

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5587**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., March 17, 2015, in Sacramento with Chair Robert Dresser presiding.

2. Roll Call: Members

Present

Absent

Robert Dresser, Chair

x

Michael Allen, Vice Chair

x

Ellen Corbett

x

3. Approval of the Minutes:

The February 10, 2015 minutes were approved unanimously.

4. Chair's Report:

Chair Dresser swore in the new Board Member, former State Senator Ellen Corbett. Chair Dresser commented that even though Member Corbett has only been here a couple weeks she is already doing cases and a great job. Chair Dresser also commented that he does miss Member Ashburn. They served together almost four years and he will be missed.

Chair Dresser reported that we are still on track to reach our March 31 Department of Labor timeliness standards, which means that the decisions are issuing in a timely way for the parties. The staff, judges, and support staff have worked very hard to keep CUIAB meeting the timeliness standards.

Chair Dresser reported that senior staff has been working very hard on the Budget 2015/16. He cannot say at this point what the end-result will be, however a lot of work has gone into that effort.

Chair Dresser understands that the newly revised standard paragraphs have been disseminated to the field and Appellate Operations. He thanked everyone who worked so hard on developing the revised and new paragraphs including former

Member John Adkisson.

5. Board Member Reports:

Vice Chair Allen welcomed Member Corbett to the board. He thinks that she will find it incredibly satisfying work. One thing that he mentioned in his first few months here was how incredibly helpful he found all the staff at CUIAB. They are very competent, very kind and they do an incredible job. He mentioned that Tennessee Williams did a play called The Period of Adjustment and he thinks that the agency right now is going through such a period of time where we've had a reduction in force because the economy has been improving. It's a big struggle to make sure that management, the judges and the support staff adjust. He wanted to convey his support for his fellow board members and the entire staff that it is a difficult period as we try to find that equilibrium and also stay within the standards that are set for us.

Member Corbett commented that she feels very welcomed in the few weeks that she has been with CUIAB. She has been very well-trained and very welcomed. She echoed Member Allen's remarks about staff and she thanked them for their help to her. She has always found it very rewarding and it feels very good as an attorney to be back in the saddle and using her legal education for the good of the public and the State of California. She feels much honored that she was chosen by President Pro Temp de Leon to serve in this position and she is also very grateful that he decided to appoint a woman to the board because she thinks that is very important perspective to share with all the other great perspectives here on the board. She thanked the Chair for swearing her in this morning and stated that she looks forward to working with both members. She knows these are challenging times and she will roll up her sleeves and jump in to do everything she can to help make sure they serve their mission here at the board.

6. Public Comment:

Katherine Fiester, an attorney with Legal Aid Society – Employment Law Center in San Francisco who works with the unemployment insurance project there, addressed the board. She appreciates the opportunity to speak with the board today about the closure of the San Francisco Appeals Office which is a grave concern of hers and equally alarming to sister organizations in San Francisco. She commented that they represent low-wage workers from under-represented communities who depend on unemployment insurance and state disability benefits once they become unemployed. Many of their clients have limited English proficiencies and many of them are illiterate. They understand that closure would

result in moving in-person hearings to either Oakland or San Jose, or to abandon in-person hearings. Interpretation for non-English speakers is usually simultaneous, and telephone hearings would have a devastating effect on their clients. Perhaps the most challenging is the inability to account for the parties' demeanor in a telephonic hearing which they really feel is crucial to adjudicating these matters. She also extended her appreciation to the board. Their clients have been well-served by the board, and the judges who understand the issues that their clients face. She provided the board with a letter outlining these concerns in greater detail which was written on behalf of unemployment insurance advocacy organizations. The letter was written on behalf of the AIDS Legal Referral Panel, Asian-Americans Advancing Justice – Asian Law Caucus, National Employment Law Project, Women's Employment Rights Clinic of Golden Gate University School of Law, Professors Miye Goishi, Gail Silverstein, and Eumi K. Lee of UC Hastings College of Law, and Chinese Progressive Association. She requested that this letter be attached to the minutes of the hearing and she welcomes the opportunity to answer any questions.

