

things as; calling in the decisions on the late appeals right away so we get credit for that. Also, there is going to be a second PALJ in-person meeting in June. He thought the first one was very good. Chair Dresser stated that Chief Roldan is in the process of completing his field visits and then the Chair will begin his round of field visits in May to each of the offices.

Chair Dresser reported that the Department of Labor is coming out next week. He also reported that the NAUIAP conference will be held in June in Nashville and two of our people are traveling on their own dime to go because we have budget issues in terms of out of state travel. He expressed his thanks to Angela Bullard and Elise Rose for doing that. Lastly, Chair Dresser reported that the Service Level Agreements were signed by EDD and CUIAB, so they are in place.

5. Board Member Reports:

Member Garcia expressed her approval of the new design of the performance report and she is hoping that it goes up online as soon as it is produced. She commented that the numbers are astonishing. How much we have really done to meet those timelines and exceed them and how much our staff has put into that effort. She thanked everybody from the people who answer the phones to the judges that hear the cases. She also thanked Elise Rose and Alberto Roldan. She also commented that her time is coming to a close here with CUIAB and it has been a great ride and she is glad she is leaving on a positive note.

Member Howard thanked and acknowledged everyone who worked on the security project. She thinks it is very important for all the reasons that the Chair stated and she would only add also for the public that we serve. She thinks the presence of an increased level of security is the right priority. Also, she reported she has received a great response to the Staff Appreciation Lunch which is going to be held on May 8.

6. Public Comment:

There was no public comment.

13. Unfinished and New Business:

This item was moved up on the agenda so the Employment Development Department (EDD) could comment on the Board's consideration of the precedent decision.

Chair Dresser welcomed Michelle Sutton-Riggs, Rick Stewart and Shannon Pavao to comment on the Board's consideration of designating AO-262834 as a precedent decision.

Rick Stewart commented that they had some concerns regarding this decision. There were some potential conflicts, one of them being, they talked with the DOL

regarding not only conformity but compliance issues with this and they think there is a potential there for this particular decision. The reason they think that that is true is because it appears that the decision precludes the department from going back and doing any type of retroactive review on any non-fraud case and that really opens a large door for potential overpayments or not being able to collect on potential overpayments for a good number of people. The decision talks about a conflict between Part 4 of the UI Code and Part 1, and in Part 4 it does state that if there is a conflict that the provisions in Part 4 do take precedent. However, it is their position that it really isn't in conflict because Part 4 does specifically exclude out sections that do not apply and in section 4202 it states that it doesn't exclude out section 1256 or 1260 of the CUIC. So those are applicable when you are talking about either FedEd benefits or being able to reach back under the code sections and since there is no conflict then they did see where there would be any issue with going back using 1260 to actually set the start date on the disqualification. There are a couple issues there that came up. They also found that under the 1332 analysis that it really didn't seem to fit because the 1256 and the 1260 would have apply because there wasn't a conflict. So, they would have the opportunity to review these cases in a timely manner and they do give notice and the claimant does have due process rights once they are given the written notice. They didn't think that that would actually apply in this particular manner either. These are all the potential issues that have come up. Under the regulations there is a citation of 1326-1(a) and its (a)1a or 1a and that section, he believes they were trying to cite to section (b) and in there it does discuss potential eligibility and if there is a potential eligibly question the department is required to go back, interview the claimant and then complete a written determination and basically tell the claimant whether they have eligibility or non-edibility so they are following a regulation there. In closing, one of things that they discussed is, are there any other protections there for the claimants if they did set up an overpayment that goes back two years, because they know that was one of the concerns. There are two sections, under 1376 of the UI Code they cannot set up an overpayment if it is more than a year after the benefit year has ended. In this case they didn't go past that it was actually within the year after the benefit year ended. But in addition, if there is no fraud or willful misstatement then there is the opportunity to waiver the overpayment. In this case, the factual finding was that the claimant had not committed fraud or willful misrepresentation that was based on the facts the board found and so therefore he would have been eligible for a request for a waiver of the overpayment under 1375, so there is a protection there. That's kind of it in a nutshell, gives an idea of some of the issues that they had.

