

No. 2020-6319

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-10-2020

Subject Considered:

NORGUARD INSURANCE COMPANY
39 Public Square
P.O. Box A-H
Wilkes-Barre, Pennsylvania 18703-0020

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 23281

General remarks and official action taken:

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

WAIVER

Norguard acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Norguard 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. Norguard 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.
2. Norguard was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. On [REDACTED], Norguard received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day accrued on [REDACTED].
5. Norguard was required to initiate or dispute [REDACTED] the later of 15 days after Norguard received written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].

6. Norguard did not file a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) and issued the initial TIBs payment on [REDACTED], which was 21 days late. Norguard included interest for late benefit weeks in the payment.

ASSESSMENT OF SANCTION

7. Failure to 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.
8. 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.
9. 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 history and extent of previous administrative violations; 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; and other matters that justice may require including the size of the company or practice.
10. 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 demonstrated good faith of the violator, the substantial actions taken to rectify the consequences of the act, and the promptness and earnestness of actions to prevent future violations.

11. Norguard acknowledges that DWC and Norguard 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).
12. Norguard 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. Pursuant to 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 DWC 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, 408.082, and 409.021, and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. Norguard violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22), when it failed to timely initiate payment of TIBs.

ORDER

Norguard Insurance Company is ORDERED to pay an administrative penalty of \$2,100 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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Tyrus Housh
Staff Attorney, DWC Enforcement
Texas Department of Insurance

COMMISSIONER'S ORDER
 Norguard Insurance Company
 TDI-DWC Enforcement File No. 23281
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AFFIDAVIT

STATE OF Pennsylvania §
 COUNTY OF Luzerne §

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

"My name is Daniel Hohal. 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 TPA oversight, and am the authorized representative of Norguard Insurance Company. I am duly authorized by said organization to execute this statement.

Norguard Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Norguard Insurance Company is voluntarily entering into this consent order. Norguard Insurance Company consents to the issuance and service of this consent order."

Daniel R Hohal

[Handwritten signature of Daniel R Hohal]

Affiant

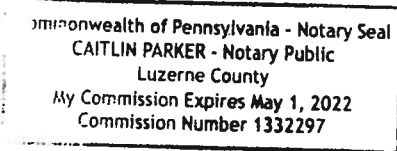
SWORN TO AND SUBSCRIBED before me on March 2, 2020.

(NOTARY SEAL)

[Handwritten signature of Caitlin Parker]
 Signature of Notary Public

Caitlin Parker
 Printed Name of Notary Public

May 1, 2022
 Commission Expiration Date



Confidential Information Redacted
 Texas Labor Code §§402.083 & 402.092

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 MAR 12 2020
 TDI-DWC CENTRAL