

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5632**

**Open Session**

The Appeals Board convened at 1:00 p.m., July 18, 2018, in Sacramento with Chair Marty Block presiding.

<b>1. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Marty Block, Chair	x	
Michael Allen, Vice Chair	x	
Ellen Corbett	x	

**2. Approval of the Minutes:**

The June 13, 2018 Meeting Minutes were approved unanimously.

**3. Chair's Report:**

Chair Block acknowledged there are now only three board members since Member Dresser's term expired. He pressed upon the Workforce Agency at their meeting today the importance of having a full Board. Ideally there would be five members; but he is hopeful they will get one member to replace former Member Dresser.

Chair Block also reported to the Workforce Agency that Executive Director Gonzales and he attended the NAUIAP conference and it was very beneficial. They had a particularly interesting session on marijuana, medical marijuana and how that is playing a role in unemployment decisions. Now that California has legalized both medical and non-medical use of marijuana, we are getting cases. He commented that some agencies have rules that you cannot use cannabis or other drugs during break time, for example. If it affects your performance and you are visibly intoxicated, be it alcohol or any other intoxicant, certainly they can take action against you. If it does not affect your performance, if the employer has a policy against using it on breaks, and an employee uses it on a break and is caught, then clearly the employer has a right to fire them. But, does the employee then have a right for unemployment, is it misconduct or just a judgement error? He

predicts they will be discussing that question in many cases and that is the kind of issue that was discussed at NAUIAP.

Chair Block and Executive Director Gonzales also had a chance to meet with several people informally at NAUIAP, and those experiences allow them to learn from people who do the same kind of work as CUIAB, from all around the country. While California is a much larger program, there are still many things in common. They talked about standards for evidence and disaster unemployment assistance, which has become a very relevant topic given the various disasters being experienced around the country. Also, discussed was social media and people being disciplined, particularly millennials, for being on social media, how they are using social media and how they use it outside of work when it might impact the workplace. He expressed his appreciation for the time spent at NAUIAP.

Chair Block reported he attended the Sexual Harassment Training for the judges, held in June in Oakland, Sacramento and Los Angeles. He thought it was very well received. He has heard from a few of the judges since that they enjoyed the training and learned a lot. He was pleased the Board Members also had an opportunity to attend the training as their presence increases the sense of importance of the training for the judges.

#### **4. Board Member Reports:**

Vice Chair Allen commented he appreciated the training and was impressed with the presenters. He stated there was plenty of valuable information at both the morning presentation and the session on legal writing, as well as the presentation on the challenges of making credibility findings.

Vice Chair Allen thanked all the staff who are helping to put together the newsletter. They are close to completion and he hopes to have a publication out soon.

Vice Chair Allen commented that he had talked to former colleague, Member Dresser, who is having difficulties adjusting to retirement. Vice Chair Allen advised him to follow his heart.

Member Corbett appreciated the information Chair Block brought back from the NAUIAP conference. She stated it is extremely important to be able to go out there into the rest of the world and find out how people are dealing with new changes. She thinks they can gain a lot by these reports.

Member Corbett also appreciated the Sexual Harassment Training held for the judges and others in the agency. She was quite surprised because she thought there was regular Sexual Harassment Training. She understands there is training for the administrators and management, but thought there was that throughout the organization. She is used to that from the Legislature, where everyone takes Sexual Harassment Training, and she considers it extremely important since we deal with sensitive issues in the workplace. She appreciated the quality of the training and thinks it will make a noticeable difference.

Member Corbett commented that she is working with a new tablet and appreciates her colleagues' patience during her learning curve. She noted that the new tablet is quite a bit slower than her previous device and had a few connectivity issues. She thanked the IT staff for all their hard work getting her up and running.

**5. Public Comment:**

No public comments.

**6. Chief ALJ/Executive Director Report:**

Chief ALJ/Executive Director Gonzales reported that the training was well received. She especially appreciated the law group used to facilitate the training and the way they presented the material. CUIAB provides the required Sexual Harassment Training to managers and supervisors, but she considers it important that the ALJs understand what types of trainings managers are required to have so the ALJs will have a better understanding when they are hearing cases of how harassment scenarios should be properly handled in the workplace. The follow-up afternoon sessions were also well received, with plenty of good discussions and sharing of ideas. She also thanked the staff who put together the training, Martha Silva, Renee Irwin and others for a job well done.

Chief ALJ/Executive Director Gonzales reported, regarding the monthly Security Report, there were no security incidents. She commented there were a few personnel related issues and they are working on those.

Chief ALJ/Executive Director Gonzales reported that Ron Kammann, Presiding Judge of the San Francisco Office of Appeals, officially retired yesterday. ALJ Stephen Angelides stepped in as Acting Presiding Judge. Interviews for the presiding judge for Oxnard Office of Appeals will be conducted next week in Inglewood.

Member Corbett asked if there was 100% participation by the Field and AO judges at the Sexual Harassment Training.