Michelle Sutton-Riggs clarified that section 1376, if the concern with the case at hand is that it is excessive or punitive for this claimant to have an overpayment that's over two years old, code section 1376 does set a statute of limitations in the absence of fraud where the department cannot establish an overpayment if the disqualification overpayment would occur one year after the ending date of a claim. The statute also provides for the waiver of the overpayment when there is no fraud or fault. She would like to just emphasis that in general the federal law is very stringent about paying properly and denying properly regardless of when the

department receives information, the eligibility information. It was unfortunate that the employer waited until the second notice to respond, they acknowledge that. However, the department under the statutes both federal and state do have the requirement to determine eligibility and in this case the claimant had misrepresented himself in terms of, instead of reporting that he voluntarily quit he reported that he was laid off or on call. In general, she would ask that the board take into consideration the legal and public policy implication that this decision could have. Really, in tying EDD's hands in terms of rendering proper decisions and the impact that it could have to the department's ability as the fiscal stewards to maintain the integrity of the trust fund, offer to help protects employers benefit cost because by preventing them from setting up overpayments when they proper they cannot recoup those moneys which relieves the tax rated employers accounts as well those reimbursable employers will be at a complete loss because they pay 100% of the benefits. So, if they are not allowed to set up the overpayments they cannot recoup those moneys from the claimants and therefore the reimbursable employers such as your government agencies or nonprofit organizations will have to foot the whole bill basically for the cost the benefits.

Rick Stewart commented that it appears that some of the issue here is regarding the source of the information. You know, they send out a notice under 4654 and 4655, they send out a notice to the employer, as they are required to do, and then they provided the EDD with information that could have been provided two years before. But the source shouldn't be controlling here because if they get an anonymous phone call or any other type of information on a claimant they are required to investigate and see if they are eligible for benefits. So, in this particular case it happened to come from the employer but that shouldn't be controlling as to how they address the prior benefit period and decide if this person was actually eligible, if they actually should have been paid benefits.

Shannon P clarified that the original determination was an unwritten, wasn't even an oral determination, if a benefit claimant files a claim; that EDD uses that information to determine eligibility. When that happens, the proper notices are sent out but the actual receipt of a benefit check, or I guess now it is an electronic benefit card, when the claimant receives their benefits that determined to be our determination that they are eligible for benefits. This decisions tries to clarify, Precedent Benefit Decisions 124 and 439, and those decisions it says that the EDD has a right to go back and re-determine eligibility without any statute of limitations where the initial eligibility was oral or unwritten. In this decision it appears that it may conflict with those other precedent decisions. EDD's position is, even though we are required by statute to do a redetermination for Fed-Ed, that determination only applies to the FedEd portion of the claimant's eligibility. What they mention in regards to "sort", if we do get information on the initial regular benefits the Feds mandate that we act so that we do not make improper payments to benefits claimants. That's where the kind of tug and pull is with this precedent decision.

Member Garcia had a question in terms of procedure. As she understood it, the

board was going to be looking at this as a precedent decision. She asked if there is anything that prohibits the board from contacting the parties to this before they act or is there any kind of proper notification process because as she understood from the communication from EDD that they were waiting for DOL to evaluate it. She asks if they can really even have this discussion or can they even comment on anything that has been said. She wanted to ask the Chiefs to make sure the board does not step on itself in some way and create some kind of liability here.

Member Torrico asked if as a matter of course when the board is considering precedent decisions if the parties got notice of it and that it is going to be on our agenda and have an opportunity to come to the meeting to comment.

Chief ALJ/Executive Director Roldan responded that the board actually bifurcated its decision. He would actually defer to Chief Rose since she is the Chief of Appellate but he would point out that the board bifurcated its decision and rendered a decision regarding the specific parties and is only considering now whether the board is going to adopt this as a precedent. So the impact of the decision regarding the actual parties has already occurred because the board has decided that case. Now the question is the applicability of this to parties other than the members. That would suggest that there is not a requirement of notice to the parties since it has already impacted them.

