



**STATE OF CALIFORNIA - GOVERNOR EDMOND G. BROWN JR.
LABOR AND WORKFORCE DEVELOPMENT AGENCY**
**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
EXECUTIVE DIRECTOR/CHIEF ADMINISTRATIVE LAW JUDGE**

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December 7, 2012

To: Board Members

**December 2012 Summary Report of Executive Director and
Chief Administrative Law Judge Alberto Roldan**

1. Office of the Chief

- A 10 judge travelling mass calendar conducted in the City of San Bernardino was completed to support the Inland Office of Appeals from December 4-6, 2012 with ALJs from outside of that office. Special thanks to IT unit employees Aldo Garcia and Tony Buenrostro who did a great job establishing virtual hearing rooms with full connectivity in a private rented facility. The Inland support staff did a great job in supporting ALJs Stephen Angelides, Polly Thomas, Gerald Kelly, Eric Wildgrube, Harlan VanWye, Joe Kane, Alicia Becerril, Alfredo Magallanes, Elise Manders, Bill Schmidt and I for the mass calendar.
- Interviews to fill PALJ positions in the Orange County, Oakland and San Jose Offices are being conducted on December 18-20. We will have three new PALJs at the January PALJ meeting.

2. Snapshot of Field Operations performance through November 2012

Overall September 2012 Workload and Performance: November is usually a down month with three days of holidays and this month was consistent with that pattern. Both the intake and disposition number were down compared to the average. New cases [32,377] were 9% below the average for 2012 and represented the lowest intake since February 2012. CUIAB closed 34,450 cases overall in November, which was 5% below average. On the bright side, open inventory [46,318 cases] was reduced for the second month in a row and is below the average for 2012.

Case Aging and Time Lapse: Average case age increased slightly to 27 days but is well within compliance with the federal standards. We continue to get closer to the 60% time lapse standard with our 30-day time lapse improving to 58%. This is the best performance for an entire month in

over 10 years and sits just slightly below DOL standards. 45-day [85%] and 90-day time lapse [97%] continue to be well within compliance of DOL standards and guidelines. Unfortunately, the time frames for the non-time lapse UI cases continue to be substantially longer. 12% of the non-time lapse UI decisions were issued within 30 days, 32% went out within 45 days and only 88% within 90 days. The travelling mass in Inland was all non time lapse UI to address this disparity in that office and other offices have been instructed to work on this balance.

Cycle Time: The UI cycle time in November was 42 days from date of appeal to issuance of the decision. This was down one day from the performance in September and October. We shaved a day off the time it took to get a case on calendar and the time between calendaring and hearing but lost that gain to an uptick in decision issuance time. The cycle time for DI appeals was 77 days, with each step of the process, except the time between scheduling and hearing, taking more than twice as long as with UI cases.

Unemployment Insurance (UI) for October: New UI cases [31,265 cases; 17,853 appellants] were down 7% from the average for 2012, and the fewest since February. The number of closed cases [32,844 cases; 18,754 appellants] was 5% below average but still outnumbered new cases by almost 1,200. This was the second consecutive month in which the open inventory [36,792 cases; 21,008 appellants] was reduced. It is now just below the average for this year. However, the offices again concentrated on time lapse as the percentage of non time-lapse UI cases [extensions basically] rose to 41% of the open caseload as opposed to 39% in September and October.

Disability Insurance (DI) for October: In disability, the number of new cases [845] was 33% below the norm for 2012. This was the first time in recorded memory we processed fewer than 1,000 new cases. There has been a general trend downward as reflected by the fact we have verified 13% fewer DI appeals during 2012 than was true in the same period in 2011. Although the number of closed cases [938] was below 1,000 for the 2nd time in three months, the open inventory [1,663] hit a six month low and is 9% smaller than the average this year.

Tax and Rulings for October: Intake was very slow in rulings with only 37 cases registered in November. With the greatest number of closed cases [425] since February, the open inventory [4,159] is at a seven month low. It should be noted, however, that we had a much smaller number of cases at the beginning of the year, and the inventory remains above the average for 2012.

Tax dispositions [234] in November were 21% below the 2012 average but still exceeded the number of new cases. As a result, this was the 4th consecutive month of falling inventory [3,664]. The open balance is at its lowest level since April 2009.

UI TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	32,164	29,014	31,429	31,869	32,267	34,435	32,319	31,827	33,713	35,619	27,150	37,388	389,194	32,433		
2010	37,307	34,125	38,172	42,249	37,447	36,321	39,238	40,219	31,780	35,604	30,181	35,509	438,152	36,513	113%	4,080
2011	38,676	34,399	39,494	35,519	36,159	35,785	32,527	38,079	39,828	36,161	30,799	31,448	428,874	35,740	98%	-773
2012	33,339	30,233	36,391	33,590	34,531	31,871	32,132	37,791	33,363	36,746	31,266		371,253	33,750	94%	-1,989
Multi:	13 180 30 9 13 15 54 5 5 2												2011	94%	93%	
	UI registrations Nov to date are down 7% from 2011, down 8% from 2010, and up 6% from 2009												2010	92%	92%	
	UI registration monthly average is down 6% from 2011, down 8% from 2010, and up 4% from 2009												2009	104%	106%	
													chg to '12 avg		chg to '12 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	25,728	24,752	28,392	30,565	30,101	32,703	34,500	30,455	32,165	39,878	34,525	36,623	380,387	31,699		
2010	32,738	37,951	44,067	39,481	35,731	36,680	35,798	39,000	38,748	37,386	34,848	36,237	448,665	37,389	118%	5,690
2011	34,029	37,998	50,124	35,054	32,103	38,117	33,797	36,979	41,802	33,663	33,076	34,301	441,043	36,754	98%	-635
2012	33,604	37,167	44,615	28,383	34,802	31,915	30,672	35,346	30,299	38,963	32,844		378,610	34,419	94%	-2,334
Multi:	1/3 4/9 2/4 43/236 2/8 1/4 3/8 2/5 7/52												2011	94%	93%	
	UI dispositions Nov to date are down 7% from 2011, down 8% from 2010, and up 10% from 2009												2010	92%	92%	
	UI disposition monthly average is down 6% from 2011, down 8% from 2010, and up 9% from 2009												2009	109%	110%	
													chg to '12 avg		chg to '12 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2009	69,049	73,237	76,311	77,968	80,188	81,750	79,774	81,302	82,785	78,473	71,095	71,813	76,979			
2010	76,301	72,323	66,136	68,715	70,234	69,664	72,557	73,410	66,243	64,624	59,811	59,075	68,258	89%	-8,721	
2011	63,632	59,909	49,088	49,435	53,389	50,926	49,805	50,755	48,650	51,057	48,653	45,715	51,751	76%	-16,507	
2012	45,315	38,225	29,603	34,674	34,327	34,188	35,578	37,843	40,820	38,495	36,792		36,896	71%	-14,855	
Multi:	13 256 275 9 10 17 56 51 6 8												2011	71%	71%	
	UI balance of open cases Nov to date is down 29% from 2011, down 47% from 2010, and down 52% from 2009												2010	54%	53%	
	UI balance monthly average down 29% from 2011, down 46% from 2010, and down 52% from 2009												2009	48%	48%	
													chg to '12 avg		chg to '12 YTD	

DI TRENDS - FO
Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	1,610	1,107	1,794	1,519	1,628	1,748	1,537	1,321	1,571	1,414	1,245	1,330	17,824	1,485		
2010	1,446	1,437	1,775	1,957	1,371	1,232	1,763	1,609	1,366	1,372	1,159	1,414	17,901	1,492	100%	6
2011	1,537	1,651	1,411	1,691	1,360	1,428	1,405	1,575	1,489	1,392	1,094	1,268	17,301	1,442	97%	-50
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845		13,971	1,270	88%	-172

DI registrations Nov to date are down 13% from 2011, down 15% from 2010, and down 15% from 2009
DI registration monthly average is down 12% from 2011, down 15% from 2010, and down 14% from 2009

