



## **5. Board Member Reports:**

Member Ducheny stated that she appreciated how much she has gotten to learn working at the board over the past year, and hopefully in her next adventure she will be able to use some of that knowledge for the benefit of the board and the system. She stated she knew the board was doing a lot of work but until she got here she did not know how bad it was. The volume of cases that people have managed to do and the fact that people are doing 150% more work than they did two years ago and still maintain high quality is admirable. She thanked everyone.

Board members and executive staff thanked Member Ducheny for her hard work and contributions, and wished her the best of luck.

Member Ashburn reported that all planned 23 satellites have been converted over to the VOIP telephone system. Similarly, good progress is being made with respect to the Imaging and Electronic Decisions and Co-location project, which shows that there is a lot more potential out there.

Member Garcia stated that in the few months she has left on this board she is going to use the opportunity to continue to tell people how important the role of this agency is. When she came on to this board in 2009 this was an agency in crisis. It is important to know the role this agency places in the lives of normal, ordinary Californians, people who lose their jobs, people who have to go on family leave, people who are disabled, small business that are dealing with tax issues. Very few State dollars go into running this shop but it seems like every year it becomes a good place to play political football. Sadly, who it impacts are the people who are unemployed and disabled in this State and CUIAB employees. Through the worst economic crisis in this State CUIAB employees worked five days a week when other agencies were shut down, they took a self-directed furlough, worked long hours, some were laid off, and they all did more with less. Instead of being a punching bag we should be a demonstration project on how government should work to receive maximum efficiency. Member Garcia thanked everyone for the work they do on a daily basis on both the board and the staff side.

## **6. Chief ALJ/Executive Director Report:**

Chief ALJ/Executive Director Roldan announced the appointment of a new PALJ in the Oakland Office, Marvin Hassan, and welcomed back PALJ Lillian Waters from a long medical leave.

Chief ALJ/Executive Director Roldan reported for the month of July they registered over 40,000 new cases, and closed 39,116 cases, to maintain an overall balance of 61,211 cases in all categories. We had a very productive month in Tax cases, which is a priority now that UI workload overall has been coming down. There was a jump in performance, with 110 more cases closed in the month of August than in July. Given that the tax office is fairly small, that is a significant increase in their

performance. Time lapse numbers are set forth in the handouts, and remain consistent with past months. We won't see significant improvement until they see a greater reduction in the backlog is achieved.

Chair Dresser commented that he is assuming that some of the drop off, slight as it was, in production was because of summer vacations and things. Chief ALJ/Executive Director Roldan responded that was correct.

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

Special Assistant Kurosaka reported that the Department of Labor has reviewed our draft 2012 Corrective Action Plan, and with just a few minor edits accepted all milestones and strategies. Both the national and the regional staff were very complimentary of CUIAB's preparation and the draft plan for next year.

Special Assistant Kurosaka reported that they received cost estimates from EDD on the Imaging Project last Friday. The team will take this week to review and validate those cost estimates and hopefully finalize the feasibility study to begin the approval process.

Special Assistant Kurosaka reported, with regard to the Co-location Pilot in Los Angeles, that the initial outcomes again show the appeals registered onsite have been taking about 42 days for the entire process from beginning to end, which is remarkable compared to the statewide average of about 59 days. They are exploring options to add staff to the Los Angeles PAC to bring it up statewide. They are only focusing on two of the field offices there. IT is costing out options for further expansion and additional primary adjudication centers. Because we are on separate networks from EDD we will need to find some kind of low cost solution to establish connectivity to our network.

Special Assistant Kurosaka reported that the Electronic Appeals Decision project is on schedule with DI and Tax decisions, with Tax Branch scheduled for implementation around the third week of September, and DI tentatively targeting November 1<sup>st</sup> for implementation.

Member Garcia commented that 42 days from 59 is remarkable and asked what kind of findings are they making. Special Assistant Kurosaka responded that they are finding errors in the documents provided to support the appeal case file, and with the Los Angeles PAC we are minimizing that because staff is onsite and can address that situation immediately with the EDD staff onsite. Member Garcia asked if this is something that our staff, with access to EDD's system, can correct themselves, or do they need to return it back to EDD because we have limited access to their documents. Special Assistant Kurosaka replied that we have very limited access to their documents, but they find it fairly educational for the EDD staff to have the CUIAB staff return to them so the EDD staff are learning through that process. Member Ducheny asked what the problem with expanding access was, to which Special Assistant Kurosaka responded that CUIAB and EDD are on separate network infrastructures and in order for us to receive the scanned

documents from their location we have to establish connectivity from their location to CUIAB, which would be through a T-1 line, a network line, directly to CUIAB to receive the scanned images of the appeals documents at a cost about \$25,000. Chair Dresser asked if they plan to expand it to San Diego next. Special Assistant Kurosaka stated that that is their next priority and then Sacramento.

