

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5507**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., May 12, 2009 in Sacramento, with Chair Garcia presiding.

2. Roll Call: Members

Present

Absent

Bonnie Garcia, Chair

X

George Plescia, Vice Chair

X

Ann Richardson

X

Liz Figueroa

X

Cindy Montañez

X

Sharon Runner

X

3. Approval of the Minutes:

The April 14, 2009 minutes were approved by all members.

4. Chair's Report:

Chair Garcia reported yesterday they had a great study session and they were able to obtain a lot of information to make the meeting today go a lot quicker and she appreciates all staff work on that effort. They have an issue regarding last month's meeting where they discussed the impact of the furlough and the Governor's emergency proclamation. We received a response from Agency which we will be discussed later and it is her recommendation that we prepare a response to Agency regarding an exemption from the furlough. Chair Garcia thanked the staff this month for doing the field trip around the building to recapture some of the space that we have here. The emergency proclamation requires us to provide greater access and service to those that are being impacted by unemployment. This will allow us to hire the judges that we need and to capture the hearing space that we need. We did some diligence on the remainder of the dollars that were left in our budget year and that amount is almost equal to what we got with the difference between 32% and a 100% reimbursement. That was an ideal way to use some of the dollars so it does not impact the service dollars or program dollars that we already have. We are hopeful that Renee Erwin will give us better news as we progress in our budget year and we are reimbursed at 100%.

5. Board Member Reports:

Member Richardson reported May is National Foster Care month and there have been celebrations all week at the Capitol. The point is to recognize and to make Californians more aware of the plight of emancipating foster youth -- many of them become homeless within 90 days of being emancipated at age 18. There is legislation to keep them in the foster system, provide them care and benefits up to the age of 21. Leadership such as Senate President Steinberg and Assembly Speaker Karen Bass recognize we need to provide even greater assistance to emancipating foster youth. So with Chair Garcia's permission we discussed the possibility of using a numerical system for attracting and hiring foster youth or emancipating foster youth as student aids so they can familiarize themselves with state government jobs and will be working with Pam Boston and her staff and possibly the Legislature to see if there is anything we can do to create in keeping with spirit of the Governor's proclamation a new labor force of emancipating foster youth. Member Richardson is excited to pursue this and with the Chair's permission to address this in this meeting.

Chair Garcia thanked the Senate leader who has been a champion for foster kids and our Assembly leaders as well. Both have made it a priority to deal with kids that are forgotten many times and there is no safety net and it is important that we do something about it. She also thanked Member Richardson for her work on it and the local board.

Member Richardson stated that she is a founding board member of the Foster Youth Education Fund which provides educational scholarships to emancipating foster youth in the Sacramento, Yuba and Placer region.

Chair Garcia stated that Member Richardson is a woman of many talents and thanked her for her work.

6. Acting Executive Director Report:

On behalf of the Acting Executive Director, Chair Garcia wants to draw to all Board members' attention that Lori Kurosaka prepared information regarding the impact of the American Recovery and Reinvestment Act and there is a 2-page handout to get a better understanding of some of the dollars. Lori Kurosaka was also directed to participate in the ongoing discussion with EDD to make sure we are identifying and utilizing those dollars to help our Agency. She thanked Lori Kurosaka for the information which will be discussed further as we go down to the budget.

7. Chief ALJ/Executive Report:

Chief ALJ/Chief Executive Alberto Roldan reported they started a class of 18 new Administrative Law Judges for their training under ALJ Lillian Waters. It is the largest class they have trained in recent memory with this particular board. Getting the 18 ALJs trained as quickly as possible is a priority.

Chief ALJ/Chief Executive Roldan reported that our open balance, taking into account both UI, DI and tax cases and other miscellaneous categories, is at 90,863 cases which is a change of 613 cases coming in over the previous week. One of the points he would make at a positive standpoint is that previous trend of changes have been well over a 1000 additional cases being added to the workload a week and what he is starting to see is a leveling off despite the fact that we are having a number of verifications coming in, leveling off closer to the point that they are being able to actually start wrestling down the workload. Having heard projections from the Department of Labor that unemployment appears something that's going to remain flat for the next two years we are still going to be wrestling with a significant workload at least for a 3-year period. Projections from EDD show our phase disposition responsibilities are going to be well over 500,000 decisions a year based on our measuring standards probably for the next two years. There has been a discussion of a Phase III hiring he wants to put into context. One of the challenges of a large workload is the inability to effectively deal with the cases in a timely manner; there are just too many cases we are dealing with a first-in first-out approach to it. We are meeting our 90-day time lapse standard slightly less than 50% of cases and meeting 30-day time lapse, which would be the optimal level, in only 3% of cases. We are trying to have an opportunity to create an environment where the judges would be able to render the decision in a timely manner and that is only going to be accomplished when we get this open balance standards in a significant fashion.

Chief ALJ/Chief Executive Roldan reported on one of the discussions yesterday was workload and the need for infrastructure. In the fiscal year 2009-2010 proposed project there is a worksheet about proposed projects and an Oxnard lease extension. Under the ARU 335 we would like to focus on the discussion this morning because these are projects the Board would want to consider. They are not being proposed for 2009-2010 but there are 4 facilities that were closed prior to the workload picking up in 2008, specifically the Fountain Valley, West Covina, Wilshire and Sherman Oaks facilities. That lead to the recapture of hearing rooms for the Greater Los Angeles and Inland area of 18 rooms total and as mentioned yesterday during the study plan in particular the closure of the Sherman Oaks facility led to low presence of the CUIAB office in the San Fernando Valley area which is obviously a very high population area in the Los Angeles County area. In doing a study of the workload that was carried by the respective offices we found that Fountain Valley carried about 27% of the workload in Orange County and that workload was reabsorbed back into the main office into the other satellite offices. West Covina handled about 27% of the Los Angeles workload as well as 3% of Inland's workload. One additional point is because of the 210 freeway that is actually a much more accessible facility now to the Inland Office. Based on discussion with the presiding judges they have an interest in reacquiring this facility and shifting their additional workload to the West Covina facility as well. The Wilshire facility carried about 17% of Inglewood's workload and 4% of Los Angeles' workload. Sherman Oaks carried 27% of Pasadena's workload. The hearing room was lost to the Oxnard facility when Sherman Oaks closed because Pasadena reacquired a hearing room they were sharing with the Oxnard facility. This, with

the exception of the Wilshire facility, would require very minor tenant improvements; they literally could, from the signing of lease, should be ready for judges to do hearings in these offices within a week of reacquiring these facilities. The total cost of the leases for these facilities would be approximately \$430,000. From what he understands we were able to negotiate through the Department of General Services the property owner's 2-year term and the 2-year soft lease for these properties. One of the concerns for the Board reacquiring properties long term would lead to a negative budget impact at a time when our workload begins diminish, hopefully in the near future. As projected, we are going to have heavy workload for approximately a 2-year period before things start working significantly better. That would seem to be consistent with the Board's legitimate concerns about not having long-term leases in this property. We are in the situation where the property owners are up against the wall too. The Department of General Services was able to negotiate a significantly better lease structure than they would have been able to do in the past. The 2-year term means that if after the 2 years we observe we did not need to carry these facilities because we are not producing significantly, with a 30-day notice we can walk away from the lease after the lease period. There will be no penalty to the Department or any cost whatsoever. With the 2-year soft lease, if workload continues we would be able to continue in the present term of the lease and at any point when workload reduces after that we can get a 30-day notice to be out of those facilities.

