

No. 2024-8747

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

Date: 7/19/2024

Subject Considered:

Everest National Insurance Company
100 Everest Way
Warren, New Jersey 07059-5195

Consent Order
DWC Enforcement File No. 34127

General remarks and official action taken:

This is a consent order with Everest National 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 "average" tier in the 2022 Performance Based Oversight (PBO) assessment. Respondent was classified as "poor" tier in the 2020 PBO assessment. Respondent was classified as "high" tier in the 2018 PBO assessment.

Failure to Timely Act on a Request for Burial Benefits

4. On [REDACTED], Respondent received bills for \$ [REDACTED] in burial benefits from an eligible beneficiary.
5. Respondent was required to pay or deny the burial benefits within seven days of receipt of the bills. The deadline to act was [REDACTED].
6. On [REDACTED], Respondent paid [REDACTED] in burial benefits to the eligible beneficiary 112 days late.

Assessment of Sanction

1. Failing to timely act on a claim for burial benefits imposes an undue financial and emotional burden on the deceased employee's beneficiaries, increases the likelihood of disputes, and is contrary to DWC's goal of a fair and balanced 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 other matters that justice may require, including but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 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, and 414.002.
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 § 408.186, if the death of an employee results from a compensable injury, the insurance carrier shall pay the costs of burial to the person who incurred liability for the costs of burial.
6. 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.
7. 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.
8. Pursuant to Tex. Admin. Code § 132.13(d), once a claim for burial benefits is made, the carrier must either pay or deny the claim within seven days of the date the claim was received.
9. Respondent violated Tex. Lab. Code §§ 408.186 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 132.13(d) by failing to timely pay burial benefits.

Order


It is ordered that Everest National Insurance Company must pay an administrative penalty of \$3,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Everest National 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, PO 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
Everest National Insurance Company
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Unsworn Declaration

STATE OF New Jersey §
§
COUNTY OF Somerset §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Patrick Stetz. I hold the position of Vice President, Claims and am the authorized representative of Everest National Insurance Company. My business address is:

100 Everest Way, Warren, Somerset NJ 07059.
(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:
Patrick Stetz
7A2A7455294F484

Declarant

Executed on June 25, 2024.

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