

MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5561

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., February 12, 2013, in Sacramento with Chair Robert Dresser presiding.

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

3. Approval of the Minutes:

The January 15, 2013 minutes were approved by all members.

4. Chair's Report:

Chair Dresser reported that he has requested that the Department of Labor remove CUIAB from the "at risk" status in light of our improved performance. In that regard, our case aging is now down to 24 days, 30 day time lapse is 54%, and 45 day time lapse is 86%. At Appellate Operations the case aging is dropping and they are at or near the federal standard, which CUIAB needs to achieve by the end of March. CUIAB has moved from 51st place in first level appeals nationally to 33rd over the last several years.

Chair Dresser reported that the Enterprise Appeals Project has run into some roadblocks, and it doesn't look like it is going to go forward as planned. We will still try to do something along those lines, but it is not going to be the full blown project report they were hoping for.

Chair Dresser reported that Best Practices team continues to meet and train field office support staff to improve our efficiency, and to help for our big push in March.

Vice Chair Howard reported at this point on the reorganization of the responsibilities and roles of the four Assistant Chiefs. To provide context, at the Presiding Judges meeting last month, an excellent meeting, she had the opportunity to hear directly from the PJs about their day-to-day challenges and to discuss the proposal for the reorganization of the four Assistant Chief responsibilities with the goal of providing better services to the field and better support to the Chief Judge. They are still in process, but they intend to get a communication out to all of the PJs that confirm specifically what the Assistant Chiefs' newly reorganized duties will be.

In addition, Vice Chair Howard reported on the IT Review that was conducted recently. They participated in a meeting with all IT staff in December, had a very helpful and fruitful discussion and as a result the Chair requested that they conduct a survey of all the IT employees, which was done in January. They did a survey monkey and received 30 responses out of the approximate 40 employees in IT, which was really excellent. Last week Chief Roldan and Vice Chair Howard met with CIO Rafael Placencia and Faye Saunders and about those results. Faye Saunders and CIO Placencia are now working on a plan to make improvements based on the staff input. Those changes generally have to do with communication, priority setting and the fair application of policies across the whole division. Also, just improving working relationships in broad terms.

Chair Dresser stated that they also have submitted to EDD a proposed reorganization of IT to try to increase some of the promotional opportunities in IT.

Chair Dresser continued his report to note that there is also an issue of compaction between PJ and ALJ II salaries because of the coming pay increase in July. They are working with Cal HR to address that issue.

Chair Dresser commented that we have posted to the website information about the improvements CUIAB has been making over the past several years.

Finally, Chair Dresser expressed condolences to the family of ALJ Michael Campbell, Tax Unit, who unexpectedly passed away over the weekend. This is a big loss to both his family and CUIAB; ALJ Campbell was a very good judge. Also, Lori Kurosaka's father, Tom Fujimoto, who was a recipient recently from President Obama of the highest civilian award for his service in World War II, passed away over the weekend. Alberto Roldan's wife's step-father passed away as well.

5. Board Member Reports:

Member Allen stated he is enjoying the work and that they are keeping him quite busy. Chair Dresser thanked Member Allen, who after being here just less than a month and a half, has assumed a full caseload, commenting that is attributable to his experience as an attorney as well as a legislator and being a hardworking person.

6. Public Comment:

Attorney Steven Rice spoke on behalf of the Supershuttle entities with respect to the issue of precedent designation, stating that the implications of such a step on franchises and franchisee operations throughout the state are very large. It potentially could turn most of the franchises in this state into employee relationships, and would also have the effect of driving out potential franchise owners who are interested in coming into this state. There are many issues in that decision that make it especially susceptible to potential reversal on judicial review. With that in mind, he would again, urge the board to give this careful consideration.

7. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Roldan reported that they are continuing to make progress on the backlog of cases, which is now down less than a week of backlog. At this point we are issuing about 36,000 decisions a month, and carrying just 40,000 open cases. We've made tremendous progress, which has had a very positive impact on the average case aging. The average case age is presently at 24 days. The cycle time is about 45 days, which means that we are closing cases on average within 45 days of the party physically mailing the appeal.

