

GERALDINE A. REILLY  
CHAIRMAN  
MICHAEL T. GREASON  
GEORGE FRIEDMAN  
JAMES S. ALESI  
RANDALL T. DOUGLAS  
MEMBERS



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Appeal Board**

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CHIEF ADMINISTRATIVE LAW JUDGE  
TERESA A. DeMEO  
CHRISTOPHER M. TATE  
MATTHEW J. TIERNEY  
PRINCIPAL ADMINISTRATIVE LAW JUDGES

Draft Minutes of Board Meeting of Wednesday, June 21, 2017

Present in Troy: Geraldine A. Reilly, Chair; Michael T. Greason, and Randall T. Douglas, Board Members; Christopher Tate, Principal Administrative Law Judge Susan Borenstein, Executive Secretary, Senior ALJ Nicole Beason. Excused Absence: George Friedman and James S. Alesi, Board Members.

Agenda:

- Welcome and Call to Order
  - Reading and adoption of agenda
  - Adoption of Minutes – March 22, 2017 meeting
  - Director’s report
  - Chief ALJ report
  - Court Decision Update – Principal ALJ for Appeals
  - Report on UIAB participation in National Appeals Review
  - Adjourn
1. Welcome and Call to Order
    - At approximately 12:05 pm Chair Reilly presiding from Troy, New York at 49<sup>th</sup> Fourth Street called the meeting to order. She reported that the public had been noticed and invited. The draft agenda published.
    - Chair Reilly stated that the required quorum was met. Board Members Alesi and Friedman were excused. She acknowledged Board Members and staff who were present and asked each to introduce her/himself including Executive Secretary Susan Borenstein, Principal Law Judge Christopher Tate and Senior ALJ Nicole Beason. She thanked Senior ALJ Beason for her work at the National Appeals Review and for reporting to the Board.
    - She thanked Board Members for their collegiality and for their work in rendering decisions. She acknowledged the retirement of Board Member George Friedman. She once again thanked Executive Secretary Susan Borenstein and Chief Administrative Law Judge Jayson Myers for their work and noted that Chief ALJ Myers was attending the annual conference of the National Association of Unemployment Insurance Appeals Professionals in Seattle. Chair Reilly thanked Principal Law Judge Christopher Tate for his contributions to the Board and for his report of Court decisions.
    - Chair Reilly called the meeting to order at this third quarterly meeting of the Board.
  2. Reading and adoption of the agenda
    - Member Greason moved to adopt the agenda
    - Member Douglas seconded the motion
    - Motion to adopt agenda adopted unanimously
  3. Reading and Adoption of the minutes, March 22, 2017 Board Meeting

- Member Michael Greason moved to dispense with the reading and to adopt the minutes
  - Member Randall Douglas seconded the motion
  - Motion to suspend reading and adoption of the minutes unanimously approved
4. Report of Executive Secretary Susan Borenstein
- Executive Secretary noted that from January 2, 2017 through June 16<sup>th</sup>, the UIAB mailed 7,444 Lower Authority decisions and 1,967 Higher Authority decisions including a large number (1500) of NYC Department of Education reasonable assurance cases.
  - With regard to USDOL timeliness markers she noted that the Lower Authority average case age as of June 31.8 days and the average case age of Higher Authority cases was 57.4 days – the elevated numbers due primarily to the large volume of reasonable assurance cases.; spate of cases with a case age of over 200 days when received; and an increased number of adjournments. The UIAB is complying with the percentage of hearing decisions mailed within 45 days at 86%; 56.2% of the cases were mailed within 30 days.
  - Borenstein reported that on June 1, 2107, a Request for Proposals (RFP) for an entirely new integrated UI computer system was released. The new system when completed will feature full electronic case files as well as seamless transfer of data from the UI to the Appeal Board.
  - Borenstein also reported on a meeting of the UI Coalition, an alliance of pro bono attorneys and advocates hosted by Elizabeth DeLeon Bhargava on May 19<sup>th</sup>. Chair Reilly and Chief ALJ Myers also attended along with executives from the Department of Labor and Unemployment Insurance Division.
  - Downsizing of staff continues with the retirement of two Senior ALJs retiring in May and notice of least two administrative staff in Brooklyn leaving for promotionary opportunities.
  - Borenstein thanks Chair Reilly and Chief ALJ Reilly for their ongoing help. She also thanked the members of the Board for their diligence in deciding cases. Finally, she noted the work of Senior ALJ Deborah Esrick and ALJ Tracie Covey for their work in the creation of a UIAB Bench Manual.
  - Chair Reilly asked if there were any questions.
    - i. Member Douglas asked how members of the Board could assist in reducing the average case age of appeals. Borenstein replied that Board Members were doing all that is possible by reviewing and signing cases quickly. She further commented that physical case files which had to be mailed to members was a constraint in lowering case age.
    - ii. Finally, Chair Reilly asked Borenstein to speak about the Board of Education cases. Borenstein responded that approximately 300 cases remain at the Higher Authority and that the entire staff in Brooklyn and Troy did a wonderful job in organizing the case files and seeing that they processed with alacrity.
    - iii. Chair Reilly asked for a motion to accept the report. Member Douglas so moved, and Member Greason seconded the motion. The report was adopted unanimously.
5. Report of Chief Administrative Law Judge (ALJ) Jayson Myers who was attending a national conference in Seattle was read by Principal ALJ Christopher Tate
- Chief ALJ reported on the latest quarterly Federal Quality Review scores for the First Quarter 2017 in which the ALJs average score was 96.8% based based upon 40 randomly selected cases scored according to a 31-point quality criteria.

