an incorrect TBR of [REDACTED] instead of [REDACTED] State National owed benefits in the amount of [REDACTED] but paid [REDACTED]
8. State National issued an additional payment of [REDACTED] on [REDACTED] and an interest payment of [REDACTED] on [REDACTED] State National miscalculated and incorrectly reduced the benefits owed to the injured employee. As a result, State National continued paying partial benefits but at an incorrect amount for those benefit periods.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: matters that justice may require, such as the prompt and earnest actions taken to prevent future violations. The adjuster was negligent in paying the benefit one day late. However, an additional delay in this matter was caused by the employer's delay in sending a complete and accurate wage statement. Once a complete wage statement was obtained, the interest payment was forwarded on January 6, 2021. The TPA compliance procedures were

examined internally, and a calendar diary was instituted to ensure timely compliance with administrative decisions in all future orders.

5. State National acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. State National 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, and 402.00128.
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. State National 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.

7. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
8. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
9. State National violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), 415.0035(e), and 415.021 when it failed to timely comply with a DWC order for benefits.
10. 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.
11. 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.
12. Pursuant to TEX. LAB. CODE § 409.021(e) and 28 TEX. ADMIN. CODE § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or, as applicable pursuant to §409.021(a-3), file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
13. 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.
14. State National violated TEX. LAB. CODE §§ 408.103, 415.002(a)(20), and 415.002(a)(22) and 28 TEX. ADMIN. CODE § 129.3 each time it failed to accurately pay TIBs.

Order

It is ordered that State National Insurance Co. must pay an administrative penalty of \$2,500 within 30 days from the date of this order. State National Insurance Co. 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Ronald R. Mackell, Jr.
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
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Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Tarrant §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Kelly Brown. I hold the position of Vice President of Compliance and am the authorized representative of State National Insurance Co. My business address is:

1900 L Don Dodson Dr, Bedford, Tarrant, TX, 76021.
(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.



Declarant

Executed on January 20, 2022.