

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5496**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 a.m., July 22, 2008 in Sacramento, with Chair Rick Rice presiding.

**2. Roll Call: Members**

	<u>Present</u>	<u>Absent</u>
Rick Rice, Chair	x	
Fred Aguiar, Vice Chair	x	
Ann Richardson	x	
Liz Figueroa	x	
Cindy Montañez		x
Stephen Egan	x	

**3. Unfinished & New Business:**

Chair Rice stated that the purpose of this Board meeting was to consider and vote on the termination of the Career Executive Assignment appointment of the Board's Executive Director/Chief Administrative Law Judge. The incumbent is Jay Arcellana, who is present. Under state law no cause is required to terminate an employee from a CEA position, only a 20 day notice. Chair Rice stated that because of state law governing public meetings the Board must consider and vote on this issue in public session. Chair Rice also stated that Mr. Arcellana deserves an opportunity to express his thoughts on the issue. He spoke to Mr. Arcellana directly and informed him that he would have that opportunity that morning as well as soon as the Chair concluded his remarks. Chair Rice stated that following Mr. Arcellana's comments individual board members will have an opportunity to speak or ask questions of Mr. Arcellana if they so chose. Following that is the period reserved for public comments, and anyone who chooses to speak may do so. Chair Rice stated that they ask that comments be limited to two minutes or less. Chair Rice stated that the board will then continue to a roll call vote in open session.

Chair Rice stated that he was the member bringing this motion before the Board. He stated he received a letter on Friday from Senator Carole Migden, Chair of the Senate Labor and Industrial Relations Committee. In the letter she expressed concerns about this motion being premature. Chair Rice stated he responded to her letter and that would read his response into the record as an opening statement. He stated he felt that it adequately portrays some of his concerns which have brought him to this point, although by no means does it portray all the issues that have brought him here.

Chair Rice then read his letter dated July 21, 2008 into the record. (Attachment A). Attached to Chair Rice's letter was the July 17, 2008 letter to Mr. Juan J. Arcellana from the U.S. Department of Labor. (Attachment B).

Chair Rice turned the floor over to Mr. Arcellana.

Chief Administrative Law Judge/Executive Director Arcellana responded that he did not prepare any remarks and that he is respectful and mindful of the Board's decision to terminate his Career Executive Appointment without cause or for any reason they deem necessary. He stated he does think that having heard the letter prepared by Chair Rice that at the very least he needs to respond to some of the comments to get a full picture of what happened with the issues.

Chief ALJ/Executive Director Arcellana stated that with respect to the assertion that the Agency has a long standing practice of delaying decisions resulting to delay benefits to employees as a budget gimmick is inaccurate. The CUIAB is paid for its work by decision. The Agency operates on a fiscal year and any decisions that are issued within a fiscal year result in income coming to California as a result of that. The federal government operates on a federal fiscal year so the impact of California's decisions does not have any effect on federal budget. He stated that if income earned by the State of California is not liquidated or spent within a fiscal year then it is lost to the State of California. In the years past the CUIAB has had surpluses equaling millions of dollars and the Agency gladly returned that money because there is no need in terms of fiscal considerations not to return it. He stated that last year was the first time that this decision was made and was the only time in this Agency. It was discussed by the Budget Advisory Committee which is consisted of Senior Staff, the decision was vetted by Presiding Judges throughout the State and was a consensus decision to simply hold back decisions for three days, the last three days of June until July 1 so that income would benefit the State of California into the next fiscal year. At that point in time, the CUIAB was facing some deficits and there was concern that without doing so the Agency would come up short which would result in facilities closures and/or downsizing the staff. So the decision was one where, again with consensus across the board, to manage resources in such a way to bring to the citizens of California the full impact, the best impact, of income that is rightfully earned by California and should retain in California. The federal provisions that govern the payment of benefits provide, in pertinent part, that substantial delay is prohibited. The staff felt that three days was not a substantial delay and that the benefit in making that decision of managing our resources far outweighed any negative impacts in that regard.

Chief ALJ/Executive Director Arcellana went on to say that with respect to time lapse standards for the past four or five years California has taken the approach that it should hear and decide its cases on a first in first out basis so that if a person files a claim benefits he or she should not have to wait for those who filed previously just for the sake of meeting a 30 day time lapse standards. This is known in California as a first in first out basis and what is important here is that we understood and recognized that we were not complying with the federal standards

regarding time lapse. However, every year a Corrective Action Plan (CAP) was submitted to the U.S. Department of Labor outlining CUIAB's approach to managing the workload and the issues we faced in doing so. Each year the Federal Department of Labor approved CUIAB's CAP. Had they at any time informed us that our CAP was inadequate or improper we certainly would have changed course. He stated that important in the DOL's decision was the fact that on average California issued its decisions with 35 days which is remarkable given the size of the workload. To put things into perspective, the workload of many of CUIAB's individual offices is much greater than the workload of many States throughout the Nation. So to decide how best to manage the workload and best serve the unemployed with respect to issuing benefits when due the consensus again at all levels, from the PALJ up through Senior Staff, was that the Agency should pay and issue our decisions first in first out basis and be mindful of the fact that what is important is that a case does not stay in the system for very long because in that situation justice in terms of delays would be a violation of due process. California made case aging standards year before last and just missed it by 5 days this past year, again the federal DOL approved our plan on liquidating our workload. The problem with overstaffing or hiring a lot of staff is that as soon as the workload goes up and the workload is liquidated the board would be faced with potential layoffs, of tremendous amounts something like the board experienced in the early 1990's. So it is a trick, and a difficult balancing of resources to know when to hire and when to not over hire to ensure that resources are effectively utilized and to not take CUIAB over budget. That was critical, at least in the minds of prior Boards, with respect to managing our resources.

Chief ALJ/Executive Director Arcellana responded that in terms of the statement that he had failed to bring forth a comprehensive plan to eliminate backlog that was somewhat inaccurate. On many occasions during board meetings and at meetings before the Labor and Workforce Development Agency the staff together with his self developed what was called the workload reduction plan. There were quarterly meetings with respect to that plan with the local offices and the local PALJs stating how the workload would be liquidated. There were targets in mind in terms of how to get to where we need to get with respect to the Federal guidelines. He stated that CUIAB has hired a number of judges in that regard as well as support staff and they felt the Agency was on the way to getting there in keeping with the target goals established internally. Again, recognizing you do not want to overstaff because as soon as you overstaff you are in a layoff mode and that was critical in putting together this plan. He stated that what should also be noted is that with respect to the performance of the ALJs, the judges have made quality standards for the past 16 quarters in a row which is remarkable given the size of the workload and they should be commended in tribute for their efforts. Particularly when one considers that in developing a plan the management is restricted by collective bargaining agreement which limits the amount of cases that an ALJ can hear throughout a week. Despite that collective bargaining agreement each of the offices and each of the ALJs in the offices have voluntarily taken on more work than is required by that plan understanding the mission of the Agency and the need to liquidate cases as quickly as possible. He stated that he thought with

respect to the liquidation of the workload it is an inaccurate statement to state that California is out of compliance with the time lapse standards but with that statement it should be noted again that the DOL, in writing, approved the CUIAB's approach to these issues, approved our CAPs and in fact commended the Agency on managing the workload.

