

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5510**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., July 14, 2009 in Sacramento, with Chairwoman Bonnie Garcia presiding.

2. Roll Call: Members

	<u>Present</u>	<u>Absent</u>
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 June 9, 2009 minutes were approved.

13. Public Comment:

Chair Garcia moved out of order to item #13 Public Comments regarding Proposed Rulemaking. She clarified for the board that this is not an action item but just a discussion item on some of the rules that they had proposed and there were some comments and changes that were made to these and she briefly went through them. Member Richardson had a concern on item #1 the Nepotism policy and the description in front of it, bottom of the first paragraph states the Chair of CUIAB. Because CUIAB has members of different departments that work as the Chair's authorized representative or representative of the board they would like to make some changes there that state "*the Chair of CUIAB or his or her authorized representative.*" When they have members of staff acting as an authorized representative the Chair has to sign that authority over. She signs a legal form whenever that is appropriate, whether it is the attorney of the agency or the personnel director or the Chief of ALJ or Appellate.

Member Figueroa asked if the Chair had to sign off on an authorization for each one, and does it specifically state what the project is or entails and the specific member or just the department. Chair Garcia responded that the specific department. For example, in this case it would probably be Personnel to ensure that they are meeting the letter of the law especially as seen on the audit but in addition the attorney would also have to be reviewing it so it would authorize, for purposes of the Nepotism Policy, the attorney and perhaps the Personnel Director

who would have oversight over what the ALJ, Chief or Appellate Chief would be doing.

Member Richardson stated that it was her understanding that the Attorney General Opinion gives the Chief of the Field the authority to hire in the field and that is why she did not want to give the Chair or the Chair's designee the authority because there are other people who have authority to hire and to make recommendations. This language, if you put the Chair or his or her designee, it still does not satisfy her concern on that issue.

Chair Garcia commented that because they would have to send it to Agency and it would also have to go through the procedural review before it would become final action the board would have to vote on it. There is still opportunity to address or tweak anything that is needed along the way. After the review process, before they go to publication, the Agency and the review process on the regulations, they would have to go through a lengthy and public review process before there is actually a final vote on the regulations.

Member Richardson questioned whether the Board takes a vote before the regulations are submitted to the Office of Administrative Law (OAL). Chair Garcia responded that before they are approved the board needs to take a vote. At this point, this is draft language and Member Richardson's concerns are noted but she does not want to make it so narrow that they lose the ability to add any changes that they need to. Member Richardson stated that she is actually looking at it to broaden it. She thinks it is too narrow now. Chair Garcia stated they will work with legal counsel to make sure to get it right.

The other item is Field Operations, section 5055, regarding electronic hearings under text of proposed regulatory changes, the intent there was to, upon showing of good cause and still allowing the ALJ to consider some of these issues before they allow electronic hearings. They missed some of the items that should have been addressed. Looking at item (b), Consideration in determining good cause under the provisions shall include, but are not limited to: (1) include some language that states transportation barriers or travel distance. It may be that they don't have transportation, not near a bus route, don't have a car, and cannot pay for taxi. It should not just be travel distance. These are items that should be considered. Item (2) time away from current employment or other responsibility. It may be that they are required to do a job search, have some other issues. Item (3) unable to secure care for children or other family member to allow them to give their full consideration to a hearing. Item (4) other hardships as explained by the party that is requesting it. In her mind that would be someone that may be in a shelter, experiencing homelessness, other barriers that they are explaining to the judge for his consideration. She included that (b) states but not limited to. Those are some items that should be considered but shouldn't be limited only to those. They will be doing some clean up language on that as well before it is submitted.

Staff Counsel Kim Hickox advised the board that there were also some additional

comments on that regulation that she received that morning and she passed out copies to the board.

Member Richardson asked in the catchall under (4) for other hardships, are they looking just at hardship? Chair Garcia responded in the negative. They want to create some specific things that are clear cut but there are some things that are not going to be mentioned specifically which the PALJ should still be able to look at to determine if there is good cause. Member Richardson commented, impediments like getting a new job. She is stuck on the word hardship. Chair Garcia responded that there is still time to vet it out and they do not have to vote on it today.

Member Figueroa asked when it would be coming back to the board. Staff Counsel Kim Hickox responded in September after the public notice and comment period. Before they submit it they go through that process and then they have to consider all the comments and make some additional changes and then the board will vote on the final regulations that will be submitted for approval to the OAL.

Chair Garcia asked if it could be brought back to the next board meeting in August. Staff Counsel Kim Hickox replied it could be but then they would not have it in time for the publication deadline of July 31, 2009. To be published by July 31st the package has to be submitted by July 21st which is next Tuesday. CUIAB has to submit its packet to the OAL by next Tuesday, July 21, 2009, in order to have the Notice published on July 31st. Chair Garcia stated if they wanted to work with her on some clear language before it is sent so that they do not miss the deadline to talk to her specifically about it.

