

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5581**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 a.m., September 9, 2014, in Sacramento with Chair Robert Dresser presiding.

<b>2. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Robert Dresser, Chair	X	
Michael Allen, Vice Chair	X	
Roy Ashburn	X	
John Adkisson	X	

**3. Approval of the Minutes:**

The August 12, 2014, minutes were approved unanimously.

**4. Chair's Report:**

Chair Dresser reported that unfortunately their mitigation efforts did not cover all of the 50 judicial positions that had to be cut by September 1, approximately 16 judges were laid off.

Chair Dresser reported that the Bureau of State Audit report was issued and CUIAB is endeavoring to analyze trends pursuant to the recommendations contained in the BSA report. He believes that the Chief's Office is taking steps so that CUIAB complies with their recommendations.

Chair Dresser reported that he understands that CUIAB made the federal time lapse for August, despite the fact that up to 25% of the judges have been on leave or using up excess leave over the past couple of months. He commended the judges and staff for continuing to make the federal standards both in time lapse and case aging.

**5. Board Member Reports:**

Vice Chair Allen commented on how pleased he is that Governor Brown has reappointed Bob Dresser as Chair. Vice Chair Allen mentioned that he has had a lot of experience in the public and private sector with layoff and people having to adjust to changed circumstances. He just wanted to assure everyone that when it comes to the staff, the employees of the agency, the board really feels strongly about trying to be supportive of the mission and of the people who work for us. He wanted to reiterate this publicly to all of them because it is an important ongoing concern.

Member Ashburn congratulated the Chair on his reappointment by the Governor.

Member Adkisson echoed the comments his colleagues and elaborated on the Chair's reappointment. He has spoken to dozens of people about this and they are in absolute uniformity, universality, and great relief in the fact that the Chair has been reappointed. He stated that the Chair should know that he is not only respected but dearly loved and people were very pleased in the turn of events.

Member Adkisson commented that he was getting tremendously positive response from staff and from other board members regarding the reexamination of many of the standard paragraphs and precedents, and the need to speed up the precedent process and to better document the process of standard paragraphs on a legal basis by which we grant and deny claims which is our main mission. He praised the staff their hard work and dedication.

**6. Public Comment:**

Mr. James Bourbeau, an attorney in Sacramento, commented on case number AO-348835, Northern California Dance Conservatory. He requested that the Board revisit this decision en banc. Ms. Jennifer Bradford, petitioner in this case, also requested that the Board reconsider its decision.

Chair Dresser responded that generally when the board issues a decision that is the end of it. The board cannot reconsider. The board will take the request under submission and if there is something that the board chooses to do legally, they will do it. If not, then the recourse will be, as her counsel said, to file a claim for refund.

Member Adkisson also said she has recourse in court. He doesn't know if the Board can reopen the case. However, another recourse it to go to the Legislature to request an exception from the general rule.

Mr. Glen Jones, Senior Staff Counsel with the Employment Development Department addressed the board regarding item number 12. The director of EDD has respectfully asked the board to continue consideration on this matter for 90 days because they have some concerns about the case.

Chair Dresser responded that there was not a copy of the decision included with the agenda notice therefore it cannot be considered today. He did open it to the board. Personally he thinks the request from the EDD director has merit but he is just one vote. He suggested that the board agree to defer it for a while. He does not want to put 90 days on it but since they cannot consider it today anyway maybe they can just leave it open.

Member Adkisson commented that this decision has been delayed for most of this year, almost the entire year. He thinks that is when it first started. It may have only come to the attention of EDD recently and that's why their request is made, and he understands it. But it is a question of great complication and of first impressions. He commented that it has always been their assumption that it was going to end up in some sort of a superior court hearing which would provide a lot more than 90 days for the time to talk about it and think about it. He personally thinks that given the Chair's remarks that he would prevail but he would oppose any additional delay. He thinks these folks have been waiting for too long for unemployment benefits and this should become the rule as fast as possible, 30 days does give the EDD a victory here without even a vote. He thinks he understands the reason, it's in good faith but he thinks they are going to get a lot more than 90 days because he imagines someone is going to bring this to a court. It is a very important issue and it is a matter of absolute first impressions, never been decided by anyone so it will start all over again. The state is going to have plenty of time. The only difference is the board is going to be voting on whether to make it a precedent and that means it can be taken up. He can't imagine a situation where they are not going to get all of the time in the world to consider what they need before even an argument is made on the merits. He would otherwise sympathize with it but he would vote against that.

