MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5462

1. **Opening of Meeting:**

The Appeals Board convened at 10:30 am, October 18, 2005 in Sacramento, with Chair Cynthia K. Thornton presiding.

2. **Roll Call:**

Members	Present	Absent
Cynthia K. Thornton, Chair	x	
Ann Richardson, Vice Chair	x	
Virginia Strom-Martin	x	
Jack Cox	x	

3. **Approval of the Minutes:**

The September 28, 2005 minutes were approved by all members.

4. **Chair's Report:**

Chair Thornton reported that she hadn't heard anything about her reappointment.

5. **Board Member Reports:**

Vice Chair Richardson commended Appellate Operations on the tax precedent case that will be considered for precedent that day.

Member Cox congratulated everyone who weighed in on the precedent decision and complimented everyone for the good work.

Member Strom-Martin commented on the effort by a large number of people who produced an excellent product. Member Strom-Martin also commented that there is an excellent article in this months "Nation" regarding the economic impact of working for a living, and offered copies of the article to anyone interested.

6. **Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that we are waiting for the final word on the exact Judicial Conference budget numbers to see how we did under the budget goals set by Agency. We expect they will be good, which bodes well in obtaining approval for next years conference. In addition, surveys of the conference were very positive. Pat O'Neal, Department of Labor, called to commend us. Executive Director/Chief Administrative Law Judge Jay Arcellana thought it was a wonderful conference. All in all it was a good week with the Judicial Conference.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that we received a request for information from Agency about laptops, generated by Jackie Spears' Office. The Senator is concerned about personal information on portable IT devices, and the potential for theft or other loss. They asked for information about who has laptops, what type of information is on those laptops and if they contain personal, sensitive information. It appears that just three of our laptops fall within the category of portable IT equipment carrying sensitive information, and those few relate to IT staff needing the information for programming needs.

Executive Director/Chief Administrative Law Judge Jay Arcellana commended IT, P&PM and Ralph because they had to put together the package at the eleventh hour. He stated that it seems like we always get these things at the last minute.

Member Richardson asked what category the three laptops fell into.

Executive Director/Chief Administrative Law Judge Jay Arcellana replied that laptops that have information with respect to SSA numbers and other personal, confidential information on people to whom we provide services. The other laptops do not contain or have access to that type of information.

Member Richardson asked if Agency was looking for things like the recent EDD breech of SSN's.

Executive Director/Chief Administrative Law Judge Jay Arcellana replied that was his guess. They didn't really explain, but the request went from Agency to EDD first, and only later did Agency look at it and determine that CUIAB should also provide the same information.

Chair Thornton requested a copy of what was provided.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that Steve Angelides was not present because he and a number of other staff were in Pasadena to begin the digital recording pilot this week. A lot of effort has been put into the digital project, and Steve Angelides is to be commended, along with Paul Prestwich, Nick Dresser, and Mary Walton-Simons. They've put together an excellent training package.

7. Branch Reports:

a. Executive Director/Chief Administrative Law Judge Arcellana reported on several personnel matters: Joann Byrne is now the LSS II in the Oakland Office of Appeals. Charley Jackson retired last month and Joann has been with the Agency for a number of years. Since she was an LSS I in Oakland, we now have an LSS I opening that will be posted. Jasmine Mukai will be the PALJ in Oxnard. At the last meeting I reported that since no eligible people submitted applications for the position initially, we conducted a spot examination and came up with three very good candidates. There were three interview panels, one composed of support staff, one composed of judges, and the third panel w

management. Jasmine has been with the Agency for about 15 years, starting with the Van Nuys office. She will be a very fine presiding judge in Oxnard.

As to the September workload for the field, Executive Director/Chief Administrative Law Judge Arcellana reported a total of 21,662 cases verified. This is the lowest number of verifications in 3 years. That tells us that the workload is leveling off, which is positive. In terms of dispositions we see the same trend. There were 18,938 dispositions, a decrease of 20 percent. If you look at specific programs, such as UI, you see the same trend: 18,000 cases were verified in September this year, a drop off of 18 percent from earlier in the year, and the lowest level in 4 years. In UI, there were 16,756 dispositions, a decrease of 23 percent. Given the current workload, we have adequate staffing levels as long as we fill any vacancies which occur. We're also doing very well budget wise. Depending on the amount of work that comes in and how we work retirees, it is likely we will generate a surplus – not as large as we have in the past, but again I think we're in very good shape right now.

