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CHRISTOPHER M. TATE
MATTHEW J. TIERNEY
PRINCIPAL ADMINISTRATIVE LAW JUDGES

Minutes of UIAB Board Meeting, Wednesday, October 2, 2019

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

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

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

Agenda:

1. Welcome and Call to Order
2. Reading and adoption of agenda
3. Reading and adoption of Minutes – June 19, 2019 meeting
4. Director's report
5. Chief ALJ report
6. Principal ALJ for Appeals Report
7. Other
8. Adjourn

1. Welcome and Call to Order

- Chair Geraldine Reilly presiding from the board's office in Troy, New York on Wednesday, October 2, 2019 opened the public meeting. She stated that the meeting had been noticed, the draft agenda had been published, the minutes from the previous, June 19, 2019 meeting have been circulated to the members, and the public has been invited to observe. Chair Reilly noted that the meeting was being recorded and would be available, along with the draft minutes on the UIAB website.
- Chair Reilly acknowledge that Board Members June O'Neill and Randall Douglas were in attendance in Troy, adding that June O'Neill had traveled from Ogdensburg and Randy Douglass had traveled from Plattsburgh. Board Member, Michael Greason, attended remotely from NYC, and Board Member Marilyn O'Mara attended from Elmira. With all members in attendance, a quorum was present. Chair Reilly said the meeting was the fourth and final official meeting of 2019.
- Board Chair Geraldine Reilly began the meeting by expressing her thanks to all the staff and leadership of all UIAB offices and she thanked her colleagues on the Board for their work, encouragement and support.
- Chair Reilly continued her remarks by noting that this was the fourth meeting of 2019; and that she hoped that the consistent, quarterly schedule of Board meetings represented a Board that is proactive and accessible-- and a Board which aggressively addresses the 21st century challenges that we face or that we anticipate.

She continued that the Board addressed those tasks with optimism and confidence in the skill and effort of our many talented employees.

- Chair Reilly observed that each Board Member, and each staff member is serious and interested—industrious and engaged in their approach to the consequential work of the Board, and she sincerely thanked them for that.
- Board Chair Reilly acknowledged and thanked Executive Director and Board Secretary Susan Borenstein; Chief Judge Jayson Meyers and Principal ALJ for Appeals Christopher Tate.
- Before the call to order, Reilly reminded members, staff and the public that the first public meeting of the Board for 2020 will be held on Wednesday, January 22, 2020.
- She added that this meeting was being recorded and will be available on the UIAB website, and that a quorum was present.
- Chair Reilly called the meeting to order at 11:02 a.m.

2. Reading and adoption of the agenda

- Member Randall Douglas moved to accept the agenda
- Member June O'Neill seconded the motion
- Motion to accept agenda adopted unanimously

3. Reading and Adoption of the minutes, from the June 19, 2019 Board Meeting

- Member Michael Greason moved to waive the reading and to adopt the minutes
- Member Marilyn O'Mara seconded the motion
- Motion to suspend reading and adoption of the minutes unanimously approved

4. Report of Executive Secretary Susan Borenstein

- Executive Secretary Susan Borenstein began her report by saying that the UIAB's average case age in higher authority appeals as of Friday, September 27th was 35.1 days, which is well below the 40-day acceptable level of performance. The UIAB is in compliance with the USDOL timeliness regulation for higher authority appeals.
- Borenstein continued by reporting that over this past year we have had many challenges not the least of which were technological. Our Chair Geraldine Reilly and Chief Administrative Law Judge Jayson Myers have always been present and ready to pitch in with finding solutions.
- She continued her report by adding that in other data points regarding compliance with USDOL acceptable level of performance markers, as of September 27th internal data indicated that the Lower Authority average case age was 26 days. The validated data as of August 2019 that is the data that is sent by the Division of Research and Statistics on the 15th of every month to the USDOL shows that the average case age in the Lower Authority was (stated 41.1 and was later corrected to say) 24.1 days, well below the USDOL 30-day acceptable level of performance, and 33.9 days for higher authority appeals.
- Executive Director Borenstein continued by saying that UIAB internal data as of September 27th also indicated that we are in compliance with the 45-day time lapse markers. As of September 27th, 85% of our cases were scheduled, heard, decided and

mailed within 45-days, again well within acceptable levels of performance. Borenstein continued that the time lapse marker which obligates the Board to mail 60% of the decisions within 30 days remains a bit low at 57%. She observed that the Board was still feeling the after effects of the weeks following the update of our case management system, when the Board and the UI Division had to submit data manually. ASO staff creates UIAB case files. As a result of the difficulties encountered with the deployment of the upgrade, when we cases were received at the UIAB, they were already too old for the Board to make the 30-day deadline. Borenstein's expectations were that by mid-October the Board would be in compliance with all USDOL regulations.

