

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5615**

Open Session

The Appeals Board convened at 10:30 a.m., February 22, 2017, in Sacramento with Chair Marty Block presiding.

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

2. Approval of the Minutes:

The January 10, 2017 Meeting Minutes were approved unanimously.

3. Chair's Report:

Chair Block reported on a recent meeting with Brooks Ellison, a principle in the law firm that represents CASE and its members. Chair Block noted that both CUIAB and CASE share a common interest in wanting employees to be happy. He observed that while there will be differences, efforts need to be made to find common ground. He added that it is important to him and the Labor and Workforce Development Agency that CUIAB improves its relationship with CASE. Chair Block recognized that we have gone through a terrible period of layoffs that could harm any relationship, but now we are past the worst of it. Thanks to the leadership of former Chair Dresser, Executive Director Gonzales, Chief Rose, and others, we should be able to move forward with CASE on a more positive footing.

Chair Block reported on efforts to advance a BCP aimed at providing more resources to work on tax cases. Chair Block reported there will be a couple of hearings, one in the Assembly and one in the Senate. He plans to personally attend the Senate hearing. He commented that Lori Kurosaki or Chief Gonzales will be talking to the other Board Members about who, if anyone, might attend the Assembly hearing.

Chair Block reported that he also met with George Okamoto, CIO from the Labor and Workforce Development Agency. Mr. Okamoto is very eager to work with CUIAB and Nick Dressler to do more to modernize our operations. Chair Block said that he has in mind things like live streaming of Board meetings, and using Skype, Facetime or other similar platforms that can enable a judge to observe demeanor and make credibility determinations of witnesses that do not testify in person.

Chair Block indicated that his next item has to do with the hierarchy and the structure of the organization. He observed that one advantage to being new to an organization is that you can evaluate its effectiveness with some detachment and objectivity. What he has observed is that CUIAB has a very bright and talented group of people who run the organization. Nevertheless, CUIAB has been through very difficult times that have caused much personal turmoil. He believes that CUIAB has survived the worst, but he does not think the organization is working to its peak capacity. To him, part of the problem is there seems to be confusion in the organization's structure. There's ambiguity in terms of who's in charge of what. Accordingly, in an attempt to resolve confusion and clarify staff roles he has prepared a written delegation of authority.

Chair Block explained that that this delegation is something consistent with what Member Dresser did orally while he was the Chair. It's based on the authority of the Chair pursuant to Appeals Board Policy No. 19. Chair Block added that what he will be distributing today for comment and discussion is a written delegation not based on the performance of any particular individual, but based on what he feels is a need for clarity in roles and responsibilities. Chair Block emphasized that the delegation is based on title so that it will apply not only to incumbents, but their future successors.

To be explicit, Chair Block added, the Executive Director, as directed by the Board, is the leader of the entire organization, and is fully accountable to the Board. That said, it is paramount that we maintain the strict wall that separates the Appellate Operations and the Field Operations in the very narrow and discreet area of case deliberation. No one outside of Appellate Operations or the Board, including the Executive Director, should have any influence over the outcome of cases heard by a higher authority. Nonetheless, to be clear, the Executive Director maintains full authority over all other aspects of AO and FO that don't fall within that very narrow and discreet exception. Again, Chair Block stated he thinks the delegation reflects what Member Dresser orally did a couple of years ago. With that, Chair Block distributed a one-page document titled "Delegation of Authority by Chair, CUIAB"

dated February 21, 2017 and asked the Board Members to take a few minutes to review it. He then opened the matter up for comment.

Member Dresser asked if the hiring of AO staff would be under the Executive Director.

Chair Block stated it would.

Member Dresser then asked what would be the role of the Chief of AO in the hiring of AO staff.

Chair Block responded that the Chief of AO would work closely with the Executive Director in hiring.

Member Dresser asked who would make the ultimate decision.

Chair Block stated it would be with the Executive Director.

Member Dresser stated he would disagree with that. He also asked about the Chief Counsel.

Chair Block asked Member Dresser when he was referring to AO staff was he talking ALJs or other AO staff.

Member Dresser stated he has a problem with that too. Member Dresser thinks, in the past, any Board Member could go to the Chief Counsel to get advice or his opinion on issues, and the Chief Counsel was responsible to the Board, while of course, working closely with the Executive Director. Member Dresser asked about the hiring of the AO Chief.

Chief Counsel Schwartz asked to take a moment to confer privately with the Chair. The Chair and the Chief Counsel then stepped out of the Board meeting, returning a few minutes later.

Member Dresser continued stating that a while ago he did delegate verbally to the Executive Director certain authority, but did not do what is now in Chair Block's delegation.

Chair Block asked Member Dresser which particular thing he thought should not be delegated.

