

No. **2022-7610**

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

Date: 11/9/2022

Subject Considered:

New Hampshire Insurance Company
175 Water Street, Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File Nos. 28273, 28715, and 29549

General remarks and official action taken:

This is a consent order with New Hampshire Insurance Company (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 "poor" tier in 2007 Performance Based Oversight (PBO) assessment, and "average" in 2009, 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Timely Initiate Payment of Accrued Impairment Income Benefits

File No. 28273

3. Respondent was required to pay impairment income benefits (IIBs) to an injured employee for the period between [REDACTED], through [REDACTED]. The IIBs payment was due seven days after the first day of the pay period. Respondent failed to timely pay IIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	10
b.	[REDACTED]	[REDACTED]	[REDACTED]	3

File No. 28715

4. Respondent was required to pay impairment income benefits (IIBs) to an injured employee for the period between [REDACTED], through [REDACTED]. The IIBs payment was due seven days after the first day of the pay period. Respondent failed to timely issue the IIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	98
b.	[REDACTED]	[REDACTED]	[REDACTED]	91
c.	[REDACTED]	[REDACTED]	[REDACTED]	84

Failure to Pay Accrued Temporary Income Benefits Based on a Designated Doctor Report

File No. 29549

5. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
6. The DD determined the injured employee was unable to work in any capacity from [REDACTED] to [REDACTED] because of a compensable injury.
7. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED]

8. Respondent issued payment of TIBs, in the amount of [REDACTED] on [REDACTED] [REDACTED] which was 59 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. 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

4. DWC found the following factors mitigating pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the Respondent has initiated an action plan to reduce errors by requiring leadership to review all state mail to confirm timely completion, and establishing a 3-day deadline for adjusters to review incoming mail. Additionally, refresher courses and coaching are implemented for all adjusters.
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, 414.003, 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)(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 §§ 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.

6. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with the DWC rules or a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate Payment of Accrued IIBs


7. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
8. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely initiate payment of IIBs.

Failure to Pay Accrued Income Benefits Based on a DD Report

9. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
10. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
11. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

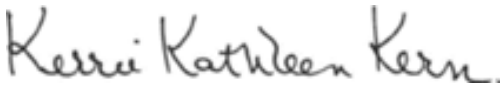
Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$16,500 within 30 days from the date of this order. New Hampshire Insurance Company 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
New Hampshire Insurance Company
DWC Enforcement File Nos. 28273, 28715, and 29549
Page 7 of 7

2022-7610

Unsworn Declaration

STATE OF NEW JERSEY §
§
COUNTY OF HUDSON §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of New Hampshire Insurance Company. My business address is:
30 Hudson Street, Jersey City, Hudson, New Jersey, 07302.
(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.

DocuSigned by:
Peter Macdonald
D382AEAD7B074AC...

Declarant

Executed on November 7, 2022.

**Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092**