8. Special Assistant to the Board, Lori Kurosaka Report:

Chief ALJ/Executive Director Roldan reported on behalf of Special Assistant Kurosaka. Due to the present lack of funding with regard to the Enterprise Appeals Project, the Project Team has transitioned into working with Unisis to implement the paperless process on a much smaller scale, in the areas of disability, tax, and paid family leave, on a budget of approximately \$2 million. Hopefully then, we'll take what we learn from those programs in the next couple of years so that we'll be in a position to implement a paperless system agency wide when more funding comes available.

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

Chief ALJ AO Rose reported that AO registered 2,789 cases last month, 600 more than the previous month and well above last year's average of 2,556. The balance of open cases is 2,057 which is well below the last year's average of 2,913. Total dispositions were 2,921 cases, far above last year's average of 2,669.

Chief ALJ AO Rose reported, regarding time lapse, that under DOL guidelines they are to issue decisions in 50% of cases within 45 days. At the end of January AO was issuing decisions within 45 days in just 13% of the cases, but in February that jumped up to 40% at one point. AO is meeting the standards for 75 days and 150 days. The appeal rate was 8.3% last month, as contrasted to the average of 7.4%. Chief ALJ AO Rose reported that the case aging has continued to improve. In January they hit their goal of 40 days. She reported that one of the things they are doing to improve these numbers is to get the field offices to send the cases up more quickly, about which Chief Roldan recently sent a reminder to the field offices. Another thing that they have done is to negotiate an interim agreement with CASE in which the ALJs can opt to listen to longer hearings, rather than receiving a transcript, in exchange for extra case credits. Previously we were transcribing all the cases over 70 minutes which can contribute to a couple weeks delay depending on how long the hearing was or how complicated it was.

10. Chief Information Officer, Rafael Placencia Report:

CIO Placencia reported that Automated Calendaring Scheduling System (ACSS) Phase Two, work is currently in the process of refining the requirements for the functionality of the system.

CIO Placencia also reported that ECATS is on schedule for conducting a stress test of the application on Wednesday. The stress test requires close coordination with approximately 70 live testers who are located in the field office and here in Sacramento. The results of the testing will be analyzed for potential performance issues.

CIO Placencia reported that the AO Paperless Project, also known as Filebound, is on schedule for full implementation at the end of April. That means we will not be using the paper files for redundancy.

CIO Placencia further reported on the IT Service Consolidation. There are two

projects within the service consolidation efforts: the Data Center Consolidation which is a requirement by the state, OCIO, to our critical systems over to a tier three data center. We are well ahead of getting CUIAB's systems over to OTech, which is going to be servicing those critical systems, along with CAMail. CAMail is a project that is also part of the overall IT Service Consolidation effort. The email addresses were changed at the end of January, and individuals are now known by their last name, comma, first name for their email address. The next phase of the migration is to migrate users over to the new system at OTech. That is scheduled to start later this month.

Lastly, CIO Placencia reported that there are two active pilot projects out of Fresno: Paperless Phone Hearings and In-house Scanning of closed case files. They had to stop the paperless phone hearings process to take a step back and look at security issues. They do have some proposals in place to start that pilot back up again. The In-House Scanning of closed case files allows the staff in the field to scan closed case files so that the documents in the field can be disposed of, thus saving storage space. He hopes to have more information on that at next month's meeting.

11. Chief Administrative Services, Robert Silva Report:

Chief Silva referenced the monthly Overtime Report in the board members' packets. He reported that in the months of October and November CUIAB was trending downward in overtime use, looking at about \$68,000 per month in expenditures. As shown by the figures in red, CUIAB continues to overspend its internal allocation for overtime that was put together at the beginning of the fiscal year. However, we also continue to under spend in the permanent help dollars and our total personnel budget which more than covers the over-use of overtime for the first half of the fiscal year.

Chief Silva reported that on January 31 he issued a memo to the management in the agency about OEE and Personnel Budget Call Letters for the 13/14 state fiscal year. All branches requests are due on February 22, where they will consolidate all of the requests and then the Budget Advisory Committee will meet and vet all of the requests and make some approvals and/or deferrals for the coming fiscal year.