Chief ALJ/Executive Director Arcellana responded that with respect to Information security there is no doubt that information security is an important facet of any association, employer, group who deals with the issue of confidential information security. When issues arose (inaudible) they did get together at any number of quarterly meetings provide training to staff on how to deal with confidential information processes and procedures. We have established procedures up and down the State to deal with this issue all of which have been implemented and all of which have resulted in a major reduction in these types of incidents.

Chief ALJ/Executive Director Arcellana responded that with respect to the statement that no progressive discipline has ever been taken, in fact, there was an employee from one of the offices who was suspected of managing files improperly which ultimately lead to the termination of that employee.

Chief ALJ/Executive Director Arcellana responded with respect to the requirements of Section 406(b) of the Code that section simply provides in part that un-appealed decisions of CUIAB judges should be randomly reviewed. What that requires is that at the end of the 30 day appeal period we cannot get to those cases because we don't know if in fact whether or not they are going to get appealed, so the end of 30 days is the only time we can get to them knowing that at that point in time they are not going to be appealed. The statute on its face simply requires that this review take place it does not specify exactly the methodologies or the ways in which the review should take place. He stated he fully appreciates that looking at the process it was not as good as it could have been. He stated he will admit that without any reservation and he accepts responsibility for that. He stated that what he did think should be noted though is that the judge that was assigned to manage these cases was reporting to a unit where two PALJs in serial and one after the other were stricken with cancer. One of whom passed away and the other who followed was forced to retire so in that process there was so mishaps and some circumstances that effected the overall situation. But in fact, as the offices know, the cases were pulled, they were reviewed and he thinks this is one of the issues that is before the Bureau of State Audits (BSA) in terms of the work product. He stated that that would probably best be resolved by the findings of the BSA.

Chief ALJ/Executive Director Arcellana stated that in making these comments he did not mean to demean or to not appreciate the right of the Board to terminate him for any reason. He stated he thought that a number of the issues raised in terms of the operations of the Agency are legitimate issues, but issues in practices and policies that have evolved over the years in as much as he has worked with the Board as either the Assistant Chief ALJ of Field Operations and then Chief/Executive Director since roughly 1991 which means he has worked with 5

different Boards. And throughout the process the Boards have adopted policies that worked there way through the system and the Agency has had a lot of turnover within the past couple of years in terms of the policy direction that the Board would like us to take. He stated he was not offering that as an excuse but simply as a reason to the dynamics at play here and that many of the policies have evolved and have carried over from one Board to the next. As difficult for Senior Staff and for himself and for the PALJs to try to at the transition point or turnover of a Board think about all the things they do operationally and raise these issues to the Board guessing that the Board may disapprove of the prior policies adopted by prior Boards. He stated there was never any intent on his part nor Senior Staff members or the PALJs to hide anything from the Board, in fact, during board meetings and (inaudible) budgets there were always PowerPoint presentations and he stated he believed that during the board meeting on the budget the year before last done with the hold back of cases was presented to the Board not for consideration but as of fact. At that point in time the Board chose not to vote on the budget which is their purgative they simply were apprised of how staff was managing the budget and gave staff indication to forward with the budget plan.

Chief ALJ/Executive Director Arcellana continued to state that at his level and at his Senior Staff level and PALJ level and at the Rank and File level, everyone in this Agency works very hard. Everyone volunteers to do more than they are required to do per collective bargaining agreements. He stated that everyone was cognizant of the fact that CUIAB's mission is to serve the unemployed and the disabled and the decisions that are made in terms managing resources, in terms of keeping together on the same page offices throughout the State of California is a large task. He stated he wanted the Board to know, for the record, that whenever policy decisions were made at his level or levels below him, whether it be from the PALJs or the Budget Advisory Committee or wherever it has always been above-board, always been within the four corners, and to say that they did not try to be creative in trying to find ways to work the best solutions for the people of California is simply not true because they did. He stated that they did push the envelope whenever they thought it was appropriate but never outside the ambits of what were the four corners in terms of ethics or legality.

Chief ALJ/Executive Director Arcellana stated, in closing, he reiterated that he does respect and appreciate the Board's decision to terminate his position and he was not there to contest that. He stated he was not there to disagree with that decision because it is their prerogative. He stated he was there simply to let the Board know that they all have worked very hard and that he just wanted to take that moment to thank his colleagues throughout the Agency for all that they have done for the Agency and for the people who serve himself personally and to let them know that over the years it truly has been a honor to serve them as their Chief ALJ/Executive Director.

Chair Rice thanked Mr. Arcellana for his comments. Chair Rice continued to the Board Members for comments.

Vice Chair Aguiar. None at this time.

Member Egan. No questions.

Member Figueroa comments that she was surprised to see this item on the Agenda and that she was not expecting it and that the Board had not discussed it at any prior board meeting so it was a real shock to her to see that the Chair had decided to take this course of action. She stated that in her experience with this Board all of the areas that Chair Rice had concerns with the Board had discussed as a Board at one point or another and she never saw an opportunity when they brought in Jay Arcellana to discuss with him about how this was going to be rectified. She stated that she knew from the moment she came onto this Board the liquidation of workload within the (inaudible), when Chairwoman Ms. Richardson was on Board and she knows herself that she asked if the Agency had had the approval of the DOL and she was told it did. She stated that she was given a letter of approval so that issue, she thought, was taken care of. Then we also had the representative here from DOL after Chair Rice requested their presence and they basically said that they were working. She stated she asked the DOL representative if they had approved the Action Plan and they stated they had. She stated she was somewhat surprised because from the moment the new Chair arrived she has really knew that there was going to be some changes but she really felt that they were going to be changes for the good of the Department as she was assured they would be. She continued to state that she had gone along and voted for some major changes because all in all she felt that that was the road the Agency was taking. That is why this was a shock to her. She stated the issues the Chair addressed in his letter responding to Chairwoman Carole Migden are issues that, to her, were issues that were discussed and had been taken care of. Issues of security, she stated she heard from Mr. Hilton that a woman had been terminated because of a security breach some time ago. So that issue was taken care of. She continued to state that there is not a Department in the State or Federal level that in a monthly basis we don't hear in the news because of a security breach. She shared with this Board that just a couple of weeks ago she went into the Oakland Department and as Board Member tried to go into her cases and tried to do work but it took her a couple of hours because she could not do it because security is so tight. To say that the security breaches and that Jay Arcellana is not doing anything about it, that is just not right. Lastly, she stated her concern is she does not understand, she voted, she agreed with Chair Rice, about the Audit and that there were some concerns but frankly she felt that those were issues that maybe could have been taken care of in-house but she felt good enough that an additional pair of eyes were fine. Therefore, she does not understand why the Board has to take this action today because she does not think it behooves just Jay Arcellana, but that the Chair is talking to everyone behind him. She thinks that the Board is talking to whole Bureau and Department because they had faith in this man, and from the way he conducts business he never does it in an isolated way; he does it in a good setting. She stated he does make these decisions with the consensus of the group to try to find ways to handle the problems, to go out of the box, to be creative in handling some of the problems

Chair Rice outlined in his letter. She stated that she has, in her position, past positions, have the opportunity to visit and look at in a very investigative way of various boards and commissions through the State and she repeats the reason she came and looked to sit on this board was because this was an exceptional one. There was no talk about mishandling of finances, of personnel, of anything and so it surprises her. She stated that every time this Board has asked for a challenge to be met especially most recently with the liquidation of workload, it started from the top down, everyone volunteered, everyone worked, but they did not do that just because the Board was asking that. They are doing it to be viewed as a team member with Jay Arcellana. She stated she believed the moral and the work productivity of this Agency will be threatened and will go down. She stated that the only thing she would like to ask is the permission of the Board to be able to speak to press.