b. Appellate Operations ALJ II Jorge Carrillo, standing in for PALJ Stephen Angelides, reported a modest spike in registrations in August. Registrations in September dropped back to a more normal 1,147. This represents about 97 percent of our calendar year average. Because we lost a week of production to the Judicial Conference, our dispositions dropped to 1,147 cases. This is 78 percent of our calendar year average. As a result our open balance of cases rose to 2,620, which is about 112 percent of our calendar year average and the highest it's been since December 2004. We should be able to reduce that balance to a more normal level over the next few months as long as our registrations do not spike again. So far they have not done so in October. As anticipated with a relatively larger number of older cases our average case age increased for the first time this year from 38 days in August to 44 days in September. However it still remains well below our average case age in January of this year, which was 62 days. Our medium case age also increased from 34 days in August to 39 days in September. We do have one area of concern. We have a large and growing open balance of tax cases. The number now stands at 176, which is triple our open balance of 59 tax cases at the beginning of the year. These are typically lengthy and about half of our open tax cases are currently in CTU. We are already borrowing, cross training and using retirees in CTU and we are going to have to do even more of that. The good news is that the tax cases appealed to the Board tend to have a higher ratio of splits than benefit cases. Our current tax split ratio at Appellate Operations is 1.821. In other words for every tax file we have an average of 1.8 cases so our 176 tax cases actually represent about 98 files. That's still a lot of files but not as many as we first thought. More good news, the Judicial Conference is finished, work on two proposed precedent decisions is now completed, and a multi is almost ready to go out, thus our special assignments are starting to wind down. We still have to two special on-going assignments and a few shorter ones that will continue to necessitate our resources.

ALJ II Carrillo reported that he will be phased out of his on-going special assignment of handling the case administration duties and special projects by the end of the year, leaving those duties to Steve. He has agreed to continue to represent Appellate Operations on the Budget Advisory Committee. Tamara Pierson's retirement luncheon is scheduled on November 10, and the annual holiday luncheon is scheduled on December 7; everyone is invited.

c. Executive Director/Chief Administrative Law Judge Jay Arcellana reported for Deputy Director Pam Boston, Administrative Services Branch, that the landlord for the San Francisco office would like us to consider another proposal.

Executive Director/Chief Administrative Law Judge Jay Arcellana stated that the official version is that one of the perspective tenants backed out. A better sense of the thing is that there has been some local political pressure on this issue, and all along they've wanted to lease to us so they're trying to work through this. We're back in the ball game so that's very positive. Of course relocation alone would cost us 3 million.

Chair Thornton stated she recalled the problem was the height of the parking garage and that was a DGS, not us.

Executive Director/Chief Administrative Law Judge Jay Arcellana replied that it appears the request for variance from the ADA requirement is now being reconsidering.

We renewed our Watsonville lease because otherwise we would have no hearing facilities between Santa Cruz and Monterey. The issue is really a matter of cost – whether or not we want to continue to maintain a one or two room facility when the work does not always justify it on an economic basis. However, after looking at the nature of the claimants, many of them are migrant farm workers who have no legitimate form of transportation and to whom adequate bus routes are not available, we felt it was the right thing to do.

Member Richardson asked for more information about the San Francisco Office variance?

Executive Director/Chief Administrative Law Judge Jay Arcellana replied that the ADA allows existing tenants to obtain waiver of some requirements where the cost of the upgrades are unrealistic, which is exactly the situation in San Francisco. Initially when the request was submitted by the owner of the building for the waiver from DGS they were denied the request. Since then the State has contacted the landlord advising that it would reconsider the request.

Chair Thornton commented that the problem is the underground parking garage is two inches too low, but given the 3 million dollar cost for the move we could do valet parking for several years and avoid the parking issue.

Executive Director/Chief Administrative Law Judge Jay Arcellana said that was

actually a consideration, but there were any number of liability issues. The unions in the city were upset that we were contemplating getting into the valet business; and what happens if a car is stolen or damaged?

c. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on three projects. The first project is a follow-up report on the Customer Satisfaction Survey. She stated that she received an e-mail via EDD from UC Berkeley's Survey Research Center inquiring about our recent customer survey. UC Berkeley was seeking information from us in response to a request from the Assistant Chief Industrial Appeals Judge in the State of Washington. Their Board would like to survey the satisfaction or dissatisfaction of their judicial staff. She responded to their request but wanted to share some comments made by Frank Newhauser of the UC Berkeley Survey Research Center to us.