Member Ashburn commented that for clarification there are two parts. There is the decision on this particular case and then there is the adoption of the decision as a precedent. There is no delay requested as he understands the director's letter with respect to the adoption of the decision on the case. The letter refers to the consideration for the adoption as a precedent decision. Now that the language is available and his dissent is available, he can't recall in his time here nearly four years the director of the department of EDD ever asking for a delay. This is a very

far reaching decision. Specifically, the director asked for consultation with the Sacramento Public Authority, with Department of Social Services and he thinks the consideration for the cost impact to state government goes beyond those, 90 days seems very reasonable. His reluctance with respect to 90 days is he does not want the delay to exceed his term on this board. He'd like to be able to be here at the time a decision is finally rendered with respect to the consideration of the precedent decision. However, he stated that 90 days seemed reasonable to him.

Member Adkisson responded that he agrees with almost everything that Member Ashburn said and said well. The one point he would like to add, and he knows that they all agree with this because it is just a fact, is that part of the delay, not all of it not even most of it, but part of the delay was that the record was so poorly put together by the parties that this board had to go out and reopen to get the basic facts necessary to decide the case and that is the responsibility of the parties some of whom, he thinks it was the EDD, didn't even show up for the oral hearing. He does not agree, he thinks there were a lot of internal reasons that this was delayed but there were also external reasons. He stated that the EDD was right at the center of that, made it very difficult for us to get the facts necessary to decide this case, which was very tough. He stated that there are arguments on both sides. He would just point out that there bears some responsibility by the EDD itself for the delay.

Vice Chair Allen remarked that they certainly are not considering this decision today as a precedent and he shares the concern of Member Ashburn about being able to rule on this before he leaves this board if he is not reappointed but having said that he just takes note of the request at this point and just note that at least for today's purposes they are not going hearing the matter.

Chair Dresser stated that it will not be considered today and may take it up next meeting.

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

Assistant Chief Judge Stephen Swenson gave the report on behalf of Chief ALJ/Executive Director Gonzales. He joined the comments made by the board members with respect to Chair Dresser's reappointment that they are very pleased in the field that that has occurred. He reported that Field Operations continues to meet the Department of Labor time lapse standards. For the 30-day time lapse they have now met that standard for the 18<sup>th</sup> consecutive month and for the 45-day time lapse the 29<sup>th</sup> straight month so they are closing in on three years on that one. Field Operation's intake for last month was just under 24,000, it's continuing to fall

and actually the lowest intake they have had since February 2008 so the economic recovery seems to be well underway and it is reflected in the numbers. For the UI cases just a little bit over 22,000 were registered, again the lowest since February 2008. Extension cases have fallen off and continued 55% each month even beyond last month which was also 55% decrease. DI cases, there is an open inventory of just over 2,000 and it is 20% greater than the average for 2014 even though the intake was lower this month the 20% average is kind of steady over the last few months. Tax rulings, there is 5,000 open cases.

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

Chief ALJ of Appellate Operations Rose added her congratulations to Chair Dresser. She reported that AO's registrations are about average for this year. Their dispositions for last month were 1,813 which is the highest they have had this calendar year. AO's open balance is 2,459. The last two months it's been higher than it has been in the past. They have had a number of ALJs burning excess leave; they've had some on vacation, also the ones that who are being laid off using time as well. They are still within their case aging requirements for the Department of Labor at 35.9 days although that has been on the rise this last week or so. Time lapse for the 45-day measure, this is the second month in a row that AO has not made its 50% goal they are at 49%. Last week AO found itself in compliance again. AO is still getting its cases from FO in a fairly prompt manner, 1.66 days.

Chief Rose distributed to the board the AO Annual Evaluation of the Telecommute Policy. One of the board policies requires the Chief of AO to complete this every year. It's basically the same as last years except fewer ALJs so she didn't do a complete PowerPoint but if there are any questions feel free to call her.

Vice Chair Allen asked Chief Rose the status of the Precedent Process.

Chief Rose commented that she thought they were done with it.