Chair Dresser comment that also the board's notice of this meeting indicated that would be and it's a public notice but the parties probably didn't read it other than EDD.

Chief ALJ-AO Rose expressed concerns that they did not receive the brief from EDD until after 3:00 p.m. yesterday. There is nothing in the brief that indicates that it was served on the parties to the case and even though the board bifurcated the precedent issue she still thinks that because it is still the same case, that the parties to the case should have been served and should have an opportunity to respond to the brief that has been submitted by EDD. One of the parties, the employer, was represented. She does not believe the claimant was represented. In light of the fact that DOL, she doesn't know if they are going to submit something in writing, she'd suggest that that is probably the proper way to communicate with the board as an amicus. She thinks that should also be served on the parties and that we defer before making a decision on whether to designate this as a precedent until we've had a chance to do that.

Chair Dresser asked if they thought that the board should solicit amicus briefs for any for any entity or organization that might be interested or is that not necessary.

Chief ALJ-AO Rose responded that she does not know if that was something that was done in the past but certainly in this case DOL obviously has an interest and she thinks that their issue that they raised is probably has more potential to be concerning than the other issues that were discussed here today. But in any event, she does think that the parties should have an opportunity to come forward and

she can't think of any other amicus off the top of her head but it is something that could be included in the minutes that the board has made that offer, that if other amicus wanted to come forward they could.

Chair Dresser asked for the board's sense on this.

Member Garcia asked regarding DOL's response time, do we have a finite time for them to respond. She doesn't think it should be out there forever, so are we saying since we only got this last night, is there like 10 days or something, is there anything in the code that requires DOL's involvement or allows their involvement and is there a timeline.

Chief ALJ-AO Rose responded that she is not aware of anything in the code. She thinks we would set a timeline based on the fact that the board would want this to come back on its next meeting. They already have notice of the issue and are looking at it so she is assuming the board could give them enough time that they could respond and we could serve it on the other side and give the other side an opportunity to respond if they wanted to so the board would have all that before it decides.

Member Garcia stated that based on Michelle's comments earlier, and she does not think at this point the board should respond to anything because it is still out there, but the general presentation was that this impacts both rated and reimbursable employers and she would ask that anything they get going forward they see exactly how it would apply to them because she wants to make sure that they don't then have to revisit this case because we excluded one or the other.

EDD clarified – procedurally, this probably seems like a very simple thing, but we are not asking necessarily that the underlying decision be returned or changed. We just want to make sure that its full consideration is into making that into a precedent because there are these issues. As far as notice to the parties, they are not changing anything for the individual parties.

Chair Dresser acknowledged that if it is the sense of the board, then they will defer action today and will come up with a notice that the Chief will work on and then they will notify everyone accordingly. He thanked EDD for their participation and welcomed them to stay for the remainder of the meeting.

7. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Roldan reported very positive the progress that the Field Operations Unit has made in terms of both eliminating, or coming very close to eliminating, the backlog and much better compliance with the federal time limit standards.

Chief ALJ/Executive Director Roldan reported that the Fields Operations Unit managed to close during the month of March 46,692 cases. That lead to the

reduction of the balance of open cases from where it was at the end of February which is 47,540 cases all the way down to 39,388 cases. They currently have a balance of 29,603 cases in unemployment insurance program. They are currently in a situation where they are in full compliance with the average case-age federal standard and that's now, it got as low as 23 days, it's about in between 23 and 25 days. The federal standard is that we be below 30 days. So since February we have been in full compliance with the average case-age standard. We closed out the month of March with the time lapse numbers being at 16% of cases being closed within 30 days; 61% of cases being closed within 45 days; and 98% of cases being closed within 90 days. He is very proud of the work of the field judges. They have really done a tremendous job. They have put us in a very good situation to have eliminated the backlog entirely easily by the end of this fiscal year.

