



**5. Board Member Reports:**

Vice Chair Allen reported that he continues to work with Chief Rose on both the precedent process and some of the cases that will be coming forward for precedent decisions. He commended Chief Rose her efforts in that respect, and for her efforts to initiate staff-training opportunities in the not distant future.

Member Corbett echoed the desire to ensure the judges are fully prepared with resources and training, not just to perform their work here, but also to ensure they are marketable should they need to find work elsewhere.

Member Corbett asked for an opportunity to survey issues that come up in appeals with regularity to analyze whether legislation might be useful. She suggested a discussion be agendized at a future meeting.

**6. Public Comment:**

(None)

**7. Chief ALJ/Executive Director Report:**

Chief ALJ/Executive Director Gonzales reported that this was the seventh consecutive month that the Department of Labor timeliness measures were outperformed by the Field. The current workload balance of all cases is roughly 26,500 and the UI balance is a little over 16,000; compared to the average open balance for cases the year 2012 was 36,000 case, the average open balance for 2013 was 37,000; the average open balance for 2014 was 24,000 and so far this calendar year 2015 starting with January the average open balance of the UI cases is 15,800.

Chief ALJ/Executive Director Gonzales clarified that the cancellation of layoff notices were mailed from CUIAB to the SROA candidates on September 30, 2015, with an effective date of the cancellation of layoff being October 1, 2015. A new layoff plan was signed on October 2, with an effective date for layoffs of February 2, 2016. The new SROA letters were mailed on October 5, 2015, notifying all SROA candidates of their status of surplus beginning October 6, 2015.

**8. Chief ALJ of Appellate Operations, Elise Rose Report:**

Chief ALJ AO Rose reported that all of the numbers of registrations and dispositions have fallen. The open balance at the end of September was 1,037

cases. The open balance hasn't been that low since before 2008. Appellate Operation's case-aging numbers are 29.8 days, well within the federal standards. AO is in compliance with all time-lapse and case-aging requirements. She reported that 91% of the cases are being decided within the 45 days, 92% within the 75 days, and 98% within 150 days. She also commented that the appeal rate from field office to AO has fallen to 5.7% which is fairly low.

**9. Chief Information Officer, Nick Dressler Report:**

CIO Dressler reported that late September CUIAB was awarded a \$462,000 grant from the Department of Labor to replace the aging Dictaphone system currently used for recording hearings and dictation. CUIAB will be working with EDD to obtain Legislative approval to spend the money. He noted it is a two-year grant. Staff is starting to reach out to vendors to scope possible replacement systems, in hopes of prompt implementation when budget approval has been obtained.

Member Corbett asked if CUIAB worked with other departments when procuring items to capitalize on volume and administrative efficiency. CIO Dressler replied in the affirmative, including evaluating systems used by other states and by other California entities that record judicial proceedings. A formal RFQ will be forthcoming after we receive budget approval.

CIO Dressler also reported that IT is approximately 75% done with installing new encryption on CUIAB laptops.

**10. Chief Administrative Services, Robert Silva Report:**

Chief Silva reported on the status of the pilot process to centralize procurement of office supplies for the 12 field offices to Administrative Services. He advised the Board that the new process has been helpful due to support-staff attrition, and it has freed up staff time to focus on appeals. The transition for supply ordering occurred on February 15 for the 12 field offices, to three employees in Admin Services. After almost 9 months, the system is working very smoothly, offices are receiving their supplies in a timely manner, and Admin Services is better able to monitor supply expenditures for budget tracking. The project has been a success, and he plans to maintain the process for the foreseeable future.

Chief Silva reported that in November the biennial bi-lingual audit will be conducted of CUIAB employees who receive the bilingual-pay differential. CUIAB currently has 46 employees receiving bilingual pay, and they will be completing time ladders in the month of November to ensure that the time spent using their bilingual skills is at or above the 10% threshold required to receive the pay differential.

Chief Silva reported that on September 22, President Obama declared major disaster areas for Lake and Calaveras Counties due to the Valley and Butte fires. As a result, disaster unemployment assistance (DUA) is now available to eligible individuals. CUIAB will see some related appeals. EDD Fiscal Programs Division provided CUIAB with Project Activity Codes so that we can directly charge the time that is spent on those cases. He stated that they are updating the time sheets and ALJ daily time reports; and they have ordered folders for DUA cases because we haven't had them in a number of years. Assistant Chief Harrison on October 6 sent an email to all AO and FO management alerting them to the upcoming DUA cases and how the time spent on them will be tracked.

Chief Silva reported that after Legislative approval is received on the grant referenced by Chief Dressler, Admin Services will work with EDD Fiscal Programs to ensure the time and materials associated with the project are properly accounted to the Project Activity Code that will be developed for the project.

Chief Silva also responded to Member Corbett's question related to leveraging purchasing authority for discounts. He stated that can speak for non-IT goods, all of CUIAB's capitalized equipment purchases go through the EDD Procurement Division, so we are able to leverage their purchasing authority for capitalized equipment. This has included our U.S. postal machines (purchased about 4 years ago), and when copy machines, among others.

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

Chief Counsel Levy reported there are currently 148 pending writ cases. The 2015 year-to-date statistics show a total of 157 affirmances, 8 reversals, and 2 remands as compared to 2014 where we had only 113 decisions with 10 reversals and 3 remands. This month we recorded 2 reversals. One was a 2010 decision, notice of which was never sent to CUIAB. It called for a new hearing for the claimant. Based on consultations with our outside counsel and court records, it appears that the claimant was ordered to prepare and procure the writ from the court, but the claimant never did so. Upon learning of the case, CUIAB wrote to the claimant to see if he wanted to pursue the matter, and we offered to prepare the writ if he wanted to exercise his right to a new hearing. We never heard back from the claimant, so we are closing the file.

