

GERALDINE A. REILLY
CHAIRMAN

MICHAEL T. GREASON
RANDALL T. DOUGLAS
JUNE F. O'NEILL
MARILYN P. O'MARA
MEMBERS



Unemployment Insurance
Appeal Board

PO Box 15126
Albany, NY 12212-5126
TEL: (518) 402-0205
FAX: (518) 402-6208
www.uiappeals.ny.gov

SUSAN BORENSTEIN
EXECUTIVE SECRETARY

JAYSON S. MYERS
CHIEF ADMINISTRATIVE LAW JUDGE

TRACIE L. COVEY
TERESA A. DeMEO
CHRISTOPHER M. TATE
MATTHEW J. TIERNEY
PRINCIPAL ADMINISTRATIVE LAW JUDGES

Minutes of UIAB Board Meeting, Wednesday, January 22, 2020

Present in Troy: Geraldine A. Reilly, Chair; Randall T. Douglas, June F. O'Neill, Marilyn P. O'Mara, Board Members; Christopher Tate, Principal 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. Reading and adoption of Minutes – October 2, 2019 meeting
4. Director's report
5. Chief ALJ report
6. Principal ALJ for Appeals Report
7. Change of Board Rules
8. Other
9. Adjourn

1. Welcome and Call to Order

- Chair Geraldine Reilly presiding from the board's office in Troy, New York on Wednesday, January 22, 2020 opened the meeting. She stated that the meeting had been noticed, the draft agenda had been published, the minutes from the previous, October 2, 2019 meeting have been circulated to the members, and the public 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 acknowledged Board Members June O'Neill, Marilyn Peña O'Mara and Randall Douglas who were in attendance in Troy. Board Member, Michael Greason, attended remotely from NYC. Chair Reilly stated a quorum was present.
- Board Chair Geraldine Reilly opened the meeting by thanking all the staff and leadership of UIAB offices who have supported the work of the Board in addressing the many tasks that they face. She also thanked her colleagues on the Board for their work, encouragement and support.
- Chair Reilly continued by noting that this was the first meeting of 2020; and that she hoped that the consistent, quarterly schedule of Board meetings represented a Board that is proactive and accessible; a Board which aggressively addresses the 21st century challenges that we face or that we anticipate; and, finally a Board that

addresses 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.
- Board Chair Reilly acknowledged and thanked Executive Director and Board Secretary Susan Borenstein whom she noted was appearing remotely from Brooklyn and Principal ALJ for Appeals Christopher Tate who was attending the meeting in the Troy office.
- Chair Reilly went on to say that Chief Judge Jayson Myers was unable to attend this Board meeting. She wished him well and said that she expects to see him soon.
- Before the call to order, Reilly reminded members, staff and the public that the next public meeting of the Board will be held on Wednesday, April 29, 2020 at 11:00 a.m.
- Chair Reilly called the meeting to order at 11:07 a.m.

2. Reading and adoption of the agenda

- Member Randall Douglas moved to accept the agenda
- Member Michael Greason seconded the motion
- Motion to accept agenda adopted unanimously

3. Reading and Adoption of the minutes, from the October 2, 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 Susan Borenstein began her report by stating that because Chief Administrative Law Judge Jayson Myers would not be in attendance at this meeting, she would report on some of the items that he would have addressed.
- She went on to say that under the able leadership of the UIAB Chair, the capable leadership of Chief ALJ Jayson Myers and the talented judicial and administrative staff, the UIAB begin this new year with optimism and excitement due to the fulfillment of all obligations arising from the MLC/Barcia litigation. She explained that the UIAB is now free to chart its own course after forty years of oversight and the intention is to meet that challenge with boldness and innovation, without sacrificing the UIAB's continuing commitment to Due Process.

