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PRINCIPAL ADMINISTRATIVE LAW JUDGES

Minutes of UIAB Board Meeting, Wednesday, June 19, 2019

Present in Troy: Geraldine A. Reilly, Chair; Michael T. Greason, Randall T. Douglas, June F. O'Neill, Marilyn P. O'Mara, Board Members; Susan Borenstein, Executive Secretary, Jayson Myers, Chief Administrative Law Judge, and Christopher Tate, Principal Administrative Law Judge

Agenda:

1. Welcome and Call to Order
2. Reading and adoption of agenda
3. Reading and adoption of Minutes – April 24, 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 offices in Troy, New York on June 19, 2019 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.
- Chair Reilly began by acknowledging that all our Board Members were in attendance with her in Troy. She extended a special welcome to Board Members Michael Greason, from NYC, to June O'Neill from Ogdensburg, to Marilyn Pena O'Mara from Binghamton and Board Member Randall Douglas from Plattsburgh. She remarked that with all members being present; there was a quorum and the meeting was official.
- Chair Reilly thanked all of those who have supported the work of the Board in addressing the many tasks that the Board faces. She also thanked the staff and leadership of all UIAB offices, and she thanked her colleagues on the Board for their work, encouragement and support.
- Reilly commented that this was the third meeting of 2019; and she hopes that this consistent, quarterly schedule of Board meetings presents a Board that is proactive and accessible-- and a Board which aggressively addresses the 21st century challenges that they face or that they anticipate—and that the Board addresses those tasks with optimism and confidence in the skill and effort of our many talented employees.

- She went on to point out that each Board Member, and each staff member is serious and interested—industrious and engaged in their approach to the consequential work that the UIAB does.
- Chair Reilly also wanted to acknowledge and thank Executive Director and Board Secretary Susan Borenstein, Chief Judge Jayson Meyers and Principal ALJ for Appeals Christopher Tate, who were also present in Troy.
- Before the call to order, she reminded members, staff and the public that the last remaining public meeting of the Board for 2019 will be held on Wednesday, October 2, 2019.
- Chair Reilly called the meeting to order at 12:05 p.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, April 24, 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 her report with data points regarding the UIAB's compliance with USDOL acceptable level of performance markers. She said, as of June 13, the UIAB's internal data indicated that the Lower Authority average case age was 24 days. The validated data as of May 2019 that is sent by the Division of Research and Statistics to the USDOL reported that the case age in the Lower Authority was 21.13 days well below the USDOL 30-day acceptable level of performance.
- Borenstein continued by saying that the UIAB's internal data as of June 13, 2019 indicated that the UIAB is in compliance with the 45-day time lapse markers. As of June 13, 2019, 84% of cases were scheduled, heard, decided and mailed within 45-days again, which is well within acceptable levels of performance. However, the time lapse 30-day marker which obligates us to mail 60% of the decisions within 30 days of the hearing request has slipped to 53%.
- Borenstein explained that the reason we are not in compliance with the 30-day time lapse percentage standard is that the UI Division has had technical difficulties with a new case management system, because of that we received a low percentage of cases with an average case age of 10 days or less. She continued by saying, since we schedule cases 14 days after receipt, it is impossible to get all cases scheduled, heard and decided within the 30-day time frame. She anticipates that this will be resolved in the near future.