Chair Dresser commented that the board has not taken any official vote to close the San Francisco office. He stated that the letter will be appended to and made part of the record. He also wanted her to know that the board has taken a consistent position for many years that they prefer in-person hearings. Sometimes for good cause telephonic hearings are appropriate. Personally, speaking for himself as Chair, he does not want to increase the percentage of telephonic hearings if it can be avoided. Many factors go into that including budget and other matters, but at this point he feels strongly not to increase the number of telephonic hearings.

Vice Chair Allen commented that they have not discussed the closures at length in their deliberations. He stated that CUIAB is known to have a robust justice system and the cost of due process is very expensive, on the other hand the cost of not having it in his opinion are even greater to society. He commented that he took copious notes while she was talking, they will read the letter, and they will be talking about it in their session. They are part of the process in determining what the budget will be, but just a piece of it. She needs to be mindful that the board is one piece of it and they have to negotiate with other parts of state government. He thanked her for her presentation.

Member Corbett thanked her for traveling all the way to Sacramento to be with the board today and present her perspective, it's very important and she knows they appreciate when the public comes to speak to the board. They will definitely take this under consideration. She agreed with Chair Dresser that obviously in-person

testimony is so important especially with regard to analyzing the demeanor of the parties.

Chief ALJ/Executive Director Gonzales clarified the facts as to what occurred with the San Francisco Office of Appeals. For more than a year the San Francisco lease was ending, and it was a very expensive lease. The Department of General Services conducted a site-search with our facilities staff and the presiding judge of San Francisco for about a year and a half to try to find sufficient space in the city of San Francisco, Daly City, South San Francisco, and even in Candlestick Park area. In San Francisco, the rental market had increased dramatically and they could not find a facility that would satisfy the needs that they had for the amount CUIAB could pay, in addition to improvements that would have to be made in advance of a move. A number of months ago, in view of the fact that they couldn't extend the lease beyond the May 31 deadline, they had to do something. The decision was made to co-locate the staff and judges in San Francisco to the Oakland Office of Appeals. It is a block from the BART station and CUIAB was already paying for it. But there was no decision to close the San Francisco Office of Appeals. At the current time we are, with DGS's help, looking for free space or for a small fee in other state agency buildings hopefully as of June 1 so that there will be hearing room space in the City of San Francisco to serve the City of San Francisco clientele. She emphasized that no board vote to close has been taken.

Ms. Fiester stated that she would lend their support in the search and that they would be happy to do anything that they can to assist.

Chief ALJ/Executive Director Gonzales, echoed the comments of the Chair and board members that the in person hearings really do make a difference and that there is no question that it makes a big difference to have people available in front of you.

Chair Dresser added that this is especially so with interpreters.

Ms. Fiester stated that with their clients the majority of the hearings she has been involved with have been interpreter hearings.

7. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Gonzales welcomed the Board Member Corbett.

Chief ALJ/Executive Director Gonzales reported that her report this month is going to be mostly numbers because as the Board Chair mentioned on March 31, is the

day on which the federal government measures CUIAB's compliance with timeliness. There are two timeliness standards, one is the case aging and one is time lapse and we have to comply with both those on March 31. One is a snapshot of just that day, March 31, of the average age of the open cases; the other is the 12-month average of the entire year up to March 31 of the average time it has taken to issue decisions in cases (time lapse). For the month of February CUIAB did not make time lapse. We closing closed 57.3% (the standard is 60%) within 30 days; and 73.8% (the standard is 80%) within 45 days. However, for the first two weeks of March, the most recent numbers show that CUIAB is in compliance with all of the timeliness standards, so despite a few in the interim, it appears that on March 31 we will make all three standards. For annual numbers, in terms of case age, right now the most recent data in the field is 20.6 days (the standard requires on March 31 it be under 30 days). The time lapse numbers show a 75% 30-day time lapse, and a 90% 45-day time lapse. So again it appears we will have outperformed the standards for the second year in a row. Chief Gonzales noted that the February numbers were anticipated due to the residual carry-over effect of staff vacations over the holidays, which was encouraged by management. She stated that she believes the presiding judges are watching the calendars making sure that all of the cases are heard.

