

No. **2022-7395**

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

Date: 7/25/2022

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 Nos. 28042, 28892, 28905, and 29239

General remarks and official action taken:

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

Waiver

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

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

Enforcement File No. 28042

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was nine days late.
4. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was two days late.
5. Respondent paid interest on [REDACTED] which was 33 days late.

Enforcement File No. 28892

6. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 10 days late.
7. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was three days late.
8. Respondent paid interest on [REDACTED] which was 20 days late.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

Enforcement File No. 28905

9. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits (SIBs) (DWC-52)*, for the eighth quarter. The eighth quarter of SIBs began on [REDACTED]
10. Respondent's payment for the first month of the eighth quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the eighth quarter, whichever is later. In this case, the latest date was [REDACTED]
11. Respondent issued a payment for SIBs for the first month of the eighth quarter on [REDACTED] which was 11 days late.
12. Respondent paid interest on [REDACTED] which was 17 days late.

Failure to Accurately Pay Supplemental Income Benefits

Enforcement File No. 29239

13. On [REDACTED] DWC approved a DWC Form-024, *Benefit Dispute Agreement (BDA)* ordering Respondent to pay SIBs for the first and second quarters.
14. On [REDACTED] Respondent paid SIBs and attorney fees for the first and second quarters. Respondent issued an overpayment in attorney fees and an underpayment of SIBs.
15. On [REDACTED] [REDACTED] [REDACTED] and [REDACTED] Respondent paid SIBs and attorney fees for the third and fourth quarters. Respondent issued an overpayment in attorney fees and an underpayment of SIBs.
16. On [REDACTED] Respondent issued payment for the underpaid SIBs.
17. On [REDACTED] Respondent issued payment for interest one day late.

Assessment of Sanction

1. Failure to provide income benefits and interest 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; 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: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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. Respondent 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, 414.002, 414.003, and 415.021.
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. Respondent 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.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(16), (20), and (22) each time it failed to timely initiate payment of accrued TIBs.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

10. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
11. 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.
12. 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.
13. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for a subsequent quarter by the 10th day after receiving an application for SIBs or the seventh day of the subsequent quarter. An insurance carrier must make the second payment by the 37th day of the subsequent quarter and the third payment by the 67th day of the quarter.
11. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time it failed to timely issue payment of SIBs.

Failure to Accurately Pay Supplemental Income Benefits

14. Pursuant to Tex. Lab. Code § 408.144(a), SIBs are calculated quarterly and paid monthly.
15. Pursuant to Tex. Lab. Code § 408.144(b) and 28 Tex. Admin. Code § 130.102(g), SIBs are a percentage difference between of average weekly wage and wages earned during the reporting period.
16. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time it failed to accurately issue payment of SIBs.

Failure to Timely Pay Interest

17. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
18. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time it failed to pay interest with accrued but unpaid income benefits.

Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$10,600 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:



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

Unsworn Declaration

STATE OF Delaware §
§
COUNTY OF New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road Wilmington New Castle DE 19803
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.



Declarant

Executed on July 19, 2022.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092