Member Richardson asked if the soft lease is pretty similar to the firm lease.

Chief ALJ/Chief Executive Roldan responded that a firm lease is a 3-year obligation to the leasing of the property. We would be obligated for that 2-year period but once you get into the soft lease portion you are able to walk away with the 30-day notice.

Chief ALJ/Chief Executive Roldan reported these 4 facilities were identified for closures because the leases were up and the board made a decision earlier last year in 2008 to end the lease agreement for these facilities. Our workload situation was very different last year. The decision to close these facilities occurred before any Phase I and Phase II increase in staffing and that is one of the biggest challenges that Field Operations has been up against. With the Pasadena facility we have added 7 additional Administrative Law Judges (ALJs) and an equal number of support staff for a total of 14 additional employees. Orange County has added 6 additional ALJs and 6 support staff, Los Angeles has added 7 additional ALJs and equal number of support staff; Inland has 9 additional ALJs and support staff and Inglewood has 6 additional ALJs and equal number of support staff. That is only for Phase I and Phase II and there is a discussion for us to potentially add 60 additional ALJs and 60 support staff under Phase III proposals. One last point he would make is we need to think outside of the box for Field Operations. Do we carry a greater load of work in terms of phone hearings that we share with other facilities, do our sister agencies negotiate or borrow property from them to do hearings? He does not think building our way out of this and encumbering the Board with a greater number of additional properties is a wise strategy. He

recognizes we are going to have a period of boom and a period of austere and we don't want to be in a situation acquiring unneeded property in a long haul. It would be wise, given the fact that these 4 facilities are getting ready to absorb work, to reacquire them and we are only obligated for a short period of time. That would match perfectly with what we project of having additional workload with the Department to take immediate action reacquiring these properties. There are other properties in the proposals that are in the package he thinks would be looked at on an individual basis but these particular properties are well justified for absorbing back into the Department.

Member Montañez asked how far the Fountain Valley office is from the current Orange County office.

Chief ALJ/Chief Executive Roldan replied that Fountain Valley is located to the south of Santa Ana down towards the Long Beach area. One of the additional benefits is that it is a property that could be used for both Inglewood and Orange County offices. There is a presence in the South Orange County area towards the Los Angeles area.

Member Montañez further asked whether it is taking 20 cases or something out of Orange County or a lower number. Chief ALJ/Chief Executive Roldan responded that Orange County was utilizing that facility for 27% of its cases at the time the facility was closed.

Member Montañez questioned about West Covina, if the Pasadena Office is the closest office. Chief ALJ/Chief Executive Roldan replied that West Covina is along 210 and was actually utilized more by Los Angeles County because Sherman Oaks has a facility that is utilized by Pasadena. The anticipation is that Los Angeles would absorb a portion of the workload that is handled by that office. Previously, Inland was only using the office for 3% of the floor plan but because of the presence of the 210 freeway, it makes it easier for judges to go across the 210 and also claimants and employers to go across the 210. That becomes the facility that we address increase workload needs for Inland as well.

Member Montanez asked whether people who live in the San Gabriel Valley have to go to Pasadena or go downtown. It makes sense to her and it is the same thing on the Sherman Oaks argument. Los Angeles County is so huge that it is hard for people to get from the valley to downtown or to Inglewood or from San Gabriel Valley downtown or to Pasadena. So having offices located closer to West Covina would better service San Gabriel Valley and Inland.

Chief ALJ/Chief Executive Roldan responded that it is correct. One of the things he did just to picture it is that his mom lives in Inland but he lives in Northern California. So he MapQuested each one of these offices, looked at them on the map and what is nice is from east to west they space out so that there is almost a co-equal distance between all these offices so they become a cluster of offices rather than being close together for that particular area. They have a cascading

effect for other offices. Oxnard would wind up with additional workload issues because they are reacquiring hearing rooms that are currently being borrowed by Pasadena to deal with their workload issues. Ventura almost goes east to west rather than north to south when you look at all these potential hearing rooms and existing hearing rooms on the map.

Member Richardson commented she agrees with Member Montañez that we need a presence in the San Fernando Valley. Her question has more to do with the proximity to public transportation as people lose their jobs and they lose their cars and transportation. Are these offices going to provide our users of the system easy access? If we are close to the 210 but we don't have a car, the 210 won't be any good unless the bus goes on there. She would like to know what the access to public transportation might be for each one of these offices.

Chief ALJ/Chief Executive Roldan responded he would address the Sherman Oaks office because the Presiding ALJ Server prepared a narrative addressing exactly that issue in relation to that office. One of the biggest advantages that existed at Sherman Oaks is the facilities that were used by that particular office. Pasadena has less access but the Sherman Oaks facility has significant bus and train access off the gold line in the Los Angeles area for those who don't have vehicles or use public transportation. West Covina is a fairly major western city in the Los Angeles County area and there is significant bus access at that location.

Member Richardson asked if they have access, to what extent can we utilize these facilities, and what type of caseload can they handle? She does not have any concept of how big they are, how many hearing rooms are in each place and so it is great that they can get there now. How many can we accommodate a week?

Chief ALJ/Chief Executive Roldan replied West Covina has 7 hearing rooms altogether, San Gabriel Valley has 3 hearing rooms, Sherman Oaks has 4 hearing rooms, and Wilshire has 4 hearing rooms. That would lead to an increase of 18 in hearing rooms almost immediately for the Greater Los Angeles area.

Member Richardson asked if he believes individual offices have sufficient hearing room facilities to handle our current caseloads with respect to diverting them off to those offices.

