



## Unemployment Insurance Appeal Board

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Draft Minutes of UIAB Board Meeting, Wednesday, April 24, 2019

Present in Troy: Geraldine A. Reilly, Chair; June F. O'Neill, Board Member; and Jayson Myers, Chief Administrative Law Judge

Present by videoconference from New York City: Michael T. Greason, Board Member; Susan Borenstein, Executive Secretary and Teresa DeMeo, Principal Administrative Law Judge

Present by videoconference from Elmira, NY: Marilyn P. O'Mara, Board Member

Present by videoconference in Plattsburgh: Randall T. Douglas, Board Member

### Agenda:

1. Welcome and Call to Order
  2. Reading and adoption of agenda
  3. Adoption of Minutes – January 30, 2019 meeting
  4. Executive Secretary Report
  5. Chief ALJ report
  6. Principal ALJ for Appeals Report
  7. Report on pro bono advocates
  8. Other
  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 April 24, 2019 opened the public meeting of the Board. The Chair noted that the meeting was noticed, the draft agenda published, minutes from the previous circulated to members, and the public invited to observe. She added that this meeting is being recorded and will be available on the UIAB website. A quorum was present.
    - Chair Reilly began by thanking the staff and leadership at all UIAB offices, and the Board for their hard work, encouragement and support.
    - Chair Reilly announced that the Board will meet two more times this year, on June 19 and October 2, 2019. She stated that "it is my hope that this quarterly schedule of meetings accomplishes my personal goal of an Unemployment Insurance Appeal Board that is accessible and fair, as well as timely and transparent."
    - She continued by acknowledging and thanking the Board's Executive Director and Board Secretary Susan Borenstein, who is participating today from our Schermerhorn Office in Brooklyn, and Chief Judge Jayson Myers who was present in Troy, and Principal ALJ Teresa DeMeo, who is appearing with M. Greason and S. Borenstein in the New York City Office. She acknowledged and thanked Principal Administrative Law Judge DeMeo, who later in the meeting provided a brief report to

the Board on efforts to nurture and encourage programs for pro bono attorneys who represent claimants.

- Chair Reilly also added that there would be a brief training session immediately following this Board meeting about Board Rules, given by Chief Judge Myers.
  - Chair Reilly called the meeting to order at 11:10 a.m.
2. Reading and adoption of the agenda
    - Member June O'Neill moved to accept the agenda
    - Member Marilyn O'Mara seconded the motion
    - Motion to accept agenda adopted unanimously
  3. Reading and Adoption of the minutes, January 30, 2019 Board Meeting
    - Member Michael Greason moved to waive the reading and to adopt the minutes
    - Member June 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 began by reporting that the UIAB remains in compliance with all Lower Authority USDOL regulations. As of April 18th, the Lower Authority average case age was 27 days. The validated data, as of March 2019, that is sent by the Division of Research and Statistics to the USDOL reported that the case age in the Lower Authority was 21.28 days well below the USDOL 30-day acceptable level of performance. Internal data as of April 18th also indicated that the UIAB is in compliance with the 30 and 45-day time lapse markers. As of that date 66% of our cases were scheduled, heard, decided and mailed within 30 days and 89% within 45-days.
    - She added, regarding Higher Authority acceptable levels of performance, the UIAB's internal data indicated that the average case age in Higher Authority has inched up. Based on internal data as of April 18th, the average case age was 39.84. The validated data as of the end of March 2019 indicates an average Higher Authority case age as 39.27 days which is in compliance with USDOL 40-day acceptable level of performance. She thanked Board Members for their ongoing attention to the age of the cases they receive
    - Borenstein reported that the fulltime staff fill level remains stable. She noted that one administrative position in Brooklyn was backfilled and that just last week ALJ Syma Islam who was in a temporary position has moved to a permanent ALJ position in Troy.
    - Executive Secretary Borenstein continued by reporting that the last several months have been filled with ongoing initiatives related to technological upgrades. She reported that the deployment of the updated ABS Version 7 has been delayed During the month-long March training sessions for the updated system new defects surfaced which require fixing before we could "go live." The Office of Informational Technology Services (ITS) is working on resolving the problems. No new deployment date has been set.
    - Also, deployment of our new website has been delayed. The cause of this delay was that new software that allows a user to search Higher Authority decisions was not functioning properly. All of the changes to the website that we have requested have