Chief ALJ/Executive Director Gonzales responded that they were all required to attend. A very few had to get approval in advance to not attend the training and that was if they had a prepaid trip or that sort of thing. The afternoon roundtable portion of the training was taped, but the few ALJs who did not attend will have to take the online Sexual Harassment Training routinely given by CUIAB.

## **7. Presiding ALJ of Appellate Operations, Jodi Remke Report:**

PALJ-AO Remke reported June was another month AO did very well with the time lapse requirement. The completion of cases within 45-days the guideline is requirement is 50%, AO is at 86.1%; for cases closed within 75-days the guideline 80% and AO is at 98.8%. There was a slight drop in the 45-day percentage from last month, 2 points, but taking into consideration it is summer, vacations, illness, and Judge Bach helping with her transition, it is understandable AO was down a little bit in production but that is the only indication that she can see, and those cases just moved into the 75-day compliance category. AO's pending case aging is at 26.2 with the standard being 40 days, again a very good indicator right now. AO closed more cases than were opened leaving an overall case balance at 1,026 cases.

Vice Chair Allen commented that he noticed in a few cases, for whatever reason, that with regard to the Precedent Decisions recently adopted, it appears some Field judges still have not gotten it. He suggested possibly giving the ALJs in the Field refreshers on the Precedents just to make sure they are on board with them. He noted that most of the postings on the Insight website were outdated and questioned if Insight could be revived.

Chief ALJ/Executive Director Gonzales responded that Insight was one of the items discussed at the training. They plan to revive Insight to have more content available and be more of a discussion page for the ALJs. Additionally, when a Precedent is adopted it is sent out to all the presiding judges who in turn have a meeting with the ALJs to discuss. Standard paragraphs are developed around the new Precedent Decisions and distributed to all the ALJs. If the Precedent has been in place for a while and an ALJ is not following it then that may be a performance issue related to that specific ALJ. Any reversal or remand of an ALJ decision is sent to the presiding judge to discuss with the ALJ.

Chair Block commented that there are times when the Board affirms an ALJ decision except on different rationale. He suggested these types of decisions should also be brought to the ALJ's attention.

Member Corbett added that it appears there are a couple Precedents that tend to have issues from time to time. She suggested there might be additional training or discussion about what the Precedent really is and where ALJs may be applying the old Precedent incorrectly. She would also be open to having an additional refresher course on Precedents for Board Members.

Chair Block commented that the Precedent Decisions have a tendency to be rather long and unwieldy, well written but not easily digested by the ALJs. He suggested shorter and more direct Precedent Decisions may help.

Chief ALJ/Executive Director Gonzales responded that she recently had a discussion with PALJ-AO Remke about trying to streamline that process. PALJ-AO Remke has been working on it with Chief Counsel Gonzalez and hopefully the precedents will be shorter and more regularly sent out to the ALJs in the Field.

Member Corbett commented that sometimes with the longer more detailed precedents, that people either grab on to just a portion of the precedent for application and the bigger picture may be missed. Or, the precedent is looked at as something to apply so literally that the precedent is not applied when it should be, because the ALJ is looking for the exact same fact pattern, as opposed to the general legal principle that the precedent is there to accomplish.

#### **8. Acting Chief Information Officer, Lori Kurosaka Report:**

Acting CIO Kurosaka reported that IT staff were videotaping today's Board meeting. They are testing equipment and storage for video recordings of the monthly Board meetings. The staff will be testing the equipment at some of the upcoming Board meetings in the fall as well. The goal is to provide more transparency to the public and video streaming is a good avenue in which to do that. This effort is on target for the December Board meeting for full implementation.

Acting CIO Kurosaka reported that they participated in a pre-audit engagement meeting with the Department of Technology. CDT reviewed the scope of the audit, audit process and estimated timeline with them. Basically, the scope of the audit

will focus on our Information Security Program. This is a four year engagement. The first year begins with the audit itself and then the following three years they will conduct follow-up visits. They have a preliminary information request that is due back to CDT by August 20, after which the auditors will be onsite to audit our program here at CUIAB. Last week, CDT released a new rate schedule for their services, and the price tag for the audit is \$320,000.

Acting CIO Kurosaka reported that Information Security Officer Paul Prestwich notified them on Monday that he retired effective on Sunday, August 15, 2018. With that the Labor Agency Chief Information Officer George Okamoto is advocating with CDT for a delay of the audit by about 60 days. They are waiting to hear back from CDT on that request in light of the lack of leadership in our Information Technology area.

Chair Block asked if the cost of the audit was at all negotiable.

Acting CIO Kurosaka responded it was not. CIO Okamoto also advocated on CUIAB's behalf for a reduction in that price schedule and CDT would not budge.

Member Corbett asked if CDT was another state agency.

Acting CIO Kurosaka stated it was the state control agency over information technology policy and information security policy.

Member Corbett commented that the state agency charges the other state agency \$320,000. She asked if there was an opportunity to see what they based that on, how they calculate that amount.

Acting CIO Kurosaka replied they can request that information.

Member Corbett stated she would like to see it.

Executive Director Gonzales commented that at the meeting their understanding was that despite the size of the agency, even smaller agencies like ALRB, would be held to the same price tag as a larger agency. That was what was communicated to them.

