

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5572**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., December 10, 2013, in Sacramento with Chair Robert Dresser presiding.

2. Roll Call: Members

Present

Absent

Robert Dresser, Chair

x

Roy Ashburn

x

Michael Allen

x

3. Approval of the Minutes:

The November 12, 2013 minutes were approved unanimously.

4. Chair's Report:

Chair Dresser reported that he hopes that CUIAB should have another member in early January. He thanked his two colleagues for deciding all of the cases that they do and for working so diligently while they are still not at full board membership.

Chair Dresser reported as to the budget savings targeted for this year that the Chief ALJ and the Chief Counsel have been diligently working to assure that CUIAB meets the goals. CUIAB has been quite frugal and he appreciates the patience and the staff in that regard. For example, we have not been using retired annuitants very much and have reduced overtime; we've restricted the travel, we've taken a lot of steps to save money in line with our budget situation.

Chair Dresser reported that he and senior staff will be meeting with the Employment Development Department regarding their budget projections because we rely on those in great part.

Chair Dresser reported that he thinks that we are still in full compliance with all of the Department of Labor standards. We are officially out of Corrective Action. He

added that he did attend in Los Angeles the holiday luncheon to express his thanks to the staff there for their part in getting CUIAB out of Corrective Action and morale was good.

5. Board Member Reports:

Member Allen commented that he is glad that caseloads are going down from the standpoint that although it has implications for us, more importantly it means more Californians are being employed which is a good thing. He's pleased that the board will be getting additional board members soon.

Chair Dresser commented that perhaps the Chief Counsel will discuss this in more detail but our loan of 10 judges to the Department of Social Services is in place since last month and will be going through the end of June. That helps us with our current budget year.

Member Allen stated that the attention to detail and caring about the cases we handle is very much appreciated by him because he sees that as a very healthy sign. When people put that much energy in trying to get things right, he just wants to thank everybody, whether it be his colleagues, all of the judges and staff members for trying to do it right.

6. Public Comment:

No public comment.

7. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Gonzales reported that the most notable information for this month is that the total caseload is below 30,000 cases, the first time it has been that low since June 2006. The UI cases are also at the lowest levels in over seven years. The open inventory of UI cases is 21,288 cases.

Chief ALJ/Executive Director Gonzales reported that we have made all federal timeliness standards. This was the 10th month that we made 30-day time lapse and 20th month of the 45-day time lapse federal standards.

Chief ALJ/Executive Director Gonzales reported that another important thing this month has been the implementation of the budget/caseload related plan to bring the work at home typists in to the offices. Since the caseload was dropping and they had less and less work at home to type, we called them into the office to do

office work and to help out where we've had an inability to fill behind staff in office because of budget restrictions. Another impact of the case load and budget crisis is to the calendaring of hearings. We are establishing an optimal calendaring approach which will assure that in order to fully utilize our facilities the judges will have workdays evenly spread over Monday through Friday, rather than with a disproportionate number of judges with regular days off on Mondays and Fridays (on a 4/10/40 schedule). Some will have a Tuesday, Wednesday or Thursday off so we can maximize the hearing room space in the event we need to close some outstations or give up parts of a lease so that we can be able to save money that way. This also enables us to fully utilize our judges, reducing the demand to use retired annuitants. Another avenue we are taking is the Excessive Leave Balance Reduction Plan. We required each office to submit a plan for each employee with over 640 hours of leave to show how they were going to reduce their leave to 640 in the next six to eight months.

Chair Dresser commented that he assumes that there has been some progress on that. That people are taking and burning off some of the leave.

Chief ALJ/Executive Director Gonzales responded yes, that there has been progress and of course it does impact us. Where they are taking the time off and at the same time we are not filling behind positions and at the same time were doing other things.

8. Project Manager, Lori Kurosaka Report:

Project Manager Kurosaka reported that we fulfilled the request from the Assembly Insurance Committee for data on CUIAB's UI appeal decisions outcome. That was completed in the last week.

Project Manager Kurosaka reported that for the month of December they will be completing FISMA audit of CUIAB administrative functions that are retained here at CUIAB. It's a biannual risk assessment of the administrative functions that must be completed by each agency.

