

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5502**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 p.m., February 10, 2009 in Sacramento, with Board Member Ann Richardson presiding.

**2. Roll Call: Members**

**Present**

**Absent**

Fred Aguiar, Acting Chair  
Ann Richardson  
Liz Figueroa  
Cindy Montañez  
Bonnie Garcia  
George Plescia

X  
X  
X  
X  
X

X

**3. Approval of the Minutes:**

The January 13, 2009 minutes were approved by all members.

**4. Chair's Report:**

No report.

**5. Board Member Reports:**

Member Richardson commended the Agency for doing such a fine job in light of the State furloughs and the economic problems we are facing. She stated that this Agency continues to work hard and do its best through its leadership and especially through its rank and file employees.

Member Figueroa echoed Member Richardson's comments commending the Agency for doing such a great job. She stated that she also appreciated the cooperation between the board members, and the communication with each other on cases.

Member Montañez agreed, and stated that she personally feels very bad for people that because of the State's situation all of a sudden they are out 10% of their salary. Their hard work is something that does not go unnoticed or unappreciated. It makes her feel proud to be part of an Agency where no one is giving up, and expressed her thanks to each and every employee who works for the Agency.

Member Garcia agreed with her fellow Board Members, and also thanked the staff for the excellent training they have provided her, and especially ALJ Marti Geiger who led that effort. She further noted that this Agency took the unusual step of recognizing our goal is to serve the public and therefore is on a self directed furlough. Member Garcia stated that she elected to take the pay cut as well. She thanked the staff for their willingness to continue to work to serve the public and for the sacrifices they are all personally making.

Member Plescia also thanked ALJ Marti Geiger for all the training and stated that it had gone very well. He also commended other board members for the numerous cases they had dealt with under the heavy caseload and expressed the hope that he and Member Garcia could help expedite those cases. He expressed thanks to the staff for working very hard and stated that no one likes to see a pay cut, and that he too volunteered to take a pay cut and be part of the team.

#### **6. Acting Executive Director Report:**

Acting Executive Director Jehan Flagg updated the Board on the furlough situation, noting that a furlough committee, composed of employees across the spectrum, was assembled as soon as we knew an employee furlough was likely to occur. CUIAB's request for a blanket exemption from the furlough was denied, but we were granted the right to a self-directed furlough so that we could keep our offices open and continue to serve the public. The furlough committee meets every Monday, Wednesday and Friday mornings in order to stay abreast of developments and to keep our employees informed.

Member Richardson commented that she was at the office on Friday and that furlough Friday could have been black Friday, but instead everyone participated with a smile on their face. She stated that the Board is not taking a self-directed furlough but will continue to work five days a week, as they recognize that if the cases stop at their level there is a ripple effect down to Appellate and the Field.

Acting Executive Director Flagg stated that the most noticeable hiccup for CUIAB was that the U.S. Post Office did not deliver the mail at headquarters because they assumed we were closed. They did end up delivering the mail at about 4:50 p.m. on Friday, and they now know that we are not closed and that we are conducting business as usual five days a week.

Acting Executive Director Flagg reported that the telephone pilot project, approved by the Board last year and chaired by PALJ Madlyn Hilton, will determine if there is a role for telephone hearings as part of our strategy. The project was effectively begun February 1<sup>st</sup> and will continue over the course of the year. ALJs are assigned to work on that program exclusively and they will collect and analysis data to see what kinds of cases seem to lend themselves better to these types of hearings. Periodic updates will be provided at subsequent Board meetings by Chief ALJ Alberto Roldan.

Member Montañez asked if the pilot program is being conduct just out of one of the field office or is it statewide. Acting Executive Director Flagg responded that the physical location of the judges who are participating is here in Sacramento, but the cases that they are hearing come from around the State.

Member Figueroa asked if any of the pilot cases will require interpreters. Acting Executive Director Flagg responded that at some point they will test cases that require interpreters, but not at the beginning. She stated that those are more complicated cases, and they want to start with the simpler cases.

Member Richardson commented that this is a pilot project that we are going to implement in the hopes of helping to reduce our backlog, and that the board is committed to maintaining in-person hearings as a policy.

