



Unemployment Insurance Appeal Board

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Minutes of UIAB Board Meeting, Wednesday, January 30, 2019

Present in Troy: Geraldine A. Reilly, Chair; Randall T. Douglas, Marilyn P. O'Mara, Board Members; Jayson Myers, Chief Administrative Law Judge, Christopher Tate and Matthew Tierney, Principal Administrative Law Judges

Present by videoconference from New York City: Susan Borenstein, Executive Secretary

Present by videoconference from Ogdensburg: June F. O'Neill, Board Member

Present by phone: Michael T. Greason, Board Member

Agenda:

1. Welcome and Call to Order
 2. Reading and adoption of agenda
 3. Adoption of Minutes – October 3, 2018 meeting
 4. Director's report
 5. Chief ALJ report
 6. Court Decision Update
 7. Report on Website
 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 opened the public meeting of the Board. She said that the meeting was noticed, the draft agenda published, minutes from the previous meeting circulated to members, and the public invited to observe. 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 also acknowledged that in December of 2018 the UIAB honored over 28 employees for their years of loyal service, dedication and performance. Individual awardees include Annual Career Achievement Award winner Danielle Klingbeil in Troy; Annual Leadership Award winner Justin Denton in Brooklyn; and the Annual Award for Excellence awardees Robert Kohl in Brooklyn, and Heather Malmberg in Syracuse.
 - She continued by thanking Executive Secretary Susan Borenstein, Chief Judge Jayson Myers and Principal ALJ for Appeals Christopher Tate for all their dedication

and hard work and added that Chief ALJ Myers and Executive Secretary Susan Borenstein will be providing a brief training session and overview of our UIAB Board Rules to the Board sometime in the future.

- Chair Reilly called the meeting to order at 11:03 a.m.
2. Reading and adoption of the agenda
 - Member Douglas moved to accept the agenda
 - Member O'Mara seconded the motion
 - Motion to accept agenda adopted unanimously
 3. Reading and Adoption of the minutes, October 3, 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 began her report noting that 2018 was a year of firsts: the first ever complete Bench Manual, the first ever E-newsletter, the first 15-minute Tech Tip webinars, the first upgrade project of our case management system in 18 years, and the first time in 35 years we have worked without a court-ordered monitor. She added that this year, too, will be a year of technology upgrades and a new Quality Assurance Audit Plan
 - Borenstein reported that the UIAB is in compliance with all Lower Authority USDOL regulations. As of January 25th, the Lower Authority average case age was 25 days. The validated data, as of December 2018, that is sent by the Division of Research and Statistics to the USDOL reported that the case age in the Lower Authority was 20.6 days which is well below the USDOL 30-day acceptable level of performance. UIAB internal data, as of January 25, 2019, also indicates that we are in compliance with the 30 and 45-day markers. As of that date 60% of cases were scheduled, heard, decided and mailed within 30 days and 89% within 45-days.
 - Regarding the Higher Authority acceptable levels of performance, internal data as of January 25, 2019 indicates that the average case age in Higher Authority was up slightly, at 42.54 days. The validated data as of December 2018 indicated an average Higher Authority case age as 36.6 days in compliance with USDOL 40-day acceptable level of performance.
 - Our fulltime staff fill level was stable at 137, until just recently receiving two resignations from ALJ's who have taken promotional positions with another agency. We have backfilled some administrative slots in Brooklyn and we have a new Supervisor, Danny Perkins in Troy who is managing the appeals administrative staff.
 - Borenstein reported that 2019 and the next two years will be years of upgrades to most of our technology – our case management system, our website, our hearing recording system, our computers and finally an entirely new Unemployment Insurance Computer System.
 - Regarding the update of our case management system, the “go live” date has been postponed again. User Acceptance Testing by a cross-section of staff who perform different functions found some major “show stoppers” in the upgraded version. As a result, the deployment was postponed. We are hopeful that by mid-March we will “Go Live.”
 - Borenstein reported on the new UIAB website. The project will be discussed further in PALJ Matthew Tierney's report later in this meeting.

