

No. 2025-9312

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

Date: 5/20/2025

Subject Considered:

Berkley National Insurance Company
1250 East Diehl Road, Suite 200
Naperville, Illinois 60563-9338

Consent Order
DWC Enforcement File No. 36125

General remarks and official action taken:

This is a consent order with Berkley National 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2020 and 2022 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2024 PBO assessment.

Failure to Timely Pay Underpaid Income Benefits, Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report, and Properly Recoup Income Benefits

3. On [REDACTED], Respondent began paying benefits to an injured employee at a rate of \$ [REDACTED] per week. Respondent had not received wage information from every relevant employer when it began paying benefits.
4. On [REDACTED], Respondent determined an injured employee's average weekly wage (AWW) was \$ [REDACTED] after receiving wage statement from an additional employer. Respondent also received post-injury earnings from the additional employer.
5. Respondent determined that the temporary income benefit (TIBs) rate should have been \$ [REDACTED] per week. Respondent then determined it owed \$ [REDACTED] in TIBs without recalculating the TIBs owed to the injured employee during the weeks there were post injury earnings. Respondent actually owed \$ [REDACTED] in TIBs.
6. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs, leaving an underpayment of \$ [REDACTED] in TIBs. Respondent failed to pay interest with the TIBs payment.
7. On [REDACTED], Respondent received a DWC Form-073, *Texas Workers' Compensation Work Status Report*, releasing the injured employee to return to work without restrictions on [REDACTED].
8. Also, on [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
9. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED]% impairment rating (IR).
10. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
11. On [REDACTED], Respondent sent a Plain Language Notice Form-03b, *Notice of Maximum Medical Improvement and Permanent Impairment* (PLN-03b) informing the injured employee that it redesignated the TIBs paid starting [REDACTED], as IIBs.

12. Because the TIBs paid from [REDACTED], to [REDACTED], occurred before MMI, the PLN-3b improperly redesignated those TIBs as IIBs. Respondent made the redesignation because it determined that it had overpaid TIBs due to the release to work without restrictions beginning [REDACTED].
13. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs and attorney fees 44 days late. The payments improperly recouped \$ [REDACTED] in overpaid benefits because Respondent had not provided notice to the injured employee that it intended to recoup income benefits.
14. On [REDACTED], Respondent paid interest for the [REDACTED], TIBs payment 66 days late.
15. On [REDACTED], Respondent sent a Plain Language Notice Form-008, *Notice of Change in Amount of Indemnity Benefit Payment* (PLN-8), to the injured employee. The PLN-8 informed the injured employee that it would reduce benefit payments from \$ [REDACTED] per week to \$ [REDACTED] per week without providing an explanation for the reduction in benefits.
16. On [REDACTED], Respondent paid \$ [REDACTED]4 in IIBs and attorney fees after receiving an amended DD report determining that the injured employee should have received a [REDACTED]% IR. The payments improperly recouped \$ [REDACTED] in overpaid benefits because Respondent had not provided notice to the injured employee that it intended to recoup income benefits.

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. Improper attempts to recoup an overpayment harm injured employees and abrogates a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.
3. 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.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating:
- a. the seriousness of the violation, including the untimeliness of income benefit payments, the failure to follow the procedures for recouping overpaid income benefits, and failure to provide adequate notice regarding the actions it was taking on the claim;
 - b. the history and extent of previous administrative violations, including five recent consent orders and three warning letters;
 - c. the penalty necessary to deter future violations; and
 - d. the negative impact on the delivery of income benefits to an injured employee, plus late interest.
5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. 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).

7. 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, 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 Underpaid Income Benefits

7. 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.
8. Pursuant to 28 Tex. Admin. Code § 126.15(b), if an insurance carrier determines an underpayment of income benefits has occurred, the insurance carrier shall pay the full amount of the underpayment with interest on accrued but unpaid benefits within seven days of the determination.
9. Respondent violated Tex. Lab. Code §§ 408.081, 409.023, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code § 126.15(b) by failing to timely pay an underpayment of income benefits it had determined had occurred.

Failure to Timely Pay Accrued IIBs Based on a DD Report

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 § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
12. Pursuant to 28 Tex. Admin. Code § 127.10(i), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
13. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Follow the Procedures for Recouping Overpayments of Income Benefit

14. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.

15. Pursuant 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.
16. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 126.16(b)(1) by failing to follow the procedures for recouping overpayments of income benefit.

Failure to Timely Pay Interest

17. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
18. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) when Respondent failed to timely pay interest with accrued but unpaid income benefits.

Order

It is ordered that Berkley National Insurance Company must pay an administrative penalty of \$5,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Berkley National 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:



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