

No. 2021-6689

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

Date: 02-24-2021

Subject Considered:

Great West Casualty Company
1100 West 29th Street
South Sioux City, Nebraska 68776-3130

Consent Order
DWC Enforcement File No. 25588

General remarks and official action taken:

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

Waiver

Great West acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Great West 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. Great West 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. Great West was classified as "average" tier in the 2009 and 2018 Performance Based Oversight (PBO) assessments. Great West was classified as "high" tier in the

2014 and 2016 PBO assessments. Great West was not selected to be tiered in the 2007, 2010, or 2012 PBO assessments.

DWC Audit No. IBA-20-113

3. On [REDACTED], DWC initiated DWC Audit No. IBA-20-113 to determine whether Great West complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that Great West reported issuing between [REDACTED], and [REDACTED]. DWC identified [REDACTED] initial DB claims for audit. A total of three initial DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining eight claims were reviewed to determine Great West's compliance.
5. The audit focused on the accuracy of Great West's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting of DB terminations.

Failure to Timely Pay Accurate DBs

6. Great West failed to timely pay accurate DBs for [REDACTED] of examined payments (four out of eight).
7. Specifically, Great West issued payments to beneficiaries over 30 days late in four instances.

Failure to Timely Report Claim Data to DWC

8. Great West failed to timely report the total number of DB terminations for [REDACTED] of examined payments (one out of three).
9. Specifically, Great West failed to timely report the true DB termination of examined payments in one instance.

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
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 or their beneficiaries;
 - the history of compliance with EDI 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, including the nature, circumstances, consequences, extent, and gravity 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 or their

beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.

5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: such as the history and extent of previous administrative violations, as the insurance carrier does not have a history of any previous administrative violations; the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act, as only one of the four violations involved actual underpayment of benefits to beneficiaries, the other three of the four violations concerned interest only; the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, as one of the underpayments was made prior to DWC notifying the insurance carrier of the issue and the other three violations were paid within three days of initial notification of the preliminary findings of the audit. Finally, the violator's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act, as the insurance carrier has instituted additional training and supervision to ensure that such errors do not continue with Texas claims specifically.
6. Great West 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. Great West 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, 409.021, 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).

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

3. Great West 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 § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
8. Great West violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely pay accurate DBs.
9. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. 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 DBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or DB payments in the manner DWC rules prescribe.
11. Great West violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

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Order

It is ordered that Great West Casualty Company must pay an administrative penalty of \$12,500 within 30 days from the date of this order. Great West Casualty 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted Texas Labor Code §§402.083 and 402.092
