



pretty good, with cases and production going well. One of the things that he asked when he visited each office was what judges thought about additional training efforts. Most of the ALJs thought the training this past May was very good and they welcome more training, particularly the newer judges. Overall the judges welcome more training. Right now, unless the economy worsens significantly, we are planning for additional training in May and September of 2012, and the national conference in 2013.

**5. Board Member Reports:**

Member Garcia reported that the Web Committee has been diligently working on upgrading the CUIAB website. She believes the redesign will help the general public get information in a way that is meaningful for them, with a layout and search mechanism that is more intuitive. Also, new numbers were released for the State that show unemployment has gone from 2.3 million Californians unemployed a year ago, 12.5%, to 2.1 million currently, or 11.9%. Unfortunately some of those numbers reflect people who no longer show up on the radar because they have exhausted all of the extensions and they are no longer eligible for unemployment. One existing rule she is hoping will be changed is the one that requires people to apply for job training early on in the unemployment process, and if they miss that window they miss out entirely on retraining possibilities.

**6. Public Comment:**

No public comment.

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

Chief ALJ/Executive Director Roldan announced the promotion of Angela Bullard to the Presiding Administrative Law Judge over the Federal Standards Compliance position in the Chief's office. She was the driving force behind putting together the Insight program and she will also be focused on helping the offices develop practices and strategies for coming into compliance with Federal timeliness and quality review standards.

Chief ALJ/Executive Director Roldan congratulated the Field Operations ALJs for meeting the stringent DOL quarterly review standards for the 24<sup>th</sup> straight quarter, a very significant accomplishment.

Chief ALJ/Executive Director Roldan reported that the current balance of cases is 61,349, with 51,067 cases in UI. The average case age did slip backwards a little to 34 days, but the 30-day time lapse improved to 5% for the first time in three years.

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

Special Assistant Kurosaka reported that the Department of Labor will be visiting

CUIAB next week on Wednesday.

The Imaging Feasibility Study Report is due to be completed by the end of November. Meetings with EDD program staff have revealed that EDD duplicated a number of costs from various areas and over estimated the number of appeal forms for the scanning process, which lead to higher estimate of ongoing costs. They will be reworking the numbers with EDD.

Special Assistant Kurosaka reported that all programs are in support of developing a web based appeal form to be developed in interim before they begin the Imaging Project. They all believe that this will reduce all the costs in developing the imaging and scanning process and help drastically reduce ongoing costs of scanning appeal forms. Chair Dresser asked when she thought that it would be implemented. Special Assistant Kurosaka replied that they hope to begin design, program by program, early next year. She stated that UI Branch estimates that about 50% of their claimants now use web based filing and web based online certification each week and DI Branch is estimating that 65% of their claimants will be using their web based application and continued claim filing. Chair Dresser asked if they anticipate those percentages to increase over time, to which Special Assistant Kurosaka responded in the affirmative, noting that UI Branch is conducting a major outreach with their online certification program.

Special Assistant Kurosaka reported the Electronic Appeals Decisions Project was successfully extended to tax decisions last month. However, implementation for DI and PFL has been delayed somewhat because other info-image projects at EDD have taken priority. They anticipate implementation sometime in December. Savings in this project last fiscal year with just the UI implementation was 1.5 million sheets of paper and \$150,000 in postage.

The CUIAB website refresh, with Mandy Garcia and the IT team of Jeff Stiliz and Janet Upton, is progressing well, and they hope to get it into review with all the board members and executive staff by the end of November or early December.

Special Assistant Kurosaka reported that their staff is also working on establishing monthly reporting from EDD Tax Branch on tax petition liabilities. We are hoping to get the first monthly reports very shortly so that we can track the tax petition liability outcomes from the tax appeals.