Chief ALJ/Executive Director Gonzales reported in February the open balance of cases was the lowest that it has been since January 2000. The open balance for the end of February showed 14,500 UI cases. It has actually gone down in the last two weeks to under 14,000 cases and to put it in a frame of reference for the new board member in September 2009 there was a balance of 81,000 cases and it is now below 14,000 cases. The economy is improving, it is good news for the rest of the economy, but in terms of CUIAB cases it is one of the lowest numbers. The current open balance of all cases moving into March is 23,500 cases. That of course does impact CUIAB's budget for the future with the caseload dropping.

8. Chief ALJ of Appellate Operations, Elise Rose Report:

Chief ALJ of Appellate Operations Rose welcomed Member Corbett and reported that they have already accomplished a great deal. They've done some training and expect to finish the training by the end of the first week in April. They really hit the ground running.

Chief ALJ of Appellate Operations Rose reported that the same thing with Appellate Operations as happened in the field. They had a very difficult time in February and they did not make their numbers in February except for case aging but they didn't make any of their time lapse, 45-day or 75-day time lapse. They

have maintained 33.4 days average case-age as of the end of last week which is well within the 40 days. For the time lapse, they fell below the 50% standard at the end of February, at 21%. They are now at 51%, so they are just eeking above the standard so they are still going to be really pushing really hard to make sure they are over the 50% by the end of the month. They are also well above the standard for the 75 day and 150 days standards. Appellate Operations is a little different than the field in that while the field is legally required to meet all of those numbers, AO is legally required to meet case aging, but the time lapse are regarded as guidelines by the Department of Labor for tier two appeals. At the end of February the open balance was 1,690 cases which is the lowest it's been since 2009. She stated that in 2011, just to give the comparison, they had 6,000 cases. So that is a huge drop as well. They are watching the numbers very closely and noted that they currently have 469 cases that are at the log in desk and at the board all together. That means those cases are all basically complete unless the board reverses the administrative law judges' decision. So they have 469 there and an additional 50 cases that are in typing. This reflects a large chunk of cases that are pretty much ready to go and will hopefully give them a positive impact on the numbers as well.

Chief ALJ of Appellate Operations Rose reported that they are losing another judge to retirement, Lori Moreland, will be retiring at the end of the year and will be burning leave starting in June. So they will no longer have the benefit of her good work. She has been with the board over 25 years. That will be a loss to Appellate Operations.

9. Assistant to the Executive Director, Sal Cannella Report:

Assistant Chief Sal Cannella also welcomed Member Corbett to the board.

Assistant Chief Sal Cannella reported that there are lots of activities going on in IT. eCATS III is under development, which will be a major upgrade to what we have right now. That we will be able to group all the different employers, it is not only a cost saving but more efficient. That should be ready around September 1, but they are working on that. They are also working with IT to develop a comprehensive packet that will include FO decisions and all of the things that they mail out right now in one program as opposed to using two different programs to get that information. Again, this will save time and become more of an efficient operation.

Assistant Chief Sal Cannella reported that the court case application is being redesigned so that it will include a tracking and alert system for the Public Records requests handled by the Chief Counsel's Office.

Assistant Chief Sal Cannella reported on eFile that there is a program that the board members have where they can communicate with each other and have a list of all of the communications between each other so that they can keep up with the conversation. This will allow the board members to know where they are in their decision making. This upgrade is presently in the testing mode.

Assistant Chief Sal Cannella reported that Chief Rose has inquired about the possibility of emailing decisions from AO. They are discussing it. This would be a tremendous savings for the agency.

