

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5603**

**Open Session**

The Appeals Board convened at 11:00 a.m., February 24, 2016, in Sacramento with Chair Robert Dresser presiding.

<b>1. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Robert Dresser, Chair	x	
Michael Allen, Vice Chair	x	
Ellen Corbett	x	

**2. Approval of the Minutes:**

The minutes of January 22, 2016, were approved unanimously.

**3. Chair's Report:**

Chair Dresser reported that the court refused to grant CASE's request for a TRO in their challenge to the layoff which became effective February 2. He stated his understanding that just 7 judges were effectively laid off, as the others either obtained other work or retired.

Chair Dresser reported that he is working with CALJ/Executive Director Gonzales and CALJ Rose to develop a training program for judges and support staff, and they hope to implement it in the spring or summer.

Chair Dresser reported that they are continuously working on ways to help the budget. For example during the current fiscal year they have been tracking time spent by judges and support staff, both in the field and in Appellate Operations, on tax cases so they can justify additional funding in the General Fund and other non-UI sources for 2016/17 fiscal year.

Chair Dresser reported that the bill to extend the time limits to file DI appeals is being processed right now and should it be passed will be effective July 1, 2017. The reason for the delay is to give EDD time to prepare its computer system for necessary reprogramming.

**4. Board Member Reports:**

Vice Chair Allen stated that he is very pleased that he was reappointed by the Speaker of the Assembly and now has the opportunity to serve for two more years.

Member Corbett and Chair Dresser congratulated Vice Chair Allen on his reappointment.

**5. Public Comment:**

Chair Dresser called for any public comment. There was no public comment.

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

Chief ALJ/Executive Director Gonzales reported that the layoff date was February 2. They have been meeting in the field trying to see where they may need to move work around because now some offices are more impacted than others. A number of cases are regularly heard by phone, such as interstate cases, so they can be transferred from one office to another with less impact. Assistant Chief Harrison, the regional managers and she have been working to try to shift work around the state so it is fairly allocated. Intake continues to be low, so judges are again being encouraged to use their excess leave. They've made significant progress in reducing the excess leave balance of all staff so that when people retire there is not a huge amount of money that has to be paid out.

Chief ALJ/Executive Director Gonzales reported that Julie Krebs, the presiding judge of the Sacramento Office of Appeals, is retiring in August. However, her last day in the office will be February 29, as she is taking the leave rather than a lump sum payout. The office will be handled in the interim by Acting Presiding Judge Dan Garcia, upon PALJ Krebs' strong recommendation.

Chief ALJ/Executive Director Gonzales reported that there will be a presiding judge meeting on April 5. All the PALJs will get together and talk about moving forward with proactive approaches to issues that are arising in the offices as well as getting ideas for in-house training. They are looking for ways to do training that is less expensive than in the past, and yet cover areas that Board Members as well as the PJs have noted as needing attention.

Chief ALJ/Executive Director Gonzales reinforced that they are working on getting more of the tax cases heard, and improving the funding level for those cases. They are currently in the process of tracking the exact amount of time that is spent on

the tax cases in the field so that they can ensure proper funding from the General Fund.

Chief ALJ/Executive Director Gonzales reported that March 31 is the date that case aging is measured. On that day, which happens to be Cesar Chavez Day, a holiday, there is a snapshot of the average case age of the cases that day. The push for the month of March is to get all of the old cases out so the average case age is below the threshold. They will authorize overtime if people are willing to work on March 31 in order to mail out what is needed to make sure the number is met.

Member Corbett asked that in regards to training, if they had any opportunity to take advantage of continuing education courses or other materials. She commented that there may be some training opportunities out there that already exist, online courses.

Chief ALJ/Executive Director Gonzales commented that this is a good suggestion, and they will certainly take a look at those options.

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

Chief ALJ Rose reported that in AO the numbers have not changed much from last month. AO is making all of its time lapse and case aging requirements. Appeal rate is down a little bit to 5.4%. Case load is low as it is in the field but they currently have enough cases to assign all the judges a full caseload.

