

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5664**

**Open Session**

The Appeals Board meeting convened at 1:00 p.m., April 21, 2021, via Zoom conferencing with Chair Marty Block presiding.

<b>1. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Marty Block, Chair	x	
Dan Reeves, Vice-Chair	x	
Mike Eng	x	
Michael Allen	x	
Laura Kent-Monning	x	

**2. Approval of the Minutes:**

The March 17, 2021, Meeting Minutes were approved unanimously.

**3. Chair's Report:**

Chair Block reminded viewers that most of the Board's work is not done during the meetings, but in-between meetings. The Board resolved 580 appeals in the past month.

Chair Block attended a staff meeting while visiting the Sacramento Headquarters, met new CUIAB staff and received a preview of the Appeals Modernization program.

Chair Block attended a meeting of the Labor Workforce Development Agency and discussed the measures LWDA agencies have taken in response to the challenges of the pandemic. Chair Block reported that Secretary Su has been nominated to serve as Deputy Secretary for the U.S. Department of Labor and wished her well.

In recognition of Administrative Professionals Day, Chair Block thanked CUIAB's administrative professionals for their dedication and hard work throughout the past year.

#### **4. Board Member Reports:**

Vice-Chair Reeves welcomed Gregory Crettol, Assistant Director of Policy. He thanked Lori Kurosaka for her many years of service to CUIAB. Vice-Chair Reeves welcomed Presiding Administrative Law Judge of the Bay Area Office of Appeals, Judge Deborah Schissell, and thanked recently-retired Presiding Administrative Law Judge Stephen Angelides of the Bay Area Office of Appeals for his work as well as other retired annuitants who continue to assist CUIAB manage its workload. Vice-Chair Reeves thanked CUIAB's administrative staff for their continued hard work.

Member Eng thanked the administrative staff for their work. Member Eng also thanked Lori Kurosaka for her years of service and the retired annuitants who have helped throughout the pandemic.

Member Eng thanked Director Cutri for his assistance referring him to resources available to stakeholders confronted with issues of fraud.

Member Allen expressed his gratitude for the work of CUIAB's staff and announced that CUIAB is commencing work on its newsletter.

Member Kent-Monning thanked the administrative staff for their work during the past year. She thanked Lori Kurosaka for her many years of service and welcomed Gregory Crettol to the agency.

#### **5. Public Comment**

No public comment.

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

Executive Director Cutri welcomed Gregory Crettol to CUIAB.

March 31 was the end of the DOL measurement year for time-lapse and case aging. As anticipated due to the pandemic, CUIAB did not meet DOL's performance metrics for field operations. As of March 31, CUIAB closed cases 47.5% within 30 days and closed 68.3% of cases within 45 days. The average case age was 68 days. Appeal timeliness is a nationwide problem and nationwide the average case age was last reported as 112 days.

During March, appeals transmittals from the Employment Development Department were approximately 176% higher than the last pre-pandemic month, March 2020.

There is now an approximate eight-week delay in EDD transmitting appeals to CUIAB. CUIAB's field operations closed 11% of appeals within 30 days and 20% within 45 days.

To address workload, CUIAB has increased its workforce capacity by approximately 40% since the beginning of the pandemic and continues hiring additional staff. ALJs closed record numbers of cases as a result of elevated caseloads, extensive use of team calendars, volunteers for higher workloads, and the hiring of new ALJs.

CUIAB had no COVID-19 related office closures in the past month.

Executive Director Cutri reported two threats to field offices. Law Enforcement was consulted on each and no further action was required.

Executive Director Cutri thanked the administrative staff for their essential work during the pandemic, which has made it possible for CUIAB to operate.

Vice-Chair Reeves inquired about the average time-lapse for CUIAB to receive appeals from EDD and workload projections. Executive Director Cutri advised that it is currently approximately 60 days. Additionally, EDD reported it has a backlog of approximately 1 million claims, which may result in appeals. Based on experience, reductions in CUIAB's workload trails larger economic recovery.