Chair Thornton asked how he heard about our survey.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons said he actually had been in the Oakland building at the time and observed the survey. She doesn't know if someone tipped him off or if it was just happenstance. In any event, he stated he was struck by how well the survey was conducted. He observed the survey techniques of UI staff and assumed from the attention to detail, control of traffic flow and everything about the operation that the survey was being conducted by a professional survey group. He further stated that if this was developed in-house, it was very well done. Mr. Newhauser should know a good survey when he sees it, since he works at a survey research center at UC Berkeley.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons stated that when she reported the results at the September Board meeting there were some questions she is now able to answer. On four of the questions there was absolutely zero percent of dissatisfaction. So for the strongly agree or strongly disagree on whether or not the reception staff was courteous, zero percent had no dissatisfaction with that. Similarly, zero percent dissatisfaction regarding the ALJ's explanation of what would happen at the hearing, the issue of the ALJ's fair treatment of the parties, for the overall hearing process, and zero percent from Spanish and Vietnamese claimants. So we actually had a better result for the surveys that were returned – usable data for the surveys that were translated in those languages.

Member Strom-Martin stated that it strikes her that as they're walkng out from their hearings and they're being asked these questions, they know that there is no decision on their case yet.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons stated that that is correct, and that is why the surveys had no information on them that required any identification. If they put anything on there it would have been a case number and that was optional. A lot of people didn't fill out any identifying information. The problem with survey results conducted by other states

-- for instance a mail survey -- the mail survey would come to the parties home address prior to the decision being issued because they wanted to see what the participants felt about the process before being influenced by their decision. The problem with this, of course, is the participants are aware that you know their name and address and therefore they would be concerned about the effect of their response on the still-pending decision. Obviously this would color the results of the survey. The other type of survey that could have been conducted was a telephone survey. Whether or not you call them before or after the decision was received, you have the same potential for coloring their responses. In both instances whoever is calling knows your name and phone number. We believe our process is the most anonymous way of conducting a survey – catching them as they go out the door when they don't have to put anything on there that makes any reference to who they are, their case number or anything like that. It is about as clean as you can get.

The PJ training update is that Renee Irwin, Joyce Bernatzke and I provided PJ training to Zaida Hackett and the supervisors in Los Angeles, thereby completing 8 of 12 offices. The four other offices, Orange County, Inland, Pasadena and San Francisco have a PJ or LSS II that's been there at least 15 years so there didn't seem to be a need to go there. But it looks like we're going back to Oxnard. And on the software training for the digital hearing pilot, we heard an overwhelming response from the P&PM staff that volunteered to be trainers for the digital hearing pilot. We had 15 staff trained. Steve said we only need 6 in Pasadena so a lot of people were disappointed that they couldn't go to Pasadena. But at least that means we have 9 backup trainers that at any point in time can cover for someone who is sick or if they find in San Francisco that they need additional staff for the training. So right now we have the two managers, Martha Silva and Martha Diaz, along with Ralyne Long, Joyce Bernatzke, Rosemarie Pineda and Pam Barrell. Special recognition to Rose and Pam, as they worked until 11 o'clock Thursday night and all day Friday with Julie Krebs to get them sent UPS and ready for Monday morning in Pasadena. So they've worked very hard along with Mary Mitchell to make what I think are excellent training manuals.

Member Strom-Martin asked whether there is any on-going training for the older PJ's training.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons stated that those PJ's are provided training on CAPS Reports, how to manage the office through using such reports and others that are very helpful to the PJs. Those reports show them which ALJs are behind in their decisions by name and by case number. Hugh Harrison produces what's called the 30-day Report that provides additional information, very detailed, for the PJs and it helps PJs manage their office for those items that have to do with the judges. And there are reports relating to any backlog of cases and UI case aging. The calendar clerk also needs to know how to use these reports for calendaring cases, keeping in

mind the case aging. The training is not mandatory for PJs. We only do it as requests come in.