- Borenstein continued by thanking Principal ALJ Christopher Tate for his work in reviewing the Board Rules for plain language and carefully inserting the changes into a document according to state requirements and protocols. She noted that she, Chris and Jayson spent many hours discussing legally appropriate language for the changes which the members of the Board would discuss later in this meeting.
- Executive Director Borenstein was excited to recognize the authors of four Bench Manual chapters which were completed at the end of last year attesting to the expertise of the UIAB's judicial staff. The chapters were circulated in hard copy to Board Members and to the judicial staff. The authors of the chapters are: Osa Iyinbo, Chapter 16: Non-Controlling Employer Issues; Tracie Covey and June Egeland, Chapter 17: Valid Original Claim; Mary Beth Danner Conboy, Chapter 18: Arbitration and Collateral Estoppel; Deborah Esrick, Chapter 19: Undocumented Foreign Nationals.
- She added that in addition to refinements, there are only two chapters left to complete: Chapter 20, Coverage of Employment and Chapter 21, Contributions to the Fund. Senior ALJ Marcy Seaburg-Brackett and Jennifer Snyder-Haas have worked on these final chapters. Senior ALJ Deborah Esrick is completing them. The chapters will be finished in early March to coincide with a training on Status and Contribution cases.
- Borenstein continued her report by sharing that earlier this month (January), the first meeting of the statewide judicial training committee was held. The members of the committee, which is chaired by Training Coordinator Senior ALJ Deborah Esrick, include Principal ALJ Tracie Covey, Senior ALJs Denyse Hodges and Alison Ferrara, ALJs June England and Eva Lynn Hayko, Executive Director Borenstein and Chief Judge Jayson Myers will oversee the work of the Committee. She explained that the group brainstormed about its work, which is to provide training guides and modules to judicial staff in a variety of settings including at team meetings, virtually, and in person at locations. The group also began to identify potential trainers and the resources needed to train the trainers.
- She continued by explaining that at the meeting, the subject of the trainings was also discussed. Future trainings will include changes in substantive law, requests by the judicial staff, patterns of errors found in the monthly audits, as well as the identification of best practices by individual ALJs which can be shared with the entire judicial staff. Prior to the next meeting in April, times, dates and trainers will be identified for an all judicial staff training on status and contribution cases in March, and a sub-committee was formed to begin the development of a diversity and cross-cultural communication training.
- Executive Director Borenstein continued by reporting that UIAB staff are now in the process of scoring the 4th Quarter Federal Quality Review of randomly selected hearing cases. This USDOL mandated review requires the audit of either 20 or 40 hearing cases per quarter (based on the number of hearing decisions during the past year). The quarterly review is a weighted list of due process procedures. A passing grade for individual cases is 85% or higher. For the Appeal Board to pass the quarterly review, the average score of the random sample must be 80% or higher. During the last several years, the average scores have exceeded 95% and it is expected that this will be the case for the 4th quarter 2019.

- Next, Borenstein reported that at the end of the last Board meeting, it was announced that the UIAB would hold a special training conference in Building 12 for all Supervisory ALJs. The two and one-half days conference was a great success. Its focus was on hearing and appeals efficiency skills. The training was in two parts. Part 1 led by Darcy Leigh, LEAD's Director, focused on supervisory skills such as providing feedback and creating an atmosphere of positivity in the workplace. Her presentation was spectacular.
- Part 2 of the training conference focused on hearing and appeals efficiency skills and how Senior ALJs might assist those they supervise to master them. Principal ALJs Christopher Tate, Tracie Covey and Matthew Tierney did a wonderful job in creating the trainings and in engaging the participants. The conference concluded with a presentation by Chief ALJ Jayson Myers on Credibility which had participants laughing out loud. He created an innovative module and chart deconstructing a credibility call. His training module featured a Jeopardy-like contest to correctly identify the elements of a credibility call. If participants correctly identified the elements, a bell sounded with the help of smart phone technology. If elements were incorrectly identified a buzzer sounded. Thus, the conference ended with smiles and good cheer. Executive Director Borenstein feels very optimistic that the conference will augur a new period of professional development for our entire judicial staff.
- Borenstein announced that the UIAB is now in compliance with all USDOL performance markers. As of January 16th, internal data indicates that the Lower Authority average case age was 22.8 days. The validated data for December 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 Lower Authority average case age for the month of December 2019 was 21.98 days, well below the USDOL 30-day acceptable level of performance, and 34.1 days for higher authority appeals. Internal data as of January 16th also indicates that the UIAB is in compliance with the 45-day time lapse markers. As of January 16th, 87% of cases were scheduled, heard, decided and mailed within 45-days, again well within acceptable levels of performance. Once again, the UIAB is in compliance with the 60%-time lapse marker 61% of the decisions were mailed.
- Executive Secretary Borenstein continued her remarks by stating that the fulltime staff fill level remains stable at 134. The federal UI grant which finances the UI Appeal Board has been cut, thus we anticipate that our staffing level will not increase for the foreseeable future, although backfill of positions will still be possible as they become vacant. Currently, the UIAB is in the process of backfilling administrative positions in Buffalo, Garden City and Brooklyn. In Troy, a Senior ALJ whom with whom the Board members have often worked, Senior ALJ Mary Beth Phillips is retiring. Today is her last day. We wish Mary Beth all the best in her retirement and thank her for her 25 years of service.
- Executive Director Borenstein continued her report by speaking about the Employee Recognition Awards ceremonies which ended in mid-December of last year and were a great success. Chair Reilly traveled to each location to present the awards, as a well as a special certificate to each UIAB staff signed by Governor Cuomo. The gubernatorial certificate commended teach staff member for his/her role in helping to complete all work

associated with the MLC/Barcia case. Staff were very pleased to spend time with Chair Reilly to discuss issues of local concern.

