

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5604**

Open Session

The Appeals Board convened at 11:00 a.m., March 18, 2016, in Sacramento with Chair Robert Dresser presiding.

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

2. Approval of the Minutes:

The minutes of February 24, 2016, as corrected, were approved unanimously.

3. Chair's Report:

Chair Dresser reported the unemployment insurance rate is down to 5.5 percent in California. When he was appointed as Chair about five years ago it was around 12.4 percent. Although the workload is still dropping, we must still be prepared for an eventual uptick, and toward that end we will be bringing back some retired annuitants, as a start.

Chair Dresser reported that March 31 is the critical day when the Department of Labor measures our timeliness standards. At this point, we anticipate compliance with all of the standards both in the field and in appellate.

Chair Dresser mentioned that they are beginning to push to develop training for the field judges and the AO judges after the March push.

Chair Dresser thanked his two colleagues for all of the cases that they do and how professionally they do them.

Lastly Chair Dresser announced that Howard Schwartz is going to be coming on Monday, March 21. He thanked Ralph Hilton for his work in the interim.

4. **Board Member Reports:**

Vice Chair Allen commented that he thoroughly enjoyed his vacation. He thanked his colleagues for taking up the slack and holding down the fort while he was gone. He was gratified to hear the comments regarding training, as training and professional development are very valuable and should be provided to all of our staff.

Member Corbett commented that it was a well-deserved vacation for Vice Chair Allen, and they now know how much they appreciate him. She also thanked Chair Dresser for his contribution to make sure the cases got out timely.

Member Corbett stated that she is very happy to hear that the training is moving forward. She commented that as they read the cases they do see bits of information and situations which lead them to understand that training is always a very good thing.

Chief AO ALJ Rose responded that she just made a training list based on all of the referrals that have been made where training has been mentioned, as well as AO ALJs who have noted issues that seem to come up a lot. At Vice Chair Allen's request, that list will be shared with the Board.

5. **Public Comment:**

Chair Dresser called for any public comment.

Ms. Jennifer Bradford, Artistic Director, The Northern Dance Conservatory offered the following comment: Some of you are familiar with my case. Some of you are not. It began four-and-a-half years ago. I was audited by the IRS for my use of independent contractors versus employees. After a very thorough investigation and a very nerve-racking two years, IRS came to the conclusion that I was within my rights to continue to employ these independent contractors and that I was doing everything correctly and within the law. She stated it was a huge relief.

Two weeks later, I received a letter from the EDD stating it was opening its own investigation regarding the same situation. Originally we lost the EDD audit. She commented that it was not based on facts; it was not based on evidence that was actually accurate. Ms. Bradford stated that they had two years' of evidence that they had used for the IRS so she felt she was very prepared. They were granted an appeal and a hearing with Judge Johnson. They sat in that room for over six hours, maybe seven hours, herself and five or six other of these contractors who were witnesses to how the businesses ran and that they are truly independent

contractors in every sense of the word. Judge Johnson's ruling was in her behalf, and, she commented that frankly, to be honest, that's the only way he could have ruled if you were in that room and really understood the scope of what these independent contractors do for this business.

Ms. Bradford stated that the State appealed that win and they now changed their tune and said okay, well, now it's based on curriculum, that you supply a curriculum to these teachers. This could not be further from the truth. There is no curriculum. So I felt, okay, well, I can appeal this again because there is no curriculum and I can easily prove that. All I needed to do is gather all the curriculums that the teachers have. These curriculums are anywhere up from 100 pages, they are steeped in tradition and history and very different from one another.

So I gathered all these curriculums; I went to these independent contractors and they gave me these curriculums. So at that point it was brought before the Board because EDD had appealed. From what I understood, it was a split decision, two and two, and apparently, that's a loss for me which I will never understand. Again I was stuck, saying how could this possibly have happened? So I appealed again and asked for another hearing.