Chair Rice responded that she has that permission. That everyone has that permission.

Member Figueroa stated that with the Policy she knows that a couple of reporters had tried to reach the Agency's Communication Director and were unable. She stated she told them they had to go to her. She asked if it is allowed for various people to talk to the press.

Chair Rice responded it was.

Member Figueroa also questioned if it would be proper for Jay Arcellana after this board meeting to also be able to talk to the press.

Chair Rice stated he could that it is in the policy.

Member Figueroa asked if they have to go through the Agency's Department of Communications.

Chair Rice stated that they have to let the Communications Director know. That was the policy Member Figueroa voted for.

Member Figueroa at that point notified for the record the Department of Communications that she will be speaking to the press and she was sure there are others present that will also be speaking with the press. She stated she has followed the Board policy but she wanted people to be aware that there are some Board policies that she has voted for because she continued to feel they have been for the good of the Agency but she stated that from here on in she will be very cautious because this action tells her that this is not an action that is going to be for the good of this Bureau.

Member Montañez. Not in attendance.

Member Richardson commented that she was glad that everyone was present and

the reason she was glad was that she thought that very rarely do they get to hear how much the Board respects all of them and the work that they do and the dedication with which they serve this Agency. She stated that there was a huge disconnect from how the Board feels about the employees and what is communicated to them. She stated she thought that they were communicated with fear and told conspiracy theories about the Board and not always told how much the Board appreciates them and how hard the Board thinks they work and how much they appreciate the fact that they are going to stay with CUIAB for as long as they can, they are going to cross-trained and move up the ranks, that they will all be supervisors. She stated that nothing is going to happen to this Agency, that it would not fall apart. She stated that they were dedicated public servants and that the Board appreciated their service and the Board will continue to work very hard together to make this a successful Agency. She thanked everyone for coming and thanked everyone for their hard work and to the ALJs who never hear it but that the Board greatly appreciates their efforts to keep this Agency running.

Member Richardson commented that since Rick Rice was appointed Chairman last August the Agency has seen a lot of change and that change has been for the good. She stated that one of the Board policies that has changed has taken the power of the Agency so that it no longer resides with one single man but the future of the Agency now rests with the Board, the judges, management and most importantly the staff that keeps CUIAB running. Dedicated staff is the heartbeat of the Agency and under Chair Rice's leadership job opportunities, training and fairness in promotions will be the rule and not the exception in this Agency. Member Richardson went on to state that civil service rules will be respected and followed. As Pam Boston had noted the Chair understands and respects the rules of civil service, all of the Agency's management will follow suit.

Member Richardson thanked Chair Rice for his integrity and honesty in serving the Board, the Agency and the public. In the months and years to come we will all benefit from his tenure at CUIAB because he has put this Agency back on the road to serving its true mission, the thousands of employees and employers who use this system. The people who work at CUIAB should be proud to be a part of an Agency that serves the citizens of California. The Senior Management has tried to scare people into believing the Agency is changing and their jobs are at stake. She stated do not believe it. With the Chair's help this will be a better Agency with more opportunities for employees to grow and prosper within the ranks, the judges will still be the best and the brightest and the public will be served without delay. Member Richardson stated that Senator Migden commented in her letter about a desire for transparency. Under Chair Rice we are all better able to know what the decisions of the management are and how that affects everybody at the Agency.

Member Richardson thanked Chair Rice for his leadership and stated that his service has been invaluable to the Agency.

#### 4. Public Comment:

Chair Rice called Cynthia Thornton as the first person indicating a desire to comment.

Cynthia Thornton, speaking as a private citizen and not as a CUIAB employee. She was once a Chair of the CUIAB Board for six years and is currently an ALJ and has heard as many as 60 cases in a single week for the past two and half years. She stated that she had a unique perspective. Ms. Thornton notified Ms. Flagg that she would be exercising her right to speak to the press about the matter afterwards and hoped that she complied with the Communications Policy by doing so. Ms. Thornton stated she was taking a vacation day to attend and she paid her own airfare up from San Diego in order to speak because she believed that this was critical. Ms. Thornton stated that in times of high unemployment it is critical that this Board function efficiently and that the Board receives accurate information about what is happening. UI administration is not easy. New York has been under a Court order and under receivership for 15 years. In 1992 the CUIAB was under a Court order because of management practices that were not up to snuff before Chief ALJ Arcellana came on. Ms. Thornton stated that when Mr. Arcellana was hired on one of his biggest issues was to make sure that did not happen again. It is extremely unfair to accuse Chief ALJ Arcellana of not caring for the disabled and the unemployed. That has been in her years of working with him his primary objective at all times. She stated Chief ALJ Arcellana is not only nationally recognized for his work having been President of the National Organization but has many achievements to his credit. He created Program and Planning Management which reduced cost and reduced duplicate functions and created a mechanism for better long term planning. He created two 5 and 10 year plans for the Agency. He institutionalized training of the judges and institutionalized training of the staff. He created strike teams to go to different offices so that the Agency would not get behind in registration or verification or hearing cases so that the cases could be pushed out more quickly and the Agency would not end up with a situation where there was an overage in the number of judges or staff when the immediate emergency was met. Between 2001 and 2007 Mr. Arcellana ran budget surpluses every single year and he implemented the Dymally-Alatorre Act far ahead of other State Agencies creating a model for us of interpreters through the other Agencies. Ms. Thornton commented that she had much more to say that what she had said did not even begin to dent what Chief Arcellana did. She stated she was not going to repeat Senator Figueroa's comments but she did state that they were insightful and on target. She stated it was very hard to find good management in State service because the State does not pay as much as private industry. She stated that every one of the judges present could get a job double their current salary but the reason they stay is because this is an efficient well managed Agency and because they are really helping the unemployed and disabled, it is a gratifying job because you are doing some good in the world. Ms. Thornton commented that if we see unfairness at the top, if we see a person of the caliber of the Chief ALJ being treated unfairly it makes it very hard for the judges to do their job and to be

fair to the public.

Chair Rice called Clair Watkins to comment.