Chief ALJ/Chief Executive Roldan responded the offices are struggling to schedule and staff but basically they become like your traffic controller. One of the concerns of the Board he has been addressing is scheduling everyday of the week. There had been a trend in the past when workload was not as high to allow for flexible schedules and Mondays and Fridays were being underutilized in the offices. That is no longer the case as none of the new judges are coming on board with anything other than a 5-day schedule. Even existing judges have been shifted off the Monday and Friday flex schedules that were doing say 4/10 schedule or they are having staff Mondays, Tuesdays or Wednesdays as their flex day. We are utilizing the rooms to the maximum and had each of the judges prepare in essence a

mapping plan of their respective offices and they are double stacking judges in the offices, taking room that was previously hearing rooms and using them as temporary hearing rooms. These are temporary solutions and the rooms they are utilizing that were not designed as hearing rooms are problematic because it creates security issues to the offices workload issues. They are using rooms for example in Orange County that are on the wrong side of the security fence so to speak of that particular office. That is not what I consider to be a safe utilization of space in those particular offices. That would address a lot of those issues.

Chair Garcia asked where we are in terms of percentage of judges using mass calendars.

Chief ALJ/Chief Executive Roldan responded that we are moving in a better direction. He knows that the Chair had asked for a particular percentage and we guesstimated at earlier points that the ALJ IIs are being under-utilized probably in the 45% range. He knows that number has gone significantly higher just because of the overload workload that is being done back in the weekly report and looking at the mass calendars there are more being done. He is having a new report that he will be sharing with members specific to pulling mass calendar information so that the Chair and the rest of the Board is aware of the utilization of the mass calendar. It is a certain percentage but he cannot say it is trending upwards.

Chair Garcia asked what we are doing on phone hearings and accommodating claimants that need to be scheduled.

Chief ALJ/Chief Executive Roldan replied that in response to the swine flu issue that played out a few weeks ago he sent a directive to each of the field offices. There were two issues, the swine flu issue and a recent change in legislation that allows parties upon their request to have phone hearings be they employers or claimants. That directive was sent out to comply with the change in the law and also in response to the concerns of the swine flu. The offices were reminded and ordered to allow, when someone phones in and says that they are sick, a phone hearing if that were possible. If for some reason they could not facilitate the distribution of the exhibits in a timely fashion, that person would be allowed postponement so the hearing could be rescheduled by phone or when the person gets better. We are moving in that direction. I would give kudos to Hazel Cash, who is the Presiding Judge of Orange County and Julie Krebs, who is the Presiding Judge of Sacramento County. Coming out of that project is a supplement to the phone pilot project that is conducted by the Tax Unit.

Chair Garcia commented she asked our Chief ALJ to take a look at all the factors before we come to the Board and say we think we need to reopen office space that we closed but there are a lot of things to consider. What have we done to be pro active as an Agency in to try to serve this people in the State? When you conduct a phone hearing it does not really matter where you are located so it is her understanding that we were taking claimants that were in the Hemet area and they were being handled by field offices that were in Northern California which

prevented delays. We also have taken a look at the use of hearing rooms that belong currently to sister agencies, colleges, private sectors, etc. And again we have to look at the safety of the judge that are in the room with two very highly sensitive parties, one that may not get his benefits and an employee that maybe a little agitated and someone did get their benefits and so there always has to be an exit strategy in those hearing rooms and we cannot put our staff in a place that is unsafe. Finding a hearing room is always difficult; it is not as easy as just finding an empty office and a computer. What we should have been asking our staff, Pat and her staff, is to hunt down these locations in proximity to the areas where we have a buildup of cases and we are looking at geographic regions and we are exhausting that. We also are working with our field offices to move toward mass calendars and start embracing the legislation that is out there because it is necessary to move some of these cases as quickly as we can. If you have a one party case it is easier to do a phone hearing and move them on to a mass calendar so as much as we can we need to do and continue to do that. Now we need to look at the 4 facilities that we are looking at and we have not talked about Oxnard. She asked Chief ALJ/Chief Executive Roldan what is going on with that current field office.

Chief ALJ/Chief Executive Roldan responded that with Oxnard they are currently housed in a county facility. It is an existing field office that is one of our 12 main field offices. The county is apparently trying to bring all their satellite county offices back into one facility. In essence, we are being evicted for want of a better term. We are in the process of looking for a new field office to relocate Oxnard. It is not a matter of acquiring a new property so much as just looking for another place to put our existing field office. It is a pretty significant jump in the rent from what he understands because of the fact that we were leasing from the county and that lease was negotiated 8 years ago and now we are negotiating even under current mortgage rates but it looks likely that the cost is still significantly more than it was 8 years ago. Square footage of that office is going from \$2.10 sq. ft. to \$3.65 a square foot which is a significant increase. It is also an office that has significant need for growth with the number of new ALJs and support staff. It is going from 6,700 sq. ft. to a little over 10,000 sq. ft. to accommodate additional staff and the need for hearing rooms and just space for people to work in that office. He visited the office and people are literally doubled up, triple up, just like CDCR facilities, just like people packed in and the massive humanity working in a very small space. Just from personal observation, he thinks the plan designed by facilities makes sense for the size of the staff they have. In the discussion we've had about re-opening the closed facilities, they would gain only one hearing room from all the facilities that we discussed. There would actually be one or two additional hearing rooms that are added to the facility if they were to move to the new location that has been designed. Given their workload and the circumstances that makes sense. Also, he would like to point out that the old cost per sq. ft. with Oxnard does not reflect the amortization costs involved in the tenant improvements and the new number does reflect the tenant improvements need to make it an appropriate CUIAB facility in terms of security, properly designed hearing rooms, properly

designed work space for the needs of our particular department. He asked the Chair if she needs him to go down each of the proposed facilities.

Chair Garcia replied no but she wants to recommend to the Board that we authorize our Department to look at this real estate contract and the existing facilities in the region but we also ask our Chief ALJ to come back with a plan that is precise and concise about everything that we are doing with our existing resources so it is not just we are planning to use our hearing rooms Monday to Friday. She does not want to get into a lease agreement whether it's one year or one-year soft without having a plan for maximum use of that site. This Board took action to close those buildings as a cost saving measure and she thinks it would be premature if we did not have a plan in place, if for example this 7 hearing rooms of West Covina could be used every single day and we are hiring in that region let us say 10 judges and we would put them there and we can hear 17 claimants a day multiplied that by 5 then we know we are serving 350 people. She wants to know for sure that we have maximized the use of our existing resources and that is our intent for existing sites that we plan to reopen because it is her understanding that previously we used that once or twice a week and today we cannot afford to do that. The other issue that we have is if we are using them that much we also need to be sure that we have a plan in place for support staff because currently as we have been utilizing them in the past the judges were the ones opening the door and greeting the claimants, etc. If we are going to use them more we have other factors to consider – do we need janitorial services, do we need security at that site, do we have hard costs with IT or phone lines, do we need to change our website? A lot of other factors come into play. Before we move on those, she wants to be sure they are absolutely necessary and that we are maximizing them and that they fit into our budget as well. She also doesn't want to delay because if we delay we may lose the opportunity to use the existing sites. If appropriate, Chief Counsel Hilton can tell us what action is necessary so we can allow the discovery process to move forward and we can start looking at encumbering those funds without having to wait until the next Board meeting to get a report and if she, as the Chair can move on that or we need to call a special meeting.

