

No. 2020-6308

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-2-2020

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 20955

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 (Indemnity).

WAIVER

Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Indemnity 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. Indemnity 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. Indemnity was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO TIMELY COMPLY WITH A BENEFIT DISPUTE AGREEMENT

3. On [REDACTED], Indemnity received a Benefit Dispute Agreement (BDA).
 - a. Indemnity was required to comply with the BDA within five days of receipt, or by [REDACTED].
 - b. Indemnity issued impairment income benefits (IIBs) on [REDACTED], 50 days late.

ASSESSMENT OF SANCTION

4. Failure to provide appropriate IIBs in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
5. 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.
6. 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, gravity of the prohibited act; the history and extent of previous administrative violations (Indemnity has approximately 20 prior 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.

7. 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 history and extent of previous administrative violations (Indemnity has no prior IIBs violations); whether the administrative violation has negative impact on the delivery of benefits to an injured employee (Indemnity timely paid the TIBs based on the BDA); and other matters that justice may require, including but not limited to, the promptness and earnestness of actions to prevent future violations (Indemnity initiated training and immediate manager review of all BDAs).
8. Indemnity acknowledges that DWC and Indemnity 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).
9. Indemnity 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, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021 and 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 § 415.010, a party to an agreement approved by DWC commits an administrative violation if the person breaches a provision of the agreement.
6. Indemnity violated TEX. LAB. CODE §§ 415.010 and 415.002(a)(22) when it failed to timely comply with a DWC approved BDA.

COMMISSIONER'S ORDER
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ORDER

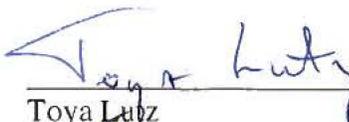
Indemnity Insurance Company of North America is ORDERED to pay an administrative penalty of \$ 5,000 within 30 days from the date of this consent Order.

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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

