STATE OF CALIFORNIA - GOVERNOR EDMOND G. BROWN JR.
LABOR AND WORKFORCE DEVELOPMENT AGENCY
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
EXECUTIVE DIRECTOR/CHIEF ADMINISTRATIVE LAW JUDGE
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April 4, 2013

To: Board Members

April 2013 Summary Report of Executive Director and

Chief Administrative Law Judge Alberto Roldan

Snapshot of Field Operations performance through March 2013

March 2013 Workload and Performance: March was a typically busy month. However, despite the increase in work and the "March push", these numbers are down substantially from the previous three years and reflect the normalization of our workload after years of recession driven cases. The number of verifications [35,462] was 3% above the average for the fiscal year, and represented the greatest number of new appeals since October. At the same time, closed cases [39,524] were 11% above the norm and also at the highest volume since last October. This was the fifth time in the last six months in which the open inventory [34,291] has been reduced. The caseload is now 22% smaller than its average size for the fiscal year and consists of the fewest open cases since March 2007. Moreover, the number of open cases in all programs is less than the average output of decisions for the first time ever. As a result, we essentially have no backlog.

Case Aging and Time Lapse: The efforts to meet DOL timeliness standards paid off as the numbers for March are simply spectacular. Average case age fell to 19 days, a new all-time low. 30-day time lapse improved to 79%, and 45-day time lapse soared to 95%, both of which established new highs for CUIAB. As the caseload has fallen, the time frames for the non-time lapse UI cases [extensions] improved dramatically although they continue to lag behind the regular UI cases. In March, 20% of the non-time lapse UI decisions were issued within 30 days, 59% within 45 days and 92% within 90 days. In February, the respectively percentages were 8%, 24%, and 84%.

Cycle Time: The UI cycle time in March was 35 days from date of appeal to issuance of the decision. This was an improvement of five fewer days from February and 10 fewer days from January. The reduction was primarily in scheduling time, which was the direct result of having fewer cases to hear. The comparative times continued to be flat with all offices within four

percentage points of the average. Finally, there was progress in DI where the cycle time improved to 60 days, down from 76 days in January.

Unemployment Insurance (UI) for March: In March, new UI cases [33,967 cases; 19,395 appellants] were 3% above the average for the fiscal year and the largest number since October. The number of closed cases [37,439 cases; 21,378 appellants] was 11% above average and also represented the greatest volume since October. This was the fifth time in six months in which output exceeded input. Moreover, at the end of each of those five months, the open balance was less than the number of dispositions rendered that month. The open inventory [25,859 cases; 14,765 appellants] is now 24% below the fiscal year average, and the smallest it has been since March 2007. Moreover, despite the push to achieve time lapse compliance, the percentage of extension cases resolved improved for the first time in several months. The percentage of non time-lapse cases fell to 42% of the total UI workload.

Disability Insurance (DI) for March: In disability, the number of new cases [995] was the highest it has been in five months, but remained below 1,000 after never dipping below that figure before last November. With the greatest number of DI decisions [1,186] since October, the inventory [991] shrank for the sixth straight month. This represents the fourth consecutive month that an all-time low in open cases was seen, and the first time there were fewer than 1,000 unresolved cases.

Tax and Rulings for March: The number of new ruling cases [185] was 14% below average. At the same time, with work in other programs at record lows, offices scheduled more hearings of rulings, which pushed dispositions [392] to a four month high. As a result, the open inventory [3,988] is below 4,000 for the first time since last April.

In tax, new petitions [299] were 26% higher than average and the most since June 2012. Meanwhile, closed cases [475] were 65% above the average due to a big push in SPG cases, which represented two-thirds of that total. The open balance of tax cases [3,453] is 7% below the average level this fiscal year and represents the fewest open cases since December 2008.

UI TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	37,307	34,125	38,172	42,249	37,447	36,321	39,238	40,219	31,780	35,604	30,181	35,509	438,152	***36,513***		
2011	38,676	34,399	39,494	35,519	36,159	35,785	32,527	38,079	39,828	36,161	30,799	31,448	428,874	***35,740***	98%	-773
2012	33,339	30,233	36,391	33,590	34,531	31,871	32,132	37,791	33,363	36,746	31,266	26,393	397,646	***33,137***	93%	-2,602
2013	33,691	31,654	33,967										99,312	***33,104***	100%	-33

Multi 7 53 5

UI registrations Mar to date are down 1% from 2012, down 12% from 2011, and down 9% from 2010

UI registration monthly average is even with 2012, down 7% from 2011, and down 9% from 2010

2012	100%	99%
2011	93%	88%
2010	91%	91%
	chg to '13 avg	chg to '13 YTD

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	32,738	37,951	44,067	39,481	35,731	36,680	35,798	39,000	38,748	37,386	34,848	36,237	448,665	***37,389***		
2011	34,029	37,998	50,124	35,054	32,103	38,117	33,797	36,979	41,802	33,663	33,076	34,301	441,043	***36,754***	98%	-635
2012	33,604	37,167	44,615	28,383	34,802	31,915	30,672	35,346	30,299	38,963	32,844	32,269	410,879	***34,240***	93%	-2,514
2013	33,153	33,375	37,439										103,967	***34,656***	101%	416

Multi 11/46

UI dispositions Mar to date are down 10% from 2012, down 15% from 2011, and down 9% from 2010

UI disposition monthly average is up 1% from 2012, down 6% from 2011, and down 7% from 2010

2012	101%	90%
2011	94%	85%
2010	93%	91%
	chg to '13 avg	chg to '13 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec		Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	76,301	72,323	66,136	68,715	70,234	69,664	72,557	73,410	66,243	64,624	59,811	59,075		***68,258***		
2011	63,632	59,909	49,088	49,435	53,389	50,926	49,805	50,755	48,650	51,057	48,653	45,715		***51,751***	76%	-16,507
2012	45,315	38,225	29,603	34,674	34,327	34,188	35,578	37,843	40,820	38,495	36,792	30,853		***36,393***	70%	-15,358
2013	31,303	29,396	25,859											***28,853***	79%	-7,540

Multi 9 67 4

UI balance of open cases Mar to date is down 23% from 2012, down 50% from 2011, and down 60% from 2010

UI balance monthly average down 21% from 2012, down 44% from 2011, and down 58% from 2010

2012	79%	77%
2011	56%	50%
2010	42%	40%
	chg to '13 avg	chg to '13 YTD

jz

DI TRENDS - FO

Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	1,446	1,437	1,775	1,957	1,371	1,232	1,763	1,609	1,366	1,372	1,159	1,414	17,901	***1,492***		
2011	1,537	1,651	1,411	1,691	1,360	1,428	1,405	1,575	1,489	1,392	1,094	1,268	17,301	***1,442***	97%	-50
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845	754	14,725	***1,227***	85%	-215
2013	982	811	995										2,788	***929***	76%	-298

DI registrations Mar to date are down 38% from 2012, down 39% from 2011, and down 40% from 2010
DI registration monthly average is down 24% from 2012, down 36% from 2011, and down 38% from 2010

	Avg.	% Chg of Avg
2012	76%	62%
2011	64%	61%
2010	62%	60%
	chg to '13 avg	chg to '13 YTD

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	1,283	1,557	1,967	1,852	1,276	1,581	1,494	1,511	1,581	1,552	1,372	1,565	18,591	***1,549***		
2011	1,295	1,576	1,925	1,512	1,441	1,567	1,365	1,462	1,426	1,579	1,266	1,270	17,684	***1,474***	95%	-76
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938	1,039	15,088	***1,257***	85%	-216
2013	1,083	906	1,186										3,175	***1,058***	84%	-199

DI dispositions Mar to date are down 27% from 2012, down 34% from 2011, and down 34% from 2010
DI disposition monthly average is down 16% from 2012, down 28% from 2011, and down 32% from 2010

	Avg.	% Chg of Avg
2012	84%	73%
2011	72%	66%
2010	68%	66%
	chg to '13 avg	chg to '13 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec		Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	2,997	2,876	2,682	2,789	2,891	2,541	2,808	2,908	2,691	2,513	2,299	2,148		***2,679***		
2011	2,390	2,465	1,951	2,126	2,046	1,905	1,943	2,054	2,117	1,930	1,757	1,755		***2,037***	76%	-642
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663	1,379		***1,798***	88%	-239
2013	1,277	1,182	991											***1,150***	64%	-648

DI open balance Mar to date is down 37% from 2012, down 49% from 2011, and down 60% from 2010
DI open balance monthly average down 36% from 2012, down 44% from 2011, and down 57% from 2010

	Avg.	% Chg of Avg
2012	64%	63%
2011	56%	51%
2010	43%	40%
	chg to '13 avg	chg to '13 YTD

jz

TAX TRENDS - FO

Program Codes 15, 17, 18, 32, 45, 46, 47, 48

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	142	139	164	233	140	163	94	137	146	181	188	232	1,959	***163***		
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	***214***	131%	51
2012	346	141	196	117	78	335	253	229	254	200	215	214	2,578	***215***	100%	1
2013	223	245	299										767	***256***	119%	41

Tax registrations Mar to date are up 12% from 2012, up 72% from 2011, and up 72% from 2010
Tax registration monthly average is up 19% from 2012, up 20% from 2011, and up 57% from 2010

2012	119%	112%	
2011	120%	172%	
2010	157%	172%	
	chg to '13 avg	chg to '13 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	48	109	107	91	117	124	135	101	174	130	99	235	1,470	***123***		
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	***237***	193%	115
2012	227	352	322	492	267	217	236	290	284	357	234	195	3,473	***289***	122%	52
2013	299	222	475										996	***332***	115%	43

Tax dispositions Mar to date are up 11% from 2012, up 97% from 2011, and up 277% from 2010
Tax disposition monthly average is up 15% from 2012, up 40% from 2011, and up 171% from 2010

2012	115%	111%	
2011	140%	197%	
2010	271%	377%	
	chg to '13 avg	chg to '13 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec		Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	4,509	4,539	4,596	4,738	4,759	4,796	4,754	4,790	4,758	4,801	4,890	4,885		***4,735***		
2011	4,880	4,874	4,824	4,833	4,797	4,700	4,643	4,630	4,666	4,520	4,445	4,593		***4,700***	99%	-34
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664	3,683		***3,997***	85%	-703
2013	3,606	3,629	3,453											***3,563***	89%	-435

Tax balance of open cases Mar to date is down 21% from 2012, down 27% from 2011, and down 22% from 2010
Tax balance monthly average is down 11% from 2012, down 24% from 2011, and down 25% from 2010

