

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5582**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., October 14, 2014, in Sacramento with Chair Robert Dresser presiding.

2. Roll Call: Members

Present

Absent

Robert Dresser, Chair

x

Michael Allen, Vice Chair

x

Roy Ashburn

x

John Adkisson

x

3. Approval of the Minutes:

Member Adkisson commented that he would normally never quibble about the minutes; they are not verbatim, but on his comments in two sections he would ask that two references be added there that have inadvertently been omitted. First, in his report he mentioned substantially his comment was based on the fact that he was getting tremendously positive response from staff and from other board members regarding the reexamination of many of the standard paragraphs and precedents, and the need to speed up the precedent process and to better document the process of standard paragraphs on a legal basis by which we grant and deny claims which is our main mission. He stated that he praised the staff, and the entire subject is left out of the minutes. He would just ask that a reference would be added. Secondly, in reference to the EDD's appearance before the board asking for a 90-day extension is stated there correctly that he stated that he agreed with most of Member Ashburn's comments and he did regarding that request but specifically he disagreed with the notion that the delay was not caused by the EDD which in fact it was in his view, and that was the main point of his comments and again, inadvertently that's been left out, it leaves the impression that he agree with language by Member Ashburn that is printed right above it that says the EDD was not the cause of the delay.

Chair Dresser, speaking as the Chair, concurred with everything that he said. He did ask him early on to please help us update the standard paragraphs, and you

have worked very hard on that and he appreciates it. For the record and your comments in terms of EDD's request for 90 days is accurate in terms of your reaction to that, so that is noted and corrections will be made.

Member Ashburn commented although he would add, Mr. Chairman, you're better off just being in agreement with him but he can support the gratification.

Member Adkission commented that he figures someday someone was going to say, you agreed with Roy Ashburn too often.

Member Ashburn stated that would be a good thing.

Chair Dresser stated that as clarified and corrected, the September 9, 2014, minutes are approved.

4. Chair's Report:

Chair Dresser reported that last week he visited five offices to meet with judges and support staff. He commented that in light of the loss of 50 judicial positions things are going pretty well.

Chair Dresser reported that this Friday he is going to take Marie Brillante of the Department of Labor to lunch. She was very helpful to CUIAB in helping us get out of Corrective Action. Ms. Brillante is retiring and he appreciates the good service she did for CUIAB.

Chair Dresser reported with respect to time lapse and case aging for September, CUIAB did make the standards. They are closely monitoring the workload. Chief Gonzales and Assistant Chief Hugh Harrison are on top of it, for example, last week transferred 75 cases from Pasadena to Inglewood and some additional cases from Sacramento to San Jose to be sure that the workload is evenly distributed.

5. Board Member Reports:

Vice Chair Allen commented that this was his first opportunity to offer his warm welcome the new Board Counsel, Michael Levy. He stated that just speaking for himself, he's sure the other board members feel the same way, any way that the board can be helpful to him in his period of adjustment coming on. He commented that they were very fortunate that they had the Board Chair reappointed. Continuity is so important here. He stated that he hope Counsel Levy likes it and that he stays

for a long time. He thinks Counsel Levy is very blessed to have a really great Executive Director to work with. He thinks there is a very good team here. Chief Rose does excellent work, all the staff does excellent work so he just wanted to extend that to him. He stated he thinks this is a top notch organization and he's just glad Counsel Levy is here.

Vice Chair Allen reported that after many months of fussing around with the precedent process with Chief Rose, basically it still needs refinement. Any process that you design on paper has to be field tested. They really won't know if the process works well or needs further modifications until they actually use it. He stated he was very grateful to all the staff and the judges who stepped up over the last few months and decided to try to provide training because he knows this has been a real concern for all the board members that with the diminution in resources to be able to provide training. It's just really important and he's talked to a number of staff who are trying to see about a way to provide that in any way possible. So he's grateful to those staff are stepping up. Lastly, he remains very supportive of what his colleague, Member Adkisson, is trying to do in terms of the standard paragraphs and working with Chief Rose and our new counsel and others to try to work on that aspect so that they can be revised and updated. He thanked Member Adkisson for that effort.

Member Ashburn welcomed the new chief counsel. He stated that he was glad that Mr. Levy is here and hopes his transition is a smooth one. He certainly concurred with Member Allen, anything that he may be able to do or the board to assist him don't hesitate and he wished him all the best.

