

Draft Minutes of UIAB Board Meeting, Wednesday, October 3, 2018

Present in Troy: Geraldine A. Reilly, Chair; Randall T. Douglas, June F. O'Neill, Marilyn P. O'Mara, Board Members; Jayson Myers, Chief Administrative Law Judge, Christopher Tate, Principal Administrative Law Judge and Tracie Covey, Senior Administrative Law Judge.

Present by videoconference from New York City: Michael T. Greason, Board Member, Susan Borenstein, Executive Secretary.

Agenda:

1. Welcome and Call to Order
  2. Reading and adoption of agenda
  3. Adoption of Minutes – June 27, 2018 meeting
  4. Director's report
  5. Chief ALJ report
  6. Court Decision Update
  7. Report on Bench Manual
  8. New business
  9. Adjourn
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1. Welcome and Call to Order
    - Chair Geraldine Reilly presiding from the Board's offices in Troy, New York on October 3, 2018 opened the public meeting of the Board. She said that the meeting was noticed, the draft agenda has been published, minutes from the previous meeting have been circulated to members, and the public has been invited to observe. She added that this meeting is being recorded and will be available on the UIAB website. A quorum was present.
    - She thanked all who have supported the work of the Board, UIAB staff and leadership as well as Board colleagues. She noted that this last meeting of 2018 accomplishes her personal goal of a Board that is accessible and fair as well as transparent and timely. She further noted that Higher Authority timeliness markers are not met; a testament to Board Members dedication. She continued by thanking Board Secretary Susan Borenstein, Chief Judge Jayson Myers and Principal ALJ for Appeals Christopher Tate. He also acknowledged the presence of Senior ALJ Tracie Covey who traveled from Syracuse to report on the Bench Manual.
    - Chair Reilly called the meeting to order at 11:05AM.
  2. Reading and adoption of the agenda
    - Member Douglas moved to accept the agenda
    - Member O'Neill seconded the motion
    - Motion to accept agenda adopted unanimously
  3. Reading and Adoption of the minutes, April 18, 2018 Board Meeting
    - Member Greason moved to waive the reading and to adopt the minutes
    - Member O'Neill seconded the motion
    - Motion to suspend reading and adoption of the minutes unanimously approved
  4. Report of Executive Secretary Susan Borenstein
    - Executive Secretary Borenstein thanked Board Members for their well wishes and thanked the Chair and Chief ALJ for their support doing her recovery.
    - As this meeting was the last of calendar year 2018, she proposed Board meeting dates for Calendar Year 2019 as follows:

Wednesday, January 30, 2019

Wednesday, April 24, 2018

Wednesday, June 19, 2019

Wednesday, October 2, 2019

- Regarding USDOL regulations, Borenstein reported that as of September 27<sup>th</sup> the Higher Authority average case age was 25.73 days and thanked the Board for their attention in getting decisions mailed in a timely fashion. As of the same date the Lower Authority average case was 23 days and the percentage of decisions mailed within 45 days was 88%. However, the 30-day time lapse marker was 55%. She noted that because of new technology being installed by the UI division that percentage will quickly increase.
  - Our fulltime staff level remains stable at 138. Four new ALJs were hired in Brooklyn. They completed their five-week training and are now holding hearings. Chief Judge Myers will speak more about them in his report. We have also decided to shift UIAB Supervisor Amy Higby's responsibility. She will join the Business Systems Analyst as a super Subject Matter Expert (SME) since Kasia Petronis has left the UIAB. Finally, we have promoted ALJ Alison Ferrara to Senior ALJ. Alison gave a presentation to the Board on the future customer service training which she authored along with UIAB Manager Janet Beaudoin, and Senior ALJ Training Coordinator Deborah Esrick.
  - Borenstein reported that there is still no "go live" for the updated case management system. Unexpected delays have been caused by the challenges of revising an "out of the box" program which has been enhanced many time over the years. In other technology news, she reported on a new "15-minute Tech Tips webinar mini-training available to the entire staff. The purpose is to familiarize staff with some of the "bells and whistles" of the powerful programs that are installed on staff computer but unused. The first min-training given twice on the same day was "how to schedule a meeting in Outlook." Upcoming trainings will include "Marking an appointment Private in your Outlook Calendar" and "How to schedule an automated 'out of the office' message in Outlook
  - Borenstein ended her remarks with inviting Board member ideas and submissions to the new UIAB quarterly newsletter.
  - Chair Reilly asked for questions or comments. Member Douglas stated that the newsletter was a wonderful idea and thanked Borenstein and the staff for distributing the security protocols.
  - Member O'Mara moved to accept the report into the record. Members Greason and Douglas, seconded. The report was unanimously accepted into the record.
5. Report of Chief Administrative Law Judge (ALJ) Jayson Myers
- Chief Judge Myers began his report with the results of the Second Quarter 2018 quarterly Federal Quality Review. He was pleased to report that our Administrative Law Judges' average grade was 97.33% based on 20 randomly selected cases that were scored according to 31 quality criteria. All 20 of the selected cases passed with a score of 85% or better. All cases audited received a passing score; nine had a score of 100. The previous quarter average was 97.25 % consistent with very good averages overall.
  - From the long-range perspective, over the past four years, Chief Judge Myers stated that the UIAB has had an almost 100% passing grade score; with only four out of 640 cases scored not achieving passing grades. The Chief ALJ thanked and saluted hearing judges across the state who have produced these impressive scores, as well as their supervisors, the Senior Judges, who guide and supervise them. He