Chief Counsel Hilton commented that Chair Garcia has the delegated authority to authorize the Agency to enter into a lease on all offices except the main offices. She has the authority delegated to her per Appeals Board Policy 19.

Chair Garcia stated that if she has that authority she does not want to act on that authority until we have all the information as a Board because she thinks that it is important to know that we are utilizing the resources we have and any additional federal dollars that we have built into our budget. She is very much aware that we have people that are travelling great distances, especially in Southern California, to get their cases heard. She does not want to create unnecessary delays.

Member Montañez commented that Chair Garcia brought a very good point but it would be helpful for her to know the number of hearing rooms, administrative law judges there, how many cases are being heard. What is the maximum potential

that we can get from each office and are we utilizing that too? It seems that we probably are right now and to have that information to say now it's clear that we need to open up these satellite offices because we are using the current offices.

Chair Garcia responded that we also learned from EDD that in the past we had been able to share some offices with them and now they are even resorting to using storage rooms for their staff. As you heard about Oxnard they are pushing us out of existing sites. Finding a free or sister agency is getting difficult.

Member Figueroa asked if we are being specific to the 4 Fountain Valley, West Covina, Wilshire and Sherman Oaks and those are the 4 that you are focusing on.

Chair Garcia responded yes and those are the 4 and directing Chief ALJ/Chief Executive Roldan those are the ones that he has to focus on as well.

Chief ALJ/Chief Executive Roldan replied yes at this point.

Chair Garcia commented that we do not have a choice and we have to move.

Member Richardson added that she has only one concern and that is Sherman Oaks has 4 hearing rooms, West Covina has 7, Fountain Valley 3 and Wilshire 4 but Sherman Oaks almost costs as much as West Covina that has 7 hearing offices. What she would like to make sure is that we get the best terms possible and if we are only getting 4 hearing rooms that might be another space that could accommodate a larger population of San Fernando Valley people.

Member Figueroa commented that we might have to redo it.

Member Richardson responded that it is going to be the balancing.

Chair Garcia added that there are no tenant improvements.

Member Richardson stated that it is expensive, it is 11300.

Chair Garcia commented that has already been embedded by DGS and our staff and they have gone back and renegotiated even rents that we have paid in the past. In essence, these spaces have been vacant about 8 months.

Pat Houston stated that since August of last year they have been ready for us to move right in and the advantage is that they were built out for us previously 8 years ago and we have already made the initial investments and so they are move in ready.

Member Montañez asked if there is a possibility for expansion in that particular office.

Pat Houston replied it seems at that time it was appropriate for the workload. There could be a possibility for expansion and she can certainly look into that.

Chair Garcia suggested alternative sites.

Member Plescia stated that it is important since Redding is a long way.

Member Richardson commented that the workload is huge in the San Fernando Valley and if they only have 4 hearing rooms we don't want to not have enough space to accommodate the claimants and employers. Her only concern is if it is big enough to accommodate the San Fernando Valley.

Chair Garcia added that the flip side of that is we also need to take a look at do people really need to come in for an actual face to face hearing? We need to look at the workload there; we need to look at the geographic region, look at the workload that we have there and see if we can accommodate differently so we are not building more hearing rooms than we need.

Chief ALJ/Chief Executive Roldan commented that Chair Garcia is absolutely correct. A lot of this is going back to the Presiding Judges saying you have to strike the balance with your assigning workload. He recognizes that not every single case that you have can be shifted to phone hearings for a variety of reasons. You may have litigants that don't have hard addresses, have a place to send the exhibits to and also sorts of things that drive against the ability for every case to become phone hearings from the present structure but many of them can. Some of them do need to be considering adding hearing rooms.

Member Plescia asked if there are any offices in the rural counties.

Chief ALJ/Chief Executive Roldan responded we have satellite offices in the rural areas and people need to travel a little bit more but we have offices all the way to Crescent City, one two-room office space that we share with EDD in a lot of the rural areas where we send the judge out and they stay there for a week and stay in a hotel every night and they do the hearings for that rural area. We send people out and people come to us.

Chair Garcia stated if that's the pleasure of the Board then that's what we will do and thanked the members and senior staff.

8. Branch Report:

a. Acting Presiding Judge, Appellate Operations (AO), Jorge Carrillo reported that for the month of April 2009, AO registered 1,835 cases, which is 15% above the fiscal year average of 1,597 cases. He requested that IT run a query and determined the actual number of appellants in these cases was 1,280. AO closed 1,556 cases for the month, which was pretty much the average for a fiscal year. The actual number of appellants involved was 1,061. What we found is basically

that for every 1.5 cases there is one appellant that is pretty much consistent. Because registration exceeded dispositions by 280 cases, the balance of open cases rose to 2,555, about 12% above the fiscal year average of 2,284. We were not able to determine the actual number of appellants involved in the balance of open cases but based on the ratios for the registration and the closed cases, we estimate that involves approximately 1,703 appellants.

The appeal rate for the month was 6.1% which is close to the average for the fiscal year of 6%.

As he predicted last month, the 169 old cases involving missed applications impacted our ability to meet time lapse dates. Whereas last month, we met all 3 time lapse dates, in April 2009, AO missed all 3 time lapse standards. 42% of our dispositions were closed within 45 days of the appeal date, below the goal of 50%; 76% were closed within 75 days, short of the 80% goal; and 82% were closed within 150 days, short of the 95% goal.

Chair Garcia asked why we miss the time lapse for the Board members that were in study session and that is important to know.

