

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5519**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., January 12, 2010, in Sacramento, with Chairwoman Bonnie Garcia presiding.

2. Roll Call: Members

Present

Absent

Bonnie Garcia, Chair

x

George Plescia, Vice Chair

x

Ann Richardson

x

Liz Figueroa

x

Cindy Montañez

x

Sharon Runner

x

3. Approval of the Minutes:

The December 8, 2009, minutes were approved by all members.

4. Chair's Report:

Chair Garcia announced that both she and Vice Chair Plescia were confirmed by the Senate. Chair Garcia thanked the staff and management team for all of their hard work in making sure there were no unresolved cases sitting on desks over the holidays.

Chair Garcia advised on Friday the Governor released his budget and an Executive Order. The Governor called for state agencies to achieve specific salary savings. The Board will conduct a second meeting this month on Tuesday, January 26, to determine how to achieve those savings without any layoffs, downsizing, or increased wait times. CUIAB is under a mandate by the federal government to timely process the appeals and our mission is to stay focused on that mandate.

Chair Garcia also reported they toured the EDD Imaging facility and are looking to use that same technology to expedite and streamline our processes.

5. Board Member Reports:

Vice Chair Plescia reported the confirmation process went smoothly and he thanked all the staff, especially Lori Kurosaka, for their hard work in preparing them to meet with the Senate Rules Committee.

The other board members congratulated Chair Garcia and Vice Chair Plescia on their confirmation and acknowledged their hard work throughout the year.

6. Assistant Secretary, Labor and Workforce Development Agency, Stephen Egan Report:

Assistant Secretary Stephen Egan reported quarterly employment figures are to be released on January 22nd. The Agency is not particularly optimistic that the numbers are going to be positive. He was scheduled that morning for a meeting with the Agency to discuss the implementation of the budget but the meeting was cancelled. He will keep the Chair posted if there are any ramifications to the Board.

7. Chief ALJ/Chief Executive and Acting Executive Director Report:

Chief ALJ/Acting Executive Director Roldan reported despite the holidays December was an extremely busy month. The number of new cases, 39,222, was more than 1100 greater than the previous high set in October. The number of closed cases, 38,969, was the second highest ever achieved and 16% greater than the average for 2009. Despite the holidays the judges and support staff continued their hard work and delivered the second most productive month ever in the history of this agency. Nevertheless, the open inventory grew for the first time in three months, to a total of 83,874, but only by the modest amount of 203 cases. For the calendar year, the agency processed 413,935 new cases, a new record in the history of the agency. This represents an increase of 20% over calendar year 2008, and 61% more cases than were processed in 2006.

Chief ALJ/Acting Executive Director Roldan remarked on CUIAB's accomplishment during the course of the year in relation to the nation as a whole. CUIAB is ranked 37th in time-lapse, and tied for 26th for average case age. Notably, CUIAB represents over 26th percent of the national workload, handling more cases than the next 5 states combined.

8. Assistant to the Executive Director, Lori Kurosaka Report:

Assistant to the Executive Director Lori Kurosaka reported they are speaking with vendors to provide document conversion services which will convert our paper archive files to digital images, which should save us both space and money.

Assistant to the Executive Director Kurosaka reported in December they met with Labor Agency leaders and the EDD IT Chief to prioritize our joint IT projects and efforts. They will be working hand-in-hand with EDD on digital imaging. The Board had an opportunity to see how far along EDD's tax branch program is with their digital imaging and the beginning stages of the same for unemployment and disability insurance. EDD will be assisting CUIAB with navigating the State Chief Information Office policies and processes and establishing a joint team together to complete that project.

Assistant to the Executive Director Lori Kurosaka reported EDD is contracting with Unisys to develop a technology solution on transferring appeal decisions back to EDD. It is estimated that this project can be completed in about six weeks. We should be testing with Appellate Operations in about five to six weeks.