- Borenstein added that the 15-minute Tech Tip webinars will continue in 2019. The next scheduled training will be specifically for ALJs and will explain how to manually enter case numbers in our hearing recording system. There is also a Tech Tip training being developed to teach users how to use the research filters on the new UIAB website.
 - Executive Secretary Borenstein noted that the Bench Manual continues to be a valuable resource for our judicial staff. It was intentionally designed to allow for adding new chapters and for easy editing. Within the next month, we will be sending out new pages to be inserted with instructions on which pages to remove. In this quarter edits will be sent out twice – next month and at the end of March. Thereafter, new chapters and edits will be sent out at the end of each quarter.
 - Borenstein discussed upcoming trainings. We expect to launch a new and special Customer Service Training for all staff either in February or March pending the “Go Live” date of our case management system. Later this year, a training for Supervisory Administrative staff will also be launched. The statewide mandatory trainings will soon be uploaded into each staff’s My Learning” on the statewide learning system. As usual, all staff will be required to complete all courses by the end of October 2019. Also, we will continue to inform Board Members of improvements in our procedures and provide quarterly training to refresh their knowledge of unemployment law.
 - 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 he found the UIAB E-Update newsletter, tech tip training and Bench Manual to be very valuable
 - Member Douglas moved to accept the report into the record. Member O’Mara seconded. The report was unanimously accepted into the record.
5. Report of Chief Administrative Law Judge (ALJ) Jayson Myers
- Chief Judge Myers reported that training has been completed on the new Quality Assurance Program at every location in the state. The 140 audits per quarter of Lower Authority hearings under this Program will begin in February, and later in the quarter audits of Higher Authority work will commence. These audits will focus on the fundamental elements of fair hearings and decisions. He noted that the Board has constructed a rigorous program that confirms our commitment to do everything we can to ensure that our work is never again the subject of litigation. Our Business Systems Analyst Amy Higby is nearing finalization of the database that will be the hub of the Quality Assurance Program. Senior ALJs and Principal ALJs who will do the auditing under this Program will soon be trained on how to enter the results of the audits into this new database. October 15, 2018 was our final quarterly quality assurance report to the Court under the 2016 stipulation which has now expired.
 - Future training for our supervisory ALJs for later this year is currently being developed. We recently conducted a Survey Monkey questionnaire of the hearing Senior ALJs and will do the same for the appeal Senior ALJs shortly. Their answers will help to shape the training. Later in the year, we will also conduct a refresher training on Employee/Independent Contractor Status and Employer Contribution cases.
 - Chief Judge Myers shared the results of the most recent quarterly Federal Quality Review of cases decided in the Third Quarter of 2018. The average grade was 98.12% 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 continue to be well above that floor with all 20 having passed. Ten of the 20 had perfect scores of 100. For this calendar year we are still scoring just 20 cases per quarter because our workload was under 40,000 benefit cases at the Lower Authority, and workload determines the number of cases that must be audited and scored.

- Myers emphasized that over the past four years there has been an almost 100% passing grade score; just four out of the last 660 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 and supervise them, as well as the legal staff at the Board whose accurate review of records informs the work of the hearing judges.
- Myers reports that a wide range of our judicial staff are contributing chapters for the Bench Manual covering the less frequently encountered legal issues. Senior ALJ Carol Procopio has drafted the section on dismissal pay. Senior ALJ Marcella Seaburg-Brackett and ALJ Jennifer Snyder-Haas, from Rochester and Buffalo, respectively, are working on the Employee/Independent contractor Status section. ALJ Susan Aron is working on the pension reduction statute section. ALJ Eva Lynn Hayko is working on the industrial controversy section. Senior ALJ Leonard Shapiro is working on the Disaster Unemployment Assistance section. Principal ALJ Christopher Tate is drafting a section on employment categories that are excluded from coverage, and a section on issues arising out of the Trade Act which is the federal legislation that affords benefits to workers who are laid off due to the adverse effect of foreign imports. ALJ Osa Iyinbo from Troy will work on a chapter concerning objections from non-controlling employers, and Senior ALJ John Muller from Troy will work on a chapter concerning the less frequent employer liability issues such as transfer of experience rating.
- Our four newest ALJs in Brooklyn have been here for five months and are now beginning to conduct four hearings a day. They are progressing on schedule and their presence and progress has caused a reduction in the number of cases that have to be redistributed around the state. In two weeks, they will receive training on Employee/Independent Contractor Status which will round out their training on substantive and procedural issues. As these ALJs ramp up in their training and skill level, we will continue to analyze the workload at each level on a weekly basis. Based on the experience and skill level of the various ALJs, we shift some ALJs from Lower Authority work to Higher Authority work when the operational needs require that.
- Chief Judge Myers reports that the committee of Senior ALJs Mark Sokolowski, Alison Ferrara, Denyse Hodges and Tracie Covey and ALJs Susan Aron, Wendy Pichardo, Michelle Burrowes have completed a first draft of a UI Appeal Board code of conduct for ALJs. The code will consolidate, in one place, applicable ethical requirements and standards for public officers and judges. There is a tentative publication date for September of 2019.