Member Dresser responded the hiring of AO staff including judges. Their promotion, retention, evaluation should all be done by the Chief of AO. Similarly with the Chief Counsel, Member Dresser continued, the Board interviewed and hired the Chief Counsel and he thinks that should be retained by the Board. Member Dresser observed, that obviously the Chief Counsel has to get along and work with the Executive Director. But the Chief Counsel always reported to the Board. So those are his main considerations and concerns.

Vice Chair Allen commented that he thinks the Board would want the head of AO to be involved in the hiring of AO judges. As to whether it is done singularly or jointly, he thinks the Board would want to keep that firewall.

Chair Block stated that this is a valid point. The Chief AO Judge should be involved and perhaps have final say over hiring of AO judges. Chair Block added that he would have loved to have had this discussion before the meeting but because of the Board's transparency they cannot discuss things as the Board outside of the public view. So, that is why they are hearing this in public. He thinks the other Member's points are very valid and may fall within the delegation exception because who you hire as a judge will have a major impact on how cases are decided. He disagrees in terms of staff. He thinks AO staff outside the judges themselves clearly falls under the purview of the Executive Director.

Member Corbett commented that it's worthwhile exploring this issue because of the firewall that is necessary. She thinks the Board should step back and think about the relationship between the Chief of AO and the Executive Director. She noted that there have been issues since her arrival about who is in charge of certain staff activities. She commented that it is extremely important that they take a good look at how CUIAB and the Board operates. With regard to Chief Counsel, because the Chief Counsel also serves as the Chief Clerk of the Board, she thinks that the Board should have more authority in selecting that individual. Member Corbett added that she is glad they will have an opportunity to talk about this some more.

Chair Block commented that he does not foresee the Board giving up any authority. He sees the Executive Director reporting to the Board on everything. He also sees the Chief Counsel continuing to report to the Board as it is stated through the Executive Director, so that the Executive Director would handle the day-to-day issues as they arise with Chief Counsel, but that it is clear the Chief Counsel reports to the Board through the Executive Director.

Member Corbett stated that she absolutely welcomes this discussion. She also welcomes the leadership Chair Block has taken in looking at ways the Board might operate better. She also observed that if they are going to deliberate on an issue of great import to the Board, perhaps it should be noticed as an item for discussion.

Chair Block commented that it was introduced as an item in the Chair's report, and clarified that it is submitted for comment, but suggested the Chief Counsel might tell them the best way to work through this policy.

Chief Counsel Schwartz suggested that going forward the matter could be agendized at a future meeting for a thorough discussion in open session.

Chair Block asked that in terms of process if Members have input, everyone should write down what they think and they will come together and work on the policy.

Chief Counsel Schwartz cautioned the Board Members from serial discussions of the policy so that they don't have a circular conversation about the content of the policy.

Member Corbett stated she would like for this to be scheduled for open discussion. She added it would be very important to take a look at our delegation of authority as it is now, so they will have a reference point for such a discussion.

Member Corbett asked if someone would give the Board the background information with cites to rules, etc., as to what the authority is. She would like to see cites as well.

Chief Counsel Schwartz said he would do that.

Vice Chair Allen commented that in an optimal situation you would have an Executive Director, a Chief Judge for the Field and a Chief Judge for AO, but we don't have that. He noted the Executive Director job is a very large, so that person must have the resources to do the things that the Board is asking. He added that the matter is complicated by the firewall issue and what is appropriate in terms of interplay between the two.

Member Dresser commented that he has a number of thoughts, but he thinks at this point he may just save them for a later discussion. He stated that having worked here a while ago as a judge and observed certain things, he thinks the Board has to retain a certain amount of control over what happens. He does not

want to delegate too much. What he did delegate to the Executive Director related to the reorganization of AO. He thinks that is an appropriate thing to do with appropriate input from the Chief of AO and other AO staff, but he really would like to preserve what we have now, not that it can't be improved.

Member Corbett asked that the Chair to clarify what he mentioned earlier - that this was a reiteration of a previous policy.

Chair Block responded that his understanding was that his delegation was very much what had been orally delegated in the past.

Member Dresser stated that that the delegation only reflects what he did verbally in the past to a certain extent.

Chair Block commented that part of the problem has been that nothing was reduced to writing, so everybody has their own idea of what Member Dresser delegated. He asked Member Dresser if he could reduce to writing what he delegated so they have a starting point.

Member Dresser stated he would and that he will try to ask the Executive Officer and Mr. Hilton to help him with that because they were both involved.

Member Corbett mentioned that they are all attorneys and are used to making sure that rules that are enforced are in writing so going forward they should make sure whatever their rules are in writing.

Member Dresser commented that the bottom line in his opinion is that a lot of it boils down to comity, because eventually no matter what the structure is you have people must get along.