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

Chief ALJ AO Rose reported they have seen a big drop in AO in the number of registrations. At 1,612 their registrations were the lowest they've been since before 2010. Their calendar average is 2,472 so they are significantly below that. They issued 1,660 which is a 200 case decrease from last month. They did have several ALJs working on a number of different projects so they were off calendar. They

had them working on four precedent decisions; training materials; training the new ALJ, Angela Bullard; and reviewing her decisions. Then there were the holidays and meetings so they were very low on output this month but they should be in better shape next month. They are having the retired annuitants come back and help them catch up. The balance of open cases is holding steady at 2,562 cases. Case aging they were at 35 days at the end of November but have brought that down to 33 days after the first week in December. So as of November they did meet all of their time lapse goals; the 45-day they were at 52%; the 75-day time lapse they were at 93%; and for the 150-day they were at 99%. They are receiving their cases from the field offices about 1.2 days after they receive the appeals. The appeal rate from FO to AO is very low right now. It was 5.4 percent in November. The average is 6.6 percent and so that is the lowest it's been all year.

Chief ALJ AO reported on a personnel note that Luis Rodriguez, who is the manager in AO, has announced he is leaving to take another job at the Lottery Commission. They are sorry to see him go. He was a very effective manager in helping AO get through the whole Filebound crisis. Chair Dresser added that he thought Luis did a great job and he's sorry to see him go but he understands we did not have the ability to give him a promotional opportunity and he regrets that.

Chief ALJ AO reported that they had an ALJ meeting on December 4. They had nine of their ALJs presenting three different training sessions on various issues that come before the board.

Chief ALJ AO reported that the pilot initiated with the Union that has the ALJs listening to all hearings instead of reading transcripts has been extended by mutual agreement through the end of June 2014.

10. Chief Information Officer, Rafael Placencia Report:

CIO Placencia reported that he is pleased to announce that the Ca.Mail Project is nearing completion. The group scheduled for migration last month went over rather smoothly and was on schedule. The final group is scheduled for migration next week, December 16 and 17. He stated it was good to see that project closing out.

CIO Placencia reported on the Windows 7 Project. They are tasked with replacing all of our XP workstations in the department with the new operating system. The main driver for that project is the end of support for XP which is happening approximately the beginning April of next year. The project is basically one field office per week, targeting a completion of early April.

Member Allen asked that with Ca Mail, where it is divided between the our old email system and the new system, is that still going on. CIO Placencia replied that we are still in a mixed mode that will be ending shortly.

11. Chief Administrative Services, Robert Silva Report:

Chief Silva reported on the Monthly Overtime Report which shows CUIAB's continuing effort to reduce overtime in the current fiscal year. The middle of the page shows the projected budget surplus of over \$220,000 which is over 50% of the initial allocation for the fiscal year. The only branch using overtime anywhere near their initial allocation is IT which at \$28,000 -- through 1/3 of fiscal year IT has spent 29% of their allocation. The bottom of the page is our year to date lump sum payouts for retirements. With 1/3 of the fiscal year past we are showing a very large budget surplus in this category but as we enter 2014 typically at the turn of a calendar year folks will start to retire so we may see this budget surplus actually be reduced. The only branches currently in the red in these categories are Admin and IT.

Chief Silva reported that Admin's Bilingual Team, with the help of Tim McArdle, in November completed the bi-annual Interpreter training that they do. Training was performed in every CUIAB office and there was a large turnout at each stop. They also filmed a session for future training for other interpreters and they won't typically schedule it again for another two years. Also in November, CUIAB bilingual employees completed their Bi-annual Audit of their services; how we do every May and November, just to insure that they are continuing to utilize their bilingual skills to the 10% threshold. They are currently collecting the data from that audit. Also in November, our three year contract with Lando and Associates, which is our vendor for telephonic interpreters for our hearings, expired. A new vendor, Global Interpreting Network, has been awarded the new contract and we will go live with them in January 2014 and will continue to use Lando temporarily up until January 2014.

Chief Silva reported on a completion of procurement training. After Admin Services was consolidated there were a lot of changes in the way that offices are responsible for procuring supplies and equipment. Victor Saldana, our Procurement Liaison, has a tremendous amount of information that is on our Bench but offices began requesting in-person training. With his visit to Orange County last week they have now covered every office within the agency for in-person procurement training for all of their managers and procurement employees.

Chief Silva reported on a couple of facility updates. Red Bluff, they are continuing as planned; it's on pace to close Chico and open Red Bluff in March 2014. The other facility is Concord. They just signed a new lease in Concord and it will save us about \$21,000 annually with the reduced lease cost for the new lease.

12. Chief Counsel's Report:

Chief Counsel Steinhardt reported that one new writ case was opened and four closed during the last month.

Chief Counsel Steinhardt reported that on the DSS loan program, ten judges have completed the three-week training program to handle appeals hearings under the Affordable Care Act; determinations made by Covered California. They expect the number of cases to start small and grow steadily

Member Allen asked what would be the typical kind of controversies that they would be ruling on, such as whether the individuals are entitled to a subsidy?