Chief Silva reported that he will be issuing a memo regarding CalATERS, which is SCO's system for web-based travel claims. It is a rather long memo with a lot of information even though it is pretty simple to use. The registration process is a snap. This will represent pretty significant change for our employees compared to

what they have been doing over the past several years. We have also apprised all of the travel coordinators in each office about the new system so they will be there as a resource to help people who may have trouble with the new system.

Lastly, the MyCalPays system was something the State Controller's Offices was working on for the last few years as the new payroll and leave accounting services for the State of California. However, they have pulled the plug on this project due to a myriad of problems.

12. Chief Counsel's Report:

Chief Counsel Hilton reported that EDD and CUIAB prevailed in the Acosta case at the court of appeal level. The court of appeal affirmed the superior court decision which was in CUIAB's favor. This is the lawsuit by CRLA against the State, essentially asking that the court take over supervision of the UI program in order to bring the State into compliance with the federal timeliness standards both for EDD and for CUIAB. The superior court denied the request on the basis of the rule of abstention, which basically means that there are adequate administrative remedies with the Department of Labor. This is a significant win for the state.

Chief Counsel Hilton reported that the board is presently carrying 328 court cases. We received nine new cases in January, and five were closed. The board was reversed in two of those cases, without any explanation by the court as to why, which usually means that the court just viewed the facts of the case differently than the board did.

13. Unfinished and New Business:

Chair Dresser stated the first item pending is consideration of board decision AO-278558, San Francisco Unified School District, for designation as a precedent. Chair Dresser commented that he has been advised by Chief Counsel that there is a similar case with similar parties pending before the San Francisco Superior Court, and that it might be helpful to delay the decision on making this a precedent until the board has the results of that litigation. The board unanimously concurred with that recommendation.

Chair Dresser stated that the next item for consideration by the board is whether or not to designate AO-279534-T, Supershuttle International, for designation as a precedent.

Member Allen commented that he feels that the decision is really well rooted in existing law. He commented that granted every case has specific facts that you look at, but to him he feels that by having markers and some guidance to franchisees as to what is appropriate and what isn't, helps in terms of having a stable business climate in California. Accordingly, his preference would be to adopt it as a precedent.

Member Ashburn stated he is opposed to making this a precedent decision. He commented that the moving parts of this decision, the unique factors that pertain to the franchises, the operators, the way in which they operate, the method of dispatch or communication of acceptance of calls and declining of calls, the authority of the company in relationship to the franchisees, is so unique to this particular case that he thinks it would be the wrong thing to make it a precedent.

Vice Chair Howard echoed Member Allen's comments. She thinks that this decision does provide needed guidance to the field in similar kinds of employment situations and so for that reason she does support making it a precedent.

Chair Dresser added that it is his understanding there are several cases now pending before the board where the issue of a franchisees is being considered. These cases do come up and he thinks that the field judges do need guidance. To him it is analogous to the courier industry where they had the precedent decision in the courier industry, and where courier drivers generally were treated as employees previously. Then for whatever reasons, economic as well as other things no doubt, there was a move to treat them as independent contractors. EDD issued an assessment, as was the case here, and the board upheld the assessment believing that the workers were primarily employees rather than independent contractors. The little extra element here is the franchisee. To him, if you have a franchisee, for example McDonalds, it is a lot different than this particular situation. As he understands the record in this case, before 1993 the drivers were considered to be employees. Then for a variety of reasons, they changed to be franchisees and thus exempt from the necessity to pay UI taxes, training taxes, etc. He sees this as somewhat analogous to the courier situations, although there are some distinctions because of franchise law, which counsel has pointed out, but to him the authority of the board is paramount to decide who is an employee, who is an independent contractor, who is eligible for unemployment and who is not. He thinks that the board is within its authority to decide as they did, and to make it a precedent decision for the guidance it will give.

Chair Dresser called for a vote, which was 3 to 1 in favor of designating the decision as a precedent, with Member Ashburn opposed.

14. Closed Session:

The Board went into closed session. No votes were reported.

Adjournment