Acting PALJ Carrillo responded that it is a combination of things by working on the old cases some of which were 400-500 days old. They spent a significant amount of time trying to get those resolved and closed and that prevented us from working on newer board appeals that would have helped us with time lapse. Another factor that impacted our ability was that we have a backlog and the number of cases ready to be assigned to judges. We normally assign 350 cases a week to our judges and right now we have a backlog of 700-800 cases on any given day. Basically, there is a two-week delay before we can assign cases to a judge and it is ready to be assigned. We were not able to assign as many cases last month for a number of reasons. We had one judge who was out for the entire month due to health issues, another one only worked half time because of health issues. We had two retired annuitants who are working pretty regularly but neither was available to work for us last month or this month. Then we hired two new ALJs and we had a number of ALJs that had been involved in their training and that has taken away from production. With the exception of the retired annuitants who continue to be out they are not required to work for us and they can pretty much dictate when they want to work. The rest of the ALJs should be available to take cases and be in production. We are of course continuing training our new judges and that will require some devotion in our judges' time. For the most part he expects their production to increase this coming month.

Chair Garcia commented that losing three and a half judges and then two to provide training really does have an impact.

Acting PALJ Carrillo added that it does and we are seeing increases from the field as the field hires more people and as more judges produce cases we get more appeals and that also contributed as well.

Member Montañez asked, based on previous comment made about the maximum potential as to what is the difference between that number when all the judges are working and the number of cases we had the last month or the last two months.

Acting PALJ Carrillo responded that he attempted to figure that out and at one point in time he calculated that it was about 20%. There are a number of people working through AO for a long time and for some they have not hired anybody for the last 16 years as far as judges and a lot of support staff as well. They are pretty much in the same age group as he is and as you get to his age you begin to have a lot of health issues. Also, he had a number of judges and support staff who have been taking care of ill family members. He would love everybody to work full time but the sad reality is that a number of our workforce right now is out because of family obligations. It is almost like a constant, one person gets well and a new person gets ill. He was told today by one of his judges that she requires surgery and she will be out for six weeks starting in June.

Chair Garcia commented that aside from hiring new judges to help us with the backlog we are making changes in our procedures which Acting PALJ Carrillo talked about some of the statutory changes that we are doing that will help us also address what is currently on the shelf and how much sooner we can tap it so we start reducing those time lapses.

Acting PALJ Carrillo reported that one of the things that he always felt was a challenge for appellate was that when we get a board appeal we send a notice out to the parties advising them that we will proceed with the appeal and that they have certain rights that they can exercise such as asking for a copy of the record or submitting written arguments or asking for additional evidence. When we do that we send out the letter after we receive the appeal and give them 12 days but then we have to wait 6 days for mail to arrive. In that sense we have to wait 18 days in most of our cases because in only about 20% of our cases do parties actually exercise their right and most of the time we send them the notice and with the 18 days passed we assign the cases to be reviewed. When you have a deadline of 45 days to try to get the cases closed, waiting 18 days just to allow the parties to exercise their rights takes a significant part of that time period. One of the things he discussed with Chair Garcia and others is rather than waiting until we receive the appeals to send them the mail and have them exercise their rights we send the information to them at that time they get the ALJ's decision. When they get the decision they have 20 days to file an appeal and that is actually longer than the period of time we give them when we send them the notice where we give them only 12 days. If we give them the notice upfront with the ALJ decision they send in the appeals they can then tell us if they want to ask for the record and in most cases they don't where they can submit whatever argument that they want with their board appeal or if they want additional evidence they can get that and submit that with their appeal. By doing that, as soon as they submit their appeal we would be able to assign those cases and review immediately if we have the judges to do that. When it is a two-party case, the other part of this proposal will

be not to involve the respondent unless we do initial review and determine based upon the review that there is grounds that we feel we should modify or reverse the decision. In that case we will get the respondent involved to give notice and allow them to argue. But since we affirm 92% of the appeals and we affirm the ALJ decision that is a very small percentage for us to be trying to get the respondent involved. If we do both of these changes he thinks we will dramatically increase our ability to process these cases quickly and meet the 45-day time lapse requirement.

Chair Garcia stated members have the statutory changes to regulations in front of you and asked Chief Counsel Hilton what that involves in terms of time lines. It is not as simple as this is a new regulation but actually what is involved with it?

Chief Counsel Hilton replied we have to draft the regulation and we have done that and as soon as the Board approves the regulation as drafted we will do the notice and publish them. There will be a public comment period of 45 days. If we receive written comments about the proposed regulation we have to address each and every one of those. And when we submit the file package to the Office of Administrative Law, any party can ask for a public hearing within 15 days of the notice of publication then we have to conduct a public hearing that will take some additional time. Once the entire public notice and comment period is over with we will come back with the final regulation to the Board, present to the Board and the Board will approve the regulation and we will submit them to the Office of Administrative Law and they are effective a number of days after they are filed. If you are lucky you can do it in about 120 days and we are looking at 4 months.

Chair Garcia stated we should not get excited. September is good where we can kick in this regulation and would allow us to reduce some of our timeframes by a minimum of 18 days just by doing this regulation. She wanted to remind the Board we took action at a previous meeting where we were also doing a pilot program. One of our field offices if you look at Acting PALJ Carrillo's report we also talked about the delays from the field office from the time that we receive and registered those cases to the time they actually showed up at AO that has been stretching anywhere between 7 and 10 days and part of that is the impact on their workforce. We have furloughs, illnesses, increased workload that is impacting that. The pilot program will allow us to automate or create a paperless system so that it is arriving at AO in paperless form so we are looking at pilot program and her recommendation is to do it out of Sacramento since our field office is right in the same building. If there are any IT problems or any glitch in the system, we can find it here first before we roll out to our other field offices. Again, if you look at that timeframe just for today, that is an extra 10 days. If you add the 18 and the 10 together we are capturing at least a month. Those are the things that we are doing differently that reduce the waits for our claimants. It makes a huge difference and we are under way.

Acting PALJ Carrillo reported that continuing on a brighter note our case aging is significantly down last month whereas our case aging was 60 days in March, this

month it was 42 days, that is still above the 40 days that DOL would like us to be at. We asked IT, with the suggestion of the Board last month, if we could back draft the time between the field getting the appeal to the time we get it and asked them to do that and they were able to determine that at the end of April the case aging for the time for appeal that had been opened at the Board is 25 days. That was a significant number of cases that was still open and could still take some time to close but that was a pretty good number.

Acting PALJ Carrillo reported that as the Chair mentioned, in your Board packet the information concerning the time that it takes to get an appeal to AO for the most part the time was significantly worse than it had been in the other months. It was up to ten and a half days and was brought to the attention of the PALJ and Supervisors. The field offices are very busy hiring and are involved in trying to handle their own workload but they are aware this is a priority to the Board.

