

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5563**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 a.m., April 9, 2013, in Sacramento with Chair Robert Dresser presiding.

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

**3. Approval of the Minutes:**

The March 12, 2013 minutes were approved by all members.

**4. Chair's Report:**

Chair Dresser reported that CUIAB is now in compliance with all federal standards. This is the first time in 10 or 11 years that this has occurred. He thanked everyone for their efforts. Chair Dresser stated that they would be meeting Wednesday with the Department of Labor regional staff and will request removal from the at risk designation and from the Corrective Action Plan in relation to the 45-day time lapse. Removal in relation to the 30-day time lapse will require additional months of compliance.

Chair Dresser reported that we received approval in the last couple weeks to have 45 more of our judges attend the NAUIAP Training Conference, which is in addition to the 80 Los Angeles Basin judges who had already been approved for the payment of their conference fee of \$300 and travel.

Chair Dresser further reported that we received approval from the Labor Agency to continue our retired annuitant judges and support staff through June 30, tempered by the reality of the sequestration and possible budget cuts.

Lastly, Chair Dresser reported that he has asked Tim McArdle to set up an Executive Planning Session for June, with the focus to be coping with a shrinking budget and less income from the federal government next fiscal year and perhaps much more immediately than that. We also know there will be some reduction in EUC benefits. Chair Dresser also asked that Sal Canella be assigned to assist in the preparation for the budget discussion.

Chair Dresser commented that, as reported by Lori Kurosaka at a previous meeting, we are going to be celebrating 70 years of CUIAB existence.

**5. Board Member Reports:**

Member Allen continued in expressing his thanks to all the staff for such a great job, and for being so supportive.

**6. Public Comment:**

No public comment.

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

Chief ALJ/Executive Director Roldan reported that they are at a very good period in terms of performance in the field. They are absolute equilibrium which basically means that the current open balance of cases is slightly smaller or equal to the average of new cases that they are receiving on a monthly basis. So there is no backlog whatsoever and their timeliness is outstanding. They are significantly exceeding all of the required standards across the board with the Department of Labor. They finished the month of March with an average case age of 19 days. In terms of time lapse, our 30-day time lapse is at 79%, well above the requirement that at least 60%; 45-day time lapse is at 95% and both of those are absolute new highs for the department. We closed 39,524 cases during the course of the month and we wound up registering about 35,462 cases. At the end of the month the open inventory was 34,291 cases. If anything, they're having a few challenges with having enough cases to completely fill the calendars of judges, so one of the things that they are trying to do is to make an effort to reduce employees' leave balances. He has issued a directive for managers to begin working with judges and support staff who have high leave balances to burn those during the next couple of months, if at all possible, so that the impact is in this fiscal year rather than carrying over to the next fiscal year. They've had some particular concerns about persons who may

be coming up in retirement with very high leave balances because that leaves the department in a situation where we have to deal with either a cash out or keeping the position off line.

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

Special Assistant Kurosaka reported that DOL, Region 6 staff will be here tomorrow afternoon for an update on the status of our Corrective Action Plan. The federal second quarter Corrective Action Plan status report will be due to DOL next month. The staff is preparing the data and summaries for that report.

Special Assistant Kurosaka reported that with regard to sequestration, the EDD's estimate for the total reduction is about \$20 million for the total UI grant, and that is from April 1 through the next fiscal year. She stated that CUIAB is approximately 10% of the UI grant budget.

Special Assistant Kurosaka reported that staff is convening a committee of representatives from all of the CUIAB entities to start planning a recognition of CUIAB's 70<sup>th</sup> anniversary. They are hoping to center the recognition around Labor Day week and will be submitting a plan for the board's review and approval once that committee has been convened. Lastly, they will be working on business requirements this week with the Judicial and Staff Councils.

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

Chief ALJ AO Rose reported that AO's statistics also have improved greatly, and that they have now complied with all of their numbers for the first time since last May. Case aging is down to 29.1 days at the end of March, a drop of 6 days from last month. In six months they dropped the average case age by a total 20 days. She reported that they are also doing very well with time lapse now. Their goal for 45-days is 50% and they were at 53.27%; further, 90.56% of the cases were decided within 75 days, exceeding the 80% goal. In addition, the transfer time it takes cases to get from FO to AO was at 1.38 days.

Chief ALJ AO Rose reported regarding Filebound that they are happy to announce that as of this week AO's entire staff will be training in how to process the cases without any reference to the paper files.

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

CIO Placencia reported that the Automated Calendaring Scheduling System is on schedule. The majority of the work continues in the area of developing the user interface.