- Borenstein reported on technology updates by beginning with discussion of the new website, which was launched over this past weekend. The new website uses the same software as other state agencies and has the same look and feel. It is much more user friendly than the former UIAB website. Most importantly, UIAB staff members will be able to change the text within the site without having to make requests to have it changed for us. Amy Higby was able to upload the Substantive Section Part II of the Bench Manual prior to the site going live. She has done a wonderful job in testing the searchable decisions and in uploading information such as the Notice of this meeting.
- Also, on the technology front, a new build to fix some defects in the Curam based ABS management system was successfully tested and launched two weeks ago. The ITS legacy team for ABS will now work on a “build” to associate combined cases. It had previously been identified that this is the biggest “pain point” in the system. When this is completed judges and you will not have to go into every case number screen to close or sign-off on a case. Instead, the cases will be automatically associated. Completion of this update will hopefully be by May of this year. In May, the ABS system will be frozen, and no updates will be possible to any data field. The reason for this is that the project to modernize the entire UI system is in full-swing and data is being migrated to the new system.
- Borenstein concluded her remarks by saying she along with Principal ALJ Teresa DeMeo, Senior ALJs Rachel Freeman and Alison Ferrara and UIAB Senior LSR Eric Koslofsky visited the Workers Compensation Board in Brooklyn to learn about and observe their first in the country virtual hearing system.
- She explained that the system allows a judge to hear a case virtually. A judge in one location appears on a screen and can see hearing parties on another screen at a Comp Board location in another part of the state. The software is also usable on a smartphone. Of course, she added, this is possible because the Comp Board has electronic case files which allows them to move cases anywhere in the state. The UIAB has recently submitted a project request to utilize the same technology for UIAB hearings. The UIAB will have electronic case files with the new UI system and would like to be the first in the country to do virtual hearings.
- Chair Reilly asked for questions or comments.
 - Member Randall Douglas noted that he had visited the new UIAB Website and thought it was wonderful
 - Chair Reilly wanted to highlight the end of the MLC/Barcia litigation and credited the entire staff for the completion of the project
 - Chair Reilly also congratulated Executive Director Borenstein and Chief Judge Myers on the success of the training conference
- Member June O’Neill moved to accept the report into the record. Member Marilyn Peña O’Mara, seconded. The report was unanimously accepted into the record.

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

- Chief ALJ Myers was not in attendance at this Board meeting. His remarks were shared by Executive Director Susan Borenstein, above.

6. Report of Principal Administrative Law Judge Christopher Tate

- Principal ALJ Tate discussed four cases affirmed by the Court:
 - Matter of Hall, 176 AD3d 1288
 - Matter of Smith, 177 AD3d 1064
 - Matter of Jensen, 2019 N.Y. App. Div. LEXIS 9118
- Chair Reilly asked for questions
 - Member June O'Neill asked what percentage of cases are not affirmed by the court to which PALJ Tate replied that he did not have an exact percentage, but there are usually only a couple of reversals per year
 - Chair Reilly commented that this affirms the high quality of work done at the Unemployment Insurance Appeal Board
- Motion to adopt the report and incorporate into the record was made by Member Randall Douglas. Member Michael Greason seconded the motion which was unanimously adopted.

7. Change of Board Rules

- The Board Rule changes had been distributed to all Board Members prior to today's meeting and a webinar was held by Principal Administrative Law Judge Christopher Tate to answer any questions that Board Members may have had pertaining to the changes.
- Principal Administrative Law Judge Christopher Tate began discussing the changes to the Board Rules by explaining that the UI Appeal Board's rules, which are contained in 12 NYCRR 460 through 465, had not been substantially updated since 1985. In 2019, a review was conducted of the existing rules with respect to outdated or complicated language to bring the rules up to date and to use plain language.
- Tate continued by stating that changes to the Board Rules include, adding clarifying definitions, using plain language in all sections and some section titles, adding website, fax and email to accommodate modern technology, providing for video conference hearings, adding references to principal administrative law judges, deleting references to split hearings to conform to current practices, and other changes that are consistent with law.
- Proposed changes to the Board Rules are as follows:

460.1 Application of Definitions

A new subsection c was added defining what the board means

The former subsection c becomes d.

The former subsection d becomes e.

The former subsection e becomes f.

