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RANDALL T. DOUGLAS
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JAYSON S. MYERS
CHIEF ADMINISTRATIVE LAW JUDGE

TERESA A. DeMEO
CHRISTOPHER M. TATE
PRINCIPAL ADMINISTRATIVE LAW JUDGES

Board Meeting Minutes

Date: Wednesday, October 21, 2020

Location: Menands, NY

Present:

Geraldine A. Reilly, Chair
Randall T. Douglas, Member
Jayson S. Myers, Chief Administrative Law Judge
Tracie L. Covey, Acting Executive Secretary
Christopher M. Tate, Principal Administrative Law Judge
Michael T. Greason, Member (via videoconference from Brooklyn, NY)
June F. O'Neill, Member (via videoconference from Ogdensburg, NY)
Marilyn P. O'Mara, Member (via videoconference from Corning, NY)

Agenda:

1. Welcome and Call to Order
2. Reading and adoption of agenda
3. Reading and adoption of Minutes – January 22, 2020 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

- Board Chair Geraldine Reilly began her remarks by saying that this has been a year like no other. She hoped that all attending and watching, and their families are in good health and continue to be safe. She noted that like so many others the UIAB was directly impacted by the pandemic, and she extended her most sincere sympathy to those who have suffered and for those whom we have lost.
- Chair Reilly noted that all who joined her in the office, out of good leadership modeling, and out of an abundance of caution were wearing masks. She went on to say that the UIAB have instituted many safeguards to the safety of its employees, and the public they serve. She said "I know that ultimately, we are New York Tough, and New York Strong-and we will Build Back Better. It is with great pride that I welcome you back to our regularly scheduled Board Meetings."

- Board Chair Reilly was presiding from the Board’s office in Menands, New York for this Wednesday, October 21, 2020 public meeting of the Board. The meeting had been noticed, the draft agenda had been published, the minutes from the previous, January 22, 2020 meeting had been circulated to the members, and the public had been invited to observe. This meeting is being recorded and will be made available, along with the minutes on the UIAB website.
- All members were present, there was a quorum and the meeting was recognized as the second official meeting of 2020.
- Chair Reilly expressed her gratitude to all of those who have supported the work of the Board in addressing the many tasks that they faced, including the staff and leadership of all UIAB offices and her colleagues on the Board.
- The schedule of Board meetings reflects a Board that is proactive and accessible which addresses the 21st century challenges faced and anticipated with optimism and confidence. She added that each Board Member, and each staff member is serious and interested—industrious and engaged in their approach to the consequential work of the UIAB.
- Chair Reilly also wanted to acknowledge and thank new Acting Executive Secretary/Director Tracie Covey, Chief ALJ Jayson Myers, and Principal ALJ for Appeals Christopher Tate. She added that Tracie is now fulfilling the role of Susan Borenstein who retired in March. Chair Reilly thanked S. Borenstein for her service.
- Chair Reilly also extended her gratitude to Melissa Sousa, Amy Higby, Janet Beaudoin, Dan Langford and Peter Azotea for their essential help in making this meeting possible.
- Reminder: the next public meeting of the Board is tentatively scheduled for Wednesday January 20, 2021.
- The meeting was called to order at 11:12 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 January 22, 2020 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. Director’s Report - Tracie Covey

- Brief timeline of events affecting the work of the UIAB this year:

- Mid-March: the UIAB paused operations and shifted staff to critical UI Division work to help with the processing of unemployment insurance claims.
- Mid-May: UIAB put numerous safety protocols into place (personal protective equipment, social distancing, and reduction in social density) and shifted back to its own essential work.
- By the end of July, the backlog of hearings resulting from the pause (11,000) was erased
- The disruption in UIAB work earlier this year had a significant effect on compliance with USDOL acceptable level of performance markers:
 - Validated data for September 2020 showed the case age of Lower Authority appeals was 31.55 days. As of October 13, UIAB internal data indicates Lower Authority average case age was 36.7 days, which is above the 30-day acceptable level of performance.
 - At the current time, the UIAB is not meeting compliance standards with 30 and 45-day time lapse markers, with 35% of cases being decided within 30 days and 65% of cases being decided within 45 days.
- Case age and time lapse statistics are due mainly to issues experienced at the UI Division as a result of the Coronavirus pandemic:
 - increase in cases to be adjudicated resulting in a backlog.
 - The UIAB is receiving a low percentage of cases with an average case age of 10 days or less. We have a 14-day notice period and need to receive at least 65-70% of cases within 10 days or less in order to meet USDOL timeliness markers. As of October 13th, the average case age at the UI Division, before the case files even come to the UIAB, is 37.4 days.
- The UIAB's internal data indicates that as of October 13th, the average case age for Higher Authority appeals is 42.34. UIAB has a certain number of cases that are under a litigation stay due to a bankruptcy proceeding and cannot move forward. If those cases are taken out of the equation, the average case age is 38.79, which is below the 40-day USDOL marker.
- The judicial and administrative staffing level is currently at 126 employees, which is a decrease from this time last year. This is due to retirements and resignations this year including six ALJs, one Senior ALJ, one Principal ALJ, and two administrative staff members. Additional retirements are anticipated. To help with these losses, the UIAB has 11 ALJ positions posted and has begun the recruitment process. We hope to have these new employees on-boarded and trained by the end of January 2021. Administrative staffing has remained stable. However, since all hearings are now being held by telephone and the UIAB operates with paper files, there has been a significant increase in administrative work – including the copying and mailing of thousands of case files to the parties. This necessitated the hiring of 10 additional hourly administrative staff across the state.

- On the topic of technology: the UIAB continues to move forward with the UISIM computer modernization project. The Lead Analyst for the UIAB, Kathy Gangaware, has been spearheading this initiative and several employees are acting as subject matter experts (or SMEs), including Senior ALJs Ned Mains, Deborah Esrick, and Rachel Freeman, ALJ Catherine Adlerman, Business Analysts Amy Higby and Virginia Couture, Supervising Labor Service Representative Eric Koslofsky and Labor Service Representatives Heather Malmberg and Joan Marie McEachron. UIAB staff have been working closely with the vendor to identify where gaps exist in a previously designed system and are taking an active role in developing the new computer system. A more aggressive project schedule was recently put in place and the UIAB hopes the modernization will be completed within the next 2 years.
- In May, the UIAB began robocalling claimants to inform them hearings had been scheduled. The message provides a voicemail line that claimants can call with any questions. A team of administrative staff return voicemails within a short time frame. On average, around 300 voicemails are received per week. The UIAB is upgrading the robocall to include the date and time of the hearing. The upgrade should be put in place this week or next at the latest.
- The UIAB website, which launched in January, has been operating successfully. The substantive legal section of the Bench Manual has been uploaded under the resources tab of the website and UIAB staff are in the process of uploading recent Board decisions into the searchable decision database.
- Other technology projects the UIAB wanted to pursue have not moved forward. Due to the pandemic and need to focus on other projects, ITS does not have the resources to focus on some UIAB initiatives: a “build” to associate combined cases in the case management system; an electronic case file; and a virtual hearing platform. These would all help decrease delays in processing both Higher and Lower Authority appeals and ensure that UIAB staff have the ability to work remotely in the event of another public health crisis. It is anticipated that the upgrades to the case management system and electronic case files will be implemented during the modernization of the existing UI System, likely by mid-2022. The UIAB also continues to work with the UI Division and ITS to determine whether a cost-effective virtual hearing platform can be implemented in 2021.
- Earlier this month the deadline for the UIAB Employee Recognition Awards closed. The Awards Committee met to select the winners from a long list of very worthy candidates. While this year’s celebration may look different than years past due to social distancing, the UIAB still intends to announce the winners in the newsletter and hold virtual awards ceremonies during the months of November and December.
- Chair Reilly asked for questions or comments.
 - Member Randall Douglas asked how recruitment of the new ALJs was going. Acting Executive Secretary Covey replied that the UIAB is waiting for a list from Civil Service which should arrive in a few weeks. Upon arrival of that list of eligible applicants the interview process can begin.

- Member Randall Douglas moved to accept the report into the record. Member Michael Greason, seconded. The report was unanimously accepted into the record.

