



Navigator

Fall 2014

South Carolina was honored as the host state of the National Association of Unemployment Insurance Appeals Professionals' (NAUIAP) 34th Annual Education and Training Conference. Approximately 145 appeals professionals from 36 states traveled to Charleston June 22-26 to share best practices in the world of Unemployment Insurance (UI) appeals.



The four-day conference was filled with speakers and 25 workshops ranging from training new hearing officers to UI appeals integrity and everything in between. Speakers and workshop leaders came from every region of the country representing the best of the best in their fields.

The presenters shared their first-hand knowledge of the most-timely and relevant issues challenging UI appeals professionals today.

Training Highlights Included:

- Ethics & UI appeal hearings
- Tribal Sovereignty: What UI laws apply to tribes?
- FLSA-FMLA: Discrimination & retaliation as they relate to UI
- Drug testing claimants/employee substance abuse
- Dealing with disruptive individuals: ALJ Demeanor-How to deal with it
- Social Media
- Statutory Interpretation
- Offset Wage Levy/Compromise/Waivers Collections Program

One of the highlights of the conference included a horse-drawn carriage tour of the city, of which no trip to Charleston is complete without. Attendees definitely got a taste of what true Southern hospitality and charm is all about, including great food, good fellowship and the culture of Charleston's rich history.



Highlights from Charleston!



Lynne Knox (CT) and Alice Mitchell, Past President (GA) enjoy some time between sessions.



Catherine Jeter and Brenda Spires hosted the registration table and conference office all week. Both were as kind and helpful the last day as the first.



Thirty attendees at the Charleston Training Conference completed the Certified Appeals Professional training presented by the Administrative Justice Institute.



In the great city of Charleston, 145 attendees listened and learned from Jim Garner of USDOL.



PRESIDENT'S COLUMN By Karl Jahnke, President, Oklahoma

First, I must say that it is an honor to address the members of NAUIAP as its President. I believe the first conference I attended was in 1989. I was then and remain impressed by the people who serve the public in the UI appellate process from all over the country.

I think those who attended the NAUIAP conference in Charleston, South Carolina this June will all agree that Tim Dangerfield and his staff did a wonderful job. A beautiful and historic city, an excellent agenda and fun and entertaining activities combined to make Charleston a great 34th NAUIAP Training Conference. The conference was attended by 135 attendees plus family and friends. In addition to memorable and informative presentations by US Department of Labor Deputy Administrator Jim Garner and John Murphy from the Boston Region of USDOL, and Chairman Frank E. Brown from Florida (just to name some of my own favorites), the agenda again offered the Certified Appeal Professional program presented by Alan Toubman, Tim McArdle and Marylyn White. The CAP program has become very popular since it was first offered at the 2005 conference. I am grateful the cooperation between Alan Toubman's American Justice Institute and NAUIAP has lasted and we will continue to find ways to continue that beneficial relationship.

On the final day of the Charleston NAUIAP Training Conference, at our business meeting, we recognized several NAUIAP members for their service to NAUIAP. David Scrimm (MT) and Steve Wilson (IL) were recognized for service on the Board of Governors. David did a great job giving our outdated website a new look and vitality and Steve served for several years ably handling the often thankless job of Treasurer. Also recognized and honored with a Life-Time NAUIAP membership, was Michael Milwee (DC). Mike served for years as the Agenda Committee

chair and deserves much of the credit for NAUIAP's reputation for providing meaningful and substantive professional education to its members. On a personal level, I am thankful to Mike and Mary for their wonderful hospitality providing me with wonderful dinners, wine I can usually only look at, and even more priceless, good conversation while away from home over the years. We thank all three for their service to NAUIAP and we hope they will be willing to serve again.

