

No. **2022-7178**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 1/14/2022

Subject Considered:

Indemnity Insurance Company of North America
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File No. 28207

General remarks and official action taken:

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

Waiver

Indemnity Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Indemnity Insurance 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. Indemnity Insurance 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. Indemnity Insurance was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Initial Supplemental Income Benefits

3. On [REDACTED] Indemnity Insurance received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs) for the 1st quarter. The 1st quarter of SIBs began on [REDACTED]
4. Indemnity Insurance's payment for the first month of the 1st quarter was due by the 10th day after Indemnity Insurance received DWC's determination of entitlement or the seventh day of the 1st quarter, whichever is later. In this case, the latest date was [REDACTED]
5. Indemnity Insurance issued a payment for SIBs for the 1st month of the 1st quarter on [REDACTED] which was seven days late.

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. 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 seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity 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; 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. Indemnity Insurance 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. Indemnity Insurance 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, 402.00111, 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. Indemnity Insurance 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.
7. Pursuant to TEX. LAB. CODE § 408.144, SIBs are calculated quarterly and paid monthly.
8. Pursuant to TEX. LAB. CODE § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to TEX. LAB. CODE § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
10. Pursuant to 28 TEX. ADMIN. CODE § 130.107, an insurance carrier must make the first payment of SIBs for the 1st quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
11. Indemnity Insurance violated TEX. LAB. CODE §§ 408.144, 408.145, and 409.023 and 28 TEX. ADMIN. CODE § 130.107 when it issued payment for SIBs for the 1st month of the 1st quarter on June 14, 2021, which was seven days late.

Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$1,700 within 30 days from the date of this order. Indemnity Insurance Company of North America 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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