Chair Garcia commented on the last item of the Proposed Rulemaking, item 5105. Some of the comments they had were regarding the clarity in this process and what the intent is to reduce the amount of time that there is on the waiting at the appellate level when it comes to the board. They want to make it clear that the party who files an appeal, also known as the board appellant, has a right to serve written argument so there needs to be some clean up on item (a). Also, for the purpose of submitting written argument he or she needs to request a copy of the record at the same time that they are filing their appeal. If their intent is to submit written argument and an extension is granted then that is also extending the time that they have to submit their written argument. So there is some clean up language needed between (a) and (b) which will actually separate it out -- you have the right to file written argument, if you file written argument that should be (b) it should be done at the same time you file your appeal. Right now the board is losing 18 days within that process. And then (c) if there is an extension to that time frame, if the board grants that extension then you have an extension for your written argument. It is chopping out (a) and (b) into (a), (b) and (c) so that there is clarity in it because it repeats itself there regarding filing the appeal and it is a bit unclear.

Member Figueroa asked if now there was just the 12 days but it is inclusive of everything. Chair Garcia responded that is correct. Presiding ALJ Jorge Carrillo

stated that he took a look at the comments and he has some ideas and suggestions.

Chair Garcia stated that if the board approved then they would work with staff and the board members that are interested in having some clarifying language before they move to public comment.

Member Richardson stated she has not had an opportunity to review the e-mails just handed out. Staff Counsel Kim Hickox responded those are comments that may be considered if they want to make changes and most of those are concerning the telephone hearings, section 5055. Also, there is an issue with out of state representatives trying to get telephone hearings.

Member Montañez commented that there were some good points brought up in the e-mails.

Chair Garcia asked if there were any members of the public that would like to speak on any of those issues.

Cynthia Rice, CRLA made the following points (Attachment A):

- Concerned about two major areas (1) telephone hearings; and, (2) request for oral argument and request for preparation of the record.
- Concerned about the elimination of subsection (f) in the regulation regarding telephone hearings because it eliminates the absolute right to insist upon an in-person hearing.
- Problem is, particularly for CRLA, the vast majority of their low wage worker claimants are not English speaking and the proposition of having an interpreted hearing by telephone is really quite daunting. They have had experience with circumstances where they have had inter-state hearings where a telephone hearing had to take place and it is not only, not the best case scenario but it really creates significant problems.
- Increasingly many of their clients are indigenous farm workers who do not speak Spanish really as a primary language and it is often necessary to have a second interpreter to interpret from some other language to Spanish and then a Spanish interpreter to English.
- Many clients are not able to articulate themselves over the telephone. EDD's sole use of telephone claims has had a huge effect on the increased number of appeals to the board.
- She fears that employers and the department may use the elimination of subsection (f) as a way of putting more of these cases into telephone hearings which will have a really negative effect on low wage workers.

- She urged the board to have stakeholders meetings on these issues because they think that the regulations can be refined a little better to identify subsections of claims that might more appropriately be handled by telephone.
- The other obvious disadvantage of a telephone hearing is that many of these claims the ALJ needs to make a determination of credibility between the employer and the employee witness. To do that over the telephone works to the disadvantage of their inarticulate, unsophisticated claimants.
- Their response will be to tell people when they file their appeal, request a copy of the record. That will put a burden on the board but in her view that is the only way she can ensure that once that client comes back to her for their first interview she can know their rights have been protected and if she needs to do written argument with respect to the record it can be done.
- It is unreasonable to insist that a claimant, at the time of the appeal, request argument and request production of the record because they are often unrepresented and haven't had a chance to get a second view of their case. That 10 day period does give them, as advocates, an opportunity to have a claimant in and review their case.

Chair Garcia clarified for the board members that this is not an action item on the agenda. This is intended for the board to know what is going on with the proposed regulations. Their intent is to start the public comment process by July 31st which will allow her and other stakeholders to have an opportunity to weigh in on what these regulations are; what should be included or not. They have had discussion with the Labor Agency about how CUIAB can be more efficient in notifying the stakeholders, the community which CUIAB serves. The Board's intent is to broaden the process to create an opportunity for them to not only do it in written form but to also have a public hearing before the board. They are not rushing through the process. They recognize that there is an increased workload, the unemployed today are new to the system, and the board is fully engaged in that.

Member Richardson commented that the UI board has two attorney members that are appointed to it and she thinks that this is probably one of the reasons why. These regulations will dictate how claims are fairly adjudicated over the next ten years of this economic crisis and she agrees with Ms. Rice that subsection (f) should be back in and that stakeholder meetings are important when you are doing something as critical as regulations. She welcomes sitting down at the table with CRLA and passing information back to the Chair or however the Chair would like her to do that. When she was in the Governor's office that was what they did, they sat down with all the people who could potentially be affected, heard them out and she thinks that is critical. Then they took the messages back to the person who made the decision. She stated she would be happy to do that for the Chair and the rest of the Board.

Chair Garcia commented that the board will follow correct protocol and go through making some modifications, going through the public comment process. All the board members have the same desire and interest, not because they are attorneys or past legislators but because they recognize who their audience is.

Member Richardson stated that she is not suggesting we deviate from proper protocol.

