

No. 2020-6359

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

Date: 06-08-2020

Subject Considered:

ACE American Insurance Company
P.O. Box 1000
Philadelphia, Pennsylvania 19105-1000

Consent Order
DWC Enforcement File Nos. 18061 and 19006

General remarks and official action taken:

This is a consent order with Ace American Insurance Company (Ace American). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against 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 procedural rights that apply, in consideration of the entry of this consent order.

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 lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Ace American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

DWC Enforcement File No. 18061:

Failure to Timely Initiate Payment of Temporary Income Benefits

3. On [REDACTED], Ace American received notice of an injury to an employee.
4. The first day of disability for the injured employee began [REDACTED], and the eighth day of disability accrued [REDACTED].
5. Ace American 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. Ace American issued the initial TIBs payment totaling [REDACTED] on [REDACTED], which was 59 days late.

DWC Enforcement File No. 19006:

Failure to Timely Reprocess Medical Bills in Accordance with a Designated Doctor Report

7. On [REDACTED], Ace American denied a bill for dates of service [REDACTED], through [REDACTED], for medical services related to an injured employee's [REDACTED]. Ace American claimed that the charges were for services unrelated to the compensable injury.
8. On [REDACTED], Ace American received DWC Form-068, *Designated Doctor Examination Data Report* and a narrative report in which the designated doctor (DD) opined that the compensable injury extended to [REDACTED].
9. Ace American was required to pay benefits based on the conditions the DD determined the compensable injury extended to. All medical bills previously denied for reasons inconsistent with the DD's report were required to be reprocessed within 21 days from receiving the DD's report, which was [REDACTED].
10. Ace American reprocessed the medical bill and issued payment on [REDACTED], which was 104 days late.

Assessment of Sanction

1. Failure to provide appropriate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Timely payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.

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 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.

4. 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, and the penalty necessary to deter future violations.
5. Ace American 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).
6. Ace American 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. Ace American 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, 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.
8. Ace American violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.
9. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute.
10. Ace American violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the DD during the pendency of a dispute.
11. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier must pay medical benefits in accordance with the DD's report for the issues in dispute. It must reprocess all medical bills previously denied for reasons inconsistent with the findings of the DD's no later than 21 days after receiving the report. It must pay in accordance with the Texas Workers' Compensation Act and DWC rules.
12. Ace American violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely reprocess previously denied medical bills in accordance with the DD's report no later than 21 days after receiving the report.

Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$19,500 within 30 days from the date of this order. Ace American Insurance Company 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:



Andrés Durá
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit


STATE OF NEW JERSEY §
§
COUNTY OF SOMERSET §

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

"My name is Sara Kendall. 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 Vice President, Claims Compliance Manager and am the authorized representative of Ace American Insurance Company. I am duly authorized by the organization to execute this statement.

Ace American Insurance Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

X 

Affiant

SWORN TO AND SUBSCRIBED before me on May 13, 2020. (NOTARY

SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration