



**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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June 8, 2012

To: Board Members

**June 2012 Summary Report of Executive Director and  
Chief Administrative Law Judge Alberto Roldan**

**1. Office of the Chief**

- I visited with the Fresno Office of Appeals on June 6<sup>th</sup> and had an opportunity to talk with the support staff and ALJs about our Best Practices effort.
- During the PALJ meeting and the LSS II meeting, the Regional Managers presented their findings and recommendations that were developed during the completed Best Practices survey.
- Assistant Chief Waters will be presenting a New ALJ Academy beginning on July 16, 2012. In addition to training the new judge recruited to support the Tax Unit, we will be cross training three of the newer Appellate Operations ALJs to be able to preside over 1<sup>st</sup> level hearings.

**2. Snapshot of Field Operations performance through May 2012**

**Overall May 2012 Workload and Performance:** May settled in to be a consistent but unexceptional month and seemed to reflect what should be expected as a “standard” month of production given the current staffing level and workload. CUIAB verified 36,576 new cases, which was only 1% above the fiscal year average. We decided and closed 36,743 cases, which was slightly below the norm. Closed cases exceeded new cases for the sixth time in the last seven months which allowed us to continue reducing the open inventory. The open caseload [43,991] is now 17% smaller than the average for the fiscal year and down over 17,000 cases since the end of last July. Given that we are receiving approximately 36,000 new cases a month, the open inventory reflects a backlog of only about a week’s worth of cases.

**Case Aging and Time Lapse:** The timeliness of our Unemployment Insurance (UI) decisions continues to improve. Average case age improved to 24 days for May which is six days better than the required standard. 30-day time lapse jumped to 45%, which is the best showing since May 2002. Meanwhile, CUIAB exceeded the 45-day United States Department of Labor (DOL)

standard for the second straight month with 83% of our decisions issued within that time frame. (The standard requires at least 80% of decisions to be issued within 45 days of the appeal.) The 90-day time lapse guideline was also exceeded with CUIAB closing 99% of UI decisions within that time frame. We met this DOL guideline for the 10<sup>th</sup> time this fiscal year.

**Cycle Time:** The UI cycle time in May was 40 days from date of appeal to issuance of the decision. This was an increase in processing time of one day from April, but an improvement of 20 days since January 2012. The increase of one day from last month resulted from a jump in one from the date of verification until the date the case was set for hearing.

**UI for May:** New UI cases [34,551 cases; 19,717 appellants] were 1% above the average for this fiscal year. The number of closed cases [34,802 cases; 19,872 appellants] was 2% below the norm, but represented the second largest month of production so far in 2012. The month-end open inventory [34,327 cases; 19,601 appellants] fell by 347 cases and is now 21% smaller than the fiscal year average.

**Disability Insurance (DI) for May:** In disability, the number of new cases [1,362] was higher than April, but still 2% below the fiscal year average. Closed cases [1,460] were the most since February. The open inventory [1,636] is the lowest month-end total since at least 2000 and is 12% smaller than the fiscal year average.

**Tax and Rulings for May:** The influx of new Ruling cases remained strong with 571 new cases being verified. With the fewest closed cases since October 2009, the inventory [4,168] rose above 4000 for the first time since January 2011.

In Tax, intake [78 new petitions] was one-third the average number and the fewest since February 2006. Although closed cases [267 decisions] were 11% below the fiscal year average, the open inventory [3,803] continued to fall and is at its lowest level since April 2009.

**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	
2009	34,115	30,306	33,645	34,018	34,720	36,687	34,412	33,610	35,623	38,035	29,542	39,222	413,935	34,495			
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	112%	4,171	
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								178,430	35,686	94%	-2,092	
	13 180 30 9													2011	94%	92%	
														2010	92%	89%	
														2009	103%	107%	
															chg to '12 avg	chg to '12 YTD	

All program registrations May to date are down 8% from 2011, down 11% from 2010, and up 7% from 2009  
 All program registration monthly average is down 6% from 2011, down 8% from 2010, and up 3% from 2009

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg	
2009	27,273	26,451	30,253	32,388	31,481	34,471	36,722	32,474	34,290	41,893	36,461	38,969	403,126	33,594			
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	118%	5,979	
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								189,175	37,835	97%	-1,101	
	1/3 4/9 2/4 43/236													2011	97%	94%	
														2010	96%	94%	
														2009	113%	128%	
															chg to '12 avg	chg to '12 YTD	

All program dispositions May to date are down 6% from 2011, down 6% from 2010, and up 28% from 2009  
 All program disposition monthly average is down 3% from 2011, down 4% from 2010, and up 13% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Change	Yr-Yr AvgChg		
2009	79,459	83,239	86,674	88,675	91,984	94,025	91,932	93,231	94,499	90,583	83,671	83,874	88,487				
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	91%	-7,656		
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								46,050	74%	-16,173		
	13 256 275 9													2011	74%	70%	
														2010	57%	55%	
														2009	52%	54%	
															chg to '12 avg	chg to '12 YTD	

All program open balance May to date is down 30% from 2011, down 45% from 2010, and down 46% from 2009  
 All program open balance monthly average is down 26% from 2011, down 43% from 2010, and down 48% from 2009

**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	
2009	1,610	1,107	1,794	1,519	1,628	1,748	1,537	1,321	1,571	1,414	1,245	1,330	17,824	<b>1,485</b>			
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	<b>1,492</b>	100%	6	
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	<b>1,442</b>	97%	-50	
2012	1,395	1,490	1,611	1,256	1,362								7,114	<b>1,423</b>	99%	-19	
														2011	99%	93%	
														2010	95%	89%	
														2009	96%	93%	
															chg to '12 avg	chg to '12 YTD	

DI registrations May to date are down 7% from 2011, down 11% from 2010, and down 7% from 2009  
DI registration monthly average is down 1% from 2011, down 5% from 2010, and down 4% from 2009

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2009	1,217	1,269	1,451	1,465	1,129	1,463	1,823	1,644	1,648	1,753	1,527	1,701	18,090	<b>1,508</b>			
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	<b>1,549</b>	103%	42	
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	<b>1,474</b>	95%	-76	
2012	1,334	1,547	1,456	1,424	1,460								7,221	<b>1,444</b>	98%	-29	
														2011	98%	93%	
														2010	93%	91%	
														2009	96%	111%	
															chg to '12 avg	chg to '12 YTD	

DI dispositions May to date are down 7% from 2011, down 9% from 2010, and up 11% from 2009  
DI disposition monthly average is down 2% from 2011, down 7% from 2010, and down 4% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2009	3,426	3,264	3,613	3,684	4,197	4,478	4,204	3,895	3,819	3,476	3,203	2,836		<b>3,675</b>			
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		<b>2,679</b>	73%	-996	
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		<b>2,037</b>	76%	-642	
2012	1,815	1,757	1,905	1,734	1,636									<b>1,769</b>	87%	-267	
														2011	87%	81%	
														2010	66%	62%	
														2009	48%	49%	
															chg to '12 avg	chg to '12 YTD	

DI open balance May to date is down 19% from 2011, down 38% from 2010, and down 51% from 2009  
DI open balance monthly average down 13% from 2011, down 34% from 2010, and down 52% from 2009

**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
2009	175	92	203	456	567	340	304	206	170	710	923	275	4,421	<b>368</b>		
2010	486	609	709	598	441	424	468	1,359	201	239	229	214	5,977	<b>498</b>	135%	130
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	<b>383</b>	77%	-115
2012	182	245	746	576	605								2,354	<b>471</b>	123%	88
													2011	123%	155%	
													2010	95%	83%	
													2009	128%	158%	
														chg to '12 avg	chg to '12 YTD	

Ruling/Other registrations May to date are up 55% from 2011, down 17% from 2010, and up 58% from 2009  
Ruling/Other registration monthly average is up 23% from 2011, down 5% from 2010, and up 28% from 2009

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	236	333	238	209	179	208	273	264	315	192	260	357	3,064	<b>255</b>		
2010	335	392	500	682	465	716	421	631	484	804	303	415	6,148	<b>512</b>	201%	257
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	<b>472</b>	92%	-41
2012	500	455	299	255	214								1,723	<b>345</b>	73%	-127
													2011	73%	72%	
													2010	67%	73%	
													2009	135%	144%	
														chg to '12 avg	chg to '12 YTD	

Ruling/Other dispositions May to date are down 28% from 2011, down 27% from 2010, and up 44% from 2009  
Ruling/Other disposition monthly average is down 27% from 2011, down 33% from 2010, and up 35% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2009	3,399	3,158	3,123	3,374	3,763	3,894	3,925	3,860	3,715	4,232	4,896	4,809		<b>3,846</b>			
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		<b>5,159</b>	134%	1,313	
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		<b>3,735</b>	72%	-1,423	
2012	3,272	3,060	3,509	3,825	4,216									<b>3,576</b>	96%	-159	
														2011	96%	94%	
														2010	69%	68%	
														2009	93%	106%	
															chg to '12 avg	chg to '12 YTD	

Ruling/Other balance of open cases May to date is down 6% from 2011, down 32% from 2010, and up 6% from 2009  
Ruling/Other balance monthly average is down 4% from 2011, down 31% from 2010, and down 7% from 2009

**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
2009	166	93	219	174	258	164	252	256	169	292	224	229	2,496	<b>208</b>		
2010	142	139	164	233	140	163	94	137	146	181	188	232	1,959	<b>163</b>	78%	-45
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	<b>214</b>	131%	51
2012	346	141	196	117	78								878	<b>176</b>	82%	-38
													2011	82%	104%	
													2010	108%	107%	
													2009	84%	96%	
														chg to '12 avg	chg to '12 YTD	

Tax registrations May to date are up 4% from 2011, up 7% from 2010, and down 4% from 2009

Tax registration monthly average is down 18% from 2011, up 8% from 2010, and down 16% from 2009

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	92	97	172	149	72	97	126	111	162	70	149	288	1,585	<b>132</b>		
2010	48	109	107	91	117	124	135	101	174	130	99	235	1,470	<b>123</b>	93%	-10
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	<b>237</b>	193%	115
2012	227	352	322	492	267								1,660	<b>332</b>	140%	95
													2011	140%	178%	
													2010	271%	352%	
													2009	251%	285%	
														chg to '12 avg	chg to '12 YTD	

Tax dispositions May to date are up 78% from 2011, up 252% from 2010, and up 185% from 2009

Tax disposition monthly average is up 40% from 2011, up 171% from 2010, and up 151% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	3,585	3,580	3,627	3,649	3,836	3,903	4,029	4,174	4,180	4,402	4,477	4,416		<b>3,988</b>		
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		<b>4,735</b>	119%	746
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		<b>4,700</b>	99%	-34
2012	4,711	4,498	4,371	3,995	3,803									<b>4,276</b>	91%	-425
														2011	91%	88%
														2010	90%	92%
														2009	107%	117%
															chg to '12 avg	chg to '12 YTD

Tax balance of open cases May to date is down 12% from 2011, down 8% from 2010, and up 17% from 2009

Tax balance monthly average is down 9% from 2011, down 10% from 2010, and up 70% from 2009

**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
2009	32,164	29,014	31,429	31,869	32,267	34,435	32,319	31,827	33,713	35,619	27,150	37,388	389,194	<b>32,433</b>		
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	<b>36,513</b>	113%	4,080
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	<b>35,740</b>	98%	-773
2012	33,339	30,233	36,391	33,590	34,531								168,084	<b>33,617</b>	94%	-2,123
	13 180 30 9												2011	94%	91%	
													2010	92%	89%	
													2009	104%	107%	
														chg to '12 avg	chg to '12 YTD	

UI registrations May to date are down 9% from 2011, down 11% from 2010, and up 7% from 2009  
 UI registration monthly average is down 6% from 2011, down 8% from 2010, and up 4% from 2009

**CLOSED CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	25,728	24,752	28,392	30,565	30,101	32,703	34,500	30,455	32,165	39,878	34,525	36,623	380,387	<b>31,699</b>		
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	<b>37,389</b>	118%	5,690
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	<b>36,754</b>	98%	-635
2012	33,604	37,167	44,615	28,383	34,802								178,571	<b>35,714</b>	97%	-1,039
	1/3 4/9 2/4 43/236												2011	97%	94%	
													2010	96%	94%	
													2009	113%	128%	
														chg to '12 avg	chg to '12 YTD	

UI dispositions May to date are down 6% from 2011, down 6% from 2010, and up 28% from 2009  
 UI disposition monthly average is down 3% from 2011, down 4% from 2010, and up 13% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2009	69,049	73,237	76,311	77,968	80,188	81,750	79,774	81,302	82,785	78,473	71,095	71,813	<b>76,979</b>			
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	<b>68,258</b>	89%	-8,721	
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	<b>51,751</b>	76%	-16,507	
2012	45,315	38,225	29,603	34,674	34,327								<b>36,429</b>	70%	-15,322	
	13 256 275 9												2011	70%	66%	
													2010	53%	51%	
													2009	47%	48%	
														chg to '12 avg	chg to '12 YTD	

UI balance of open cases May to date is down 34% from 2011, down 49% from 2010, and down 52% from 2009  
 UI balance monthly average down 30% from 2011, down 47% from 2010, and down 53% from 2009

**California Unemployment Insurance Appeals Board**  
**FO Cycle Time Summary Report**  
**For Cases Closed in May 2012**

<b>UI CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	40	4	15	14	1
Inglewood	38	7	5	16	3
Inland	34	4	7	15	2
Los Angeles	41	6	10	15	4
Oakland	47	5	20	14	2
Orange County	41	6	9	16	6
Oxnard	36	4	12	14	1
Pasadena	33	5	4	14	5
Sacramento	39	5	10	14	3
San Diego	48	7	16	15	5
San Francisco	37	4	13	13	1
San Jose	38	3	12	15	2
<b>Statewide</b>	<b>40</b>	<b>5</b>	<b>11</b>	<b>15</b>	<b>3</b>

<b>ALL CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	40	4	15	14	1
Inglewood	49	8	15	17	3
Inland	36	4	9	15	2
Los Angeles	42	6	11	15	4
Oakland	47	5	20	14	2
Orange County	42	6	9	16	6
Oxnard	37	4	12	14	1
Pasadena	34	5	5	14	5
Sacramento	40	5	10	14	3
San Diego	49	7	16	15	5
San Francisco	37	4	13	13	1
San Jose	40	3	13	15	2
<b>Statewide</b>	<b>41</b>	<b>5</b>	<b>12</b>	<b>15</b>	<b>3</b>

AO REPORT TO BOARD -- MONTH OF MAY 2012

	# Cases	# Appellants	Calendar Yr Avg
REGISTRATIONS	2418	1481	2858
DISPOSITIONS	2310	1628	3071
OPEN BALANCE	3014	1721	3101
PENDING REG. (6/1/12)	2058		
APPEAL RATE			7.90%

CASE AGING                    38 Days                    MET DOL STANDARD (40 DAYS OR LESS)

TIME LAPSE	DOL STANDARD	EXCEEDED DOL STANDARDS IN ALL CATEGORIES
45 Days (50%)	57.00%	
75 Days (80%)	92.00%	
150 Days (95%)	99.00%	

ADDITIONAL INFORMATION

FO to AO Monthly Report - 3.49 days Statewide Average

FO ALJs working in AO                    0

**AO REPORT TO BOARD -- MONTH OF MAY 2012**

	# Cases	# Appellants	Calendar Yr Avg
REGISTRATIONS	2418	1481	2858
DISPOSITIONS	2310	1628	3071
OPEN BALANCE	3014	1721	3101
PENDING REG. (6/1/12)	2058		
APPEAL RATE			7.90%

CASE AGING                      38 Days                      MET DOL STANDARD (40 DAYS OR LESS)

TIME LAPSE	DOL STANDARD	EXCEEDED DOL STANDARDS IN ALL CATAGC
45 Days (50%)	57.00%	
75 Days (80%)	92.00%	
150 Days (95%)	99.00%	

**ADDITIONAL INFORMATION**

FO to AO Monthly Report -    days Statewide Average  
 FO ALJs working in AO                      0

WEEKLY AO WORKLOAD REPORT  
May 2012

Week Ending	<u>Unreg total</u>	<u>Appeals Rec'd</u>	<u>Registrations</u>	<u>Dispositions</u>	<u>Open Balance</u>	<u>Change</u>
5/4/2012	1359	453	627	511	3013	107
5/11/2012	1237	669	556	467	3102	89
5/18/2012	1191	604	636	488	3247	145
5/25/2012	1304	721	374	491	3131	-116
5/31/2012	1787	840	228	353	3006	-125
<b>Running Total</b>		<b>3287</b>	<b>2421</b>	<b>2310</b>		

Week Ending	<u>Average Case age</u>	<u>45-Day (50%) Time Lapse</u>	<u>75-Day (80%) Time Lapse</u>	<u>150-Day (95%) Time Lapse</u>
5/4/2012	30	69.78%	94.70%	99.69%
5/11/2012	32	65.74%	92.40%	99.84%
5/18/2012	34	65.39%	91.74%	99.12%
5/25/2012	35	59.82%	91.50%	99.36%
5/31/2012	38	57.42%	91.77%	99.46%

APPELLATE OPERATIONS ~ REPORT SUMMARY

2014-2012

APPELLATE	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
<b>WORKLOAD</b>																
<b>Registrations</b>																
UI TL	2,858	3,104	3,115	3,121	2,223	2,405	2,661	2,205	3,383	2,517	2,307		2,718	85%	29,899	
DI	131	130	124	118	87	108	99	82	120	66	74		104	71%	1,139	
Ruling & T-R	8	9	13	13	6	3	6	6	39	1	3		7	42%	78	
Tax	23	23	6	43	25	41	22	20	39	23	34		27	125%	299	
Other	1	1	1	3	0	4	1	3	3	1	0		2	0%	18	
Total	3,021	3,267	3,259	3,298	2,341	2,561	2,789	2,316	3,555	2,608	2,418		2,858	85%	31,433	1,481
Multi Cases		2														
<b>Dispositions</b>																
UI TL	2,252	2,722	3,951	3,595	2,976	2,884	2,780	2,960	3,237	2,626	2,211		2,927	76%	32,194	
DI	86	100	133	162	118	111	113	116	140	88	73		113	65%	1,240	
Ruling & T-R	6	4	11	13	17	8	6	4	7	7	6		8	74%	89	
Tax	16	31	19	33	19	17	15	23	21	24	17		21	80%	235	
Other	1	3	2	1	0	2	3	3	2	2	3		2	150%	22	
Total	2,361	2,860	4,116	3,804	3,130	3,022	2,917	3,106	3,407	2,747	2,310		3,071	75%	33,780	1,628
Multi Case/Ch						2										
<b>Balance - Open Cases</b>																
UI TL	5,700	6,077	5,243	4,766	4,009	3,518	3,398	2,671	2,785	2,703	2,799		3,970	71%		
DI	234	265	254	210	180	177	163	130	109	87	88		172	51%		
Ruling & T-R	16	21	23	23	12	7	7	9	12	6	3		13	24%		
Tax	66	58	45	55	61	85	92	89	108	107	124		81	153%		
Other	4	2	1	3	3	5	3	3	4	3	0		3	0%		
Total	6,020	6,423	5,566	5,057	4,265	3,792	3,663	2,902	3,018	2,906	3,014		4,239	71%		1,721
Multi Cases	2	4	4	4	4	2	2	2	2	2	2					Estimate
<b>FO to AO Appeal Rate</b>																
UI TL	7.5%	9.2%	8.4%	7.5%	6.6%	7.3%	7.8%	6.6%	9.1%	5.6%	8.1%		7.6%	107%		
DI	8.4%	9.5%	8.5%	8.3%	5.5%	8.5%	7.8%	6.1%	7.8%	4.5%	5.2%		7.3%	71%		
Ruling & T-R	1.3%	2.5%	3.4%	2.6%	1.0%	0.8%	1.9%	1.3%	2.3%	0.4%	1.3%		1.7%	74%		
Tax	8.3%	13.7%	2.2%	13.2%	8.5%	12.7%	8.9%	8.8%	11.1%	7.1%	6.9%		9.2%	75%		
Other	2.9%	5.9%	6.3%	12.5%	0.0%	20.0%	3.1%	9.4%	15.8%	2.4%	0.0%		7.1%	0%		
Overall Rate	7.4%	9.1%	8.3%	7.5%	6.5%	7.3%	7.7%	6.5%	9.0%	5.6%	7.9%		7.5%	105%		

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE		July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.
<b>TIME LAPSE</b>															
	4/5 Day-80 %	10	11	10	12	12	17	17	48	70	66	57		30	191%
	7/5 Day-80 %	44	40	43	73	86	89	85	91	91	94	92		75	122%
	1/50 Day-95 %	97	99	99	99	99	99	99	99	99	99	99		99	100%
<b>CASE AGE</b>															
	Avg Days-UI (mean)	47	48	44	39	38	39	37	32	30	31	38		38	99%
	Avg Days-UI (median)	45	44	42	35	36	38	34	27	25	26	35		35	99%
<b>Over 120 days old</b>															
	UI Cases	31	39	67	42	31	23	29	22	13	18	18		30	59%
	UI %	1%	1%	2%	1%	1%	1%	1%	1%	1%	1%	1%		1%	68%
	UI % w/out Multis	1%	1%	2%	1%	1%	1%	1%	1%	1%	1%	1%		1%	68%
<b>NET PYS USED</b>															
	ALJ	21.15	24.29	26.77	26.77	25.10	22.14	25.40	24.67	27.41	0.00	0.00		24.9	110%
	AO Non ALJ	33.72	38.48	36.80	39.48	32.35	32.78	33.15	34.75	38.65	0.00	0.00		35.6	109%
	CTU Non ALJ	4.84	4.86	5.17	5.44	3.40	3.87	4.93	4.59	3.88	0.00	0.00		4.6	85%
	Net Pys	59.71	67.63	68.74	71.69	60.85	58.79	63.48	64.01	69.94	0.00	0.00		65.0	108%
<b>RATIOS</b>															
	AO w/o transcribers	1.59	1.58	1.37	1.47	1.29	1.48	1.31	1.41	1.41				1.43	99%
	AO with transcribers	1.82	1.78	1.57	1.68	1.42	1.66	1.50	1.59	1.55				1.61	96%
<b>TRANSCRIPTS</b>															
	PAGES	124	106	163	127	84	144	115	132	130	123	161		128	126%
	AVG PGS Per T/S	9,492	7,593	11,689	9,142	7,070	10,289	8,801	11,236	9,726	8,409	13,155		9,691	136%
		77	72	72	72	84	71	77	85	75	68	82		76	108%
<b>PRODUCTIVITY</b>															
	ALL Dispmk	26.6	26.8	36.6	33.8	32.8	32.5	28.7	31.5	28.2				30.8	92%
	Trans Pgs/day	93.39	71.02	107.66	80.02	109.44	126.60	89.26	122.40	113.94				101.5	112%

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

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	1,502	1,272	1,889	1,758	1,646	1,868	2,259	1,928	2,047	2,044	1,982	2,118	22,313	1,859		
2010	2,374	2,049	2,870	2,656	2,262	2,575	2,404	2,862	2,945	2,547	2,654	2,600	30,798	2,567	138%	707
2011	2,389	2,509	3,616	2,882	3,165	2,850	2,858	3,104	3,115	3,121	2,223	2,405	34,237	2,853	111%	287
2012	2,661	2,205	3,383	2,517	2,307								13,073	2,615	92%	-238
													2011	92%	90%	
													2010	102%	107%	
													2009	141%	162%	
														chg to 12 avg	chg to 12 YTD	

UI registrations Jan to date are down 10% from 2011, up 7% from 2010, and up 62% from 2009  
 UI registration monthly average down 8% from 2011, up 2% from 2010, and up 41% from 2009

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	1,476	1,510	1,708	1,469	1,493	1,693	1,760	1,804	1,852	2,216	1,894	2845	21,720	1,810		
2010	2,115	2508	2646	2519	2435	2785	2267	2539	2550	2748	2442	2276	29,830	2,486	137%	676
2011	2,476	2459	2464	2442	2859	3265	2252	2722	3951	3595	2976	2884	34,345	2,862	115%	376
2012	2780	2960	3237	2626	2211								13,814	2,763	97%	-99
													2011	97%	109%	
													2010	111%	113%	
													2009	153%	180%	
														chg to 12 avg	chg to 12 YTD	

UI dispositions Jan to date are up 9% from 2011, up 13% from 2010, and up 80% from 2009  
 UI disposition monthly average down 3% from 2011, up 11% from 2010, and up 53% from 2009

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	2218	1967	2158	2436	2584	2755	3253	3371	3547	3372	3463	2720	33,844	2,820		
2010	2977	2507	2742	2868	2695	2492	2662	2983	3392	3181	3401	3712	35,612	2,968	105%	147
2011	3619	3668	4738	5237	5489	5090	5700	6077	5243	4766	4009	3518	57,154	4,763	160%	1,795
2012	3398	2671	2785	2703	2799								14,356	2,871	60%	-1,892
													2011	60%	63%	
													2010	97%	104%	
													2009	102%	126%	
														chg to 12 avg	chg to 12 YTD	

UI balance of open cases Jan to date is down 37% from 2011, up 4% from 2010, and up 26% from 2009  
 UI balance monthly average down 40% from 2011, down 3% from 2010, and up 2% from 2009

**DI TRENDS-AO**  
Program Codes 7,10, 11, 12, 16 & 20

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	70	51	64	64	62	83	86	95	133	92	68	90	958	80		
2010	88	67	98	108	87	90	90	85	112	93	106	101	1,125	94	117%	14
2011	91	94	135	114	105	112	131	130	124	118	87	108	1,349	112	120%	19
2012	99	82	120	66	74								441	88	78%	-24
													2011	78%	82%	
													2010	94%	98%	
													2009	110%	142%	

DI registrations Jan to date down 18% from 2011, down 2% from 2010, up 42% from 2009.  
DI registration monthly average down 22% from 2011, down 6% from 2010, and up 10% from 2009.

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	94	74	65	78	38	75	59	57	64	131	100	127	962	80		
2010	92	108	94	78	83	132	67	106	81	87	99	68	1,095	91	114%	11
2011	100	128	93	91	95	132	86	100	133	162	118	111	1,349	112	123%	21
2012	113	116	140	88	73								530	106	94%	-6
													2011	94%	105%	
													2010	116%	116%	
													2009	132%	152%	

DI dispositions Jan to date up 5% from 2011, up 16% from 2010, up 52% from 2009.  
DI disposition monthly average down 6% from 2011, up 16% from 2010, and up 32% from 2009.

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	124	101	100	86	110	118	145	183	253	213	181	143	1,757	146		
2010	139	98	103	132	136	94	120	99	130	137	144	176	1,508	126	86%	-21
2011	167	133	175	198	208	188	234	265	254	210	180	177	2,389	199	158%	73
2012	163	130	109	87	88								577	115	58%	-84
													2011	58%	65%	
													2010	92%	95%	
													2009	79%	111%	

Open Balance of DI Jan to date down 35% from 2011, down 5% from 2010, and up 11% from 2009.  
Open Balance monthly average down 42% from 2011, down 8% from 2010, and down 21% from 2009.

**TAX TRENDS-AO**  
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	11	2	10	10	3	3	3	0	5	15	4	14	80	7		
2010	5	15	15	4	6	12	16	7	16	9	25	15	145	12	181%	5
2011	25	18	21	33	32	2	23	23	6	43	25	41	292	24	201%	12
2012	22	20	39	23	34								138	28	113%	3
													2011	113%	107%	
													2010	228%	307%	
													2009	414%	383%	

Tax registrations Jan to date are up 7% from 2011, up 207% from 2010, and up 283% from 2009  
 Tax registration monthly average up 13% from 2011, up 128% from 2010, and up 314% from 2009

2011	113%	107%
2010	228%	307%
2009	414%	383%

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	23	12	3	8	1	7	4	5	1	4	10	8	86	7		
2010	1	14	20	14	9	19	9	3	11	8	14	5	127	11	148%	3
2011	15	34	21	12	34	30	16	31	19	33	19	17	281	23	221%	13
2012	15	23	21	24	17								100	20	85%	-3
													2011	85%	86%	
													2010	189%	172%	
													2009	279%	213%	

Tax dispositions Jan to date are down 14% from 2011, up 72% from 2010 and up 113% from 2009  
 Tax disposition monthly average down 15% from 2011, up 89% from 2010, and up 179% from 2009

2011	85%	86%
2010	189%	172%
2009	279%	213%

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	30	20	27	29	31	27	44	39	43	54	48	54	446	37		
2010	57	58	53	44	41	34	41	45	50	51	62	72	608	51	136%	14
2011	82	66	66	87	86	59	66	58	45	55	61	85	816	68	134%	17
2012	92	89	108	107	124								520	104	153%	36
													2011	153%	134%	
													2010	205%	206%	
													2009	280%	380%	

Tax balance of open cases Jan to date is up 34% from 2011, up 106% from 2010, and up 280% from 2009  
 Tax balance monthly average up 53% from 2011, up 105% from 2010, and up 180% from 2009

2011	153%	134%
2010	205%	206%
2009	280%	380%

**OTHER TRENDS-AO**  
Program Codes 9,13, 14, 19, 21,22, 40, 44

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	5	1	1	3	6	2	3	3	2	7	1	3	37	3		
2010	3	5	98	11	7	14	8	3	16	9	11	5	190	16	514%	13
2011	1	4	7	17	16	7	9	10	14	16	6	7	114	10	60%	-6
2012	7	9	13	2	3								34	7	72%	-3
													2011	72%	76%	
													2010	43%	27%	
													2009	221%	213%	

Other registrations Jan to date down 24% from 2011, down 73% from 2010, and up 113% from 2009  
Other registration monthly average down 28% from 2011, down 57% from 2010, and up 121% from 2009

chg to 12 avg      chg to 12 YTD

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	16	3	4	1	1	7	5	1	2	3	1	11	55	5		
2010	2	4	4	96	7	13	9	9	5	10	10	11	180	15	327%	10
2011	10	5	5	1	6	20	7	7	13	14	17	10	115	10	64%	-5
2012	9	7	9	9	9								43	9	90%	-1
													2011	90%	159%	
													2010	57%	38%	
													2009	188%	172%	

Other dispositions Jan to date are up 59% from 2011, down 62% from 2010, and up 72% from 2009  
Other disposition monthly average down 10% from 2011, down 43% from 2010, and up 88% from 2009

chg to 12 avg      chg to 12 YTD

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	7	5	2	4	9	6	4	6	6	10	4	3	66	6		
2010	4	5	99	14	14	15	14	8	19	18	19	13	242	20	367%	15
2011	4	3	5	21	31	19	20	23	24	26	15	12	203	17	84%	-3
2012	10	12	16	9	3								50	10	59%	-7
													2011	59%	78%	
													2010	50%	37%	
													2009	182%	185%	

Other balance of open cases Jan to date down 22% from 2011, down 63% from 2010, and up 85% from 2009  
Other balance monthly average down 41% from 2011, down 50% from 2010, and up 82% from 2009

chg to 12 avg      chg to 12 YTD

**ALL PROGRAM TRENDS-AO**

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	1,588	1,326	1,964	1,835	1,717	1,956	2,368	2,026	2,187	2,158	2,056	2,225	23,406	1,951		
2010	2,470	2,136	3,081	2,779	2,362	2,691	2,518	2,957	3,089	2,658	2,796	2,721	32,258	2,688	138%	738
2011	2,506	2,625	3,779	3,046	3,318	2,971	3,021	3,267	3,259	3,298	2,341	2,561	35,992	2,999	112%	311
2012	2,789	2,316	3,555	2,608	2,418								13,886	2,737	91%	-262

2011	91%	90%
2010	102%	107%
2009	140%	162%

Registrations Jan to date down 10% from 2011, up 7% from 2010, and up 62% from 2009.  
 Registration monthly average down 8% from 2011, up 2% from 2010, and up 40% from 2009.

chg to 12 avg      chg to 12 YTD

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	1,609	1,599	1,780	1,556	1,533	1,780	1,827	1,867	1,919	2,354	2,005	2,991	22,820	1,902		
2010	2,210	2,634	2,764	2,707	2,534	2,949	2,352	2,657	2,647	2,853	2,565	2,360	31,232	2,603	137%	701
2011	2,601	2,626	2,583	2,546	2,994	3,447	2,361	2,860	4,116	3,804	3,130	3,022	36,090	3,008	116%	405
2012	2,917	3,106	3,407	2,747	2,310								14,487	2,897	96%	-110

2011	96%	109%
2010	111%	113%
2009	152%	179%

Dispositions Jan to date up 9% from 2011, up 13% from 2010, and up 79% from 2009.  
 Disposition monthly average down 4% from 2011, up 11% from 2010, and up 52% from 2009.

chg to 12 avg      chg to 12 YTD

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Number Change
2009	2,379	2,093	2,270	2,555	2,734	2,906	3,446	3,599	3,849	3,649	3,703	2,918	36,101	3,008		
2010	3,177	2,668	3,000	3,058	2,886	2,635	2,837	3,135	3,591	3,387	3,626	3,973	37,973	3,164	105%	156
2011	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	60,562	5,047	159%	1,882
2012	3,663	2,902	3,018	2,906	3,014								15,503	3,101	61%	-1,946

2011	61%	64%
2010	98%	105%
2009	103%	129%

Open Balance Jan to date down 36% from 2011, up 5% from 2010, and up 29% from 2009.  
 Open Balance monthly average down 39% from 2011, down 2% from 2010, and up 3% from 2009.

chg to 12 avg      chg to 12 YTD

**APPELLATE OPERATIONS TL & Case Aging TRENDS**

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Stand and	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Stand and	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Stand and	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%
<b>Case Aging</b>										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%
<b>Case Aging</b>	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%
<b>Case Aging</b>	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%
<b>Case Aging</b>	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%
<b>Case Aging</b>	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%	99.9%	99.0%	99.1%	99.6%	99.1%	99.8%	100.0%	99.4%	99.8%	97.6%	99.3%
<b>Case Aging</b>	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%
<b>Case Aging</b>	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%
<b>Case Aging</b>	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%
<b>Case Aging</b>	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%											61.9%
12/13 75-Day	94.0%	91.8%											92.9%
12/13 150-Day	99.3%	99.5%											99.4%
<b>Case Aging</b>	31	38											35

Board Member	1st	2nd	3rd	UI	DI	Ruling	Tax	1 Party	2 Party	Total
<b>Alberto Torrico</b>										
Sum	277	426	2	662	35	0	8	278	427	705
Percent	21%	32%	2%	25%	26%	0%	40%	28%	24%	
<b>Bonnie Garcia</b>										
Sum	336	190	4	494	34	0	2	207	323	530
Percent	25%	14%	5%	19%	25%	0%	10%	21%	18%	
<b>Kathleen Howard</b>										
Sum	303	362	3	632	33	0	3	237	431	668
Percent	23%	27%	4%	24%	25%	0%	15%	24%	24%	
<b>Robert Dresser</b>										
Sum	44	37	74	154	1	0	0	28	127	155
Percent	3%	3%	89%	6%	1%	0%	0%	3%	7%	
<b>Roy Ashburn</b>										
Sum	379	323	0	664	31	0	7	246	456	702
Percent	28%	24%	0%	25%	23%	0%	35%	25%	26%	
<b>Total Cases Reviewed:</b>	1339	1338	83	2606	134	0	20	996	1764	

\*Off Calendar

# Monthly Board Meeting Litigation Report - May 2012

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	<b>TOTAL = 333</b>
<b>SUPERIOR COURT:</b> Claimant Petitions.....	277
Employer Petitions.....	29
EDD Petitions.....	3
Non-benefit Court Cases .....	7
<b>APPELLATE COURT:</b> Claimant Appeals.....	9
Employer Appeals.....	4
EDD Appeals.....	0
Non-benefit Court Cases .....	1
<b>ISSUES:</b> UI.....	289
DI.....	19
Tax.....	14
Non-benefit Court Cases .....	11

## 2012 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>May</u>
<b>SUPERIOR COURT:</b> Claimant Petitions.....	62	16
Employer Petitions.....	12	3
EDD Petitions.....	0	0
<b>APPELLATE COURT:</b> Claimant Appeals.....	0	0
Employer Appeals.....	0	0
EDD Appeals.....	0	0
 <u>LITIGATION CASES CLOSED</u>	 <u>YTD</u>	 <u>May</u>
<b>SUPERIOR COURT:</b> Claimant Petitions.....	28	4
Employer Petitions.....	5	0
EDD Petitions.....	0	0
<b>APPELLATE COURT:</b> Claimant Appeals.....	4	0
Employer Appeals.....	0	0
EDD Appeals.....	0	0

## 2012 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 10	Loss: 22	Win: 0	Loss: 5	Affirmed: 27	Reversed: 9	Remanded: 1

CUIAB 11/12 Fiscal Year Overtime/Lump Sum Payout - SCO Report  
July 2011 through April 2012

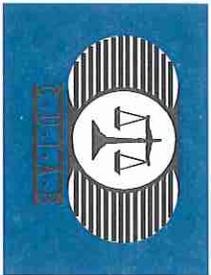
11/12 Fiscal Year-to-Date Overtime Expenditure

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	903.35	\$23,631.51	1,847.00	\$54,669.49	1,359.80	\$37,094.62	2,544.95	\$63,183.15
Admin	40.75	\$1,604.34	0.00	\$0.00	0.00	\$0.00	1,016.00	\$40,657.85
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1,642.25	\$68,571.76
Exec	20.00	\$872.82	0.00	\$0.00	251.50	\$11,228.29	199.00	\$6,229.46
Project	0.00	\$0.00	0.00	\$0.00	46.50	\$2,105.30	22.00	\$863.74
Field	353.00	\$10,829.40	0.00	\$0.00	6,579.70	\$194,596.21	8,447.25	\$248,909.25
<b>Total</b>	<b>1,317.10</b>	<b>\$36,938.07</b>	<b>1,847.00</b>	<b>\$54,669.49</b>	<b>8,237.50</b>	<b>\$245,024.42</b>	<b>13,871.45</b>	<b>\$428,415.21</b>

Branch	11/12 Fiscal Year-to-Date Total Overtime Expenditures				FY 11/12 FY Projections		
	11/12 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	Estimated Expenditures Over-/Under	
Appellate	\$52,599.00	6,655.10	3.20	\$178,578.77	<b>-\$125,979.77</b>	<b>-\$161,695.52</b>	
Admin	\$90,306.00	1,056.75	0.51	\$42,262.19	\$48,043.81	\$39,591.37	
IT	\$123,050.00	1,642.25	0.79	\$68,571.76	\$54,478.24	\$40,763.89	
Exec	\$21,977.00	470.50	0.23	\$18,330.57	\$3,646.43	<b>-\$19.68</b>	
Project	\$0.00	68.50	0.03	\$2,969.04	<b>-\$2,969.04</b>	<b>-\$4,156.66</b>	
Field Operations	\$864,113.00	15,379.95	7.40	\$454,334.86	\$409,778.14	\$318,911.17	
<b>Total</b>	<b>1,152,045.00</b>	<b>25,273.05</b>	<b>12.15</b>	<b>\$765,047.19</b>	<b>\$386,997.81</b>	<b>\$233,394.56</b>	
Actual Monthly Average Personnel Year							14.58

11/12 Fiscal Year-to-Date Lump Sum Payout  
July 2011 through April 2012

Branch	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay
Appellate	522.70	0.25	\$13,844.55
Admin	861.00	0.41	\$23,462.47
IT	0.00	0.00	\$0.00
Exec	1,002.00	0.48	\$62,015.25
Project	0.00	0.00	\$0.00
Field Operations	11,047.94	5.31	\$457,245.46
<b>Total</b>	<b>13,433.64</b>	<b>6.46</b>	<b>\$556,567.73</b>



**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**  
**SPECIAL PROJECTS MATRIX**  
**June 2012**

California's economy is globally ranked with approximately 1.0 million business owners and 18.2 million workers. Currently, California, along with the nation, is experiencing an immense economic downturn with 2.0 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
<p><b>EDD/CUIAB Appeal Co-Location Pilot</b>            Exploring the co-location of four CUIAB staff at EDD's LA PAC to streamline appeals registration processing.</p>		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	<ul style="list-style-type: none"> <li>- Reduce claimants' &amp; employers' wait time for hearing decisions.</li> <li>- Resolve appeal registration issues in a timely manner.</li> </ul>	Scanning for 2 FOs – Pasadena & LA. LA FO is hiring 3 staff to fully implement pilot. Hires are pending in LA.
<p><b>US Department of Labor Taskforce</b>            For nine years, CUIAB has failed to meet US DOL timeliness standards for UI appeals. California is ranked 51<sup>st</sup> 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 &amp; CUIAB representatives.</p>		High	Appeal program review 07/27-31/2009 DOL report 02/05/2010 LWMDA response 03/10/2010 Two yr At Risk CAP 07/15/2010 Site visit 04/18/2012	<ul style="list-style-type: none"> <li>- Meet DOL time lapse measures.</li> <li>- Meet DOL case age measures.</li> </ul>	April 2012 Performance – first level Rank 46th 30-day – 35% (60%) 45 day – 79.9% (80%) Avg Age – 26 days (30 days) Second level Avg age – 31days (40 days)

## TECHNOLOGY

Project & Description	Lead	Priority	Milestones	Goals	Status
<p><b>Collate Decision Print Jobs</b> Reduce a manually collated appeal decision print jobs to one print job to save staff time.</p> <p><b>Court Case Database Conversion</b> Update the writ of mandate database with web-based software for easier reporting and software and database upgrade deployment.</p>	<p>Hugh Harrison Julie Krebs Lori Kurosaka Faye Saunders</p> <p>Faye Saunders</p>	<p>High</p> <p>Medium</p>		<ul style="list-style-type: none"> <li>- Reduce claimants' &amp; employers' wait times for benefits and adjustments.</li> <li>- Reduce cycle time for appeals process.</li> </ul>	<p>IT presented high level requirement for FO decisions on 03/13/2012 for user review. Solution will be implemented with new E-CATS release in Summer 2012.</p> <p>Database conversion completed. Working on a few enhancements for Legal Office.</p>
<p><b>CUIAB Network Upgrade</b> This upgrade will double the bandwidth for faster processing of appeal data and information for ALJs and staff.</p> <p><b>Dictaphone Integration</b> Consolidating data &amp; audio files on CATS for appeal cases for improved access.</p>	<p>Rafael Placencia</p> <p>Faye Saunders</p>	<p>High</p> <p>High</p>		<ul style="list-style-type: none"> <li>- Reduce cycle time for appeals data flow and document saving.</li> </ul>	<p>Meeting with EDD IT to explore options &amp; alignment with Agency network consolidation efforts. Design plans are completed.</p> <p>Will be released with E-CATS.</p>
<p><b>Digital Imaging</b> 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.</p>	<p>Lori Kurosaka</p>	<p>High</p>	<p>Kick off 11/2010</p> <p>FSR completion 02/2011</p> <p>Potential BCP 02/2011</p> <p>Procurement 04/2011</p> <p>FSR in review 03/14/2011</p> <p>FSR in review 11/30/2011</p>	<ul style="list-style-type: none"> <li>- Reduce paper files prepared &amp; sent by EDD.</li> <li>- Increase information security.</li> <li>- Reduce paper file storage space needs &amp; costs at CUIAB.</li> <li>- Reduce postage costs.</li> <li>- Increase federal performance.</li> </ul>	<p>On 06/01/2012, EDD offered three solution designs for CUIAB's review (conceptually same as FSR solution with program detail). CUIAB Execs approved the designs on 06/05/2012. EDD will work on cost estimates for target completion 06/21/2012. CUIAB will forward FSR in sections to EDD for review beginning 06/13/2012. Target submittal to OCIO on 07/16/2012.</p>
<p><b>E-CATS</b> 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</p>	<p>Faye Saunders</p>	<p>High</p>		<ul style="list-style-type: none"> <li>-</li> </ul>	<p>Users will see enhancements such as new and improve screen search, efficiency in decision printing, and IT ability to roll-out updates via the Internet. Implementation scheduled for Summer 2012.</p>
<p><b>Electronic Case Management</b> CUIAB's case tracking database is 10 years old and cumbersome to manage the current workload volume. CUIAB is collaborating with LWDA &amp; EDD to develop an integrated case management system.</p>	<p>Lori Kurosaka Janet Maglente</p>	<p>On Hold</p>	<p>LWDA, EDD &amp; CUIAB approved FSR &amp; project strategy in 10/2010. Kick off 05/2011.</p>	<ul style="list-style-type: none"> <li>- Receive appeals case documents electronically from EDD.</li> <li>- Eliminate internal mailing of case documents</li> </ul>	<p>DOL approved funding at \$404,000 for the planning phase only. EDD is too busy to participate in FSR development. FSR is complete and on-hold to complete imaging project first as of 09/2011.</p>

**TECHNOLOGY cont.**

Project & Description	Lead	Priority	Milestones	Goals	Status
<p><b>E-Decision Review for ALJs</b> In-house development for electronic appeal decision review process.</p> <p><b>EDD CCR Interface</b> 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.</p> <p><b>Expand Auto Dialer Hearing Reminder</b> Adding email and cell phone text features for supplemental hearing notifications.</p>	Faye Saunders	High		<ul style="list-style-type: none"> <li>- Eliminate paper exchange process with EDD.</li> <li>- Increase worker information security.</li> </ul>	Performing business analysis for requirements gathering.
<p><b>Explore Feasibility to Use EDD Mail Center</b> 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.</p> <p><b>Field Office Technology Enhancements</b> 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.</p> <p><b>Field Office Telephone Tree</b> 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.</p> <p><b>Hearing Scheduling System</b> Currently, FO &amp; AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field &amp; IT staff observed an EDD demon on their UI Scheduling System.</p>	Rafael Placencia	High	Updated software. Final testing 08/2010. Implemented 09/2010. Implemented email reminders 04/2011. Revised 10/2011.	<ul style="list-style-type: none"> <li>- Increase hearing attendance rate &amp; productivity.</li> </ul>	EDD's CCR implementation is scheduled for winter 2013. CUIAB will pursue project funding from EDD.
<p><b>Explore Feasibility to Use EDD Mail Center</b> 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.</p> <p><b>Field Office Technology Enhancements</b> 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.</p> <p><b>Field Office Telephone Tree</b> 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.</p> <p><b>Hearing Scheduling System</b> Currently, FO &amp; AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field &amp; IT staff observed an EDD demon on their UI Scheduling System.</p>	Hugh Harrison Lori Kurosaka Faye Saunders	High		<ul style="list-style-type: none"> <li>- Improve readability of documents on screen.</li> </ul>	Held planning meeting with EDD on 04/12/2012 for requirements gathering and costing. Identifying existing model costs and estimating project cost estimates. Held requirements gathering session with FO & AO on 05/02/2012. Preliminary design session with EDD on 06/19/2012. Hardware deployment
<p><b>Field Office Telephone Tree</b> 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.</p> <p><b>Hearing Scheduling System</b> Currently, FO &amp; AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field &amp; IT staff observed an EDD demon on their UI Scheduling System.</p>	Rafael Placencia	Medium	Complete procurement	<ul style="list-style-type: none"> <li>- Reduce claimants &amp; employers time on phones.</li> <li>- Standardize hearing information provided by phone.</li> </ul>	Standard phone tree design completed. Pilot began in the Inland FO. IT & Admin are developing evaluation tool to measure pilot effectiveness.
<p><b>Field Office Telephone Tree</b> 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.</p> <p><b>Hearing Scheduling System</b> Currently, FO &amp; AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field &amp; IT staff observed an EDD demon on their UI Scheduling System.</p>	Lori Kurosaka Faye Saunders	High	Charter & scope completed. Kick off 10/14/2010. Requirements 2/2011 Testing began 01/2012 AO Implementation 04/26/2012	<ul style="list-style-type: none"> <li>- Reduce claimants &amp; employers wait time for hearing decisions.</li> <li>- Provide easier electronic process for staff to calendar hearings or schedule cases.</li> </ul>	Will hold kick-off with FO for requirements gathering.

**TECHNOLOGY cont.**

Project & Description	Lead	Priority	Milestones	Goals	Status
<p><b>LWDA Network Consolidation</b> To comply with OCIO Policy Letter 10-14, the LWDA Departments &amp; Boards are developing a network consolidation plan that must be completed by June 2013.</p>	Rafael Placencia	Medium	LWDA Workgroup develops migration plan. Consensus on migration plan. Implementation	<ul style="list-style-type: none"> <li>- Improve IT efficiency &amp; effectiveness.</li> <li>- Improve security.</li> <li>- Reduce IT costs by using shared service models.</li> <li>- Reduce greenhouse gas emissions.</li> </ul>	The migration plan is completed and a cost model has been developed.
<p><b>Personal Productivity &amp; Mobility Pilot for Board Members, Appellate &amp; Senior Staff</b> Testing use of new mobile, paperless technology with Board Members, six Appellate ALJs, and Senior Staff.</p>	Rafael Placencia	On Hold due to air card limitations	OCIO approval for procurement. Testing equipment with Board.	<ul style="list-style-type: none"> <li>- Reduce the use of paper for board appeal processing and board meetings.</li> </ul>	Scoped down due to GO directive on cell phone (air card) reductions.
<p><b>Printer Standardization</b> Standardizes the use of printers throughout the organization as they are replaced. This will reduce maintenance and toner costs through the printers lives.</p>	Rafael Placencia	Medium		<ul style="list-style-type: none"> <li>- Reduce maintenance &amp; support costs.</li> <li>- Reduce toner costs.</li> </ul>	Researching feasible equipment. Standards are in place for light, heavy, color, and multi-function printers.
<p><b>Refresh Bench &amp; Conversion</b> CUAAB's Intranet site is under refresh and conversion to SharePoint 2010 software. This software will provide easier updates and content.</p>	Faye Saunders	Medium		<ul style="list-style-type: none"> <li>- Improve internal communication tool for CUAAB employees.</li> </ul>	Pursuing consultant to build a development environment for software to begin migration of the Bench.
<p><b>VOIP Telephony</b> CUAAB is exploring use of Voice Over Internet technology to provide lower cost telecommunications.</p>	Rafael Placencia Janet Maglente	On Hold	09/17/2011 Completed 23out station hearing facilities.	<ul style="list-style-type: none"> <li>- Elimination of long distance toll calls</li> <li>- Consolidation of telecommunications support areas.</li> </ul>	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
<b>Archive File Document Conversion</b> Each FO is retaining three years of completed paper appeal case files that are sitting in considerable real estate space. The file room space may be easily converted to ALJ offices or hearing rooms.	Lori Kurosaka Pat Houston	High	MSA vendor contract executed 01/2010. OC, Inland, LA, Oxnard, San Jose, San Diego, LA, Sacto, SF, Appellate complete Vendor quality checks 04/05, 05/06, 08/19. Vendor quality check 05/09	<ul style="list-style-type: none"> <li>- Recapture real estate space for ALJ offices and hearing rooms.</li> <li>- Priority conversion for OC, Inland, LA, San Jose &amp; Oxnard.</li> </ul>	Extended vendor contract to 12/31/2012. CUJAB IT working on solution to scan files in FO.
<b>Judicial Advisory Council</b> Established an advisory council of two Presiding Judges & three ALJs to seek input on major technology development.	Lori Kurosaka Janet Maglante	High	07/2011-Completed business requirements for case management system.	<ul style="list-style-type: none"> <li>- Design comprehensive technology systems with input from judicial users.</li> </ul>	Updating business requirements for imaging & workflow system. Testing ergonomic furniture to help judges to adopt new technology.
<b>Performance Management Tools for Board &amp; Leadership</b> 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 Maglante	High	Business case metrics for imaging Business case metrics for case management Tested report template designs with IT.	<ul style="list-style-type: none"> <li>- Design comprehensive technology systems with input from staff users.</li> </ul>	Design & test Appellate Operations cycle time and case aging reports. Field Operations performance indicator reports are complete.
<b>Staff Advisory Council</b> Established an advisory council of six Field Operations staff and two Appellate staff to seek input on major technology development.	Lori Kurosaka Janet Maglante	High		<ul style="list-style-type: none"> <li>- Design comprehensive technology systems with input from staff users.</li> </ul>	First assignment is to redesign appeal forms as smart forms.
<b>Transforming CUJAB</b> Engage a consultant to help plan and guide the leadership team through organizational change management. A consultant will assist with defining organizational structure, proactive communications with stakeholders, identify staff skill sets needed for new technology, etc. to maximize user acceptance of new technology.	Rafael Placencia Pam Boston Lori Kurosaka	High	Release RFO 03/18/2011 Rerelease RFO 05/12/2011 Bids due 05/31/2011. Intent to award 06/10/2011. Deliverable1 completed 10/2011.	<ul style="list-style-type: none"> <li>- Plan, design and implement organizational design for the large scale technology projects.</li> <li>- Plan and coordinate communications with all stakeholder groups.</li> </ul>	Vendor staff preparing analysis on as-is duty statements. Vendor staff submitting proposed communication plan deliverable to steering council on 06/07/2012 for review.



Edmund G. Brown Jr.  
Governor

June 7, 2012  
53:128:rs:jo:lch  
916-654-8410

California Unemployment Insurance  
Appeals Board  
c/o Robert Dresser, Chairman  
2400 Venture Oaks Way  
Sacramento, CA 95833

**Re: Proposed Precedent AO-262854**

Dear Board Members:

This correspondence from the Employment Development Department (EDD) sets forth its position in regards to the pending vote to make Appeals Case Number AO-262854 a Precedent Benefit Decision (the Decision). The EDD respectfully requests that the California Unemployment Insurance Appeals Board (Board) not make this case a precedent.

The EDD requested that the U.S. Department of Labor (DOL) review the case regarding possible conformity issues, and DOL has taken the position that the decision would not create a conformity issue with Federal UC law. (see enclosure)

While the decision does not create a conformity issue, EDD is required to have methods of administration to protect against *improper payments* and fraud. The proposed Decision does not protect against improper payments pursuant to the statutory scheme set forth in Part 1 of the Unemployment Insurance Code. The Unemployment Insurance Code (UI Code) Sections 1256 and 1260, read together, require that disqualifications begin in the week in which the act occurred. As cited *In the Matter of David Clark*, Precedent Benefit Decision 433, the Board held that the "act causing the disqualification" cited in UI Section 1260 referenced to the week in which the act occurred, not the week in which a final decision adverse to the claimant is issued by the Board.

The statutes are clear that Part 1 of the UI Code also applies to Part 4 of the UI Code and states that "Except as otherwise provided, the provisions and definitions of Part 1 apply to this part. In case of any conflict between the provisions of Part 1 and the provisions of this part, the provision of this part shall prevail with respect to federal-state extended benefits." (Unemp. Ins. Code § 4002, subdivision (a)). The language is

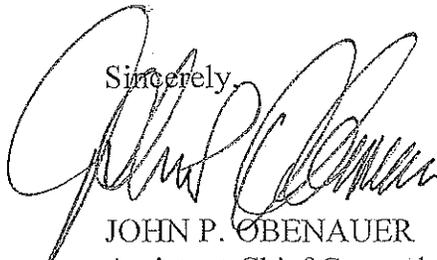
specific that in case of a conflict it only applies as to the claimant's eligibility for federal-state extended benefits and not regular UI benefits. Section 4002, subdivision (b) specifically lists the exceptions and states "Except as otherwise provided, subdivision (d) of Section 1253, and Sections 1030, 1032, 1254, 1277, 1281, 1327, 1328, 1329, 1330, and 1331 do not apply to this part." Section 4002, subdivision (b) does not exclude Section 1256 or 1260, subdivision (a) of the UI Code.

It is the position of the EDD, that if Part 4 contained a provision describing the effective date of a 1256 disqualification, there would have been a conflict between Part 1 and Part 4 and the Board's rationale would apply, and Part 4 would supersede. However, since there is no such conflict, Section 1260, subdivision (a) of Part 1 applies to both Part 1 and Part 4 and the effective date of the 1256 disqualification should be effective, June 6, 2009, the Sunday of the week the disqualifying act occurred.

The Decision finds a conflict because "considered alone, section 1260(a) would require every section 1256 disqualification to begin with the week of the act that causes the disqualification, in this case the week beginning June 7, 2009. Such a result conflicts with section 4655, which limits the EDD's authority regarding eligibility determinations in Fed-Ed claims to Fed-Ed benefits." It is EDD's position that it may make a determination on the appropriate weeks of benefits any time that it comes into possession of the necessary information to do so.

In closing, the Board appears to be concerned with claimants who have not committed fraud or made a false statement would be at risk for repayment of benefit overpayments after being determined eligible years earlier. A claimant faced with such an overpayment could be potentially eligible for a waiver request for any such overpayment under UI Code section 1375, if they have not committed fraud.

Sincerely



JOHN P. OBENAUER  
Assistant Chief Counsel

Enclosure

cc: Ralph Hilton, Chief Counsel  
Alberto Roldan, Chief Administrative Law Judge

U.S. Department of Labor

MAY 21 2012

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



Mr. Talbott Smith,  
UI Deputy Director  
Employment Development Department  
P.O. Box 826880 MIC 83  
Sacramento, California 94280

Dear Director Smith:

In response to a request from Michele Sutton-Riggs, we have reviewed the California Unemployment Insurance Appeals Board (CUIAB) decision, Sallee v. Del Taco LLC Case No. AO 262854 to determine if it raises a conformity issue with the requirements of Federal unemployment compensation (UC) law. It is our opinion that the decision does not create an issue with Federal UC law.

In this decision, the CUIAB ruled that the agency may only adjudicate an Extended Benefit (EB) claim based on the information received in response to the notice of an EB claim being filed, and that absent a finding of fraud or willful misrepresentation on the part of the claimant, there is no authority under the state UC law or precedent for the agency to re-adjudicate the original claim once the benefit year has ended. The decision is based on state law and precedent. Because the state has no authority to re-adjudicate the original claim for UC, the CUIAB ruled that the state could not establish that the regular UC was overpaid and recoup it from the claimant.

Federal UC law is silent on many administrative matters. It does not contain any requirements for states regarding finality of decisions and does not address the period of time during which a claim may be re-determined. Therefore, absent such requirements in Federal UC law, these are matters left to state law.

While we understand that the CUIAB is proposing to make this decision a precedent benefit decision, and as such may lead to the state being unable to recoup benefits that may have been overpaid, because the decision is based on state law, making it a precedent would not create a conformity issue with the requirements of Federal UC law.

If you have any questions concerning this letter, please contact your regional office's legislative liaison, Jamie Bachinski, at 415-625-7925 or [Bachinski.jamie@dol.gov](mailto:Bachinski.jamie@dol.gov).

Sincerely,

A handwritten signature in cursive script that reads "Gay M. Gilbert".

Gay M. Gilbert  
Administrator  
Office of Unemployment Insurance

cc: Todd Yamamoto  
Acting Regional Administrator  
San Francisco

cc: Michele Sutton-Riggs - Division Chief  
EDD/UI Policy & Coordination Division

## **COMMENTS ON PROPOSED PRECEDENT (AO-262854) BY JORGE CARRILLO**

Unfortunately, I am unable to attend the Board's June 12<sup>th</sup> meeting so I am presenting my thoughts in this memo. I encourage the Board to adopt its decisions in Case Nos. AO-262854 through AO-262862 as a precedent because the decisions meet all 3 criteria in section 5109, title 22, CCR for designation as a precedent. The reasons will likely be covered by others at the Board meeting so I will limit my remarks to arguments raised by EDD at the Board's April meeting.

1. **EDD Argument: There is no conflict between Part I (dealing with regular claims and extended benefits) and Part IV (dealing with FED-ED benefits)**

EDD argues that there is no conflict between the provisions affecting regular claims (Part I) and the provisions affecting the FED-ED program (Part IV) because section 1256 contained in Part I is incorporated by section 4202 into the FED-ED program. However, the FED-ED provisions (Sections 4654 and 4655) only authorize EDD to decide the claimant's entitlement to FED-ED benefits. As such, it is clear that the incorporation of section 1256 into Part IV is only for the purpose of allowing EDD to decide the claimant's eligibility for FED-ED benefits. A conflict has been created by EDD's use of the provisions of the FED-ED program in a manner not envisioned by the Legislature, namely EDD disqualifying the claimant not only for FED-ED benefits but for all benefits received under the claimant's regular parent claim and other extended benefits. By doing so, EDD is re-considering the issue of the claimant's entitlement to benefits under section 1256 for the regular parent claim in a manner that is inconsistent with limitations contained in Part I (Sections 1327, 1328 and 1332.5). The Board's decisions in Case Nos. AO-262854 through AO-262862 clarify that the provisions under the FED-ED program (Part IV) only authorize EDD to decide the claimant's eligibility for FED-ED benefits and are not a basis for EDD re-deciding issues of eligibility under the regular claim (Part I). The decisions in AO-262854 through AO-262862 also make clear that any authority for EDD to reconsider an earlier decision of eligibility under a regular claim must be done under the provisions of Part 1 itself ((Sections 1327, 1328 and 1332.5).

2. **EDD Argument: The effective date of a disqualification under section 1256 is the date of the claimant's separation from work, not the date of the claimant's entitlement to FED-ED benefits.** This argument by EDD is a red herring. Regardless of the date of separation or what section 1256 states, the provisions of the FED-ED program, through sections 4654 and 4655, make clear that under Part IV, the EDD is only authorized to decide the claimant's eligibility for FED-ED benefits. The Board's decisions in Case Nos. AO-262854 through AO-262862 merely state in plain English that a disqualification under section 1256 made pursuant to the FED-ED program (Part IV) starts as of the date the claimant is eligible for FED-ED benefits. This is consistent with the Legislature's intent as expressed in sections 4654 and 4655.

3. **EDD Argument: There are no statutory provisions restricting EDD from reconsidering 1256 determinations when EDD has not issued a written determination. The Board's precedent decisions in P-B-128 and P-B-439 explicitly affirm EDD's right to issue silent determinations and its right to reconsider the silent determinations at any time.** EDD is incorrect in its assertions. As directly addressed in the Board's decisions in Case Nos. AO-262854 through AO-

262862, the California Legislature, in sections 1327 and 1328, set forth explicit requirements that EDD must follow when a claimant files an initial claim for benefits. These include giving notice of a claim filed to the most recent employer and issuing a **written** determination of the claimant's eligibility under section 1256. Sections 1327, 1328 and 1332.5 do not allow EDD to reconsider this initial decision except in limited circumstances and within certain time limits (for example, fraud, false statement or willful misrepresentation).

There are no statutory provisions under the Unemployment Insurance Code for EDD to disregard the Legislature's explicit requirement for EDD to issue a written determination when EDD makes an initial decision of eligibility pursuant to the provisions of sections 1327 and 1328. Similarly, there are no statutory provisions for EDD to ignore the explicit limitations in sections 1327, 1328 and 1332.5 for EDD to reconsider its initial determination.

The Board's decisions in P-B-128 and P-B-439 do not provide support for EDD's arguments. Neither P-B-128 nor P-B-439 involved the EDD deciding a claimant's eligibility under section 1256 pursuant to the provisions of section 1327 and 1328, as was the case in Case Nos. AO-262854 through AO-262862. Had P-B-128 and P-B-439 involved EDD's determination under section 1256, the Board in those 2 precedent decisions would have had to explain why it was disregarding the requirements of sections 1327 and 1328 that such determination be in writing and why the limitations of 1332.5 did not apply. The Board in P-B-128 acknowledged that a decision made pursuant to the provisions of sections 1327 and 1328 is required to be in writing. The Board in P-B-128 was able to affirm the EDD's reconsideration of a prior "silent" determination only because the facts in that case did not involve an initial determination of the claimant's eligibility under section 1256 using the provisions of sections 1327 and 1328. This is not the situation in AO-262854 through AO-262862 where the EDD made an initial determination of the claimant's eligibility under section 1256 pursuant to the processes of sections 1327 and 1328. The Board's decisions in Case Nos. AO-262854 through AO-262862 directly address EDD's erroneous interpretation of its authority under sections 1327 and 1328. It also clarifies the correct interpretation of P-B-128 and P-B-439.

**4. EDD Argument: The Board's decisions in Case Nos. AO-262854 through AO-262862 interfere with DOL's directive for California to recoup overpayments for improperly paid benefits.**

The California Legislature has enacted a comprehensive statutory scheme that promotes the recovery of improperly paid benefits but , at times, also promotes other equally important goals that may, to some extent, limit the State's ability to prevent the improper payment of benefits. For example, if an employer does not timely respond to an EDD notice of claim filed under the provisions of sections 1327 and 1328, the employer cannot receive a determination or ruling regarding the claimant's eligibility for benefits, cannot appeal an adverse determination and cannot appear as a party in any appeal filed by a claimant. In some instances, these procedures may result in claimants receiving benefits improperly since the employer, who is usually in the best position to present witnesses and evidence that could disqualify a claimant, is prevented from presenting such evidence at a hearing. However, because the effectiveness of the statutory scheme is dependent on the employer's cooperation in responding to these notices under sections 1327 and 1328, the Legislative built a strong incentive for such cooperation by

penalizing employer's who failed to respond to the notices even though this penalty may result in some improper payment of benefits. Similarly, the Legislature deemed the provisions of sections 1327 and 1328 regarding EDD making an initial written determination of eligibility under section 1256 to be so important that it expressly limited the ability of EDD to reconsider its initial determination to those instances and time limits described in sections 1327, 1328 and 1332.5, despite the consequence that it might prevent EDD from reconsidering the improper payment of benefits in some instances. If DOL has any concerns about the wisdom or effect of this statutory scheme, DOL needs to address those concerns to the California Legislature. Neither the EDD nor the CUIAB are free to ignore or disregard the express limitations and provisions enacted by the Legislature.

5. **EDD Argument: The claimants can get relief from large overpayments because the EDD can consider waiver of the overpayment and there is a time limit to the collection of overpayments under section 1376.**

This argument ignores the statutory provisions described above that prevent the EDD from reconsidering its initial determination under section 1256 except in limited circumstances. It also ignores the fact that waiver of an overpayment can be denied for "fault" and EDD can easily find fault for simple negligence or carelessness. It also ignores that it is extremely stressful and devastating for a claimant who follows the procedures in sections 1327 and 1328 and is deemed eligible for benefits, suddenly to find himself or herself some years later assessed a very large overpayment of up to \$40,000 or more. It is clear from the statutory provisions discussed above that the Legislature intended for EDD and the parties to have some finality involving EDD's initial written determination under sections 1327 and 1328 except in limited exceptions described in sections 1327, 1328 and 1332.5. The Board's decisions in Case Nos. AO-262854 through AO-262862 affirm the Legislature's intent for some measure of finality and freedom from EDD's devastating practices in these cases.

6. **Another Argument; A precedent is not needed anymore because FED-EDD benefits ceased in mid-May.**

EDD has been making determinations consistent with its arguments in these cases for some time and there are cases in the appeal process where this issue is still alive. Also, the decision of whether FED-ED benefits will be paid is made every 3 months so there is a possibility that in the near future, the FED-ED program could be re-instituted. EDD's arguments and practices involved in these cases are so at odds with the Legislative scheme that EDD will continue to act in accordance with its interpretation as it did in Case Nos. AO-262854 through AO-262862. The issues are therefore very likely to recur and should be addressed by the Board by adopting a precedent decision in these cases.

Thank you for taking the time to consider my thoughts. Jorge Carrillo

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

RYAN J SALLEE  
Claimant

Precedent Benefit  
Decision No. P-B-499

DEL TACO LLC  
c/o UC EXPRESS  
Employer/Appellant

DECISION

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

BONNIE GARCIA

ALBERTO TORRICO

ROBERT DRESSER

KATHLEEN HOWARD

ROY ASHBURN

Pursuant to section 409 of the California Unemployment Insurance Code, AO-262854 is hereby designated as Precedent Decision No. P-B-499.