2011	88%	87%	
2010	85%	85%	
2009	86%	85%	
	chg to '12 avg	chg to '12 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	1,217	1,269	1,451	1,465	1,129	1,463	1,823	1,644	1,648	1,753	1,527	1,701	18,090	1,508		
2010	1,283	1,557	1,967	1,852	1,276	1,581	1,494	1,511	1,581	1,552	1,372	1,565	18,591	1,549	103%	42
2011	1,295	1,576	1,925	1,512	1,441	1,567	1,365	1,462	1,426	1,579	1,266	1,270	17,684	1,474	95%	-76
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938		14,049	1,277	87%	-196

DI dispositions Nov to date are down 14% from 2011, down 17% from 2010, and down 14% from 2009
DI disposition monthly average is down 13% from 2011, down 18% from 2010, and down 15% from 2009

2011	87%	86%	
2010	82%	83%	
2009	85%	86%	
	chg to '12 avg	chg to '12 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	3,426	3,264	3,613	3,684	4,197	4,478	4,204	3,895	3,819	3,476	3,203	2,836		3,675		
2010	2,997	2,876	2,682	2,789	2,891	2,541	2,808	2,908	2,691	2,513	2,299	2,148		2,679	73%	-996
2011	2,390	2,465	1,951	2,126	2,046	1,905	1,943	2,054	2,117	1,930	1,757	1,755		2,037	76%	-642
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663			1,836	90%	-201

DI open balance Nov to date is down 11% from 2011, down 33% from 2010, and down 51% from 2009
DI open balance monthly average down 10% from 2011, down 31% from 2010, and down 50% from 2009

2011	90%	89%	
2010	69%	67%	
2009	50%	49%	
	chg to '12 avg	chg to '12 YTD	

TAX TRENDS - FO
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	166	93	219	174	258	164	252	256	169	292	224	229	2,496	208		
2010	142	139	164	233	140	163	94	137	146	181	188	232	1,959	163	78%	-45
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	214	131%	51
2012	346	141	196	117	78	335	253	229	254	200	215		2,364	215	101%	1
													2011	101%	109%	
													2010	132%	137%	
													2009	103%	104%	
														chg to '12 avg	chg to '12 YTD	

Tax registrations Nov to date are up 9% from 2011, up 37% from 2010, and up 4% from 2009
 Tax registration monthly average is up 1% from 2011, up 32% from 2010, and up 3% from 2009

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	92	97	172	149	72	97	126	111	162	70	149	288	1,585	132		
2010	48	109	107	91	117	124	135	101	174	130	99	235	1,470	123	93%	-10
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	237	193%	115
2012	227	352	322	492	267	217	236	290	284	357	234		3,278	298	126%	61
													2011	126%	126%	
													2010	243%	265%	
													2009	226%	253%	
														chg to '12 avg	chg to '12 YTD	

Tax dispositions Nov to date are up 26% from 2011, up 165% from 2010, and up 153% from 2009
 Tax disposition monthly average is up 26% from 2011, up 143% from 2010, and up 126% from 2009

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	3,585	3,580	3,627	3,649	3,836	3,903	4,029	4,174	4,180	4,402	4,477	4,416		3,988		
2010	4,509	4,539	4,596	4,738	4,759	4,796	4,754	4,790	4,758	4,801	4,890	4,885		4,735	119%	746
2011	4,880	4,874	4,824	4,833	4,797	4,700	4,643	4,630	4,666	4,520	4,445	4,593		4,700	99%	-34
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664			4,026	86%	-674
														2011	86%	85%
														2010	85%	85%
														2009	101%	102%
															chg to '12 avg	chg to '12 YTD

Tax balance of open cases Nov to date is down 15% from 2011, down 15% from 2010, and up 2% from 2009
 Tax balance monthly average is down 14% from 2011, down 15% from 2010, and up 1% from 2009

RULING - OTHER TRENDS - FO
Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	175	92	203	456	567	340	304	206	170	710	923	275	4,421	368		
2010	486	609	709	598	441	424	468	1,359	201	239	229	214	5,977	498	135%	130
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	383	77%	-115
2012	182	245	746	576	605	424	229	418	209	315	51		4,000	364	95%	-19
													2011	95%	92%	
													2010	73%	69%	
													2009	99%	96%	
														chg to '12 avg	chg to '12 YTD	

Ruling/Other registrations Nov to date are down 8% from 2011, down 31% from 2010, and down 4% from 2009
Ruling/Other registration monthly average is down 5% from 2011, down 27% from 2010, and down 1% from 2009

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	236	333	238	209	179	208	273	264	315	192	260	357	3,064	255		
2010	335	392	500	682	465	716	421	631	484	804	303	415	6,148	512	201%	257
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	472	92%	-41
2012	500	455	299	255	214	165	239	323	170	334	434		3,388	308	65%	-164
													2011	65%	64%	
													2010	60%	59%	
													2009	121%	125%	
														chg to '12 avg	chg to '12 YTD	

Ruling/Other dispositions Nov to date are down 36% from 2011, down 41% from 2010, and up 25% from 2009
Ruling/Other disposition monthly average is down 35% from 2011, down 40% from 2010, and up 21% from 2009

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	3,399	3,158	3,123	3,374	3,763	3,894	3,925	3,860	3,715	4,232	4,896	4,809		3,846		
2010	4,965	5,182	5,394	5,312	5,287	4,996	5,048	5,781	5,494	4,931	4,857	4,658		5,159	134%	1,313
2011	4,281	3,977	3,340	3,692	3,792	3,672	3,716	3,772	3,453	3,842	3,698	3,590		3,735	72%	-1,423
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199			4,070	109%	334
													2011	109%	109%	
													2010	79%	78%	
													2009	106%	108%	
														chg to '12 avg	chg to '12 YTD	

Ruling/Other balance of open cases Nov to date is up 9% from 2011, down 22% from 2010, and up 81% from 2009
Ruling/Other balance monthly average is up 9% from 2011, down 21% from 2010, and up 6% from 2009

ALL PROGRAM TRENDS - FO

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg
2009	34,115	30,306	33,645	34,018	34,720	36,687	34,412	33,610	35,623	38,035	29,542	39,222	413,935	34,495		
2010	39,381	36,310	40,820	45,037	39,399	38,140	41,563	43,324	33,493	37,396	31,757	37,369	463,989	38,666	112%	4,171
2011	40,411	36,315	41,141	38,210	38,185	37,903	34,470	40,374	41,888	38,682	32,388	33,369	453,336	37,778	98%	-888
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377		391,588	35,599	94%	-2,179
Multi	13	13	180	30	9	13	15	54	5	5	2					
													2011	94%	93%	
													2010	92%	92%	
													2009	103%	105%	
														chg to '12 avg	chg to '12 YTD	

All program registrations Nov to date are down 7% from 2011, down 8% from 2010, and up 5% from 2009
 All program registration monthly average is down 6% from 2011, down 8% from 2010, and up 3% from 2009

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg
2009	27,273	26,451	30,253	32,388	31,481	34,471	36,722	32,474	34,290	41,893	36,461	38,969	403,126	33,594		
2010	34,404	40,009	46,641	42,106	37,589	39,101	37,848	41,243	40,987	39,872	36,622	38,452	474,874	39,573	118%	5,979
2011	35,905	40,146	52,970	37,208	34,144	40,592	35,714	39,116	44,083	36,128	35,054	36,169	467,229	38,936	98%	-637
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450		399,325	36,302	93%	-2,633
Multi	1/3	4/9	2/4	43/236	2/8	1/4	3/8	2/5	7/52							
													2011	93%	93%	
													2010	92%	91%	
													2009	108%	110%	
														chg to '12 avg	chg to '12 YTD	

All program dispositions Nov to date are down 7% from 2011, down 9% from 2010, and up 10% from 2009
 All program disposition monthly average is down 7% from 2011, down 8% from 2010, and up 8% from 2009