Chair Garcia asked what that accomplishes for us in terms of time. Assistant to the Executive Director Kurosaka responded it will save about five to seven days over the current hardcopy process. Assistant to the Executive Director Kurosaka commented that the new process will also enhance information security, avoiding lost and misdirected mail.

Chair Garcia stated they are also looking at the Kodak scanners in use at the Imaging Center to expedite the processing of appeals from field office decisions to the Board, stating that she would like to move in that direction. In the long term, though, Chair Garcia stated they are developing digital imaging with EDD so that when an appeal comes to us initially it will already be in digital form.

9. Chief ALJ, Appellate Operations Branch, Jorge Carrillo Report:

Chief ALJ/AO Jorge Carrillo reported last month AO registered 2,225 board appeals, the 6th month in a row that AO had new appeals coming in at over 2,000. AO issued close to 3,000 decisions, 57% above the calendar year average and the highest it has been since 1993. On the last day of the year AO closed 630 cases with the help of various people, including the Chair herself. The number of open cases dropped from 3,700 to under 3,000, with the target a more manageable level of around 2,400 open cases.

The average age of an open case at AO was 34 days, significantly under the Department of Labor standard of 40 days, and the 6th month in a row that AO has been under 40 days.

Chief ALJ/AO Carrillo reported AO met two of the three DOL time lapse standards, closing over 40% within 45 days, 93% within 75 days, and almost 100% within 150 days.

Chief ALJ/AO Carrillo reported for the 2009 calendar year AO registered 23,406 board appeals, a 29% increase over 2008. The number of decisions issued was 22,820, a 32% increase over 2008.

Chief ALJ/AO Carrillo reported on the AO ALJ Assignment of Cases Report, which shows the production by ALJs in AO for the month, a new report that will be included in the board packets.

Chair Garcia commented she thinks the reports are important and mentioned they have asked AO staff to do more mass calendars, similar to the kind of work that is being done in field operations. They have also asked AO staff to help the field offices with the strike teams. We are doing some innovative things to drive down

the work load, looking at everything from the day an appeal hits our mailbox to the last person at the closing desk to touch it.

10. Chief Information Officer, Rafael Placencia Report:

Chief Information Officer Rafael Placencia reported that there are two significant DOL-funded projects for IT right now. First, is the expansion of CUIAB's information technology infrastructure, a project that involves redesigning the network, the system that all of our data runs over. That project has received all necessary approvals and is well on its way now.

The other DOL project is the speech-to-text. They have everything they need to move forward and now it is just a matter of coordinating the installation of the software. The pieces that still need improvement are the training components.

CIO Placencia reported the suppression of social security numbers from mail correspondence is currently in the testing phase. They have also merged the address sheet onto the decision cover sheet, thus eliminating one sheet of paper and the social security number from everything that is not being sent to EDD. They hope to have something online by this time next month.

Chair Garcia inquired about the auto dialer. There were some glitches with the auto dialer a couple days where it did not load up the information and she had thought that issue was resolved. Chair Garcia stated it was a priority and requested that he report on it at the next board meeting.

11. Deputy Director, Administrative Services Branch, Pam Boston Report:

Deputy Director Pam Boston reported Personnel is conducting some promotional exams for Business Services Officer II, Presiding Administrative Law Judge, Program Tech III, and Management Services Technician.

Deputy Director Boston reported they will be holding a budget advisory committee meeting later in the month to review the first and second quarter expenditures and position usages; plan for the third and fourth quarter; and, start talking about budget planning for 2010/2011.

Deputy Director Boston further reported there are quite a few vacancies within the Personnel Department, in particular the transactions unit, which processes pay and benefits. They are currently recruiting hard to fill those vacancies.

Lastly, Deputy Director Boston reported she had planned on presenting the new employee orientation package at this Board meeting, but decided to obtain input from management and supervisory staff first. This presentation will be ready for the February Board meeting.

12. Chief Counsel's Report:

Chair Garcia advised the Board of Chief Counsel Hilton's retirement effective December 30, 2009, and that he is currently back working as a retired annuitant. Chair Garcia thanked him for his years of service.