been made, Borenstein believes that everyone will find the new website user friendly. She announced that after the “go live” date for the website is set, the Business Systems Analyst team schedule a 15-minute “Tech Tip” training on its use. While the new website and the case management system are being updated, the UIAB is also working on updating the Liberty Court Reporter software and hardware, the system that records hearings. Finally, on the technology front, Borenstein announced that the UIAB staff will be receiving new computers in 2019.

- Borenstein continued to report that a new chapter of the Bench Manual – “Dismissal Pay” – has been distributed to all Board Members and judicial staff. We have submitted requests for new printed tabs. The next Bench Manual updates are scheduled for the end of June.
  - On the training front, we were finally able to deliver the Quality Public Service or Customer Service training to all UIAB staff. The first session was presented in Buffalo on April 10th. The Buffalo session by all accounts was very successful. Staff particularly appreciated the module on de-escalation techniques of parties and callers. We will continue to deliver this training to all locations during April and May.
  - Executive Secretary Borenstein concluded her report by talking about the quarterly UIAB newsletter. Commencing with the June newsletter and for the next five successive newsletters, a new feature will highlight the work and profile of a Board Member. She asked Board Members to feel free to give her suggestions for future articles.
  - Chair Reilly asked for questions or comments. Chair Reilly commented that she and staff welcome the Public Quality Service training and look forward to benefitting from it.
  - Member Michael Greason moved to accept the report into the record. Member June O’Neill, seconded. The report was unanimously accepted into the record.
5. Report of Chief Administrative Law Judge (ALJ) Jayson Myers
- Chief Administrative Law Judge Myers reported that the results of the most recent quarterly Federal Quality Review, involving Lower Authority cases decided in the Fourth Quarter of 2018 showed that we continue on an excellent path. The average grade was 97.79% based on the 20 randomly selected cases that were scored according to the 31 federal quality criteria. All 20 of the selected cases achieved the U.S. Department of Labor’s passing grade of 85% or better. The acceptable level of performance is 80 percent, or 16 cases, passing with grades of 85 or better so we have continued to be well above that floor with all 20 having passed. Twelve of the 20, or 60 percent of the cases scored, had perfect scores of 100.
  - Chief Myers added that from the longer-range perspective, over the past four years just four out of the last 680 cases scored have not achieved passing grades. He acknowledged the hearing judges across the state, who produce these very high scores, and their supervisors, the Senior Judges, who guide them, as well as the legal staff at the Board whose accurate review of hearing records serve to develop our law and positively affect the work of the hearing judges.

