

No. 2023-7755

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

Date: 1/23/2023

Subject Considered:

American Casualty Co. of Reading PA
P.O. Box 8317
Chicago, Illinois 60680-8317

Consent Order
DWC Enforcement File No. 29890

General remarks and official action taken:

This is a consent order with American Casualty Co of Reading PA (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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2012 PBO assessment.

Failure to Timely Comply with a Commissioner's Order

3. On [REDACTED] Respondent received a Commissioner's Order directing Respondent to issue an advance payment of benefits based on financial hardship.
4. Respondent was required to comply with this order within seven days of receiving it, or by [REDACTED]
5. Respondent issued the advance payment on [REDACTED] or 12 days late.

Assessment of Sanction

1. Timely submitting information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
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; the history and extent of previous administrative violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and the penalty necessary to deter future violations.
4. DWC found the following factors 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.
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, 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. 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)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
6. 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.
7. 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.
8. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), a person regulated by DWC under this title commits an administrative violation if they violate the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.
9. Pursuant 28 Tex. Admin Code § 126.4(d), the Commission shall notify the carrier and the employee in writing when an advance is ordered. The notice shall include the amount of the advance to be paid; this amount shall not exceed four times the maximum weekly benefit for temporary income benefits as computed under the Act, §408.061(a). The carrier shall pay an advance ordered by the Commission within seven days of the receipt of notice from the Commission by the carrier's Austin representative.
10. Respondent violated Tex. Lab. Code §§ 415.002(17), (20) and (22), 415.0035(e) and 415.021(a) and 28 Tex. Admin Code § 126.4(d) by failing to timely comply with a Commissioner's Order within seven days.


Order

It is ordered that American Casualty Co of Reading PA must pay an administrative penalty of \$2,000 within 30 days from the date of this order. American Casualty Co of Reading PA 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF IL §
 §
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is PETER McCARRON. I hold the position of SVP CLAIMS and am the authorized representative of American Casualty Co of Reading PA. My business address is:

151 N. FRANKLIN CHICAGO Cook IL 60606
(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 1/6/23 2023