Adopted as Precedent: June 12, 2012



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

RYAN J SALLEE  
Claimant-Appellant

DEL TACO LLC  
c/o UC EXPRESS  
Account No.: 351-7813-6  
Employer

Case No.: **AO-262854**

OA Decision No.: 3712405  
EDD: 1210 BYB: 06/07/2009

## DECISION

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

**BONNIE GARCIA**

**ALBERTO TORRICO**

**ROBERT DRESSER**

**KATHLEEN HOWARD**

**ROY ASHBURN**

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 20 2012**

Case Nos.: AO-262854 through AO-262862  
Claimant: RYAN J SALLEE

---

OP

The claimant appealed from the decisions of the administrative law judge that held the claimant:

1. disqualified for benefits under section 1256 of the Unemployment Insurance Code;
2. disqualified for benefits for five weeks under code section 1257(a); and,
3. liable for repayment of a \$15,379 overpayment under code section 1375, and for a 30 percent penalty assessment in the amount of \$4,613.70 under code section 1375.1.

The employer's reserve account was relieved of charges.

Pursuant to California Code of Regulations, title 22, section 5100(b), these appeals are consolidated for consideration and decision.

We delete the word "employer" where it appears listed as a party present at the hearing.

#### ISSUE STATEMENT

The issues are:

1. What effect, if any, does the employer's failure to respond to the first notice of claim filed have on its right to later receive a ruling;
2. Whether the claimant was discharged for misconduct connected with the most recent work;
3. If the claimant is disqualified for benefits under code section 1256, what is the effective date of the disqualification;

4. Whether the claimant willfully made a false statement, or representation, or willfully withheld a material fact when claiming benefits.
5. Whether the claimant was overpaid benefits, and, if so, whether the claimant is liable for the repayment of those benefits; and
6. Whether the claimant was overpaid benefits due to a willful false statement or representation, or willful withholding of a material fact when claiming benefits.

### FINDINGS OF FACT

The claimant was last employed as a crew leader at a Del Taco restaurant for six months earning \$8.50 per hour. He last worked on June 10, 2009 and separated from his employment under the following circumstances.

The claimant was called in to meet with the manager when he arrived at work on June 10, 2009. The manager told the claimant that co-workers had complained about him. The most recent incident involved the claimant swearing at a shift leader during the claimant's last shift. The manager also stated the claimant's work performance was not acceptable. The claimant complained to the manager about changes in his schedule reducing his hours from 30 to 15 hours. The meeting became heated and the claimant was told to "leave." The manager did not yell at the claimant nor did she tell the claimant he was discharged or fired. The claimant knew he was scheduled for additional shifts but did not return to work those hours. The claimant was unhappy about the reduction in his hours.

Later on June 10, the claimant filed his unemployment claim on-line listing June 10 as his final day of work. He correctly identified Del Taco as his last employer and reported to the Employment Development Department (EDD) that he was "placed on-call." The claimant later explained that he believed the employer was laying him off when he was told to leave, or, effectively placing him on on-call status.

A notice of claim filed was sent to the employer by the EDD on June 17, 2009, informing it that the claimant had filed a claim for benefits. The EDD claim notes do not show that EDD received a response to the notice of claim filed.

The EDD did not issue a written determination regarding the claimant's eligibility for benefits but began paying the claimant unemployment insurance benefits on July 2, 2009 for the week ending June 20, 2009. When the claimant's regular benefits were exhausted, the EDD found the claimant eligible for extended

benefits under the Emergency Unemployment Compensation (hereafter referred to as "EUC") program and paid the claimant extended benefits beginning December 16, 2009. The claimant received EUC extended benefits through December 18, 2010.

On December 22, 2010, the EDD sent Del Taco a new notice of claim filed because the claimant was being transferred from the EUC extended benefits program to the Federal-State Extended Compensation Act of 1970 (hereafter Fed-Ed or federal-state) benefits program. Del Taco was still the claimant's most recent employer at the time he became eligible for Fed-Ed benefits. According to the EDD claim notes, on March 24, 2011, the employer responded in writing to the second notice of claim filed stating the claimant voluntarily quit due to dissatisfaction with the job. The claim notes describe the employer's response as timely. The employer's response was not included in the information forwarded by the EDD for consideration at the hearing.

On April 1, 2011, an EDD representative spoke with both the claimant and an employer representative regarding the claimant's June 10, 2009 separation. In April 2011, the EDD issued a written determination and ruling which found the claimant disqualified for benefits under code sections 1256 and 1257(a) and relieved the employer's reserve account of charges under code section 1030. The 1256 disqualification listed a beginning date of June 7, 2009.

The EDD also issued a series of notices of overpayment and penalty assessments covering the period of June 13, 2009 through March 12, 2011. The notices include Fed-Ed benefits the claimant received beginning December 19, 2010 through March 12, 2011. Those benefits totaled \$2,025.

The claimant filed timely appeals and the matters were set jointly for hearing. The claimant was the only party who appeared at the hearing.

### REASONS FOR DECISION

In order to simplify the decision, we are separating the employer's entitlement to a ruling from the claimant's eligibility for benefits and potential liability for any overpayment of benefits and penalties. We deal first with the issue of the ruling.

### THE RULING

Section 1327 of the Unemployment Insurance Code requires the EDD to give notice of the filing of a new or additional claim to the employer by whom the claimant was last employed immediately preceding the filing of the claim.

If a claimant's most recent employer wants a ruling, it must respond to the notice of claim filed within ten days after it is mailed. The response must include any facts known to the employer that might affect the claimant's eligibility for benefits, including the circumstances of the claimant's separation from employment. The ten day period may be extended for good cause. (Unemployment Insurance Code section 1030(a) and 1327.)

Sections 4654 and 4655 of the Unemployment Insurance Code contain identical procedures for new or additional claims for federal state extended benefits. The EDD is required to send a notice of claim filed and the employer must respond as in code section 1030(a) and 1327. The EDD is required to consider facts submitted by an employer, and, if federal-state extended benefits are requested, make a determination as to a claimant's eligibility for federal-state extended benefits.

At the time the claimant became eligible for Fed-Ed benefits the employer was sent a second notice of claim filed as required by Unemployment Insurance Code sections 4654 and 4655.

As a result of the employer's response to the second notice of claim filed, EDD issued a determination and ruling which found the claimant disqualified for benefits and the employer's reserve account relieved of charges. The claimant filed a timely appeal.

In Precedent Ruling Decision P-R-363, the Board considered the employer's entitlement to a ruling under similar facts. In that case the employer also failed to respond to the first notice of claim filed, but responded to the second.

The Board's decision includes a lengthy review of the obligations of both the employer and the EDD, as set out in statutes and regulations, in regards to rulings in both regular and federal-state claims. The Board stressed the employer's obligation to promptly provide the EDD with information which would bear upon the claimant's entitlement to benefits. "The purpose of the unemployment compensation program is to provide benefits to those claimants who are involuntarily unemployed within the meaning of the California law. As ameliorative legislation it is essential that a determination of entitlement be rendered as expeditiously as possible to provide continuing funds to claimants who are qualified to receive benefits. It is for such reasons that time limitations have been imposed not only on the employer but on the Department as well."  
(Precedent Ruling Decision P-R-363, pg 9.)

Having reviewed both the statutory scheme and public policy considerations, the Board held in Precedent Ruling Decision P-R-363 that where the employer,

without good cause, fails to respond to the first notice of claim filed, the employer is not entitled to a determination or a ruling.

There is no evidence in the record that the employer filed a timely response to the first notice of claim filed or that the employer had good cause for any such failure to respond. In the absence of such evidence, the ruling in this case was issued in contravention of Precedent Ruling Decision P-R-363. Based on that precedent and the record in this case, we set aside those portions of the administrative law judge's decision and the underlying EDD ruling which concern the employer's reserve account.

### THE SEPARATION

We move now to the claimant's entitlement to benefits under code section 1256.

An individual is disqualified for benefits if the individual left the most recent work voluntarily without good cause or the individual was discharged for misconduct connected with the most recent work. (Unemployment Insurance Code, section 1256.)

In Precedent Benefit Decision P-B-37, the appeals board held that in determining whether there has been a voluntary leaving or a discharge under section 1256 of the code it must first be determined who was the moving party in the separation. If the claimant left employment while continuing work was available, the claimant was the moving party. If the employer refused to permit the claimant to continue working, although the claimant was ready, willing and able to do so, the employer was the moving party.

After a discussion with the employer about both the employers' dissatisfaction with the claimant's work and the claimant's dissatisfaction with the reduction in his hours, the claimant was told to "leave". He was not told he was being terminated. He knew that he was scheduled for additional shifts, but he did not return. The term "leave" is ambiguous and the claimant could have, but did not, ask the employer to clarify whether he was being asked to leave the room, leave for the day or leave the job altogether.

The claimant's interpretation without clarification about what the employer wanted was not reasonable and, in light of his other expressed unhappiness about the working conditions, the most reasonable conclusion given the circumstances is that he quit.

In Precedent Benefit Decision P-B-229, the Appeals Board held that a claimant who left work primarily in protest to a reprimand which was apparently merited, and which was given in a reasonable manner, left without good cause.

Although the claimant stated the final discussion was heated, he conceded the employer did not yell at him. We do not find the reprimand provided good cause to quit.

In Precedent Benefit Decision P-B-301, the claimant quit when her hours of work per week were reduced from 40 to 16. She presented no evidence that working part-time would cause any undue hardship or prevent her from seeking full-time employment elsewhere. The appeals board held the claimant left without good cause.

The claimant in this case, like the claimant in Precedent Benefit Decision P-B-301, was unhappy at having his hours reduced. He presented no evidence that the reduction would cause unusual hardship or that he could not use the time to seek full time work elsewhere. Consequently, his reduction in hours does not provide good cause to quit for purposes of determining eligibility for unemployment insurance benefits.

We understand the claimant's argument that he did not return to work the scheduled shift as he had been told to leave. The claimant argues that the employer laid him off or placed him on-call when he was sent home. While we understand the claimant's interpretation of the events, we find that interpretation unreasonable in light of the surrounding circumstance and find the claimant voluntarily quit without good cause.

Having found the claimant did not have good cause to quit, we affirm that portion of the administrative law judge's decision which found the claimant disqualified from receiving benefits under code section 1256. We now must determine the effective date of the disqualification.

The EDD's April, 2011 determination established June 7, 2009, as the effective date of the 1256 disqualification, reaching back to disqualify the claimant effective the date of his separation from employment 22 months earlier.

Because the EDD issued the April 2011 determination only after the employer responded to the Fed-Ed notice of claim filed, it follows that the determination was issued pursuant to Unemployment Insurance Code sections 4654 and 4655. As discussed earlier, these sections provide that the EDD must notify the employer of a Fed-Ed claim, permit the employer to respond to the claim and then "make a determination as to the claimant's eligibility for Federal-State

extended benefits.” (Unemployment Insurance Code section 4655.) As the statute only permits the EDD to determine the claimant’s eligibility for Federal-State extended benefits, determinations issued after the employer responds to the Fed-Ed notice of claim filed must be limited to the claimant’s eligibility for Fed-Ed benefits unless some other authority exists allowing a retroactive disqualification for benefits received prior to the Fed-Ed claim for benefits. While the determination itself does not reference the EDD’s authority for applying the disqualification retroactively, we look to precedent decisions, cases and statutes which might authorize retroactive application.

One possible authority for retroactive application is section 1260(a). That section provides that an individual disqualified under section 1256 is ineligible to receive unemployment benefits *beginning in the week the act that causes disqualification occurs* and continuing until the claimant has registered for work and performed services in bona fide employment for which remuneration is received equal to or in excess of five times the claimant’s weekly benefit amount. (Emphasis added.)