2012	89%	79%	
2011	76%	73%	
2010	75%	78%	
	chg to '13 avg	chg to '13 YTD	

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RULING - OTHER TRENDS - FO

Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	486	609	709	598	441	424	468	1,359	201	239	229	214	5,977	***498***		
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	***383***	77%	-115
2012	182	245	746	576	605	424	229	418	209	315	51	108	4,108	***342***	89%	-41
2013	292	280	201										773	***258***	75%	-85
													2012	75%	66%	
													2011	67%	306%	
													2010	52%	43%	
														chg to '13 avg	chg to '13 YTD	

Ruling/Other registrations Mar to date are down 34% from 2012, up 206% from 2011, and down 57% from 2010
Ruling/Other registration monthly average is down 25% from 2012, down 33% from 2011, and down 48% from 2010

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	335	392	500	682	465	716	421	631	484	804	303	415	6,148	***512***		
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	***472***	92%	-41
2012	500	455	299	255	214	165	239	323	170	334	434	171	3,559	***297***	63%	-175
2013	242	250	424										916	***305***	103%	9
													2012	103%	73%	
													2011	65%	58%	
													2010	60%	75%	
														chg to '13 avg	chg to '13 YTD	

Ruling/Other dispositions Mar to date are down 27% from 2012, down 42% from 2011, and down 25% from 2010
Ruling/Other disposition monthly average is up 3% from 2012, down 35% from 2011, and down 40% from 2010

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec		Avg.	% Chg of Avg	Yr-Yr AvgChg
2010	4,965	5,182	5,394	5,312	5,287	4,996	5,048	5,781	5,494	4,931	4,857	4,658		***5,159***		
2011	4,281	3,977	3,340	3,692	3,792	3,672	3,716	3,772	3,453	3,842	3,698	3,590		***3,735***	72%	-1,423
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199	4,133		***4,075***	109%	340
2013	4,182	4,212	3,988											***4,127***	101%	52
													2012	101%	126%	
													2011	110%	107%	
													2010	80%	80%	
														chg to '13 avg	chg to '13 YTD	

Ruling/Other balance of open cases Mar to date is up 26% from 2012, up 7% from 2011, and down 20% from 2010
Ruling/Other balance monthly average is up 1% from 2012, up 10% from 2011, and down 20% from 2010

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ALL PROGRAM TRENDS - FO

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	*Avg.*	*% Change*	Yr-Yr AvgChg
2010	39,381	36,310	40,820	45,037	39,399	38,140	41,563	43,324	33,493	37,396	31,757	37,369	463,989	***38,666***		
2011	40,411	36,315	41,141	38,210	38,185	37,903	34,470	40,374	41,888	38,682	32,388	33,369	453,336	***37,778***	98%	-888
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377	27,469	419,057	***34,921***	92%	-2,857
2013	35,188	32,990	35,462										103,640	***34,547***	99%	-375

Multi	7	53	5

All program registrations Mar to date are down 3% from 2012, down 12% from 2011, and down 11% from 2010
All program registration monthly average is down 1% from 2012, down 9% from 2011, and down 11% from 2010

2012	99%	97%
2011	91%	88%
2010	89%	89%
	chg to '13 avg	chg to '13 YTD

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	*Avg.*	*% Change*	Yr-Yr AvgChg
2010	34,404	40,009	46,641	42,106	37,589	39,101	37,848	41,243	40,987	39,872	36,622	38,452	474,874	***39,573***		
2011	35,905	40,146	52,970	37,208	34,144	40,592	35,714	39,116	44,083	36,128	35,054	36,169	467,229	***38,936***	98%	-637
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450	33,674	432,999	***36,083***	93%	-2,853
2013	34,777	34,753	39,524										109,054	***36,351***	101%	268

Multi		11/46

All program dispositions Mar to date are down 11% from 2012, down 15% from 2011, and down 10% from 2010
All program disposition monthly average is up 1% from 2012, down 7% from 2011, and down 8% from 2010

2012	101%	89%
2011	93%	85%
2010	92%	90%
	chg to '13 avg	chg to '13 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec		*Avg.*	*% Change*	Yr-Yr AvgChg
2010	88,772	84,920	78,808	81,554	83,171	81,997	85,167	86,889	79,186	76,869	71,857	70,783		***80,831***		
2011	75,183	71,225	59,203	60,086	64,024	61,203	60,107	61,211	58,886	61,349	58,553	55,653		***62,224***	77%	-18,608
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048		***46,263***	74%	-15,961
2013	40,368	38,419	34,291											***37,693***	81%	-8,570

Multi	9	67	4

All program open balance Mar to date is down 20% from 2012, down 45% from 2011, and down 55% from 2010
All program open balance monthly average is down 19% from 2012, down 39% from 2011, and down 53% from 2010

2012	81%	80%
2011	61%	55%
2010	47%	45%
	chg to '13 avg	chg to '13 YTD

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FIELD OPERATIONS ~ REPORT SUMMARY

STATEWIDE		2012-2013													STATEWIDE				
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	*Average*	*Current Mo.*	Total	Appellants		
WORKLOAD															*% of Avg.*		Current Mo.	Average	Total
New Opened Cases																			
	UI TL	32,132	37,791	33,363	36,746	31,266	26,393	33,691	31,654	33,967				33,000	103%	**297,003**	19,395	18,843	169,589
	DI	1,206	1,122	1,233	1,069	845	754	982	811	995				1,002	99%	**9,017**			
	Ruling & T-R	207	399	185	295	37	93	270	258	185				214	86%	**1,929**			
	Tax	253	229	254	200	215	214	223	245	299				237	126%	**2,132**			
	Other	22	19	24	20	14	15	22	22	16				19	83%	**174**			
	Total	33,820	39,560	35,059	38,330	32,377	27,469	35,188	32,990	35,462	0	0	0	34,473	103%	**310,255**			
	Multi Cases	15	54	5	5	2		7	53	5									
Closed Cases																			
	UI TL	30,672	35,346	30,299	38,963	32,844	32,269	33,153	33,375	37,439				33,818	111%	**304,360**	21,378	19,310	173,790
	DI	1,079	1,220	999	1,452	938	1,039	1,083	906	1,186				1,100	108%	**9,902**			
	Ruling & T-R	215	294	157	305	425	146	226	229	392				265	148%	**2,389**			
	Tax	236	290	284	357	234	195	299	222	475				288	165%	**2,592**			
	Other	24	29	13	29	9	25	16	21	32				22	145%	**198**			
	Total	32,226	37,179	31,752	41,106	34,450	33,674	34,777	34,753	39,524	0	0	0	35,493	111%	**319,441**			
	Multi Case/Clmt	1/4	3/8	2/5	7/52		2/6			11/46									
Balance - Open Cases																			
	UI TL	35,578	37,843	40,820	38,495	36,792	30,853	31,303	29,396	25,859				34,104	76%		14,765	19,474	
	DI	2,005	1,906	2,139	1,755	1,663	1,379	1,277	1,182	991				1,589	62%				
	Ruling & T-R	4,424	4,530	4,558	4,547	4,159	4,104	4,147	4,176	3,970				4,291	93%				
	Tax	3,931	3,871	3,841	3,683	3,664	3,683	3,606	3,629	3,453				3,707	93%				
	Other	42	33	44	35	40	29	35	36	18				35	52%				
	Total	45,980	48,183	51,402	48,515	46,318	40,048	40,368	38,419	34,291	0	0	0	43,725	78%				
	Multi Cases	17	56	51	6	8		9	67	4									
Time Lapse																			
	30 TL % (60)	42	50	50	53	58	48	54	70	79				56	141%				
	45 TL % (80)	83	83	85	81	85	83	86	89	95				86	111%				
	90 TL % (95)	98	98	98	98	97	97	97	98	99				98	101%				
CASE AGE																			
Average Days	UI (mean)	26	23	27	26	27	27	24	20	19				24	80%				
Average Days	UI (median)	22	21	24	22	23	24	21	17	18				21	84%				
>90 Days Old	UI	0%	1%	1%	1%	1%	1%	1%	1%	0%				1%	0%				
>90 Days Old	w/out Multis	0%	1%	1%	1%	1%	1%	1%	1%	0%				1%	0%				
>90 Days Old	DI	2%	5%	8%	5%	8%	6%	5%	5%	4%				5%	75%				
NET PYs USED	ALJ	164.22	180.02	176.37	190.53	168.33	163.71	169.71	181.93					174.4	104%				
Field Offices	Non ALJ	180.08	190.86	186.68	195.64	167.80	173.65	179.83	186.84					182.7	102%				
	Net PYs	344.30	370.88	363.05	386.17	336.13	337.36	349.54	368.77					357.0	103%				
	Ratio 1 /	1.10	1.06	1.06	1.03	1.00	1.06	1.06	1.03					1.05	98%				
w/FOHQ&RSU	ALJ	169.52	184.78	180.11	196.95	172.77	168.36	174.49	187.42					179.3	105%				
SS w/EDD	Non ALJ	218.65	234.75	228.30	236.61	202.94	209.82	219.61	226.65					222.2	102%				
EDD 0	Net PYs	388.17	419.53	408.41	433.56	375.71	378.18	394.10	414.07					401.5	103%				
	Ratio 1 /	1.29	1.27	1.27	1.20	1.17	1.25	1.26	1.21					1.24	98%				
PRODUCTIVITY																			
Weekly Dispos per ALJ (UI&DI)		44.6	43.0	45.7	44.6	51.5	49.5	46.7	48.1					46.7	103%				
Weekly Dispos per ALJ		45.3	43.7	46.4	45.4	52.5	50.0	47.5	48.8					47.4	103%				
Weekly Dispos (Non-ALJ)		35.1	34.4	36.6	37.8	44.7	40.1	37.7	40.4					38.3	105%				

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WEEKLY AO WORKLOAD REPORT
March 2013

Week Ending	Unreg total	Appeals Rec'd	Registrations	Dispositions	Open Balance	Change
3/1/2013	2074	183	182	198	2462	-16
3/8/2013	1879	707	643	863	2156	-306
3/15/2013	2102	642	675	623	2226	70
3/22/2013	2196	709	642	717	2201	-25
3/29/2013	2204	801	861	1097	2106	-95
3/1- 3/31/2013						
Running Total		3042	3003	3498		

Week Ending	Average Case age	45-Day (50%) Time Lapse	75-Day (80%) Time Lapse	150-Day (95%) Time Lapse
3/1/2013	34	54.61%	97.87%	100.00%
3/8/2013	34	42.92%	88.70%	99.40%
3/15/2013	33.3	39.79%	90.21%	100.00%
3/22/2013	32.6	57.63%	93.31%	100.00%
3/29/2013	27.2	63.61%	88.03%	99.42%
3/1- 3/31/2013	29.1	53.27%	90.56%	99.70%