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Change	Yr-Yr AvgChg
2009	79,459	83,239	86,674	88,675	91,984	94,025	91,932	93,231	94,499	90,583	83,671	83,874		88,487		
2010	88,772	84,920	78,808	81,554	83,171	81,997	85,167	86,889	79,186	76,869	71,857	70,783		80,831	91%	-7,656
2011	75,183	71,225	59,203	60,086	64,024	61,203	60,107	61,211	58,886	61,349	58,553	55,653		62,224	77%	-18,608
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318			46,828	75%	-15,396
Multi	13	256	275	9	10	17	56	51	6	8						
													2011	75%	75%	
													2010	58%	57%	
													2009	53%	53%	
														chg to '12 avg	chg to '12 YTD	

All program open balance Nov to date is down 25% from 2011, down 43% from 2010, and down 47% from 2009
 All program open balance monthly average is down 25% from 2011, down 42% from 2010, and down 47% from 2009

AO REPORT TO BOARD -- MONTH OF November 2012

	# Cases	# Appellants	Calendar Yr Avg
REGISTRATIONS	2260	1425	2592
DISPOSITIONS	2247	1421	2675
OPEN BALANCE	2722	1652	2964
PENDING REG.			
APPEAL RATE			5.80%

CASE AGING 45 Days

TIME LAPSE

45 Days (50%)	22.00%
75 Days (80%)	83.00%
150 Days (95%)	100.00%

ADDITIONAL INFORMATION

FO to AO Monthly Report 2.21 days

FO ALJs working in AO 1

WEEKLY AO WORKLOAD REPORT
November 2012

Week						
Ending	Unreg total	Appeals Rec'd	Registrations	Dispositions	Open Balance	Change
11/1-11/2/12	2700	308	193	109	2962	84
11/9/2012	2795	733	551	547	3030	68
11/16/2012	2691	626	642	416	3257	227
11/23/2012	2541	476	452	373	3332	75
11/30/2012	2745	732	538	882	2894	-438
11-1 thru 11-30-12						
Running Total		<u>2875</u>	<u>2376</u>	<u>2327</u>		

Week	Average	45-Day (50%)	75-Day (80%)	150-Day (95%)
Ending	Case age	Time Lapse	Time Lapse	Time Lapse
11/1-11/2/12	45	31.40%	84.88%	100.00%
11/9/2012	45	31.55%	90.84%	100.00%
11/16/2012	46	25.77%	78.01%	100.00%
11/23/2012	48	21.35%	85.77%	100.00%
11/30/2012	45	13.42%	79.38%	98.85%
11-1 thru 11-30-12	45	22.14%	83.21%	99.58%

ALL PROGRAM TRENDS-AO

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	1,588	1,326	1,964	1,835	1,717	1,956	2,368	2,026	2,187	2,158	2,056	2,225	23,406	1,951		
2010	2,470	2,136	3,081	2,779	2,362	2,691	2,518	2,957	3,089	2,658	2,796	2,721	32,258	2,688	138%	738
2011	2,506	2,625	3,779	3,046	3,318	2,971	3,021	3,267	3,259	3,298	2,341	2,561	35,992	2,999	112%	311
2012	2,789	2,316	3,555	2,608	2,418	1,958	2,407	2,932	2,430	2,728	2,376		28,517	2,592	86%	-407

Registrations Jan to date down 15% from 2011, down 3% from 2010, and up 35% from 2009.

Registration monthly average down 14% from 2011, down 4% from 2010, and up 33% from 2009.

2011	86%	85%
2010	96%	97%
2009	133%	135%

chg to '12 avg chg to '12 YTD

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	1,609	1,599	1,780	1,556	1,533	1,780	1,827	1,867	1,919	2,354	2,005	2,991	22,820	1,902		
2010	2,210	2,634	2,764	2,707	2,534	2,949	2,352	2,657	2,647	2,853	2,565	2,360	31,232	2,603	137%	701
2011	2,601	2,626	2,583	2,546	2,994	3,447	2,361	2,860	4,116	3,804	3,130	3,022	36,090	3,008	116%	405
2012	2,917	3,106	3,407	2,747	2,310	1,816	2,653	3,087	2,709	2,341	2,327		29,420	2,675	89%	-333

Dispositions Jan to date down 11% from 2011, up 2% from 2010, and up 48% from 2009.

Disposition monthly average down 11% from 2011, up 3% from 2010, and up 41% from 2009.

2011	89%	89%
2010	103%	102%
2009	141%	148%

chg to '12 avg chg to '12 YTD

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2009	2,379	2,093	2,270	2,555	2,734	2,906	3,446	3,599	3,849	3,649	3,703	2,918	36,101	3,008		
2010	3,177	2,668	3,000	3,058	2,886	2,635	2,837	3,135	3,591	3,387	3,626	3,973	37,973	3,164	105%	156
2011	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	60,562	5,047	159%	1,882
2012	3,663	2,902	3,018	2,906	3,014	3,141	2,948	2,758	2,509	2,863	2,894		32,616	2,965	59%	-2,082

Open Balance Jan to date down 43% from 2011, down 4% from 2010, and down 2% from 2009.

Open Balance monthly average down 41% from 2011, down 6% from 2010, and down 1% from 2009.

2011	59%	57%
2010	94%	96%
2009	99%	98%

chg to '12 avg chg to '12 YTD

Case Assignment to the Board for the month of: November 2012

Agenda Item 9

Board Member	1st	2nd	3rd	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Alberto Torrico										
Sum	467	471	28	925	38	0	3	357	609	966
Percent	32%	32%	37%	32%	26%	0%	30%	32%	32%	
Kathleen Howard										
Sum	433	537	25	945	48	0	2	371	624	995
Percent	29%	36%	33%	33%	33%	0%	20%	33%	33%	
Robert Dresser										
Sum	133	71	22	214	10	0	2	78	148	226
Percent	9%	5%	29%	7%	7%	0%	20%	7%	8%	
Roy Ashburn										
Sum	444	398	0	792	48	0	3	323	520	843
Percent	30%	27%	0%	28%	33%	0%	30%	29%	27%	
Total Cases Reviewed:	1477	1477	75	2876	144	0	10	1129	1901	

*Off Calendar

Monthly Board Meeting Litigation Report - November 2012

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	TOTAL = 328
SUPERIOR COURT: Claimant Petitions.....	273
Employer Petitions.....	32
EDD Petitions.....	3
Non-benefit Court Cases	6
APPELLATE COURT: Claimant Appeals.....	9
Employer Appeals.....	2
EDD Appeals.....	0
Non-benefit Court Cases	1
ISSUES: UI.....	286
DI.....	21
Tax.....	12
Non-benefit Court Cases	9

2012 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>November</u>
SUPERIOR COURT: Claimant Petitions.....	112	9
Employer Petitions.....	19	0
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	6	0
Employer Appeals.....	0	0
EDD Appeals.....	0	0
 <u>LITIGATION CASES CLOSED</u>	 <u>YTD</u>	 <u>November</u>
SUPERIOR COURT: Claimant Petitions.....	79	3
Employer Petitions.....	9	0
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	11	2
Employer Appeals.....	2	0
EDD Appeals.....	0	0

2012 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 14	Loss: 76	Win: 0	Loss: 11	Affirmed: 87	Reversed: 12	Remanded: 2

NOVEMBER 2012 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
Closed Cases		
% Closed in <= 30 Days	58.5%	60%
% Closed in <= 45 Days	85.3%	80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	27	30

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	31,266	32,377
Closed	32,844	34,450
Balance of Open Cases	36,800	46,326

CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Appeals	43 days
DI Appeals	77 days
All Programs	46 days

FO OVERTURNED OR MODIFIED¹ EDD DETERMINATION

% Overturned/Modified EDD UI TL* Benefit Decisions	50%
% in Favor of Claimants (for Claimant UI appeals)	52%
% in Favor of Employers (for Employer UI appeals)	35%

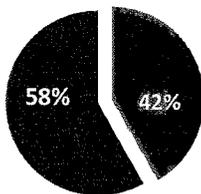
Source: Official Monthly Workload Report

* UI TL stands for UI Timelapse (i.e. regular UI non-extension).