**9. Chief ALJ of Appellate Operations, Jorge Carrillo:**

Chief ALJ AO Carrillo reported that in October Appellate Operations received 3,298 new board appeals, 6% above their monthly average for the calendar year. In the preceding month they closed about 4,100 cases, and this month they closed 3,804 cases, combining to lower AO's inventory by 1,600 cases. AO's open balance of cases is now down to 5,000 and they have about 700 cases that are pending registration so their true backlog as of the end of the month was about 5,800 cases. What that has allowed them to do is to meet the case aging

standards for the first time since March. AO has benefited greatly by the loaning of four judges from the field offices. If they can keep this on track, when DOL measures our performance in March, we will be able to avoid a corrective action plan.

Chief ALJ AO Carrillo reported with regard to the timeliness standards that they closed 12% of their cases within 45 days of the appeal date, 73% within 75 days, and 99% within 150 days. The appeal rate continues to be high at 7.5%.

**10. Chief Information Officer, Rafael Placencia Report:**

CIO Placencia reported that the AO Paperless Project is an interim solution as we move towards a paperless environment with EDD. This project is on task for full implementation starting January 2012. The system is being developed by in-house staff using commercially available off-the-shelf software and hardware. They are currently in live testing, processing approximately 5 AO cases through the system per day. An example of an improvement gain with the new process is the downloading of electronic case files to the ALJs. ALJs are no longer required to lug physical case files as part of their processing of the second level appeals.

An added bonus of the AO Paperless Project is that they are going to be able to use the same hardware and software to leverage that system for the 406b Project. That project will also be completely 100% paperless.

Lastly, CIO Placencia reported that they are in the acceptance phase of the VOIP project. They have had some issues with some of the locations, but they have dealt with them and the system is 100% online today.

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

Deputy Director Pam Boston reported that we are within the allocation for overtime usage, as reflected in the report in the board member packets.

The administrative consolidation is on schedule, with the first moves to start this month, and to be completed in January 2012. We are working with employees to determine their workstation needs and to continue any reasonable accommodations. All but one of the liaison positions have been filled. Rob Silva has been chosen to manage the Liaison Unit. We are working on a service level agreement with EDD to ensure continued good support for our judges and support staff.

As mentioned by the Chair, CUIAB has received approval to fill 30 of the 60 requested support staff positions, with the other 30 requests deferred for further consideration in January 2012. Also approved were 3 IT positions and 11.5 ALJ positions.

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

Chief Counsel Ralph Hilton reported that we are currently carrying 293 court cases, with five new cases and four cases closed last month. There were two reversals, one on the facts, the other on a procedural issue which has been referred to our trainers.

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

Budget Item: Robert Silva presented the 2011/2012 quarterly budget report via PowerPoint presentation (See attachment). Chair Dresser asked if the possible approval by Labor Agency of additional freeze exemptions had been factored into this budget. Mr. Silva responded that it was not, and that such additional exemptions would add roughly about \$170,000 per month to the budget.

Precedential Decision item: Chief ALJ AO Carrillo presented the proposed precedent designation for AO-238561. Chief Carrillo stated that the proposed precedent addresses two important legal and/or policy determinations. One, what are the factors that a judge must address when considering an application to reopen when the party's nonappearance at a hearing was due to the unavailability of an important witness. Second, whether a party can be found to lack good cause for its nonappearance when it chooses not to submit a written statement for an important witness who is unable to appear by telephone or in person. The proposed precedent decision explains that appearing by written statement is an option that a party can exercise if it chooses to do so but a party cannot be forced or pressured into choosing it as an option or be penalized for exercising a different option that preserves its right to request another hearing in order to present the sworn testimony of its important witness. The proposed precedent decision also gives guidance in future cases on the appropriate legal standard regarding the use of written statements. These two principles are significant because they are important in preserving the inherent fairness necessary to this successful operation of this agency's hearings and reopening procedures. The issues in this proposed precedent are likely to recur in future cases. In the calendar year 2010, the rate of nonappearances by a party in our hearings was approximately 22 or 23 percent. Based on the total number of decisions issued last year in 2010, there were approximately 100,000 cases involving a nonappearance by a party. During this same time period there were approximately 21,000 cases involving applications to reopen. For these reasons, Appellate Operations recommends that the board adopt this decision as a precedent.