Acting Executive Director Flagg deferred to Chief Counsel Hilton for an update on the BSA audit. Chief Counsel Hilton reported that the Sacramento District Attorney's Office had investigated the appointment of our prior Chair, Cynthia Thornton, as an Administrative Law Judge. That office was investigating specifically to determine whether or not there was a violation of any of the conflict of interest provisions in the Government Code and the Public Contracts Code. They completed their investigation and issued a report at the end of January, in which they opined there was no violation of the Government Code, but there was a violation of a Public Contracts Code provision. The alleged violation carries a one year statute of limitations and thus, the DA did not file an action. We have not heard anything from the Attorney General's Office regarding further investigation of this matter.

## **7. Chief ALJ/Chief Executive Report:**

Chief ALJ/Chief Executive Alberto Roldan reported that he had been traveling throughout the State, visiting 7 of the 12 field offices in the last month in an effort to establish a connection with the field. During the last month we have been developing a strategy to deal with furlough Friday, in addition to submission of a timely exemption request. Chief ALJ/Chief Executive Roldan is very proud of the way that the staff has recognized the importance of doing the work of the Agency.

Chief ALJ/Chief Executive Roldan reported that the State is dealing with record unemployment, which is driving some tremendous numbers in our direction. Prior to September 2008 the Agency had verified more than 30,000 cases in one month only once in its history. Since September of 2008 we have verified at least that number of cases every month and for January 2009 we hit an all time high of 34,115 verified cases. This number is 19% higher than the average for 2008 and 32% higher than the one month figure for January 2008. Dispositions have been increasing in a record fashion as well. For January 2009 there were 27,273 dispositions, higher than the average for the year 2008 and an increase of over 4,300 of that number that played out in January of 2008.

Chief ALJ/Chief Executive Roldan reported that FO is currently at an open balance of approximately 79,459 cases, an increase of 70% since August of 2008. The average in excess, basically verifications outpacing dispositions, has been 5,500 verifications a month since August, and the January deficit was the second largest during that period of time. FO is having a rough time keeping up with verifications even though we are ramping up dispositions in record fashion. In accord with Phase One of the Workload Reduction Plan we are proceeding with hiring, with 15 new ALJs hired in December and January. In the near future he will bring to the Board Phase Two of the Workload Reduction Plan. Another aspect of the attempt to make hires available for use as quickly as possible was the move in January to the Office of Administrative Hearings employment list, which allows access to reachable candidates as quickly as possible.

Chief ALJ/Chief Executive Roldan reported that a couple of areas of improvement have been in the Tax Unit where they have been able to reduce their inventory for 4 months straight. He also reported that Disability Insurance cases are starting to climb, although the challenges there are not anywhere near the level of the UI cases.

Chief ALJ/Chief Executive Roldan reported that one of the other casualties of the workload has been time lapse. Average case age has jumped to 51 days, and the 90-day time lapse numbers fell to 62%, the lowest in a long time.

Member Figueroa asked how many new hires they anticipate in the next month or so. Chief ALJ/Chief Executive Roldan responded that under Phase One 15 judges have already come on board and they are anticipating an additional 14 ALJ hires.

Member Figueroa inquired if they had room for possible additional hires. Chief ALJ/Chief Executive Roldan replied that they do have room for additional hires, but starting with Phase Two those would have to be Permanent Intermittent positions since those could be paid for out of the temporary help budget.

Member Figueroa then asked how it would affect CUIAB if the Governor indeed does the 20% layoffs. Deputy Director Boston responded that the recently issued Executive Order by the Governor applies the layoff potential only to General Fund positions. CUIAB has only 4 General Fund positions, so CUIAB would lose just one position

Acting Executive Director Flagg replied that is not a certainty, because the 20% could also be interpreted in a different fashion. There is a 20% that either applies to General Fund positions or it is a flat 20% of all employees who have the least amount of seniority. It could go either way, and because less than 1% of CUIAB's budget is General Fund money we would only be losing about 4 positions.

Member Figueroa commented that if the staff reduction affects new hires, then doesn't that defeat the purpose of bringing on new judges. Acting Executive

Director Flagg responded that it could but so far under the furlough directive CUIAB has been told that we have the ability to continue with the hires.

