

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 22 2019

Subject Considered:

ACE AMERICAN INSURANCE COMPANY
P.O. Box 1000
Philadelphia, Pennsylvania 19105-1000

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 20915

General remarks and official action taken:

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

WAIVER

Ace American acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Ace American 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. Ace American 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Ace American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO TIMELY PAY IMPAIRMENT INCOME BENEFITS

3. On [REDACTED], Ace American received a DWC Form-69, or a designated doctor (DD) report, from the DD.
4. In the DD report, the DD certified the injured employee at maximum medical improvement on [REDACTED], with a [REDACTED] impairment rating. Ace American, therefore, was required to initiate impairment income benefits (IIBs) within five days of receipt of the DD report and to pay IIBs weekly since it did not enter into an agreement with the injured employee to pay IIBs monthly in accordance with 28 TEX. ADMIN. CODE § 130.11.

5. Ace American timely initiated IIBs but failed to timely pay IIBs for the week of [REDACTED], through [REDACTED], which was due on [REDACTED]. Ace American did not pay IIBs for the week of [REDACTED], through [REDACTED], until [REDACTED] which was 57 days late.

ASSESSMENT OF SANCTION

6. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
7. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (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 (EDI) 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.
8. 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; and the history of compliance with EDI requirements.
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 mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the insurance carrier has instituted training and review procedures intended to correct the error.

10. Ace American acknowledges that DWC and Ace American 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).
11. Ace American 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, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth herein 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)(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.
5. Pursuant to TEX. LAB. CODE §§ 415.002(a)(16), 409.023, and 408.081, insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner unless the employee and the insurance carrier have entered into an agreement under 28 TEX. ADMIN. CODE § 130.11, in which case IIBs are to be paid monthly.
6. Ace American violated TEX. LAB. CODE §§ 415.002(a)(16) and (22) and 409.023 when it failed to timely pay IIBs.

ORDER

Ace American Insurance Company is ORDERED to pay an administrative penalty of \$4,500 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:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