Chair Block stated that lack of clarity he thinks results in confusion and lack of comity. To him, clarity is the critical thing he is trying to get at here more than what the responsibilities are - clarity as to everybody's roles and responsibilities. Who reports to whom at the top levels of the organization is not clear at this point.

Chief AO Rose commented that she was very surprised about this and she has some serious concerns. She stated she will reserve her comments until a later meeting. She did ask, however, for clarification on whether this means that the Executive Officer has hiring authority over everybody in the organization such that none of the Division Chief's or PJs can hire their own support staff.

Chair Block responded that just as the Board right now has ultimate authority over hiring everybody, that does not mean that PJs and managers don't have authority to hire their own staff. But in a hierarchy someone has responsibility and it would mean that the Executive Director would have the ultimate responsibility.

Member Corbett stated that for future discussions she would like to see operational rules, what's the authority of the Chair, what's the authority of the Board, how is authority shared with other staff, what are the rules now with regard to the AO and Executive Director. She requested anything dealing with the operational infrastructure and how CUIAB and the Board operates.

Chair Block commented that some of it is in Board Policy No. 19.

Turning to the last item of his report, Chair Block reported that a couple of Board members independently asked him about reports about Board referrals of what was considered less than model conduct by ALJs in Field Operations. Members have said that they haven't always known what the outcome was of those referrals. He has discussed this with the Executive Director and she will send a monthly confidential memo to all the Board Members updating any actions taken during the month. She will also make suggestions for additional training, special development, or whatever else might be appropriate.

Member Dresser asked if a Board Member wishes to give a compliment to a Field judge how is that to be handled. Right now he thinks it goes to the Chief of AO and then it goes to the Executive Director.

Executive Director/Chief ALJ Gonzales stated that was correct and that one of the reasons it goes through the Executive Director is because at the very same time if a Board Member is complimenting someone on a decision and the presiding judge is writing up the ALJ for an issue it could cause a conflict.

Member Dresser asked if there was a way to figure out which compliments go through and which don't?

Executive Director/Chief ALJ Gonzales responded that it would then require her to go into a discussion about why a compliment was not passed forward. She doesn't know if the Board wants to get involved in those types of things.

Member Dresser stated he sees her point. He commented that the few times he has given a compliment he has received nice responses back.

Member Corbett suggested that staff explore creating a process where the Board is notified when a compliment is passed on to a judge.

4. Board Member Reports:

Vice Chair Allen thanked everyone for the great job they are doing.

Member Corbett commented that there are legislative developments in Washington D.C. that may affect California's UI program, including a proposal to require drug testing for UI recipients. Member Corbett indicated that CUIAB should be keeping a close watch on these proposals.

Chair Block asked Executive Director Gonzales to follow up to make sure the Board has information on any significant federal legislative developments.

Member Dresser thanked Chief Gonzales, Assistant Chief Harrison, and Chief Rose for their recent efforts in improving case processing statistics.

5. Public Comment:

No public comment.

6. Chief ALJ/Executive Director Report:

Chief ALJ/Executive Director Gonzales reported that the Field Offices are focused now on meeting federal timeliness standards. DOL will take a measurement of CUIAB's performance on March 31. That is Cesar Chavez Day, and even though it is a State holiday, people will be working on that day to get the reports completed. The good news is that all of the case timeliness standards are within acceptable ranges. Assistant Chief Hugh Harrison will be monitoring the case statistics on a daily basis from now until the end of March to ensure that all timeliness standards are met.

Judge Harrison stated that there are standard benchmarks of which the Field Offices are well aware. The offices all know how to calendar to maximize our performance and we are right on course. He added that for the last several weeks the number of transmittals coming in for UI cases is down and there are no big backlogs.

Executive Director Gonzales reported that there is a presiding judge meeting scheduled for April 11, 2017. It coincides with the April Board Meeting, so that the Chair and other Board members can attend if they wish.

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

Chief AO ALJ Rose reported that Appellate Operations reported that AO is meeting all of its case aging numbers.

Chief AO ALJ Rose reported that last month she had a meeting with the Precedent Decision Committee. They are discussing issues for future precedents.

Chief AO ALJ Rose further reported that she put together a draft report for the Legislature and she needs to talk to Board Members Corbett and Allen about where they are on that project. She has a draft to get to them that is mostly focused on precedent decisions that have already been adopted and issues for potential future precedents.

Lastly, Chief AO ALJ Rose reported that AO has lost its Staff Service Analyst, Kim Bernhardt, who has now been hired by the IT Division. Chief Rose commented that Kim is an amazing staff member. She will be sadly missed, but Appellate Operations is supportive of her promotion and they all wish her well in IT.