Member Montañez commented that our furlough situation does not really impact General Fund money. People taking a pay cut here is not impacting the General Fund in any way or helping the State's budget situation, it is the contrary. She stated we are impacting claimants, employer and people that work here in many ways when we are trying to get these unemployment cases done because of the economic situation. She stated that having CUIAB participate does nothing to help the State's fiscal situation.

Acting Executive Director Flagg stated that she does not know why CUIAB did not get a full exemption. However, because we were given the ability to do a self directed furlough, that means CUIAB is working five days a week and not closing offices. The flip side to that is it means our employees, all of us, are taking a 9.23% cut in pay each month and at some point the furlough days are accrued and will have to be taken.

Member Montañez stated that everyone should appreciate what this Agency is doing because, really, budget reductions do nothing to help the State's situation. Very few pennies are being saved at the Capitol because most of CUIAB's funding is Federal.

Member Figueroa commented that it is the opposite in that the more cases we process, the more money CUIAB gets from the Federal government.

Acting Executive Director Flagg reiterated that CUIAB is conducting business as usual so that as far as the caseload we are at maximum capacity per the labor agreements. The impact is that the staff has to work and is getting a reduction in pay of 9.23%. She stated that EDD's unemployment figures for the State will be out a week from Friday and they anticipate that they will probably mirror the national trend, meaning a higher unemployment rate and the number of jobs lost will also be larger.

Member Montañez asked if the appeal rate has changed or are we still at about the 6% range.

Chief ALJ/Chief Executive Roldan responded that in terms of the appeal rate for Field Operations the trend has been upward in terms of percentage of cases coming to FO then going to the second level of appeal to the board, about 10%.

Acting Executive Director Flagg asked what the appeal rate is from EDD to the field.

Member Montañez commented that all of it goes back to what Member Figueroa was saying about the need to get the hires on board, train them and if there is a possibility to bring in additional people. It is obvious that the workload is increasing

significantly and will continue to trend in that direction.

Chief ALJ/Chief Executive Roldan stated that raw numbers from EDD are being driven by the overall unemployment numbers hitting that Agency. He stated he has not seen any significant increase in the percentage of cases being appealed from EDD. There was a slight increase only because EDD is so overwhelmed they have in essence abandoned their internal review process that use to cut off some of the cases that came to the Board, so we are getting the raw decision-making from EDD without any internal controls and that has lead to a slight increase in the percentage of cases coming to CUIAB.

Member Garcia asked that as CUIAB starts getting these judges on board and they start taking on more cases, what support staff t is going to be needed to help deal with all the cases that are generated. She asked what CUIAB is doing to address that issue besides driving it with overtime and are we looking to fill positions for support staff.

Chief ALJ/Chief Executive Roldan replied that we absolutely are considering that issue, and that the Phase One Workload Reduction Plan had a proportionate number of support staff that was allocated, and the Phase Two Workload Reduction Plan that is being developed also provides for proportionate support staff to support the ALJs.

## **8. Branch Report:**

a. Acting Presiding Judge, Appellate Operations (AO), Jorge Carrillo reported that AO registered 1,588 cases in January, 2 percent above the fiscal year average. The appeal rate for January was 5.7%, much lower than the 7.3 percent appeal rate for December 2008 and also below the 6 percent average for the fiscal year. AO closed 1,609 cases, which is 7 percent above fiscal year average.

AO's open balance of cases stands at 2,379 cases, 5 percent above the fiscal year average. We continue to see a steady rise in our workload due to Field Operation's increased production, but we are taking steps to increase our own production pursuant to AO's Workload Reduction Plan.

The average number of days for our open cases is 37 days, which meets the Department of Labor's guideline of 40 days or less. However, we missed on two DOL time lapse standards: 31 percent of our dispositions closed within 45 days of the appeal date, which is short of the 50 percent goal, and 75 percent closed within 75 days of the appeal date, short of the 80 percent goal. As we focus on closing more cases to meet the 45 day time lapse standard as well as closing older cases, more cases are building up close to the 75 day standard. As we hire more ALJs and support staff, we should be able to close more cases to meet the 75 day standard. On the positive side, we did meet the third DOL time lapse standard with 99 percent of dispositions closed within 150 days of the appeal date.