Clair Watkins, aka Clair Connelly former board secretary, aka Clair McArdle, Tim McArdle's daughter. Ms. Watkins stated that her parents met at EDD in 1972 in Los Angeles, CA. Her mother a graduate from Purdue University and an Indiana native decided to venture to California and secured a job at the EDD. Her dad, a Santa Clara graduate had been discharged from the Army with honors and as an officer after being drafted into the Vietnam War. She stated he too secured a job at the EDD, #121, downtown Los Angeles. She stated she was telling the Board this because although as an outsider looking in they see nepotism, she as the one living it sees family pride. After her parents met and ultimately married in 1974 they relocated to Northern California. In 1978 when she was two years old her dad was offered a job as the manager at the Auburn EDD office. Her mom then secured a transfer to EDD Central office in Sacramento and quickly moved to the office manager in Grass Valley where they lived. Ms. Watkins went on to say that her mom served the people of the State of California until she retired. She stated she grew up reading the bulletin boards of the break rooms of EDD field offices between Fresno and Redding. She knew what the rights of employers and claimants were from sitting in EDD office lobbies between Chico and Truckee and she knew she wanted to be just like her mom and dad; they were so passionate about their work. They love their jobs and took tremendous pride in each and every day. She stated that when her dad joined CUIAB in 1985 she was 9 years old. She stated she quickly became familiar with language such as hearings, board members, Chief Counsel. She remembered sitting in her dad's office in the Twin Towers on L Street and various office staff would pop their heads in the door and asked him the most detailed and complicated questions. Ms. Watkins went on to say he always knew the long legal answer and she remember thinking as a child how badly she wanted to work with him. She stated she remembered attending CUIAB Christmas parties, company picnics and the Agency even had a softball team, the Half-Writs, to which he played right field. Ms. Watkins went on to say that this was a culture and environment that she had wanted to a part of, it was an integral and inspirational part of her childhood. Ms. Watkins chose to speak in hopes that the Board would see another side of the story. The word nepotism has been tossed around so loosely and what it actually is is family pride and pride in servicing the people of the State of California.

Chair Rice called John Martin to comment.

John Martin, Presiding Administrative Law Judge at the Inglewood Office of Appeals. He stated he was present because as one of the Agency's managers he has a profound concern about the proposed action that is being considered especially this action, at this time, under these circumstances. He stated that his belief based on his perception of the mood in his office and by extension many if not all of the field offices in CUIAB is that this action could undermine the moral of his office and the commitment of its employees to CUIAB. Thus the delivery of

these fundamental services to the people of the State of California could be adversely affected. Mr. Martin stated that that was based in large part upon pervasive feeling of anxiety in his office that is based on a lack of knowledge of the facts that are being considered, that started with the audit that was ordered. That itself generated tremendous anxiety and fear among his employees. He stated that it should be evident in the letters of many of his staff that have been submitted for the board's consideration. He stated that his staff does not know what is going on, they have never met the board, the board has never visited with them, and they have never heard directly from the board. He stated that the board is a mystery to his employees. Mr. Martin went on to state that the basis for the board's consideration of this type of drastic action eludes them. He stated that some of the board members were lawyers and know that the administration of justice requires fairness of process at a minimum and the perception that there is a contrary process at work will undermine the faith in any result that is achieved. In closing, he stated that he would ask the board to defer their action until the process of the audit is complete. He commented that as for Jay Arcellana he has no issue with his leadership in his seven years with the Agency or his three years as Presiding Judge, he cannot imagine a better boss or a more effective leader and he is convinced that all decisions made were vetted properly by committee and governed by applicable regulations. The overriding imperative that the employees have from Mr. Arcellana was to serve, and this always trumped any other directives was to serve the public first and to never delay benefits for their own convenience.

Chair Rice called Hugh Harrison to comment.

Hugh Harrison thanked the board for giving them the opportunity to speak. Mr. Harrison stated that they all recognize that the board sets policy for the Agency and is charged with responsibility of ensuring the proper leadership and part of that is the selection of the Chief/Executive Officer. He stated he was speaking primarily because of the implications and actual statements that have been emanating from Sacramento regarding bad faith and misfeasance in office. He was there as someone who has worked as closely as possible with Jay Arcellana. Mr. Harrison commented that he does not always agree with Mr. Arcellana but Mr. Arcellana has always listened to them, to him particularly, considered their point of views and then made his decisions. He stated that Mr. Arcellana in making his decision would always put the public first and the Agency and the staff second and never made any personal consideration for himself. Mr. Harrison stated that he thought it was important that it be stated publicly in the record that any implication that Jay has acted in anyway wrongly is a misrepresentation of reality. He stated that they may all disagree with Mr. Arcellana, and certainly the board in their position disagrees with him and have the right to replace him. He stated that he thought they needed to be careful about how they do it and how they state why they are doing it in order that the wrong implications do not be made.

Chair Rice called Mary Kelly:

ALJ Kelly who spoke as an ALJ working for the Board but came as a private person commented that CUIAB is a great agency to work for. She left the federal service to come here because of Jay. Jay's leadership, experience, knowledge, and absolute commitment to quality public service are unbelievable. Even being under siege by this Board Jay told them he knows that they are upset that the Board is not putting through the ALJ promotional exam but it would be wrong if they are not going to do the work of an ALJ II even if they are not being paid for because the public would suffer. The ALJs all agreed and continued working as ALJ IIs without getting paid for it even though the Board has put us them through a promotional exam and it is not being adopted. She stated that she has read the Minutes and agreed that Member Figueroa is absolutely right. Every single thing that has been addressed by Chair Rice was discussed with this Board and the Department of Labor (DOL) agreed that we have an agreement on casing. Chair Rice said that we are making tremendous efforts commenting "this is great progress". Now we hear today it is not progress at all and we hear that Chair Arcellana is at fault for this information breach when there was a special job created for Ms. Flagg and it was her duty and she undertook the training. She is wondering why Jay is being blamed and she does not understand. Ms. Kelly further commented that people cannot afford to go to the Superior Court to have decision overturned. They are represented mostly by Counsel. Integrity, impartiality, and fairness in due process is what is most important and this action of the Board taken today has shown the world that this Board is not acting with due process in fairness in restricting our comments.

Chair Rice called Ted Wolfe to comment.

Ted Wolfe has been with our Agency for 22 years wrote a letter and she wants to make this part of the record and would like to read it and make an exception. Lynn Martinez in their office, who worked diligently for Jay Arcellana, said that she was promoted and she is not a family member. Her second page was not included. This perceived action being taken was planned and it is unnecessary since Chair Rice is not going to be here within the few months. She is urging the Board to reconsider its position so that the new Board member who takes over can consider all of the comments fairly and not restrict them to two minutes.

Chair Rice called Erica Hahn to comment.

ALJ Hahn's letter did not make it to the record either. She wanted to make her comments short. She is an ALJ and speaking as a private citizen and came up on her own dime. She has been with the Agency for nearly 26 years and that means she has seen almost of the people hired including Jay Arcellana. She has worked for four Chief ALJs. One of them was Mike Disanto who was so inspirational but at the end of the day Jay has been a far more effective and better Chief ALJ and he did it for 3 reasons. Chief ALJ Jay Arcellana has enormous competence and

understands management, and care to details. That is the only way to run this Agency because there are so many knots and faults and third graciousness and compassion. He is gracious and compassionate to the staff and he is actually committed to serving the public. Mike Disanto was very good to the ALJs but Jay also reached out to the support staff which no Chief ALJ ever did. Jay made it possible for them to promote, to get raises, and feel good about the job. She further commented that they have survived a number of crises since Jay was here. One of which was over-hiring in 1992 which for the next five years we were eliminating staff in a bloody coup, trying to get rid of too many people. After that there was other crisis. They work for this man and do far more cases than they are required by the union contract. Nobody is scared of him that is not an issue. They did it because of morale. ALJ Hahn asked the Board to let him continue to lead this Agency.