Cynthia Rice, CRLA final comments (paraphrased):

- The people in the advocate community always hope that the regulatory process will be an opportunity to tweak things to include other issues that they see.
- Addressing specifically the board's requirements particularly with respect to any request for argument or preparation of the record because the notices going out, particularly the alternative language notices, there is a real problem which will also complicate any immediate need to request hearing. So addressing that in the regulations would go a long way to establishing a standard that people can understand and live by and eliminate the need to request to reopen appeal period, etc.

Angie Wei, CA Labor Federation made the following comments (paraphrased) (Attachment B):

- Concerns about expediting the process and limiting choices for laid-off workers to appear in person.
- Caution about moving to phone interviews because, as Ms. Rice indicated, visual cues are important, low wage workers who may have English as a second language in which phone interpretation does not give them the comfort or the clarity they need to be able to defend their claims.
- Benefits are these claimants lifeline.
- Some things are just not done over the phone. Defending your right to the benefits you think you are owed should be defaulted to in person hearings.
- Existing law allows for good cause reasons to allow for in-person interview. Not clear to them why the existing law does not work today. As a stakeholder they think the background for this proposed regulation, that language, to be codification of existing practice of the board.
- Unclear why there is a need to go through a regulatory change when the process seems to be working. Have not heard any real complaints about the ability to go to telephone appeals process.
- Three points that give them pause:

1. That the ALJs can require a phone hearing. That they can actually require all parties to show up by phone. That potentially limits laid off workers choices and they have a problem with that.
2. The proposed regulation deletes the authority of the ALJ to require someone to appear in person. The ALJ may determine that there is enough paperwork that requires people to sit down across the table and look at documents as opposed to doing it over the phone. Their concern is that these regulations delete the authority of the ALJs to require that in-person appearance.
3. When reading regulation 5050 there is a lack of clarity about whether or not a claimant can request to participate in person even if the opposing party wants to be on by phone. So worker may choose, even though their employer or rep. wants to appear by phone, they still want to show up in person and will this proposed regulation allow for that?

- Final issue, they are learning more about employer representatives who are actually doing the representation at the hearings. Concern that allowing for easier access to telephone hearings allows for third party representatives in other states easier access to be able to file these appeals. These newer third party vendors may be less aware of California's UI rules and regulations creating problems with their interpretation as they may want to try break into this large marketplace of a potential place to make money if folks from other states can come in and appear by phone.

- Strongly encourage and ask for some stakeholder process to make sure that there are not unintended consequences that get opened up through the new regulations. They want to be involved in that.

- Not sure how furloughs help the situation of the board's increasing workload. The issue of furloughs should be done in a surgical manner where it is done carefully rather than through a hatchet manner where everyone gets furloughed no matter source of funding. Staff morale is affected by the furlough issue. Encourage the board to continue to fight for the staff on the furlough issue.

Chair Garcia stated the furlough issue is not on the Agenda so they cannot comment on that issue. Their goal with creating the regulation is they need to adhere to the new legislation that came out of the Legislature but also do it in a way that is fair to the claimants. It is not the Board's intent to create any shortcuts but it is clearly their intent to make sure that anybody that asks for a hearing, that is willing to participate in a phone hearing because of whatever hardship they have, that the request is documented. Which is currently not being done so they were not sure how many people had called in and who exactly was making those decisions and if they are finding good reason and good cause. There may be in all of the situations described, language barriers, too many exhibits, etc, that decision should always remain with the ALJ. That is why there is an ALJ hearing these cases and not some clerk on the other end of the phone. They want to make sure that they preserve that right for the claimants but they also want to make sure that they are providing a clear path for those claimants and respondents that want to go

that route. It is never going to be changed in a way when one is willing and the other is not. Both parties have to agree. She invites them through the public comment process to help them get there.

Member Montañez requested that Angie Wei provide a copy of her comments to the board. Chair Garcia suggested she email her comments.

4. Chair's Report:

Chair Garcia reported there was a meeting last week to deal with the furlough situation. It is a very difficult time for the Board. CUIAB is on a self directed furlough which means we are required to be on a furlough. We only have the flexibility in terms of the days that they can allow employees to take off. They are working with all of the departments. They are fully aware of the caseload and the issue that it is having on staff and they are continuing to explore an exemption to this process. Those meetings are still continuing with the Governor's Office and the Labor Agency and today they have not had a response regarding that. They are also submitting a weekly report that outlines the immediate impact to the agency. The board received a copy of the report last Friday that was submitted to the Governor's Office. The goal is to continue to serve the public and to find a way to address the impact it is having on the staff.

Member Figueroa commented the board is receiving copies and asked whether they could make the total staff aware of not actually the letter but make them aware each time that the Chair submits communication regarding the furlough? Chair Garcia responded one of the things they asked to do is to put the communication up on the Bench. The staff is being informed and as they are getting the letters out she is personally communicating with the employees through e-mailing any attachments or information. Lori Kurosaki is working on putting the information on the Bench.

Member Figueroa commented people keep calling and they are just so frightened. She tells them they are all fighting for those furlough exemptions and they do it on a regular basis. She stated she will refer them to the Bench.