Member Eng inquired about CUIAB receiving appeals directly. Executive Director Cutri advised that this is an item of discussion and will be addressed in connection with proposed regulatory revisions. Member Eng commended Executive Director Cutri and the IT team on their work with the Appeals Modernization Program and asked when the testing and training phase may begin. Executive Director Cutri advised this is anticipated to take place in the Fall of 2021. Member Eng also inquired about the results of the 2020 Employee Survey. Based on the survey results, CUIAB's change management group adjusts its organization communications. Member Eng requested a copy of the survey results.

Member Allen inquired about CUIAB's staffing level in relation to its workload. Executive Director Cutri advised that he anticipates hiring additional staff.

Member Kent-Monning thanked Executive Director Cutri for his work and assistance with her ongoing inquiries.

## **7. Presiding ALJ of Appellate Operations, Jodi Remke Report:**

Presiding Administrative Law Judge for Appellate Operations, Jodi Remke reported that as of the end of the reporting year, AO did not meet DOL's time-lapse standards. Since August of 2020, AO has met DOL's standards on a monthly basis. During March AO resolved 90.9% of its cases within 45 days and 92.7% within 75 days.

Member Eng thanked Presiding Administrative Law Judge Remke for her assistance in resolving complicated cases.

Members Allen and Kent-Monning thanked Presiding Administrative Law Judge Remke for her ongoing availability and assistance when needed.

#### **8. Chief Information Officer, Jeff Willoughby Report:**

Acting Chief Information Officer, Albert Hernandez, advised that the Appeals Modernization Program continues to progress with work on the hearing and scheduling components.

IT is currently working on upgrading CUIAB's network speed and nine of 24 sites have been completed.

Vice-Chair Reeves thanked Acting CIO Hernandez for his technical assistance.

Member Eng inquired about the cause and impact of the Orange County Office of Appeals network outage. IT is still waiting for the root-cause analysis from AT&T. Executive Director Cutri confirmed there was no impact on the scheduled hearings due to the network outage.

Member Allen requested that during the development of CUIAB's modernization project, it consider the needs of persons in unstable living situations or limited access to online services so that solutions will be available to these individuals.

Member Kent-Monning thanked Acting CIO Hernandez for appearing on behalf of CIO Willoughby to address the Board's questions.

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

Chief Silva reported on staffing. Five new ALJs will begin training in May, and two offers of employment are pending. Since the last Board Meeting, there have been four support staff separations, and there 17 support staff positions in the recruitment

process.

On March 11, President Biden signed the American Rescue Plan Act which amends provisions of the Pandemic Unemployment Assistance, Pandemic Employment Unemployment Compensation, Mixed Earner Unemployment Compensation, and Federal Pandemic Unemployment Compensation programs. A supplemental budget request was sent to the Department of Labor to support the cost of the amended programs.

On March 19, Governor Newsom signed SB 95, extending Supplemental Paid Sick Leave, retroactive to January 1, 2021. CUIAB is working with potentially impacted individuals to ensure they receive this benefit if eligible.

EDD announced they will be contracting with Alta Language Services to provide live bilingual testing for various languages and invited CUIAB to utilize this service.

Chief Silva reported the Oxnard office formal lease extension renewal is pending with the Department of General Services. The Sacramento office is currently in a temporary lease extension as well.

Vice-Chair Reeves asked when the five new ALJs will be hearing cases. Executive Director Cutri stated the ALJs will begin hearing cases when the training has been completed. Vice-Chair Reeves asked about the additional ALJs to be recruited; Chief Silva anticipates another recruitment of ALJs soon. Member Reeves also asked about the process of bringing back Retired Annuitant ALJs to assist with backlogs. Chief Silva stated there is a specific process in selecting Retired Annuitant ALJs. With much success, CUIAB has a large selection of Retired Annuitant ALJs.

Member Eng asked about the ongoing needs for Retired Annuitant ALJs. Chief Silva stated that CUIAB's needs to use RAs continue. Member Eng also inquired about the language proficiency tests and CUIAB's readiness to provide services in the needed languages. Chief Silva advised that Vietnamese and Mandarin are the only additional languages nearing a threshold for the provision of additional language services in its forms and CUIAB continues to monitor needs in the field offices.