The second reversal was a matter of statutory interpretation on a lag-wages claim. The superior court ruled that there was some kind of inconsistency the superior court found between subdivisions (a) and (b) of section 1277. While we believe the court was mistaken, the case is not worth the resources to pursue an appeal, so

we will comply with the writ, and close the matter.

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

Chair Dresser deferred the Telecommute Report to next month's meeting.

A. Consideration of the board decision in AO-359822 for designation as a precedent:

Chief Rose presented to the board that this case involves the in-home supportive services (IHSS) program, and interprets statutes that authorize IHSS providers to receive unemployment benefits. In this case, the Board found that section 631 is clear and unambiguous in excluding from the definition of "employment," services that are performed by a claimant in the employ of his or her son, daughter, or spouse. In reaching its conclusion, the Board held that section 683, which specifies who are deemed employers under the IHSS program, does not limit or even reference section 631. Since section 683 does not address family-member employment, it can't be viewed as narrowing the reach of the general exclusion in section 631. Notably, section 631 includes an exception that allows excluded employment be deemed included for disability insurance if the employer opts into the disability program. The Board held that basic rules of statutory interpretation precluding imputing additional exceptions that the Legislature chose not to include.

Chief Rose noted that the California Attorney General has also issued an opinion finding that the fact that a county may use a public authority to administer its IHSS program does not render a public authority to be a "joint employer" with the recipient of IHSS services. The Attorney General concluded there is no joint employment of IHSS workers in the context of unemployment insurance law. The decision found that reliance upon P-B-111 for a joint-employment theory is inappropriate. In that decision, joint employment was found based upon an actual partnership. There was no partnership between the recipient and the public authority in the case at hand. Even if each were separately deemed an employer under the program, section 631 mandates the fact that the services were rendered by a mother for her son determinative, and triggers the exclusion.

Chief Rose stated that this case is appropriate for designation as a precedent because it contains a significant legal or policy determination (whether section 631 that excludes from definition of employment services that children perform for their parents still operates under the IHSS program in view of section 683). The issue is recurring, with inconsistent decisions having been issued amongst the ALJs. It resolves an unsettled area of the law. And it affects the great majority of IHSS cases, because the nature of the program is such that these cases often involve

the excluded relationships. Chief Rose presented the staff recommendation to adopt it as a precedent.

Chief Counsel Levy stated that the board received two written comments; one from Legal Services of Northern California over the signature of Stephen Goldberg, and another from the California Department of Social Services. Both of those were received into the record.

The board unanimously voted to designate Case No. AO-359822 as a precedent decision.

B. Consideration of the board decision in AO-167799 for designation as a precedent:

Chief Rose presented the facts and issue to the Board. Section 1256 disqualifies a claimant who has left their most recent work voluntarily or without good cause, or who was discharged for misconduct connected with their most recent work. The phrase “most recent work” appears twice in that statute. The board had taken a position for several years that most recent work means the work that the claimant last performed prior to and nearest the filing of a claim for benefits including part-time work. In 1978, a judicial decision defined “most recent work” to mean primary, regular or principle, or fulltime job, and the Legislature amended the statute in response to that case and restored the statute to be consistent with CUIAB’s interpretation. CUIAB has also held that “most recent work” also includes part-time work. Consistent with precedents issued before 1978 ruling, this proposed precedent clarifies that it remains the current standard.

In this particular case, which was actually adopted some time ago as a panel decision, a woman had worked in both a part-time job and a fulltime job. She was terminated for cause from her fulltime job, and she applied for benefits following termination. However, between the termination and the time that she filed her claim, she had worked at her part-time job and continued to do so up to and through the time of the hearing. The panel held the part-time job was her “most recent work,” and the fact that she was continuing to hold that job at the time she applied for benefits, did not exclude it from being the most recent work. Since the misconduct-disqualification under 1256 is not imposed if the claimant is not separated from the most recent work, in this situation, section 1256 was held not to apply, and she was held eligible for partial benefits.

This case also meets the criteria of the regulation for precedent decision in that this is a recurring issue that is often missed by field judges, and EDD. This decision would clarify that the precedent decisions that were issued before the court ruling,

remain good law, and it clarifies that a person in this circumstance may claim even though he or she is still employed at the time the claim is filed. The staff would recommend that this case be adopted as a precedent decision. Chief Rose stated that to her knowledge there have been no written comments received on this particular case.

The board approved unanimously voted to designate Case No. AO-167799 as a precedent decision.<sup>1</sup>

### **13. Closed Session:**

The Board adjourned to closed session at 11:16 a.m.

[There was one item on for closed session which is the deliberation on the Sevilla case.]

The Board adjourned from closed session at 11:47. No votes were reported. The meeting was recessed until 1:30 pm.

The Appeals Board reconvened at 1:33 p.m., October 13, 2015, in Sacramento with Chair Robert Dresser presiding. All members present.

### **14. Presentation by the Attorney General's Office on the Bagley Keene Act:**

Ted Prim and Julia Bilaver of the Attorney General's Office gave a PowerPoint presentation on the Bagley Keene Act. (See Attachment A)

**Adjournment at 2:46 p.m.**

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<sup>1</sup> Subsequent history on Case No. AO-167799 is reflected in the Board's minutes of November 10, 2015.