If considered alone, section 1260(a) would require every section 1256 disqualification to begin with the week of the act that causes the disqualification, in this case the week beginning June 7, 2009. Such a result conflicts with section 4655, which limits the EDD’s authority regarding eligibility determinations in Fed-Ed claims to Fed-Ed benefits. When conflicts occur between Unemployment Insurance Code provisions contained in Part 1 “Unemployment Compensation” (which includes section 1260(a)) and those in Part 4 “Federal-State Extended Compensation” (which includes section 4655), the provisions of Part 4 prevail with respect to federal-state extended benefits. (Code section 4002(a).) Consequently those portions of section 1260(a) which appear to require a 1256 disqualification issued in a case such as this to relate back to the week of the disqualifying act are superseded and do not authorize a disqualification date earlier than the date the claimant became eligible for Fed-Ed benefits, December 19, 2010 in this case.

In addition to determining the claimant’s entitlement to Fed-Ed benefits, the April 2011 determination can be viewed as a reversal or redetermination of the original unwritten determination that found the claimant not disqualified under code section 1256. We consider next whether the EDD is authorized to redetermine the claimant’s entitlement to benefits under the circumstances of this case.

Determinations of eligibility under code section 1256 are made by the EDD after notice to the claimant’s most recent employer and an opportunity for that employer to respond. (Unemployment Insurance Code sections 1327 and 1328.) Additionally, the EDD is required to interview the claimant in detail as to the reasons for his unemployment (Title 22, California Code of Regulations, section

1326-1(a)(1)(A).) The EDD is required to "promptly notify" the claimant and any employer who responded to the claim notice about the determination. (Unemployment Insurance Code sections 1328 and 1332(a).) Service of any notice of determination of eligibility shall be made personally or by mail. Failure to serve this notice shall not affect the determination of eligibility. (Unemployment Insurance Code section 1332(a).)

The mechanisms for reconsideration or reversal of a determination are defined by statute. A party can appeal a determination which may result in a decision reversing the determination. (Unemployment Insurance Code sections 1328 and 1332.) The EDD may "for good cause" reconsider a determination within 15 days after an appeal or within 20 days if no appeal is filed. If the claimant does not appeal from an adverse decision issued by an administrative law judge, or such an appeal is withdrawn or dismissed, the EDD may, for good cause, reconsider the underlying determination throughout the benefit year and any extensions of the benefits. If, after reconsideration, a new reconsidered determination is issued, the parties again have appeal rights. (Unemployment Insurance Code section 1332(b).) With the exception of cases involving fraud, misrepresentation or willful nondisclosure full (Unemployment Insurance Code section 1332.5), these are the only statutory guidelines regarding reconsidered determinations.

The purposes of the time limitation in section 1332 are to insure prompt payment or denial of benefits and to give the EDD the authority to have supervisors review decisions made by its employees and correct patent errors. (*Miranda v. UIAB* (1973) 36 Cal App 3d 213, 219.)

The federal courts have considered the authority of the EDD to reconsider initial determinations of eligibility beyond the section 1332 statutory limits and recognized one exception to the time limits. In *Holt v. Donovan* (9<sup>th</sup> Cir. 1986) 790 F2d 1417, the court held that section 1332(a) did not bar prospective redetermination of benefits when the redetermination was issued because agency policy regarding eligibility had changed. In reaching its decision the court recognized the importance of section 1332 in expediting the prompt payment or denial of benefits, but concluded the section "was not intended, however, to paralyze agency efforts to correct its own erroneous interpretations of the law." *Holt* at 1418. See also *Turner v. Brock* (9<sup>th</sup> Cir. 1987) 813 F 2d 1494. We note that both *Holt* and *Turner* envisioned only prospective changes in a claimant's eligibility for benefits.

The determination in this case was not issued as a result of a change in interpretation of law, but rather as a result of new information obtained from the last employer that it could have, presumably, provided earlier. Consequently, the exception carved out in *Holt* and its progeny does not apply.

In Precedent Benefit Decisions P-B-128 and P-B-439, the Board permitted redeterminations beyond the 1332 statutory period. In each case the EDD issued a first written determination which effectively overruled an earlier unwritten determination long after the time period provided in code section 1332. In Precedent Benefit Decision P-B-128, the Board distinguished determinations concerning on-going eligibility for benefits from the initial determination of eligibility when the claimant opens a claim. While the EDD is required to determine the eligibility of a claimant for benefits each week prior to issuing the benefit check, customarily the EDD does not issue a written determination. The payment itself is, in effect, the determination of eligibility. The Precedent identifies the payment as a "silent," or "unwritten" determination.

In both Precedent Benefit Decisions P-B-128 and P-B-439, a late redetermination of the claimant's on-going eligibility for benefits, as opposed to initial entitlement to benefits, was permitted. The late redetermination was allowed as the on-going weekly requirement to determine eligibility for benefits is not statutorily required to be in writing. In contrast, the initial determination considering the separation issued under code section 1328 is required to be written and served on all parties. Therefore, we conclude that the exception to compliance with the code section 1332 time limitations is limited to "silent" or "unwritten" determinations concerning on-going issues of eligibility, and does not apply to the initial determination of eligibility for benefits under code section 1256.

As this case involves the claimant's entitlement to benefits under code section 1256, we find the EDD is bound by the timelines contained in code sections 1328 and 1332 even though the first determination regarding the claimant's eligibility for benefits under code section 1256 was not a written determination. To find otherwise would defeat the purpose and spirit of code section 1332 that the claimant receive prompt payment of benefits he or she can rely on and that the EDD cannot reconsider except in limited circumstances. Otherwise a claimant, such as this claimant, would be at risk to repay almost two years of benefits after EDD determined the claimant eligible, where a new determination is issued only when the claimant becomes eligible for Fed-Ed benefits. While there may be exceptions permitting retrospective changes in a claimant's eligibility under code section 1256 when the first written determination exceeds the timelines provided in code sections 1328 and 1332, no such exception exists in this case. In this case the EDD simply changed its position after obtaining new information from a former employer. Unless another reason exists to permit the disqualification to apply to benefits received prior to the application for Fed-Ed benefits, the disqualification is effective only as to the claimant's Fed-Ed claim.

There is one other possible basis for the EDD to issue a late redetermination.

As noted above, the statutory limits in code sections 1328 and 1332 do not apply "in any case of fraud, misrepresentation or willful nondisclosure." (Unemployment Insurance Code section 1332.5.)

In order for the EDD to disqualify the claimant for benefits received prior to the application for Fed-Ed benefits, the EDD must find the claimant committed fraud, willfully failed to disclose information or misrepresented facts surrounding his separation with actual knowledge that the representations were false. *Jackson v. Donovan* (9<sup>th</sup> Cir. 1985) 758 F2d 1313, 1314. This standard mirrors the language in code section 1257(a), so if the claimant is found to be disqualified under section 1257(a), the EDD would have authority under section 1332.5 to make the disqualification under section 1256 effective going back to the date of separation, i.e. back to June 7, 2009.

For the reasons stated below in the section titled "FALSE STATEMENT", we find that the claimant did not make a willful false statement and is not disqualified for benefits under section 1257(a). Having found not even a willful false statement, neither can we find fraud, misrepresentation or failure to disclose under code section 1332.5, and section 1332.5 does not apply. Because the time limits for the EDD to reconsider its original determination of the claimant's eligibility have passed and no exceptions to those time limits are present in this case, the EDD's authority to issue a new determination is limited to the claimant's eligibility for Fed-Ed benefits under code section 4654. Therefore the effective date of the 1256 disqualification is December 19, 2010, when the claimant was first eligible for Fed-Ed benefits.

#### FALSE STATEMENT

An individual is disqualified for benefits if, for the purpose of obtaining benefits, he or she either willfully made a false statement or representation, with actual knowledge of the falsity of the statement or representation, or willfully failed to report a material fact. (Unemployment Insurance Code, section 1257(a).)

The burden of proving a willful false statement or withholding of material information is on the EDD. (Evidence Code, section 520; Precedent Benefit Decision P-B-224.)

The claimant reported to the EDD both that he was laid off of work and that he was placed on-call. The claimant was told to leave work. While we find the claimant's failure to return for scheduled hours amounted to a voluntarily quit, we accept as true the claimant's testimony he believed he was laid off or placed on-call. Consequently, we find the claimant did not make a willful false statement and reverse the administrative law judge's decision as to this issue.

## OVERPAYMENT

Any person who is overpaid unemployment insurance benefits is liable for repayment unless the overpayment was not due to fraud, misrepresentation or willful nondisclosure, was received without fault, and its recovery would be against equity and good conscience. (Unemployment Insurance Code, section 1375(a).)

The overpayment determinations issued on this case cover the period July 4, 2009 through March 12, 2011. Having found the claimant's disqualification for benefits is effective only as to the Fed-Ed benefits, we reverse the administrative law judge's decisions as to all benefits received before December 19, 2010.

Having found the claimant disqualified from receiving Fed-Ed benefits, we affirm the overpayment beginning December 19, 2010.

We next look to whether the claimant is entitled to a waiver of the repayment of the overpayment.

In Precedent Decision P-B-361, the appeals board held that under section 1375 of the code, waiver of the recovery of an overpayment depends upon three tests. "First, were the benefits overpaid by the department because of fraud, misrepresentation or willful nondisclosure [P-B-69]. Second, was the overpayment received without fault on the part of the claimant. Third, provided there was no fraud or fault on the part of the claimant, would compelling recovery of the overpayment violate the principles of equity and good conscience [citation omitted]."

Fault does not signify willful intent or evil design; rather fault results from negligence, an error in judgment, or inadvertence due to lack of care or carelessness. (Precedent Decision P-B-368.)

We focus our attention on the fault analysis, as we have already found the claimant did not participate in fraud, misrepresentation or willful nondisclosure. The claimant knew when he filed his benefits that, although his employer sent him home, he was still on the calendar for future shifts. Nor did he disclose the reprimand which caused him to feel "fed up" with his job. While the claimant did not disclose all of the facts surrounding his separation to the EDD, we do not believe he willfully failed to disclose a material fact. On the other hand, had he disclosed this information, the EDD might have investigated his case more thoroughly. We find the claimant was negligent or made an error in judgment in not disclosing more of the circumstances surrounding his separation.

Consequently, we find the claimant was at fault and not entitled to a waiver of the overpayment of the Fed-Ed benefits he received.

If an individual is overpaid benefits because the individual made a willful false statement with actual knowledge, or withheld a material fact, the director shall assess against the claimant an amount equal to 30 percent of the overpayment amount. (Unemployment Insurance Code, section 1375.1.)

Having found the claimant did not make a willful false statement, the claimant is not liable for any overpayment penalty.

### DECISION

The decisions of the administrative law judge are affirmed in part, reversed in part and modified in part.

We set aside those portions of the decisions and underlying determination and ruling which concern the employer's reserve account. The claimant is disqualified for benefits under code section 1256 effective December 19, 2010 and such disqualification applies only to Fed-Ed benefits.

The claimant is not disqualified for benefits under code section 1257(a).

For the period beginning June 13, 2009 through December 18, 2010, the claimant was not overpaid benefits under code section 1375 nor is he liable for penalties under code section 1375.1.

For the period beginning December 19, 2010 through March 12, 2011, the claimant was overpaid benefits and is liable for repayment of the overpayment under code section 1375, but not liable for the penalty under code section 1375.1.