AO REPORT TO BOARD -- MONTH OF MARCH 2013

	# Cases	Calendar Yr Avg
REGISTRATIONS	3003	2838
DISPOSITIONS	3498	2911
OPEN BALANCE	2106	2147
PENDING REG.	2204	

CASE AGING (40 days) 29.2 days

TIME LAPSE

45 Days (50%)	53.27%
75 Days (80%)	90.56%
150 Days (95%)	99.70%

ADDITIONAL INFORMATION

FO to AO Avg. Transfer Time	Days Statewide Avg.	1.38 days
FO ALJs working in AO	5.5	
Appeal rate FO to AO	8.60%	

California Unemployment Insurance Appeals Board

Board Appeal Summary Report

Average Days in Transfer from FO Received Date to Date Received at AO

	March, 2013		February, 2013		January, 2013		December, 2012	
	Average Days in Transfer	Case Count	Average Days in Transfer	Case Count	Average Days in Transfer	Case Count	Average Days in Transfer	Case Count
Fr	1.85	116	1.71	110	4.63	152	2.23	156
Ing	0.90	195	1.79	286	3.68	231	7.05	210
Inl	1.55	256	1.80	230	5.86	277	10.52	292
LA	0.58	245	1.36	187	2.50	181	3.44	204
Oak	1.00	177	2.35	148	14.36	180	4.54	176
OC	0.57	254	1.02	177	0.98	203	2.40	364
Ox	0.29	123	9.38	171	4.10	129	1.38	137
Pas	3.35	92	5.34	176	14.00	174	19.39	169
Sac	1.76	278	2.19	286	6.10	280	3.75	310
SD	3.26	176	7.78	205	7.30	218	12.00	209
SF	1.62	113	4.49	98	3.00	95	4.16	125
SJ	0.77	92	2.16	130	2.63	114	1.68	105
Tax			0.94	16	1.33	6	5.59	17
Total	1.38	2117	3.33	2220	5.92	2240	6.15	2474

APPELLATE OPERATIONS TL & Case Aging TRENDS

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	*Avg.*
Standard	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
03/04 45-Day	57.4%	58.8%	54.0%	52.0%	51.9%	50.3%	52.0%	54.0%	50.3%	9.9%	0.8%	5.1%	41.4%
03/04 75-Day	84.8%	85.7%	82.3%	77.7%	82.2%	84.7%	87.3%	87.3%	87.1%	38.1%	54.0%	75.2%	77.2%
03/04 150-Day	99.2%	97.2%	97.5%	98.1%	98.0%	96.9%	98.2%	97.9%	97.8%	95.9%	97.9%	98.8%	97.8%
Case Aging										50	46	46	47
04/05 45-Day	8.2%	10.2%	5.2%	6.3%	5.1%	6.4%	7.7%	10.4%	4.5%	4.5%	9.7%	10.8%	7.4%
04/05 75-Day	69.7%	74.6%	70.1%	70.9%	62.9%	75.2%	76.3%	71.5%	60.1%	65.3%	65.4%	64.5%	68.9%
04/05 150-Day	99.1%	99.4%	99.8%	99.4%	97.8%	98.9%	96.9%	87.5%	88.2%	92.3%	95.7%	89.3%	95.4%
Case Aging	44	49	49	55	50	53	60	61	55	62	60	48	54
05/06 45-Day	3.6%	5.8%	6.0%	4.5%	5.6%	13.5%	7.2%	10.5%	6.7%	7.9%	8.6%	8.3%	7.3%
05/06 75-Day	71.7%	73.0%	63.7%	74.1%	75.8%	76.9%	69.0%	66.3%	49.6%	52.0%	59.6%	57.2%	65.7%
05/06 150-Day	96.2%	98.8%	98.1%	99.1%	99.3%	99.2%	97.8%	97.7%	97.7%	98.8%	99.2%	99.0%	98.4%
Case Aging	46	47	42	40	38	44	46	52	45	46	45	38	44
06/07 45-Day	17.9%	17.1%	10.9%	10.7%	11.0%	10.8%	9.2%	18.3%	37.2%	21.0%	22.2%	25.9%	17.7%
06/07 75-Day	80.0%	67.6%	73.2%	86.8%	91.0%	86.5%	80.5%	85.8%	90.2%	89.4%	86.0%	89.6%	83.9%
06/07 150-Day	98.8%	98.4%	98.7%	98.7%	99.6%	99.1%	99.4%	97.2%	99.1%	99.8%	99.6%	99.2%	99.0%
Case Aging	41	42	36	34	38	40	39	35	33	36	32	35	37
07/08 45-Day	15.2%	13.7%	3.4%	5.6%	8.9%	5%	9%	14%	12%	7%	22%	22%	11.4%
07/08 75-Day	87.8%	88.2%	83.8%	80.5%	80.5%	77%	81%	87%	86%	86%	80%	80%	83.1%
07/08 150-Day	98.8%	99.8%	99.6%	99.6%	99.7%	99%	99%	99%	99%	99%	98%	98%	99.2%
Case Aging	33	36	41	39	40	43	37	38	40	43	45	34	39
08/09 45-Day	52.2%	37.8%	38.4%	33.2%	16.1%	4.7%	13.8%	20.6%	38.7%	30.8%	43.2%	60.0%	32.4%
08/09 75-Day	93.2%	94.9%	92.3%	90.4%	91.2%	87.3%	88.2%	90.6%	93.9%	75.3%	86.7%	92.7%	89.7%
08/09 150-Day	99.6%	99.7%	98.9%	99.0%	99.1%	99.6%	99.1%	99.8%	100.0%	99.4%	99.8%	97.6%	99.3%
Case Aging	30	34	34	32	38	37	33	39	39	37	44	59	38
09/10 45-Day	42.4%	41.8%	39.5%	28.6%	35.6%	28.8%	29.2%	37.3%	40.6%	43.3%	59.4%	80.5%	42.2%
09/10 75-Day	76.2%	85.2%	69.7%	75.9%	78.5%	74.2%	83.2%	88.0%	92.9%	93.3%	91.3%	94.7%	83.6%
09/10 150-Day	82.6%	98.8%	96.7%	99.1%	99.3%	99.3%	99.0%	99.5%	99.6%	99.7%	99.8%	99.4%	97.7%
Case Aging	42	45	41	39	39	39	37	38	34	35	29	26	37
10/11 45-Day	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
10/11 75-Day	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
10/11 150-Day	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
Case Aging	26	28	27	27	25	28	28	33	38	38	36	34	31
11/12 45-Day	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
11/12 75-Day	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
11/12 150-Day	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
Case Aging	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
12/13 75-Day	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
12/13 150-Day	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%

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Case Aging	31	38	44	48	44	49	45	45	41	41	35	29.1	*41*

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APPELLATE OPERATIONS ~ REPORT SUMMARY

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APPELLATE	2013													AO				
	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	Current Mo.	TOTAL	Appellants		
WORKLOAD														% of Avg.		Current Mo.		
Registrations																		
UI TL	2,708	2,596	2,942										2,749	107%	**8,246**			
DI	52	121	55										76	72%	**228**			
Ruling & T-R	2	1	3										2	150%	**6**			
Tax	27	0	0										9	0%	**27**			
Other	0	3	3										2	150%	**6**			
Total	2,789	2,721	3,003										2,838	106%	**8,513**	1,655		
Multi Cases	4																	
Dispositions																		
UI TL	2,823	2,240	3,363										2,809	120%	**8,426**			
DI	69	60	117										82	143%	**246**			
Ruling & T-R	3	2	0										2	0%	**5**			
Tax	25	11	15										17	88%	**51**			
Other	1	1	3										2	180%	**5**			
Total	2,921	2,314	3,498										2,911	120%	**8,733**	1,968		
Multi Case/Clt		4/57																
Balance - Open Cases																		
UI TL	1,933	2,279	1,809										2,007	90%				
DI	51	110	50										70	71%				
Ruling & T-R	1	0	3										1	225%				
Tax	72	61	46										60	77%				
Other	0	2	2										1	150%				
Total	2,057	2,452	1,910										2,140	89%		1,091	Estimate	
Multi Cases	61	4	3															
FO to AO Appeal Rate																		
UI TL	8.4%	7.8%	8.8%										8.3%	105.6%				
DI	5.0%	11.2%	6.1%										7.4%	81.9%				
Ruling & T-R	1.4%	0.4%	1.3%										1.0%	125.9%				
Tax	13.8%	0.0%	0.0%										4.6%	0.0%				
Other	0.0%	18.8%	14.3%										11.0%	129.7%				
Overall Rate	8.3%	7.8%	8.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	8.2%	104.7%				

APPELLATE OPERATIONS ~ REPORT SUMMARY

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APPELLATE	2013													AO	
	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	*Average*	*Current Mo.*	
TIME LAPSE														*% of Avg.*	
45 Day-**50 %**	13	24	53										30	177%	
75 Day- **80 %**	83	77	91										83	109%	
150 Day- **95 %**	100	100	100										100	100%	
CASE AGE															
Avg Days-UI (mean)	41	35	29.1										35.0	83%	
Avg Days-UI (median)	40	31	25.0										32.0	78%	
Over 120 days old															
UI Cases	20	7	1										9	11%	
UI %	1%	0%	0%										0%	0%	
UI % w/out Multis	1%	0%	0%										0%	0%	
NET PYs USED															
ALJ	21.21	22.75											22.0	104%	
AO Non ALJ	39.92	40.71											40.3	101%	
CTU Non ALJ	3.29	3.34											3.3	101%	
Net PYs	64.42	66.80											65.6	102%	
RATIOS															
AO w/o transcribers	1.88	1.79											1.83	98%	
AO with transcribers	2.04	1.94											1.98	98%	
TRANSCRIPTS	97	50	42										**63**	67%	189
PAGES	7,602	3,940	4,633										**5,392**	86%	16,175
AVG PGS Per T/S	78	79	110										89	124%	
PRODUCTIVITY															
ALJ Disp/wk	32.8	25.4											29.1	87%	
Trans Pgs/day	110.03	58.98											84.5	70%	