8. Chief Information Officer, Nick Dressler Report:

CIO Dressler also announced that Kimberly Bernhardt has joined the IT Division. He added that she will be a great asset not only for IT but for the department as a whole.

CIO Dressler reported that the department wide email migration project is underway and running very smoothly. Mail migration is expected to occur during the weekend of March 4. There will be no email that weekend, and iPhones and OWA will all be down. The IT Division will provide plenty of notice in advance of that event.

9. Chief Administrative Services, Robert Silva Report:

Chief Silva reported on monthly overtime usage and lump sum payouts. He provided reports to the Board on overtime usage in Administrative Services, IT and the Field Offices.

With regard to Administrative Services, there has not been any overtime used, but 23 hours of CTO has been accumulated.

With regard to IT, midway through the year they have spent \$18,000 in overtime which is well within their overtime allocation of \$40,000; however, they have also accumulated 96 hours of CTO overtime, which if it doesn't eventually get used would be cashed out as a wage.

With regard to Field Operations, they really haven't used much overtime over the last couple of years so their allocation is \$0 for 2016/17. However, in late November a typing backlog required the use of 300 hours of overtime. With that usage, the total projected overtime usage by the Field Offices for the entire fiscal year is about \$25,000, for which there is no allocation. The worst case scenario for the year is a projected shortfall of \$33,000 for overtime.

In addition, at the halfway point of the fiscal year, CUIAB has made \$205,000 in lump sum payouts. That is less than one-quarter of the allocation for the entire fiscal year, and will help resolve any shortfall in the previously discussed overtime expenditures.

Chief Silva further reported that just yesterday he submitted CUIAB's second quarter report to Labor Agency showing that CUIAB is on pace to beat both the personnel expenditures and OE&E expenditures that were reported at last month Board meeting.

Chief Silva stated that with regard to next year's budget, on January 30 the Budget Call Letter process was started for 2017/18 fiscal year. Each fiscal year all branches in CUIAB are afforded the opportunity to submit Call Letter requests both for hiring personnel and for operating expenses and equipment for consideration in the upcoming fiscal year. All Call Letter requests for Field Operations are due on February 22 and the remaining CUIAB branches are due March 3. On March 8 there will be a quarterly meeting with EDD's Fiscal Programs Division. At that meeting CUIAB will get a preliminary look at what will be the 2017/18 fiscal year budget.

Lastly, Chief Silva reported that the lease renewal for the Lancaster hearing facility is being finalized. The rent will now go up 4% to match the local market. CUIAB is going to be paying about \$39,000 a year for the Lancaster facility.

Action Items:

10. Consider Board Decision AO-389480 (D), Juan Ceja, for designation as precedent.

Chief ALJ AO Rose identified the decision before the Board as summarized that this case involves a seasonal agricultural worker who had worked for the employer

for 20 years. The season typically runs from April to November. The claimant worked the 2015 season through the end. He received unemployment benefits for some time through January 9, 2016, and three weeks later he became disabled and filed for disability benefits. EDD had denied those benefits. In its decision the Board found the code section relied on by EDD, § 140.5, does not necessarily preclude a seasonal worker who suffers a disability while unemployed during the off season from receiving disability benefits. As is the case with UI benefits, DI benefits may be available to seasonal workers despite the fact that the season has ended at the time the disability arose so long as the claimant is available for work and has not withdrawn from the labor market, and so long as the wage loss is due to unemployment as a result of illness.

Chief ALJ AO Rose commented that she has circulated the decision to the administrative law judges in the Field Offices as well as the Appellate Operations administrative law judges. The Precedent Decision Committee members have received positive feedback on making the decision precedent. She thinks this will be helpful as it is a difficult area of the law.

Chief AO Rose added that the parties were invited to submit written argument or oral comments. No response was received. However, she stated that they did receive one comment by EDD early on and they were supportive and in agreement with CUIAB's result in this case.

Member Corbett commented that she very much appreciates the good work done on this precedent. It was a complex issue, but it recognizes the need for benefits for very hardworking individuals who are a part of our workforce here in California. She thinks this is an excellent precedent.

Vice Chair Allen commented that this was a difficult case, but he really he thinks the Board arrived at the correct result. He thinks the Decision is well written and he is enthusiastically voting for it to become a precedent.

Chair Block asked if there was a motion.

Member Dresser moved to designate the decision as precedent. Member Corbett second. Each Board member voted. The motion passed unanimously.

Closed Session:

The Board adjourned Open Session at 11:36 a.m. The Board commenced a Closed Session at 11:38 a.m. Closed Session was adjourned at approximately 12:31 p.m.

Open Session:

The Board reconvened in Open Session at approximately 12:32 p.m. Chair Block reported that no votes were taken in Closed Session and that there was nothing further to report.

Chair Block adjourned Open Session at 12:32 p.m.