Acting PALJ-AO Carrillo stated that included in the meeting packets is information relating to the time it took to get cases from field operations to appellate operations in the month of January (Attachment A). The numbers have been steadily improving in the past few months as the reports have helped PALJs and supervisors in the offices to understand the need to focus on moving board appeals as quickly as possible.

Acting PALJ-AO Carrillo reported that with the approval of Acting Chair Aguiar and Acting Executive Director Flagg, Appellate Operations is going to begin to send some cases to the Board without the physical case folder, starting next week. These cases will be those in which the ALJ is working out of the office, the cases have time lapse or statutory dates that are 5 days or less and it is possible to email or phone the decision to the typist, have the decision typed and have the case moved to the board without the case folder. The Board will not notice any change on their part as they will still be reviewing the cases initially through the E-File. This will enable us to move the cases to the Board members more quickly, and thus help meet time lapse.

Member Garcia commented that the report Acting PALJ-AO Carrillo provided is extremely important because when looking at time lapse, the days that the files are sitting somewhere to be mailed to the board, the five or six days lost means less time for the ALJ to review that file, and similarly less time for Board member review, which places a lot of pressure on both the ALJs and the Board members. CUIAB has to find a way to drop the numbers for everyone, down to one to two days, or create some type of policy that the day they get the file they mail them within 48 hours or 72 hours. She went on to state that if she were to look at all of CUIAB's links from the day that the person files the appeal to the very end of it, the one thing we can probably fix and help us most is this one. This portion is the most critical link.

Acting PALJ-AO Carrillo responded that in order to meet the DOL's guidelines everything has to happen perfectly from the beginning to the end of the process. We are looking at every point and trying to figure out where time can be saved so that in the end everybody has enough time to do their job. The first part is a critical part because it takes on the average 8 to 10 days to get a case to AO. If FO delays 4 to 8 days, then AO probably has no chance in meeting the M-Dates. FO has been working very hard on this.

Member Garcia commented that she appreciates AO looking at each element because they are all critical in putting this together. She stated that the problem is not always fixed by adding more staff and that it might be fixed by find out how each cog moves in the process.

Member Figueroa stated that she agreed wholeheartedly, but there may also be some caveats, for example the San Jose office move. This really puts a mirror to the whole agency, and how everyone is important to make it all work because if you do not get someone into the office on a timely basis, that disrupts everything.

Acting Executive Director Flagg recommended a side-bar explanation if there is something out of the ordinary that affects the time periods.

Member Plescia asked if the San Jose office move was completed.

Chief ALJ/Chief Executive Roldan responded that they are in a temporary location and it is a very odd arrangement, as the support staff is separated from the ALJs, it is not an optimal working environment.

Member Plescia asked if they have looked at what the Sacramento office has done right because they really lowered their numbers.

Acting PALJ-AO Carrillo responded that the PALJ used to be the head of Appellate Operations and two of the supervisors used to be supervisors in Appellate Operations, so they have a special understanding of the process. In addition, they are located downstairs and do not have to spend a day to send the appeals.

**b.** Deputy Director Pam Boston reported that the 2009/10 call letters were sent out on February 2, 2009. The Call Letters is a process by which CUIAB begins negotiations for the budget for fiscal year 2009/10. Each Branch Manager goes through the process to request items that they may need in the areas of OE & E and Personnel. They are providing training on February 17 to new supervisors and anyone who needs a refresher on how to complete the call letters. She stated that it is all online on the Bench and available for the Board members to peruse.

Deputy Director Boston reported that at the last Board meeting a request to augment the overtime blanket was brought to the Board. It turns out this was something that did not need Board approval, as in looking back at the Board meeting in September the Board's approved of the 2008/09 budget included an allocation for the temporary help blanket, which includes overtime. Both FO and AO have enough money in their temporary help budget to cover their overtime needs until the end of the fiscal year. Further, we are aware that overtime is not to be used to circumvent the furlough, and overtime is being requested and approved in the same manner as prior to the implementation of the furlough.

Deputy Director Boston reported that Cindy Abercrombie, Labor Relations Specialist, has accepted a position with the Franchise Tax Board. We are losing a valuable member of the Personnel staff. Ms. Abercrombie started with CUIAB in November 1989. Member Richardson and the rest of the Board commended Ms. Abercrombie for her service and asked that Ms. Boston pass our well wishes along to her.