APPELLATE OPERATIONS ~ REPORT SUMMARY

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APPELLATE	2012-2013													AO				
	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	Current Mo.	TOTAL	Appellants		
WORKLOAD														% of Avg.		Current Mo.		
Registrations																		
UI TL	2,319	2,824	2,338	2,632	2,260	2,091	2,708	2,596	2,942				2,523	117%	**22,710**			
DI	85	92	78	85	65	57	52	121	55				77	72%	**690**			
Ruling & T-R	1	1	3	1	5	1	2	1	3				2	150%	**18**			
Tax	2	13	11	9	44	6	27	0	0				12	0%	**112**			
Other	0	2	0	1	2	1	0	3	3				1	225%	**12**			
Total	2,407	2,932	2,430	2,728	2,376	2,156	2,789	2,721	3,003				2,616	115%	**23,542**	1,655		
Multi Cases			283	9		6	4											
Dispositions																		
UI TL	2,538	2,958	2,582	2,235	2,247	2,512	2,823	2,240	3,363				2,611	129%	**23,498**			
DI	79	95	79	87	77	71	69	60	117				82	143%	**734**			
Ruling & T-R	1	0	3	3	0	5	3	2	0				2	0%	**17**			
Tax	35	34	43	16	2	18	25	11	15				22	68%	**199**			
Other	0	0	2	0	1	2	1	1	3				1	270%	**10**			
Total	2,653	3,087	2,709	2,341	2,327	2,608	2,921	2,314	3,498				2,718	129%	**24,458**	1,968		
Multi Case/Clt				1/5		4/237		4/57										
Balance - Open Cases																		
UI TL	2,744	2,578	2,363	2,727	2,722	2,199	1,933	2,279	1,809				2,373	76%				
DI	102	97	97	95	82	68	51	110	50				84	60%				
Ruling & T-R	2	3	3	1	6	2	1	0	3				2	129%				
Tax	100	78	46	39	82	70	72	61	46				66	70%				
Other	0	2	0	1	2	1	0	2	2				1	180%				
Total	2,948	2,758	2,509	2,863	2,894	2,340	2,057	2,452	1,910				2,526	76%		1,091	Estimate	
Multi Cases	0		283	287	287	57	61	4	3									
FO to AO Appeal Rate																		
UI TL	7.3%	9.2%	6.6%	8.7%	5.8%	6.4%	8.4%	7.8%	8.8%				7.7%	115.0%				
DI	7.5%	8.5%	6.4%	8.5%	4.5%	6.1%	5.0%	11.2%	6.1%				7.1%	85.8%				
Ruling & T-R	0.7%	0.5%	1.0%	0.6%	1.6%	0.2%	1.4%	0.4%	1.3%				0.9%	150.9%				
Tax	0.9%	5.5%	3.8%	3.2%	12.3%	2.6%	13.8%	0.0%	0.0%				4.7%	0.0%				
Other	0.0%	8.3%	0.0%	7.7%	6.9%	11.1%	0.0%	18.8%	14.3%				7.5%	191.7%				
Overall Rate	7.2%	9.1%	6.5%	8.6%	5.8%	6.3%	8.3%	7.8%	8.6%				7.6%	114.0%				

APPELLATE OPERATIONS ~ REPORT SUMMARY

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APPELLATE	2012-2013													AO	
	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	*Average*	*Current Mo.*	
TIME LAPSE														*% of Avg.*	
45 Day-**50 %**	13	29	41	25	22	14	13	24	53				26	204%	
75 Day- **80 %**	81	81	76	75	83	75	83	77	91				80	113%	
150 Day- **95 %**	100	99	99	99	100	98	100	100	100				99	100%	
CASE AGE															
Avg Days-UI (mean)	48	44	49	45	45	41	41	35	29.1				42	69%	
Avg Days-UI (median)	43	38	41	42	42	41	40	31	25.0				38	66%	
Over 120 days old															
UI Cases	49	36	36	9	24	17	20	7	1				22	5%	
UI %	2%	1%	2%	0%	1%	1%	1%	0%	0%				1%	0%	
UI % w/out Multis	2%	1%	2%	0%	1%	1%	1%	0%	0%				1%	0%	
NET PYs USED															
ALJ	17.38	19.99	17.62	17.40	18.79	17.31	21.21	22.75					19.1	119%	
AO Non ALJ	37.21	41.93	39.47	41.41	38.34	39.87	39.92	40.71					39.9	102%	
CTU Non ALJ	2.94	3.78	3.50	3.50	3.50	3.25	3.29	3.34					3.4	99%	
Net PYs	57.53	65.70	60.59	62.31	60.63	60.43	64.42	66.80					62.3	107%	
RATIOS															
AO w/o transcribers	2.14	2.10	2.24	2.38	2.04	2.30	1.88	1.79					2.09	86%	
AO with transcribers	2.31	2.29	2.44	2.58	2.23	2.49	2.04	1.94					2.27	85%	
TRANSCRIPTS	90	114	94	73	126	99	97	50	42				**87**	48%	785
PAGES	6,209	7,640	6,943	7,403	8,955	6,856	7,602	3,940	4,633				**6,687**	69%	60,181
AVG PGS Per T/S	69	67	74	101	71	69	78	79	110				**80**	138%	
PRODUCTIVITY															
ALJ Disp/wk	36.3	33.6	40.5	29.2	32.6	37.7	32.8	25.4					33.5	76%	
Trans Pgs/day	100.57	87.88	104.41	91.96	134.66	105.48	110.03	58.98					99.2	59%	

Board Member Case Activity for the month of: March 2013 **Agenda Item 9**

Board Member		1st	2nd	3rd	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Kathleen Howard											
	Sum	576	520	50	1075	66	0	5	418	728	1146
	Percent	31%	28%	34%	30%	30%	0%	36%	29%	30%	
Michael Allen											
	Sum	580	651	25	1192	61	0	3	470	786	1256
	Percent	31%	35%	17%	33%	27%	0%	21%	33%	32%	
Robert Dresser											
	Sum	106	28	72	195	10	0	1	70	136	206
	Percent	6%	2%	49%	5%	5%	0%	7%	5%	6%	
Roy Ashburn											
	Sum	615	644	1	1171	85	0	5	459	802	1261
	Percent	33%	35%	1%	32%	38%	0%	36%	32%	33%	
Total Cases Reviewed:		1877	1843	148	3633	222	0	14	1417	2452	

***Off Calendar**

Monthly Board Meeting Litigation Report - March 2013

AGENDA ITEM 9

LITIGATION CASES PENDING	**TOTAL = 326**	
SUPERIOR COURT:	Claimant Petitions	267
	Employer Petitions	36
	EDD Petitions	3
	Non-benefit Court Cases	6
APPELLATE COURT:	Claimant Appeals	8
	Employer Appeals	3
	EDD Appeals	0
	Non-benefit Court Cases	1
ISSUES:	UI	282
	DI	20
	Tax	15
	Non-benefit Court Cases	9

2013 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

LITIGATION CASES FILED		**YTD**	**March**
SUPERIOR COURT:	Claimant Petitions	19	10
	Employer Petitions	6	1
	EDD Petitions	0	0
APPELLATE COURT:	Claimant Appeals	0	0
	Employer Appeals	0	0
	EDD Appeals	0	0
LITIGATION CASES CLOSED		**YTD**	**March**
SUPERIOR COURT:	Claimant Petitions	19	8
	Employer Petitions	2	0
	EDD Petitions	0	0
APPELLATE COURT:	Claimant Appeals	2	2
	Employer Appeals	0	0
	EDD Appeals	0	0

2013 Decision Summary

Claimant Appeals		**Employer Appeals**		**CUIAB Decisions**		
Win: 2	Loss: 19	Win: 0	Loss: 2	Affirmed: 21	Reversed: 1	Remanded: 1

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in March 2013

UI CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	**Average**	**Average**	**Average**	**Average**	**Average**
Fresno	39	5	12	12	2
Inglewood	34	5	6	14	3
Inland	39	5	9	15	3
Los Angeles	35	5	9	13	4
Oakland	33	5	7	11	3
Orange County	35	5	7	12	4
Oxnard	31	5	7	13	1
Pasadena	36	5	6	12	7
Sacramento	35	6	8	13	3
San Diego	36	5	5	16	4
San Francisco	35	5	10	13	2
San Jose	32	5	8	11	2
Statewide	**35**	**5**	**8**	**13**	**3**

ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	**Average**	**Average**	**Average**	**Average**	**Average**
Fresno	39	5	13	12	2
Inglewood	50	5	17	17	3
Inland	41	5	9	15	4
Los Angeles	37	6	10	13	4
Oakland	34	5	7	11	3
Orange County	38	6	9	12	4
Oxnard	36	5	11	13	1
Pasadena	38	5	6	12	7
Sacramento	39	6	11	13	3
San Diego	36	5	6	16	4
San Francisco	36	5	**10**	13	2
San Jose	34	5	9	11	2
Statewide	**38**	**5**	**10**	**13**	**3**

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in March 2013

PFL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	**Average**	**Average**	**Average**	**Average**	**Average**
Fresno	66	24	16	13	9
Inglewood	49	23	9	13	8
Inland	58	22	12	16	5
Los Angeles	61	24	0	11	5
Oakland	57	29	11	12	3
Orange County	40	21	5	12	6
Oxnard	40	17	11	11	1
Pasadena	52	19	12	12	6
Sacramento	55	24	8	13	5
San Diego	50	22	4	20	4
San Francisco	42	17	9	14	1
San Jose	62	23	17	12	7
Statewide	**53**	**22**	**11**	**14**	**5**

DI CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	**Average**	**Average**	**Average**	**Average**	**Average**
Fresno	54	9	15	13	4
Inglewood	58	12	15	13	6
Inland	76	13	23	14	15
Los Angeles	64	12	21	12	6
Oakland	53	12	14	12	6
Orange County	57	15	7	12	8
Oxnard	50	10	11	12	2
Pasadena	69	12	11	13	11
Sacramento	55	13	13	14	8
San Diego	60	11	11	17	8
San Francisco	49	13	10	14	3
San Jose	59	14	19	11	3
Statewide	**61**	**12**	**15**	**13**	**8**

FO Cycle Time Summary Report
For Cases Closed in March 2013

RULING CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	**Average**	**Average**	**Average**	**Average**	**Average**
Fresno	107	4	47	13	5
Inglewood	357	5	243	79	5
Inland					
Los Angeles	288	3	248	7	0
Oakland	124	3	39	13	7
Orange County	234	4	191	12	4
Oxnard	210	4	158	12	0
Pasadena	123	4	29	14	18
Sacramento	274	3	221	13	4
San Diego					
San Francisco	100	5	38	13	2
San Jose	119	3	54	13	7
Statewide	**274**	**4**	**192**	**42**	**5**

MARCH 2013 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS
UI TIMELAPSE CASES

Closed Cases	Closed	DOL Standard
% Closed in <= 30 Days	79.2%	60%
% Closed in <= 45 Days	95.2%	80%

Pending Cases	Avg. Days	DOL Standard
Case Aging	19.4	30

WORKLOAD	UI	ALL
Opened	33,967	35,462
Closed	37,439	39,524
Balance of Open Cases	25,859	34,291

CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Appeals	35 days
DI Appeals	61 days
All Programs	38 days

FO OVERTURNED OR MODIFIED[1] EDD DETERMINATION

% Overturned/Modified EDD UI TL* Benefit Decisions	52%
% in Favor of Claimants (for Claimant UI appeals)	54%
% in Favor of Employers (for Employer UI appeals)	33%

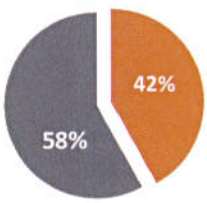
Source: Official Monthly Workload Report

** UI TL stands for UI Timelapse (i.e. regular UI non-extension).*

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	70%
UI Extensions as % of All UI	30%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 42% of UI Open Balance, and Regular UI cases made up 58%.