Finally, Acting PALJ Carrillo expressed his congratulations to ALJ Marti Geiger and ALJ Nancy Kirk who recently completed 25 years of State service.

b. Deputy Director Pam Boston reported the status of their hiring. Under Phase I they projected that new hires would be made by end of May. We had total ALJ hires authorized at 27. For our support staff we had authorized to hire 23 and we still have 2 pending support hires to be made under Phase I. For Phase II we projected that hiring will be completed by June. We had authorized 40 ALJ positions and we still had pending to hire 14. For support staff we authorized an additional 40 hires and we have pending hires of 25. So we are making progress and moving quite well and we are gearing up for a possible Phase III of hiring.

Deputy Director Boston reported at the Board meeting on May 4th there were a couple of items the Board brought up on the Employee Satisfaction Survey and the Exit Survey. Under the Employee Satisfaction Survey she believes Member Richardson was involved in this and we started working on this project back in late 2008 and what we did was we checked with various State departments who have done or frequently conduct satisfaction surveys. At that point in time we identified the categories we were going to focus on is the retention, hiring processes, upward mobility and training. There was about 43 random questions which focused on those four areas and employees could choose to agree, disagree or no opinion on various questions. She apologized to the Board and she intends to make copies of this draft questionnaire that was developed and get it to the Board members. What we would like to do at this point in time is to have the group get back together and re-look at this survey to make sure it adequately meets what we are trying to obtain and have a draft for the next Board meeting.

Chair Garcia stated she would like to make some comments about it. After our Board meeting we were trying to determine how this project had sidelined and apparently through a series of meetings and discussions and leadership it got sidelined. So we have it back on track and would like to appoint a Board member to work with Deputy Director Boston so we are sure it does not get buried again

and have that person report back to the Board. Are there any volunteers or should I pick someone?.

Member Figueroa volunteered.

Chair Garcia stated she looked at the initial sample that Deputy Director Boston is going to give you and she has some concerns she addressed with Chief Counsel Hilton which she knows we have already taken a look at. We have to be careful we don't draft something that might create opportunities for either legal action.

Deputy Director Boston reported the Exit Survey as the Chair mentioned are two projects we started but were shelved so we are taking it off the shelf and starting to work on it again. As she mentioned yesterday in our study meeting she went back for several years since 2003 and mapped out a number of separations and the number of retirements that we had over the years and in my opinion it was not significant. For example in 2003 we had 11 separations, 10 retirements; 2004 21 separations and 32 retirements; 2005, 28 separations and 27 retirements; 2006, 28 separations and 18 retirements; 2007, 27 separations and 19 retirements; 2008, 23 separations and 28 retirements. So in her opinion those are not real high numbers but she knows it is a concern. There was a draft policy in your packet on the Exit Survey and what we plan on doing is having staff take another look at it to make sure it addresses what we want to address. Individuals can either complete it online or it can be done confidentially and sent to the responsible person. What we have planned on the Exit Interview is to do it on a branch level so for instance individuals who work in the field could either do an interview with the Chief ALJ or the Executive Director. People in Appellate Operations would either do it with the Chief ALJ or the Executive Director, other staff either the Deputy Director or the Executive Director, for IT either Chief ISO or the Executive Director. We had set it up initially to do either an online survey or interview process or both. She will plan to have a draft to the Board at the next meeting.

Member Richardson thanked Deputy Director Boston for resurrecting it because these issues are extremely important at a time when we are creating an increased burden on staff and we want to ensure we have recruitment and retention policies in place.

9. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported, with regard to workload, all of the Board Members are very busy, but thanks to having six Board members to share in the workload, each Member is handling 18 cases a day rather than 24 cases a day as in the recent past.

Chief Counsel Ralph Hilton reported with regard to litigation that we are still carrying the same number of cases as last month, because although six cases were closed, six new cases were filed last month. All six of the new cases were claimant appeals, and all six of the closed cases affirmed the Board's decisions.

Chair Garcia pointed out, for the benefit of the public, they are not a part-time Board. If you look at the status report in the meeting packages, it shows that on average each Board Member hears between 375 and 400 cases a month, in addition to subcommittee work and Board meetings, as well as the emergency budget meetings that we are holding to deal with the workload. Let there not be a misconception that we are eating grapes 29 days out of the month and showing up one day a month. We are working hard every day to make sure that the claimants are getting the benefits they are entitled to, so thank you for your hard work.

Member Richardson thanked Chair Garcia for her leadership.

Chair Garcia further stated especially during these times we are transitioning by moving towards technology and growing our offices and staffing, whom we cannot do without, who she thanked for their efforts.

10. Unfinished & New Business

Renee Erwin presented the current year budget 2008/09 and the Board at the last meeting approved a secondary quarterly purchasing plan which left a balance of approximately \$500,000 and as was previously mentioned by the Chair we are looking at utilizing those dollars for the Ventura field office to address the increase square footage staffing. As for the 2009 budget it is still in draft mode and the reason for that is there are several areas of uncertainty like the May revise has not been returned and approved by the Department of Finance and the Governor's Office. We expect that usually the beginning of June. The out-of-state travel budget was returned by Labor Agency to make further reductions in that the 2009/10 Governor's budget shortfall is now estimated to be approximately \$24 billion.

Ms. Erwin reported that the Legislative Analyst's Office sent out a report directing the Governor and the legislatures to come up with a plan in June to be effective July 1 so we are anticipating additional Executive Orders or directives reducing budgets for State departments so we don't know how that will impact CUIAB. Lastly, our building based on the May revise increase workload is that Phase III hiring plan would require some infrastructure and facilities in order to house those new hires that are being proposed. What I have here in your handouts is a document to give you a snapshot of where we are now. The Governor's budget that was proposed for CUIAB in 2009/10 has authority for 743 positions and funding of \$912 million and that amount has since been reduced by the furlough appropriation reduction for two days per month. State agencies are having authority reduced by those savings and impact for CUIAB is \$7.6 million. The May revise on the UI Program has forecasted the workload to increase from 375,000 cases in a year to 538,000 cases in a year, that is 164,000 additional cases that CUIAB will be expected to process. With that increased workload the May revise would authorize 112 additional permanent positions and 366 temporary positions and the funding for those positions would be \$37.4 million. We have a slight reduction forecast for the DI Program and workload should drop off by around 900

cases, that would be an adjustment or reduction of 2.3 positions and \$175,000. We also have the Paid Family Leave Program if we do not generate the work that is budgeted for and we anticipate about \$1.8 million that we will not have earnings from. Based on those figures we end up Phase III that she will discuss in a few minutes.