- Borenstein continued indicating that fulltime staff fill level remains stable at 134 employees. The UIAB hired one new ALJ in Brooklyn, Eno-Obong Essien and ALJ Syma Islam transitioned to the hearing section in Troy after working on the re-review project. The UIAB has also backfilled or will backfill administrative positions in Troy, Brooklyn, Garden City and Buffalo. Borenstein noted that the turnover in administrative staff positions is caused by staff seizing promotional opportunities at other agencies. The UIAB does not always have open positions at higher grade levels to which we can promote staff even though staff tell us they would like to remain with the UIAB. We understand why staff chose to leave as they cannot give up higher salaries which the promotional positions afford.
 - Executive Director Borenstein continued by saying that yesterday was the deadline for the nominations for the UIAB Employee Recognition Awards. The Awards Committee, composed of Chief ALJ Jayson Myers, Principal ALJ Christopher Tate, UIAB Manager Janet Beaudoin, and Borenstein will meet soon to select the winners from a list of very worthy candidates. She added that Board Chair Geraldine Reilly participates in the process as well. All winners will be announced in the upcoming newsletter. Employee Recognition awards will be presented at events during the months of November and December, by Chair Geraldine Reilly.
 - Finally, Borenstein ended her remarks by saying that Executive team was very pleased that at the end of this month, the UIAB will hold a training conference in Building 12 for all Supervisory ALJs. The training will be in two parts. Part 1 which will be led by Darcy Leigh, LEAD's Director, will focus on supervisory skills such as providing feedback and creating an atmosphere of positivity in the workplace. Part 2 will focus on hearing and appeals efficiency skills and how Senior ALJs might assist those they supervise to master them. She mentioned her optimism that the conference will augur a new period of professional development for the entire judicial staff. Chief ALJ Jayson Myers will speak more about this conference in his report. With those remarks Borenstein's report was concluded.
 - 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'Neill 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 ALJ Myers began by reporting the results of the most recent quarterly Federal Quality Review, involving Lower Authority cases decided in the Second Quarter of 2019. The UIAB has continued the trend of high performance of the past several years. The Administrative Law Judges' average grade was 97.93% based on the 20 randomly

selected cases that were scored according to the 31 federal quality criteria. All the cases that were scored achieved the U.S. Department of Labor's passing grade of 85% or better, and all but one hearing scored 94 or better. The acceptable level of performance is 80 percent, or 16 cases, passing with grades of 85 or better. Ten hearings had perfect scores of 100.

- CALJ Myers continued by reporting that over the past four years just four out of the last 720 cases scored have not achieved passing grades. He gave credit to the hearing judges across the state, who produce these very high scores, and their supervisors, the Senior Judges at the Lower Authority (hearing level), as well as the judicial staff at the Higher Authority (Board level).
- Chief Judge Myers continued by saying that the second quarter of audits under the UIAB's own Quality Assurance Program have been completed and audits for the third quarter are well underway. One hundred forty (140) hearings are audited every three months. Out of the first 281 audits, only five hearings contained errors requiring a remedy, which equates to a 1.8% rate. Chief Judge Myers continued by stating that the UIAB can be very proud of that level of performance. Audits focus on the fundamental elements of fair hearings and decisions. Some audits are done by the ALJ's supervisor and some by Senior ALJs who are not the ALJ's supervisor. All audit results are reviewed by the supervisors to determine if follow-up is needed. Principal ALJ Tracie Covey coordinates the Quality Assurance Program. Business Systems Analyst Amy Higby is the Access database expert who maintains and updates the Quality Assurance database. Both have been indispensable to the initial success of this program.
- CALJ Myers turned his report to focus on the upcoming training schedule for the remainder of 2019. As Susan Borenstein mentioned, on October 29, 30, and 31, in Albany, the UIAB will be holding a Senior ALJ Training Conference, the first of its kind in memory. The Training Conference will focus on two critical aspects of a Senior ALJ's work: first, the skills needed in supervising and providing feedback to ALJs within a positive atmosphere of professional development and second, what Senior ALJs should concentrate on when it comes to ensuring the efficiency of their teams in completing their work in a timely manner. Chief Judge Myers continued by reporting that the results of Survey Monkey questionnaires conducted at the beginning of this year helped to shape the training. Principal ALJs Chris Tate, Matthew Tierney and Tracie Covey and Training Coordinator Deborah Esrick will join the Department of Labor's LEAD Director, Darcy Leigh, as the trainers at this conference.
- Chief Judge Myers continued to report on the Sr. ALJ training by explaining that for the efficiency skills, there will be separate modules for Senior ALJs assigned to the Board. Chris Tate and Deborah Esrick will handle the Higher Authority module. Tracie Covey and Matthew Tierney will handle the Lower Authority module. All drafts of the facilitator guides for the training have been drafted and are expected to be finalized soon. Staff will be conducting "dry runs" of the efficiency portion of the training beginning on