CIO Placencia reported on ECATS that the majority of the work required for addressing performance issues discussed at the last board meeting is complete, and they are moving towards initial testing and in the direction of rescheduling the stress test, tentatively set for late April or early May.

CIO Placencia next reported on the AO Paperless Project, commenting that the remaining IT work on this project is in the development of CATS reports. To date they have developed the majority of the reports needed for managing that system. The majority of the work for supporting the system is going forward.

CIO Placencia reported they are a little behind schedule on the Ca.Mail project due to other priorities within OTech, but expects it to be just a small delay.

The Fresno FO archive pilot is in place and to date approximately 1,900 cases have been scanned. We are basically scanning those images in anticipation of collapsing the storage areas as well as moving those projects through the system electronically. Good news there as it seems to be meeting the goal of the project.

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

Chief Silva introduced two new employees to Administrative Services, Kevin Terpstra and Rochelle Beaver, Personnel Liaison.

Chief Silva reported on the monthly Overtime Report contained in the board meeting packets. As CUIAB's caseload is becoming more manageable, the overtime use has lessened over the past couple of months. Halfway through the current fiscal year we were averaging just under \$70,000 in monthly overtime. During the month of February we only expended \$49,000 in overtime. However, our lump sum retirement payments are exceeding allocations, an issued noted by Chief ALJ Roldan. Fortunately this is offset by under spending in permanent help dollars, although the projected surplus is a poultry \$720,000, significantly below prior year surpluses. They hope that a reduction in the need for overtime will supplement that projected surplus.

Chief Silva reported, with regard to CalAters Global for travel reimbursements, that the level of requests for assistance has been on the decline recently as people grow accustomed to using the system and familiarize themselves with it. However, the changeover has created workload bottleneck at EDD Travel Unit. Prior to the CalAters implementation they were running with about a four week backlog to reimburse claims. We've had CalAters in effect for about six weeks and some people have not yet received their travel reimbursements. He has contacted EDD and they are explaining that this changeover created a hiccup and they expect between four to six weeks to be back to the original four week backlog and then work towards the quick turnaround time that CalAters promises once they become more comfortable with working the system on their end.

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

Chief Counsel Hilton reported that the board is presently carrying 326 court cases. We received 11 new cases in March, and 10 were closed. All of those cases were affirmations of the board decisions.

**13. Unfinished and New Business:**

Chair Dresser opened the floor to the board for discussion of AO-304880 for designation as a possible precedent.

Vice Chair Howard stated that she would like some discussion about comments submitted just recently by one of our ALJs.

Chief ALJ AO Rose stated there are obviously different ways you can argue any of the issues involved in this case, but she doesn't think that the issue is really whether or not this person was in a sensitive position, as raised by the ALJ's comments. The drug testing in this particular case was done solely because of the accident.

Member Allen commented that the decision is very well written, and will provide valuable guidance to our judges. To him, giving some guidance rather than staying silent on it is worthwhile, but he is in no rush. He is open to what other board members feel.

Vice Chair Howard commented that she agrees with Member Allen. She had been and remains comfortable with the decision as it is written. She thinks it provides

important guidance. Drug testing is such a big issue. To summarize, there are different ways we might have looked at this, and the ALJ's comments do not mean there is anything wrong with the way the case was decided.

Member Ashburn stated that he does not mind if they defer this forever. He's very much opposed to this as a precedent. This is a very far-reaching decision affecting the employees particularly more than employers with respect to the issue of drug testing of employees. It is very far-reaching decision and will serve to undermine reasonable rules that are designed to protect the safety of employees. Certainly this case could be decided in favor of the claimant, that the number of times that she was required to give the test could be found reasonably to be unreasonable in this case. Fine let that be the decision of the board. But to make this a precedent decision gives no guidance whatsoever, none. Because the specifics of each individual injury in the workplace and the application of the employer's reasonable rule for drug testing in the event of an injury, those specific facts are going to be unique to each case. So he is very strongly opposed to this being adopted as a precedent. He just thinks that they really ought to be careful about this. The facts that will occur in each individual instance are not assisted; they are just not assisted by this particular proposed precedent decision.

Member Allen commented that he does appreciate what Member Ashburn is saying and there is certainly room for debate on it. But he would make a motion to adopt it today.

Vice Chair Howard second.

Chair Dresser called for a vote, which was 3 to 1 in favor of designating the decision as a precedent, with Member Ashburn opposed. He commented that he is aware of the good arguments that Member Ashburn raised and he thinks they are serious concerns but he does think it's important for his own vote to give guidance to the field and he thinks this goes somewhat towards giving guidance in an area that is controversial and very important.

#### **14. Closed Session:**

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

### **Adjournment**