- Chief ALJ Myers stated that the UIAB will complete the first quarter of audits under our own Quality Assurance Program by the end of April. One hundred forty (140) hearings will have been audited. These audits focused on the fundamental elements of fair hearings and decisions. Business Systems Analyst Amy Higby did a great job in constructing the database for the new Quality Assurance Program. Principal ALJ Tracie Covey has stepped smoothly into her role as the coordinator of this program. Both contributed to the User Guide for how to conduct audits under this Program, how to enter the results of the audits, and how to obtain and track the files.
- Regarding training, as previously reported, we are in the planning stages for a refresher training on Worker Status and Employer Contribution cases. Principal ALJ Chris Tate is chairing the planning committee for that training which also consists of Principal ALJ Tracie Covey, Training Coordinator Deborah Esrick and Senior ALJs Marcy Seaburg-Brackett, John Muller, David Kim and Dennis Torreggiani. Myers continued his report by saying that in the next two months there will be planning for the training of supervisory ALJs for both the Lower and Higher Authority. The results of Survey Monkey questionnaires sent to supervisory ALJ's will help to shape the training.
- Chief Judge Myers continued his report by stating that the Bench Manual for Administrative Law Judges will be expanding with the addition of sections on the less frequently encountered statutory issues. At the end of March, a Dismissal Pay section was added. At the end of June sections will be added from among the following topics: excluded employment, agricultural workers, the Self-Employment Assistance Program, eligibility for claimants approved for career and related training, reduction of benefit rate due to pension or retired pay, suspension of benefits due to industrial controversy, Disaster Unemployment Assistance, and some of the employer liability issues such as transfer of experience rating and fraud penalties, timeliness requirements for protests of charges, and relief from charges for non-controlling employers due to voluntary separations without good cause or misconduct. More and more Administrative Law Judges have been involved in the expansion of the Bench Manual. Chief ALJ Myers wanted to thank Administrative Law Judges Nicholas Alimaras from Hauppauge, Viren Pergadia from Brooklyn, Osa Iyinbo from Troy, Susan Aron from Troy, Eva Lynn Hayko from Troy, and Senior Administrative Law Judges Leonard Shapiro from Garden City, John Muller from Troy, Herbert Fowler from Syracuse, and Mark Sokolowski from Buffalo for their hard work in drafting these sections.
- Myers also reported that since the last Board meeting Principal Judge Tracie Covey has begun her oversight of the Buffalo, Rochester and Syracuse hearing offices, in addition to her important role as coordinator of the Quality Assurance Program. In other changes to Principal Judge duties, Matthew Tierney assumed oversight of the Garden City and Hauppauge offices from Teresa DeMeo who now focuses her oversight on our largest hearing location in Brooklyn. Our four newest ALJs in Brooklyn have been with the UIAB for eight months now and are progressing on schedule and carrying full caseloads. Chief Myers believes that the recent appointment of Syma Islam to a permanent position as an ALJ will help us a great

deal as she has shown great promise in her one year with the UIAB. Three Troy ALJs and three Brooklyn ALJs have continued to work at the Higher Authority because operational needs require that. Those assignments may be revisited once the summer vacation season starts.

- Chief Administrative Law Judge Myers concluded his report by stating that the Board has continued its accelerated pace of issuing Worker Status and Employer Contribution decisions, pointing out that members have been seeing a good number of those cases lately.
  - Chair Reilly asked for questions and comments. Member June O'Neill was impressed by Chief Judge Myers' report. Chair Reilly said the success of the ALJ staff is a result of Chief Judge Myers' great leadership.
  - Member Marilyn O'Mara moved to accept the report into the record. Member Randall Douglas seconded. The report was unanimously adopted into the record.
6. Report of Principal Administrative Law Judge Christopher Tate on four cases affirmed by the court. This report was read by Chief Administrative Law Judge Jayson Myers in Christopher Tate's absence. The reported cases are:
- *Matter of Hasan*, 2019 N.Y. App. Div. LEXIS 1847, was decided on March 14, 2019.
  - *Matter of Li*, 2019 N.Y. App. Div. LEXIS 2195, was decided on March 21, 2019.
  - *Matter of Gilyard*, 2019 N.Y. App. Div. LEXIS 2208, was decided on March 21, 2019.
  - *Matter of Houston*, 2019 N.Y. App. Div. LEXIS 2190, was decided on March 21, 2019.
- Chair Reilly asked for questions and, hearing none, asked for a motion to adopt the report and incorporate them into the record.
  - Member June O'Neill moved to accept the report and to incorporate them into the record. Member Randall Douglas seconded the motion which was unanimously adopted.
7. Report on Pro Bono Advocates
- Principal Administrative Law Judge Teresa DeMeo began her report by talking about Volunteers of Legal Service (VOLS), located in lower Manhattan, which is an organization that arranges for legal services for low-income people including the elderly, immigrants, and the unemployed, among others. Its Unemployment Insurance Advocacy Project connects with attorneys from top New York City law firms and secures their commitment to provide pro bono services to claimants. VOLS works closely with hospitals, schools, senior centers, and other community organizations, integrating pro bono legal assistance into the array of services these institutions already provide. This is how claimants typically find them and ask for assistance.
  - Principal Judge DeMeo continued by reporting that the attorneys from the different law firms request the opportunity to observe the UIAB's hearings after they commit to accepting assignments through VOLS. The Unemployment Insurance Advocacy Project Director, Olga Medyukh, arranges for the attorneys to learn about our