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

- Federal Quality Reviews were suspended for the first and second quarters of 2020 due to the pandemic. The third and fourth quarters of 2019 are the most recent quarters for which scoring is complete. Twenty randomly selected cases were scored in each of those quarters according to the 31 federal quality criteria. UIAB ALJs' average grade was 98.06% for the third quarter of 2019 and 98.26% for the fourth quarter of 2019. All cases scored over those two quarters 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 the UIAB once again easily surpassed that. Eleven of 20 hearings scored had perfect scores of 100 in the third quarter of 2019 and 12 of 20 had perfect scores in the fourth quarter of 2019. The Federal Quality Reviews have resumed for hearings conducted in the third quarter of 2020, and those audits are taking place currently. Results of current audits will be reported at the next meeting.
- The scores achieved by UIAB Judges speak for themselves. He thanked the UIAB hearing judges across the state and their supervisors, the Senior Judges, as well as the judicial staff at the Higher Authority. He added that the UIAB strives to maintain the highest level of performance for the benefit of the public whom we serve.
- The UIAB continues to administer its own Quality Assurance Program this year despite the pause. The audits focus on the fundamental elements of fair hearings and decisions. Some audits of hearings are done by the ALJ's supervisor and some by Senior ALJs who are not the ALJ's supervisor. This enables UIAB staff to closely track all the auditors' command of the criteria. All the audit results for an ALJ are reviewed by the supervisor to determine if follow-up is needed. Business Systems Analyst Amy Higby is the Access database expert who maintains and updates the Quality Assurance database. Thanks go to her and all the Senior and Principal ALJs who do these audits. We are committed to the highest level of internal quality control.
- The UIAB has seen many personnel changes in the past nine or so months. When Susan Borenstein retired as Executive Director, Chief Judge Myers noted that he lost a dear and valued colleague from whom he learned so much. He continued by stating, "As they say, when one door closes another one opens because we now have Tracie Covey who brings to the position her own skill set as well as a rich background as an ALJ, Senior ALJ and Principal ALJ." He added that he values greatly his collaboration with her.
- Principal ALJ Matt Tierney retired after serving 10 years in the position. PALJ Tierney leaves a void of experience and insight, especially his knowledge of the hearing process. Myers wished him a wonderful retirement. Acting in his role now is Mark Sokolowski who is based in Buffalo. The Board will meet Mark at future Board meetings, and Judge Myers said he knows that the Board will be impressed by Mark's knowledge and his empathy for both our staff and the public.

- Additional UIAB staff departures that have occurred since the last Board meeting include Senior ALJ Mary Beth Phillips, ALJs David Kogelman, Joseph Wolfermann, Lynn Morrell, Steven Kittleman, Sharon Beilinson and Victoria Speciale. The UIAB wishes these individuals great health and happiness going forward.
- The UIAB looks forward to the arrival of 11 new ALJs spread among Brooklyn, Menands, Syracuse, Rochester and Buffalo whom are expected to be hired by the end of this year.
- This year UIAB judicial staff stepped up to one of the greatest challenges they have faced at UIAB. First, many of them participated in crucial unemployment insurance claims-related activities, as some Board members did, too, during April and May. Then, when the UIAB had to resume its essential work in hearings and appeals in May, UIAB staff showed their resilience and versatility by working in both facets depending on what the workload demanded. UIAB staff eliminated backlogs and are ready to handle future spikes in workload as they may arise. Myers added that the UIAB is fortunate to have such a dedicated staff.
- Training: In October the UIAB is holding WebEx-based training on the topic of worker status and employer contributions. The judicial staff has been divided into four one-day sessions, the last two of which will take place October 22, 2020 and on October 27, 2020. Putting the training together was a collaborative effort among 19 UIAB staff:
 - Principal Judge Chris Tate guided the group who prepared the content,
 - Training Coordinator Deborah Esrick tied everything together with painstaking logistics work;
 - The content group also included Tracie Covey and Senior ALJs David Kim, Marcy Seaburg-Brackett, Dennis Torreggiani and John Muller.
 - The presenters are Chris Tate, Mark Sokolowski, Senior ALJs Denyse Hodges, Carol Procopio, Justin Denton, Diane Rafter, Carol Johnson and Jean Bell, and ALJs Will Friedman and Kathleen Mannix.
 - Amy Higby, Bob Kohl and Heather Malmberg who provided technical assistance and expertise.
- The UIAB training committee is also hard at work with other projects. Two of those are diversity and inclusion training and the preparation of materials on improving the efficiency of our hearings. The committee is composed of Senior ALJ Alison Ferrara, Senior ALJ Denyse Hodges, ALJs June Egeland, Eva Lynn Hayko and Kathleen Mannix, LSR Heather Malmberg.
- Deborah Esrick, who has served as the UIAB Training Coordinator since 2015, is stepping down from that role. She was indispensable in shaping and coordinating so many successful training programs over these past five years. She will continue to have a vital position in the UIAB reviewing complex appeal cases, so her talents will continue to benefit the organization.