Chair Garcia stated that one of the things that was outlined in the report were the states that are experiencing furloughs and which state exempted the UI & DI. There was a letter that went from Vice President Biden to the National Governor's Association addressing the issues. The Governor's Office is up to speed on it and they are hopeful they will consider all those items as their negotiations move forward.

5. Board Member Reports:

Member Runner commented she appreciates the staff and all their hard work on all these furlough issues.

Member Montañez complimented and thanked Chair Garcia on her aggressiveness and thoroughness in going after this furlough issue and that her leadership is admirable.

Member Figueroa reiterated Member Montañez's statement and added that it is a good opportunity to educate the public about how CUIAB is not state funded, explain that we are federally funded and how the process goes.

Chair Garcia reported they did submit a request for an exemption on purchasing, services, contracts and things like that which allowed CUIAB to continue to operate. They are doing modifications to this building to expand the hearing space. They have some service contracts and construction contracts regarding expanding some of the field offices for hearings, security, etc. and that exemption has been granted by the Governor's Office.

6. Assistant Secretary, Labor and Workforce Development Agency, Report:

Assistant Secretary, Labor and Workforce Development Agency (LWDA), Stephen Egan reported that the U.S. Department of Labor (DOL) is going to conduct a review the last week of July, the 27th through the 31st. They will be coming and meeting first with the Chair and the Senior Staff, visiting the Sacramento field office, the Oakland field office and Appellate Operations. He is told that this is a non-adversarial review. They hope to be able to share some ideas that maybe they have gotten from other reviews conducted in the western states. They are not happy with the furlough. They have this idea that we are inefficient in our handling of the cases and files. Mr. Egan stated he personally conducted a very detailed analysis of each of the field functions and found no inefficiencies, if there is any delay at all it is less than half a day because someone is on vacation, sick leave, jury duty or something. And although CUIAB employees are cross-trained they will handle what they can and they cannot do both jobs. So if anything, it might be delayed a half a day or so but nothing significant. He thinks that the only long range method to speed the process is through some kind of computerization which is really going to be sent down and dictated from EDD because they are the larger player and CUIAB needs to tag along with their decisions in that regard. It is going to be sometime before that happens. The only other effective way is through ALJ hiring which CUIAB is conducting. DOL will have an exit interview and hopefully he will be able to find out what their feeling is and if they have any ideas on streamlining, increasing the efficiencies. He will report back with the details.

Member Figueroa asked when he says computerize with EDD is he talking about something in addition to what CUIAB is already doing with them or just continuing in that line of reasoning in terms that we want to just speed up the process? Assistant Secretary Egan responded it is inevitable that there will be a paperless decision process and the file will come to the board in a paperless fashion and be handled here paperless. He thinks CUIAB is really relying on EDD to make that conversion. Some of their documents now are even in long hand and photo copied for their files so in some respects they are way back in the horse and buggy days.

It is going to take a while and CUIAB is kind of stuck with what they send us and right now it is all a paper file transfer. They have talked about scanning it on our level entry but he thinks that to be really effective it has to be paperless from EDD to us and then processed through the entire system. They had hoped to maybe capture and do it at this time because there is some of this money coming from Washington but it doesn't seem like that is going to happen. It would limit our requirement to have as extensive of a processing in the registration in the field as we currently have. It will prevent lost and misfiled documents which is what we deal with coming from transfer from EDD.

Chair Garcia stated some of the things CUIAB has done internally will help us reduce some of our own time. For example, the field decisions to EDD are currently being mailed but they are working on a link so that we have a common computer system where we can reduce the time that it takes for EDD to match up our information with theirs reducing the time for the claimant after that 20 day waiting period to actually get payment if they are owed payment. We are still moving on the paperless system from the field office to Appellate Operations to reduce time from there. Internally we are making some changes independent of EDD so that we can help ourselves through this process.

Member Montañez questioned on the furlough issue that CUIAB is submitting its weekly request, is the LWDA then turning around and also talking directly to the Governor to try and address the furlough situation? Assistant Secretary Egan responded yes.

7. Chief ALJ/Acting Executive Director Report:

Jorge Carrillo, Presiding Judge, Appellate Operations (AO) Branch gave the report for Alberto Roldan, Acting Executive Director/Chief ALJ as follows:

1. Personal report

- a. June 30, 2009 was my six month anniversary with CUIAB.
- b. I've completed site visits to 11 of the 12 field offices and both regional support units. Most recently, I visited the Fresno, Orange County, and Inland offices and the Southern California regional support unit.
- c. As part of my development in serving the office as the chief administrative law judge, I have completed all of the judge's training offered by CUIAB.
- d. I, along with other senior members of CUIAB, including the Chief of AO, and the Presiding Judge of the Regional Support Unit have been served with notice that we are being deposed in the *Acosta v. CUIAB* lawsuit around July 23, 2009.

2. Snapshot of Field Operations as of June 30, 2009

- a. As of June 30, we had an open balance of 94,025 cases in all categories. (UI, Disability Insurance and Tax.)