Chief ALJ Rose reported that they had an Appellate Operations training/meeting yesterday. People had an opportunity to debate some really interesting issues. They had two substantive presentations. She suggests using some of the training that they have done for AO in some of the substantive areas and making that available to the field.

Chief ALJ Rose reported that the Precedent Decision Committee meets next week.

Vice Chair Allen suggested the judges in the field have a checklist when building the record. He thinks it is a quality assurance issue and standardization for what they expect from the field.

#### **8. Chief Information Officer, Nick Dressler Report:**

CIO Dressler reported that IT implemented a new HelpDesk phone system on February 15. The system allows more flexibility with their reduction in staffing to

better serve CUIAB staff when they need assistance; it allows them to route calls more efficiently when people are on vacation or sick leave; it allows for better coverage with fewer people. He asked the board to please let him know if anyone has any issues since it is a new system there may be a few bugs but so far everything looks good.

CIO Dressler reported that IT also implemented a new password expiration system. Instead of having the little screen that pops up in the lower right hand corner of the computer saying your password expires in so many days, which not everyone sees all the time, IT will now actually send out two reminders letting you know your password expires, one 10 days prior and then one 3 days prior. This is a great benefit to the user because then they can actually get their password changes and not have to go through the HelpDesk which takes a little bit of time.

CIO Dressler reported that on the February 1, IT gained a new addition, Matt Hunter. He comes from the Employment Training Panel. Matt will be working in the server group and comes at a very opportune time because one of his peers, Ryan Howland, will be off for two months on paternity leave.

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

Chief Silva reported on the monthly Overtime Report, noting that the IT Branch continues to be the only branch with significant overtime usage here at CUIAB. Through November IT was averaging about 67 overtime hours per month when factoring in both overtime for pay and overtime for compensatory time off. In December 2015, IT only used 45 hours, so there is a downward trend there. CUIAB's lump sum allocation was expectantly pummeled in December. During the SROA process a handful of ALJs announced December retirements, which was expected, and some of those ALJs were carrying high leave balances. The end result was \$317,000 paid out in lump sum payments in December 2015. This places CUIAB in a position now of projecting to have a lump sum shortfall of just under \$126,000. But barring anything unforeseen they don't expect another lump sum expenditure month like that this fiscal year, so this projected shortfall should decrease as CUIAB moves through the fiscal year.

Although Chief Silva just reported on a heavy lump sum payout month, CUIAB's excess leave reduction plan that has now been in place for about 28 months has been very successful. During that 28 month period the number of leave hours in excess of 640 for the entire agency has fallen from 40,500 hours to 8,800 hours, so in that time frame there's been 78% reduction.

Chief Silva reported that on February 4, the Budget Call Letters were released for

state fiscal year 2016/17 to begin planning next year. All CUIAB branches will have about a month to submit both personnel requests and requests for operating expenses, equipment, furniture, etc. The Call Letters are due March 4. After receipt of the submittals the Budget Advisory Committee will vet the requests for possible inclusion in next year's budget.

## **Action Items**

### **10. Board to Consider Annual Telecommute Report:**

Chief ALJ Rose reported that Policy 17, the Telecommute Policy, requires once a year that she report on the status of the telecommute system in AO.

Chief ALJ Rose stated that all 11 AO ALJs are currently participating in the CUIAB Telework Program for Appellate Operations. There are requirements for the ALJs to participate in that program. The first requirement is the ALJs are required to have two set days in the office. The ALJs are required to be accessible during core hours. They have to let Chief Rose know if they are going to be unavailable by phone or email during these hours. They may be required to come into the office to perform professional duties when necessary even notwithstanding it may not be their regular telecommute day. Each ALJ must have backup in the office. Each ALJ must use available technology when they are teleworking and they are all required to attend mandatory AO ALJ meetings, trainings, and committee meetings even if those activities fall on their regular telecommute day. According to Policy 17, AO ALJs can telecommute up to 20 hours per week, however temporary and informal agreements to allow an employee to telework over 20 hours in a particular week have been allowed based on special circumstances. Failure to complete assignments on time or to comply with the Telecommuting Policy can result in cancellation of the privilege.