Ms. Erwin reported we have estimated our production will fall short by about 8,500 cases to what is projected in the May revise. Based on that there will be a reduction of 26 positions and \$1.9 million if we did not produce that work. What we are looking at in our budget for 2009/10 is 1,193 positions and a \$117 million. The request comes in from the Call Letters from the four branches and IT Branch had come in at a \$102 million and we also have the three workload reduction plans that would cost us \$14 million. What we need to do is to go back and do a re-evaluation of what is in the Call Letters vs. what is in the Phase III plan because there is some duplication of efforts, duplication of positions being asked. We will go back and make sure we are not having specific cost centers or branches asking in their Call Letter for 10 positions and we're also going to give those 10 in the Phase III. In Phase III we still have approximately \$900,000 that would not be identified to be out to any specific branch.

Chair Garcia stated she wanted to remind the Board we are looking at field offices, growing our IT Unit so there are different things we are still working on internally that we are closing in the next 30 days.

Member Richardson clarified that it is not \$900,000 and Chair Garcia replied no.

Chair Garcia added in response to the impact on our budget you have before you a draft letter regarding the furlough that she intended to send to Agency requesting an exemption from the furlough for our Department. If you recall at a previous meeting we sent a notice to Agency where we wanted to know how exactly the Governor's State of Emergency Proclamation was to be implemented in our Agency because while it did not create an exemption for the mandated furlough it did involve some relief from the hiring and contracting practices and with the growing demand in this Agency we needed to know if that also included hiring practices and existing practices regarding current employees. We do have a copy of the Labor Agency's Acting Secretary response and a copy of the draft letter that we are sending to start our process requesting exemption from the furlough which reflects the impact of the current unemployment numbers on our workload and also you have a copy of what we expect from the American Recovery and Reinvestment Act of 2009. Outside of the budget process there are other factors in play as this Board also took action the last Board meeting to hire consultants to work with us so that our staff can better understand the extraordinary budget times that we are in and there is no running from the fact the State is in a budget crisis. However, some of our dollars come from the Federal Agencies and we need to make sure we protect those and we are not losing bodies as we are trying to serve the public. Over the next 30 days we have a lot of work before us so if you have any questions regarding the exemption letter or any questions that you may have

on the budget process please let me know.

Member Figueroa stated she wants to commend Chair Garcia for sending out a letter and not an email and being very thorough and specific in what we are asking for. She thanked Chair Garcia for doing that and she believes in following up and being vigilant of the expenditures. The other thing is that for the public we need to make sure people are aware we are getting our money from the Federal government. There are a lot of people questioning how we can be hiring so many people, how you can be undertaking so many new projects when we are in such a financial dire state. Let us not assume everybody understands we get our money from the Federal government.

Chair Garcia stated we do receive some funding from the State but it is very minimal.

Renee Erwin reported on the Phase III Workload Action Plan and starting with Field Operations what we are looking at with the increased workload is a need to hire 60 ALJIs for permanent and 16 temporary. In doing so if we look at staggering those hires from July through October we will be slowly gaining and reducing the open balance and getting the number of dispositions up to and exceeding the verifications. In doing so these 60 ALJIs hires will generate an additional almost 70,000 cases in the year and by June 2010 the open balance for Field Operations will equal the dispositions which then enables Field Operations to make time lapse and case aging standards. Based on the production at the Field Operations level it drives the workload at AO based on a 6.1% appeal rate to the field decisions what Phase III is proposing AO needs to hire 15 ALJIs, 6 permanent and 9 temporary and phasing those hires in beginning in June that's going forward with that and with the hires being completed by October in doing so these new hires will produce an additional almost 12,000 dispositions for the year and will be able to reduce the open balance of cases down to 2800 which will allow them to make time lapse and case aging achievable by February 2010. In support of operational branches we also realize that there is a bigger demand on the service branches once you increase staffing levels so we identified what the needs are for administrative services to hire 7 additional staff, information technology, 6 additional staff in Executive Office to hire 4 so that will be a total of 17 for the service branches, 120 for Field Operations, 30 for Appellate Operations bringing Phase III to a total of 167 new hires.

Member Montañez asked if she has that in written form and Renee Erwin replied it is in their folder.

Chief Counsel Hilton added those are in your folder from yesterday.

Member Montañez questioned if we can meet our time lapse and case aging standards by February 2010.

Renee Erwin responded that for Appellate Operations by February 2010 and for

Field Operations by June 2010, 13 months for Field and approximately 7 months for AO.

Member Montañez asked if we do the 16 new ALJs that will bring us to 40 being permanent. Renee Erwin replied 44.

Renee Erwin reported to ease the concerns that we would be over hiring and the workload may be dropping off faster than it's been forecasted the Field Operations historically has approximately 10-15 retirements per year of ALJs. In addition to that, they are now operating with 15 retired annuitant ALJs working per month. So there would be 30 positions that would be reduced if we have a sudden change in the workload.

Chair Garcia thanked Renee Erwin and moved forward to the next item on the agenda, the status report on regulations.

Chief Counsel Hilton reported he has given the board a copy of the draft regulations, with is a summary sheet. The first two proposed regulations are the Board policies that the Bureau of State Audits (BSA) said should be in regulation form in order to be fully applied. The first one deals with nepotism, and is exactly as the policy was written. You might want to look at it and see if there are any changes you want to make to this, or to the other one relating to the appointment of a Board member within a year to a position within the Agency.

Member Richardson asked if we have to suspend the Board policies pending this regulation.

Chief Counsel Hilton responded we should suspend Board Policy No. 24 relating to appointment of an Appeals Board member. The BSA found that it is an underground regulation and it should not be applied. The nepotism policy can be applied as written, it does not have to be suspended as a policy because it can be validly applied on an internal basis. It cannot be applied to individuals applying from outside to be hired by this Agency, new hires, but it can be applied to individuals seeking appointments and promotions within the Agency. As written it is valid if it is interpreted and applied just to existing employees of the Agency.

Chair Garcia asked if Policy 24 pertains to the employment of Board members. Chief Counsel Hilton replied yes. Chair Garcia asked further why would that be considered an underground policy if it is an internal policy adopted by the Board.

Chief Counsel Hilton responded it applies to somebody other than an existing employee of the Agency. When a Board member's term ends they are no longer an employee, so when they seek employment with us they are outside of the Agency. There are certain exemptions from the definition of regulations, one of which is anything dealing with any internal management rules. The moment you apply a rule to individuals not currently employed or to the public in general or the general population, it is a regulation.

Chair Garcia questioned how long it takes to go through the regulatory process so we are clear on how long the suspension will be.

Chief Counsel Hilton replied a minimum of 120 days.

