

No. 2020-6413

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

**Date:** 07-31-2020

**Subject Considered:**

American Casualty Company of Reading, Pennsylvania  
9500 Arboretum Boulevard, Suite 145  
Austin, Texas 78759-6307

Consent Order  
DWC Enforcement File Nos. 24453, 24454, and 24477

**General remarks and official action taken:**

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

**Waiver**

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

DWC Enforcement File No. 24453: Failure to Timely Pay Accrued [REDACTED]

3. American Casualty was required to pay [REDACTED] to an injured employee for the period of [REDACTED], through [REDACTED]. The [REDACTED] payment was due on [REDACTED]. American Casualty issued payment on [REDACTED], which was three days late.

DWC Enforcement File No. 24454: Failure to Timely Pay Underpaid [REDACTED]

4. On [REDACTED], American Casualty determined it underpaid [REDACTED] to the injured employee after receiving a preliminary wage statement. American Casualty was required to pay the unpaid [REDACTED] with interest within seven days. The unpaid [REDACTED] were due on November 26, 2019. American Casualty issued payment on [REDACTED], which was 14 days late.

DWC Enforcement File No. 24477: Failure to Timely Pay Attorney Fees Ordered by DWC

5. On [REDACTED], DWC ordered American Casualty to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered American Casualty to pay attorney fees in the amount of [REDACTED] of each income benefit payment to the injured employee.
6. On [REDACTED], American Casualty issued a payment to the injured employee for unpaid income benefits. American Casualty was required to pay attorney fees on the same day but did not issue payment until [REDACTED], which was 457 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. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.

3. 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.
4. 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; 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.
5. DWC found the following factors 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.
6. American Casualty 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).

7. American Casualty 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, 415.002, 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. American Casualty 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 §§ 408.081, 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.
8. Pursuant to TEX. LAB. CODE § 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.

9. American Casualty violated TEX. LAB. CODE §§ 409.021, and 415.002(a)(16), (20), and (22) each time it failed to timely pay accrued TIBs.
10. Pursuant to 28 TEX. ADMIN. CODE § 126.15(b), if the insurance carrier determines that it underpaid income benefits, it must pay the full amount of the underpayment with interest on accrued but unpaid benefits within seven days of the determination.
11. American Casualty violated TEX. LAB. CODE §§ 408.083, 409.023, and 415.002(a)(16), (20), and (22) each time it failed to timely pay accrued but unpaid TIBs.
12. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021, an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
13. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), an insurance carrier is required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
14. American Casualty violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), 415.0035(e), and 415.021(a) when it failed to timely comply with a DWC order to pay attorney fees.

Commissioner's Order  
American Casualty Company of Reading, Pennsylvania  
DWC Enforcement File No. 24453, 24454, and 24477  
Page 6 of 7

### Order

It is ordered that American Casualty Company of Reading, Pennsylvania must pay an administrative penalty of \$3,500 within 30 days from the date of this order. American Casualty Company of Reading, Pennsylvania must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



---

Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



---

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

Commissioner's Order  
 American Casualty Company of Reading, Pennsylvania  
 DWC Enforcement File No. 24453, 24454, and 24477  
 Page 7 of 7

### Affidavit

**STATE OF** \_\_\_\_\_ §  
 \_\_\_\_\_ §  
**COUNTY OF** \_\_\_\_\_ §

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

"My name is Peter D. McCarron. 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 Senior Vice President and am the authorized representative of  
 American Casualty Company of Reading, Pennsylvania. I am duly authorized by the  
 organization to execute this statement.

American Casualty Company of Reading, Pennsylvania has knowingly and voluntarily  
 entered into this consent order and agrees with and consents to the issuance and service  
 of this consent order."

*Peter D McCarron*  
 Affiant

SWORN TO AND SUBSCRIBED before me on July 9, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
 Signature of Notary Public

\_\_\_\_\_  
 Printed Name of Notary Public

\_\_\_\_\_  
 Commission Expiration