

No. 2020-6314

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-10-2020

Subject Considered:

NEW HAMPSHIRE INSURANCE COMPANY
175 Water Street 18th Floor
New York City, New York 10038

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 23415

General remarks and official action taken:

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

WAIVER

New Hampshire acknowledges that the Texas Labor Code and other applicable laws provide certain rights. New Hampshire 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. New Hampshire 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 insurance in Texas.
2. New Hampshire was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments. New Hampshire was classified as "poor" tier in the 2007 PBO assessment.

FAILURE TO TIMELY PAY ATTORNEY FEES
ORDERED BY TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS'
COMPENSATION

3. On [REDACTED], New Hampshire received an order for attorney fees from Texas Department of Insurance, Division of Workers' Compensation (DWC) totaling \$[REDACTED]. DWC ordered New Hampshire to pay attorney fees in the amount of [REDACTED]% of each income benefit payment to the injured employee.

4. On [REDACTED], New Hampshire issued a check to the injured employee for indemnity benefits. New Hampshire was required to issue payment to the attorney the same day but did not issue payment until [REDACTED], which was seven days late.

ASSESSMENT OF SANCTION

5. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
6. 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.
7. 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; and the penalty necessary to deter future violations.
8. 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: whether the administrative violation has negative impact on the delivery of benefits to an injured employee and the promptness and earnestness of actions to prevent future violations.
9. New Hampshire 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).

10. New Hampshire 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 §§ 415.0035(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.
6. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance 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.
7. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(20), 415.0035(e), and 415.021(a) when it failed to timely comply with a DWC order to pay attorney fees.

COMMISSIONER'S ORDER
New Hampshire Insurance Company
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ORDER

New Hampshire Insurance Company is ORDERED to pay an administrative penalty of \$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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Tyrus Housh
Staff Attorney, DWC Enforcement
Texas Department of Insurance