Executive Director/Chief Administrative Law Judge Jay Arcellana stated that the Department of Personnel Administration states that when an individual is promoted into a PJ position as well as other supervisory positions there is a block training that is mandatory. So they go through that block training and learn the basic concepts to management. We have developed our own in-house training packages to address the specific needs of our agency, for example, teaching the PJs how to review cases for quality review. Mary's group provides training on how to read reports that we put together and workload report. We also have some people from Pam's shop who train on personnel matters, that type of thing and they do have on-going training sessions in the regard.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton stated that Board's case load is still healthy. In litigation we're carrying 122 cases. We received 5 new cases last month. We didn't close any cases last month, but we did receive a decision in the case I spoke about at the Judicial Conference, the San Francisco Unified School District case involving the substitute teachers. This case involved a Board Decision finding that substitute teachers are eligible for benefits, notwithstanding provisions relating to reasonable assurance, if they make themselves available but are not given work during the Summer session. This decision has been upheld by the San Francisco Superior Court. We are waiting to see if the San Francisco Unified School District will take this up to the Court of Appeals. They've got 60 days to decide. (Board Workload Report and Litigation Report, Attachments A and B respectively)

Chair Thornton asked if we're on track to have about 18,000 decisions at the Board level this year. Chief Counsel Ralph Hilton stated that we've got 13,000 right now and that it looks like we are.

9. Unfinished & New Business:

Chair Thornton asked Chief Counsel Ralph Hilton to present the case on the agenda up for consideration as a precedent.

Chief Counsel Ralph Hilton presented case number AO-11366. All Board Members have reviewed and deliberated over the decision itself, which involves the issue of burden of proof for statutory fraud, who has that burden of proof and what that burden is. The Board's decision places that burden upon EDD, and holds that it must be met by clear and convincing evidence. The question today for the Board is whether or not it wishes to designate this decision as a precedent. It is my recommendation that it be so designated, and it is also the recommendation of Appellate Operations. I invite any questions or discussions before the matter is offered up for a vote.

Chair Thornton stated that the first thing to do is get a motion and a second to have it designated then have the discussion. It was motioned by Member Strom-Martin and seconded by Member Richardson that case number AO-111366 be designated as a precedent decision. Is there any discussion on it? I think we've all seen the decision. I just want to say that this decision goes to show the level of work that we're capable of and I think Appellate Operations did a superb job and I understand it was a group effort there and there were a number of people that had input and I would just love to publicly say who they are because the work is just so outstandingly good.

Executive Director/Chief Administrative Law Judge Jay Arcellana stated that he believes that the Field Operation through the PJs weighed in as well.

Chief Counsel Ralph Hilton remarked that input was received from both the field and Appellate Operations with regard to this decision.

Member Richardson asked about an 1128b penalty that came into effect in 1995, which would be 2 years after the beginning of the penalty assessment period in this case, so is there any way to address that issue?

Chief Counsel Ralph Hilton asked if she meant to prorate the penalty?

Member Richardson asked if we know or are we just leaving it up to EDD to assess or are we just assuming EDD assessed it correctly because – well there's nothing in the statute that makes it retroactive.

Chair Thornton stated that a 50 percent penalty applies only to the assessment period that begins on January 1, 1995 which is when the statute went into effect.

Member Richardson states that she was looking for that footnote and that that was exactly what she wanted to know.

Chief Counsel Ralph Hilton stated that that was one of the things that was caught by virtue of circulating this decision to other units within the agency. That is the value of obtaining as much input as possible.

Chair Thornton asked for a vote. All those in favor of adopting AO-111366 as a precedent decision please say aye, all opposed? It's adopted unanimously. Thank you very much. This is an outstanding piece of work. I'm very impressed.

Chief Counsel Ralph Hilton stated that it would be posted on our website today or tomorrow.

10. Public Comment:

Claire Connelly stated that it was a pleasure to work with Chair Thornton and that she learned a great deal from her.

Chair Thornton stated that she hoped to be back next month.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board went into closed session.

LITIGATION CASES PENDING

TOTAL: 122

September 2005

Non-Benefit Cases: 3

New Cases Filed This Month: 5

Cases Closed This Month: 0

SUPERIOR COURT:	Claimant petitions	100	
	Employer petition	15	
	EDD petitions	0	115
APPELLATE COURT:	Claimant appeals	3	
	Employer appeals	1	
	EDD appeals	0	4

2005 Activity Summary

FILED - SUPERIOR COURT:	Claimant petitions	31	
	Employer petitions	9	
	EDD petitions	0	40
FILED - APPELLATE COURT:	Claimant appeals	1	
	Employer appeals	1	
	EDD appeals	0	2
CLOSED - SUPERIOR COURT:			35
CLOSED - APPELLATE COURT:			2