Deputy Director Boston reported that Personnel recently released the exam bulletin for the CEA position in Appellate Operations. The bulletin has been posted on the State Personnel Board website and will be advertised in the Capitol Morning Report and the Capitol Weekly. The final filing date is March 9, 2009.

**9. Chief Counsel's Report:**

Chief Counsel Ralph Hilton reported from the Workload Report that each board member received 22-23 cases per day on the average, with the exception of the two new Board members who are carrying a reduced workload until they are fully trained.

Chief Counsel Hilton reported, with regard to litigation, four new cases filed in January and two cases closed, both of which affirmed the Board decisions.

**10. Unfinished & New Business:**

Budget Plan 2008/09: Acting Executive Director Flagg stated that the Agency's budget is under review by staff in light of continuing workload developments and anticipated funding changes. We anticipate there will need to be changes to the Budget Plan as initially approved by the Board, but at this time staff has not had enough time nor enough information (the necessary funding numbers) to present proposed revisions to the Board for consideration. We will be ready to do so by the time of the March Board meeting, although a special Board meeting prior to the regularly-scheduled March meeting is also an option.

Member Richardson asked if we have received any new information regarding the federal funding rate.

Acting Director Flagg replied that they had not yet heard anything, and we were supposed to hear in January. Our current budget is very conservative and assumes 32% funding for the over base. We did get reimbursed dollar for dollar for the first two quarters. When the proposed Budget revisions are presented to the Board, we will give the Board a couple of options, one assuming funding at the 32% level, the other assuming funding at the 100% level.

Member Richardson asked if historically CUIAB had been reimbursed on a 100% basis. Acting Executive Director Flagg responded that according to EDD historically CUIAB has been reimbursed somewhere between 85 cents and a dollar.

Member Richardson asked if there is any reason to believe that CUIAB will not be reimbursed at that rate. Acting Executive Director Flagg again responded that according to EDD this is the very first time that CUIAB has been put in this position, so there is no way to say. EDD is operating on the assumption that they will be reimbursed dollar for dollar, but CUIAB is not.

Member Richardson asked if CUIAB anticipates any surplus at the 32% level of funding. Acting Executive Director Flagg responded that the Fiscal Officer, with the help of ALJ Hugh Harrison, estimates that if CUIAB continues operating on the basis of the previously adopted budget, which anticipates reimbursement at 32%,

we may have about a \$4.5 million windfall at the end of the fiscal year. If for some reason CUIAB is reimbursed at the full amount we may have much more money than that.

Appeals Board Policy Statement No. 18, Pepper Gas (Attachment B): Chief Counsel Hilton that this policy is been superseded by a provision in the Penal Code that addresses the possession and use of pepper gas, and should therefore be repealed. Under CUIAB's policy there were a number of requirements that employees had to meet before they could bring pepper gas onto the premises, including specific training. CUIAB cannot impose such additional requirements in the face of the Penal Code provision that allows any citizen in the State of California to own up to 2.5 ounces of pepper spray and to take that with them wherever they need for purposes of defense. Accordingly he is asking that the Board to vote to repeal Appeals Board Policy No. 18.

Member Figueroa commented that she is concerned that if an employee uses pepper gas on the premises that there be a report. Chief Counsel Hilton responded that there are other separate reporting requirements already in place, apart from this Appeals Board Policy, that require that an incident report be filed whenever any threat or incident occurs.

Member Garcia asked if CUIAB needed to develop a policy for taser guns. Chief Counsel Hilton replied that that is totally a separate item and he does not believe there are any provisions for the general citizenry to carry tasers.

The Board voted unanimously to repeal Appeals Board Policy #18 relating to pepper gas.

**11. Public Comment:**

There was no public comment.

**12. Closed Session:**

No votes were reported.

**Adjournment**

-----Original Message-----

**From:** Jorge Carrillo  
**Sent:** Tuesday, February 03, 2009 9:41 AM  
**To:** PALJs; Alberto Roldan; LSS IIs; LSS Is  
**Subject:** Board Appeals--FO to AO

ATTACHMENT A

Below are the numbers for the month of January 2009 that shows the time it takes a board appeal to reach Appellate Operations (AO) and for AO to begin its work. To reiterate, this time measurement starts from the date of the postmark of an appeal (or, if applicable, the fax date or delivery date) to the time AO begins to process the board appeal, usually one or two days after receipt at AO. Given the various processes, a number of 8 days or less is a good average. Some offices this month are averaging 4 to 5 days which is excellent. Keep in mind that this query was run on February 2 and there still may be a number of board appeals filed in January still in the field and not reflected in these numbers.