Member Adkisson joined his colleagues in welcoming Counsel Levy and perhaps because he is here in Sacramento he's had an opportunity to work with him a half dozen times on very substantive matters and he's very impressed with not only Counsel Levy's legal mind but also his attitude and warmth. He stated he's basing this not only on good wishes but what he's seen so far and he appreciates his being here.

Member Adkisson commented also stated he sent a letter to his appointing authority and requested that he not be reappointed next year for personal retirement reasons so his will be a one year term. There will not be enough time to get through the reform of the standard paragraphs and precedents before he leaves. A system has been developed so he will simply provide a list of the areas he believes need to be looked at and any recommendations he has in particular. The recurring issues have to do with a number of standard paragraphs that, in his view, ignore literally 40 years of employment law especially in the area of

discrimination and advances in areas including family and medical leave and other issues. Although those statutes are mentioned in the standard paragraphs there is no guidance given to judges in terms of how to analyze actual fact patterns that come before the judges and, in his view benefits may have been wrongly denied. He sees it in his review of cases every day because the standard paragraphs do not take into account modern employment law. This is difficult to see if you haven't practiced in the area but many of the suggestions that he has are not easy to see by even the very well trained and talented attorneys who serve as our administrative law judges. Secondly, he stated that there's an issue in addition to what Member Allen mentioned about precedents. There is a need for literally one or two dozen new precedents per year in order to get our cases up to date. The board needs precedents on so many different topics to come in line with definitions of disability under the Fair Employment and Housing Act and other rights under the Labor Code and Family Medical Leave and other discrimination statutes. He's spoken with Member Allen and Member Allen has said that he would be looking at that too and he really appreciates that. Member Adkisson commented that he has a strong feeling that Mr. Levy is going to be a champion for this reform.

Chair Dresser responded that, as long as he is Chair, he will continue to try to improve those standard paragraphs and get as many relevant precedents done as possible. He thinks that four years from now Member Adkisson will be pleased with the results.

Member Adkisson commented that this problem began as the law regarding employees changed and that was literally in the 1960's and more changes came in the 1970's even more in the 1980's and a huge change in California law occurred in the 1990's.

Chair Dresser commented that he appreciates that and he also appreciated Member Adkisson's candor and his hard work during his term and please keep the comments coming and the recommendations.

6. Public Comment:

No public comment.

7. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Gonzales reported that the intake of cases for the month of September was the smallest since February of 2008, and it 15% lower than the averages for 2014, so it is consistent with what the projections were that

the workload is going down.

Chief ALJ/Executive Director Gonzales reported, to address some of the workload issues after the reduction in force, they had a presiding judges meeting here in Sacramento a couple of weeks ago and they had the opportunity to introduce the new Chief Counsel Michael Levy to the presiding judges so they would know who he was. He was able to participate and hear what some of the issue were in the field and in Appellate Operations so he jumped in on his first day with two feet into the nuts and bolts of all that's going on. She stated that she has had the opportunity to have a couple of meetings with Counsel Levy and she thinks that they will work well together and she is also happy that he is here although she does miss Counsel Steinhardt.

Chief ALJ/Executive Director Gonzales reported that they have been trying to, with the reduction in force; work with the cases in the field. They've moved certain zip codes around, they've allowed some judges to be loaned to other offices that have requested to do so when the workload needs require them because certain offices had very little reduction in their ALJs and other offices had substantial reductions and retirements. That took place with a lot of daily looking at the numbers making sure the workload moves around. They are trying to avoid sending things out as phone hearings although in some cases that might be the case but not an exorbitant amount, the normal ones would just be transferred, that are normally phone hearings they transfer them from one office to another just so that the cases could all get out. She stated that they are also down staff in the offices, the people registering cases, so they are moving the workload, with the staff around also, that different offices will register cases for an office that doesn't have enough MSTs or the people that normally register the cases. So there has been a lot of shuffling around of things at the same time as they are continuing to move forward on the testing of the Automated Calendaring System for the field and so on to make things move more quickly. She stated that the presiding judges are on board and understand that right now is the time that they have to more carefully manage their offices and make sure that they are on top of things and that the cases are getting moved and if they need help to go through Hugh Harrison for workload movement. That has mostly been the focus for the last month since the workload reduction.

Chair Dresser added that he was remiss in not welcoming the new Chief Counsel and commented that he really enjoys working with him. Another thing, there was a compliment for Robert Silva from a field office on how he handled the layoffs, the calls and trying to keep everyone apprised of their employment opportunities. In that regard, he thanked Assistant Chief Judge Swenson for his work in making sure that DSS, Workers Comp Appeals Board and OAH had all the information

they needed to pick up CUIAB's laid off judges. Lastly, he thanked Assistant Chief Harrison because he has really done good work in helping Chief Gonzales in making sure that the workload is evenly distributed and he appreciates that very much.