Special Assistant Kurosaka introduced Principle Consultant Art Blan and Analyst Brian Mueller from the Legislative Analyst's Office.

#### **8. Chief ALJ of Appellate Operations, Jorge Carrillo:**

Chief ALJ AO Carrillo reported that Appellate Operations registered 3,267 cases and disposed of 2,860 cases. They are still training three new judges, and have four field judges cross training in AO. The open balance of cases is 6,423 cases, 23% above calendar year average, plus they have about 1,500 appeals that are waiting to be registered, so their true backlog at this point is about 8,000 cases, the highest in three years. Last month the appeal rate was 9.1%. In four of the last six months the appeal rate has average 8.7 to 9.4%. That, coupled with the fact that we have had a hiring freeze going back to August of last year, with exemptions only recently, has been impacting their ability to keep up with the caseload.

Chief ALJ AO Carrillo reported they are at 48 days in case aging, and closed 11% of their cases within 45 days of the board appeal, 40% within 75 days, and 99% within 150 days. The average time for transmission of appeals from the field to AO in August was 4.19, very good considering that typically one or two of those days is the U.S. Postal Service delivering the mail to local offices and then they have to turn around and overnight the appeal to AO.

Chief ALJ AO Carrillo reported that they had the initial meeting of the Precedent Decision Committee last week. The committee is made up of two appellate judges and five field judges. Their task is to identify issues that could use the benefit of a precedent decision, and once those issues have been identified to find suitable cases that might serve as vehicles for precedent decisions.

#### **9. Chief Information Officer, Rafael Placencia Report:**

CIO Placencia reported on the new ALJ Intranet, internally known as Insight. Development was done completely in-house and with input from ALJs, training staff and IT. Insight will serve as an online portal for ALJs throughout the agency. Features will include; discussion boards, sample decisions, access to training documents, and links to valuable knowledge resources. The scheduled launch date is October 3<sup>rd</sup>. An icon will be placed on each desktop so that ALJs will have access to this portal.

CIO Placencia also reported that the AO Automated Calendaring System is on task for implementation later this year. The idea is to bring it online at the second level and then expand to the field.

CIO Placencia report that they have completed Stage One for VOIP. The next phase of the project is to move toward full implementation at the field offices if the agency chooses to do that. Right now they are analyzing the cost of going forward. Member Ducheny asked if they are finding that it costs less than the long distance. CIO Placencia responded that they have been able to eliminate long distance costs from the billing, but capturing that actual cost has been a challenge, as it is a difficult process getting those numbers from EDD. Chair Dresser commented that one of the things he heard last week in San Francisco was that under the new VOIP system there are certain limitations for conference calls and that if it is more than three parties the parties have to be directed to call into a certain 800 or 866 number and it delays things. CIO Placencia responded that was true, and it is one of the issues that they ran across implementing at a field office.

Lastly, CIO Placencia reported that they are currently in the process of developing the Labor Agency's IT Capitol Plan. He was pleased to announce that their three projects that were on the old plan have been accepted for including into the IT Capitol Plan: Case Management System, Imaging System and E-Services System.

Member Garcia asked if they worked out all of the additions that they were doing for the auto-dialer to reminder people of their hearings, like the messaging. CIO Placencia responded no they have not, as they are dealing with being able to scrub the information off the DE1000 and they are not quite sure how they are going to be able to handle that piece.

**10. Deputy Director, Administrative Services Branch, Pam Boston Report:**

Deputy Director Pam Boston reported on the following items:

- Overtime and Year-to Date Lump Sum Payout Reports through July are in your packets.
- Dragon Training – Vendor finished training our in-house trainers and PC Liaisons. Our In-house Trainers have 58 ALJ's scheduled to be trained during the month of September.
- The Greenfield Hearing Facility is open for hearings. This is a single room County Facility.
- Open enrollment for Health and Dental is in October instead of September this year. Personnel will be sending notification to all employees.

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

Chief Counsel Ralph Hilton reported that last month each board member decided an average 26 cases each day, and that number will be going up with the reduced number of board members. He further reported that we are carrying almost 300 court cases right, with ten new cases last month and six closed cases. Somewhat unusual is that in three of those cases the board was reversed, not on any issues of law, but simply because the court viewed the facts in a different light.