NAUIAP is only as strong as its membership. A special effort was made at this past Training Conference to emphasize the importance of your participation in NAUIAP through volunteering on NAUIAP committees. We had a great response and we thank everyone who signed up. Your Committee Chairs should have contacted you already or will soon. It is still not too late to volunteer. You can find the names and contact information for Committee Chairs in this Navigator. There is an old Phil Ochs song that reminds us we can't do our share after we're gone, so we'll have to do it while we're here. So, sign up! It is well worth your share of time professionally and you may make some life-long friends in the process.

Finally, I spoke at the close of the Charleston meeting of the importance that we remember where we came from. My 95-year-old father still sometimes says that to me when I leave his apartment after a visit. He regularly said it to me when I was young. He was never afraid I would get lost coming home, though I admit I gave him more than a few reasons to hope I might. It is a different kind of compass he hopes I will recall; the kind of compass that reminds us of our history and our guiding principles. This year, I hope we take time as an organization to review where we have come from as well as where we are going and to take stock of what we believe in as public servants playing a critical role in the national UI system. We can do that better with your participation than without so please take advantage of the opportunity to engage with NAUIAP in every way possible throughout the upcoming year and start making plans now for Washington, D.C.

COME ONE, COME ALL!

Committee work is a great way to get better acquainted with your colleagues across the nation. If you want to become more involved and are willing to share a little time, talent and ideas, we have room on all NAUIAP committees. Our committees meet via conference call, some more frequently than others. Please contact a committee chair or co-chair if you have interest in or questions about any committee's work, or time commitment. Or, just sign up!

Newsletter Committee.....	Sabrina Rahn, Indiana
Marketing/Membership Committee.....	Alice Mitchell, Georgia
Website/Technology Committee.....	Chris Tyler, Oklahoma
Planning/Projects Committee.....	Cheri Ruch, Idaho
Agenda Committee.....	Erika Randmere, New Hampshire and Jayson Myers, New York

Administrative Law: Fair Hearing Class, National Judicial College

By Kathy Bushnell and Kimm Kennedy, Hearing Officers, Oklahoma

Last month, my colleague, Kimm Kennedy, and I had the incredible opportunity to attend the Administrative Law: Fair Hearing course at the National Judicial College (NJC) in Reno, NV. NAUIAP awarded us generous scholarships to assist with our tuition. We cannot say enough great things about this class! Instruction was intensive from the first hour until the last. The instructors taught us techniques to communicate effectively, to manage stress, and to conduct hearings that will pass judicial review. We were introduced to the neuroscience of decision making, and discovered ways to recognize our own biases, including how to prevent them from influencing our hearings. The course took into consideration the differing needs of high- and low-volume courts, and held separate class sessions to address these needs. We learned many new skills that we are already using in our hearings and decision-writing.

"The NJC staff was exceptional!"

This course presented a unique opportunity to meet hearing officers and administrative law judges from many different agencies. Through conversations in discussion groups, over lunch, and outside of class, we learned so much from the experiences our peers shared.

The NJC staff was exceptional! They were very welcoming and encouraging. They seemed to anticipate needs of instructors and class members alike, and always assisted with a smile. What we found most impressive is that the instructors volunteer their time. The instructors are amazing, bringing a wealth of knowledge, education, and experience to their presentations. The passion they feel for their learned callings shows; their energy and enthusiasm are contagious! We are still excited about our time at NJC and hope to have the opportunity to attend other classes in the future. Thank you, NAUIAP, for helping us to have this experience.

Thank You to Our Training Conference Sponsors!



TEAM **ia**
innovative answers.

UNEMPLOYMENT ALLIES

UNEMPLOYMENT APPEALS REPRESENTATION



Exhibit A: The Appellate File

By Yasmin Elias, former Michigan ALJ, now Federal ALJ



One of my guilty pleasures is watching forensic file shows on TV. I admire the way detectives are able to reconstruct the sequence of events that preceded a crime based on loose, seemingly random pieces of evidence. One could compare the work of hearing officers to that of detectives in that we are often called upon to piece together shards of evidence in order to make findings of fact that can support reasoning and conclusions. That is not a good reason for having hearing files that can pass for a crime scene.