process. Medyukh sends DeMeo an e-mail with the attorney name and law firm and a request for that attorney to view hearings on a specific morning or afternoon. DeMeo will check the hearing calendar to make sure that there are hearings that reflect the common caseload and those issues of interest to the pro bono attorney. DeMeo will also check to ensure that there are Senior ALJs available to answer questions and make the observations more meaningful.

- Principal ALJ DeMeo continued explaining the process by saying that in the Brooklyn hearing office, there are five Senior ALJs. Each typically has one day in each week on which he or she is responsible for monitoring the hearing calendar for that day. That “Senior of the day” makes sure the pro bono attorney observes as many hearings as possible, based on analysis of the calendar and the available supervisory staff for the time requested. DeMeo would then either grant the request or suggest a different date or time. Once the appointment to observe hearings is arranged, DeMeo will notify the Senior ALJs, the reception staff on the floor where the hearings are held, and the security staff of the identity of the observer and the date and time they will arrive. After the attorney has observed our hearings, he or she can begin to accept assigned cases from VOLs and begin to represent claimants.
- Principal Judge DeMeo reported that “this month, Olga Medyukh reported receiving positive feedback from the pro bono attorneys about their observations of hearings. From the Unemployment Insurance Appeal Board’s standpoint, it helps us to have attorneys who when representing claimants already understand how our hearings work.”
- DeMeo continued her report, stating that “Director Medyukh has advised me that VOLs is also a resource for the Unemployment Action Center, which is an organization run by law students from various metropolitan New York City law schools that provides representation by law students to claimants in unemployment insurance matters. From time to time, Ms. Medyukh will ask me a procedural question on behalf of a law student who is preparing to represent a claimant and I will provide a response.”
- Principal Judge DeMeo also talked about the claimant representative table, which is held on Wednesdays and serves as another way that the Brooklyn office reaches out to legal assistance providers. A coalition of several different legal services groups sends a representative who is available to provide information about representation to potential clients, and to answer questions about cases. Sometimes, the representative staffing the table will agree to represent the party and appear at a future hearing. While there is a list of attorneys, which parties can obtain prior to their hearing, some claimants like to see someone with whom they can discuss the details of their case in person.
- DeMeo concluded her report by stating that in several years past, through Manhattan Legal Services attorney Julia Rosner, the Brooklyn UIAB office has arranged time to train Summer interns for the law firm, Brown Rudnick, so they could represent claimants during Summer break. In those sessions, the Department of Labor’s Adjudication Services Office (ASO) provides training on the determinations of the Department and the consequences. At the end of the ASO training, Principal Judge

DeMeo conducts a question and answer period regarding procedures, such as how to request an adjournment or how to object to evidence being admitted at a hearing.

- Principal Judge DeMeo added that the UIAB office in Brooklyn has worked with a City University of New York law professor by arranging for a Senior ALJ to answer questions from law students about our hearing process.
  - All these efforts have brought great value both for the public and for us. Parties value the representation and the support for a representative bar, and attorneys and law students develop meaningful knowledge and skills to use when representing parties. We are committed to a process that welcomes legal assistance providers. We continue to be available to allow pro bono and other representatives to observe our hearings and to educate them to prepare to be part of our process.
  - Chair Reilly asked for questions and/or comments. Member June O'Neill said that this is a great outreach program to law firms and law schools. Chair Reilly added that she would like to see this program nurtured and expanded in the future.
  - Member Marilyn O'Mara moved to accept the report. Member June O'Neill seconded. The report was unanimously accepted into the record.
8. New Business: Chair Reilly asked for new business and hearing none, asked for a motion to adjourn.
  9. Member Randall Douglas moved to adjourn the meeting and Member Michael Greason seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:44 a.m.

Submitted by Susan Borenstein with the assistance of Melissa Sousa