2005 Decision Summary

Claimant Appeals		Employer Appeals		CUIAB Decisions		
Win: 6	Loss: 23	Win: 3	Loss: 5	Affirmed: 30	Reversed: 6	Remanded: 1

Case Assignments to the Board for the Month of: September 2005

Agenda Item 8

Board Member		1st Member	2nd Member	3rd Member	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Ann Richardson											
	Sum	210	248	2	393	58	0	9	183	277	460
	Percent	24%	29%	0%	46%	7%	0%	1%	21%	32%	
Cynthia Thornton											
	Sum	192	224	1	359	54	1	3	166	251	417 *
	Percent	22%	26%	0%	42%	6%	0%	0%	19%	29%	
Jack Cox											
	Sum	237	221	2	399	52	1	8	164	296	460
	Percent	28%	26%	0%	46%	6%	0%	1%	19%	34%	
Virginia Strom-Martin											
	Sum	184	163	4	310	36	0	5	125	226	351 *
	Percent	21%	19%	0%	36%	4%	0%	1%	15%	26%	
Total Cases Reviewed:		823	856	9	1461	200	2	25	638	1050	

ATTACHMENT B

* Off Calendar

LITIGATION CASES PENDING — TOTAL: 121 — October 2005

Non-Benefit Cases: 3

New Cases Filed This Month: 2

Cases Closed This Month: 3

SUPERIOR COURT:	Claimant petitions	99	
	Employer petition	15	
	EDD petitions	0	114
APPELLATE COURT:	Claimant appeals	3	
	Employer appeals	1	
	EDD appeals	0	4

2005 Activity Summary

FILED - SUPERIOR COURT:	Claimant petitions	33	
	Employer petitions	9	
	EDD petitions	0	42
FILED - APPELLATE COURT:	Claimant appeals	1	
	Employer appeals	1	
	EDD appeals	0	2
CLOSED - SUPERIOR COURT:			38
CLOSED - APPELLATE COURT:			2