Chief ALJ/Executive Director Roldan stated he has provided the board with reports that give a more executive summary to give them a sense of performance. Both reports were prepared by Janet Maglante and he is very appreciative of her work on two new additional above and beyond the ones prepared by John Zinto that are shared. One of the reports is the FO Cycle Time Summary Report and what that tells you is both the statewide and office by office performance measure so that they have a sense of where specifically in the process where they are seeing improvement; where they are seeing challenges that have come up. And then the performance indicators are sort of a dashboard of overall performance of both field and Appellate Operations units and that gives the board a sense of both the cycle time, how long it is taking to process cases and where they are at in terms of the balance of workload in both UI and in all categories.

Chief ALJ/Executive Director Roldan reported on the performance and progress that has been taking place in the Tax Unit. Obviously a lot of their focus has been on UI over the few years because that is where the huge influx of new cases came from but they do have the work of the Tax Unit to talk about and because of their efforts, as of April 6, 2012, the open inventory was at its lowest level since September of 2009. They had a very large case status effort that went on last week that allowed them to close 186 cases just in one week and they continue to make progress reducing the backlog; which just a few months ago was at about 4900 cases. They are making tremendous progress in the Tax Unit as well despite the fact that they had a retirement of Terry Savage, one of the stalwart in the unit who finished work on March 31. He also closed his report by pointing out that Hazel Cash, one of their veteran Presiding Administrative Law Judges and leader of the Orange County Office of Appeals also retired effective March 31. Those are going to be very difficult shoes to fill. They do have an active recruitment in place and they have received a number of applications for that position. He will be, along with the Chair and either John Martin or Zaida Hackett, will do the interviews in about three or four weeks to fill the position.

She commented that she does not want to diminish really what it took to get to these numbers so if she could for just a moment; if we start backwards from hearing date to decision mail date, we are in the single digits there averaging two

and three days and that is in large part due to addressing the typing backlog that we had. There was a time when these decisions were taking 10 days to 3 weeks to get them from the judges' notes to the typing pool to approval to mailing. She thinks that one of the projects that was undertaken which was to allow for the dictation software and the training program helped us there in putting some focus on the typing pool and also automating our closures to EDD. So when you look at the matrix of all the special projects that's a combination of all of those that helped drive that time down by about two weeks. One of the other side benefits to that to the customers, our claimants, is that one time when we were in the middle of this huge workload the decisions would get over to EDD and they were paper decisions that were unsorted. So EDD just worked down the pile. So there were people to be closed, no benefits, and people that were to be paid and they were in the same pile sometimes delayed. So this also separated so that we can prioritize those that were being paid. That just shows how quickly we are putting that money back into the economy and closing it off. Schedule date to hearing date, we have to still give them 10 days notice so this is giving them significant lead time so that the claimant's are not feeling like, we get this letter in the mail and we have to be there in three days. So that is showing some improvement here. The verified date to creation date, I'm not quite sure what all is involved there but case creation to verified date; there was also a time when if we didn't have all the documents we needed all of the issues listed on the paperwork that EDD was sending over, we had to dial the same 800 number that the general public had get and it took us sometime three weeks to get a response from EDD. So that is also helping us drive down some of that time. She just wanted to take a minute to acknowledge that there a lot of work that went into all of these steps and she wanted to say, lead by Hazel in the Orange County office because she helped them move that automation project forward. Lori and Janet were instrumental in helping drive some of the funding the agency got for those grants and certainly Alberto leading the Field Operations. Lastly, she acknowledge Rafael and his team going out there and connecting our cans through strings sometimes to get the information in a way that made sense without EDD's help. A lot of the projects that we did were built in-house; EDD's team was not available to us so their shoestring budget at IT has certainly gone a long way with a lot of the smart folks that we have working for us.

Member Garcia acknowledged that the overturn rate, as shown on the report, is almost 50%. So it is to the claimants' favor to go through the hearing process. That shows how important the appellate unit really is.