- Senior ALJ Alison Ferrara who is based in Brooklyn will assume the Training Coordinator role. Chief Judge Myers stated that he knows she will continue to move us forward by coordinating effective training programs.
- During the UIAB pause, ALJ June Egeland in Buffalo was the go-to person at a very busy time with respect to providing the guidance to the judicial staff on the many elements of the CARES Act programs as they were published. She drafted and updated several times a guide that UIAB ALJs have relied on since May. She deserves many thanks for her continuing diligence in this very important task.
- At the beginning of 2020 several new chapters were added to the UIAB Bench Manual. Those are Non-Controlling Employers, Valid Original Claim, Arbitration and Collateral Estoppel, and Undocumented Foreign Nationals. The Bench Manual is reviewable online through the UIAB website.
- The UIAB is mindful of the need to capture institutional knowledge and convert it from tacit knowledge, that is to say knowledge that is in someone's head, to explicit knowledge, meaning knowledge that has been documented so that others in the organization can learn it and begin to perform those tasks. Chief Judge Myers formed a Knowledge Transfer Committee in March composed of himself, Tracie Covey, Chris Tate, Mark Sokolowski, UIAB Manager Janet Beaudoin, Business Service Analyst Amy Higby and Supervising Labor Service Representative Vanessa Castillo.
 - Every team in the organization recommended topics most appropriate for attention based on the frequency of the task, the number of current experts on the topic, and whether the topic has already been captured either by a user guide or a section in the Bench Manual.
 - Forty-nine topics were recommended by team meetings in the summer and referred to the committee. The committee then split into judicial and administrative subgroups to prioritize the 49 topics.
 - The result was a recommendation that 9 topics receive high priority and quick attention. Those nine topics are now being addressed through work on user guides or Bench Manual sections and should all be captured by the end of the year.
 - The committee sees this as a big win for the UIAB because it will allow for the successful transfer organizational knowledge and prevent any loss of personnel from having a detrimental impact.
- Chief Judge Myers wished the Board and UIAB Staff to stay safe by being smart and careful and wishing that 2021 will be better, at least with respect to health, than 2020 has been.
- Chair Reilly asked for questions or comments
 - Chair Reilly noted that the FQR scores were very impressive and that they speak to the leadership and training that UIAB staff receive.

- She also noted that UIAB staff are considered essential workers because the work that they do is so important.
- Motion to adopt the report and incorporate into the record was made by Member Randall Douglas. Member June O'Neill seconded the motion which was unanimously adopted.

6. Principal ALJ Report - Christopher Tate

- Principal ALJ Tate discussed four cases affirmed by the Court:
 - Matter of Leone, 180 AD3d 1124
 - Matter of Cunningham, 182 AD3d 887
 - Matter of Putrelo Building Enterprises Inc. 184 AD3d 938
 - Mater of Doster, 2020 N.Y. Div. LEXIS 5386
- Chair Reilly asked for questions
 - There were no questions or comments
- Motion to adopt the report and incorporate into the record was made by Member Randall Douglas. Member June O'Neill seconded the motion which was unanimously adopted.

7. Other

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

8. Adjourn

- 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 11:55 a.m.

Adopted January 27, 2021