Chair Block commented it would be interesting to see if there is hourly billing to see if it's costing us \$1,000 an hour or whatever.

Member Corbett stated she thinks it is important to look beyond what they have told us.

Chair Block asked how frequently these audits are done.

Acting CIO Kurosaka responded every four years.

Acting CIO Kurosaka reported that the headquarters Phone Refresh Project has begun at Venture Oaks. The cutovers to the new system are scheduled by floor at headquarters from June through September. The first floor cutover occurred in June, it was successful and without incident. The remaining three floors are also on schedule. The third floor is scheduled for the Friday before Labor Day weekend. She asked the staff to provide training for the Board Members, to be scheduled around the August Board meeting. The phones are very high tech and have a lot of functionality. She thanked Jeff Kumanchik, the sole Telecom Analyst, at CUIAB. Not only does he troubleshoot all of the problems in the Field office and at headquarters, he is completing the statewide Phone Refresh Project by himself as the project manager. In his spare time he audits the monthly AT&T phone bills resulting in a total annual credit of \$975,000. She acknowledged that he does the work of two staff and generates tremendous savings for the agency as well.

Acting CIO Kurosaka reported they received 63 applications for the CIO position with interviews beginning tomorrow for 11 candidates.

Chair Block asked what the timeline was for completion of the interviews.

Acting CIO Kurosaka responded that they are going through August 3, due to some vacation schedules with the candidates. Then a second level of interviews will take place with Executive Director Gonzales.

Member Corbett acknowledged how grateful she is to the IT staff for helping her the past few weeks. She literally spent an hour and a half with two staffers to be able to get online with the new device. She very much appreciates their work.

Vice Chair Allen expressed his appreciation to Acting CIO Kurosaka for wearing many different hats.

Chair Block commented that he seriously appreciates the fact that the meeting is on video today and that it is a test for future streaming. He noted that when he was first appointed he requested, like many of the Boards in the state, that CUIAB

stream for more transparency to the public and also so our offices around the state can see what goes on in the Board meeting.

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

Chief Silva commented that although the new phone system is more technologically advanced that with regard to future billings he expects them to go down – better phone system, less cost.

Chief Silva reported on the Monthly Overtime Lump/Sum Payout Report. In April 2018, the 62 hours of overtime was the lowest of the fiscal year and in May a total of 12 hours of overtime was used. Because of this dramatic decrease in usage during the second half of the fiscal year the projected budget shortfall for this category was once at about \$40,000 and is now under \$9,000. During the last Board meeting he reported that there would be some significant lump sum payouts for retirements to occur in May and those did come to fruition. The total lump sum payouts in May were \$77,000 which was a 200% increase over the previous monthly average. Even with that heavy expenditure in May the projected shortfall is predicted at only \$19,000 in that category.

Chief Silva reported that the results of the audit conducted in May of the 43 employees who receive bilingual pay differentials, only five did not meet the 10% threshold. Of those five employees three were quite close to the threshold so they are doing additional time-ladders this month to continue their bilingual pay.

Chief Silva reported that to insure that equal levels of services are available to non-English speaking public, every two years state departments have to conduct a language survey for our public contact employees. CUIAB employees will be doing that survey this coming week and again the week of August 6.

Chief Silva reported that CalHR announced they are discontinuing their Language Fluency Examination Unit. However, CalHR is still accepting verifications in fluency testing by Los Angeles Unified School District. CUIAB actually already transitioned to LAUSD about a year ago because their level of service is quite high so this does not have an impact to CUIAB.

Chief Silva reported regarding Personnel, the San Diego Office of Appeals is having both support staff supervisors leave during the month of July. One is transferring to a different department and the other is leaving to burn some accumulated leave prior to retirement. They quickly advertised for a legal support



supervisor position in San Diego. The final filing date for that position was August 13, and they hope to fill it soon for support management.

Chief Silva reported regarding Facilities, one of the facility projects approved by the Board last fiscal year was the repaint, re-carpet for the Oakland Office of Appeals. Department of Finance approved the request to put the funds into an Architectural Revolving Fund account. This week they received the proposal letter from Department of General Services to start the project. This is the first step in what will be a four month project involving DGS but he is hopeful it will be done by the end of this calendar year.

Chief Silva reported on the Modular Replacement Project approved by the Board last year for the Orange County Office of Appeals. The project is now underway to avoid disruption as much as possible they will do the project in two halves. One half of the office was completed over the course of last weekend. He expressed kudos to the IT, Admin and Telecom staff for an excellent job last weekend. Currently the Orange County Office of Appeals is split in half, with half completed and half the old. The rest will be done this weekend. He predicts this project will be completed on time.

Chair Block noted that with only three Board Members, Bagley Keene issues can surface. He requested the Chief Counsel prepare an analysis for the next Board meeting identifying what types of issues the Board Members can discuss without violating Bagley Keene.

Member Corbett commented that are some interesting interpretations with regard to three Member discussions which they should become more familiar with again.

**Closed Session:**

There was no Closed Session. The Board adjourned Open Session at 1:42 p.m.

**Adjournment**