Chief Counsel Hilton reported the agency received 5 new cases last month, closed 5 cases, thus still carrying 230 cases. The Board was affirmed in all 5 cases closed. As a year review for 2009, the Board closed out 38 cases but opened 83 cases, reflecting the impact of the economy on the court cases.

Chief Counsel Hilton reported the Board members' workload has increased significantly, with each Board member reviewing and deciding almost 40 cases each day.

In terms of significant court case activity, there was a ruling in the furlough case, *SEIU v. Governor Schwarzenegger*, issued in Alameda County on December 31, 2009. The Governor's office has stated it will be appealing that decision which was adverse to the Governor's furlough policy. There is an automatic stay upon appeal unless the court rules affirmatively otherwise. There is also the ongoing *Acosta* case which was filed against EDD and CUIAB with regard to timeliness issues under of the Department of Labor standards. It was amended to include allegations on the furlough issue. Chief ALJ/Chief Executive Roldan will be deposed in the *Acosta* matter on February 2, 2010.

Chief Counsel Hilton reported the proposed regulations were published in the Notice Register on January 1, 2010, and is proceeding on schedule. The regulations should be finalized around April.

Chair Garcia asked Chief Counsel Hilton to explain to the Board why they will be holding a second board meeting this month.

Chief Counsel Hilton stated the second board meeting is to deal specifically with the Governor's Executive Order that requires each state agency to reduce its budget by 5%. Each state agency must submit a plan for this reduction by February 1, 2010, thus requiring immediate action by the Board.

Chair Garcia acknowledged and welcomed the new ALJs in the audience and thanked ALJ Lilian Waters for her special efforts in providing the training.

13. Unfinished & New Business

2009/10 Budget review and revisions (including overtime, digital storage contract, Project Director position, additional construction cost)

Renee Erwin, SSM II, reported Executive Order S-01-10 impacts both the current year budget and also next year's budget. The Department of Finance has not yet released a budget letter that usually provides the detail of how departments are to achieve their cost savings and submit their plans. We will be putting together an exemption request that shows the impact of this Executive Order in relation to the workload, our earnings, case aging and time-lapse. The Executive Order requires each agency to submit a plan by February 1, 2010. We estimate that we will need to identify about 35 positions and 2.3 to 2.5 million in reductions to meet the required salary savings.

Another item impacting the current year budget is the use of overtime. Historically, we allocate overtime based on the previous year's usage, which was approximately \$700,040. However, we exhausted that allocation within six months, due to the workload and furlough. We will be coming back to the Board to ask for an augmentation to cover the shortfall through January and then we will be reevaluating and coming back with an additional request to augment overtime for the remainder of the fiscal year. We have estimated we will need approximately \$311,000 to cover the additional costs through January.

The overtime is being utilized as follows: decision typing 34%; CTU typing 3%; the remainder is primarily for record control, reception or other field office clerical functions.

The request for augmentation of the overtime budget to cover December and January, in the amount of \$400,000, passed unanimously.

Status of decision review pursuant to CUIA 406(b)

Chief ALJ/Acting Executive Director Roldan reported the agency had not formalized a 406(b) review process. The Unemployment Insurance Code requires that CUIAB maintain a continuous review of un-appealed decisions to uncover decisions which appear inconsistent with the law or case law and to recommend such cases to the Board for action.

Chief ALJ/Acting Executive Director Roldan recommends there be a designated person to perform the review. Currently they do have a judge that is responsible for review of complaints against ALJs but this is an expansion of the particular process and as such it is a position that should be filled at the presiding judge level, as this person has to have sufficient authority to interact with the presiding judges because it involves oversight of the ALJs. Having a peer conduct the review process would not be sufficient. He recommends a random sampling of 200 cases a month, and in addition they select cases of specific ALJs who have been referred

to the process because of complaints made by the public. Another category of cases that should be reviewed is one party, 1256 cases, the voluntary quit/misconduct cases, because those cases generally have very little oversight as one party cases.