- Finally, Chief Judge Myers explained that the Board has accelerated its pace of issuing Employee/Independent Contractor Status and Employer Contribution decisions. He said that a team of appeal ALJs are working on those cases and Members will see a steady flow of them throughout 2019. On the other hand, as predicted, this year there are a smaller number of appeals concerning the issue of reasonable assurance of continued similar employment for educational employees of the New York City Department of Education following the *Enman* decision by the Appellate Division.
 - Chair Reilly asked for comments and a motion to accept the report. She acknowledged and thanked Chief Judge Myers for his excellent leadership which shows in the excellent Federal Quality Review scores and for the impressive number of staff members who are involved in special projects. Chief Judge Myers thanked Chair Reilly and added that he wanted to acknowledge the three Principal Administrative Law Judges for their great work, and contributions as well.
 - Member Douglas moved to accept the report into the record. Member O'Neill seconded. The report was unanimously adopted into the record.
6. Report of Principal Administrative Law Judge Christopher Tate discussed four cases affirmed by the Court. They are:
- Principal ALJ Tate discussed four cases affirmed by the Court:
 - *Matter of Schwartz*, 164 AD3d 1582, was decided on September 27, 2018
 - *Matter of Stack*, 165 AD3d 1362, was decided on October 11, 2018
 - *Matter of Pemberton*, 166 AD3d 1202, was decided on November 8, 2018
 - *Matter of Pearson*, 2018 N.Y. App. Div. LEXIS 8537, was decided on December 13, 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'Mara moved to accept the report and to incorporate them into the record. Member O'Neill seconded the motion which was unanimously adopted.
7. Report on Website
- Principal Administrative Law Judge Matthew Tierney began his report with background information regarding the current UIAB website. www.uiappeals.ny.gov which was initially launched in 2013 and was last updated in 2016. In November of 2018, Chief Administrative Law Judge Jayson Myers and Executive Director Susan Borenstein created a work group consisting of Business Systems Analyst Kathy Gangaware, UI Appeal Board Manager Janet Beaudoin, Melissa Sousa, who is Jayson Myers' assistant, and himself to collaborate with website designers from the Office of Information Technology Services to redesign the website.
 - PALJ Tierney explained that to prepare for the task the work group participated in 2 1/2 days of specialized training to learn the website building process and become familiar with the platform that the new website would be built on.
 - The shared goals for this project are to provide the public with information about the Unemployment Insurance Appeal Board and to provide the parties and their representatives with the specific information they need to prepare for their hearings

and appeals. The work group is making steady progress toward meeting these goals and mid-February is the anticipated launch date for the new website.

- Tierney pointed out that Individuals who come to the new website will immediately notice that it has a similar look and feel as other state agency websites. Material that identifies who we are as an Agency and the work that we do will be readily available on the website. Examples include: our Agency’s Mission statement; Board Member biographies; archived videos of Board meetings; a listing of our primary functions; our contact information; and a copy of the Board’s rules.
 - Principal ALJ Tierney continued by saying that content from our current website will migrate to the new one. Content will be reorganized to more prominently feature the information parties and their representatives need. Examples include the following:
 - The heavily viewed video added to our website in 2015 entitled “Preparing for Your Unemployment Insurance Hearing”.
 - Frequently Asked Questions which includes an explanation of who the Administrative Law Judge is and the role he or she will play in the hearing; how to review the case file in advance of the hearing; what happens at a hearing; approximately how long a hearing will take; how to request a postponement or a subpoena; the contact information and directions for each of our eight hearing locations; when and how to appeal from a hearing decision; how to request a review of the hearing transcript; and the procedure to follow when submitting a written statement.
 - The Searchable Board Decisions feature is used by parties and their attorneys to prepare their cases and by our staff when preparing decisions. This link will be upgraded to give users the choice of searching the decision database by typing key words into a search box or by choosing from a list of the most frequently searched legal topics and sub-topics.
 - Tierney added that the new website will give users the option to view the video and vital documents in the eight most common non-English languages spoken in New York State and the website’s entire content can be viewed in 95 different languages.
 - Principal ALJ Tierney closed his report by explaining that the next two weeks will be critical for this project as the group refines website pages in preparation for our go-live date. Our team has worked diligently on this project and looks forward to its successful conclusion.
 - Chair Reilly asked for comments and a motion to accept the report. Board member June O’Neill asked if there will be a beta version of the new website to which PALJ Tierney explained that he has seen some of the new pages for the website and is waiting to see more. Tierney also added, that there will be at least a week for review of the new website before it goes live.
 - Member Douglas moved to accept the report. Member O’Mara 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 April 24, 2019 at 11:00 a.m.

9. Member Greason moved to adjourn the meeting and Member Douglas seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:42 AM.

Adopted: April 24, 2019