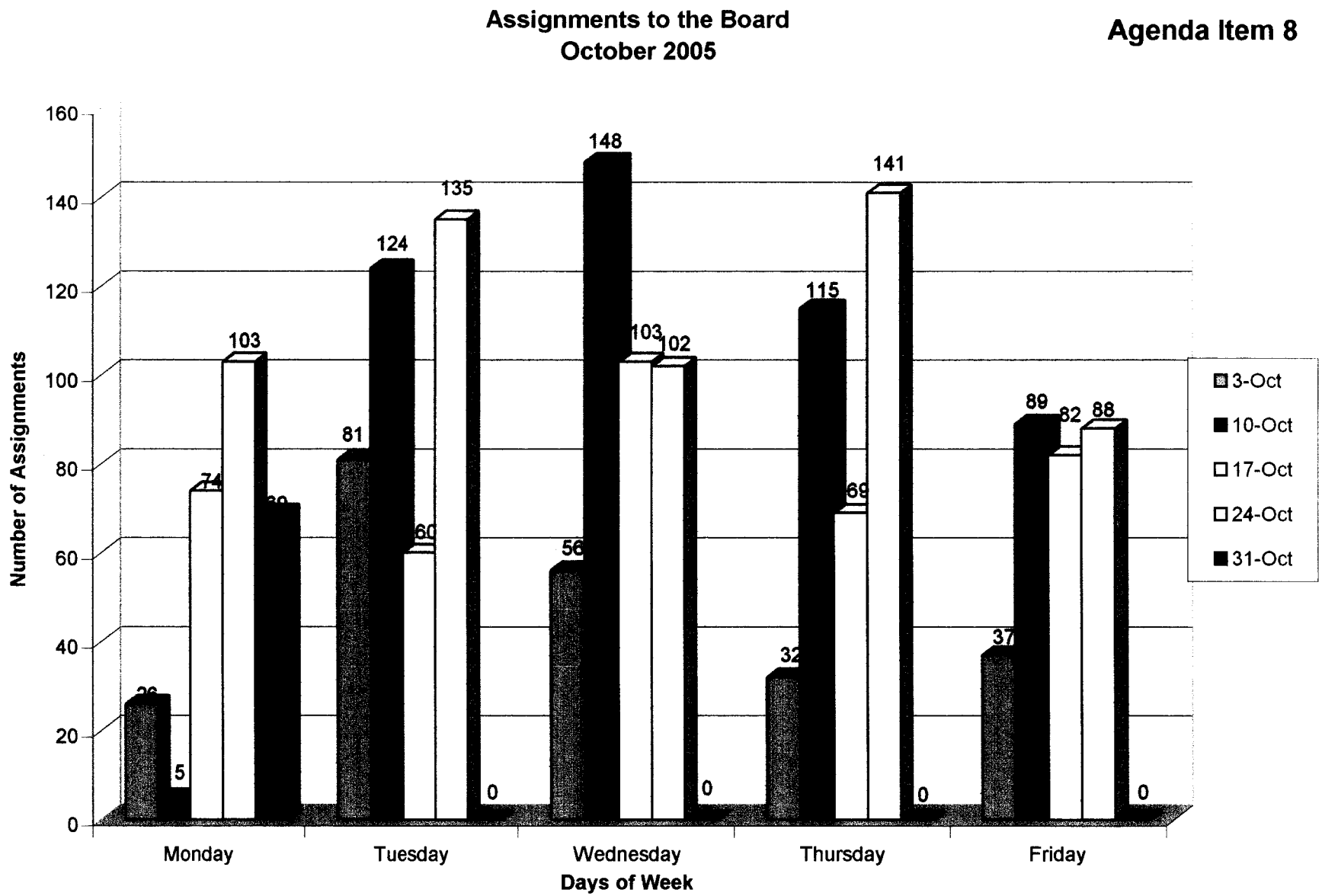
2005 Decision Summary

Claimant Appeals		Employer Appeals		CUIAB Decisions		
Win: 6	Loss: 26	Win: 3	Loss: 5	Affirmed: 33	Reversed: 6	Remanded: 1

Court Decisions

	Superior Court		Appellate Court		Supreme Court				
	Won	Lost	Won	Lost	Won	Lost	Remands	Total Court Decision	Total Appeals Board Decision
1982	44	22	7	6	0	0	0	79	12386
1983	51	35	17	3	1	0	0	107	14788
1984	62	27	9	7	1	2	0	108	14353
1985	92	34	9	5	0	4	0	141	14185
1986	82	34	15	3	0	0	0	134	12551
1987	51	23	6	16	0	0	0	96	13477
1988	38	27	3	1	0	1	0	70	13609
1989	84	21	4	0	0	0	0	109	12650
1990	28	24	6	1	0	0	0	59	13361
1991	35	15	6	0	0	0	0	56	13940
1992	19	6	3	0	0	0	0	28	21183
1993	87	30	6	1	0	0	0	124	29490
1994	68	21	4	0	0	0	0	93	25547
1995	63	42	0	0	0	0	0	105	20207
1996	63	19	11	2	0	0	0	95	18266
1997	73	14	7	1	1	0	0	96	16908
1998	45	8	4	0	0	0	0	57	16253
1999	31	7	2	0	0	0	0	40	17708
2000	68	7	2	1	0	0	0	78	11225
2001	12	12	2	0	0	0	0	26	13825
2002	80	10	10	1	0	0	0	101	15837
2003	33	5	1	0	0	0	0	39	18457
2004	30	3	4	0	0	0	5	42	18698
2005	32	5	1	1	0	0	1	40	14556

Agenda Item 8



Case Assignments to the Board for the Month of: October 2005

Agenda Item 8

Board Member		1st Member	2nd Member	3rd Member	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Ann Richardson											
	Sum	211	230	0	378	47	2	14	159	282	441
	Percent	24%	26%	0%	43%	5%	0%	2%	18%	32%	
Cynthia Thornton											
	Sum	217	201	0	359	52	1	6	141	277	418 *
	Percent	24%	23%	0%	41%	6%	0%	1%	16%	31%	
Jack Cox											
	Sum	220	220	1	380	49	1	11	161	280	441
	Percent	25%	25%	0%	43%	6%	0%	1%	18%	32%	
Virginia Strom-Martin											
	Sum	232	208	2	377	51	2	12	174	268	442
	Percent	26%	23%	0%	43%	6%	0%	1%	20%	30%	
Total Cases Reviewed:		880	859	3	1494	199	6	43	635	1107	

* Off Calendar

Assignments to the Board
October 1, 2005 - October 31, 2005

	Monday	*Tuesday*	*Wednesday*	*Thursday*	*Friday*
3-Oct	26	81	56	32	37
10-Oct	5	124	148	115	89
17-Oct	74	60	103	69	82
24-Oct	103	135	102	141	88
31-Oct	69	0	0	0	0
Total	277	400	409	357	296