Ms. Bradford noted that they were given a hearing by a Judge Garcia. It was a very short hearing. I didn't even have the opportunity to really speak and the whole basis of this hearing was based on this curriculum. I showed up with over 300 pages of evidence, these are the true curriculums. I didn't write them. I don't hand them out or control them. These are curriculums that come from Russia, from Romania, from Scandinavia, from all over the world where these teachers come from and they're very different from one another. I have no control over what they teach.

Ms. Bradford remarked that what was interesting was the judge ruled against her, but he never once mentioned the curriculum. He never once mentioned the evidence. He never once mentioned anything which was why they were there in the first place. I understand now, after sitting back and thinking about it, that they were asking a judge to overturn a decision from his superiors, which probably doesn't happen very often, as unjust as that may seem.

Ms. Bradford commented that they have had testimony over and over, but I am a professional in my field. I've done this since I was 15 years the old. I built a business with one student and my life savings to a world-renowned education facility. We have more students getting into the Juilliard School than any school in the world. We have five students this year alone that received full tuition, 100

percent scholarships to the universities of their choice. We have a student that just won the Presidential Award for the Arts, meaning the student will be flown to New York or to Washington DC to meet President Obama and perform for him.

Ms. Bradford explained that this is not Dolly Dinkle's School of Dance. I cannot employ Sally to teach modern, jazz, tap and hip-hop. I must have these independent contractors to continue my business to give these opportunities to these students. She commented that they have professional dancing all over the world because of these independent contractors who will not work as employees. She commented that if you've ever tried to tell a Russian Ballet Master what to do, you will know it's not possible. I do not control their salaries. I do not control their curriculum. I do not control their schedules. But yet, the EDD has continually made these findings based, they're not facts and every time I prove they're not factual they change the findings; now they are going to go after curriculum; and once I prove that there is no curriculum, then the judge didn't even mention it in his findings.

Ms. Bradford commented that she was here because this is coming back to the board and she is asking the board to please look at this as a whole. Look at this as what this decision is going to do to our community, to these children, to her school that I have spent the last ten years of my life building. I've dotted my i's and crossed my t's. I'm an honest citizen, pay my taxes, every dollar is accounted for, which is very rare in this industry.

Ms. Bradford stated that this will come back to the board again and she asks that they look at Judge Johnson's decision and they look at the decision of the IRS and take all of those things in consideration because the findings of the EDD are not factual, and if she had the opportunity, she could sit and go line by line by line, but she hasn't had the opportunity. I've been thrown down this rabbit hole that I can't seem to get out of. She thanked the board for their time. She added that she doesn't know when this will come to their desk, but she knows it will be coming soon, and she hopes that they take these comments to heart when they review the case.

Chair Dresser stated that she made a very powerful presentation, which will be considered in the manner of argument, as distinguished from new evidence. He stated for the record that that because the other side is not present, in the furtherance of due process, the board prepare a transcript of Ms. Bradford's comments and serve it on the other parties. He stated that they will seriously consider her appeal when it comes before the board.

Chief ALJ/Executive Director Report:

Assistant Chief ALJ K. Stephen Swenson gave the report on behalf of Executive Director Gonzales. He reported that in February, all-case intakes dropped by 9 percent from the fiscal year average. In the UI realm there was also a 9 percent drop in new case intakes and it's the first time since 2005 that UI cases fell below 16,000 cases, verifications. He reported that it is the normal ebb and flow with DI however, but with the tax cases this is the 9th month in which the number of dispositions was exceeded by the intake of new tax cases and the open inventory is at the highest level it's been since May of 2011. With regards to the tax ruling cases, the intake increased by 9 percent over the fiscal year average.

Assistant Chief Swenson reported that in terms of case aging and time lapse, he would just reiterate that CUIAB is on target to meet all timeliness standards.

Vice Chair Allen asked what actions were being taken to address the increase in the tax case intake.

Assistant Chief Swenson stated that Chief Gonzales identified that issue quite a while back. He will be going into the field to do tax training, and they are lining up tax cases in Sacramento to be heard next month.

Chair Dresser also commented that staff is tracking the time spent on tax cases, and preliminary reports indicate, after meeting with EDD, that we may receive some additional positions next fiscal year for our tax cases.

