

No. 2023-8312

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

Date: 10/31/2023

Subject Considered:

National Liability & Fire Insurance Company
3024 Harney Street
Omaha, Nebraska 68131-9942

Consent Order
DWC Enforcement File No. 32698

General remarks and official action taken:

This is a consent order with National Liability & Fire 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 not selected to be tiered in any year of Performance Based Oversight (PBO) assessments.

Failure to Timely and Accurately Pay Impairment Income Benefits (IIBs)

File No. 32698

3. On [REDACTED], Respondent received a designated doctor (DD) report in connection with a DD examination. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], and assigned an impairment rating (IR) of [REDACTED] %.
4. Respondent was required to pay IIBs to the injured employee between the dates of [REDACTED], and [REDACTED].
5. The IIBs were required to be paid at a rate equal to 70% of the injured employee's average weekly wage. In this case, the correct weekly rate of IIBs due to the injured employee was \$ [REDACTED].
6. Respondent paid IIBs at an incorrect rate of \$ [REDACTED] from [REDACTED], through [REDACTED], resulting in an underpayment of \$ [REDACTED].
7. Additionally, Respondent withheld excess attorney's fees of \$ [REDACTED] from the injured employee's IIBs payments.
8. On [REDACTED], Respondent paid \$ [REDACTED] in deficient IIBs payments, including interest, 94 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 history and extent of previous administrative violations; 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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 § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it violates the Texas Workers' Compensation Act.
6. 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. An employee is entitled to timely and accurate benefits.
7. Pursuant to Tex. Lab. Code § 408.126, an impairment income benefit is equal to 70% of the employee's average weekly wage.
8. Respondent violated Tex. Lab. Code §§ 408.081, 408.126, 409.023, 415.002(a)(16) and (22) each time Respondent failed to timely and accurately pay IIBs.

Order

It is ordered that National Liability & Fire Insurance Company must pay an administrative penalty of \$5,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, National Liability & Fire Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
National Liability & Fire Insurance Company
DWC Enforcement File No. 32698
Page 6 of 6

2023-8312

Unsworn Declaration

STATE OF Texas

§

COUNTY OF Denton

§

§

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Priscilla Griffith I hold the position of Senior Resolution Manager and am the authorized representative of National Liability & Fire Insurance Company. My business address is:

4120 International, Carrollton, Denton, Tx, 75007
(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.

[Signature]
Declarant

Executed on 10/26, 2023.