FED-ED UI Extensions made up 0.6% of the FO open balance. These are the extensions that ended in late May 2012. In 2011, they were 3% of the workload.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS
UI TIMELAPSE CASES

Closed Cases	Closed	DOL Guideline
% Closed in <= 45 Days	53.3%	50%
% Closed in <= 75 Days	90.6%	80%

Pending Cases	Avg. Days	DOL Standard
Case Aging	29.0	40

WORKLOAD	UI	ALL
Opened	2,946	3,003
Closed	3,363	3,498
Balance of Open Cases	1,809	1,910

CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Appeals	TBD
DI Appeals	TBD
All Programs	TBD

Report under development

AO OVERTURNED OR MODIFIED[1] FO DECISION

% Overturned/Modified FO UI TL* Benefit Decisions	16%
% in Favor of Claimants (for Claimant UI appeals)	18%
% in Favor of Employers (for Employer UI appeals)	9%

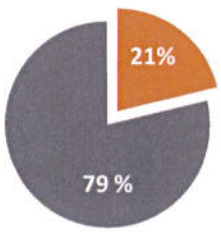
Source: Official Monthly Workload Report

** UI TL stands for UI Timelapse*

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	75%
UI Extensions as % of All UI	25%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 21% of UI Open Balance, and Regular UI cases made up 79%.

FED-ED UI Extensions made up 0.5% of the AO open balance.

[1] *"Overturned or Modified" is the number/percentage of cases where marked "favorable" to appellant. A case is marked "favorable" if the judge's decision modifies or reverses the EDD determination. The CUIAB's current case tracking system cannot separate out or quantify the modifications from the reversals.*

CUIAB 12/13 Fiscal Year Overtime/Lump Sum Payout - SCO Report
July 2012 through February 2013

12/13 Fiscal Year-to-Date Overtime Expenditure

Branch	FY Y-T-D Decision Typing		FY Y-T-D CTU Typing		FY Y-T-D Registration		FY Y-T-D Other	
	Hours	Pay	Hours	Pay	Hours	Pay	Hours	Pay
Appellate	511.55	$13,797.80	1,351.75	$38,819.91	1,407.10	$38,028.60	2,982.65	$80,364.97
Admin	54.50	$1,982.64	0.00	$0.00	46.00	$926.16	183.35	$5,654.67
IT	0.00	$0.00	0.00	$0.00	0.00	$0.00	1,612.80	$63,684.03
Exec	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00
Project	28.00	$1,141.36	0.00	$0.00	10.00	$462.70	183.50	$6,670.92
Field	1,864.46	$53,549.81	267.50	$7,184.60	1,689.75	$50,705.01	5,779.99	$162,128.49
Total	2,458.51	$70,471.61	1,619.25	$46,004.51	3,152.85	$90,122.47	10,742.29	$318,503.08

12/13 Fiscal Year-to-Date Total Overtime Expenditures						FY 12/13 FY Projections
Branch	12/13 FY Allocation	Year-to Date Hours	Year-to-Date Position Equivalent	Year-to Date Pay	Allocation Balance	Estimated Expenditures Over-/Under
Appellate	$71,338.00	6,253.05	3.01	$171,011.28	-$99,673.28	-$185,178.92
Admin	$3,818.00	283.85	0.14	$8,563.47	-$4,745.47	-$9,027.21
IT	$35,711.00	1,612.80	0.78	$63,684.03	-$27,973.03	-$59,815.05
Exec	$2,266.00	0.00	0.00	$0.00	$2,266.00	$2,266.00
Project	$10,165.00	221.50	0.11	$8,274.98	$1,890.02	-$2,247.47
Field Operations	$233,873.00	9,601.70	4.62	$273,567.91	-$39,694.91	-$176,478.87
Total	357,171.00	17,972.90	8.64	$525,101.67	-$167,930.67	-$430,481.51
Actual Monthly Average Personnel Year			12.96			

12/13 Fiscal Year-to-Date Lump Sum Payout July 2012 through February 2013			
Branch	Year-to Date Hours	Year-to-Date Position Equivalent	Year-to Date Pay
Appellate	1,802.50	0.87	$91,237.61
Admin	202.50	0.10	$3,537.34
IT	0.00	0.00	$0.00
Exec	1,271.00	0.61	$78,222.40
Project	0.00	0.00	$0.00
Field Operations	6,966.50	3.35	$200,220.56
Total	10,242.50	4.93	$373,217.91

4-4-13 vg

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

SPECIAL PROJECTS MATRIX
April 2013

California's economy is globally ranked with approximately 1.0 million business owners and 18.3 million workers. Currently, California, along with the nation, is experiencing an immense economic downturn with 1.8 million California workers out of work. These are unprecedented numbers for California and the nation. Given this current economic situation, we strive to better serve California's workers and business owners during a time when more than ever, they are in need of our services. Since January 2009, the Board has been focused on the appeal backlog and identifying work solutions that will help address the workload.

WORK PROCESS IMPROVEMENTS

Project & Description	Lead	Priority	Milestones	Goals	Status
EDD/CUIAB Appeal Co-Location Pilot Exploring the co-location of four CUIAB staff at EDD's LA PAC to streamline appeals registration processing.		High	Developed scope with EDD 07/2010 Connectivity established 08/2010 Train staff 09/20/2010 Launch Pilot 09/27/2010 Suspended due to freeze 10/04/2010 Relaunch 06/13/2011	– Reduce claimants' & employers' wait time for hearing decisions. – Resolve appeal registration issues in a timely manner.	On 07/09/12, one Pasadena staff member was added and Inglewood FO appeals was added on 9/10/12. New staff started 03/01/13. Co-Location is registering for Inglewood, Los Angeles, Pasadena, Sacramento, and San Diego.
US Department of Labor Taskforce For nine years, CUIAB has failed to meet US DOL timeliness standards for UI appeals. California is ranked 51st among 53 states and US territories on time lapse and case aging standards. In late 2008, US DOL placed CUIAB under a corrective action plan with oversight by a taskforce of US DOL, EDD & CUIAB representatives.		High	Appeal program review 07/27-31/2009 DOL report 02/05/2010 LWDA response 03/10/2010 Two yr At Risk CAP 07/15/2010 Last site visit 12/12/2012	– Meet DOL time lapse measures. – Meet DOL case age measures.	CA removed from corrective action on average case age for first level appeals. For February 2013, CA ranked 28 in the nation compared to rank 51 in December 2008. March 2013 Performance – First Level 30-day – 79.2% (60%) 45 day – 95.2% (80%) Avg Age – 19.4 days (30 days) Second level Avg age – 29.0 days (40 days)

TECHNOLOGY

Project & Description	Lead	Priority	Milestones	Goals	Status
Collate Decision Print Jobs Reduce a manually collated appeal decision print jobs to one print job to save staff time.	Hugh Harrison Julie Krebs Lori Kurosaka Faye Saunders	High		– Reduce claimants' & employers' wait times for benefits and adjustments. – Reduce cycle time for appeals process.	Programming completed and testing is in progress. Solution will be implemented with new E-CATS release (Spring 2013).
CUIAB Network Upgrade This upgrade with double the bandwidth for faster processing of appeal data and information for ALJs and staff.	Rafael Placencia	High		– Reduce cycle time for appeals data flow and document saving.	Meeting with EDD IT to explore options & alignment with Agency network consolidation efforts. Design plans are completed.
Dictaphone Integration Consolidating data & audio files on CATS for appeal cases for improved access.	Faye Saunders	High			Will be released with E-CATS. Issues identified with Dictaphone 8 & Windows 7. Server Group is analyzing solutions & testing.
Digital Imaging EDD mails hard copy documents to CUIAB when an appeal is filed. CUIAB will collaborate with EDD to image documents and records relating to all appeals and design an electronic exchange.	Lori Kurosaka	High	Kick off 11/2010 FSR completion 02/2011 Potential BCP 02/2011 Procurement 04/2011 FSR in review 03/14/2011 FSR in review 11/30/2011	– Reduce paper files prepared & sent by EDD. – Increase information security. – Reduce paper file storage space needs & costs at CUIAB. – Reduce postage costs. – Increase federal performance.	Agency, EDD, CUIAB meeting on 01/16/2013. Moving UI appeal scope back to UI Forms Project. CUIAB & EDD will explore scope that can be completed before UI Forms Project is relaunched. Decisions will be made at a follow up meeting.
E-CATS Enhanced CA Appeal Tracking System is the modernization of CUIAB's legacy appeals tracking system. In-house IT staff are developing the system on a Microsoft web application framework	Faye Saunders	High	Stress test 02/13/2013	–	Users will see new and improved screen search, efficiency in decision printing, and IT ability to roll-out updates via the internet. Conversion from Silverlight to WFP is complete. IT is debugging &d retesting.
Electronic Case Management CUIAB's case tracking database is 10 years old and cumbersome to manage the current workload volume. CUIAB is collaborating with LWDA & EDD to develop an integrated case management system.	Lori Kurosaka Janet Maglinte	On Hold	LWDA, EDD & CUIAB approved FSR & project strategy in 10/2010. Kick off 05/2011.	– Receive appeals case documents electronically from EDD. – Eliminate internal mailing of case documents	Project Team is revisiting the FSR to update and complete by end of fiscal year. Will begin product research and demos.
E-Decision Review for ALJs In-house development for electronic appeal decision review process.	Faye Saunders	High		–	Performing business analysis for requirements gathering.

TECHNOLOGY cont.