Chief ALJ Rose reported that they have had some changes in recent years. For one, the implementation of FileBound in 2012, and the Policy was revised in 2011. So the current policy doesn't reflect some of the technological changes that have occurred. The continuous improvements and new technology has maximized the efficiency of telecommuting. Development and implementation of eFile communication tool, discussion page notwithstanding its current problems, for ALJs and board members allows everyone working on a case to see all communications related to that case. Ongoing training of ALJs to utilize new technology to improve efficiencies in working remotely has been provided on a quarterly basis during the ALJ meetings. The benefits of using the FileBound digital case processing system are several. The ALJs no longer need to take the files outside the office. All the files are available to staff, ALJs and board members at

the same time and they can be accessed from anywhere via a secure internet connection. Digital files eliminate concerns over the files being lost or inaccessible when an ALJ is out of the office. Technology has improved the security of the confidential information that is in the files in allowing them to be accessed online. All AO ALJs are technically capable of preparing and moving cases to typing and the board while they are teleworking. All 11 of AO ALJs use eDec to upload their decisions to the typists and all of them use FileBound digital files for almost all the cases now.

Chief ALJ Rose stated that the benefits of the Telecommute Program to the ALJs, management and board members are that it improves productivities and efficiencies. There are fewer distractions. They are doing work instead of commuting and it's less stressful to be able to work at home and not commute in. It improves attendance. Instead of taking days off for medical appointments and pressing errands the ALJs can work around them and in times of high level of ALJ staffing they save resources by allowing the ALJs to share offices which they have done in the past. It increases employee morale. It's been shown to have higher job satisfaction and flexibility. It improves retention of experienced AO ALJs, assists in the recruitment of new ALJs, and saves wear and tear on cars, gasoline costs, etc. They have less commuting in AO which benefits the ALJs and the environment. Currently AO has two ALJs that live within 11 to 22 mile radius of the office; 5 ALJs who live within a 38 to 68 mile radius; and 4 ALJs that live over 120 mile radius from the office. Teleworking ALJs save between 82,000 to 95,000 miles of driving annually. They also save on car maintenance, improve traffic congestion, lower air pollution and related health issues, and increase safety. By teleworking AO ALJs save between 650 and 1800 hours commuting time annually.

There are some downsides to telecommuting. It creates isolation. The use of emails can eliminate visual cues that are sometimes necessary for good communications. People get frustrated phoning each other when they have to leave messages, etc., so that can be frustrating. Slower network connections right now when FileBound is accessed from home, even when using Wi-Fi it's slower than accessing at the office. Creates merging of personal and work lives and sometimes makes it difficult for the ALJs to know if they have really put in a full day because they are working and taking time for something else. They are supposed to be devoting 10 hours a day to working when they are on a 4/10/40 schedule. It makes it more difficult for Chief Rose in terms of setting last minute meetings. She does try to give them as much notice as she can and they are all very good about coming in. There is less interaction between support staff and ALJs, and between ALJs amongst themselves; and with managing onsite board members. There are some distractions at home that are not present in the office. Some people are better at ignoring these than others. But over the years that she has worked in AO

she has concluded that the policy that limits telecommuting to 50% of an ALJ's work hours, which is two days a week, provides an ideal balance between these benefits and other issues. Requiring the ALJs to be in the office a couple days a week maintains the opportunity for them to collaborate, to do onsite brain storming and come up with innovative ideas. It allows them to resolve issues with support staff regarding case processing or typing issues with the face to face contact. It maintains the balance of human interaction. It allows her to meet with the ALJs in person; she knows what days they are in the office. If there is an issue or she needs to provide oversight or direction she'd rather do that face to face so that is another benefit of them being in the office a couple times a week. She has options when she can meet with them. Preserve the opportunity for onsite board members to meet or consult with board authors face to face. It facilitates the planning of AO office wide and ALJ meetings and training. Being in the office a couple days a week does foster good relationships between support staff and the ALJs as well as with each other, management and board members. It also promotes uniformity in approach which is one of the benefits of AO, to be able to come to unified resolution on some of these issues so they don't have one ALJ putting out something that conflicts with something else someone else might have sent out. So being in the office they can work out any differences with each other and it makes it easier to discuss things with more than one ALJ at a time if they are coming into the office a couple days a week. That is basically what is going on now with the telecommuting policy.