Chair Garcia stated we need to take action to move.

Chief Counsel Hilton stated we should vote to suspend that policy.

Chair Garcia asked in order to suspend the policy do we have to take action to move through regulatory process?

Chief Counsel Hilton responded yes, but we should do it at end of his summary.

Chief Counsel Hilton reported on Section 5002, that we already incorporate by reference in our regulations certain aspects of the Administrative Procedure Act, and one of the new sections that was added some time ago was the Administrative Code of Ethics, Section 16 of the APA. We are just updating our regulations to reflect that that section of the APA is also incorporated into our regulations. Regarding Section 5010, currently our regulation provides for the retention of our case files for 13 months. He does not know where that number came from, but it is not in accordance with Federal requirements which require retention for 3 years or 36 months, so we correcting. 5052 relates to tax petition procedures. It is somewhat narrow and the purpose of this change is to implement a section of the UI Code 1222 to provide that the 30 day petition period starts from the date the assessment has been issued, unless there is a lack of service issue, which would change the start of the 30 day period.

Chief Counsel Hilton reported Section 5055 relates to electronic hearings. As mentioned in the prior Board meeting, there was a bill passed in the extraordinary session, AB 29. Essentially, it instructs the Board to adopt regulations with regard to phone hearings. We already have phone regulations, but the intent of that bill is to liberalize the circumstances under which the Board will grant phone hearings to the parties, and that is what this proposed regulation would do.

Member Figueroa would like to be on the record that she is not one who would say or embrace that having the phone hearing is the best policy. That should not ever supersede having actual face to face hearings.

Chief Counsel Hilton replied the Board is on record several times stating it strongly supports and encourages in-person hearings, and what this does is just give an alternative where it is geographically inconvenient for a party to attend. For example, a claimant who since the time of filing of the claim has obtained employment.

Member Figueroa stated she does not have any problem with that. She does not

want to go on a slippery slope that all of a sudden somebody suggests or that we start thinking about everything done by phone.

Vice Chair Plescia added like EDD, you can't talk to a person, and Member Figueroa replied exactly, she does not want to go in that direction.

Member Richardson commented she concurs with Member Figueroa that she would never support telephone hearings in lieu of in-person hearings. However, we have 25% no-show rates and that has to do with people who are out looking for work or have just recently found work and they are too afraid to leave that employment for even an hour to come to a hearing. The no-show rates are detrimental to our case processing and scheduling and they harm the claimants because they have to appeal and provide us with good cause. This regulation is a good compromise because it allows the parties to elect whether they want to participate by phone and so again our policies are in keeping with prior sentiments of the Board that we don't want to do phone hearings in lieu of personal appearances but we need to solve this 25% no-show problem.

Chair Garcia commented the claimant always has the right to waive a personal hearing and can do it in writing as well. Looking at Item (d) of the hearing schedule, third party's notice was served at least 10 days before the date of the hearing. She does not see any provision here that would allow any party to waive those 10 days. For example we recently had this case with the swine flu. We absolutely do not want these people coming into hearing rooms getting our staff sick or contaminating the general public while they are waiting. She does not want us to get into a hard and fast kind of rule where we could not allow that kind of flexibility of 10 days. If for example the party called in and had a transportation problem or job problem and was able to keep their appointment but wanted to keep it as phone hearing, can we add some language to ensure that the 10-day rule can be waived if all the parties agreed to it?

Chief Counsel Hilton responded that our current practice is to allow waiver by a party regardless of whether or not it is a phone hearing or an in-person hearing. In fact that is how we are able to plug no show time. When a claimant calls in and cancels a hearing, we have the opportunity to plug another hearing and we can do so only if we get a waiver from the party of the 10-day notice. That is a current practice.

Chair Garcia stated if we are going to the trouble of writing a regulation she thinks we should put it into the regulation so there is no gray area and we know for sure. Chief Counsel Hilton agreed and he will take a look at this

Member Richardson asked if we have something in precedent and directed the question to Acting PALJ Carrillo.

Acting PALJ Carrillo responded he thinks the regulations do specifically allow for waiver of rights.

Chair Garcia commented if we are doing this process let us do it right. With reference to Section 5010, audio visual record and transcript, where did we come up with \$5 and is that amount adjusted. A Board sitting here 10 years from now, do they have to come back and revisit this or can we create some flexibility in this so that it moves with the ages with whatever the duplicating costs are? The second question is, she knows our current processes are to do audio, but she does not ever want it moved into a place where they want us to transcribe that audio. Looking at the regulations itself she wants to make it clear it is only available in audio and there is no obligation that the Agency has to transcribe that for whatever party, that they expect us to do at a charge of \$5.

Chief Counsel Hilton responded the regulation is clear that whatever record we have we are not required to transcribe it, but he will take another look at that. That regulation was adopted before he came here, so how they came up with \$5 he does not know. Claimants don't have to pay anything, not even the nominal amount. A policy decision was apparently made at the time the regulation was adopted that the Agency would not charge claimants for a copy of their record. Anybody else, including employers or a member of the public, is charged a fee. Somebody who is not a party will be charged 15 cents a page, but parties are covered by this regulation, and pay just \$5.

Chair Garcia stated it is not her intent to charge more; she is just asking where that number came from. She knows that our policy is not to charge the claimants but if that is our policy she thinks it is still confusing to the claimants because this regulation talks about financial hardships to a party, it does not say no claimant should be charged for a copy of their record.

Chief Counsel Hilton stated he will take a look at it because he thought that's what it provided.

Acting PALJ Carrillo added the regulations do provide the claimant can request a copy of their record at no charge. It is an exception to the general rule but it is contained in there. When he first started this was back in 1988 and all of their cases were transcribed and there were no audio recordings. The parties routinely got written argument with the transcript as part of their written argument. When the decision was made to charge he was not part of that but his recollection is that it was desired to have some amount even a nominal amount because it was feared that if it was free, parties would request it as a tactic to prolong the process. But they did not want to make it burdensome on small employers or employees who generally would want a copy of the record.

Chair Garcia stated she wants to apologize and stand corrected. It is item (j), notwithstanding any other provisions of the rule the claimant should not be charged.

Acting PALJ Carrillo commented it is based on a statutory provision which requires

that we provide copies to claimants free of charge.

Chief Counsel Hilton stated, with regard to the other two items at the bottom of the summary, that Acting PALJ Carrillo has already provided an explanation for those proposed regulations.

Chair Garcia set the motion to adopt this and authorize the regulatory process, which was approved by the Board 6-0.

11. Public Comment:

There was no Public Comment.

12. Closed Session:

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

Adjournment