The first time I covered an unemployment appeal hearing for a colleague who called off sick, I was very surprised. The file contents that were forwarded to me did not look like the hearings files I was used to. The forwarded file was quite bare, with no trace of the agency records that led to the agency adjudication, and without the party's protest requesting a hearing. Soon, I realized that hearing officer preferences could shape the contents of the hearing file. While some of my colleagues preferred to have every possible agency record documenting the trajectory of a claimant's application for unemployment benefits as well as every agency decision with respect to that benefit claim added to their hearing files, others preferred to have quite the opposite, almost nothing in the hearing file. The fact that my office encouraged a team approach to work and that my colleagues and I routinely covered hearings for one another allowed me to glean just how wide the range of practices could be.

My colleagues had a similarly individualized approach to their treatment of certain documents for the hearing record. That is to say, many had different perspectives as to whether the jurisdictional documents that led a matter to an unemployment appeal hearing should be made a part of the hearing record, either as exhibits or as something else. Then, while participating in the Labor Department's national review of unemployment appeal hearings, I noticed that many states have similarly individualized practices. While some states' agency rules provide that agency records are to be part of the appeal hearing record file under the cover of "jurisdictional documents," or "agency exhibits," others provide no such instruction. As a result, many states do not score well in the "exhibit" criterion of the federal review.

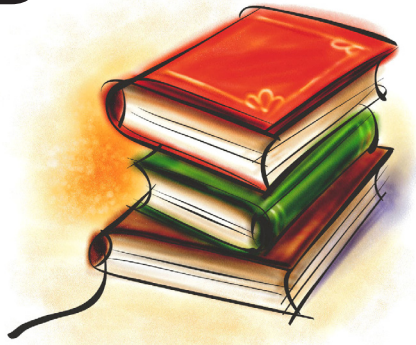
One thing that is consistent across the board for unemployment appeal hearings is that parties can appeal lower authority decisions to the higher authority and higher authority decisions to circuit courts. As part of each such appeal, someone has to compile and certify a hearing record. A uniform treatment of jurisdictional documents would provide a more consistent approach through appeal hearing offices, giving parties and practitioners a better understanding of what to expect with respect to such documents. It could also save time. A general explanation identifying the jurisdictional documents and describing the weight they will be given at an appeal hearing could be added to hearing notices or to agency publications and online materials, thus relieving the hearing officer from having to dedicate much time addressing this issue during hearings. It would also provide clarity to staff as to what documents should be incorporated with hearing records when matters are appealed further.

The U.S. DOL provides some guidance for appeal hearings through E.T. Handbook No. 382. However it does not prescribe a specific treatment for jurisdictional documents through the "Exhibits" criterion. Instead, it notes that states have a wide range of practice with respect to jurisdictional documents and exhibits. This is an area where more specific national requirements could help improve the quality of lower authority appeal hearing files.



A GOOD READ

Cynthia Thornton,
California



One Summer: America, 1927 by Bill Bryson

As the title suggests, the book examines one summer in American history. In fairness, a lot happened that Summer in baseball, in politics, in finance, in movies, in tabloids and in flight. The author cheats just a bit by counting as significant preliminary occurrences to bigger events like the Great Depression, but the book was interesting and fun to read.

Proof of Heaven: A Neurosurgeon's Journey into the Afterlife by Eben Alexander III M.D.

Lots of new abbreviations in this book: NDE's (near death experiences) and OBE's (out of body experiences.) The story itself was interesting, well written, easy to read and short. This is the story of a prominent neurosurgeon who goes into a coma and has an experience he describes in the book. Combined with the recent work in math and physics about the Heisenberg Uncertainty principle and multi-verses, the book was fascinating and great for cocktail party conversation.