- Executive Secretary Borenstein continued by adding, with regard to Higher Authority acceptable levels of performance, the UIAB's internal data indicated that the average case age in Higher Authority remains below 40 days. Based on internal data as of June 13, 2019, the average case age was 34.11 days. The validated data as of the end of May 2019 indicated an average Higher Authority case age of 35.38 days which is in compliance with USDOL 40-day acceptable level of performance. Borenstein thanked the Board Members for their ongoing attention to the age of the cases that they receive.
- Executive Secretary Borenstein continued her remarks by saying that the fulltime staff fill level currently remains stable at 139 employees. One ALJ in Brooklyn will retire in July, and another Brooklyn ALJ will move to a promotional position at the Workers Compensation Board at the end of the month. Both of those positions are in Brooklyn and will be backfilled. In addition, two administrative positions will be backfilled; one in Garden City and one in Buffalo.
- Next, Borenstein reported that the past several months have been filled with ongoing initiatives related to technological upgrades of the Curam based case management system – ABS; the UIAB website will be new; and the UIAB's hearing recording system is also being upgraded so that it is compatible with Windows 10. User acceptance testing of our case management system will be completed on June 19, 2019, and if all goes well the expected "go live" will be July 11. She added that all the upgrades have been delayed because of technical difficulties.
- Executive Secretary Borenstein added, the UIAB has received good news that the state contract for the modernization of the entire UI system has been signed. Both Geri Reilly, our Chair and she are members of the Steering Committee for the project which meets quarterly. They expect that the contracted vendor, Tata will be on site starting in July. Two Business Systems Analysts from the UIAB, including Kathy Gangaware, our Lead analyst, will permanently decamp to Building 12 for the duration of the project. The entire project is scheduled to be completed in four years.
- Borenstein continued her report by noting that other upgrades that the Business Systems Analyst team have worked on since the last Board meeting include a new on-line fillable subpoena form; new guidelines for the receipt of video evidence in a hearing; the acquisition of laptops at all hearing locations to view the video evidence; and our ongoing 15-minute webinar Tech Tips program.
- Borenstein continued by saying that the UIAB is embarking on a new project to "robo" call all hearing parties twice prior to their scheduled hearing to remind them of the date, time and place of the hearing. The UIAB is piggy backing on new software that the DOL has purchased and she added that she is optimistic that this system will be deployed sometime in August and will successfully reduce the number of defaults.
- Executive Secretary Borenstein announced that at the end of this month Board Members will receive three new Bench Manual chapters along with some updates. The newly printed tabs for all remaining chapters have been already distributed to all those who have a hard copy of the Bench Manual. She added that the on-line version of the Bench Manual is constantly updated as well.
- Borenstein was excited to share that in the Brooklyn office, they have launched a new customer service pilot project the week of June 3, 2019. Two Supervisory Labor Services Representatives, Vanessa Castillo and Eric Koslofsky, will be stationed in the hearing waiting room twice a week for several hours to answer questions and concerns parties may have about the hearing process. The goal is to show customers that we take

our mission seriously, to provide the best customer service possible. The viability of this pilot will be assessed at the beginning of July. If the pilot is found to be successful, the program will be rolled out statewide.

- Borenstein ended her remarks by letting everyone know that the next UIAB newsletter will be released in June and will feature a Q & A with Board Member Randy Douglas. Another Board member will be featured in the following issue.
- Chair Reilly asked for questions or comments. Member O'Neill asked whether or not the fact that cases are now being sent from Member to Member has helped with the case age. Borenstein responded affirmatively, adding that this is likely the reason for the number of days going down in recent months.
- Member Douglas moved to accept the report into the record. Member Marilyn O'Mara seconded. The report was unanimously accepted into the record.

5. Report of Chief Administrative Law Judge (ALJ) Jayson Myers

- Chief ALJ Jayson Myers began by reporting on the results of the most recent quarterly Federal Quality Review, involving Lower Authority cases decided in the First Quarter of 2019. He said that the Administrative Law Judges' average grade was 98.96% based on the 20 randomly selected cases that were scored according to the 31 federal quality criteria, which could be an all-time high. All 20 of the selected cases, achieved the U.S. Department of Labor's passing grade of 85% or better. He added that the acceptable level of performance is 80 percent, or 16 cases, passing with grades of 85 or better. Thirteen of the 20, or 65 percent of the cases scored, had perfect scores of 100.
- Chief Judge Myers continued his report on the quarterly Federal Quality Review by adding that from the longer-range perspective, over the past four years just four out of the last 700 cases scored have not achieved passing grades. He believes that we should all be quite proud of these results. He offered the credit to the hearing judges across the state, who produce these very high scores, their supervisors, the Senior Judges at the Lower Authority which is our hearing level, and the judicial staff at the Higher Authority which is the Board level. He added that the Board Members also deserve credit for issuing decisions that clearly shape our legal landscape. He added that the entire UIAB will continue to work hard to maintain this very high level of performance.
- Myers moved on to report that staff have completed the first quarter of audits under the UIAB's own Quality Assurance Program and are well into the second quarter. One hundred forty (140) hearings are audited every three months. These audits focus on the fundamental elements of fair hearings and decisions. Principal ALJ Tracie Covey is guiding this process as the coordinator of this program. Business Systems Analyst Amy Higby is our Access database expert who maintains and updates the Quality Assurance database.
- Chief Judge Myers continued his report by discussing the UIAB training schedule for the remainder of 2019. A workgroup composed of Principal ALJ Chris Tate, Principal ALJ Tracie Covey, Training Coordinator Deborah Esrick and Senior ALJs Marcy Seaburg-Brackett from Rochester, John Muller and David Kim from Troy, and Dennis Torreggiani from Brooklyn continue to plan for a refresher training on Employee/Independent