## **12. Unfinished & New Business:**

AO Telecommute Policy: Chief ALJ AO Carrillo discussed the proposed amendments to the Telecommute Policy (See Attachment – 2011 Report on Telecommute Policy). The board voted unanimously to approve the following amendment to the first paragraph and subparagraph (a) of the telecommute policy (Board Policy No. 17):

1. "Subject to the provisions of any applicable collective bargaining provision, the Chief Administrative Law Judge/Appellate Operations (CALJ/AO) has the authority to select the participants for the telecommute program and the discretion to determine the amount of time applicants need to qualify for participation as well as the number of hours applicants may telecommute per week. Selection for the telecommute program will be made using the following factors:

(a) Completion of a period of work for Appellate Operations sufficient to demonstrate a clear understanding of the law and the procedures related to board appeals and a demonstrated ability to work independently without close supervision;"

Proposed Precedent Decision: Chief Counsel Hilton presented AO-254427 for consideration as a precedent. At the outset Member Hollingsworth announced that he is recusing himself from both the discussion and any decisions regarding the proposed precedent because of his involvement as a party to litigation on this subject matter. Chief Counsel Hilton stated that this decision clarifies the proper legal standard to be used in determining whether a claimant has good cause to quit his or her job to follow another individual to another location. The decision establishes that the standard is a totality of the circumstances involved in the claimant's reasons for leaving. This case happens to involve a same-sex couple, but that was not the controlling factor. The same principle would apply to other couples and is not limited to cohabitating couples. The question today is whether or not this case should be adopted as precedent to provide uniformity and guidance to our judges in the field. Member Garcia noted that some of the field judges who reviewed this decision were concerned, but she thinks its value is in establishing a template for how you analyze this type of issue. Upon the Chair's call for a vote, the board adopted AO-254427 as precedent unanimously for the five members participating.

## **13. Public Comment:**

William Weissman from Littler Mendleson expressed his agreement with Member Garcia and appreciated her frustration with this Agency, one that does a lot of important work and should be recognized in the Legislature and publicly for the work that it does, and certainly he thinks the Governor's proposal to abolish the board is short sighted and lacks an understanding of what the board does. Mr. Wiseman commented that one way the board can elevate its public standing is more precedent decisions.

Mr. Weissman also commented on the following items: Notices of Postponement—

this form letter sent out by the CUIAB states: "This is to notify you that your appeal hearing that was scheduled on (whatever date) will be postponed due to circumstances beyond the control of this office." Mr. Weissman states that a number of his clients are confused by that language, asking him what it really means. He suggests that the notice simply state: "Your hearing has been postponed" and not say anything else, since there can be a variety of reasons for a postponement. It's a minor point, but he thinks it would help the board because people tend to read too much into the existing language.

Another form type letter states: "We want to know if you want to dismiss your hearing." After waiting a year or more for a hearing, again taxpayers are concerned about a request for dismissal, and Mr. Weissman questions whether or not a similar notice is sent to EDD asking if they want to drop their assessment. He doesn't believe the intent of question is to put any kind of pressure on the taxpayer, but again there is a perception out there, why are you asking us this. He suggests there may be a need to divide benefit cases a little bit more from tax cases in terms of procedure. Some of the tax cases involve millions of dollars, they are very complicated, they involve complex legal issues that can last for days, and perhaps a different set of procedures for those large cases would be beneficial. One thing that the board does which he thinks is very helpful is prehearing conferences. He commented that we could send out a prehearing conference notice instead, where this question can be raised: "Do you want to go forward?" At a prehearing conference a variety of issues can be raised. He thinks that may be a better way to approach some of these cases than sending out these notices.

Lastly, with regard to the tax cases, many involve motions to dismiss for a variety of reasons, statute of limitations for example, and they have gotten push back from some of the ALJs, who tell him to just raise all of this at the hearing on the merits. That effectively defeats a motion to dismiss because if we have to go through a hearing on the merits, we haven't narrowed the case in any way.

Chair Dresser asked if he thought the latter point would require a regulation change. Mr. Wiseman responded that he did not think so.

Member Garcia suggested that Mr. Roldan meet with Mr. Wiseman to further discuss some of these issues. The Board values these comments, but perhaps 90% of the other attorneys feel differently, so we want to make sure that we don't respond to just one persons thought on the process but rather look at it collectively. Chair Dresser agreed and asked Executive Director Roldan to handle it.

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

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

### **Adjournment**