Chair Rice called Kirk Garvin to comment.

PALJ Garvin commented that in the last fiscal year and in June 30 of this year CUIAB received over 300,000 appeals and petitions. The Department indicated 1.6 million letters will be sent out to citizens of the State of California advising them of their right to potentially receive at least two weeks extended unemployment compensation. Chief ALJ Arcellana has presided over the last run up workload that they have and handled it very successfully. In the last 6 straight months in the office that he worked in the morale has just deteriorated. People of the State of California deserve better than this. Chief ALJ Arcellana has never ever once bad mouthed any member of this Board or this Board collectively either in PJ meetings or in personal contact. The good people of the State of California deserve a continuity that Chief ALJ Arcellana can bring to this position. He asked not to remove him from his position.

Chair Rice called Marcos Max Gunkel to comment.

PALJ Gunkel wanted to exercise his right under a (in audible) but since his name has been read in the record he wants it noticed. He is here on his time and dime. There were more people that wanted to be here but this will come out when the Public Records Act (PRA) request is made as a result of the Bureau of State Audits (BSA). He was the person who wrote the letter to the BSA saying there is a concern of retaliation for those people who made their comments known to the BSA. So he asked BSA what happens when comments are made and he learned that as long as there is no PRA request there won't be any disclosure. However, PALJ Gunkel is sure and they all know that there will be a PRA request made. As a result of that people did not want to make any comments or did not respond not because of some concerns or fear of what Jay might do, but what the members of the Board would do in retaliation. The Board will find that many of the judges have put that in writing, and seeing their comments would be a concern. Ever since he became an ALJ and was hired by Mike Disanto, Mr. Disanto has emphasized that CUIAB is a family and as a family they are all guilty of nepotism because that's the way we feel about one another at this Agency. By and large they do this as a job

but they do it as an act of love to the public. They enjoyed their jobs and frankly all his colleagues that he has gone to school with can say the same thing. He asked the Board to make his comments known on the record and as part of this process. If the Board waited till the results of the BSA came out he thinks the Board will be somewhat surprised by what communication has been put in there.

Chair Rice called Julie Krebs comment.

PALJ Krebs thanked the Board for giving her the opportunity to speak. She is speaking as a private individual in support of Jay Arcellana. She commented that Jay has been an effective and innovative leader at CUIAB. He has been integral to the high level of professionalism at this Board. He created the Planning & Program Management Branch which provides the essential workload analysis and oversees a highly praised language program. He was the force behind requiring additional training and oversight when our Department of Labor quality review scores were admittedly low. As a result CUIAB now regularly surpasses this requirement and he has done for a number of months and years. He was instrumental in providing input and guidance for the development of our IT division. It was during his tenure that the innovative pass program was created for our Agency. This accomplishment occurred as Jay emphasized our paramount objective of quality service to the public. She considers Jay a gifted leader. Perhaps his greatest gift is his ability to hear out people, solicit input, make difficult decisions, and motivate people who disagree with those decisions. She does not know how he does it but he does it. She thinks that he is a highly gifted visionary to see this broad picture of what will happen in the future and yet he bounces that with his compassion and understanding of people. He is one of the best people at figuring out people's personality. He truly cares about the public before the employees. It's the gift of balancing the compassion for people the drive to the public service and his motto of doing the right thing that motivates us. She humbly asked the Board to leave him as Chief ALJ/Executive Director of CUIAB.

Chair Rice called Connie Jones to comment.

ALJ Jones said that Jay hired her and is grateful. Bruce Berwald, who is an ALJ II at the San Jose Office of Appeals, would have been in the Board meeting but had surgery so he wants it read. Jay Arcellana has been an excellent Chief ALJ. He is widely respected by his colleagues in California as well as individuals in other states who looked at California as a model to emulate both Republican and Democratic administration and has kept CUIAB remarkably free from artisan political whacko. The judges from the field respect and value him as he understands the day to day pressure that goes to ensure that they can act as impartial arbiters in their hearings. His honesty and integrity are beyond question. He has been instrumental in providing Agency-wide training for ALJs and re-training for judges. His overriding concern is that the people they serve, the unemployed, the employer community, and the disabled are provided with a caring, compassionate and fair hearing, and well reasoned and clear decision. He truly is the epitome of a public servant. California needs more public servants like

Jay Arcellana. He should be commended and not terminated and she agrees wholeheartedly. She said that the Board is making a terrible ridiculous mistake, a man who has been here for less than a year who is no longer making a decision for a Board that will continue beyond this and has a lot to learn.

Chair Rice called Mary Walton-Simons to comment.

Deputy Director Walton-Simons stated she is here on state time and as a member of the Senior staff. If she was asked to charge vacation she will. She spoke from public comments from costly retaliation and to staff of P&PM branch that means so much to her. She worked for CUIAB for 32 years. She was the first exam analyst, classification and pay analyst, labor relations officer, personnel officer for CUIAB. She was asked to transfer down to work for Mike DiSanto and then later Jay Arcellana as Deputy Director of P&PM Branch. She worked for many boards and chair. It was not until the leadership of Jay Arcellana as the Executive Director that she actually witnessed the turnaround of service that CUIAB provides to the public. Jay has implemented judicial training program is superior to any training ever provided in this Agency. He recognizes support staff who made valuable contributions. The support staff of CUIAB was provided training at support staff conferences that will showcased that national conferences. Prior to Jay becoming the Executive Director CUIAB withstood because the Agency took up to 6 months for the public to have a hearing and receive a decision. The average now is three and a half weeks. That has never happened under the leadership of Jay Arcellana that the public has had to wait so many months for a hearing and a decision. In her statement she summed comments regarding Polycom she won't read that but that will be part of the Board's record. Best practices – during Jay's leadership the US DOL contacted CUIAB to request that our State participate along with 14 other states to rewrite the best practices manually. They were selected as the best practiced State and they still get contacts from other states. Case aging – they were selected and were the first state contacted for case aging because of the superior performance in how they handled the public. Upward mobility – it was under Jay that they have an upward mobility program and there are hiring practices. She is a certified State Personnel Board Chair and chaired on zillions of exams and she also implemented for Jay the post circle hiring process. It opened up the hiring process for CUIAB that never occurred before. Decisions for hiring were made by single supervisors or managers. We now have a full circle process. She wished her statement made a part of the official record of the board meeting. She respectfully hopes that the Board will consider Jay's action in this fair understanding, and kind vision and knowledge of the Agency and the public he serves.

Chair Rice called Steve Angelides to comment.

PAL Angelides was here as a private citizen at his own time and dime. He has a lot to say that can't possibly be said in two minutes. He stated that he is not going to make a mockery of his own remarks by attempting to shorten it to two minutes. He is using his time to note that this proceeding is a mockery because the arbitrary

two minute limit with no regulations.

Chair Rice called Susan Lee to comment.