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	73%
UI Extensions as % of All UI	27%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 42% of UI Open Balance, and Regular UI cases made up 58%.

FED-ED UI Extensions made up 1.2% of the FO open balance. These are the extensions that ended in late May 2012. In 2011, they were 3% of the workload.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
Closed Cases		
% Closed in <= 45 Days	22.1%	50%
% Closed in <= 75 Days	83.2%	80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	45	40

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	2,260	2,376
Closed	2,247	2,327
Balance of Open Cases	2,722	2,894

CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS - October

UI Appeals	67 days
DI Appeals	83 days
All Programs	68 days

Source: Results were derived from CATS AO data sets.

AO OVERTURNED OR MODIFIED¹ FO DECISION

% Overturned/Modified FO UI TL* Benefit Decisions	12%
% in Favor of Claimants (for Claimant UI appeals)	13%
% in Favor of Employers (for Employer UI appeals)	8%

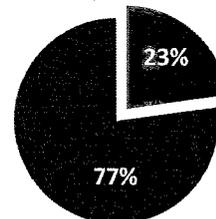
Source: Official Monthly Workload Report

* UI TL stands for UI Timelapse

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	74%
UI Extensions as % of All UI	26%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 23% of UI Open Balance, and Regular UI cases made up 77%.

FED-ED UI Extensions made up 1.1% of the AO open balance.

¹ "Overturned or Modified" is the number/percentage of cases where marked "favorable" to appellant. A case is marked "favorable" if the judge's decision modifies or reverses the EDD determination. The CUIAB's current case tracking system cannot separate out or quantify the modifications from the reversals.

**California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in November 2012**

UI CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	39	6	13	13	2
Inglewood	40	5	10	15	4
Inland	47	5	16	16	4
Los Angeles	35	4	7	13	4
Oakland	37	5	11	13	2
Orange County	48	5	17	14	5
Oxnard	37	4	11	15	1
Pasadena	57	8	19	15	8
Sacramento	43	4	13	15	4
San Diego	41	5	10	15	4
San Francisco	44	4	18	13	3
San Jose	40	3	15	13	2
Statewide	43	5	13	14	4

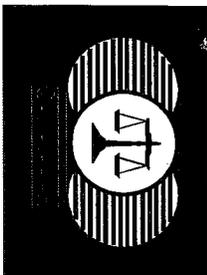
ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	41	6	14	13	2
Inglewood	63	8	28	17	4
Inland	49	5	17	16	4
Los Angeles	38	5	8	13	4
Oakland	40	6	13	13	3
Orange County	49	6	18	14	5
Oxnard	39	5	12	15	1
Pasadena	58	9	20	15	9
Sacramento	44	4	14	15	4
San Diego	41	5	10	15	4
San Francisco	45	4	18	13	4
San Jose	41	4	16	13	2
Statewide	46	6	16	15	4

CUIAB 12/13 Fiscal Year Overtime/Lump Sum Payout - SCO Report
July 2012 through October 2012

12/13 Fiscal Year-to-Date Overtime Expenditure									
Branch	FY Y-T-D Decision Typing Hours	Pay	FY Y-T-D CTU Typing Hours	Pay	FY Y-T-D Registration Hours	Pay	FY Y-T-D Other Hours	Pay	
Appellate	262.55	\$7,469.28	755.75	\$22,531.76	874.30	\$23,922.11	1,610.45	\$44,287.61	
Admin	28.00	\$1,051.32	0.00	\$0.00	42.00	\$802.76	45.50	\$1,496.03	
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	733.75	\$30,900.43	
Exec	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
Project	18.00	\$832.86	0.00	\$0.00	10.00	\$462.70	64.50	\$2,622.03	
Field	523.00	\$15,198.34	98.75	\$2,940.52	909.50	\$26,025.09	3,138.60	\$92,353.13	
Total	831.55	\$24,551.80	854.50	\$25,472.28	1,835.80	\$51,212.66	5,592.80	\$171,659.23	

12/13 Fiscal Year-to-Date Total Overtime Expenditures									
Branch	12/13 FY Allocation	Year-to Date Hours	Year-to-Date Position Equivalent	Year-to Date Pay	Allocation Balance	Estimated Expenditures Over-/Under			
Appellate	\$71,338.00	3,503.05	1.68	\$98,210.76	-\$26,872.76	-\$223,294.28			
Admin	\$3,818.00	115.50	0.06	\$3,350.11	\$467.89	-\$6,232.33			
IT	\$35,711.00	733.75	0.35	\$30,900.43	\$4,810.57	-\$56,990.29			
Exec	\$2,266.00	0.00	0.00	\$0.00	\$2,266.00	\$2,266.00			
Project	\$10,165.00	92.50	0.04	\$3,917.59	\$6,247.41	-\$1,587.77			
Field Operations	\$233,873.00	4,669.85	2.25	\$136,517.08	\$97,355.92	-\$175,678.24			
Total	\$357,171.00	9,114.65	4.38	\$272,895.97	\$84,275.03	-\$461,516.91			
Actual Monthly Average Personnel Year 13.15									

12/13 Fiscal Year-to-Date Lump Sum Payout July 2012 through October 2012				
Branch	Year-to Date Hours	Year-to-Date Position Equivalent	Year-to Date Pay	
Appellate	0.00	0.00	\$0.00	
Admin	202.50	0.10	\$3,537.34	
IT	0.00	0.00	\$0.00	
Exec	873.00	0.42	\$53,439.41	
Project	0.00	0.00	\$0.00	
Field Operations	2,466.00	1.19	\$78,372.09	
Total	3,541.50	1.70	\$135,348.84	



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

SPECIAL PROJECTS MATRIX

December 2012

California's economy is globally ranked with approximately 1.0 million business owners and 18.2 million workers. Currently, California, along with the nation, is experiencing an immense economic downturn with 2.0 million California workers out of work. These are unprecedented numbers for California and the nation. Given this current economic situation, we strive to better serve California's workers and business owners during a time when more than ever, they are in need of our services. Since January 2009, the Board has been focused on the appeal backlog and identifying work solutions that will help address the workload.

WORK PROCESS IMPROVEMENTS

Project & Description	Lead	Priority	Milestones	Goals	Status
EDD/CUIAB Appeal Co-Location Pilot Exploring the co-location of four CUIAB staff at EDD's LA PAC to streamline appeals registration processing.		High	Developed scope with EDD 07/20/10 Connectivity established 08/20/10 Train staff 09/20/2010 Launch Pilot 09/27/2010 Suspended due to freeze 10/04/2010 Relaunch 06/13/2011	<ul style="list-style-type: none"> - Reduce claimants' & employers' wait time for hearing decisions. - Resolve appeal registration issues in a timely manner. 	On 07/09/12, one Pasadena staff member was added and Inglewood FO appeals was added on 9/10/12. Co-Location is registering for Inglewood, Los Angeles, Pasadena, Sacramento, and San Diego. Currently, recruiting for one support staff.
US Department of Labor Taskforce For nine years, CUIAB has failed to meet US DOL timeliness standards for UI appeals. California is ranked 51 st among 53 states and US territories on time lapse and case aging standards. In late 2008, US DOL placed CUIAB under a corrective action plan with oversight by a taskforce of US DOL, EDD & CUIAB representatives.		High	Appeal program review 07/27-31/2009 DOL report 02/05/2010 LWDA response 03/10/2010 Two yr At Risk CAP 07/15/2010 Site visit 04/18/2012	<ul style="list-style-type: none"> - Meet DOL time lapse measures. - Meet DOL case age measures. 	CA removed from corrective action on average case age for first level appeals. November 2012 Performance - First Level 30-day - 58% (60%) 45 day - 85% (80%) Avg Age - 27 days (30 days) Second level Avg age - 45 days (40 days)

