

No. 2019 6098

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: SEP 27 2019

**Subject Considered:**

**SELECTIVE INSURANCE COMPANY OF AMERICA**  
40 Wantage Avenue  
Branchville, New Jersey 07890

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 21017

**General remarks and official action taken:**

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

**WAIVER**

Selective acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Selective 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. Selective 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Selective was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS**

3. On [REDACTED] Selective received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED]. The eighth day accrued on [REDACTED].
5. Selective was required to initiate or dispute temporary income benefits (TIBs) no later than the later of 15 days after the insurance carrier's written notice of the injury or seven days after the accrual date, which was by [REDACTED].
6. Selective filed a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) on [REDACTED]. Selective was required to pay benefits that had accrued and were payable prior to the date the insurance carrier filed the notice of denial and only then was it permitted to suspend benefits. Selective was required to pay for the benefit periods between [REDACTED] and [REDACTED].
7. Selective issued the initial TIBs payments 539 days late on [REDACTED].

**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 Texas workers' compensation system.
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.

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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, 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; 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; and other matters that justice may require.
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, as the claimant did not submit doctor's reports to substantiate his earlier disability period until after the benefit review conference (BRC) held on [REDACTED] and did not mention the [REDACTED] through [REDACTED] disability period at the BRC. Additionally, at the BRC, the claimant did not claim any periods of disability other than periods of [REDACTED] through [REDACTED] and agreed to withdraw his claim to the [REDACTED] through [REDACTED] disability period.
12. Selective acknowledges that DWC and Selective have communicated 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. Selective 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, 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs no 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.
7. Selective violated TEX. LAB. CODE §§ 409.021, and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.

**ORDER**

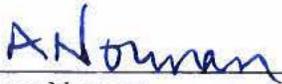
Selective Insurance Company of America is ORDERED to pay an administrative penalty of \$6,500 within 30 days from the date of this Order.

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.



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Cassie Brown *WCTA*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Amy Norman  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

