

No. 2019 5832

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JAN 03 2019

Subject Considered:

LIBERTY MUTUAL FIRE INSURANCE COMPANY

175 Berkeley Street
Boston, MA 02116-5066

CONSENT ORDER

TDI-DWC Enforcement File No. 15809

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Liberty Mutual Fire Insurance Company (Liberty).

WAIVER

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

DWC AUDIT IP-18-108

3. On November 2, 2017, the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-18-108 to determine whether Liberty was complying with the Texas Labor Code and related rules regarding the timely payment of initial temporary income benefits (TIBs), and the timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments reported to have been issued between [REDACTED] and [REDACTED]. DWC identified 62 payments for audit. Two payments failed to

meet the audit selection criteria and were dropped from the audit. The remaining 60 payments were reviewed to determine Liberty's compliance.

5. The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timelines of reporting initial TIBs payments and the accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs From Date, TIBs End Date, and Initial TIBs Payment Date).

FAILURE TO TIMELY PAY INITIAL TEMPORARY INCOME BENEFITS

6. Liberty failed to timely initiate TIBs for 38% of payments examined (23 out of 60).
7. Specifically, Liberty issued payments to injured employees less than six working days late in nine instances, between six and 15 working days late in four instances, between 16 and 30 working days late in five instances, and over 30 working days late in five instances.

FAILURE TO SUBMIT TIMELY AND ACCURATE INFORMATION REGARDING THE INITIATION OF TEMPORARY INCOME BENEFITS TO THE DWC

8. Liberty failed to accurately report the First Date of Disability for 20% of payments examined (12 out of 60).
9. Liberty failed to accurately report Date of First Written Notice for 17% of payments examined (10 out of 60).
10. Liberty failed to accurately report initial payment of TIBs for 3% of payments examined (2 out of 60).

ASSESSMENT OF PENALTY

11. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
12. Timely submission of information and documentation to DWC, and compliance with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
13. DWC relies on claims information submitted by the insurance carriers for a variety of 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 taken on claims.
14. Liberty acknowledges harm to the system and agrees that the penalty assessed is reasonable.

15. In assessing the penalty for this case, the commissioner 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 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.
16. Liberty acknowledges that in assessing the penalty, the commissioner appropriately and fully considered the relevant applicable factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
17. Liberty acknowledges that this consent order sufficiently communicates information about the penalty, including the relevant statutes or rules violated, the conduct giving rise to the violations, and the factors considered in determining the penalty.

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, 402.00128, 409.021, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth 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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. 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 the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. Liberty violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.
8. 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 on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
9. Liberty violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to accurately notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

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ORDER

Liberty Mutual Fire Insurance Company is ORDERED to pay an administrative penalty of \$32,000 within 30 days from the date of this consent 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

JB

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