TECHNOLOGY

Project & Description	Lead	Priority	Milestones	Goals	Status
Collate Decision Print Jobs Reduce a manually collated appeal decision print jobs to one print job to save staff time.	Hugh Harrison Julie Krebs Lori Kurosaka Faye Saunders	On Hold		<ul style="list-style-type: none"> Reduce claimants' & employers' wait times for benefits and adjustments. Reduce cycle time for appeals process. 	Programming completed and testing is in progress. Solution will be implemented with new E-CATS release (date pending).
CUIAB Network Upgrade This upgrade will double the bandwidth for faster processing of appeal data and information for ALJs and staff.	Rafael Placerda	High		<ul style="list-style-type: none"> Reduce cycle time for appeals data flow and document saving. 	Meeting with EDD IT to explore options & alignment with Agency network consolidation efforts. Design plans are completed.
Dictaphone Integration Consolidating data & audio files on CATS for appeal cases for improved access.	Faye Saunders	High			Will be released with E-CATS.
Digital Imaging EDD mails hard copy documents to CUIAB when an appeal is filed. CUIAB will collaborate with EDD to image documents and records relating to all appeals and design an electronic exchange.	Lori Kurosaka	High	Kick off 11/2010 FSR completion 02/2011 Potential BCP 02/2011 Procurement 04/2011 FSR in review 03/14/2011 FSR in review 11/30/2011	<ul style="list-style-type: none"> Reduce paper files prepared & sent by EDD. Increase information security. Reduce paper file storage space needs & costs at CUIAB. Reduce postage costs. Increase federal performance. 	Completed scope reduction. FSR sent for to EDD 12/04/2012 for final review. Agency will assist on funding strategies.
E-CATS Enhanced CA Appeal Tracking System is the modernization of CUIAB's legacy appeals tracking system. In-house IT staff are developing the system on a Microsoft web application framework	Faye Saunders	High			Users will see enhancements such as new and improved screen search, efficiency in decision printing, and IT ability to roll-out updates via the internet. Testing is in progress. Implementation scheduled for November 2012.
Electronic Case Management CUIAB's case tracking database is 10 years old and cumbersome to manage the current workload volume. CUIAB is collaborating with LWDA & EDD to develop an integrated case management system.	Lori Kurosaka Janet Maglente	On Hold	LWDA, EDD & CUIAB approved FSR & project strategy in 10/2010. Kick off 05/2011.	<ul style="list-style-type: none"> Receive appeals case documents electronically from EDD. Eliminate internal mailing of case documents 	Project Team is revisiting the FSR to update and complete by end of fiscal year. Will begin product research and demos.
E-Decision Review for ALJs In-house development for electronic appeal decision review process.	Faye Saunders	High			Performing business analysis for requirements gathering.

TECHNOLOGY cont.

Project & Description	Lead	Priority	Milestones	Goals	Status
<p>EDD CCR Interface As a part of EDD's UI Modernization Project, CUIAB is building an interface with the Continued Claims Redesign Project under development. Primary data exchange will include address change updates.</p>	Faye Saunders	High		<ul style="list-style-type: none"> - Eliminate paper exchange process with EDD. - Increase worker information security. 	Completed testing solution with EDD. EDD's CCR implementation is scheduled for March/April 2013.
<p>Expand Auto Dialer Hearing Reminder Adding email and cell phone text features for supplemental hearing notifications.</p>	Rafael Placencia	On Hold	<p>Updated software. Final testing 08/2010. Implemented 09/2010. Implemented email reminders 04/2011. Revised 10/2011.</p>	<ul style="list-style-type: none"> - Increase hearing attendance rate & productivity. 	
<p>Explore Feasibility to Use EDD Mail Center Within three months, Field Operations wants to explore feasibility of mailing decisions and notices via the EDD Mail Center to take advantage of bulk postal discounts and save staff resources.</p>	Hugh Harrison Lori Kurosaka Faye Saunders	High		<ul style="list-style-type: none"> - 	Held planning meeting with EDD on 04/12/2012 for requirements gathering and costing. Identifying existing model costs and estimating project cost estimates. Held requirements gathering session with FO & AO on 05/02/2012. Design session on hold due to other IT priorities. AppDev is procuring software to expedite coding for this process.
<p>Field Office Technology Enhancements Investing and testing use of larger sized monitors for hearing rooms. Provide second monitors for support staff to toggle into SCDB without interrupting their CATS.</p>	Rafael Placencia	Medium	Complete procurement	<ul style="list-style-type: none"> - Improve readability of documents on screen. 	Hardware deployment
<p>Field Office Telephone Tree Field Operations will test the use of phone menu options to answer routine constituent calls. This will allow support staff to spend more time on the non-routine calls.</p>	Rafael Placencia	Medium	<p>Develop standard automated phone tree to be used for all FO's Pilot new phone tree in the Inland FO</p>	<ul style="list-style-type: none"> - Reduce claimants & employers time on phones. - Standardize hearing information provided by phone. 	Standard phone tree design completed. Pilot began in the Inland FO.
<p>EDD Flat File Expansion The nightly data file of UI, DI, and PFL appeal transmittals will be expanded to include data for the entire UI macro print jobs. This expanded data will allow CUIAB to calendar hearings before paper transmittal arrives.</p>	Lori Kurosaka Faye Saunders	High		<ul style="list-style-type: none"> - Reduce claimants' & employers' wait times for benefits and adjustments. - Reduce cycle time for appeals process. - Reduce hard copy SCDB screen prints mailing from EDD. 	Gathered business requirements with Judicial Advisory Council 10/16/2012. Trying to schedule project launch meeting with EDD. EDD IT Branch has lead.

TECHNOLOGY cont.

Project & Description	Lead	Priority	Milestones	Goals	Status
<p>Hearing Scheduling System Currently, FO & AO support staff schedule or assign appeal hearings or cases using a hybrid manual process. Appellate, Field & IT staff observed an EDD demon on their UI Scheduling System.</p>	Lori Kurosaka Faye Saunders	On Hold	Charter & scope completed. Kick off 10/14/2010. Requirements 2/2011 Testing began 01/2012 AO Implementation 04/26/2012	<ul style="list-style-type: none"> - Reduce claimants & employers wait time for hearing decisions. - Provide easier electronic process for staff to calendar hearings or schedule cases. 	IT team visited 12 FOs to observe calendaring processes. Business requirements & design document were vetted with FO Steering Council in September 2012.
<p>LWDA Network Consolidation To comply with OCIO Policy Letter 10-14, the LWDA Departments & Boards are developing a network consolidation plan that must be completed by June 2013.</p>	Rafael Placencia	Medium	LWDA Workgroup develops migration plan. Consensus on migration plan. Implementation	<ul style="list-style-type: none"> - Improve IT efficiency & effectiveness. - Improve security. - Reduce IT costs by using shared service models. - Reduce greenhouse gas emissions. 	The migration plan is completed and a cost model has been developed.
<p>Personal Productivity & Mobility Pilot for Board Members, Appellate & Senior Staff Testing use of new mobile, paperless technology with Board Members, six Appellate ALJs, and Senior Staff.</p>	Rafael Placencia	On Hold due to air card limitations	OCIO approval for procurement. Testing equipment with Board.	<ul style="list-style-type: none"> - Reduce the use of paper for board appeal processing and board meetings. 	Scoped down due to GO directive on cell phone (air card) reductions.
<p>Printer Standardization Standardizes the use of printers throughout the organization as they are replaced. This will reduce maintenance and toner costs through the printers lives.</p>	Rafael Placencia	Medium		<ul style="list-style-type: none"> - Reduce maintenance & support costs. - Reduce toner costs. 	Researching feasible equipment. Standards are in place for light, heavy, color, and multi-function printers.
<p>Refresh Bench & Conversion CUJAB's intranet site is under refresh and conversion to SharePoint 2010 software. This software will provide easier updates and content.</p>	Faye Saunders	Medium		<ul style="list-style-type: none"> - Improve internal communication tool for CUJAB employees. 	Secured consultant to build a new SharePoint server in early September 2012. Migration of current content completed in August. IT is working with different programs to update the content of their pages. All contents must be updated by November.
<p>VOIP Telephony CUJAB is exploring use of Voice Over Internet technology to provide lower cost telecommunications.</p>	Rafael Placencia Janet Maglente	On Hold	09/17/2011 Completed 23out station hearing facilities.	<ul style="list-style-type: none"> - Elimination of long distance toll calls - Consolidation of telecommunications support areas. 	On hold 07/2011. IT staff are preparing business analysis for feasibility of further implementation.

