

No. 2019 6157

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 22 2019

Subject Considered:

ARCH INDEMNITY INSURANCE COMPANY
300 Plaza 3 3rd floor
Jersey City, New Jersey 07311-1107

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21522

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Arch Indemnity Insurance Company (Arch).

WAIVER

Arch acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Arch 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. Arch 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. Arch was classified as "average" tier in the 2018 Performance Based Oversight (PBO) assessments. Arch was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

DWC AUDIT NO. IP-19-202

3. On February 27, 2019, the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-19-202 to determine whether Arch 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 October 1, 2018, and December 30, 2018. DWC identified 34 initial TIBs payments for audit. Two initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 32 payments were reviewed to determine Arch's compliance.
5. The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness 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 TIBS

6. Arch failed to timely initiate TIBs for 25% of payments examined (8 out of 32).
7. Specifically, Arch issued payments to injured employees less than six working days late in three instances, between six and 15 working days late in four instances, and over 30 working days late in one instance, or 54 working days late.

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

8. Arch failed to accurately report the First Date of Disability for 12% of payments examined (4 out of 32).
9. Arch failed to accurately report the Date of First Written Notice for 18% of payments examined (6 out of 32).
10. Arch failed to accurately report the TIBs From Date for 3% of payments examined (1 out of 32).
11. Arch failed to accurately report the Initial TIBs Payment Date for 3% of payments examined (1 out of 32).

ASSESSMENT OF SANCTION

12. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
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. In assessing the sanction for this case, DWC 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 EDI 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.
15. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company.
16. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the history and extent of previous administrative violations, as Arch does not have an extensive history of administrative violations.
17. Arch acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
18. Arch acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

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, and 414.003.
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 a provision of 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. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Arch violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.
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 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.
10. Arch violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to accurately notify DWC of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.
11. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e), insurance carriers are required to notify DWC of initial payment of benefits within 10 days of making the first payment.

- 12. Arch violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely notify DWC of the initial payment of benefits.

ORDER

Arch Indemnity Insurance Company is ORDERED to pay an administrative penalty of \$10,250 within 30 days from the date of this 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 *not*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