460.2 Board Sessions

Only plain language changes

460.3 Action of individual board member

Reference to where Bd decisions are filed was changed from DOL to UIAB.

460.4 Subpoenas and depositions

Reference to principal ALJs, who did not exist before 1997, was added.

Reference to seal of DOL on UIAB subpoenas was changed to indicate the seal of the State, to remove the appearance that UIAB is subservient to DOL.

460.5 List of authorized agents and attorneys

Reference to website, fax and email as means of communication was added to update rule to accommodate modern technology.

Reference to where Bd decisions on revocations/suspensions of registration of claimant representatives are filed was changed from DOL to UIAB.

460.6 Attorney and Registered Representative fee procedure

Only plain language changes

460.7 Record on appeal to the court

Only plain language changes

460.8 Rules and regulations

Reference to where Bd rules are filed was changed from DOL to UIAB.

461.1 Request for hearing under subdivision 1 of section 620 (claimant case)

Reference to electronic submission as means of requesting a hearing was added.

Outdated term local office was eliminated as place to file hearing request.

Website was added as to where to find instructions for making a hearing request online.

461.2 Application for hearing by employer under subdivision 2 of section 620 (employer case)

Similar changes to 461.1

461.3 Notice of hearing

Only plain language changes

461.4 Conduct of hearing

Subsection on phone hearings was moved from 461.7 Transfer of Case.
Provision for video hearings has been added.
Reference to principal ALJs, who did not exist before 1997, was added.

461.5 Investigation

Reference to principal ALJs, who did not exist before 1997, was added.

461.6 [Adjournment] Postponement of hearing

Changes were made to make the language plainer in both the text and the section title.

461.7 Transfer of case

Reference to split hearings in former c was deleted to conform to current practice.
Reference to phone hearings was moved to 461.4 Conduct of Hearing
Reference to principal ALJs, who did not exist before 1997, was added.

461.8 Reopening

Reference to principal ALJs, who did not exist before 1997, was added.

462.1 [Rendition,] Decisions: timing, content and revision

Changes were made to make the language plainer in both the text and the section title.
Reference to principal ALJs, who did not exist before 1997, was added.

462.2 Notice of right of appeal

Only plain language changes

462.3 Transmittal and filing

Reference to where corrected Bd rules are filed was changed from DOL to UIAB.

463.1 Notice of appeal to the board

The address for filing an appeal to the Board has been updated.
Faxing has been included as a means of filing appeal.

463.2 Conduct of appeal

Reference to principal ALJs, who did not exist before 1997, was added.

463.3 Board hearing

Provision for phone or video conference hearing has been added.

463.4 Notice of hearing

Only plain language changes

463.5 Investigation

Only plain language changes

463.6 Reopening

Only plain language changes

464.1 Board Decisions [Rendition], content and revision

Changes were made to make the language plainer in both the text and the section title.

464.2 Transmittal and filing

Updates where to obtain Board decisions—UIAB or online, not DOL

465.1 [Purpose and scope] Access to Board – Records - Generally

Title of section has been changed from Purpose Scope to Access to Board Records - Generally

Availability of records has been tied to FOIL and other relevant laws.

465.2 Records Access officer

Section title has been made clearer.

Office locations for records access officer have been updated.

465.3 Subject matter list

Consistent with law, this section states that the subject matter list kept at the board and on its website.

465.4 Fees

This has been updated to provide for emailing of records.

465.5 Hours

This has been updated to substitute the Board for the DOL as place where requests are accepted.

465.6 Access

Only plain language changes

465.7 Denials [of access] and appeals

Title of subsection has been changed to clarify as the subsection concerns denials and appeals.

465.8 Public Notice

Consistent with POL 87(4)(c) this section now includes what must be posted on website.

465.9 Severability

Only plain language changes

- Chair Reilly asked for questions or comments
 - Member Randall Douglas acknowledged that his questions had already been answered prior to the Board meeting.
 - Member June O'Neill thanked PALJ Tate, Executive Director Borenstein and Chief Judge Myers for taking on the task of updating the Board Rules. She noted that while there were no substantive changes, the changes that were made were important and timely
 - Chair Reilly echoed Member O'Neill's statement and added that the changes to the Board Rules are important for the modernization of the UIAB
- Member Randall Douglas moved to accept the report into the record. Member Michael Greason, seconded. The report was unanimously accepted into the record

8. Other

- Chair Reilly asked for new business and hearing none asked for a motion to adjourn

9. Adjourn

- Member Marilyn Pena O'Mara moved to adjourn the meeting and Member June O'Neill seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:41 a.m.

Adopted: October 21, 2020.