- i. Most of the cases are in UI. That open balance was 81,750 cases involving 52,729 appellants.
- ii. June was the 12th straight month in which new cases [36,687 cases] exceeded closed cases [34,471 cases]. It was a very busy month in that both intake and production were at all-time highs.
- iii. The number of new cases was up by more than 2100 from May and 14% greater than the average for the fiscal year.
- iv. The number of cases closed by disposition was up almost 3000 cases and 24% greater than the fiscal year average.
- b. The new judges combined with the experienced judges have been making an impact at the Field Operations level.
 - i. From January-March 2009, we had 90,066 new cases come into CUIAB. During that same period of time, we closed 83,977 cases.
 - ii. From April-June 2009, we had 105,425 new cases come into the department. During that period of time, we closed 98,340 cases.
 - iii. This was an increase in productivity of over 14,000 cases as compared to the previous three-month period.
- c. Given that it is the end of the fiscal year, it is worthwhile to look back at some trends over the last 12 months.
- d. For the 2008/2009 fiscal year:
 - i. There were 386,166 new cases in all programs, representing an increase of 27% over the previous fiscal year.
 - ii. 338,032 closed cases for the year was a 13% increase over the previous fiscal year.
 - iii. There were 361,262 new UI cases involving 233,014 appellants. This compares to 279,046 cases involving 179,985 appellants from the previous fiscal year, or an increase of 29%.
 - iv. For this year, there were 316,361 closed cases [204,053 appellants]. This represents a 15% increase from the previous year's 275,877 cases [177,941 appellants].
 - v. The inventory is now more than twice where it was at the beginning of the fiscal year.

3. Field Operations Workload Committee

- a. This committee was created to assist the Office of the Chief in identifying and suggesting ways to address issues of concern affecting Field Operation's ability to do its job. The committee is composed of individuals from various offices, branches and disciplines who have the knowledge and background to advise on solutions to issues affecting workload in the field.

- i. They have completed a draft of proposals to assist the department in addressing workload issues. In addition, through their work, some smaller operational changes have been implemented. Examples are; the shifting of assigned cases to less impacted offices, and the mobilization of administrative law judges to areas of greater need.

4. Facilities and Procurement Report

A number of significant projects previously approved by the Board are under way:

- a) Construction improvements in the Headquarters building for the Sacramento Office of Appeals have been underway.
- b) Because of the budget crisis, restrictions have been imposed on all state departments for the purchase of goods and services. CUIAB submitted requests for exemptions for the balance of 2008/2009 purchasing pursuant to the legal liability exception that was authorized. Those exemptions were granted. We are still awaiting word from the granting of some of the more general exemptions requested for the 2009/2010 fiscal year. The exemption process has caused some delays in projects that have been authorized by the Board.
- c) Construction is in the final stretch for the San Jose Office of Appeals permanent space. That project was expected to be completed by the third week of July but has been delayed by approximately 3 weeks.

Member Figueroa asked if they knew why there was a delay. Pat Houston responded that they are working with the building owner to design the modular furniture and there are delays with the vendor.

8. Presiding Judge, Appellate Operations Branch, Report:

Presiding Judge, AO Branch, Jorge Carrillo reported that for the month of June 2009, AO registered 1,956 cases, 19% above the fiscal year average of 1,637 cases. The number of appellants involved in these registrations was 1,361. Although we lost 2 registration persons within the past month (one to retirement and one who resigned to relocate), we have been able to keep our registration count above normal by having registration staff work overtime. We have also hired 2 new registration persons and are in the process of advertising and hiring for a third. We are also transferring the attendance duties from a registration staff member so that she can devote herself full time to registration. The goal of AO is to increase our registration capacity to 2,300 cases a month by October or November. This is the number of board appeals expected to be generated as a result of Field Operations' Phase I and Phase II ALJ hires.

In June 2009, AO closed 1,780 cases, 14% above the fiscal year average of 1,562 cases. The appellant count for dispositions was 1,157. These numbers are very good considering that 2 AO judges continue to be out due to medical leaves and the equivalent of 1 judge has been out of production to train 2 new judges hired in April. The 2 new judges will be in full production later in July. We have also hired 5 new Permanent Intermittent ALJs who started on July 6, 2009 and are currently in a 2 week training program. The 5 new ALJs are here today. In alphabetical order they are Kevin Elmendorf, Thomas Flynn, Theresa Herrington, Eugenie Mitchell, and Lisa O'Brien. I would also like to introduce another new judge that was hired in April and that is Peri DeMarco. I want to welcome them to the CUIAB and also thank Nancy Kirk who has done an extraordinary job of planning and organizing the 2 week training program. After the 2 week training has been completed, we will have two teams of ALJs training them for the next 2 to 3 months. At that time we will have 22 ALJs and one retired annuitant judge working for AO and this should give us the capacity to prepare about 2,300 board decisions a month.

Because the number of registrations exceeded our dispositions by almost 200 cases, the number of open pending cases increased to 2,904 cases. The estimated number of appellants involved is 1,531.