Chair Garcia inquired how the 406(b) decision reviews are being done now.

Chief ALJ/Acting Executive Director Roldan stated they now have the mentoring that takes place for all new judges. For a number of months a second judge is assigned to sit in, review and actually be present when the new judges are conducting hearings. That in essence is in compliance with the 406(b) process except for the fact that there is no mechanism that exists right now for them to refer a case for review by the Board.

Member Richardson commented if you are doing the 406(b) process it should be applied across the board and not just to the new trainees because that is not a true representation of the 406(b) process.

Chief ALJ/Acting Executive Director Roldan stated that was correct. The question from the Chair was what is going on right now in terms of oversight of cases. There are also random samplings of cases and the quarterly QR review by the presiding judges, but that doesn't necessarily mean it is oversight that fully complies with what is required by the 406(b) process and that is what he is proposing that they address, by creating from front to rear the 406(b) process so that we are in compliance with the statute.

Chair Garcia commented she thought under the code 406(b) that responsibility fell to Chief ALJ/Acting Executive Director Roldan and the reason she asked that it be put on the agenda is so that they are sure it is being done, specifically because they were questioned about this in the confirmation hearings. She stated what she is hearing is that CUIAB is kind of doing it but needs to create a position so that there is someone who can have general oversight. However, in light of the fact that they are going to be having a discussion about potential cut backs on staff in terms of vacancies, why are they are creating something new? Before they explore that or invest in a whole new structure, program or even assigning people to do this, they need to look at what they already have, what can be built into the existing framework and what would be an adequate review process so that they are complying with DOL requirements but not creating a whole new program. She questioned creating a PJ level job that is going to also be working with other judges, giving them other duties within those field offices with a number of 200 cases, stating that the Board does not have enough information to say that is the way we should go. This is an issue that definitely deserves more discussion, and what she would like to hear as the Chair is that the CUIAB is complying with the code. She wants to see that at least one file from every field office has had a top to bottom review so that they are protecting peoples' rights. Not that they are trying to create a whole new infrastructure to create something that would be ideal. She questioned the Chief Counsel as to what was done in the past with the 406(b)

requirement.

Chief Counsel Hilton responded both in the recent past and in the distant past he does not know that anything was done. But in the last five years there have been various individuals assigned to this specific function.

Chair Garcia asked who that individual has been in the past. Chief Counsel Hilton replied that Sal Cannella was one, when he was initially appointed to his position, and ALJ Miller Medearis performed the function after Mr. Cannella.

Chair Garcia stated she wanted to see the package, what Chief ALJ/Acting Executive Director Roldan was sending to Personnel, what he is proposing, how much it is going to cost, what he envisioning in terms of that infrastructure, how much work it is going to entail, and, how many other people are going to be impacted in that operation. She wants to see a full detailed report that she can read through until she is comfortable saying we need to build it.

Chief ALJ/Acting Executive Director Roldan responded he does have a draft proposal that is much more detailed and he will send that to the Board.

Chair Garcia asked Chief ALJ/Acting Executive Director Roldan to provide that report at the Board meeting on January 26, 2010. She stated if it is going to be a cost that needs to be factored into the budget, it is certainly something that they need to do. In the meantime, she would ask the Board to support requesting one file randomly selected from every field office sent specifically to Chief ALJ/Acting Executive Director Roldan so he can designate someone now, existing staff, who can take a look at it and make sure CUIAB is complying with the law.

Member Montañez asked if there was someone doing that at this time.

Chief ALJ/Acting Executive Director Roldan stated specific to the 406(b) process, there is no one, he does not want to create the impression that there is no oversight going on with the judges. There is actually significant amount of oversight going on with the judges in terms of the mentoring program and the quarterly review process. For clarification, he is not proposing to add a person to the ranks of the presiding judges, but simply to fill an existing PJ vacancy.

Chair Garcia stated it may not need to be a PJ, it could be a business manager or some other classification and that is why she thinks they should really look at it. She stated her reading of the code was that that was the Chief ALJ's responsibility. She didn't see it as a designee or somebody else.