Contractor Status and Employer Contribution cases tentatively scheduled for late September of this year. First drafts of materials are due on July 8, 2019 and final drafts on July 22, 2019. He added that the Facilitator's Guide will be due on August 15, 2019.

- Chief Judge Myers continued by adding that as previously reported the UIAB is also moving ahead on a very important multiple-day training for supervisory ALJs for both the Lower and Higher Authority. He strongly believes that this training will help to accomplish a revitalization of the Senior ALJ position at the UIAB. On June 20, 2019, there will be an initial workgroup meeting. The workgroup is composed of Tracie Covey, Deborah Esrick, Denyse Hodges from Hauppauge, Alison Ferrara and Justin Denton from Brooklyn, Mark Sokolowski, Susan Borenstein and Myers. He added that the results of a Survey Monkey questionnaires conducted at the beginning of this year will help to shape the training. The two major modules of that training will be hearing skills and supervisory techniques. There will also be modules for appeals Seniors
 - Myers reported that The Bench Manual for Administrative Law Judges is expanding further at the end of this month with the addition of sections on eligibility for claimants approved for career and related training written by Mark Sokolowski, reduction of benefit rate due to pension or retired pay written by Susan Aron from the Higher Authority in Troy, and suspension of benefits due to industrial controversy written by Eva Lynn Hayko, also from the Higher Authority in Troy, as well as timely update in several existing chapters. Other chapters will be added at the end of September. He added that Senior ALJ Carol Johnson from Troy will draft the chapter on Emergency Unemployment Compensation and ALJ Mary Beth Danner Conboy from Troy will draft the section on the collateral estoppel effect of arbitration decisions on unemployment insurance decisions. Myers noted that the Bench Manual continues to be well received by our administrative law judges.
 - Regarding staffing, Chief Judge Myers said that two Brooklyn ALJs are leaving the UIAB. Sally Woo in Brooklyn will shift over from appeals to hearings to maintain our hearing capacity there, and we are recruiting for two ALJs to replace the two who are leaving.
 - Chief Judge Jayson Myers concluded his remarks by adding that the Board continues to issue Employee/Independent Contractor Status and Employer Contribution decisions at a rapid pace. This coincides nicely with the planned upcoming training on these subjects for judicial staff since there now is a rich recent body of work coming out of the Board. He thanked all the Members for those decisions.
 - Chair Reilly asked for comments and a motion to accept he report.
 - 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 Xavier, 2019 N.Y. App. Div. LEXIS 4056, was decided on May 23, 2019*

- *Matter of D'Altorio, 2019 N.Y. App. Div. LEXIS 4250, and 103 other related cases, were decided on May 30, 2019*
 - *Matter of Gunn, 2019 N.Y. App. Div. LEXIS 4296, was decided on May 30, 2019*
 - *Matter of Magdylan, 2019 N.Y. App. Div. LEXIS 4240, was decided on May 30, 2019*
 - 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. New Business: Chair Reilly asked for any 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 2, 2019.
8. 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 12:37 p.m.

Submitted by Susan Borenstein with the assistance of Melissa Sousa
Adopted unanimously: October 2, 2019