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

Chief ALJ of Appellate Operations Rose added her welcome to Michael Levy and stated that they have already had a chance to work together and she thinks they will make good progress.

Chief ALJ AO Rose reported AO had a decrease in registrations at 100 fewer than the registrations average for the calendar year. AO's dispositions were up a little bit in September despite the layoffs from 1,813 to 1,925 however she has just learned since the last board meeting that they have three of their current AO judges retiring; two at the end of this month and one the end of December. She stated that with the layoffs, retirements and transfers AO's staff has been reduced to half of what it was a year ago.

Chief ALJ AO Rose reported that the Standard Paragraph Committee has been reconstituted, a mixture of AO and FO people. There has been a first meeting set. The committee will be working on some of Member Adkisson's recommendations and they'll move forward on those.

Chief ALJ AO Rose reported that she's been doing some research on the precedents and sees that under Chair Dresser they have issued the most precedents since the term 1995 to 1998.

Member Adkisson questioned the standard paragraph process and how standard paragraphs are approved. Chief ALJ AO Rose replied that her understanding is that staff writes the standard paragraphs with guidelines for the field ALJs. The board process is the precedent process, to put together precedent decisions, to carry out the board's policies. Member Adkisson stated he thinks the board should be aware of what is being approved and what isn't being approved, there needs to be oversight of that process. There should be precedents where we have recurring fact patterns, which we have many of and since we have so many we do need to increase the number of precedents only because of that.

Chair Dress responded the committee is meeting and a final level of review, consisting of the Chief ALJ, Chief Counsel and Chief of AO has been established. He thinks by December 15, they will have a number of standard paragraphs

revised, updated and he thinks Member Adkisson will be somewhat pleased with the process.

Member Adkisson commented that just by looking at these issues is a big improvement. He believes the board should at least approve the policy itself, the procedures, the authority by which the most important guidelines that govern our decisions are written.

Chair Dresser commented that he thinks this will be an improvement. We'll have a working committee, we'll have the review by the three Chief and then we'll see. It may be that they'll have to take another and maybe change the procedure and if so, he's willing to do that.

9. Chief Information Officer, Rafael Placencia Report:

Lori Kurosaka gave the report on behalf of Rafael Placencia. She updated the board on the top three priorities currently in the Information Technology Branch. First, she thanked the Dictaphone software migration team for their many works on upgrading the software version.

Secondly, Ms. Kurosaka reported that the Appeals Case Scheduling System development is rolling smoothly and they anticipate completion by early spring 2014.

Third, IT Branch completed the Information Technology Capsule Plan for submission to Agency and Department of Technology.

10. Chief Administrative Services, Robert Silva Report:

Chief Silva gave the monthly Overtime and Lump Sum Payout Report that is included in the board packets. He reported that there was no overtime work in the month of August so the figures are the same as July. As a refresher again, there was no overtime in July either but there were some accumulated CTO payouts that went toward the overtime budget in the IT department. He reported that the bottom of the page reflects the lump sum payout amounts. There were significant lump sum payouts in the amount of \$283,000 in Field Operations in the month of August which represents lump sum payouts for some administrative law judges that retired during the SROA process. There are no allocations to balance these expenditures against because until the Board adopts a budget there are no allocations.

Chief Silva stated one significant aspect of balancing the budget this year is; in

2013/14 CUIAB instituted an internal hiring freeze other than the most needed positions to having savings through attrition and they are proposing to continue that practice in the current fiscal year until such time that the agency can realize enough attrition savings to balance the personnel side of the budget.

11. Chief Counsel's Report:

Chief Counsel Levy thanked the board for their gracious comments and also the opportunity to serve in this capacity. He's looking forward to working with all of the board members, has enjoyed working with the staff and has started meeting some of the presiding ALJs.

Chief Counsel Levy reported that the statistics in the litigation report are included in the board packets and will discuss some of them with the Board in closed session in more specifics. He stated that he hopes to do in the upcoming months is to actually prepare a summary of the significant cases and get that information to the Board; both the claims that are made in Superior Court and also the decisions that come out of the Courts of Appeal at the same time.

12. Unfinished and New Business:

Chief Silva presented the CUIAB 2014/2015 Budget Proposal via PowerPoint presentation.

The CUIAB 2014/2015 Budget was adopted unanimously.

13. Closed Session:

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

Adjournment