STAFFING, FACILITIES, EQUIPMENT & OTHER

Project & Description	Lead	Priority	Milestones	Goals	Status
<p>Archive File Document Conversion Each FO is retaining three years of completed paper appeal case files that are sitting in considerable real estate space. The file room space may be easily converted to ALJ offices or hearing rooms.</p>	Lori Kurosaka Pat Houston	High	MSA vendor contract executed 01/2010. OC, Inland, LA, Oxnard, San Jose, San Diego, LA, Sacto, SF. Appellate complete. Vendor quality checks 04/05, 05/06, 08/19. Vendor quality check 05/09	<ul style="list-style-type: none"> - Recapture real estate space for ALJ offices and hearing rooms. - Priority conversion for OC, Inland, LA, San Jose & Oxnard. 	Extended vendor contract to 12/31/2012. CUIAB IT working on solution to scan files in FO.
<p>Judicial Advisory Council Established an advisory council of two Presiding Judges & three ALJs to seek input on major technology development.</p>	Lori Kurosaka Janet Maglinte	High	07/2011 -Completed business requirements for case management system.	<ul style="list-style-type: none"> - Design comprehensive technology systems with input from judicial users. 	Updating business requirements for imaging & workflow system. Testing ergonomic furniture to help judges to adopt new technology. Scheduling mini-design sessions from September - December 2012 to begin workflow design.
<p>Performance Management Tools for Board & Leadership Develop additional reporting tools that the Board & Leadership will use to monitor overall appellate performance and appeal process cycle times. These tools will also help to measure success with the large scale technology projects.</p>	Janet Maglinte	High	Business case metrics for imaging Business case metrics for case management Tested report template designs with IT.	<ul style="list-style-type: none"> - Design comprehensive technology systems with input from staff users. 	Field Operations performance indicator reports are complete. In design & test for Appellate Operations cycle time and case aging reports.
<p>Staff Advisory Council Established an advisory council of six Field Operations staff and two Appellate staff to seek input on major technology development.</p>	Lori Kurosaka Janet Maglinte	High		<ul style="list-style-type: none"> - Design comprehensive technology systems with input from staff users. 	First assignment is to redesign appeal forms as smart forms. Scheduling mini-design sessions from September - December 2012.
<p>Transforming CUIAB Completed engagement with vendor. Establish new change management program at CUIAB to train staff for skills needed for new technology implementations and communicate on tech project initiatives.</p>	Pam Boston	High		<ul style="list-style-type: none"> - Develop and implement training plan for judges & staff. - Develop and implement a communications plan targeting all CUIAB stakeholder groups on new technology status. 	Draft communications and training plans are completed and will be vetted with the CUIAB OCM steering council.



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

THEODORE D STINSON
Claimant-Appellant

LONG BEACH USD
c/o UC EXPRESS
Account No.: 942-5050-3
Employer

Case No.: **AO-270683**

OA Decision No.: 3833032
EDD: 0410 BYB: 06/05/2011

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

ALBERTO TORRICO

ROBERT DRESSER

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed:

NOV 28 2012

Case No.: AO-270683
Claimant: THEODORE D. STINSON

The claimant appealed from the decision of the administrative law judge that held the claimant ineligible for unemployment insurance benefits under section 1253.3 of the Unemployment Insurance Code¹ beginning June 19, 2011.

ISSUE STATEMENT

The issue before us is whether the claimant, a school employee as specified in code section 1253.3, subdivision (c), is entitled to unemployment insurance benefits given that the employer did not comply with the requirement of providing written notice of reasonable assurance no later than 30 days before the end of the academic term or year, pursuant to code section 1253.3, subdivision (i).

STATEMENT OF FACTS

The claimant has worked for Long Beach Unified School District, a public educational institution, for approximately six years. Since July 2009, the claimant has worked as a substitute security officer. The spring semester of 2010-2011 ended on June 16, 2011. The claimant's last day of work before the summer recess was June 16, 2011.

As was the case with the summer of 2010, the claimant was not offered any work with the employer in the summer of 2011. In a letter dated May 18, 2011, received by the claimant on May 21, 2011, the employer gave the claimant notice that he had reasonable assurance of returning to work in his usual capacity in the next school year. The letter stated that the claimant's services would not be needed over the recess periods. The letter also advised the claimant that he had the right to file a claim for benefits at the end of the school year, that the determination of eligibility for benefits would be made by the Employment Development Department (EDD), not the employer, and that the claimant had the right to file a claim for retroactive payment of benefits within the first 30 days after the start of the next academic year if the claimant was not afforded the opportunity to work in the new academic year. To be timely, under code section 1253.3, subdivision (i), the employer should have

¹ All statutory references are to the Unemployment Insurance Code, unless otherwise noted.

provided the written notice on or before May 17, 2011. Thus, the notice required by code section 1253.3, subdivision (i) was given to the claimant 1 day late.

The fall term of the 2011-2012 academic school year began on August 30, 2011. The claimant returned to work on August 30, 2011, and was given a 59-day assignment as a substitute security guard.

REASONS FOR DECISION

Code section 1253.3 controls whether school employees are entitled to unemployment benefits during a summer recess. As a general rule, benefits will be denied if the claimant worked in an academic year or term and the employer provides "reasonable assurance" of reemployment in the second of the academic years or terms. Separate subdivisions govern the employee's rights and the employer's obligations under the statute, depending upon the type of position held by the employee during the academic year.

Unemployment insurance benefits based on service performed in the employ of a nonprofit or public educational institution in "an instructional, research or principal administrative capacity . . . are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms . . . if the individual performs services in the first of the academic years or terms and if there is a contract or reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms." (Unemployment Insurance Code, § 1253.3, subd. (b).)

Unemployment insurance benefits based on service performed in the employ of a nonprofit or public educational institution in other than an instructional, research or principal administrative capacity "shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform the service in the second of the academic years or terms." (Unemployment Insurance Code, § 1253.3, subd. (c).)

When an employer provides "reasonable assurance," the employer is entering into an agreement which contemplates the reemployment of the employee, but which is not legally enforceable. (*Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834.)

In the case of employees performing substitute work, reasonable assurance of work as a substitute after the summer recess is sufficient even though the

employer may not be able to specify exactly when the claimant would perform services. (*Board of Education of Long Beach Unified School District v. California Unemployment Insurance Appeals Board* (1984) 160 Cal.App.3d 674.)

While "reasonable assurance" is an issue in all cases involving eligibility for benefits during school recesses, school employees may have different rights, depending upon whether the employee performs services in an instructional, research or principal administrative capacity ("professional employees"), or performs services in all other capacities ("nonprofessional employees"). (Code section 1253.3, subdivisions (b) and (c).)²

Professional school employees are entitled to fewer protections with respect to their rights to unemployment insurance benefits than are nonprofessional school employees. Specifically, professional school employees, who have reasonable assurance during a recess period, have no potential for retroactive benefits in the event an opportunity to perform services in the second academic year is not offered. In contrast, nonprofessional school employees may be entitled to such benefits. (Compare Code section 1253.3, subds. (b) and (c). See also Section 3304 (a)(6)(A)(ii)(II) of the Federal Unemployment Tax Act (FUTA).) Thus, it is important to distinguish whether the school employees are considered professional or nonprofessional because they are treated differently by statute.