October 1, 2019. The training for the ALJs has been postponed to the early part of 2020 because of the focus on the upcoming Senior ALJ Training Conference.

- Myers continued his report by addressing that the Bench Manual for Administrative Law Judges will be expanding further at the end of the year with the addition of chapters on Valid Original Claim authored by Tracie Covey and ALJ June Egeland from Buffalo, and issues involving non-controlling employers authored by ALJ Osa Iyinbo from Troy. In the first quarter of 2020, the UIAB will be publishing chapters on Arbitration and Collateral Estoppel authored by ALJ Mary Beth Danner Conboy from Troy, and issues involving foreign nationals authored by Deborah Esrick. A new section addressing Emergency Unemployment Compensation authored by Senior ALJ Carol Johnson from Troy, will also be added to the Federal Programs Chapter. The chapters on Coverage of Employment and Contributions to the Fund authored by Tracie Covey, Senior ALJ Marcy Seaburg-Brackett from Rochester and former ALJ Jennifer Snyder-Haas will be published in the first half of next year.
 - Chief Judge Jayson Myers was pleased to announce that the UIAB has welcomed a new ALJ, Eno-Ebong Essien, to the staff in Brooklyn. She came to the UIAB from the Division of Human Rights. Also, Troy ALJ Syma Islam has been transferred from working on the re-review appeals to begin to hear cases at the Lower Authority. Both ALJ Essien and ALJ Islam are currently being trained before beginning their assignments.
 - CALJ Myers concluded his report by addressing the re-reviews, he reported that the UIAB expects to finish work on those cases by the end of the year. At that point, all obligations under the MLC litigation will have been satisfied. The UIAB is demonstrating presently and will continue to ensure that due process is afforded and the UIAB will serve the public at an admirable level of quality.
 - Chair Reilly asked for comments and a motion to accept the report.
 - Member Douglas 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 Evens, 2019 NY App Div LEXIS 6681
 - Matter of Bloomfield, 2019 N.Y. App. Div. LEXIS 6550
 - Matter of Stewart, 2019 N.Y. App. Div. LEXIS 6031
 - Matter of Bebbino, 174 AD3d 1238
 - Chair Reilly asked for questions and, hearing none, asked for a motion to adopt the report and incorporate them into the record. Member Douglas moved to accept the report and to incorporate them into the record. Member O'Neill seconded the motion which was unanimously adopted.
7. Other
- Chair Reilly asked for new business and Board Member June O'Neill said that she wanted to congratulate and thank the team who worked so hard on the ABS version 7

update. She stated that she really enjoys using the updated database and enjoys lots of the improved features.

- Member Randall Douglas agreed with Member O'Neill and thanked the team for their patience and attention while getting Board Members trained on the new system.
- Chair Reilly also thanked the BSA team for their efforts in the ABS v7 project from start to finish.

8. Adjourn

- Board Chair Geraldine O'Reilly noted that the next Board meeting will be on January 22, 2020, thanked Board Members for attending this meeting and then asked for a motion to adjourn.
- Member Douglas moved to adjourn the meeting and Member Greason seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:28 a.m.

Adopted 1.22.20 by unanimous approval of the Board