continued, "I may sound like a broken record on this subject, but all over the state we do not take high level performance for granted."

- Myers once again acknowledged the work of Principal Judge Christopher Tate and the Higher Authority judicial staff in reducing the Higher Authority average case age to a record low of 26.1 days on September 1<sup>st</sup>.
  - Chief Judge Myers reported that the Bench Manual for Administrative Law Judges in use and has been a great training resource. New sections on employer liability and benefit issues will be added in the coming months.
  - Myers reported that the four vacant ALJ positions in Brooklyn had been filled; their initial training completed; and all are excited about their work. He also welcomed Alison Ferrara to the Senior Judge team spoke of the customer service training for later this year. Most importantly, he announced a quality assurance training for the entire judicial staff; an especially timely as the UIAB transition from a court monitored quality assurance report to a self-monitored plan. The final report to the Court will be submitted on October 15<sup>th</sup>, and the expectation is that the results will be excellent as in the past. We will continue to demonstrate our commitment to full, fair and well conducted hearings. A cohort of seven judges Mark Sokolowski of Buffalo, Tracie Covey of Syracuse and Denyse Hodges of Hauppauge, and ALJs Michelle Burrowes, Wendy Pichardo and Alison Ferrara of Brooklyn and Susan Aron of the Higher Authority in Troy, worked with me on developing the new quality assurance program. The committee has now shifted their attention to developing a UI Appeal Board Code of Conduct.
  - Contributions of the judicial staff and their work on statewide committees was also recognized by the Chief ALJ in his report. Senior Judges Tracie Covey and Rachel Freeman and Higher Authority ALJ Catherine Adlerman have been participating in the Curam update of our case management system. And Senior Judge Rachel Freeman, Senior Judge Ned Mains and ALJs Kathleen Mannix and Catherine Adlerman from Troy also are participating as Subject Matter Experts in the Unemployment Insurance Systems Solution (USIS) project, the replacement for the UI Division's and UI Appeal Board's current computer systems.
  - Judge Myers noted that this year, the Board will see a smaller number of appeals concerning the issue of reasonable assurance of continued similar employment for educational employees of the NYC Department of Education as result of the *Enman* decision in the Appellate Division.
  - Myers ended his report by emphasizing the importance of security issues and noted the work of Chair Reilly in making this a priority. He concluded by stating that the judicial staff in several locations expressed their appreciation for such an emphasis.
  - Chair Reilly asked for comments and a motion to accept the report. She thanked Chief ALJ Myers for his leadership in promoting excellence and quality standards for the judicial staff and for in his report mentioning the contribution of judges on committees.
  - Member O'Neill moved to accept the report into the record. Member Greason seconded. The report was unanimously adopted into the record.
6. Report of Principal Administrative Law Judge Christopher Tate