Chief Counsel Steinhardt replied that entitlement to subsidy, and at what level, would be common questions, as would be entitlement to coverage in the first place.

13. Unfinished and New Business:

Chair Dresser opened the floor for consideration of AO-317936, Jordan, for designation as a precedent. Member Allen moved to adopt the precedent. Chair Dresser and Member Allen voted for the precedent and Member Ashburn opposed. The decision is adopted as a precedent.

Chair Dresser reported that the next matter on the agenda is not ready for consideration as a precedent, AO-314175. He stated that an errata has gone out in that case. That matter will be brought before the board in January.

Chair Dresser opened the floor for consideration of AO-337099, Brady, for designation as a precedent. He commented that he wanted to thank Attorney John Yeh, representative for the San Francisco Unified School District for his position paper dated December 9, 2013, that was received and reviewed by the board members. He appreciates Mr Yeh taking time to share with the board his views. With respect to his position paper he just wanted to make a couple of brief comments. First, the Brady case comes from a different area of California,

Southern California, and it's not part of the litigation currently pending in the San Francisco Superior Court involving Calandrelli and 20 other claimants. He added that the board, since February, has had a number of cases raising this issue and guidance is in his view urgent.. He realized that the position paper from the District indicates that he said at the February 2013 meeting that the board might wish to defer to see the results of litigation, but he has reconsidered his position since there are a number of pending cases and in his view, the board needs to act with a precedent decision giving guidance to the department and our judges, as well as the parties, as to what the board's position is.. After careful deliberation, in his opinion, he thinks Brady better reflects the congressional legislative history indicating that the prohibition of giving a summer vacation payment really applies to those permanent fulltime teachers who are paid either on a nine or 12 month basis presumably for 12 months worth of work. Substitutes in his view are on a much different position and have to be addressed in that context especially if there is a summer term as there is in Brady. The fact of unemployment by a substitute teacher when they indicate an interest and are not called, in his opinion, is a key factor giving rise to eligibility for benefits. He just wanted to clarify for the record that the Brady decision should it be adopted as a precedent does not minimize the reasonable assurance requirements of the Unemployment Insurance Code. In fact, in Brady itself, the claimant is held ineligible during the summer except for the duration of the summer term. Neither in the Long Beach case nor in Russ was the same factual situation before the board in terms of a substitute teacher who had some connection with wanting to teach in summer school where there was a summer school term. So he would think they were distinguishable in that situation. Before he asks for a motion he would like to turn to his colleagues and here their thoughts.

Member Ashburn commented that he has three concerns. The first is the one that the Chair just addressed and that has to do with the adoption of a precedent while litigation is pending and we can look back to February to the Calandrelli where the board was explicit in making a decision that it would be unwise to adopt a precedent while litigation was pending. That was an explicit expression of the board. Here just a few months later, not only is it proposed to have a precedent adopted during the consideration by the courts, that consideration is scheduled for Friday of this week. In order to reach this point, the precedent adoption procedure internal to our agency has not been followed. We have a precedent committee. The committee has followed its procedures for the consideration of adoption of precedents in prior matters. In this case the precedent committee did not have the opportunity to go through the normal process for the consideration of the adoption of a precedent. He thinks that is extremely unwise. With respect to the subject matter,, in granting benefits to a substitute teacher where there is a summer recess

and there just happens to be summer session held, this is a grant of benefits that has never existed prior. It is far beyond what the law envisions. Just because a person happens to be a substitute teacher during the regular term and the school district happens to hold summer session, somehow and they are not called to teach that person is somehow eligible for benefits is a position that he does not support. For those three reasons, he disagrees with the proposal that is before them.

Member Allen stated that he will be making the motion for the adoption of the precedent and the reason he's doing that is because he feels that the judges need guidance in this matter. He thinks that this matter has been well considered. He also read the letter that came in late yesterday regarding the concerns of the school district. He thinks that it is very clear that there was never an intent to give teachers subsidies for vacations but there was intent by Congress to compensate for lost work and he thinks that is what this case provides for. He does feel that they are giving some guidance and some certainty in this area so that is why he is moving for approval and adoption of this as a precedent.

Chair Dresser seconded the motion. He noted that even if there were a decision by the Superior Court in the near future chances are it is going to be appealed to the Court of Appeal and possibly to the Supreme Court and therefore a decision might be a year or two in the future. So there's no telling when there will be some finality and he as one board member thinks that the board has an obligation to give some guidance earlier instead of later. That's just his own opinion though he appreciates the comments of his two colleagues.

The vote was called. Member Ashburn opposed; Chair Dresser and Member Allen voted yes. The precedent was adopted two to one.

14. Closed Session:

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

Adjournment