Member Allen inquired about the anticipated date to present a budget to the Board for approval. Chief Silva advised that it may be ready for the July or August Board Meeting.

Member Kent-Monning asked for clarification regarding the Alta Language Services

contract to certify employees as bilingual. Chief Silva confirmed this is the service Alta will perform. Member Kent-Monning asked about efforts to recruit staff with specific language capabilities. Chief Silva advised he will report on this.

**10. Action Item - Proposed New and Amended Regulations to California Code of Regulations, title 22, Section 5000 et seq.:**

Chief Counsel Mark Woo-Sam provided an overview of proposed amendments to California Code of Regulations, title 22, Section 5000 et seq.

Chair Block inquired whether the regulations provide a consequence for EDD's failure to promptly submit appeals to CUIAB. Chief Counsel Woo-Sam advised that the current and proposed regulations do not prescribe a legal consequence for EDD's late transmission. Chair Block suggested considering providing a specific number of days for EDD to transmit appeals to CUIAB after receipt.

Vice-Chair Reeves asked about the process for determining whether a hearing would take place electronically or in person. Chief Counsel Woo-Sam advised that it would be initially subject to CUIAB's discretion; however, other provisions of law impact a determination on whether a hearing will take place electronically or in person. Vice-Chair Reeves expressed that he feels the default scheduling of hearings should be in-person. Vice-Chair also inquired about the regulations proposed per page duplication costs in response to public records act requests and requests for administrative records, as well as the ability to send records electronically. Chief Counsel Woo-Sam advised that \$.10 per page has been CUIAB's longstanding practice and is in alignment with other state agencies and regulatory obligations. Chief Counsel Woo-Sam also advised that it would remain possible to transmit records electronically under the proposed regulations without charging copying costs.

Member Eng asked for clarification on the intent of the proposed delete language in §5000 (gg). Chief Counsel Woo-Sam stated the reference pertained to filing an appeal with EDD rather than CUIAB, and the deletion would make it consistent with the intent to have appeals filed directly with CUIAB rather than limit options for filing. Member Eng inquired about the intent of the proposed changes to section 5054 regarding the location of the hearing. Chief Counsel Woo-Sam advised that the intent was to provide greater discretion and flexibility in the scheduling of hearings. Member Eng inquired about the standards for "hardship waiver" in the assessment of costs for records. Chief Counsel Woo-Sam advised that it is not contained in the regulations; however, CUIAB has waived costs in matters in which courts have

granted hardship waivers, and the Unemployment Insurance Code provides for claimants to receive copies of their own case records at no charge. Member Eng also asked about the recording of pre-hearing conference. Executive Director Cutri advised that due to the possibility of confidential items being discussed during a pre-hearing conference, they are not recorded. Member Eng suggested the word “television” be removed in §5000 (cc).

Member Allen requested clarification of the process for promulgating the regulatory changes. Chief Counsel Woo-Sam and Counsel Hickox provided an overview of the Administrative Procedures Act rulemaking process.

Member Kent-Monning thanked all the individuals involved in the rulemaking process and asked to confirm her understanding of the general intent of the regulatory changes as being to improve parties’ access to CUIAB’s processes. Chief Counsel Woo-Sam affirmed this intent.

Chair Block, Vice-Chair Reeves and Member Eng inquired about the opportunity for the Board to review and consider proposed amendments before a final filing with the Office of Administrative Law. Chief Counsel Woo-Sam affirmed the Board could act to commence formal rulemaking subject to final Board consideration and approval prior to filing the final regulatory package with OAL for review.

Member Eng moved to commence formal rulemaking on the proposed regulations subject to the requirement that the proposed rulemaking will be brought back to the Board for approval prior to filing a Final Statement of Reason with the Office of Administrative Law. The motion passed unanimously.

**Closed Session:**

There was no Closed Session.

**Adjournment**