Assistant Chief Sal Cannella reported on the consolidating of recordkeeping for attendance. Instead of having attendance clerks in each office, they have been consolidated to two different areas to do the recordkeeping for the whole agency. He stated they hope to modify the Time Reporting System (TRS) to see if they can not only keep track of the time, but also generate monthly timecards.

Lastly, Assistant Chief Sal Cannella reported on the contracts for the cameras in the hearing facilities. These contracts are expiring and they are looking to develop a cost analysis of what it would cost to continue with that, what the repair would be, what it would be to have a contract to have a warranty for it and they will have that information available for the executive and the board to decide whether they want to continue with the monitoring of the hearing rooms or if it is a cost that is no longer affordable.

Chair Dresser asked if he had a rough estimate of the cost.

Assistant Chief Sal Cannella responded he did not—it had just come to his attention last week, and they have people starting on it. Once they have all the information they will submit it to the executive director and to the board to make a decision about how to proceed.

Chair Dresser asked in terms of the legal office if there were some plan to tickle or track appeals of the board's decisions. In other words, right now he's not sure whether that is on the computer or not. He commented that sometimes there are quite a few cases in litigation.

Chief Counsel Levy responded that presently legal-office staff manually enters calendar notes on a dedicated calendar in Outlook to keep track of the deadlines in litigation, but it is extremely resource intensive to spend that kind of time to do that. So he is talking with Assistant Chief Cannella's team about adding litigation-tracking protocols to the database. He stated that Assistant Chief Cannella's team

has been extremely helpful.

10. Chief Administrative Services, Robert Silva Report:

Chief Silva welcomed new Member Corbett to the board.

Chief Silva reported on the Monthly Overtime and Lump Sum Payouts. As usual there is not a lot to report with overtime. CUIAB continues to markedly underspend its overtime allocation for 2014/15. We have only spent \$1,385 in January 2015; that overtime was for a specific project, IT staff and a couple of Field Operations staff for performing some testing in the case tracking system in eCATS. He reported at the last board meeting that due to continuing retirements and separations we would most likely hit our full allocation through January and we came very close. CUIAB spent \$1.129 million, year to date, through January of the \$1.142 million allocation. However, we are seeing a decline in lump sum payouts as the fiscal year progresses. At last month's board meeting the estimated overage for lump sum was \$893,000 and has now been reduced to \$793,000 overage. That estimated overage is really not a concern to CUIAB's overall Personnel Budget for 2014/15. This last Friday we received updated expenditure reports through the month of January and CUIAB spent \$24.3 million of its \$41.4 million allocation for salaries and wages through January. That equates to 58.5% of the total fiscal allocation. In a perfect world we would have spent only 58.1% of that allocation through January but our higher expense months in personnel were at the beginning of the fiscal year prior to the SROA. That coupled with continued attritions this fiscal year CUIAB will definitely meet its budget requirements for 2014/15.

CUIAB is currently in the process of building the budget for next fiscal year 2015/16. Two weeks ago, CUIAB branches submitted Budget Call Letter requests for both Personnel and OE&E. The budget shop has consolidated these requests and a meeting of the Budget Advisory Committee has been set for April 27 and April 28. By then we should have a good idea where the budget will be for 2015/16 and will use that meeting to vet the Call Letter requests for 2015/16.

11. Chief Counsel's Report:

Chief Counsel Levy welcomed Board Member Corbett.

Chief Counsel Levy indicated that the Litigation Report is in the packets. CUIAB's current pending inventory is 274 cases in the various courts. There were two cases in the U.S. Supreme Court; one has been denied and one remains pending. The

board will be updated on that next month. This month CUIAB received six new Petitions for Writs of Mandate filed in the Superior Courts throughout California, five for claimants and one is an employer. Also, at the bottom of the Litigation Report it reflects 21 affirmances and 0 reversals in 2015 year to date.

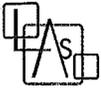
12. Unfinished and New Business:

No unfinished or new business.

13. Closed Session:

The Board went into closed session at 11:16 am. The Board adjourned from closed session at noon. No votes were reported.