Member Adkisson raised the point on the precedents. He was given a draft a long time ago and inquired if it had been changed. He stated that he did read that but it doesn't address what he thinks needs to be addressed. He doesn't know what the way to discuss that is. He stated that to him when it comes to writing bit important precedential decisions they really put a lot of time into it and they come out with a lot of thought but when he reads the old precedents from this agency they are about three pages long and the purpose of them is to address different fact patterns that come up so that in the future judges can look at those same fact

patterns and say well if this happens this should be the result. Those should not take anywhere near as long as one of these important precedential decisions that take tremendous amounts of research. He believes that the process changes that should be aimed at increasing the number of precedents to 10 to 15 per year. He says that not as a number he has taken out of his hat but he knows of about 30, 40, 50 areas where there are no precedents directly on point. He's had discussions with ALJs here about particular decisions and they end up coming to an impasse and they just have to make a call when in fact it would have been nice to have a precedent because this comes up several times. He would like that the procedures reflect that they should be attacking lots of issues and just going about these simple little precedents. He can list them off the top of his head about a dozen of them. They are just things that are not clear. They could go either way and we really ought to have a policy because they do come up repeatedly and each person from the EDD, to the hearing stage, to our stage and the 95% or more that never get appealed, all as many as possible are treated the same way under the same fact pattern. That's the reason for the precedents so we don't have different results based on the difference between my judgment and Mike's judgment or the ALJs hearing judges' judgment. He stated that there are lots and lots of those. He hopes that this precedent process can at least discuss the idea of doing something to expedite the number of precedents the board can take up, put to a process and make a decision about.

**9. Chief Information Officer, Rafael Placencia Report:**

Lori Kurosaka gave the report on behalf of Rafael Placencia. She also congratulated the Chair on his reappointment. They are very thankful and excited to work under his leadership for four more years.

Ms. Kurosaka thanked the very small and talented IT managers and staff for ensuring CUIAB's network and databases and telecommunications are up and running each day for appeal hearings and board appeals. IT lost a total of 10 staff since July 2013. This is equivalent to 23% of the IT positions that were established in July 2013 and they are now down to 33 filled positions in IT.

Ms. Kurosaka reported that they are experiencing a slight delay to rolling the new hardware for the hearing room facilities. IT staff are still planning to fully test pilot deployment in the Sacramento area hearing room.

Ms. Kurosaka reported that the programmers are very busy in development on the Automated Appeal Case Calendaring System for Field Operations. The programmers are also completing in-house small programming enhancements to

eCATS.

Lastly, Ms. Kurosaka reported that the telecommunications staff are installing phone menu options for the main customer phone lines the field offices. Seven of the 12 field offices are completed. The four remaining offices are anticipated to be completed in the next few months. They are anticipating switching by October 30. Sacramento field office is not eligible for this service because they have an older AT&T phone system that does not allow for phone menu options in the system.

**10. Chief Administrative Services, Robert Silva Report:**

Chief Silva, on behalf of Admin, congratulated the Chair on his reappointment.

Chief Silva gave the monthly Overtime Report that covers the first month of the current fiscal year. Now that the SROA process has been completed and the accompanying salaries and lump sum payouts associated with that have been realized the Budget Advisory Committee (BAC) will meet September 23, to put the finishing touches on both the personnel and OE&E side of the 2014/15 budget so that a proposed budget can be presented to the board during the October board meeting. He reported that after the Zero Based Budget Project in late 2013, CUIAB was given a 2013/14 OE&E budget of \$16.7 million. CUIAB's expenditures came well within that at \$15.9 million. That \$15.9 million figure in OE&E expenditures represents a reduction of \$1.4 million from CUIAB's actual expenditures back in 2012/13 fiscal year. After the Zero Based Budget project they were not however given a specific salary and wages expenditure target for 2013/14. CUIAB was tasked with beginning to reduce the budget in 2013/14 salary and wages to reach a total budget of \$41.4 million for state fiscal year 2014/15. In going back to 2012/13, CUIAB expended \$48.3 million in salary and wages. In state fiscal year 2013/14, even with sizable reduction in overtime and retired annuitant usage and realizing 85 attritions, CUIAB was only able to reduce salary and wages by \$1 million in 2013/14, ending with an expenditure of \$47.3 million. The just completed SROA effort along with additional attritions and further reductions in overtime, lump sum payouts, etc., are in large part what the BAC will be discussing on September 23, are to reduce the salary and wages by an additional \$5.9 million to meet the target of \$41.4 million for the current 2014/15 fiscal year.

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

Kim Hickox, Attorney, congratulated Chair Dresser on his reappointment and gave the report on behalf of Chief Counsel Steinhardt. Ms. Hickox reported that three new writ cases were opened for the month of August and five writ cases closed.

The board was affirmed in all but one of those cases. In the case the board was reversed on the court simply saw the facts differently.

**12. Unfinished and New Business:**

No unfinished or new business.

**13. Closed Session:**

The Board went into closed session to interview the candidates for Chief Counsel. The Board reconvened into public session to announce that Michael J. Levy was selected by unanimous vote of the Board pending reference checks.

**Adjournment**