Code section 1253.3, subdivision (i) applies only to "nonprofessional" employees. Subdivision (i) provides, in pertinent part, that *no later than 30 days before the end of a "first academic year or term,"* (emphasis added) public school employers shall provide a written statement indicating:

- (1) Whether or not there is reasonable assurance of reemployment.
- (2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should file a claim for benefits at the close of the academic year or term.
- (3) If it is stated that the individual has reasonable assurance of reemployment, the written statement shall also inform the employee that he or she may file a claim for benefits and that the determination

² For ease in reference, these school employees are referred to as "professional employees" or "nonprofessional employees," as they are in the Unemployment Insurance Program Letters (hereinafter referred to as UIPL) issued by the U.S. Department of Labor. "Professional is the name given to the services described in clause (i) of [26 U.S.C.] Section 3304(a)(6)(A) as services performed in an 'instructional, research, or principal capacity.' 'Nonprofessional' is the name given to the services described in clause (ii) as services performed in 'any other capacity.'" (U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992), citing 26 U.S.C. Section 3304(a)(6)(A).

for eligibility for benefits is made by the Employment Development Department not by the employer.

- (4) If it is stated that there is reasonable assurance of reemployment, that the individual shall be entitled to a retroactive payment of benefits if the individual is not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, if the individual is otherwise eligible and he or she filed a claim for each week benefits are claimed, and if a claim for retroactive benefits is made no later than 30 days following the commencement of the second academic year or term."

Here, it is undisputed that as a substitute security guard at a public education institution, the claimant falls within the class of "nonprofessional school employees" and is thus protected by the rights to unemployment insurance benefits of code section 1253.3, subdivisions (c) and (i). Code section 1253.3, subdivision (i) requires that the employer provide written notice of reasonable assurance to work in the next academic year or term "no later than 30 days before the end of the first of the academic years or terms." The written notice provided by the employer was dated May 18, 2011 and mailed on or about that date, less than 30 days before the end of the academic term.

The question presented in this case concerns the consequence of the employer's failure to comply with the 30 day requirement for the written notice under code section 1253.3, subdivision (i).

"The policy underlying the Unemployment Insurance Act is to promote public and private enterprise by establishing 'a system of unemployment insurance providing benefits to persons unemployed through no fault of their own, and to reduce the suffering caused thereby to a minimum.'" (*Metric Man, Inc. v. Unemployment Insurance Appeals Board* (1997) 59 Cal.App.4th 1041, 1051, quoting, in part, Unemployment Insurance Code, § 100.)

"The provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objective of reducing the hardship of unemployment. [Citations omitted.]" (*Gibson v. Unemployment Insurance Appeals Board* (1973) 9 Cal.3d 494, 499.)

The U.S. Department of Labor requires that "[s]ocial legislation such as the FUTA is to be construed broadly with respect to coverage and benefits. Exceptions to its statutory remedies are to be narrowly construed. . . . Accordingly, since the denial provisions are exceptions to the broad coverage provisions of Section 3304(a)(6)(A), they are given a narrow reading. . . . Such a reading, which

permits a State to differentiate among services, or to otherwise limit application of a clause, could also result in extending coverage to the broadest number of unemployed persons, thereby accomplishing the basic purpose of the coverage requirements of Section 3304(a)(6)(A), FUTA." (U.S. Dept. of Labor, Unemployment Insurance Program Letter (UIPL) No. 43-93 (April 23, 1993) (internal citations omitted).)³

Code section 1253.3, subdivision (a) declares that unemployment insurance benefits will be paid to school employees in equal measure and under equal terms as those paid to non-school employees, except as provided by the terms of section 1253.3. (Unemployment Insurance Code, § 1253.3, subd. (a).)

The language of code section 1253.3, subdivision (a) is almost identical to the proposed draft language for the States offered by the U.S. Department of Labor. (See U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992).) The section includes the general provision of legislative intent to avoid or mitigate major disruptions to the economy resulting from involuntary unemployment and the suffering so caused. (See Unemployment Insurance Code, § 100; see also, FUTA, 26 U.S.C. §§ 3301-3311.)

By the terms of subdivision (a), any restriction on unemployment benefits afforded to school employees under code section 1253.3 is to be limited. (Unemployment Insurance Code, § 1253.3, subd. (a).) Subdivision (i) of that section mandates what the school employer must do to provide the reasonable assurance that results in the denial of benefits to nonprofessional school employees benefits between academic years or terms. Basic principles of legislative intent dictate that "[e]xceptions to the general provisions of a statute are to be narrowly construed." (*Corbett v. Hayward Dodge* (2004) 119 Cal.App.4th 915, 921.) The requirements are clear, explicit, specific and mandatory. The one at issue here mandates the notice of reasonable assurance for nonprofessional school employees to be provided in writing, "...no later than 30 days before the end of the first of the academic years or terms." (Unemployment Insurance Code, § 1253.3, subd. (i).)

³ "The United States Department of Labor is the federal agency responsible for ensuring that state unemployment laws comply with the mandatory federal criteria set out by Congress." (*Dole Hawaii Division-Castle & Cooke, Inc. v. Ramil*, 71 Haw. 419, 426 (Haw. 1990) (internal citations omitted).) In order for California to qualify for federal funding for this State's unemployment insurance program and for private employers in California to be eligible for federal tax credits for unemployment contributions, California's unemployment compensation laws must comply with the standards set forth in the Federal Unemployment Tax Act of 1954 (hereinafter referred to as "FUTA"), codified at 26 U.S.C. §§ 3301-3311.). (See e.g., *Russ v. Unemployment Insurance Appeals Board*, *supra*, 125 Cal.App.3d at 891.) Thus, the UIPL's by the Department of Labor may be used as persuasive interpretations of the federal law. (*Ibid.*)

Since the language is unambiguous, the plain meaning of the language governs. (See *Estate of Thomas* (2004) 124 Cal. App. 4th 711, 719.) Specifically, the language of code section 1253.3, subdivision (i) mandates that specified employers of nonprofessional school employees, "...shall provide a written statement ...to the individual no later than 30 days before the end of the first of the academic years or terms." (Emphasis added.) The Unemployment Insurance Code, itself, directs that "...[s]hall' is mandatory and 'may' is permissive'." (Unemployment Insurance Code, § 15.) Moreover, the use of the word *shall* is typically construed as mandatory, while the word *may* is construed as permissive. (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542; *Doe v. Albany Unified School District* (2010) 190 Cal.App.4th 668, 676-677.) The mandatory nature of section 1253.3, subdivision (i) is further evidenced by its imperative language "...no later than 30 days before the end of the first academic years or terms." (Emphasis added.) [See *Ursino v. Superior Ct.* (1974) 39 Cal.App.3d 611, 619 (finding that the use of the word "shall" in conjunction with the phrase "not later than" shows an intent for a mandatory time period).]

Well-settled principles of statutory construction require the interpretation of the statute "in a manner to implement the legislative intent." (*Worthington v. Alcalá* (1992) 10 Cal.App.4th 1404, 1408.) The intent is derived by looking first at the ordinary meaning of the words used in the statute and construing "them in the context of the statutory scheme in which they appear." (*Ibid.*)

The statute's plain language conveys an unambiguous prerequisite to a finding of reasonable assurance that results in a denial of benefits to nonprofessional school employees. Further, the statutory scheme of code section 1253.3 is to allow for benefits to school employees with limited exceptions as outlined within the statute. Significantly, by the use of the word "shall," the California Legislature clearly stated an expectation that the school employer provide the notice of reasonable assurance within the 30 day time limit. The California Legislature intended it, to be a consistent practice in providing reasonable assurance to nonprofessional school employees. Thus, the enactment of subdivision (i) gives further definition of the requirements of reasonable assurance under subdivision (c) for the nonprofessional school employees. Accordingly, if the employer fails to provide the nonprofessional school employee with 30 days written notice of reasonable assurance, as required under code section 1253.3, subdivision (i), then the nonprofessional school employee has not received reasonable assurance under subdivision (c) and is not ineligible for unemployment insurance benefits under subdivision (c).

This conclusion is supported by a review of the code section, and its interplay with the enabling federal legislation. In 1991, the federal government amended

subsection (a)(6)(A)(ii)(I) of 26 USC 3304 by substituting "may be denied" in place of "shall be denied" for nonprofessional school employees only. (See The Emergency Unemployment Compensation Act of 1991 (Public Law 102-164).) The federal amendment allows the states the option of providing benefits between consecutive academic years or terms to nonprofessional school employees, regardless of reasonable assurance. Under code section 1253.3 subdivision (c), California opted to deny benefits to nonprofessional school employees if there is reasonable assurance of working in the next academic year or term, provided the employer has satisfied the requirements of subdivision (i).