Chief ALJ/Acting Executive Director Roldan responded the language states for the Chief Administrative Law Judge to "maintain a continuous review of the decisions of administrative law judges". It doesn't necessarily call for the Chief himself to conduct that review, but for the Chief to maintain a process by which that is occurring.

Chief Counsel Hilton concurred with Chief ALJ/Acting Executive Director Roldan, in that whoever reviews decisions pursuant to 406(b) should at least be an administrative law judge, and Chief Roldan's point is that he wanted a PJ there because you are not going to be able to get any results when you have an ALJ trying to deal with PJs. Chief Counsel Hilton also commented that as an interim measure between now and the next board meeting, he does not know that that is really necessary, but if they are going to have any kind of interim solution, one case a month per office isn't really enough, as it would not meet the requirements of the statutory provision.

Chair Garcia asked Chief Counsel Hilton what he recommended per office. Right now they have 100% of nothing.

Chief Counsel Hilton responded that was true, but waiting until the next Board meeting, coming this same month, will not add to the problem.

Chair Garcia clarified she was not suggesting they do that one this month but that they need to do at least one for each field office. She questioned what would be reasonable, five cases?

Chief ALJ/Acting Executive Director Roldan responded he thinks 200 is pretty much a minimum number per month, and that is probably approaching statistical validity. There needs to be more research on this but there definitely needs to be a review of more than 12 a month.

Chair Garcia agreed but stated she thinks they need to start somewhere. Even if they do 2 per office until they build a program and figure out how they are going to do it, they need to do something. Chief Counsel Hilton concurred with that statement.

Chief ALJ/AO Carrillo commented 6% of the field decisions are appealed to Appellate and they do a review. If they find any situations where they think a judge needs training or are perhaps doing something inappropriate, they refer those to the Chief's office. So there is sort of a starting point for them to spot someone who is having problems and allow the field to kind of follow up on it. But it's only 6%, 94% of them is a lot of other cases and he does agree that there is a need for independent review of those cases as well. But there is something in place to catch the more glaring stuff that occurs that gets appealed to AO.

Chief Counsel Hilton stated that was true, but the 406(b) process has an entirely different objective.

Chief ALJ/Acting Executive Director Roldan stated this was the beginning of the discussion at the request of the Chair. He will formalize a proposal for the next board meeting.

Chair Garcia stated what is glaring is that they have not really worked towards

filling that void in a long time and this is something that has to be addressed before it gets addressed for us.

Status of Construction Projects

Rita Thompson, SSM I, reported in the Board packets there was a list of facility projects. She asked the Chair if there were any specific questions about those projects.

Chair Garcia advised the Board as part of their discussion on the budget they need to make some decisions about facilities because in their desire to have more hearing rooms, accommodate the staff and public, they also have to be now fully aware of the fact that the Governor's Office has called for some salary savings, and while they might have the dollars in the budget for additional facilities today, they may not have funds later on down the road.

Chief ALJ/Acting Executive Director Roldan stated CUIAB's budget in the last fiscal year was built in large part on a projection of over 500,000 cases, and that did not develop.

Chair Garcia commented they are at 430,000 cases so there is a probability our revenue may go down and it may be difficult to sustain those leases and the additional cost of tenant improvements and the IT improvements that need to be done at some of those sites. She stated they may need to revisit some of the facilities again. That discussion will be held over for the budget meeting.

Chair Garcia noted at two of the facilities, Indio and Murrieta, we were forced to move. EDD is closing a site that we share with them in Indio and that is why we are moving, and at Murrieta we are sharing the facility with the county and they have forced us to move. The Los Angeles Office site is probably being sold by the State of California.

Rita Thompson, SSM I, clarified they did talk to DGS, and if they do sell that building we are probably looking at a doubling of our rent, if not tripling.

14. Public Comment

None

15. Closed Session:

No votes were reported from closed session.

Adjournment