Project & Description	Lead	Priority	Milestones	Goals	Status
EDD CCR Interface As a part of EDD's UI Modernization Project, CUIAB is building an interface with the Continued Claims Redesign Project under development. Primary data exchange will include address change updates.	Faye Saunders	High		– Eliminate paper exchange process with EDD. – Increase worker information security.	Completed testing solution with EDD. EDD's CCR implementation is delayed to July 2013.
Expand Auto Dialer Hearing Reminder Adding email and cell phone text features for supplemental hearing notifications.	Rafael Placencia	On Hold	Updated software. Final testing 08/2010. Implemented 09/2010. Implemented email reminders 04/2011. Revised 10/2011.	- Increase hearing attendance rate & productivity.	
Explore Feasibility to Use EDD Mail Center Within three months, Field Operations wants to explore feasibility of mailing decisions and notices via the EDD Mail Center to take advantage of bulk postal discounts and save staff resources.	Hugh Harrison Lori Kurosaka Faye Saunders	On Hold		-	Held planning meeting with EDD on 04/12/2012 for requirements gathering & costing. Held requirements gathering session with FO & AO on 05/02/2012. Procuring software to expedite coding for this process. Held CUIAB requirements session. CUIAB IT is unable to dedicate resources due to other priorities.
Field Office Technology Enhancements Investing and testing use of larger sized monitors for hearing rooms. Provide second monitors for support staff to toggle into SCDB without interrupting their CATS.	Rafael Placencia	Medium	Complete procurement	- Improve readability of documents on screen.	Hardware deployment
Field Office Telephone Tree Field Operations will test the use of phone menu options to answer routine constituent calls. This will allow support staff to spend more time on the non-routine calls.	Rafael Placencia	Medium	Develop standard automated phone tree to be used for all FO's Pilot new phone tree in the Inland FO	– Reduce claimants & employers time on phones. – Standardize hearing information provided by phone.	Standard phone tree design completed. Pilot began in the Inland FO.
EDD Flat File Expansion The nightly data file of UI, DI, and PFL appeal transmittals will be expanded to include data for the entire UI macro print jobs. This expanded data will allow CUIAB to calendar hearings before paper transmittal arrives.	Lori Kurosaka Faye Saunders	High		– Reduce claimants' & employers' wait times for benefits and adjustments. – Reduce cycle time for appeals process. – Reduce hard copy SCDB screen prints mailing from EDD.	Gathered business requirements with Judicial Advisory Council 10/16/2012. Trying to schedule project launch meeting with EDD. EDD IT Branch has lead. UI Branch is now on "lock-down" due to CCR Project testing.

TECHNOLOGY cont.

Project & Description	Lead	Priority	Milestones	Goals	Status
Hearing Scheduling System Currently, FO & AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field & IT staff observed an EDD demon on their UI Scheduling System.	Lori Kurosaka Faye Saunders	Medium	Charter & scope completed. Kick off 10/14/2010. Requirements 2/2011 Testing began 01/2012 AO Implementation 04/26/2012	– Reduce claimants & employers wait time for hearing decisions. – Provide easier electronic process for staff to calendar hearings or schedule cases.	IT team completed visits to 12 FOs to observe calendaring processes. Business requirements & design document were vetted with FO Steering Council in September 2012. Application coding is 35% completed.
LWDA Network Consolidation To comply with OCIO Policy Letter 10-14, the LWDA Departments & Boards are developing a network consolidation plan that must be completed by June 2013.	Rafael Placencia	Medium	LWDA Workgroup develops migration plan. Consensus on migration plan. Implementation	- Improve IT efficiency & effectiveness. - Improve security. - Reduce IT costs by using shared service models. - Reduce greenhouse gas emissions.	The migration plan is completed and a cost model has been developed.
Personal Productivity & Mobility Pilot for Board Members, Appellate & Senior Staff Testing use of new mobile, paperless technology with Board Members, six Appellate ALJs, and Senior Staff.	Rafael Placencia	On Hold due to air card limitations	OCIO approval for procurement. Testing equipment with Board.	- Reduce the use of paper for board appeal processing and board meetings.	Scoped down due to GO directive on cell phone (air card) reductions.
Printer Standardization Standardizes the use of printers throughout the organization as they are replaced. This will reduce maintenance and toner costs through the printers lives.	Rafael Placencia	Medium		- Reduce maintenance & support costs. - Reduce toner costs.	Researching feasible equipment. Standards are in place for light, heavy, color, and multi-function printers.
Refresh Bench & Conversion CUIAB's intranet site is under refresh and conversion to SharePoint 2010 software. This software will provide easier updates and content.	Faye Saunders	Medium	Secured consultant to build SharePoint server 09/2012. Migration of current content completed 08/2012.	- Improve internal communication tool for CUIAB employees.	IT is working with different programs to update the content of their pages. Forms & documents are migrated to new site. Project reassigned to new IT staff this month to complete page design & links.
VOIP Telephony CUIAB is exploring use of Voice Over Internet technology to provide lower cost telecommunications.	Rafael Placencia Janet Maglinte	On Hold	09/17/2011Completed 23out station hearing facilities.	- Elimination of long distance toll calls - Consolidation of telecommunications support areas.	On hold 07/2011. IT staff are preparing business analysis for feasibility of further implementation.

STAFFING, FACILITIES, EQUIPMENT & OTHER

Project & Description	Lead	Priority	Milestones	Goals	Status
Judicial Advisory Council Established an advisory council of two Presiding Judges & three ALJs to seek input on major technology development.	Lori Kurosaka Janet Maglinte	On-Going	07/2011-Completed business requirements for case management system.	– Design comprehensive technology systems with input from judicial users.	Updating business requirements for imaging & workflow system. Testing ergonomic furniture to help judges to adopt new technology.
Performance Management Tools for Board & Leadership Develop additional reporting tools that the Board & Leadership will use to monitor overall appellate performance and appeal process cycle times. These tools will also help to measure success with the large scale technology projects.	Janet Maglinte	High	Business case metrics for imaging Business case metrics for case management Tested report template designs with IT.		Field Operations performance indicator reports are complete. Testing on Appellate Operations cycle time and case aging reports.
Staff Advisory Council Established an advisory council of six Field Operations staff and two Appellate staff to seek input on major technology development.	Lori Kurosaka Janet Maglinte	On-Going		– Design comprehensive technology systems with input from staff users.	Updating business requirements for imaging & workflow system.
Transforming CUIAB Completed engagement with vendor. Establish new change management program at CUIAB to train staff for skills needed for new technology implementations and communicate on tech project initiatives.	Pam Boston	High	Vetted with Presiding Judges 02/2013	– Develop and implement training plan for judges & staff. – Develop and implement a communications plan targeting all CUIAB stakeholder groups on new technology status.	Draft communications and training plans are approved by Steering Council. Staff are developing PC skills assessment tools. Draft communication tools are in review with Steering Council.

From:
Sent: Friday, March 29, 2013 3:04 PM
To:
Cc:
Subject: RE: Proposed Precedent A0-304880

Dear Ms. Rose and Mr. Hilton,

Having served in the past as a neutral for the DFEH and EEOC, I would like to respond to the above opinion:

I believe there is a balance between the decisions of Board members Howard, Allen and Dressler and the dissenting decision of Mr. Ashburn. First, I firmly believe the standard of review regarding one's constitutional expectation to privacy in this setting is a "rational basis" and that drug and/or alcohol testing as part of a normal procedure when an accident occurs is reasonable, subject to its reasonable implementation. I would however, like to see such policy published so that employees understand that they will be subjecting themselves to drug or alcohol testing if they are involved in a workplace accident.

I do not believe that analyzing whether an eye injury or any other injury is serious should be the standard, but that any workplace accident that occurs with this employer can reasonably require a drug or alcohol test subject to disclosure through the employer's policy and procedures manual. Having such a policy eliminates the burden of deciding whether an injury is serious or not as well as whether a person's job is sensitive, or not. The alcohol/drug testing then becomes completely non-discriminatory in its application and is uniformly implemented as part of a reasonable procedural requirement when a workplace accident occurs. (There is no longer a need to establish damage thresholds or sensitivity of one's job position).

That being said, I now look to the claimant to see if she reasonably complied with being asked to subject herself to the testing procedure. In this regard, I agree with Board members Allen, Dressler and Howard. Not only did the claimant subject herself to multiple swab testing, but she also voluntarily gave a urine sample. She therefore reasonably complied with a "reasonable" rule, i.e. the rule that she must subject herself to alcohol and/or drug testing when a workplace injury occurs. In this matter, she did not breach her duty owed to her employer.

The claimant's refusal to what appears to be the fourth attempt to test her and obtain a second urine sample after having already tested her urine and performed two swab tests now becomes obtrusive and burdensome, but it is not based upon her expectation of privacy or violation of her constitutional rights. At some point, it simply becomes unreasonable to subject one to the same test, over and over again because the results are inconclusive. Even in this matter, the employer could publish a policy that states that should an inconclusive result come back, the employee who was involved in a workplace accident will be required to take a second test. Here, a reasonable standard must be applied. Additionally, the claimant had concerns for her safety having already subjected herself to a driver who she believed to be unsafe.

Therefore, the claimant is still entitled to benefits, but such entitlement is because she has reasonably complied with the requests of her employer regarding the implementation of drug and alcohol testing having been in a workplace accident. Her employer's request to take a forth test is not reasonable since the claimant has already complied and the claimant is not responsible for inconclusive results. Otherwise, the employer could continue to conduct an unlimited number of tests with virtually no limitation at all. The employer's reserve account should be charged for benefits paid.

Sincerely,
Steven Cohen, ALJII

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

LAURIE M FREEMAN Claimant-Appellant KOHLS DEPT STORES c/o UC EXPRESS Account No.: Employer	Case No.: **AO-304880** OA Decision No.: 4525925 EDD: 0190 BYB: 06/17/2012

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

KATHLEEN HOWARD

MICHAEL ALLEN

ROBERT DRESSER

ROY ASHBURN, Written Dissent

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed: MAR 25 2013

REV

The claimant appealed from the decision of the administrative law judge that held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code, held the claimant not disqualified for unemployment insurance benefits under code section 1256.4[1], and held the employer's reserve account not subject to charges related to the claimant's benefit claim.

ISSUE STATEMENT

The issues presented in this case are:

1. Whether the claimant was discharged from her most recent employment due to behavior that constituted misconduct connected with the work;
2. whether the claimant was discharged from her most recent employment due to behavior that was attributable to an irresistible compulsion to consume intoxicants, and
3. whether the employer's reserve account is subject to charges for benefits paid or payable to the claimant.

FINDINGS OF FACT

Prior to filing her benefit claim, the claimant was most recently employed by the employer as a material handler earning $12.28 per hour. The claimant had been so employed for slightly more than two years when she was discharged on June 14, 2012. She was discharged because she refused to complete a urinalysis drug screen required by the employer.

Toward the end of the claimant's work shift on June 13, 2012, a small piece of cardboard or some other substance flew into the claimant's eye as the claimant was cutting a cardboard box. The claimant did not immediately seek medical attention because she considered the matter to be a minor annoyance that would resolve without need for medical treatment. By the time that the claimant reported for her next work shift on June 14, 2012, the affected eye had become more irritated and the claimant's supervisor at the beginning of the shift directed

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[1] Unless otherwise noted, all code references are to the Unemployment Insurance Code.

the claimant to see the company nurse on the employer's premises for the purpose of having the eye rinsed. The claimant complied with that directive and the nurse examined the claimant's eye.

