

No. **2021-7102**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 11/23/2021

Subject Considered:

Indemnity Insurance Company of North America
115 Wild Basin Road, Suite 207
Westlake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File No. 27612

General remarks and official action taken:

This is a consent order with Indemnity Insurance Company of North America (Indemnity). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Indemnity.

Waiver

Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Indemnity 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. Indemnity 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. Indemnity was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Termination of Benefits without Reasonable Grounds

3. On [REDACTED] Indemnity received a work status report that indicated the injured employee had a full release to return to work from Dr. Thomas.
4. On [REDACTED] Indemnity received an email from the employer stating that the injured employee had been off work since [REDACTED]. The email received on [REDACTED] did not have medical documentation to support it.
5. On [REDACTED] Indemnity issued a PLN-11, *Notice of Disputed Issues and Refusal to Pay Benefits* (PLN-11). The PLN-11 cited a lack of documentation that the injured employee had experienced lost time or reduced wages as a result of the compensable injury. Indemnity also cited no current DWC Form-073, *Texas Workers Compensation Work Status Report*, that took the injured employee off work or restricted them from working.
6. On [REDACTED] the same day, Indemnity received a work status report from Dr. Adair, dated [REDACTED] indicating that the injured employee had been taken off work as of [REDACTED]. The report provided the name and location of the treating health care provider.
7. Indemnity sent the PLN-11 based on Dr. Thomas' report and terminated benefits based on the lack of documentation earlier in the day and then received the work status report from Dr. Adair, taking the injured employee off of work as of [REDACTED]. Indemnity then issued payment of benefits within seven days of receiving Dr. Adair's submission, on [REDACTED].

Assessment of Sanction

1. Failure to provide appropriate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas 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 history and extent of previous administrative violations; 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; and other matters that justice may require, including the size of the company or practice.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: Indemnity's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act, as Indemnity received incomplete information on January 6, 2021, lacking medical documentation to support the basis for the claimant's being off work. Medical documentation was received on January 8, 2021, and benefits were issued within seven days.

5. Indemnity acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. Indemnity 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, 414.002, 414.003, and 415.021.
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. Indemnity 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 § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation if they violate a DWC rule or fail to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2), an insurance carrier commits an administrative violation if it does not have reasonable grounds to terminate or reduce benefits.
7. Indemnity violated TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2) and (22) when it terminated benefits without reasonable grounds.

8. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when benefits accrue, without order from the commissioner.
9. Indemnity violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16) and (22) each time it failed to continue to timely pay benefits.

Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Indemnity Insurance Company of North America must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Pennsylvania §
§
COUNTY OF Chester §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is DAN HAWTHORNE. I hold the position of North American Claims Mgr. and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road Wilmington New Castle DE 19093
(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.


Declarant

Executed on 10/25, 2021.