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

Special Assistant Kurosaka reported that as far as the federal outlook, the Department of Labor, Region 6, office staff will be visiting CUIAB on next Wednesday, April 18, so if any of the board members are interested it will be in the afternoon. The acting DOL Regional Director, Christine Chudd, will also be participating on both the April as well as the June visit.

Special Assistant Kurosaka reported on the top three projects that they are working

on at this point. With the Co-Location Pilot in Los Angeles, Rafael and his IT team are resolving some minor imaging issues and hardware issues and they hope to resolve those items very quickly. The L.A. field office is in the process of hiring three additional positions for the Co-Location Pilot and they hope that they complete that very quickly so that they can increase the number of field office participating in the study.

Special Assistant Kurosaka reported on the Appeal Decisions Collating Project. She stated that the decisions are printed out of two print jobs; ones out of a Microsoft print job, and the other is a CATS print job. The staff when they are preparing for mailing have to collate those manually in order to prepare the mailing to the parties. IT has developed the solution that will collate those automatically. They have walked through the solution with Field Operations. They need to meet with Appellate Operations staff to make sure that the solution meets their requirements as well. IT indicates that they can implement by this summer. Phase Two of that project looks at the feasibility of centralizing the mail. They are meeting with EDD this week to look at business requirements on their end to use their mail center. They have delayed the business requirements gathering in Field Operations because of the March workload so they will be scheduling business requirements sessions with field later this month. They are identifying some current business model costs on prior surveys. It takes about 2.9 minutes per case for the staff to sort and mail those decisions in the field, so that is a significant amount of time that they are taking to sort those decisions. That time, if they centralize the appeal mailing that time can be redirected to a number of different things such as scanning to the board appeals. They are also working with IT to estimate some project development costs. They will bring all that information forward for the board to make a decision on whether to go forward with the Phase Two solution or not.

Lastly, Special Assistant Kurosaka reported on the Imaging Feasibility Study they received about 22 pages of comments from all of the EDD programs earlier this month. The Project Team reviewed all of those comments and have prepared responses to their comments. They are scheduled to hold meetings with each of the Deputies later this week, Thursday and Friday at EDD to hopefully go through a final walk through with them and their goal is to finalize and move the FSR forward to agency by the end of this month.

9. Chief ALJ of Appellate Operations, Elise Rose:

Chief ALJ AO Rose reported that the numbers in AO are also looking very good as a result of the March push. In registrations, for the first time since last July, they had an increase in the number of cases registered during the month of March. They registered 2,316 cases in February and 3,555 cases in March. The balance of open cases is also increased from last month so it is now 3,016 but to put it in perspective, the beginning of this fiscal year they had over 6,000 open cases. The number of dispositions has increased by 300. The appeal rates, normally their rates average 7.7% of the decisions get appealed to the Appellate Operations, this month it was 9%. It is interesting because in August and September of last year

there was the same jump in appeal rates which is significant because field office has now issued 46,000 decisions so AO will see a lot of appeals coming in the next couple of months so workload will not be decreasing for the foreseeable future. Under the DOL standards, case aging AO was at 32 days at the end of February down five days from the previous month and well within the 40-day standard as of the end of March we're at 30 days.

Chief ALJ/AO Rose reported that regarding time lapse the goal for the number of cases to be decided within 45 days at AO is 50%. They are now having 70% of their cases decided within 45 days. The goal for the 75 days and the 150 days goals have also been exceeded, 91% of the cases are decided within 75 days and 99% within 150 days. She commented that the most interesting statistic this month happens to be the days in transit numbers. The average number of days in transit from the field offices to the Appellate Operations dropped to 3.3 days in March. Interestingly, 44% of those appeals came from the offices that were scanning their files digitally rather than mailing them. Four of the six offices using the digital scanning have an average of less than three days in transit. Orange County, which has the largest number of appeals, their average was 2.5 days to get their appeals to AO. That's pretty interesting and she guesses that Filebound is making a difference.