ALJ Lee thanked the Board for allowing her to address them. She is an ALJ with the Oakland Office of Appeals and has been with CUIAB five and a half years. She stands as a private citizen on a matter of public concern and the public concern regard will be detrimentally harmed if Jay is terminated as Chief ALJ/Executive Director of CUIAB which had a stellar reputation in serving the public. California's unemployment rate is at its highest in five years. She commented that this is not the time to change leadership in the Agency which helps administer the unemployment fund. With 30 years experience at the EDD and CUIAB there was no one better suited to stay in the Agency than Jay Arcellana. It is now time to refocus our attention to those who are jobless to no fault of their own. Terminating Jay would continue to draw valuable time and resort away from what our mission is. The CUIAB mission is to serve the people of California as independent adjudicatory agency. We conduct impartial hearings and issue prompt decision to resolve and speed unemployment, disability, and tax determination of the EDD. Mission accomplished time and time again under the leadership of Jay Arcellana. She has tremendous respect for Jay not only can you see the big picture of providing the best service to employers, workers, and the disabled who appear before us, but he also understands the characteristics of the diverse population that California serves. She particularly appreciates how Jay had successfully served those who are non-English speaking. She would like to put in protocols for obtaining assistance for parties with limited English proficiency where many of our staff who speak bilingual languages is located in all our offices throughout the State. She would like to submit the 2003-2004 statewide language survey and implementation plan. This rate puts CUIAB at 95.7% level providing services to the limited English speaking population for the record.

In closing, she shares with the Board her own personal story of her first introduction with CUIAB. In 2001 she filed for a UI benefits with EDD after a back surgery. It was a completely frustrating ordeal as she dealt with staffs who asked irrelevant questions, inconsistent, and wrong information. After numerous phone calls and receiving incoherent explanation she finally asked EDD representative to send her in writing and she appealed the determination right away. Her first contact with CUIAB was like a breath of fresh air. She still remembers the receptionist who was so courteous and helpful. She even suggested that she sit on a hearing so she can be prepared for her own hearing. The ALJ was professional, took all the documents and even smiled couple of times during the hearing. She did not feel rushed. When she received the decision it was not favorable to her. However, she did not appeal the decision because for the first time she understood how the law applies to her actual situation. It takes legal expertise to administer the UI program, expertise that EDD simply does not retain. The public needs CUIAB to restore faith in the State government.

Chair Rice called Elena Gonzalez to comment.

ALJ Gonzales came as a private citizen although she is an ALJ with the Agency for four years. Because of the two minutes time she did intend to save her time to her colleague who is more well prepared, but in light of the rule that was just disclosed as she starts to speak and it seems to be in keeping with the Board policy that restricts them all who work for the Agency to communicate our feelings of what is going on with the Agency to the Board and to the Press. She is in the same position as Steve Angelides and she can't really convey what she wished to convey which does make these proceedings far from fair. She came here after a 30-year career as an Attorney both in private and public service. She came recently as the Assistant Chief Trial Counsel of the State Bar of California in charge of ethical attorney prosecutions. She came here because this was the best that public service had to offer. This was the Agency that serves the public but had a wonderful congenial atmosphere and she came with a huge cut in pay with a huge cut in benefits and came here because of Jay and the Agency that he created. Today, she rues that decision and wants to say that as a person who dedicated his life to ethics she finds Jay to be one of the most fair, ethical, and honest persons she could ever work for and call as a friend. She wishes she could say the same for the Board today because she feels that this action has been taken in an unfair and impartial manner. The Board has the right to terminate Chief ALJ but that is tempered by the rule that it cannot be arbitrary and must be fair. Mr. Arcellana has embraced staff promoted from within and up and above, women, minorities. He has created an Agency that serves the public well and who will be this Agency and who will take it to the place when Jay is gone. This is a sad day for the people of California. When she tried her case 30 years ago she had faith in the jury system and 12 strangers could have given a fairer and complete decision on the fact of a case than what it's going to be done today.

Chair Rice called Pat Whalen to comment.

Mr. Whalen came to the Board meeting on behalf of CASE, which is the bargaining unit that represents all of the ALJs and other legal professionals in Unit 2. He wanted to give the Board a slightly different perspective of what is going. CASE represents ALJs and legal professionals and about 80 different State agencies, boards, and commissions. He commented that all day long the phones are ringing off the hook, emails going crazy because they are getting complaints from members about things that management in different departments is doing. They don't hear a lot of that from CUIAB. In fact what he thinks is remarkable is the unprecedented level of support that they are seeing from rank and file members and from members of management. He does not see that a lot in his job. That speaks volume about the gravity of the decision that the Board is weighing here today. He said that the Board has their managers here telling them that it is a serious morale issue. There were speakers after speakers talking about the fact that your ALJs are going above and beyond what the MOU requires in terms of processing caseload, not because they are getting extra money or benefit but because of the sense of morale and duty that is fostered by Mr. Arcellana. One positive thing that this Agency seems to have going forward is on the chopping

block today. That seems to be ridiculous. There are stacks of letters out there in the table most of them in support of Mr. Arcellana and what he wanted to note for the record is that while there's a handful of them near the back that appears negatively about Mr. Arcellana, those are the only letters that are unsigned. Everybody else who wrote a letter in favor of Mr. Arcellana have the courage to put their name before this Board.

Lastly, Mr. Whalen addressed Board Member Richardson by stating, "you talked about conspiracy theory and rumors and the fact that the rank and file did not really understand what the Board stood for. Is this really the way that you wanted to introduce yourself to your members"?

Chair Rice called Zaida Hackett to comment.

PALJ Hackett is the Presiding Administrative Law Judge of the Los Angeles Office of Appeals. She is making these comments on her own behalf on her own time. She echoed the sentiments of all the speakers and written comments that have been sent in support of Jay. She added that based on comments made to her this past week you would have needed the biggest meeting in Sacramento with everyone here who could have been here today. She hopes that the Board is open to considerations of everything they've been hearing and comments made today. A lot of them feel that they are not listened to. People left in the Los Angeles Office have said who you are, why are they not talking to us because they are not getting our point of view. At a minimum, she hopes that the Board would wait until the BSA has completed its work since the Board has spent \$200,000 of the Agency money. This is our Agency too and they feel at a minimum that's what you should take into consideration before this kind of a decision. Throughout her tenure in this Agency she too has seen high peaks of unemployment and they are experiencing one that is extremely high now. But what Jay has said to them at PJ meeting after meeting that their biggest concern is to get their hearings heard and timely decisions out. That is the message all PJs carry back to their ALJs and to the staff and to an office that have done more than their share of work. They don't feel that the Board has thanked them at all. But what they do feel is a commitment to this Agency, a commitment to the people of California and a commitment to Jay and she urged the Board to consider the collective knowledge, experience. The Board is making a mistake if you don't at least wait.

Chair Rice called Cindy Ross to comment.

PALJ Ross came as a private citizen and was compelled to address on behalf of the staff, the judges, and colleagues that are here on annual leave and on their own time. She had the privilege of working with Jay for the past 18 years. She had never seen anyone with more tireless effort and dedication to this Agency. He has the support of all the PJs in the field; he is the most fair and dedicated man she had the pleasure of working with in both the public and private sectors. His devotion to the public service is how they were all trained when they started. He has earned the respect and loyalty of almost everyone. Prior to her appointment to

this Agency she served as a legal adviser to the Commissioner and Chair of the Public Utilities Commission. At that time she had many career opportunities available but she was most interested in joining the CUIAB based on its reputation as an agency that perform a great public service and also provided a supportive working environment for each employee. The cooperative working relationship between the Board members and the field was very well known and greatly respected and that has continued for many years while serving as Chair for the State Bar Committee on Women in the law representing a diverse interest of 25,000 women lawyers to find common grounds to achieve mutual goals. She asked the Board on behalf of all employees what the Board needs from them in the field, and how should the Board like them to help in furthering the common goal for the public that they serve. She wanted to ask the Board to help them by reconsidering the decision to terminate Chief ALJ Arcellana so that they can continue to work together for a mutual goal.