The Language of Food: A Linguist Reads the Menu

by Dan Jurafsky

If you've ever wondered why certain words end up on menus while others don't, this is the book for you. This book is the result of several studies of how we describe our food, how we sell our food and what causes us to consume some foods while passing on others. I had no idea that the name of the bird turkey was related to the country Turkey and that eating toast was related to making a toast. This book explores the way we talk about food and the history of how we talk about food. It's an easy read chock full of fun facts.

Foodopoly: The Battle Over the Future of Food and Farming in America by Wenonah Hauter

Sticking with the food theme, if you're trying to shed a few extra pounds, this book is for you! I had no idea that the FDA passed regulations outlawing food producers from advertising that their products were free of certain chemicals. This book goes through the recent history of food regulation and lobbying in the United States. The most frequent recurring thought I had while reading was, "I should've bought organic!"

Stuff Parisians Like: Discovering the Quoi in the Je Ne Sais Quoi by Olivier Magny

If you are ever interested in becoming a Francophile, this book is for you. The book is a series of short chapters covering topics like "English" "The Word Simpa" and "calling People Beaufs." Each chapter ends with a useful tip and advice on how to sound like a Parisian. The book was a best seller both in Paris and overseas. My guess is that the Parisians buy it to discover how to be cool and we foreigners buy it to blend in with the Parisians. If you've ever wondered, "Why do the French do THAT?" buy this book. Chances are you will not only find the answer, but laugh out loud while doing so.

The Museum of Extraordinary Things by Alice Hoffman.

This novel takes place in New York City in the early 1900s and has romance, mystery and a disturbing insight into the world of the circus. This is classic Alice Hoffman: well written, edge of your seat and fun.

The Rosie Project: A Novel by Graeme Simsion

This is about a Genetics Professor at a prestigious Australian University who is on the Asperger spectrum but is unaware. He is sufficiently self-aware that he knows he is odd, but he also knows that his oddness has helped him succeed in life. Some of the situations he finds himself in are funny; others are poignant. The plot is solid and the book won an award for unpublished novels.

A GOOD LISTEN TOO

Karl Jahnke



This is a new addition to the Navigator! Each newsletter will contain a song or two related to work (or lack thereof). My first offer is the following ode to the working man by Sam Baker, Ditch. I hope you enjoy it. If it offends you, don't listen twice.

<http://www.pastemagazine.com/blogs/av/2013/07/song-premiere-sam-baker---ditch.html>

State Spotlight

Submitted by Christopher Tyler, Oklahoma

MARYLAND

The Maryland Department of Labor, Licensing and Regulation, UI Appeals Division, has a Lower Appeals Division and a higher authority Board of Appeals. The Board of Appeals is comprised of three (3) members, appointed by the Governor, who serve overlapping six (6) year terms. The Board of Appeals sits in Baltimore.

The Lower Appeals Division also has its primary administrative office in Baltimore, but conducts its hearings throughout the State at seventeen (17) local office sites. Hearing Examiners travel among these locations, conducting hearings at a different location each day. Hearing Examiners are assigned to be in Baltimore one (1) day each week. 75% of the cases are heard "in-person." There are thirty (30) Hearing Examiners and five (5) Senior Hearing Examiners, plus a Chief Hearing Examiner/Division Director and a Deputy Chief Hearing Examiner. All Hearing Examiners are licensed Maryland attorneys. The Lower Appeals Division averages forty-five thousand (45,000) appeals per year.

IDAHO

Higher authority is handled by the Idaho Industrial Commission. The Commission's primary mission is workers' compensation, so UI appeals are a very small part of what the agency does. Two referees write the decisions for the Commissioners. We do a de novo review of the record established during the hearing at the lower authority. We can, by statute, hold our own hearings at this level, but have not done so in nearly 20 years. The Idaho Industrial Commission has three Commissioners, all appointed by the governor and confirmed by the Idaho Senate. The Commissioners serve staggered 6-year terms - one is up for re-appointment every 2 years. One Commissioner is an attorney, one from labor, and one from the business community. No more than two can come from the same political party. The Commissioners sign the

decisions the referees write - 2 signatures are necessary for each decision. Our decisions are not public record. From the Industrial Commission, unemployment decisions are appealable only to the Idaho Supreme Court.