- Principal ALJ Tate discussed four cases affirmed by the Court:
    - *Matter of Baxter*, 162 AD3d 1451, was decided on June 28, 2018
    - *Matter of Dillon*, 162 AD3d 1307, was decided on July 19, 2018.
    - *Matter of Mullane*, 2018 N.Y. App. Div. LEXIS 5591, was decided on August 2, 2018.
    - *Matter of Eidelson*, 2018 N.Y. App. Div. LEXIS 5562 was decided on August 2, 2018.
  - Chair Reilly asked for questions and, hearing none, asked for a motion to adopt the report and incorporate them into the record. Member O’Neill moved to accept the report and to incorporate them into the record. Member Douglas seconded the motion which was unanimously adopted.
7. Report on Bench Manual
- Chair Reilly asked Chief ALJ Myers to introduce Senior ALJ Tracie Covey who gave a report on the creation, content, uses and publication of the Bench Manual for Administrative Law Judges.
  - Myers noted that Tracie Covey has been at the UIAB since 2010 and became a Senior ALJ last year. Prior to her tenure at the Board she had more than seven years of experience in employment law. She was one of the primary authors of the Bench Manual and played a pivotal role in its creation. She has also worked on numerous other trainings with our Senior Training Coordinator Deborah Esrick. Tracie Covey has been a great asset to the Board.
  - Sr. ALJ Covey was asked in May 2016 by Chief ALJ Myers about her interest in working on a Bench Manual Project – a comprehensive compendium of procedures and substantive law. From then on, a committee composed of herself, Chief Myers, Director Borenstein and Training Coordinator Deborah Esrick oversaw the formatting drafting, editing and publication.
  - This formidable undertaking was an opportunity to promote accuracy, efficiency and uniformity in hearing practices and the application of the law.
  - Many ALJs contributed to the drafting and research for the manual including: Senior ALJ Justin Denton from Brooklyn, ALJ June Egeland from Buffalo, ALJ Maura Gregory from White Plains, Senior ALJ Carol Johnson from Troy, Senior ALJ Marcella Seaburg-Brackett from Rochester, ALJ Jennifer Snyder-Haas from Buffalo, Senior ALJ Carol Procopio from Brooklyn, Senior ALJ John Muller from Troy, and Principal ALJ Christopher Tate all authored or edited manual sections. ALJ Michelle Burrowes from Brooklyn provided research on the topic of employment laws, and LSR Heather Malmberg from the Syracuse office assisted with formatting and final proof-reading of the chapters.
  - Once complete a draft was sent to stakeholders for comments.
  - The manual itself is comprised of two parts. A procedural section and a substantive law section. In the procedural section, totaling approximately 140 pages, we have chapters on: an overview of the role of an administrative law judge; opening statements; witnesses; document handling; expanding the scope of the hearing; evidence; the decision; adjournments and applications to reopen; timeliness; and language access. These chapters contain explanations of a judge’s responsibilities,

detail our best practices for ensuring due process in our hearings and explain concepts and requirements contained in both federal and internal quality guidelines. They contain practice tips and examples, including examples of an opening statement and how to develop the record through questioning of witnesses.

- The Manual is a living document. As the law and procedures change, sections will be amended. New chapters on still being written.
  - The reception of the manual has already become an invaluable resource and its reception has already been a great success.
  - Chair Reilly asked for questions and comments. Members Douglas and O'Mara congratulated Covey. Member O'Neill spoke of her appreciation for fostering team-work up and down the Board. Chair Reilly expressed her enduring gratitude for the work of so many staff. She announced the first hard copies have been distributed to Board Members.
  - Member O'Neill moved to accept the report. Member Greason seconded. The report was unanimously accepted into the record.
8. New Business: Chair Reilly asked for new business and hearing none, Chair Reilly thanked the Board Members for making the trip to Troy and then asked for a motion to adjourn. She noted that the next Board meeting will be on October 27, 2018.
  9. Member Douglas moved to adjourn the meeting and Member O'Neill seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:45 AM.

Adopted unanimously by the Board on October 3, 2018.  
Submitted by: Susan Borenstein