Having reviewed the policy recently she noticed that it hasn't been amended since 2011, before the implementation of FileBound. Chief AO Rose recommends at this point that the board take a vote to direct staff to update this Telecommute Policy so that they can conform to the new technologies that are being used now and so they can clarify some of the existing provisions and add some of the additional information that she has included in this report that is not currently in the policy.

Chair Dresser asked Chief Rose to work with Chief Gonzales and Mr. Hilton to take a look at the items she just numerated that might deserve amendment. Chief Rose commented that she does believe that the policy also provides for involvement of the union at some point before implementing changes to the policy. Chair Dresser agreed and stated that if there are some changes that she recommends to the board, the board can talk to the union at some point after all of the members have had a chance for input.

ALJ Wendy Breckon, speaking for herself, added that one of the benefits for the board members is that if she is telecommuting at home and she knows that she has all these cases that she has to go through that she will take Sundays routinely and work. If she did not have the telecommute program she definitely would not be

doing that. So she is working probably more than she should be and she is not the only one.

ALJ Peri De Marco commented that she is a big fan of telecommuting because she has done that for almost 30 years in her career. She was fortunate enough to start way back when there was dial-up. She thinks as the technology progresses the concern to be physically present in a location is not really necessary. They have webcams, they have webinars, and they can easily caucus with technology. She personally thinks it is a waste of time and money to come in completely because of the technology that is available today.

Chair Dresser noted their comments and stated that when he was a board author for almost ten years it was really helpful to him to come in and bounce ideas off his colleagues, most of whom were there in the office. He thought, in terms of the unified approach to the law, you can kind of see if you're off base and try resolving things to the extent they can. He thinks it is very helpful. He's not saying all 40 hours but he is not encouraging any change in the 20 hours right now. He knows there are a lot of benefits as Chief Rose numerated. His own personal preference is that he thinks it is a good mix the way it is right now.

Member Allen commented that he has some 45 years of management experience in various nonprofits and public work. It just seems to him that a good manager, and he thinks we do have good managers, can know when to call people together, when it is absolutely necessary, when people do need the face-to-face contact. He does agree with what is being said that it has evolved a lot and the technology keeps on getting better and better. To him, he doesn't like the sort of thing where you have rigid rules that say it's got to be x percent of whatever but that when the managers think that it's time to for everyone to get together because they need to talk face to face regarding something that that is a good way to do it. He knows that sometimes there is just no substitute for people being in the same room and going over something together.

**11. Board to Consider Decision AO-37922, Washington, for designation as precedent:**

Chair Dresser commented that he thinks the decision was a very good effort and he knows it went through some additions; the board author did a very good job on it. There being no further discussion, the board voted unanimously to adopt AO-37922 as a precedent decision.

Chief Rose stated that they sent out a notice to the parties and EDD soliciting comments on the precedent. No comments were received.

**12. Request by ALJ Renee Lias for exception to Board Policy No. 17, Telecommute Policy:**

Mr. Hilton noted that ALJ Lias has submitted a written statement in support of her request for the exception. Chief Rose commented that ALJ Lias is a top notch ALJ, always timely with her well written and analyzed decisions. She is responsible, dependable, both in terms of her own work and when serving as a backup to other ALJs. That said, Chief Rose indicated that at times AO ALJs are required to train and mentor, attend office meetings, and participate on committees. As such, Chief Rose recommended against granting a long term permanent exception.

After discussion of the telecommute policy and the basis for exceptions the board voted unanimously to deny the request pending further review.

Request for Exception - Exempt from Disclosure: Government Code sections 6254(c) and 11125.1(a)

**Closed Session:**

The Board adjourned to closed session.

The Board reconvened in open session at approximately 12:30 p.m. and reported that it voted unanimously to appoint Howard Schwartz as Chief Counsel.