Chief ALJ/AO Rose reported as far as projects, they have changed their processing of late cases and that change went into effect April 1. They have also changed some of the processes for board referrals to the Chief ALJ in Appellate Operations. They have received emails regarding those changes. She reported that in Filebound they are still pressing ahead. They are still hoping to be paperless by July and they are resuming the training now of the ALJs and support staff now that March is over. They are also continuing the gap training for the judges that need some prerequisite training before they can use Filebound. The ACSS, the automated case assignment system, is also moving forward. IT has been great in working with the staff to address some of the issues that they have identified during the trial runs of that process and they are still hoping that that is going to be up and running soon. Precedent decision committees and board paragraph committees have continued to meet.

10. Chief Information Officer, Rafael Placencia Report:

CIO Placencia reported that the AO paperless project, Filebound is basically the back end of that system. That system, right now, they are scanning from six field offices electronically for second level appeals. That process is going rather smoothly. There is very little concern as far as being able to scale up that system so that they have full implementation. The key factors for being able to do that is have the staff fully training, available to deal with these electronic files because that is the big change right now. They are going from a completely paperless process to an electronic process. A lot of the efforts right now are getting the staff prepared for dealing with the electronic files.

CIO Placencia reported on the automated calendaring scheduling system, Phase One, they have an implementation date set for April 19 to go live with Phase One, which is the AO portion of this. All indications are that they will be able to meet that date. The testing has been going fine. The next phase of that project will be for developing the FO solution. Good news on those two projects.

CIO Placencia reported on the IT Consolidation, they have been tasked with consolidating services within IT over to a statewide solution, Ca.mail email is one of those projects. They are doing quite a bit of work preparing to move those services over to the Office of Technology Services. The plan is to have that system fully over to that date center by the end of this year. Those costs are costs that we do not have right now. They will be additional costs affecting our budgets going forward. He wanted to make sure he touched on IT consolidation as a report because it is new for our department. A lot of our systems are housed here at CUIAB. Email consolidation as well as data centers consolidations will be new costs.

Special Assistant Kurosaka responded that they are actually meeting with EDD budget office this afternoon to prepare for state fiscal year end planning. They will take that discussion to that meeting.

11. Deputy Director, Administrative Services Branch, Pam Boston Report:

Rob Silva gave the report for Deputy Director Boston. He presented the monthly overtime report. Mr. Silva also reported the requesting and monitoring of contracts is going to be handled through a combination of CUIAB management and the administrative services group. The actual bidding process for the contracts is going to happen through EDD's business services department. He further reported they have eight facility projects currently in the works. They have been working with EDD to secure architecture revolving fund accounts for the tenant improvements for these particular projects. The projects are two lease renewals, one in San Francisco and one in Bakersfield; three relocations, San Luis Obispo, Victorville and Stockton; and then some security related tenant improvements in Los Angeles, Oakland and Modesto. Yesterday he signed documentation which now goes to EDD and then DGS and eventually DOF, hopefully to approve these architecture revolving fund accounts so we can capture current year dollars to pay for the tenant improvements on these facilities. He reported that later today he is going to be issuing a memo to the agency about assets transferring procedures; sort of a nuts and bolts affair, but with our assets management now residing with EDD some procedural changes are going to be in effect with how we survey items and how we transfer items. As previously mentioned, they have budget meetings later today with EDD to go over 2012/2013 CUIAB budget outlook. All of the CUIAB branches have submitted their budget call letter requests for the next fiscal

year and we have a budget advisory committee meeting next Monday to review those request and to begin to build the 2012/2013 budget.

12. Chief Counsel's Report:

Staff Counsel III Kim Hickox gave the report on behalf of Chief Counsel Ralph Hilton. She reported that we are currently carrying 314 cases. There were 11 new cases filed last month, and 1 case was closed and in that case the board was affirmed.

14. Closed Session:

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

Adjournment