The lower authority is housed within the Idaho Department of Labor. The agency is responsible for administering the UI program. They hold the hearings - all by telephone - and issue the decisions that are appealable to the Industrial Commission.

WEST VIRGINIA

The WV Workforce UC Board of Review has a lower authority and an upper authority. Due to budget constraints, the lower authority and upper authority share office space, office name, hearing room, mailing address, phone number and employees.

Although there may be the potential for confusion and conflicts of interest, the professional, conscientious and diligent behavior of the staff has avoided such concerns. For instance, the chief judge supervises the lower authority ALJs and the chief judge is also legal counsel to the upper authority Board of Review. There is one Board of Review office in Charleston, the state capitol. The shared Board of Review office staff consists of six employees, including the office manager. The lower authority also has ten ALJs, including eight part-time and two full-time. Five of the part-time judges are employees convening two dockets a week, eight cases per docket. Three of the part-time judges are temporary contract workers convening one or two dockets a week, as needed. The part-time judges are situated throughout the state. The full-time judges situated in Charleston are the deputy chief ALJ and the chief ALJ. The judges convene in person dockets in a dozen different local UC office venues around the state, in addition to telephonic dockets. The judges' dockets approximate 30 % in person hearings and 70 % telephonic hearings. The recent trend is favoring more telephonic ALJ hearings. The upper authority convenes two dockets per month in Charleston. During the fiscal year ending March 31, 2014, the lower authority decided 5435 appeals, and the upper authority decided 966 appeals. All appeals from the Board decisions are heard by the Circuit Court of Kanawha County, WV (about thirty appeals per year), and then the Supreme Court of Appeals of WV (about twelve appeals per year), in turn. The upper authority consists of three Board Members, appointed by the Governor and confirmed by the Senate. All of the Board Members may not be registered in the same political party. A custom has developed such that one of the three Board Members resides in each of the three congressional districts.

for past issues of the Navigator

VISIT www.naviap.org

GET CONNECTED IN 2015!



*Join us at the 35th annual
NAUIAP training conference
in Washington, D.C.!*

- *USDOL Speakers*
- *Fantastic Topics*
- *Great Sight-Seeing*
- *And Much, Much More!*



June 23 - 26, 2015

Save The Date!!!

NAUIAP Board of Governors

OFFICERS

President

KARL JAHNKE (OK)
405-601-3311
karl.jahnke@oesc.state.ok.us

President-Elect

KATHRYN TODD (OH)
614-644-7207
Kathryn.Todd@jfs.ohio.gov

First Vice President

ERIKA RANDMERE (NH)
603-223-6150
Erika.randmere@nhes.nh.gov

Second Vice President

DOROTHY JOHNSON (FL)
850-487-2685 x 143
Dorothy.Johnson@raac.myflorida.com

Secretary

BRAD COLLINS (AR)
501-682-1063
brad.collins@arkansas.gov

Treasurer

DAN DOHERTY (MD)
410-570-2032
Daniel.Doherty@maryland.gov

Past President

ALICE S. MITCHELL (GA)
404-232-7480
alice.mitchell@dol.state.ga.us

AT-LARGE MEMBERS

SABRINA RAHN (IN)
317-232-7168
srahn@dwd.in.gov

JAYSON MYERS (NY)
518-402-0191
Jayson.myers@labor.ny.gov

TIM DANGERFIELD (SC)
803-737-2653
tdangerfield@dew.sc.gov

CHERI RUCH (ID)
208-334-6087
Cheri.Ruch@iic.idaho.gov

CHRISTOPHER TYLER (OK)
405-601-3311
Christopher.Tyler@oesc.state.ok.us