Member Corbett asked if we were studying this trend to determine why this is occurring.

Chair Dresser answered that he thinks that one cause may be that the layoffs disproportionately impacted the tax unit. The head of the tax unit is taking steps with Chief ALJ Gonzales and Assistant Chief Swenson to gear-up to tackle the tax case inventory, and he is pretty sure by the end of June we'll see an appreciable reduction in the inventory.

Assistant Chief Swenson agreed with Chair Dresser that layoffs did affect the number of the judges in the tax unit, as did some retirements.

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

Chief ALJ Rose reported that the numbers in February in terms of AO case aging and time lapse are all positive. AO is making all of the requirements and guidelines

and should be good by the end of the month when it counts for DOL's audit.

Chief ALJ Rose reported that AO had a few more registrations in February than it did the month before and the dispositions were down. This was a result of people using excess leave because our balance of open cases was down in January to 771 but it up to 1,265 today, which is the highest it's been since last August.

Chair Dresser commented that they issued one precedent decision this month and he knows the precedent committee will be meeting again soon.

Lastly, Chair Dresser expressed the board's condolences to ALJ Angela Bullard on the loss of her father.

7. Chief Information Officer, Nick Dressler Report:

CIO Dressler reported that IT completed a major milestone. Back in early 2015, IT started a major network upgrade, upgrading the size of the network connections for all the field offices and hearing facilities. He reported that they are completely done. All the facilities have been upgraded with lines that are substantially faster so there will not be any slowness in their computers accessing email and eCATS, and so forth.

CIO Dressler reported that IT has received a federal grant to replace the old Dictaphone dictation system. IT has completed its preliminary fact finding and different replacement options. They are putting together a work group to start looking at some systems that they deem will meet the requirements. Then we can go out to bid and start working on the actual replacement of the system. They have three to four really good vendors that they feel will meet the needs of the agency.

Lastly, the IT Help Desk phone system was implemented last month and after a month in use they haven't had any complaints with the system. The system uses an 800 number which has been well received. The phone system allows IT more flexibility with less staff to address coverage during the 7:00 a.m. to 5:30 p.m. hours. They can shift phone calls around based on staff availability during the day to cover for vacations and people being sick. He asked if they experience any problems to please let him know.

Member Corbett stated she was pleased IT was looking into new products and asked if they had a timeline when the new products might be ready for testing. CIO Dressler responded that they have been waiting for the end of March so they can get a good sampling of ALJs and typists for the work group because it does stretch across not only the hearing process but the dictation of decisions and transcripts

as well. They want to make sure that whatever is chosen is well received by all. They hope to have the demos in April.

Vice Chair Allen thanked IT for its continued efforts to get the discussion page working. He commented that he knows that they are trying to work out the proper protocols or appropriate uses of the discussion page, and he knows the judges are still working with it, but he just wanted to note that he is grateful for all the effort the department's made to try to keep on refining it and making it more useful for everybody. CIO Dressler commented that IT appreciates their feedback because if IT doesn't know about a problem then they cannot fix it.

Chair Dresser asked CIO Dressler to comment about the new email system on the Cloud. CIO Dressler responded that a new contract had been awarded to replace the existing email. Right now the State of California has two primary emails; CA Mail, which is what the Board is on; and, CES Mail, which other departments are on. That contract expired last year but it had been extended. They have finally come to agreements with the new email system which is part of the Microsoft Cloud. It will be available starting next month so CUIAB will be transitioning its mail over to that and hopefully that task will be completed by the end of the year.

CIO Dresser stated that if there is any training required he wants to get that done ahead of time before it is rolled out so staff aren't having difficulties with access.

CIO Dressler reported that the Filebound contract for enhancements and changes was finalized and they will be getting the vendor onboard very soon to start the work.

8. Chief Administrative Services, Robert Silva Report:

No report given.

Closed Session:

The Board adjourned to closed session.

The Board reconvened in open session at approximately 12:30 p.m. No votes were reported.