The meeting adjourned at noon.



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Via Hand Delivery

March 16, 2015

The Honorable Judge Robert Dresser, Board Chair
and Honorable Members of the Board
California Unemployment Insurance Appeals Board
2400 Venture Oaks Way
Sacramento, California 95833

Re: *Closure of San Francisco Office of Appeals*

Dear Judge Dresser and Members of the Board:

Together with AIDS Legal Referral Panel, Asian-Americans Advancing Justice – Asian Law Caucus, National Employment Law Project, Women's Employment Rights Clinic of Golden Gate University School of Law, and Professors Miye Goishi, Gail Silverstein, and Eumi K. Lee of UC Hastings College of the Law (affiliation listed only for identification purposes), the Legal Aid Society – Employment Law Center ("Legal Aid") writes to express our deep concern over the closure of the San Francisco Office of Appeals. On behalf of low-wage worker community who most depend on unemployment insurance benefits and state disability insurance benefits to survive once they become unemployed or disabled, respectively, we urge that you reconsider your decision.

The signatories to this letter are all advocacy and legal services organizations or individuals who defend the rights of low-wage and unemployed workers and/or provide advice, counsel, and representation to San Francisco or San Mateo low-income residents in need of unemployment insurance benefits and/or state disability insurance benefits. As an example, Legal Aid is a non-profit public interest law whose mission is to protect, preserve, and advance the workplace rights of individuals from traditionally under-represented communities. Each year Legal Aid provides advice, counsel, and representation to over 2,000 low-wage workers through its Workers' Rights Clinics throughout California – a large fraction of whom specifically contacts us with questions regarding unemployment insurance benefits – and represents scores of clients at unemployment insurance appeal hearings before the Appeals Board each year. In 2014, for instance, Legal Aid represented over 70 clients, and in 2013, over 80 clients; over two-fifths of these cases were heard in the San Francisco Office of Appeals.

We understand that the Appeals Board has decided to close the San Francisco Office of Appeals when its lease ends on Berry Street in May 2015. This is troublesome, to say the least. San Francisco's Office of Appeals covers a very large territory and adjudicates the claims of potentially millions of claimants. The importance of San Francisco as a site in the

unemployment insurance landscape is even codified in the Unemployment Insurance Code: “[f]ree public employment offices shall be maintained in the Cities of San Francisco, Los Angeles, Oakland and Sacramento, and, whenever the director deems it necessary, in other cities.”¹ It is incongruous to close the San Francisco Office of Appeals with such clear legislative guidance to the contrary.

We further understand that the Appeals Board is now considering between two alternatives: sending claimants to either Oakland or San Jose, or replacing in-person hearings with phone hearings. Neither is feasible for our client populations.

As for the first option, many of our clients, most of whom live paycheck to paycheck, will not be able to afford the commute. Because we also represent clients in the East Bay, we know that many of our unemployed clients who are counting the cost of each meal they eat, cannot afford the commute on public transportation to our office in San Francisco to drop off a case file or prepare for a hearing;² we believe the same to be true for those in San Francisco or San Mateo counties headed to Oakland or San Jose.³ For our clients who are not English-speaking and/or illiterate, few have ventured beyond their neighborhoods within San Francisco and have even experienced difficulties in getting to our office in downtown San Francisco; undoubtedly, this population would be unable to navigate a new form of public transportation without assistance. For those with impaired physical mobility, a longer commute – one that requires multiple legs on different modes of transportation – might make a claimant who is otherwise able to attend in person, remain home-bound.