Under Public Law 102-164, the States can choose to make the requirements less restrictive for nonprofessional employees to receive benefits. (See U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992).) If the States should choose to deny benefits to the employees, the States "have the option of adopting a more restrictive test than the reasonable assurance test for nonprofessionals." (U.S. Dept. of Labor, UIPL No. 15-92 (Jan. 27, 1992).) "For example, instead of requiring the reasonable assurance requirement . . . , the State law may include a provision requiring a contract to return to work in the next year or term." (*Ibid.*)

In California, the Legislature chose to include subdivision (i), and thereby adopted a more restrictive test for reasonable assurance for nonprofessional school employees. Accordingly, the school employer must provide the written letter of reasonable assurance 30 days before the end of the academic year or term in order to provide reasonable assurance to nonprofessional school employees. There is no question that the school employer must satisfy the further requirements under subdivision (i) if benefits are to be denied under subdivision (c). With the enactment of subdivision (i), the California Legislature provided greater protection to nonprofessional school employees than professional school employees.

For all the foregoing reasons, we find that to give reasonable assurance to this claimant, the employer had to provide the written notice 30 days before the end of the academic term. The academic term ended on June 16, 2011. Accordingly, in order to meet the 30 day requirement, the written statement needed to be provided on or before May 17, 2011. The written statement is dated May 18, 2011. Therefore, the employer did not satisfy the notice requirements for giving notice of reasonable assurance to this claimant.

Under these circumstances, we find that the lack of timely notice precludes a finding of reasonable assurance of employment. The claimant is not ineligible for benefits beginning June 19, 2011, under code section 1253.3.

DECISION

The decision of the administrative law judge is reversed. The claimant is not ineligible for benefits under code section 1253.3, subdivision (i), beginning June 19, 2011. Benefits are payable, provided the claimant is otherwise eligible.

FURTHER APPEAL INFORMATION

The Appeals Board's decision is final and can be changed only by action of a judicial court. (Unemp. Ins. Code § 410). The Appeals Board cannot reconsider or set aside the enclosed decision. (37 Ops.Cal.Atty.Gen. 133.)

If you wish to appeal the enclosed decision, you may seek review in Superior Court by filing a *Petition for Writ of Mandate* against the California Unemployment Insurance Appeals Board (Appeals Board) pursuant to section 1094.5 of the Code of Civil Procedure.

The Appeals Board does not process petitions for court review. **You must file such petitions directly with the Superior Court not later than six (6) months after the date of the decision of the Appeals Board. You must also serve a copy of the Petition for Writ of Mandate on the Appeals Board** at its headquarter, 2400 Venture Oaks Way, Suite 100, Sacramento, California 95833. Service of the Petition must comply with legal requirements set forth in the Code of Civil Procedure, sections 414 to 415.95.

The Appeals Board does not pay benefits, handle claims or claim forms, or collect overpayments. If you have questions about these matters, you must contact the Employment Development Department (EDD), not the Appeals Board. It is important that you notify the appropriate EDD office of any change in your address. You may contact EDD at (800) 300-5616 for California claims (Intrastate) or (800) 250-3913 for out-of-state claims (Interstate).

If you are a claimant, you are reminded to continue to file weekly claim forms with the EDD while seeking a writ of mandate. If you prevail in court, you will only be paid for those weeks in which you file weekly claim forms and meet other eligibility requirements.



INGLEWOOD OFFICE OF APPEALS
9800 South La Cienega Blvd - Ste 901
INGLEWOOD CA 90301

(310) 337-4302

THEODORE D STINSON
Claimant-Appellant

LONG BEACH USD
c/o UC EXPRESS
Account No: 000-0000
Employer

Case No. 3833032

Issue(s): 1253.3

Date Appeal Filed: 07/29/2011

EDD: 0410 BYB: 06/05/2011

Date and Place of Hearing(s):
(1) 09/09/2011 Long Beach

Parties Appearing:
Claimant

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

E. Mallette, Administrative Law Judge

FILE COPY

Date Mailed: SEP 13 2011

Case No.: 3833032
CLT/PET: Theodore D. Stinson
Parties Appearing: Claimant
Parties Appearing by Written Statement: None

Inglewood Office of Appeals
ALJ: E. Mallette

ISSUE STATEMENT

The claimant appealed a determination which held him ineligible for benefits for an indefinite period beginning June 19, 2011 under Unemployment Insurance Code section 1253.3. The issue in this case is whether the claimant had reasonable assurance of returning to work with the Long Beach Unified School District in the next school year or term.

FINDINGS OF FACT

The claimant filed a claim for benefits which began June 5, 2011. He last worked for the employer on June 16, 2011. The claimant has worked for the employer since 2006. Since 2009 he has worked as a substitute campus security officer. He stopped work due to the summer recess. In a letter dated May 18, 2011, the employer informed the claimant that he has reasonable assurance of returning to work in his usual capacity in the next school year.

The claimant was not offered any work with the employer in the summer of 2011, 2010 and 2009. The new school year began on August 30, 2011. The claimant returned to work and was given a 59 assignment.

The claimant contends that he received the reasonable assurance notification on May 21, 2011 and that since he did not receive 30 days notice, the letter is void. There was no guarantee of returning to work.

The claimant held a long term substitute campus security position before the summer recess. He was offered the position in January, 2011 and worked until mid June 2011. He contends that the position he began in August, 2011 is not comparable because it is only a 59 day assignment.

REASONS FOR DECISION

Unemployment insurance benefits based on service performed in the employ of a non-profit or public educational institution in other than an instructional, research or principal administrative capacity are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms if the individual performs services in the first of such academic years or terms and if there is reasonable assurance that such individual will

perform services for any educational institution in the second of such academic years or terms. (Unemployment Insurance Code, section 1253.3(c).)

Section 1253.3(i) of the code provides that no later than 30 days before the end of a "first academic year or term," public school employers shall provide a written statement to employees not engaged in instructional, research, or principal administrative tasks, indicating:

- (1) Whether or not there is reasonable assurance of reemployment.
- (2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should file a claim for benefits at the close of the academic year or term.
- (3) If it is stated that there is a reasonable assurance of reemployment, that the Employment Development Department not the employer will determine if the employee is entitled to unemployment insurance benefits.
- (4) If it is stated that there is reasonable assurance of reemployment, that the employee is entitled to retroactive benefits if not offered an opportunity to perform services in the second academic year or term, if he or she is otherwise eligible and filed a claim for each week for which benefits are claimed, and if the claim for retroactive benefits is made no later than 30 days following commencement of the second academic year or term.

"Reasonable assurance" is an agreement which contemplates the reemployment of the employee but which is not legally enforceable. (*Russ v. California Unemployment Insurance Appeals Board* (1981) 125 Cal.App.3d 834.)

In *Board of Education of Long Beach Unified School District v. California Unemployment Insurance Appeals Board* (1984) 160 Cal.App.3d 674 the claimant worked as a substitute teacher and was offered continuing work as a substitute after a summer recess. The court held the claimant had reasonable assurance of reemployment even though the employer could not specify exactly when or if the claimant would perform services.

In this case, it is clear that the employer issued the claimant a reasonable assurance notification. Even if the notice was not "provided" exactly thirty days before the end of the school year, the code does not state that this defect voids the notice and the provisions of code section 1253.3 in general.

The claimant received notice of reasonable assurance, was on a summer recess and did not normally work in the summer. A guarantee of work in the next term is not required by the code. There is also no requirement that he be given a specific number of days of work from one school year to the next.

For these reasons it is found that the claimant had reasonable assurance of returning to work in the next school year or term. He is ineligible for benefits under code section 1253.3 from June 19, 2011 through August 27, 2011, the recess period.

DECISION

The determination is modified. The claimant is ineligible for benefits under code section 1253.3 from June 19, 2011 through August 27, 2011.

Ing/em