Under the employer's "Safety and Accident Policy," any employee "reporting a work related injury is subject to drug/alcohol screening/testing." An employee's "failure or refusal to submit to such screening/testing may result in disciplinary action up to and including termination." The employer's stated intent of that policy is "to develop and maintain for all associates a work environment that is safe, and free of drugs and alcohol."[2] Pursuant to that policy, the company nurse required that the claimant submit to an initial drug screen test consisting of an oral swab. The claimant complied with that requirement. Since the result of that oral swab test was inconclusive, the claimant was required to undergo a second oral swab test and the claimant again complied. Inasmuch as the result of that second oral swab test was also inconclusive, the employer required the claimant to participate in a urinalysis drug screen test at a medical facility. The employer made arrangements to transport the claimant to that clinic and the claimant complied with that requirement.

Upon arriving at the clinic, the claimant's eye was examined and the claimant was given antibiotics, Tylenol and eye drops. The claimant was required to produce a urine specimen for urinalysis. The claimant advised clinic personnel that the claimant might have difficulty in quickly producing a urine specimen because the claimant had recently urinated before reporting to work, but the claimant complied with the request. She provided a urine specimen in the cup that had been supplied for that purpose. The claimant had participated in previous urinalysis drug screen tests and on the basis of that prior experience she believed that the amount of the urine specimen she provided on June 14, 2012 would be satisfactory. A doctor at the clinic decided, however, that the amount of the specimen was insufficient. That doctor poured the specimen in a

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[2] A separate and more general employer policy concerning workplace alcohol and drug prohibitions includes a section entitled "Injury on The Job – Distribution Centers" that provides as follows: "1. If an Associate is involved in an accident, which involved damage to company property that is outside of normal daily wear and tear on the building or equipment, a post accident drug test will be performed. Montana: Post-accident testing will be performed only for accidents resulting in damages in excess of $1,500 or bodily injury. 2. If an Associate has an accident on power or non-power related equipment, which requires any Associate to seek medical treatment, a post-accident drug test will be performed."

The stated intent of this policy is summarized as follows: "[The employer] is committed to providing a pleasant and safe working environment for all of our Associates. The use of illegal drugs or abuse of controlled substances or alcohol can pose a significant challenge to this commitment and negatively affect many Associates. Substance abuse may result in loss of work quality, damage to facilities, disruption of the work environment and potential Associate dishonesty; areas that affect all of us, not just the user. . . .[¶] With these basic thoughts in mind, the following detailed policies and procedures have been established to ensure that we continue to maintain a work place free of drug and substance abuse."

nearby toilet and indicated that the claimant would need to produce a new urine specimen before the claimant left the clinic.

The claimant believed that she had been treated unfairly because she had not been advised as to the required amount of the specimen before she was ordered to produce it. She also felt humiliated and frustrated by the proceedings in which she had been forced to participate after reporting to the company nurse. She concluded that she had in good faith complied with all of the requests with which she had to that point been presented and that it was unreasonable to require more from her. The claimant therefore declined to provide another urine specimen and requested that she be transported back to the employer's workplace. The individual who drove the claimant back to the employer's workplace operated the vehicle in a manner that the claimant considered to be unsafe.

Upon the claimant's return to the workplace, representatives of the employer's human resources department informed the claimant that she would be discharged due to her refusal to complete the urinalysis unless she immediately returned to the clinic and finished that drug screen procedure. Despite repeated entreaties from those representatives to preserve her job and avoid a discharge by completing the urinalysis process, the claimant persisted in her refusal to do so.

The claimant contends that her refusal to complete the urinalysis drug screen was due to both her belief that she had already sufficiently complied with the employer's drug screen requirements and her safety concern relating to the fact that the driver who would transport the claimant back to the clinic was the same driver who had already transported the claimant from that clinic to the workplace in a manner that the claimant had found to be unreasonably hazardous.

The employer discharged the claimant due to the claimant's refusal to complete the urinalysis process at the clinic.

It was not established that the claimant suffers from an irresistible compulsion to consume intoxicants. It was not established that the employer at any time had a reasonable suspicion that the claimant was working while impaired by the use of any intoxicant. It was not established that the claimant's job was safety-sensitive or otherwise involved extraordinary risks to the interests of the employer or the public from employee drug use.

REASONS FOR DECISION

A claimant is disqualified for benefits under code section 1256 if he or she was discharged for misconduct connected with his or her most recent work.

Misconduct was defined in Precedent Benefit Decision P-B-3, citing *Maywood Glass Co. v. Stewart* (1959) 170 Cal. App. 2d 719, as being "conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee."

Pursuant to code sections 1030 and 1032, an employer's reserve account will be relieved of benefit charges if the claimant was discharged for misconduct connected with the work.

The employer has the burden of proving misconduct. (*Prescod v. California Unemployment Insurance Appeals Board* (1976) 57 Cal. App. 3d 29.)

An employee shall substantially comply with all the directions of his or her employer concerning the service on which he or she is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee. (Labor Code, section 2856.)

An employee's deliberate disobedience of a lawful and reasonable instruction of the employer, related to the employer's business, is misconduct. (Precedent Benefit Decision P-B-190.)

In Precedent Benefit Decision P-B-194 the appeals board held that an employer rule requiring employees to submit to polygraph tests was unreasonable with the consequence that the claimant's refusal to comply with that unreasonable rule did not amount to misconduct.

In *Amador v. California Unemployment Insurance Appeal Board* (1984) 35 Cal. 3d 671, the California Supreme Court held that an employee's refusal to comply with a reasonable rule or direction is not misconduct if the employee has good cause for his or her refusal. The claimant has the burden of proving good cause exists for the refusal to comply.

In Precedent Benefit Decision P-B-454, the claimant, a drop hammer operator, was discharged because he refused to take a drug test. Since the drug test was required because the employer reasonably suspected that the claimant was working while impaired by drug use, the appeals board found the requirement of

the drug test to be reasonable. The claimant's refusal to take the test was therefore held to represent misconduct.

In *American Federation of Labor v. Unemployment Insurance Appeals Board* (1994) 23 Cal. App. 4th 51, the claimant was discharged because he refused to take an annual drug test as required by the employer's rules. The claimant worked on an offshore oil drilling platform. Due to the hazardous nature of that work environment, the claimant's job was considered safety-sensitive. Given the employer's strong interest in maintaining a drug-free work force in that hazardous environment and the claimant's minimal expectations of privacy under the circumstances of such employment, the requirement of the drug test was found to be reasonable. The claimant's refusal to take the test was therefore held to constitute misconduct.

Code Section 1256.4 disqualifies for benefits any claimant who was discharged from his or her most recent work for chronic absenteeism due to intoxication, reporting for work while intoxicated, using intoxicants on the job, or gross neglect of duty while intoxicated, when any of these incidents is caused by an irresistible compulsion to use or consume intoxicants, including alcoholic beverages. A claimant disqualified under code section 1256.4 remains disqualified until he or she either returns to work and earns five times his or her weekly benefit amount in bona fide employment, or a physician or authorized treatment program administrator certifies that the claimant has entered into and is continuing in, or has completed, a treatment program for his or her condition and is able to return to employment.

The reserve account of the claimant's most recent employer may be relieved of benefit charges if the claimant was discharged as a result of an irresistible compulsion to use intoxicants. (Unemployment Insurance Code, sections 1030 and 1032.)

The claimant was discharged because she refused to comply with the employer's directive to complete a urinalysis drug screen test. That directive was based upon the employer's post-accident/injury drug testing policy that requires an employee to undergo drug testing whenever the employee reports a work-related injury and regardless of however minor or inconsequential that injury might be. Thus, the questions presented under code section 1256 are whether that directive was reasonable and, if so, whether the claimant had good cause for refusing to obey it. If the directive was unreasonable, the claimant's failure to follow it would not constitute misconduct and it would not be necessary to consider the question of whether good cause otherwise existed to justify her refusal. For the reasons that we will now explain, we have concluded that such

directive was unreasonable because it impermissibly intruded upon the claimant's constitutional right to privacy.

In California, every individual enjoys a constitutional right to privacy that is not relinquished upon entering a workplace. (Cal. Const., art. I, §1; *Wilkinson v. Times Mirror Corporation* (1989) 215 Cal. App. 3d 1034.) An employer's requirement that an employee participate in a drug screen test intrudes upon that right to privacy. (*Loder v. City of Glendale* (1997) 14 Cal. 4th 846; *Edgerton v. State Personnel Board* (2000) 83 Cal. App. 4th 1350.) An intrusion upon that right will be permitted if it is justified by a sufficient competing interest. (*Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1; *Loder v. City of Glendale*, *supra*.)

In *Hill*, the California Supreme Court upheld the drug testing of college athletes. In doing so, the Court provided a comprehensive explanation of the "balancing test" that should apply to such questions. The competing interests of safeguarding the integrity of intercollegiate sports and protecting the health and safety of students were held to justify the testing, particularly since college athletes already had a reduced expectation of privacy with regard to such matters. The Court held that such an invasion of an acknowledged privacy interest would be permissible if it was justified by a "legitimate and important" competing interest.[3] The Court rejected the proposition that the competing interest need be characterized as "compelling"[4] and observed that such conflicts are "best viewed flexibly."[5] It was observed that an individual alleging an invasion of the constitutional right to privacy must establish a legally protected privacy interest, a reasonable expectation of privacy in the circumstances involved, and conduct that constitutes a serious invasion of that privacy.[6]

While the question of what requirements are imposed upon private employers by the California constitutional right to privacy was not presented in that case, the Court in *Hill* indicated that such question should be answered by application of the same "balancing test" described in the decision.[7] However, the Court confirmed that, at least in the context of government employment, a mere employer interest in a "drug-free" workplace would not, in itself, justify drug testing without reasonable suspicion of impairment in the workplace.[8] Indeed, the Court cited the following language from *American Federation of Government Employees, AFL-CIO v. Roberts* (9th Cir. 1993) 9 F. 3d 1464, 1468: "No one

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[3] *Hill, supra,* at p. 38
[4] *Id.* at pp. 34-35
[5] *Id.* at p. 31
[6] *Id.* at pp. 35-37
[7] *Id.* at p. 55
[8] *Id.* at p. 54

would want to live in an Orwellian world in which the government assured a drug-free America by randomly testing the urine of all its citizens."[9] It was acknowledged that "particular kinds of employment settings" presenting "extraordinary risks to employer or public interests from employee drug use" had been necessary in order to justify the drug testing of public employees in the absence of a reasonable suspicion of impairment.[10]

There are as yet no California court decisions involving private employment that apply the principles announced in *Hill* to facts similar to those presented by this case. Moreover, most of the relevant case law that has developed on the subject of post-accident/injury drug testing concerns federal employment. We recognize that those cases discuss the application of the Fourth Amendment's protection against unreasonable searches and seizures, a proscription that does not apply to private employers. However, inasmuch as those cases are otherwise governed by the same balancing of rights and interests described in *Hill*, we have looked to those cases for guidance in assessing the propriety of the post-accident/injury drug screen test requirement imposed upon the claimant in this case.