As for the second proposed alternative, that the Appeals Board would hold telephonic hearings in the cases of our clients who could not reach the Oakland or San Jose Office of Appeals, it is equally untenable. Telephonic hearings raise a myriad of procedural concerns, such as requiring all supporting documentation well in advance – usually a day or two after the Notice of Hearing is received by the claimant, and weaken due process protections. For claimants unfamiliar with the procedure, the telephonic hearing will be difficult to follow; for those who request interpretation services, they will experience further procedural barriers. And perhaps most challenging with telephonic hearings, is the inability to account for the parties’ demeanor,⁴ making credibility findings all the more arbitrary. Furthermore, there is clear legislative guidance that in-person appeal hearings are preferable. Sections 1951 and 1953.5 of the Unemployment Insurance Code require a party requesting a telephonic hearing to show good cause. This requirement embodies the legislative conclusion that in-person hearings are superior to telephonic appearances. Occasionally allowing clients to request telephonic appearances when they reside out of state, for instance, is one thing; requiring them to do so, because they live in San Francisco or San Mateo county, is another. The California Law Revision Commission’s comments state that telephonic hearings

¹ (Unemp. Ins. Code § 2055.)

² Not including the expense of getting around Alameda County on ACTransit, a roundtrip BART ticket from downtown Oakland to our office in downtown San Francisco is just over \$6.50. (Bay Area Rapid Transit, Fare Calculator, at <<http://www.bart.gov/tickets/calculator>> [as of March 16, 2015].)

³ A roundtrip Caltrain ticket from San Francisco to San Jose is approximately \$18.50 (Caltrain, Fare Chart <<http://www.caltrain.com/Fares/farechart.html>> [as of March 16, 2015]), and from our experience, the San Jose Appeals Board Office is a tram- **and** bus-ride away from the various Caltrain stations in San Jose, adding over 30 minutes to an already long commute. In addition to the BART or Caltrain fare, San Francisco’s MUNI fare for a roundtrip ticket is \$4.50 for a non-disabled adult. (San Francisco Municipal Transportation Agency, Single Rides & Transfers, at <<http://www.sfmta.com/getting-around/transit/fares-passes/single-rides-transfers>> [as of March 16, 2015].)

⁴ As advocates we find telephonic appearances more challenging, too, because of our inability to look a lying witness in the eye, read a judge’s reaction to certain testimony, etc.

may be granted only in cases where "the amount in controversy is relatively small."⁵ However, for most of our low-wage worker clients, who barely make ends meet while working, these benefits represent more of a lifeline than a safety net; it helps put food on the table and keep a roof overhead. Our clients never consider their claim for unemployment insurance or state disability benefits to be "relatively small" as they are wholly dependent on these benefits as a temporary source of income to pay the very cell phone bill that telephonic hearings would require. In fact, we have served many clients who do not have a telephone available to them at the time of their appeal hearing;⁶ the proposed closure and move to telephonic hearings would essentially require that such clients forfeit the very benefits for which they so desperately need.

Again, we reiterate our concerns about the office closure and the alternatives being contemplated, and we urge you to reconsider. In coming days, we will be reaching out to our legislators so that they know of the devastating impact this office closure will have on our client communities. Any other support we can lend so that the San Francisco Office of Appeals remains open, please do not hesitate to contact us by phone at 415.864.8848 or electronic mail at kfiester@las-elc.org or cvigne@las-elc.org, respectively.

Sincerely yours,



Katherine Fiester & Carole Vigne
Legal Aid Society – Employment Law Center

On behalf of
AIDS Legal Referral Panel
Asian-Americans Advancing Justice – Asian Law Caucus
National Employment Law Project
Women's Employment Rights Clinic of Golden Gate University School of Law
Professors Miye Goishi, Gail Silverstein, and Eumi K. Lee of UC Hastings College of the Law (affiliation listed only for identification purposes)

⁵ (Unemp. Ins. Code §1953.5; Cal. Law Revision Comm. com., 27 Cal.L.Rev.Comm. Reports (1997) p.593.)

⁶ On average, our clients wait a minimum of two months from the day they file for unemployment insurance to attend their appeal hearing. Over these two months, our clients are often on the verge of eviction and any last penny is spent on feeding their families; paying their cell phone bill is the least of their concerns.



The
Legal Aid Society—
Employment Law
Center

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The Honorable Judge Robert Dresser
and Honorable Members of the Board
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