Due to the large number of open cases, we accumulated a high number of older appeals that were filed in March and April 2009. In late June, we made a concerted effort to close as many of these older cases as possible. We asked for volunteers among the ALJs to take their weekly assignments ahead of time and work in the evenings, their regular days off and the weekend to close as many of these older cases as possible by June 30th. The ALJs who volunteered were Julia Newcomb, Kevin Toole, Pat Poyner, Marti Geiger and Shelley Mydans. I also took cases to help out. All of our staff worked hard to close these cases by June 30, including our case assignment staff, my secretary Juanita, the decision typists, the board log-in desk, the board's executive staff, and the closing desk staff that mailed out the decisions. The board members especially worked very diligently to review and decide as many cases as possible. As a result, the board closed approximately 250 cases in the last 3 days of the month.

Because we concentrated on closing older cases instead of newer cases, our time lapse numbers suffered slightly. We still closed 39.47% of our dispositions within 45 days of the appeal date, 69.73% within 75 days and 96.70% within 150 days. In the future, we will concentrate on closing older cases with board appeals that are 60 days or older in addition to closing newer cases for time lapse purposes. Our case aging number, that is, the average age of an open case, continues to fall. It was 41 days in June, 1 day above what the DOL sets as a guideline. However, when the average age of our open cases is measured from the time AO actually received the case file, that number is 31 days.

We have been busy this past week working with staff to implement the details of the furlough program. As you can well imagine, the furlough program will

adversely affect our production in the coming months not only because our staff will be off work for 3 days out of the month but also because staff will no longer be able to work overtime during the furlough weeks to help reduce our backlog in critical areas such as registration. The loss of production will also affect our ability to meet time lapse standards and our case ageing number as the backlog will increase and the length of time that open cases sit before review will increase. Without the furlough program, we had estimated we would achieve our goal of having the number of dispositions equal the number of new appeals in June 2010. With the furloughs, AO will not be able to achieve that goal until February 2012, 19 months later than the original target date. Additionally, the CUIAB will lose \$686,826 in revenue due to the loss of dispositions at the appellate level. Nonetheless, we will do the best we can under these difficult circumstances.

In your packet is the monthly report on the time it takes for board appeals to arrive at AO from the field (Attachment C). The average time for the month of June was about 9.5 days which is still several days above what we would like. Last month, staff from Field Operations, Administration and AO met to discuss details of a pilot for the staff in Orange County to transmit electronically the contents of board appealed cases to AO. This will allow AO to begin the registration process immediately without waiting for the contents of the physical folder to arrive. If successful, the pilot will be expanded to the Sacramento Office of Appeals and hopefully eventually to the other field offices. It also will be a first step for AO to begin processing its cases electronically throughout the appellate process. Unfortunately, the furlough program may adversely affect the ability of the Field to process these cases on a timely basis.

Chair Garcia thanked the board members, during the last days of the month they were knocking out perhaps 30, 40, 50 cases each to get the numbers in check. What they recognize is that there were a lot of appeals that had been pending about three months because of the backlog. It gave them an opportunity to get responses to those appellants first. The board member case activity report does not reflect the fact that Member Montañez was on vacation so there needs to be a correction made to that report.

Member Richardson commented she did not participate in that big push at the end of the month, it was the rest of the board members that worked very diligently on it and she was gone on vacation. She really wanted to thank the board members for picking up the slack while she was gone. She knows it makes life much more difficult especially for the Chair because she has so many other activities. She thanked the board members for covering her while she was gone.

Member Montañez commented she was off a few days also because a family member passed away.

Chair Garcia stated Member Richardson was on vacation and Member Montañez was on bereavement leave and the report does not accurately reflect that. She wanted to note that for the record so that they can accurately report it so it doesn't

look like there were slackers on the board. Everybody worked hard the rest of the month just the last week of the month was extremely busy. Also, one of things that should be clarified is not that staff cannot work overtime but that during the weeks that they work 32 hours if they do overtime, it is considered straight time for those 8 hours until they get to the 40 hour mark. It is extremely difficult when you are doing the three weeks in a row. The other issue impacting their ability to get the cases from the field to AO is, if in fact it is coming from a field office and it is a Friday for example and we have less staff there it is impossible to get everything out especially if you have people who are doing registration or getting into the CATS system which needs to be done before they can actually date stamp. One of things that they are not doing is, they are not short cutting the due process for the claimants and they have to make sure when it is dropped in the mail that that date is certain. There are some hardships that we are looking at that definitely impact our ability to meet these timelines and again those are the issues that they are stressing as they are working on that exemption.

Member Montañez asked about the pilot program in which we will be receiving the files electronically, when are they intending to actually have that going? Presiding ALJ AO Carrillo responded they are meeting to discuss the details of that. They have set a target of starting September.

Chair Garcia commented one of the challenges they had and why they lost some time since the board had approved it was because they needed to get an exemption for service contracts and purchasing and they recently received that. The other thing was they needed to have staff that was available that would be able to help them so that when they created the pilot program they would be able to monitor it accurately and the staff in Orange County was the best site.

