

2019 5962
No. _____

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAY 15 2019

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 18887

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.

DWC AUDIT IBA-19-106

3. On [REDACTED] the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated Audit No. IBA-19-106 to determine whether IICNA was accurately paying lifetime income benefits (LIBs) and death benefits (DBs) and whether claim information was being timely and accurately reported to DWC.
4. The audit covered LIBs and DBs claims with dates of injury between [REDACTED] and [REDACTED]. DWC identified 40 claims for audit. Eleven claims failed to meet

selection criteria and were dropped from the audit sample. The remaining 29 claims were reviewed to determine IICNA's compliance.

Failure to Accurately Pay Death Benefits

5. IICNA failed to accurately pay 8% of the DBs claims reviewed (2 out of 25).
6. All outstanding inaccurate DBs payments identified in the audit were paid by IICNA, with interest, on or before [REDACTED]. IICNA issued DBs payments totaling \$ [REDACTED].

Failure to Accurately Pay Lifetime Income Benefits

7. IICNA failed to accurately pay 25% of the LIBs claims reviewed (1 out of 4).
8. All outstanding inaccurate LIBs payments identified in the audit were paid by IICNA, with interest, on or before [REDACTED]. IICNA issued LIBs payments totaling \$ [REDACTED].

Failure to Timely or Accurately Report Claim Data to DWC

9. IICNA failed to timely report to DWC 67% of the DBs termination identified (2 out of 3).
10. IICNA failed to accurately report to DWC 29% of annual LIBs increases paid (2 out of 7).
11. IICNA inaccurately reported claims data to DWC on 11 claims. This inaccurate information caused the claims to be erroneously selected for audit.

ASSESSMENT OF SANCTION

12. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
13. Timely submission of accurate information and documentation to DWC is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
14. 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.
15. 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; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
16. 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 and earnestness of actions to prevent future violations.
17. 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).
18. 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, 414.004, and 415.021; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE §§ 2001.051–2001.178.
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 fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 408.081(a), an employee is entitled to timely and accurate income benefits.
6. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier shall pay DBs to the legal beneficiary if a compensable injury to the employee results in death. Subject to TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75 percent of the employee's average weekly wage.
7. IICNA violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to accurately pay DBs to legal beneficiaries.
8. Pursuant to TEX. LAB. CODE § 408.161(c), the amount of LIBs is equal to 75 percent of the employee's average weekly wage. Benefits shall be increased at a rate of three percent a year notwithstanding section 408.061.
9. IICNA violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to accurately pay LIBs to an injured employee.
10. 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.
11. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e)(6), insurance carriers are required to report the termination of income or DBs within 10 days of making the last payment for benefits.
12. IICNA violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely report the termination of DBs to DWC.
13. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e)(3), insurance carriers are required to report the change in the net benefit payment amount that was not caused by a change in the employee's post-injury earnings within 10 days of making the first payment reflecting the change.
14. IICNA violated TEX. LAB. CODE § 415.002(a)(20) each time it failed accurately report annual LIBs increases.
15. Pursuant to 28 TEX. ADMIN. CODE § 124.2, insurance carriers are required to notify DWC of actions taken on, or events occurring in a claim. Inherent in this duty is the requirement that the information be reported accurately.
16. IICNA violated TEX. LAB. CODE § 415.002(a)(20) each time it provided inaccurate claim data to DWC.

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ORDER

Indemnity Insurance Company of North America is ORDERED to pay an administrative penalty of \$9,900 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 *NCIP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



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

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