Member Garcia questioned, so when you ask for an appeal, you typically get scheduled in person. There are circumstances when that appearance might be by phone or you may request by phone. If that doesn't fit the criteria that you need, then you can submit a written statement. She commented that if she understands it correctly there is a difference between what type of written document you submit. One that is sworn subject to perjury and one that is an unsworn statement. So in

essence we have four different ways that you can appear; in person, by phone, by written statement and a sworn declaration.

Chief ALJ AO Carrillo responded that generally a declaration that is sworn is treated as hearsay even if it is under penalty of perjury, but it is up to the judge to decide what weight to give, and some judges will give a little more weight to something that is under penalty of perjury, but it is still regarded as hearsay.

Member Hollingsworth stated that in addition parties are basically told, without being pressured, we are not going to reschedule, we are not going to provide you with a different hearing date, and you need to put this in a written statement. But a lot of parties feel like they are not necessarily being told that it is going to have less weight and by introducing that written statement you are in effect appearing and not likely to get a reopening.

Member Garcia added that, in essence, if you do what Member Hollingsworth just said, then you voiding your opportunity for a second hearing through a reopening.

Chief ALJ/Executive Director Roldan commented that a lot of what drives the Field is that they have very strict federal timeliness issues and sometimes those federal timeliness issues are in direct conflict with the due process rights of the public at large. If the Field makes a decision to grant a continuance, the federal government doesn't forgive us and say "because you had a continuance in furtherance of due process, we are going to give you a buy on that." The clock continues to run and if the case is continued two or three weeks to facilitate the party at the Field level, they are going to have those two to three weeks on their books. In a situation where the denial of a continuance is granted but they are very open about the reopening, the clock stops once the case is dismissed because of a nonappearance and then when a reopening is granted the clock starts running again. So really the Field Operations Unit is painted into a very difficult corner because of the federal timeliness standards.

Chief ALJ AO Carrillo stated: one, this precedent will be something we can use in training to point out to the staff and to the judges that when a party asks for a continuance, they shouldn't be pressured into making unclear choices. They should be referred to the Notice of Hearing pamphlet which lays out the pros and cons and allows the party to be informed and to choose. People should know the advantages and disadvantages of each option.

Chief ALJ AO Carrillo stated that is the second part of the case which he thinks is important, that a lot of times the judges don't really think about it and they don't ask all the questions they should be asking. This decision lays out the factors and hopefully it will be part of the training that judges can use to say, okay, I've got a reopening issue and it is because of a witness, what questions do I need to ask, resulting in a better record and a better basis for making the proper decision.

Member Garcia commented that she sees the need for it, but she also sees it as a slippery slope and thinks they need to make sure that they make it really tight, similar to Assemblyman Coto's legislation that required us to provide an opportunity for a phone hearing. We adopted regulations that are very clear on the factors the judges need to consider and that the parties need to provide. We have to meet a federal timeline and if they couldn't really articulate why they need to move to a phone hearing or reschedule their hearing, we have to stick to our calendar.

Upon the Chair's call for a vote, the board unanimously voted to designate AO-254427 as a precedent decision.

Board takeover item, Case No. 3850549: Chief Counsel Hilton stated that under Unemployment Insurance Code § 413 the board can take over a case within 30 days of the ALJ decision if it wants to review that decision and perhaps decide the case itself. In this particular instance the ALJ who decided this case is the one who made the request because he felt that he had misapplied the law. Staff agrees that there are some issues that need to further examination in this case, and therefore we recommend a takeover. This doesn't necessarily mean that the board is going to reverse the field decision, simply that there has been a threshold determination that the case should be reexamined to ensure that the law has been correctly applied. This is a case of wage allocation and to some extent the characterization of the proceeds of a class action settlement that were received by this particular claimant. If the Board agrees, Appellate Operations will review the record as in any other case and come back to the board with a recommended decision.

Chair Dresser called for a vote, on which the board unanimously voted to take over Case No. 3850549.

**14. Closed Session:**

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

**Adjournment**