All 40 of the cases reviewed passed with a score of 85% or better. Over the last 12 quarters only four of 480 of cases scored did not achieve a passing grade.

- Chief Myers reported that Senior ALJ Nicole Beason(Brooklyn) represented the UIAB at the just concluded USDOL National Appeals Review in Washington, D.C. Representatives from all states and territories score 10 or 20 hearings depending on the size of the state. He noted that the UIAB would receive a summary report with the results of the review.
  - Chief Myers thanked Senior ALJ Deborah Esrick and ALJ Tracie Covey for their work in completing the substantive and procedural chapters of the UIAB Bench Manual, and singled out ALJ Covey for singular high praise because she drafted large portions of the manual, as well as formatting and proof read the work.
  - Chief Myers discussed the realigned of ALJ teams in Brooklyn because of the retirement of two Senior ALJs and the upcoming departure of ALJ Frank Seminerio.
  - Finally, he thanked the ALJs in Brooklyn for their efforts in completing the NYC Department of Education reasonable assurance cases.
  - Chair Reilly asked for a motion to accept the report.
    - i. Member Douglas so moved. Member Greason seconded the motion and the report was unanimously accepted.
6. Report of Principal Administrative Law Judge Christopher Tate
- Principal ALJ Tate discussed four cases affirmed by the Court.
    - *Matter of Santos*, 2017 N.Y. App. Div. LEXIS 3217 decided April 27, 2017
    - *Matter of Campise*, 2017, N.Y. App. Div. LEXIS 3953 decided May 18, 2017
    - *Matter of Schaefer*, 2017 N.Y. App. Div. LEXIS 4263, decided June 1, 2017
    - *Matter of Clemons and Matter of Rigby*, 2017 N.Y. Div. LEXIS 4258, decided June 1, 2017.
7. Report on UIAB participation in National Appeals Review by Senior ALJ Nicole Beason
- ALJ Beason thanked the Board for the opportunity to report on her participation in the National Appeals Review (NAR) held from June 5<sup>th</sup> through June 9<sup>th</sup>, 2017 at the building of the USDOL in Washington, DC.
  - She noted that the NAR will now be held on a triennial basis. Twenty hearings were reviewed from large states including NY.
  - ALJ Beason then reported on conference highlights and her own participation.
    - i. She noted that participants received an orientation and review of the standards to be applied in the grading process. She noted that the USDOL is considering some changes to the grading process including a two-part passing element – efficiency and technical.
    - ii. ALJ Beason found the experience to be personally enriching and said she was mindful that her skills would reflect upon the skill of all NY judges. In comparing NY hearing processes and procedures with other states, she concluded that in NY judges are more focused on ensuring that parties feel that they are fully heard, thereby resulting in a hearing record that is more fully developed that compared with other states. She also found that in NY judges were more apt to ask “open” questions during the hearing.

- iii. ALJ Beason reported that NY received a score of 93 at the Review and had originally scored itself at 96. A differential three points was considered a good differential. In about six months, the Appeal Board will receive official scores.
- Chair Reilly asked for questions or comments.
  - i. Board Member Randall Douglas asked if Judge Beason can share her report with other Senior ALJs in order to identify best practices?
  - ii. Chair Reilly noted that the report reflects the efforts of the Board's to standardize "fairness" procedures in hearings. She asked if any of UIAB cases scored had used translators. Beason said no case used translators.
  - iii. ALJ Beason said that she would look into how best to share her experiences with colleagues.
- Chair Reilly asked for a motion to accept the report. Member Douglas so moved. Member Greason seconded the motion. The report was unanimously accepted.
- 8. New Business: Chair Reilly asked for new business and commented that the date of the Fall Board meeting is scheduled for Wednesday, October 18. Hearing none, she asked for a motion to adjourn.
  - Member Douglas moved to adjourn. The motion was seconded by Member Greason. The motion to adjourn was unanimous.

Submitted by: Susan Borenstein

Adopted: October 18, 2017