

No. **2021-6903**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 7/8/2021

Subject Considered:

Safety National Casualty Corporation
1832 Schuetz Road
Saint Louis, Missouri 63146-3540

Consent Order
DWC Enforcement File Nos. 21499, 22420, 23041, and 23574

General remarks and official action taken:

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

Waiver

Safety National acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Safety National 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. Safety National 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. Safety National was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. Safety National was not selected to be tiered in the 2007 PBO assessment.

DWC Enforcement File No. 21499: Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED], Safety National received notice of an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED]. The eighth day of disability accrued on [REDACTED].
5. Safety National was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
6. Safety National issued the initial TIBs payment totaling [REDACTED] on [REDACTED], which was 20 days late.

DWC Enforcement File No. 22420: Failure to Timely Pay Attorney Fees Ordered by DWC

7. On [REDACTED], DWC ordered Safety National to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Safety National to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
8. On [REDACTED], a balance of [REDACTED] in attorney fees was outstanding.
9. On [REDACTED], Safety National issued a payment to the injured employee for unpaid supplemental income benefits. Safety National was required to issue a payment for attorney fees to the injured employee's attorney the same day but did not issue payment until [REDACTED], which was 21 days late.

DWC Enforcement File No. 23041: Failure to Timely Pay Accrued TIBs

10. Safety National 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]. Safety National issued payment on [REDACTED], which was seven days late.

DWC Enforcement File No. 23574: Failure to Timely Comply with a Final or Binding Contested Case Hearing Decision and Order

11. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Safety National to pay benefits in accordance with the decision. Safety National received the CCH D&O on [REDACTED].
12. The CCH D&O became final on [REDACTED]. Safety National was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED]. Safety National filed its appeal on [REDACTED], thus requiring compliance with the CCH D&O.
13. Safety National paid benefits on [REDACTED], which was 100 days late. Safety National issued payments for interest on:
 - [REDACTED], which was 100 days late; and
 - [REDACTED], which was 105 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. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly.
4. 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.
5. 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 penalty necessary to deter future violations; 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 other matters that justice may require, including the size of the company or practice.
6. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; evidence was provided that raised a question as to the day of disability determination (#21499); evidence was provided indicating the attorney fee amount owed was less than initially determined (#22420); evidence was provided showing initial TIBs were paid 11 days early in relation to the late TIBs payment (#23041); third-party interference by the vendor made compliance with the CCH D&O late (#23574).

7. Safety National 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).
8. Safety National 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. Safety National 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or 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, 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.

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7. Safety National violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.
8. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are 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.
10. Safety National violated TEX. LAB. CODE §§ 415.002(a)(20), 415.021(a), and 415.0035(e) when it failed to timely comply with a DWC order to pay attorney fees.
11. 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 must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
12. Safety National violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) when it failed to timely pay accrued TIBs.
13. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
14. Safety National violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), 415.0035(e), and 415.021 when it failed to timely comply with a DWC order for benefits.

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Order

It is ordered that Safety National Casualty Corporation must pay an administrative penalty of \$9,500 within 30 days from the date of this order. Safety National Casualty Corporation 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

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Affidavit

STATE OF Missouri §
§
COUNTY OF St Louis §

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

"My name is Dana Lynn Bailey. 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 AVP Claims Compliance and am the authorized representative of Safety National Casualty Corporation. I am duly authorized by the organization to execute this statement.

Safety National Casualty Corporation has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Dana Lynn Bailey
Affiant

SWORN TO AND SUBSCRIBED before me on June 1, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

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