As a way to compare, I am also including numbers for the months of November and December 2008. As you can see, there have been dramatic improvements in the past 3 months. I very much appreciate your efforts and attentiveness in this regard.

The Board has asked me to report these numbers at each board meeting and to obtain reasons from any office that is substantially above the average. I will be contacting offices that are averaging 10 days or more in January 2009 for information. Thank you. Jorge

**FO TO AO REPORT  
QUERY FOR JANUARY ON 2/2/09**

<b>OFFICE</b>	<b>NOV 08</b>	<b>DEC 08</b>	<b>JAN 09</b>	<b># CASES (JAN 09)</b>
<b>FRESNO</b>	9.17	8.72	6.89	90
<b>INGLEWOOD</b>	9.24	9.25	6.53	100
<b>INLAND</b>	8.22	9.62	5.47	104
<b>LOS ANGELES</b>	8.63	6.87	4.78	51
<b>OAKLAND</b>	17.66	11.38	10.83	87
<b>ORANGE CO</b>	8.27	5.94	5.55	115
<b>OXNARD</b>	8.25	6.58	6.04	99
<b>PASADENA</b>	18.58	14.17	12.77	65
<b>SACRAMENTO</b>	8.29	8.72	4.91	175
<b>SAN DIEGO</b>	10.98	7.79	7.24	95
<b>SAN FRANCISCO</b>	8.78	8.14	7.57	117
<b>SAN JOSE</b>	11.03	13.24	14.48	31
<b>TAX</b>	16.12	19.17	9.85	20
<b>TOTAL</b>	10.28	8.99	7.11	1149

## Appeals Board Policy Statement #18

SUBJECT: Pepper Gas

### PURPOSE

To establish a safer working environment for all CUIAB employees, by providing a defensive tool which can lessen the potential for injury to employees by irate clients.

### POLICY

It is the policy of the California Unemployment Appeals Board to provide information, tools, and training which will enhance the safety of its employees. To help CUIAB employees protect themselves in a potentially violent situation, all employees may apply to the Operations Security Officer to carry Pepper Gas on CUIAB leased or owned property.

### PROCEDURES

#### A. Training

1. Any employee wishing to carry Pepper Gas should place his/her name on the sign-up list. The sign-up list will be maintained by the PALJ or his/her appointee in each field office. The sign-up list at the Venture Oaks office will be maintained by each unit (cost center) manager.
2. Employees must attend a CUIAB authorized training class and receive a certificate authorizing them to carry Pepper Gas before any employee will be permitted to possess Pepper Gas on CUIAB leased or owned property.
3. Training will be provided for the employees at each field office when there is sufficient interest and operationally feasible.

#### B. Use of Pepper Gas

1. Pepper Gas may only be used as a defensive weapon to protect an employee from a clear and present danger of bodily harm and when other alternatives are not practical.
2. Employees will not brandish, threaten, or spray anyone with Pepper Gas until a clear threat exists.

#### C. When Pepper Gas is used.

1. Notify your supervisor immediately.

2. Obtain medical assistance for the person sprayed with Pepper Gas.
3. Call State Police or Local Police to have the assailant arrested. (usually for Battery or Assault)
4. Forward a complete written report via FAX (916) 263-3465 of all the facts and circumstances of the incident, within 24 hours, to the Operations Security Officer. Include the following:
  - a. names of all persons involved
  - b. names of all witnesses
  - c. time/date of incident
  - d. address of incident
  - e. circumstances which led to the use of Pepper Gas
  - f. name of medical company providing assistance to person sprayed
  - g. name of Police Department, report number, disposition
  - h. condition of assailant
  - i. injuries to employee

Reports will be distributed by the Operations Security Officer to the Chairman, Chief Counsel, and as appropriate, the Chief ALJ, Chief of Appellate Operations, and PALJ.

ADOPTED: 8-2-94