9. Chief Information Officer Report:

Chief Information Officer, Rafael Placencia thanked the board on behalf of the Information Technology (IT) division for recognizing the importance of IT. It is clear to the staff in IT that the board is very supportive of what they are trying to do with IT and how it can help with the caseload.

CIO Placencia reported on the ongoing project currently underway at CUIAB. (Attachment D) under the Technology heading.

Field Office Telephone Tree: is a project that they were waiting for approval with the funding before moving forward.

Auto Dial Hearing Reminder System: ready for implementation. They will use the following information from the CATS tracking system for generating call lists based on party name, party phone, hearing date, hearing time, hearing location, party language, either English or Spanish, and hearing type, in-person or telephone. They have the standard message text that has been approved by the Director and they are now waiting for final approval to move that system forward. The audio is

available if the board would like to listen to it.

Expansion of Information Technology Infrastructure: they are working with their service provider for developing the conceptual design and cost. The proposal will be presented back for final approval.

Digital Imaging: no new information on this project. This project is being lead by the Agency. This is part of the going paperless.

Electronic Case Management: this is also being lead by Agency. They are waiting for direction on exactly what they are looking at doing with that project.

WAN Acceleration: this project is also in the development phase. Testing is scheduled to start in the month of August. What that will do is hopefully speed up all of the low connections so that the files can be processed a lot quicker. That is a very good project for helping us do our work.

Digital Personnel System: this is a system that they are looking at bringing into the Personnel Department which will automate the process of hiring staff. They recently had staff travel over to the Public Utilities Commission because they have a working model and they are looking at leveraging what they have done there to basically duplicate that and bring it into CUIAB for our use.

Chair Garcia stated for simplification purposes, if someone wants to apply for an appellate job in Orange County, Sacramento and Inland, currently they would have to file three applications. So by doing it paperless they can designate which offices they are willing to work in and then each of those PALJs would get a copy of the application. It would save some time in Personnel. They also could transfer the file electronically to each of those offices versus what is currently being done. Standing in front of the copy machine and then sending it out. It helps with that and also if there are openings that are permanent or temporary in nature it allows them to be considered for both without having to go through separate applications. That was something the board asked the personnel department to do some time ago when they were looking at expediting the hiring of the ALJs.

CIO Placencia reported on a couple new items as informational, IT policy letter 09-05 which is a reporting structure and 09-06 IT procurement. He will be working with Senior Staff to figure out exactly what the impact is to CUIAB but they are actually far reaching policy letters that are coming out of the State Office of the CIO. That is basically going to change the way we do business.

CIO Placencia lastly reported on the Agency consolidation efforts. He is part of a work group along with other Agency partners that are developing a plan for consolidating services within IT. The hope is to show a cost savings by combining services so that we are able to do more with less and this is ongoing.

Member Montañez asked when the Auto Dialer for the hearing reminder is going to

start. CIO Placencia responded they are ready to implement it is just a matter of getting final approval from the Director to move forward with it.

Chair Garcia commented there were some changes to the text so they were specific about which office you needed to go to and to get the right dialect. They know that about 25% of the claimants forget, don't show up, didn't call in and it ends up becoming a reopening which creates work for the Appellate Division. This is a way to remind them about their hearing that is coming up and gives them at least a two day window to call in. The other piece of that which CIO Placencia touched on was the Telephone Tree. Some agencies when you call in you don't get a live party and you get shut off. When they actually call our agency you do reach someone. By being able to zero in on what you need, do you need to reschedule, do you need to get copies of your documents, do you need to find out how to get to the location, whatever, it will help them get to the source as well. The two complement each other and they should probably be underway with that the beginning of next week.

10. Deputy Director, Administrative Services Branch Report:

Staff Service Manager (SSM) II, Pat Houston gave the report for Deputy Director, Administrative Services Branch, Pam Boston. She reported the status of hiring for Phase I is complete and Phase II the allocated 40 ALJ hires which 31 have been filled and 9 are pending. We have an allocation of 40 support staff of which 21 have been filled and 17 are still pending. For Phase III, the ALJ applications are being sent to the offices this week and the support staff are being advertised.

SSM II Houston reported within the Administrative Services projects, Pam Boston, Ralyne Long, and Martha Silva met to discuss several projects that will be taken off the shelf and dealt with. They are as follows: (1) Reception Training -- Ralyne has put together a four hour training for new receptionists. Alberto will be sending out an e-mail to the PALJs and LSSII announcing the training. Ralyne has already given this training to new receptionists in Orange County and it has been well received. (2) New Employee Orientation -- with all the new hires the decision has been made to resurrect the New Employee Orientation Training. This training was done several years ago and included general information about CUIAB and a brief explanation of their benefits. This training will benefit both ALJs and support staff. (3) Supervisor Training --this training was developed several years ago and geared toward new LSS I and LSS II. They are totally redoing this training to include all areas that a new supervisor may experience.

Chair Garcia thanked Ms. Houston and her staff work on the facilities and helping to expedite opening those hearing rooms.

