

No. _____

2019 5904

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date ~~MAR 18 2019~~

Subject Considered:

EVEREST NATIONAL INSURANCE COMPANY
P.O. Box 830
Liberty Corner, New Jersey 07938-0830

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17667

General remarks and official action taken:

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

WAIVER

Everest acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Everest 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. Everest 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 workers' compensation/employers' liability insurance in Texas.
2. Everest was classified as "high" tier in the 2018 Performance Based Oversight (PBO) assessment. Everest was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

**FAILURE TO TIMELY COMPLY WITH A FINAL OR BINDING
CONTESTED CASE HEARING DECISION AND ORDER**

3. On [REDACTED] the Texas Department of Insurance, Division of Workers' Compensation (DWC) issued a contested case hearing decision and order (CCH D&O) requiring Everest to pay benefits to an injured employee. Everest was deemed to have received the CCH D&O on [REDACTED]

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4. Everest timely filed an appeal of the CCH D&O on [REDACTED]. However, during the appeals process, Everest was required to comply with the CCH D&O and issue payment of accrued and unpaid income benefits within five days of filing the appeal, or by [REDACTED].
5. Everest issued payment to the injured employee in compliance with the CCH D&O on [REDACTED] which was five days late.

**FAILURE TO TIMELY PAY ATTORNEY'S FEES
ORDERED BY DWC**

6. Between [REDACTED] and [REDACTED] Everest received a sequence of four attorney fee orders from DWC totaling \$[REDACTED]. DWC ordered Everest to pay attorney's fees in the amount of 25% of each income benefit payment to the injured employee.
7. On [REDACTED] Everest issued a check to the injured employee for temporary income benefits. Everest was required to issue payment to the attorney the same day but did not issue payment until [REDACTED] which was 72 days late.

ASSESSMENT OF SANCTION

8. 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.
9. 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 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.

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10. 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; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
11. 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; the promptness and earnestness of actions to prevent future violations; and PBO assessments.
12. Everest 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).
13. Everest 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, 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 a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

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7. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a person is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, it must be complied with no later than the fifth day after filing a written request for appeal.
8. Everest violated TEX. LAB. CODE §§ 415.002(a)(22), 415.0035(e), 415.021, and 415.002(a)(20) when it failed to timely comply with a binding CCH D&O regarding benefits.
9. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney's fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
10. Everest violated TEX. LAB. CODE §§ 415.002(a)(20), 415.0035(e), and 415.021(a) when it failed to timely comply with DWC orders to pay attorney's fees.

ORDER

Everest National Insurance Company is ORDERED to pay an administrative penalty of \$3,900 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 *NCR*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Van B. Moreland
Staff Attorney, DWC Enforcement
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