Chair Rice called Jorge Carrillo to comment.

ALJ Carrillo spoke as a private citizen. He wanted everyone to know that it is not easy for him to be there. Some of his colleagues think that it is crazy to think about speaking. He feels strongly about this so he wanted to give his comments. He said that the mark of a true leader is not to articulate a vision but to inspire others to act. The most important step in inspiring people to act is to involve them, value their input, and make them feel that the decision is in the best interest of the group. When Jay was first proposed as Executive Director he opposed the action by the Board. He lobbied very hard to prevent it and he failed. After that he got to know Jay a little better. He did not oppose him because he was against him personally but he felt that AO has always been under the Board and that remains to be so. But after his appointment he got an opportunity to serve on various committees that he sponsored and established for the sake of the Agency. And these were committees that are in depth with the theory that a true leader relies on the input of people, solicits that input, and makes them feel like they are part of the system. He served in total management committee, strategic planning committee, and the budget advisory committee. What struck him with working with all these committees is that everyone in that committee represented various different parts of the Agency and it all felt that their input was being valued and will all come together for decision of the best interest of the Agency and Jay also supported that. And even with the AO he has been a part of a number of committees and every person whether its management, supervisor, ALJ, support staff, their input has always been valued and they feel like they are contributing to the improvement of the Agency. We face difficult times right now. The budget is a mess, workload is high; this is the time that we need Jay's leadership and abilities to help us get through this. This is not a time for change, to do something that is unknown and untested and hopes that the Board realized that whatever individual concerns they may have can be worth thinking. Things can be improved and glad that Chair Rice put forth change because he want that to be a part of the on-going culture but the Board need to involve them and everyone and senior staff has always been supportive of change because they feel that that is what leads to positive results.

He asked to consider whether this particular time and change is in the best interest of the Agency or whether we need to come together and work together to improve this.

Chair Rice called Elizabeth Merkin to comment.

ALJ Merkin spoke as a private citizen. She commented that no one in this room as far as she knows knew that there is going to be a two-minute rule on their public comments to the Board. Many people brought letters from their colleagues back in their offices that they are not presented to legal counsels. Many of them have longer comments they wish to make that were cut short. She requested that the Board hold open the opportunity to provide written materials to the Board until 10:00 a.m. the following day to delay the vote and allow them to be heard in the public.

Chair Rice called Ron Kammann to comment.

PALJ Kammann spoke on his own time and dime. He did consider putting mileage on his travel claim but Jay won't approve it. This Agency is the best, it is flexible, innovative, creative, responsive, and in large part because of people like Jay. It has been a pleasure and proud to work with him and under his executive direction. We need Jay particularly because of the economy. He's gone through the 90s when we had the recession. We went through the dot.com bust and brought us through that. He served the people of California excellently during that time of great need of the unemployed. We don't need chain torches in this difficult time in California's economic history. Secondly, this Agency is all about due process. We owe due process to ourselves as well. This proceeding is not demonstrating that commitment and speaks poorly to what we stand for. He supports Jay 100% and hopes the Board defers this action until we have a new Board. This is not the time when the Board should be taking decisions of this importance which has an impact not only on the Agency but on the people of California.

Chair Rice called Joe Cane to comment.

ALJ Cane was here on his own time and dime and has been with the Agency for 26 years. He worked last Sunday, worked nights and weekends a lot simply because it is an honor to serve this Agency and because Jay is the flag bearer for that sort of work ethics. A lot of what we see are employees who disregard the interest of their employer and a lot of what we see are employers who disregard the interest of their employees. If we did not have this people we lose 70% of our caseload and most of us would be out of work. He urged the Board to adopt the same principle here. One of the things that stands out in this Agency is this is an agency that is organized from the bottom up. Management has always had to respect each worker and urged the Board to keep that principle in mind in reaching this decision.

Chair Rice called Madlyn Hilton to comment.

PALJ Hilton echoed the sentiment that you wait until the Bureau of State Audits is done with their investigation. She is in fact meeting with them at 1:30 pm today and one of the items that she is meeting with him is with regards to an allegation (Chair Rice interrupted PALJ Hilton by saying that he does not think that we can discuss that). PALJ Hilton added that she has not been told not to discuss it and she is going to discuss it with him today and she just thinks in fairness to the whole proceedings to wait for the decision to be made until that audit is completed.

Chair Rice called Mary Kelly to comment again.

She gave notice in writing in July 11, 2008 that she would be taking leave and coming out on her own dime. She did not receive any information from the Board that her remarks would be limited to only two minutes and she thinks that she should have known earlier.

Chair Rice Robert Stone to comment.

Mr. Stone is a Legal Support Supervisor I in the San Francisco Office of Appeals. He represents the support staff of his office and other offices. He disagrees with the Board's decision to terminate Chief ALJ Arcellana. They are the face of the Agency and talked to the claimants on a daily basis on grievances. He commented that the Board reconsiders Jay to be nothing but positive for this Agency and wanted him retained.

Chair Rice asked if there were any others wishing to comment, and with none, thanked everyone for their comments and took a 5 minute recess.

Chair Rice stated that the Board has now reviewed the additional submissions and therefore brought forth the motion. He stated that this decision is not his own but one subject to a Board vote. Chair Rice made a motion to terminate the CEA appointment of Executive Director/Chief ALJ Juan J. Arcellana. The motion was seconded by Member Aguiar. Chair Rice called for any discussion among Board members, and there being none, called for the vote, as follows:

Vice Chair Aguiar	-	Aye
Member Egan	-	Aye
Member Figueroa	-	No
Member Richardson	-	Aye
Chair Rice	-	Aye

The Motion carried on a 4 to 1 vote. Chair Rice instructed Personnel to prepare a 20-day notice and to facilitate the transition into Mr. Arcellana's previous classification as comfortable as possible.

The meeting was adjourned.



STATE OF CALIFORNIA - GOVERNOR ARNOLD SCHWARZENEGGER  
LABOR AND WORKFORCE DEVELOPMENT AGENCY

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
OFFICE OF THE CHAIR  
2400 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Phone: (916) 263-6783  
Fax: (916) 263-6736

July 21, 2008

Honorable Carole Migden, Chair  
Senate Committee on Labor & Industrial Relations  
California State Senate  
State Capitol  
Sacramento, CA 95814

Dear Senator Migden:

Thank you for your letter of July 17, 2008 regarding the upcoming public meeting of the California Unemployment Insurance Appeals Board (CUIAB).

Although you are correct that the Board requested an outside audit of questionable practices undertaken by CUIAB staff, which was granted by the Joint Legislative Audit Committee and is currently under way, it should be clarified that the audit is separate and apart from the issues to be considered at tomorrow's meeting.