11. Chief Counsel's Report:

On behalf of Chief Counsel Ralph Hilton, Staff Counsel Kim Hickox stated the case report for June was in the packet and the Chair commented on whether it

accurately reflects the cases. Each board member received 22 plus cases a day, possibly more.

Staff Counsel Hickox reported on the litigation front for June, 5 new cases were opened and 3 were closed.

12. Unfinished & New Business

2008/09 & 2009/10 Budgets: nothing specific to report. Budget report planned for the next board meeting in August. Chair Garcia stated one of the things it needs to include, that there has been some discussion on, is because of the furlough and the discussion at the last board meeting they needed to make some adjustments to the budget as they are developing it so they can create enough of a cushion there to pay for overtime because the work is not going to go away. They need to make sure they have enough, or if they need to cancel projects or make some adjustments to that they can pay for staff to do that. She does not want to get into the situation where they don't budget for it and then create a hole for ourselves by continuing to defer the work. They need that for the next board meeting.

Staff Counsel Hickox stated the proposed Exit Interview Policy is included in the board packet for review and they can take action on it at the next board meeting. Any comments should be directed to Deputy Director Pam Boston.

Chair Garcia thanked Deputy Director Boston for her work on the Exit Interview Policy. She knows that Deputy Director Boston had talked to several board members about what some of their concerns were and questions that they wanted incorporated. Deputy Director Boston is on vacation so they will take it up at the next board meeting.

CIO Rafael Placencia reported on the IT Reorganization (Attachment E). What they have actually done within the IT division is they went from a pre-workload planning phase which was before all the additional staff was hired. From 25 permanent positions and 2 temporary positions; out of these positions 3 positions were used for IT management and supervision and 24 positions for rank and file. They had two major groups and 14 actual units within the groups. Why they reorganized -- the existing structure was inadequate for the demand of services meaning there was more work demands than they could actually provide. What they were trying to do is use the limited staff that they had to do both the routine work as far as new projects. It was difficult at best to do that. They were actually able to at least stay ahead of it a little bit but not by much. Another issue was the existing structure was inadequate for promoting upward mobility. They had a situation where somebody would just outgrow their unit and would move on to a different agency. Existing classifications were too low for the work performed. They had people who were actually performing outside of their classification. They still have a high supervisor to staffing ratio which means that basically supervisors are spending most of their time supervising staff than actually doing some of the work that is necessary at that level. His approach was to use a functional model for

developing IT division structure. Create the boxes so that the work is being performed with those units. They did this with the help from Personnel, they analyzed the job duties and upgraded where justified. They looked at a position and if it warranted an upgrade they did that. That was basically the first step in constructing this new organization. The demand for IT services was justified by additional PYs. If the PYs were there then they justified it by the work. They promoted the use of overall CUIAB PYs to justify IT staffing needs. The more people they hired the more demand on the IT services. He tried to basically sell that point and he was somewhat successful in doing that.

He reported that now, Post IT Reorganization, they are using 34 positions, 7 of those depending on how this budget year is built will be temporary positions. That depends upon the growth. If the growth is there and the demand is there, they will use temporary positions to add the help that they need. Out of those positions, 4 positions will be used for IT management and supervision, 37 positions will be rank and file. They will have 3 major group areas and 14 IT units. So what they are actually doing is introducing another supervisor that is going to manage the help desk, support areas along with some of the business type functions. What that does is provides them a supervisor to staffing ratio that is manageable. The benefits for doing this are they are providing upward mobility for IT staff because there are more higher level positions to where they can promote within instead of going out looking at other departments to satisfy that upward mobility. They are providing an adequate level of IT staffing to do the work as well as the projects that are coming in. This promotes the use of a functional model for providing IT services. This is in line with what is being done at the state level. It keeps the supervisor to staffing ratio manageable to where they can actually do the work.

Member Figueroa asked are the services that CUIAB renders in IT are transferable to other state entities? CIO Placencia responded it was and in fact that the type of work that they do is pretty typical of what is being done out there at other state agencies. Member Figueroa clarified so that if someone leaves CUIAB they have transferable skills to go somewhere. Their skills are not just unique to CUIAB. CIO Placencia stated that our skills are actually in demand because of the technology that CUIAB uses. That is kind of the problem. We train our staff and they move on.

Chair Garcia commented it was evidenced by the recent loss of several members from Rafael's team and one of the actions that the board took a few months ago was to help with this restructuring because, as shown in the workload list, we were operating as a fire truck. We were putting out fires. Now what we have done is we have actually taken a look at our workload, our future workload and our workforce and have doled it out in a way that is more manageable. The paperless, the phone tree, the phone calling system, looking ahead to the work that is coming our way, merging our computer system with EDD's or even doing some internal fixes without waiting for EDD helps us manage our workload. She thinks what has happened is that our staff just putting out the fires they get burnt out and they can go to another state department where they are not working as hard but there are also opportunities here for them to learn because the talent we have in IT is in high

demand. So if they are managing or developing a project it makes them even more appealing to other state agencies. She thanked CIO Placencia for his leadership.

14. Closed Session:

The Board went into closed session. No votes were taken in closed session.

Adjournment