

No. **2019 6071**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **SEP 03 2019**

Subject Considered:

HARTFORD FIRE INSURANCE COMPANY
One Hartford Plaza, Tower 17 81
Hartford, Connecticut 06155

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 15929

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Hartford Fire Insurance Company (Hartford Fire).

WAIVER

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

**FAILURE TO TIMELY PAY TEMPORARY INCOME BENEFITS IN
ACCORDANCE WITH A DESIGNATED DOCTOR REPORT**

3. On [REDACTED], the injured employee sustained a compensable injury that consisted of a [REDACTED]. The injured employee was released by the treating doctor to work light duty and worked up until [REDACTED].
4. On February 2, 2016, the injured employee underwent [REDACTED] [REDACTED] as recommended by [REDACTED] treating doctor and was taken off work for that day. On the injured employee's discharge notice dated [REDACTED], [REDACTED] treating doctor indicated that the injured employee could return to work with [REDACTED] on [REDACTED]. The treating doctor subsequently issued a *Work Status Report* (DWC Form-73) to this effect on [REDACTED].
5. On [REDACTED], the employer, relying upon the treating doctor's discharge notice and DWC Form-73 claiming that the injured employee could work [REDACTED], attempted to make a bona fide offer of employment (BFOE) to the injured employee.
6. The injured employee rejected the alleged BFOE claiming that he wanted [REDACTED] to improve before returning to work.
7. Hartford Fire, reduced the injured employee's temporary income benefits (TIBs) by the amount that [REDACTED] would have earned had [REDACTED] accepted the alleged BFOE offer of employment and began paying partial TIBs.
8. On [REDACTED], Hartford Fire received a report from the first designated doctor (DD) appointed by the Texas Department of Insurance, Division of Workers' Compensation (DWC) to evaluate the [REDACTED] and determine the issues of [REDACTED], [REDACTED], and [REDACTED].
9. The DD determined, in part, that the injured employee was unable to return to work due to the injured employee [REDACTED] [REDACTED] during which time [REDACTED] was unable to work, under the treating doctor's restrictions, from [REDACTED], through [REDACTED].
10. Hartford Fire never disputed that the injured employee's [REDACTED] injury was not the direct result of workplace injury and did not submit this question to the first designated doctor.
11. Hartford Fire was required to pay the full amount of accrued TIBs and to begin weekly payment of full TIBs no later than five days after receipt of the DD report, which in this case was by [REDACTED].

12. Hartford Fire had begun paying TIBs before this date but had issued only partial payment. Hartford Fire issued a lump sum payment of \$ [REDACTED] for the remaining balance of accrued TIBs in accordance with the DD report on [REDACTED], but did not come into full compliance until [REDACTED], when the interest payment of \$ [REDACTED] was issued, which was 350 days late.

ASSESSMENT OF SANCTION

13. Failure to accurately provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
14. In assessing the sanction for this case, 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.
15. 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, and gravity of the prohibited act; the penalty necessary to deter future violations; the negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

16. 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 penalty necessary to deter future violations and other matters that justice may require, specifically high PBO assessments in 2010, 2012, and 2018.
17. Hartford Fire acknowledges that DWC and Hartford Fire have 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).
18. Hartford Fire 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, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. In accordance with 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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a commissioner rule.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner.
7. Hartford Fire violated TEX. LAB. CODE §§ 409.023, 415.002(a)(16), and 415.002(22) each time it failed to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner.

8. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute.
9. Hartford Fire violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the DD during the pendency of a dispute.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
11. Hartford Fire violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.

ORDER

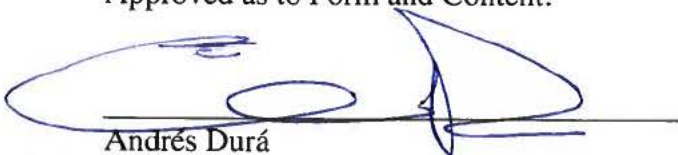
Hartford Fire Insurance Company is ORDERED to pay an administrative penalty of \$8,000 within 30 days from the date of this Order.

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 *NCTW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

