

No. **2021-6896**

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

Date: 7/1/2021

Subject Considered:

New Hampshire Insurance Company
P.O. Box 25974
Overland Park, Kansas 66225-5974

Consent Order
DWC Enforcement File No. 26913

General remarks and official action taken:

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

Waiver

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

Failure to Timely Pay Attorney Fees Ordered by DWC

3. On [REDACTED], DWC ordered New Hampshire to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered New Hampshire to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee. The insurance carrier received the order on [REDACTED].
4. On [REDACTED], a balance of [REDACTED] in attorney fees was outstanding.
5. On [REDACTED], New Hampshire issued a payment to the injured employee for unpaid supplemental income benefits. New Hampshire was required to issue a payment for attorney fees to the injured employee's attorney the same day but did not issue payment until [REDACTED], which was 115 days late. The late payment was [REDACTED].

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; the history of compliance with electronic data interchange requirements; and other matters that justice may require, including, but not limited to, the size of the company or practice 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 factor in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
 5. New Hampshire 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. New Hampshire 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, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

3. New Hampshire 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 §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
8. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(20), 415.021(a), and 415.0035(e) when it failed to timely comply with a DWC order to pay attorney fees.

Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$400 within 30 days from the date of this order. New Hampshire Insurance Company 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Affidavit

STATE OF Connecticut §
§
COUNTY OF Hartford §

Before me, the undersigned authority, personally appeared Peter Macdonald,
who being by me duly sworn, deposed as follows:

"My name is Peter Macdonald. I am of sound mind, capable of making this
statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President and am the authorized representative of
New Hampshire Insurance Company. I am duly authorized by the organization to execute
this statement.

New Hampshire Insurance Company has knowingly and voluntarily entered into this
consent order and agrees with and consents to the issuance and service of this consent
order."



Affiant

SWORN TO AND SUBSCRIBED before me on May 21, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092