In *Skinner v. Railway Labor Executives' Association* (1989) 489 U.S. 602, the United States Supreme Court upheld the post-accident drug testing of railway employees "directly involved" in "major train accidents" defined as any train accident that involved a fatality, the release of hazardous materials resulting in evacuation or reportable injury, or damages in excess of $500,000. The Court also upheld drug testing after accidents or incidents of less severity if a supervisor had a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or the severity of the accident or incident. The Court recognized the strong government interest in regulating railroad employees' conduct to ensure public safety. The tests were not considered unduly intrusive, in part, because of the employees' diminished expectations of privacy due to the industry being highly regulated for safety.

In subsequent cases, the federal courts have interpreted *Skinner* as requiring a reasonable suspicion that the employee caused or bears substantial responsibility for the accident or injury and either a reasonable monetary threshold of property damage or substantial injury in order to justify the intrusion upon the employee's privacy represented by drug testing. In *Plane v. United States*, (W.D. Mich. 1990) 750 F. Supp. 1358, the United States District Court enjoined enforcement of a policy that required the drug testing of all employees "involved" in workplace accidents or "mishaps" concerning specified damage

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[9] *Id.* at p. 55

[10] *Id.* at pp. 54-55

thresholds on the ground that the "involvement" standard was so overbroad that it would impose testing in situations where there was no employee fault, such as when an employee was merely sitting in a vehicle that was rear-ended.

In *Connelly v. Newman* (N.D. Cal. 1990) 753 F. Supp. 293, the United States District Court struck down a policy of the United States Office of Personnel Management that required urinalysis drug testing of its employees, who are primarily clerical workers, whenever an on-duty accident resulted in injury requiring hospitalization or caused property damage in excess of $1,000. The court held that the Fourth Amendment requires such post-accident drug testing policies to establish "some threshold level of severity (measured in terms of actual personal injury or property damage suffered, or the level of harm at risk)" and cover only the employee or employees who "may have caused the accident."[11] Since the policy did not contain a causation requirement and set a threshold for testing that was deemed to be "unreasonably low,"[12] the policy was invalidated. The court found that the government's interests did not outweigh the employees' reasonable expectations of privacy.

Similarly, in *American Federation of Government Employees, AFL-CIO v. Sullivan* (D.D.C. 1990) 744 F. Supp. 294, the United States District Court abrogated a Department of Health and Human Services policy that required urinalysis drug testing of any employee involved in an on-the-job accident resulting in death or personal injury requiring immediate hospitalization or damage to government or private property in excess of $1,000. In so doing, the court concluded as follows: "The government's interest in securing a safe workplace is certainly important, but the testing of any employee for any accident resulting in as little as $1,000 of damage, when the employee is not engaged in a safety-sensitive position, when there is no indication that the employee was at fault, and when the employee may not have engaged in any conduct which would diminish his or her expectations of privacy, is simply too invasive for the government's stated purpose."[13]

In *American Federation of Government Employees, Local 1533 v. Cheney* (N.D. Cal. 1990) 754 F. Supp 1409, the United States District Court considered the constitutionality of a Navy policy that called for the urinalysis drug testing of "any employee involved in an on-the-job accident."[14] While acknowledging that the Navy had a strong interest in determining the cause of an accident and otherwise ensuring the safety of its employees, the court also noted that that the Navy had the burden of showing that the events triggering the testing met "some threshold

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[11] *Id.* at p. 296
[12] *Id.* at p. 297
[13] *Id.* at p. 302
[14] *Id.* at p. 1425

level of severity in terms of potential harm and actual personal injury or property damage."[15] It was observed that Navy employees engage in "a wide variety of duties, from traditional office work to operation of major equipment necessarily implicating major public safety issues."[16] Concluding that the policy would allow testing for any incident necessitating medical treatment, no matter how trifling, and that it applied to all employees, regardless of their job duties and reasonable expectations of privacy in their job positions, the court found that the Navy policy did not satisfy the necessary "threshold level of severity" by setting a "reasonably high threshold" for "events" that would trigger testing.[17] The court therefore enjoined application of the policy to employees beyond those in safety-sensitive positions.

Having considered these authorities in conjunction with our review of the facts of this case, we have concluded that this employer's post-accident/injury policy is unconstitutionally overbroad and unreasonable to the extent that it purportedly required the claimant to undergo drug screen testing merely because she saw the company nurse in order to remove a speck from her eye. Before explaining our reasons for this decision, however, we first confirm that the claimant had not only a constitutional right to privacy with regard to such drug testing, but also a reasonable expectation of privacy concerning such matters. Her job as a material handler was not shown to be safety-sensitive and she thus could not be reasonably expected to anticipate that she would be subjected to such an invasion of her privacy merely because she briefly had a small particle of cardboard or some other substance in her eye. Moreover, the urinalysis testing she was required to undergo represented an invasion of her privacy that was manifestly serious.

With regard to the requisite balancing of the claimant's right to privacy against the employer's interest for requiring drug testing, we find in the facts of this case no legitimate and important interest sufficient to justify the serious invasion of the claimant's right to privacy represented by the required drug testing. As was recognized in *Hill* and *Skinner*, an employer's mere desire for a drug-free workplace is not, in itself, a sufficient competing interest to justify drug testing in the absence of a reasonable suspicion that the employee involved was impaired while at work. The employer in this case had no suspicion that the claimant was working while impaired by drug use. It was also not established that the drug testing was otherwise justified on the ground that the claimant's job was safety-sensitive or involved other "extraordinary risks" to the employer or the public from employee drug use.

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[15] *Id.* at p. 1418
[16] *Id.* at p. 1425
[17] *Id.* at p. 1426

Moreover, the employer's post-accident/injury drug testing policy is devoid of the necessary safeguard provisions concerning damage thresholds, severity of injury, and fault.[18] On its face, the employer's post-accident policy requires drug testing in the event of any reported work-related injury regardless of the extent of any damage, the extent of the injury, and whether the claimant bears any responsibility for incurring the injury. As such, the policy is overbroad and unreasonable.

We think it has been well established that drug testing of an employee may be reasonably required if it is reasonably suspected that the employee is working while impaired by drug use or the employee's position is safety-sensitive. We also acknowledge that employers may often have legitimate and important reasons for reasonably requiring the drug testing of employees who bear responsibility for workplace accidents that result in considerable damage or substantial injury. Indeed, the above-cited authorities support the inference that an employer's policy that calls for the drug testing of an employee in the event of a work-related accident or injury will likely be considered reasonable if the testing requirement is made conditional upon both (1) a reasonable suspicion that the employee caused the incident or substantially contributed to its occurrence or severity, and (2) the existence of either property damage in excess of a reasonable monetary threshold or some substantial injury as a result of the incident.

We do not believe, however, that an employee should have his or her constitutional right to privacy violated by an employer's requirement that he or she submit to a drug test merely because the employee sustained a paper cut, blister, speck in the eye or some other trivial work "injury" that may have resulted in the employee receiving a Band-Aid or some other brief assistance from a company nurse or similar authority. We therefore discern no legitimate and important employer interest that justified the employer's requirement that the claimant undergo urinalysis drug testing merely because she briefly had a small irritant in her eye.

Since the directive that the claimant complete the urinalysis was unreasonable, the claimant's refusal to comply with that directive did not constitute misconduct. It is therefore not necessary to address the question of whether the claimant otherwise had good cause for that refusal. The employer has not satisfied its burden of proving that the claimant was discharged for misconduct. The claimant

[18] While the employer's separate policy concerning injuries "on the job" in "distribution centers" lists a monetary threshold for accidents resulting in damages in excess of $1,500 in Montana, no such limitation exists with regard to workers in California.

is not subject to benefit disqualification under code section 1256 and the employer's reserve account is not entitled to relief from benefit charges.

Inasmuch as there is no basis for concluding that the claimant suffers from an irresistible compulsion to consume intoxicants, there is no basis for concluding that the claimant is subject to benefit disqualification under code section 1256.4.

DECISION

The decision of the administrative law judge is, in part, affirmed and, in part, reversed. That portion of the decision that concerns the claimant's qualification for benefits under code section 1256.4 is affirmed; the claimant is not disqualified for benefits under code section 1256.4. That portion of the decision that concerns the claimant's disqualification for benefits under code section 1256 and the chargeability of the employer's reserve account is reversed; the claimant is not disqualified for benefits under code section 1256 and the employer's reserve account is not relieved of benefit charges related to the claimant's benefit claim. Benefits are payable to the claimant provided the claimant is otherwise eligible.

DISSENTING OPINION

I respectfully dissent from the decision reached by my colleagues. I would affirm the decision of the administrative law judge holding the claimant disqualified for benefits under code section 1256 and the employer's reserve account not subject to benefit charges.

The employer instituted its safety and accident policy in an understandable effort to protect its workplace from the deleterious effects of drug and alcohol use. Under that policy, any employee who reports a work-related injury is subject to drug testing. I find that rule to be eminently reasonable. I see no reason why we should hamper the efficacy of such rules by burdening employers with the additional obligation of guessing at whether the injury is sufficiently "substantial" or "consequential" to warrant the requirement of a drug test. Indeed, often enough it is a relatively minor workplace injury that provides an employer with the first indication that the employee in question may be under the influence of some intoxicant. Permitting employers the flexibility to require a drug test at the first sign of such trouble allows employers the opportunity to promptly address the cause of the problem before more serious injuries and consequences develop. I therefore think that my colleagues have erred in declaring that the rule is unreasonable.

I also take issue with the depiction of this claimant's injury as "trivial" or "trifling." Given the value most of us place on our eyesight, I believe that any injury to an eye should be considered as being serious. Moreover, I note that by the time that the claimant was required to take the drug test the injury had worsened rather than improved. I therefore suggest that the injury suffered by the claimant was sufficiently "substantial" to justify the requirement that she complete the drug test.

In my opinion, the requirement that the claimant complete the drug screen test was reasonable and the claimant has revealed no good cause for her refusal to comply with that directive. That refusal constituted misconduct within the meaning of code section 1256. I thus believe that the Employment Development Department and the administrative law judge were correct in holding the claimant disqualified for benefits under that provision with the result that the employer's reserve account was relieved of benefit charges.

ROY ASHBURN