The action item listed on the agenda for the meeting concerns the termination of the Career Executive Assignment (CEA) appointment of the Board's Executive Director and Chief Administrative Law Judge. The incumbent of any CEA position, if removed, has return rights to his or her previous civil service position and state regulations require that if an individual is terminated from a CEA position, then that person shall continue receiving full CEA pay for at least three months. Further, no reason for termination from a CEA appointment is required by State law, merely 20 days notice to the employee being terminated.

Nevertheless, please be assured that I am not bringing this action before the Board without serious consideration. I have been weighing the operational ramifications of this termination for some time. I have concluded that it is better for the agency and the public not to delay this action any longer. I will be stepping down as Chair in the near future and I feel that it is imperative to take this action now so that any future Chair and the Board will be able to move the agency forward from the outset in a positive manner with new management of their choosing. Ultimately, of course, this will be the Board's decision to make and not mine alone.

In coming to this conclusion, the final straw, for me, came when I learned of the longstanding practice of delaying decisions, resulting in the delay of benefits to the unemployed, as a budget gimmick designed to ensure that CUIAB would be flush with cash, even though our unemployed claimants would have their benefits delayed. I was never made aware of this practice (and to my

**ATTACHMENT A**

July 21, 2008  
Senator Carole Migden

knowledge, nor were any other board members) by the Executive Officer/Chief ALJ. In fact I only learned of it because I sat in on a lower level staff budget meeting where the practice was under discussion. I questioned the practice and was told that "we do this all the time." I requested an opinion of our staff counsel, who indicated that the practice appeared in conflict with federal law. I then went to the U.S. Department of Labor (U.S.D.O.L.) for their opinion on the subject and found them to be as appalled as I was. (Enclosed is a letter from Deputy Administrator Dale Zeigler of the U.S.D.O.L.'s Employment and Training Administration, demanding an end to this practice and a response from our Executive Officer/Chief ALJ within 30 days.)

Other issues have plagued the Board as well, including the dismal performance in meeting federal timeliness standards. Originally the Board was misled by the Executive Officer/Chief ALJ into thinking that our performance in meeting federal standards was adequate. It wasn't until the U.S.D.O.L. flew out its second in command over the Unemployment Insurance system from Washington D.C. to address our Board in public session that the Board had an inkling of the miserable job being done in meeting timeliness standards and that what was being portrayed to us by staff as our "workload" was in fact a major backlog of cases that still remains to this day.

Federal standards call for 60 percent of cases to be resolved in 30 days. California currently resolves only 6 percent of its cases in 30 days, and we continue to have a backlog of more than 46,000 cases. This is unacceptable for the unemployed workers of our state who are struggling in these difficult economic times. Nevertheless, although I have authorized the hiring of several new administrative law judges and field staff to hear and process cases over the past year, the Executive Officer/Chief ALJ has failed to bring forth a comprehensive plan to eliminate the backlog and that failure is a great disservice to unemployed Californians awaiting their benefit checks.

Another area of great concern is information security. CUIAB case files contain ample personal confidential information on claimants and employers. These files are shipped to various offices around the state. Although procedures are in place, there have been numerous security breaches whereby confidential information affecting thousands of Californians have been lost. Still, no comprehensive plan to avoid such mishaps has come forth from the Executive Officer/Chief ALJ and to my knowledge no progressive discipline has been taken against those who were at fault for the security breaches.

Additionally, there is the issue of fulfilling the responsibilities of the position as mandated by the California Unemployment Insurance Code. Section 406(b) requires that a system be created and overseen by the Executive Officer/Chief ALJ, whereby the Board may intervene in field decisions that are inconsistent with the law. The process that was developed and ostensibly overseen by the Executive Officer/Chief ALJ made Board intervention impossible, thereby denying the Board its statutory obligation to intervene in order to help claimants deserving of benefits. It wasn't until I discovered that the practice did not comport with the law, that the Executive Officer/Chief ALJ became aware of the problem. Instead, he had been using his misconceived system to provide what can only be described as "busy work" for a former Board

July 21, 2008  
Senator Carole Migden

member who he had hired as an administrative law judge. This individual remained on the payroll for over three years and a review of his work indicated that he had not been properly supervised throughout that period. The individual nevertheless was paid over \$100,000 per year, plus benefits for performing ineffective work. The Executive Officer/Chief ALJ has still never put in place a system to satisfy the requirements of the Code.

I don't believe that any of the aforementioned problems are subject to the Bureau of State Audit investigation, but I'm sure you will agree that they are significant enough to raise concerns by the Board. As I mentioned earlier, no reason is required for termination from a CEA appointment. Dismissal from Civil Service does require a cause, but this is an action that I would caution the Board not to consider until the BSA audit has been completed and their findings can become part of the official record.

I wish to thank you again for your interest in this matter. I would be happy to appear before your committee to discuss these matters in more detail or provide additional information as you may request.

Sincerely,



Rick Rice  
Chair

Attachment

cc: Rodger Dillon, Consultant (Fax: 916 327-5703)



JUL 17 2008

Mr. Juan J. Arcellana  
Chief Administrative Law Judge  
California Unemployment Insurance Appeals Board  
2400 Venture Oaks Way  
Suite 300  
Sacramento, CA 95833

Dear Judge Arcellana:

We are writing because we were informed that the California Unemployment Insurance Appeals Board (CAUIAB) is unnecessarily delaying mailing appeal decisions in order to credit the dispositions for the next fiscal year. Federal unemployment compensation (UC) law requires that state law provide methods of administration to ensure full payment of UC "when due," and therefore such a practice raises an issue. A detailed discussion follows.

Sections 303(a)(1) and (3) of the Social Security Act (SSA) require, as a condition of a state receiving administrative grants for the operation of the UC program, that state law include provision for:

(1) Such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

\* \* \*

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied;

Departmental regulations require that state law include provision for "such methods of administration of the appeals process as will reasonably assure *hearing and decision with the greatest promptness that is administratively feasible.*" (Emphasis added.) This regulation was issued in response to concerns about "delay in payment" of UC, including "delays caused specifically by the adjudication process." (20 CFR 650.1(a).) To meet these requirements, states must structure their appeals processes in a way that permits appeals to be scheduled and decided with the greatest promptness that is administratively feasible.

Once the administrative law judge hears and decides the case, and the decision is prepared for mailing, the decision is ready to be issued with the greatest promptness that is administratively feasible. Any significant delay in the mailing of such decisions raises an issue of whether the agency is meeting its responsibility to pay UC "when due."

Please respond within 30 days of this letter to inform us whether the CAUIAB is delaying the mailing of appeal decisions as indicated above. If so, please indicate what actions you will take to ensure that this practice will not continue. If you have any questions concerning this issue, please contact Robert Johnston at 202-693-3005 or johnston.robert@dol.gov, or your Regional Office's contact Jamie Bachinski at 415-625-7925 or bachinski.jamie@dol.gov.

Sincerely,



Dale Ziegler  
Deputy Administrator  
Office of Workforce Security

cc: Richard C. Trigg  
Regional Administrator  
San Francisco

Cheryl Atkinson  
Administrator  
Office of Workforce Security

Rick Rice  
Chair  
California Unemployment Insurance Appeals Board