National Association Unemployment Insurance Appellate Boards

NAUIAB Newsletter

Volume 1, No. 14 November 1994

President's Column

By Gordon Doig, Texas

The NAUIAB Board of Governors met October 20 and 21 in Oklahoma City to begin the process of planning our next annual conference to be held June 4 through June 8, 1995, in Albuquerque, New Mexico. The Board reviewed comments and evaluations from past conferences and brainstormed topics for the agenda. Our host, Donna Torres of New Mexico, appears to have many great surprises and activities in store.

Preparatory work by the Issues and Legal Concerns Committee under Chair Rita Moore provided the Board members valuable suggestions for topics for the conference. The members of Rita's committee in conjunction with other Board members will be contacting many of you, to enlist your assistance in preparing and presenting items on the agenda. If you wish to make yourself available, please contact Rita Moore or any Issues and Legal Concerns committee member. The success of our annual conferences is in large part dependent on your involvement.

Another significant matter discussed by the Board was the extent to which NAUIAB should and will be an active player on the national scene regarding issues affecting the unemployment insurance system. As you may recall, at the Detroit conference, I pledged to Dr. Bassi of the Advisory Council on Unemployment Compensation that NAUIAB would be available any time, any place to provide input on appeals matters. A discussion was had about whether we should be

Continued on page 2

The 1994-95 Board. Back row, left to right, Glenn Williams, Vincent C. Martorano, James L. Pflasterer, Elizabeth A. Graham, Teresa M. Morris and Michael DiSanto. Front row, left to right, Annette C. Benedetto, Gordon A. Doig, B. Pennie Millender, Rita Moore.

High Court Awards Benefits for Sex Harassment Based on Sexual Orientation

By Prudence E. Lee, Arizona Department of Economic Security

The Minnesota Court of Appeals has ruled that a claimant who is subject to sexual harassment based on sexual orientation has established good cause to quit and is eligible for unemployment insurance benefits. In Hanke v. Safari Hair Adventure, Commr., No. C3-93-1918, March 1, 1994, the court found an offensive working environment existed, based on a manager's comments to the claimant.

The claimant worked as a hair stylist until he quit his job, alleging discrimination and sexual harassment based on his sexual orientation. A referee with the Minnesota Department of Jobs and Training denied the employee unemployment benefits after finding the employee had not been harassed or discriminated against. A Commissioner's representative affirmed the referee on appeal, finding that, although the manager had made homophobic comments to the claimant, the claimant had failed to communicate to the employer the occurrence of the comments or the resulting offensiveness to the claimant.

It was undisputed that the claimant's manager had told him on several occasions that she was going to "get [him] married to a girl if she had anything to do with it" She also told him once that she did not want "a bunch of fags in this salon." The claimant did not complain to the owner because he believed the owner was biased against homosexuals.

On the day that the claimant quit, he had been meeting with the owner, discussing an advertisement the claimant had placed in the Equal Times

Continued on page 2

President's Column...

Continued from page 1

Gordon A Doig, President, NAUIAB

taking a national stance on the current AFI proposals and, if so, what that stance should be.

Advisory Council

As far as the Advisory Council is concerned, Robert Harvey and Allan Toubman both appeared and testified before the Council's public hearings regarding appeals matters. While they were not specifically appearing on behalf of NAUIAB, their comments represented our interests. Additional public hearings are scheduled November 30 in Denver, Colorado, and in April in Detroit, Michigan. It is hoped that we can have NAUIAB members appear at both of these hearings to offer testimony.

Surveys

Our offer to provide appeals' expertise to the Council resulted in discussions with Dr. Bassi, myself, and other NAUIAB members concerning the possibility of our sponsorship of several national surveys. The Board of Governors agreed in principle to sponsor the surveys if early tests in a few states indicate feasibility of the method and instrument. The Advisory Council would provide the expertise to compile and analyze the results in time for submission to NAUIAB and the Council by June of 1995. The surveys would address why people appeal and "customer satisfaction" with the appeals process, post hearing and at the higher authority level. Allan Toubman and Jim Pflasterer, members of the Legislation and National Concerns Committee, in conjunction with the Council staff members, devised the questions and format. The Board will be soliciting your participation later in the year to help in the survey. We hope by sponsoring and assisting the Council in this endeavor, we will gain national credibility as an organization.

Financing

On another issue of current national concern, you should be aware that the Department of Labor has agreed to postpone the printing of the Administrative Financing Initiative proposals until April or May 1995 in order to allow time for more discussion and input from affected parties. To that end, The Department of Labor is hosting meetings in Chicago on November 2, Dallas November 9–10 and San Francisco November 15–16, 1994, to obtain more input from states about the current proposals.

Symposium

The Advisory Council on Unemployment Compensation has also contacted the University of Michigan Law School to put on a symposium in late March 1995 in Ann Arbor, Michigan, concerning legal issues affecting unemployment insurance. Scholarly papers on selected issues will be presented, debated and discussed at the symposium. The Board of Governors has tentatively agreed to schedule its spring meeting in Ann Arbor in conjunction with the symposium to enable board members who wish to attend both at no little additional expense. We will share with you the exact dates as soon as they are available so that you can make plans to attend if interested.

The upcoming year has already proved full of issues and potential changes affecting the unemployment insurance system in many ways. Please consider taking an active role both within and without NAUIAB to effect that change for the better.

Sex Harassment

Continued from page 1

Prudence Lee, Detroit Conference

directory to assist him to expand his clientele. The claimant thought he had placed the ad with management approval. During the meeting, the claimant testified, that the owner stated he did not want the salon listed in a directory such as Equal Times. The owner testified that he said only that such decisions should be discussed with him first.

It was during this meeting that the claimant told the owner about the manager's comments. The owner did not believe the manager was capable of such comments. He wanted the claimant to talk with the manager and work things out, but that he, the owner, could not "control the opinions of what other people feel or think." The meeting ended with the claimant quitting, stating he could no longer work at the salon.

The court stated that "harassment based on an employee's sexual orientation provides an employee with good cause to quit if the harassment creates an offensive working environment and the employer knows or should know of the harassment but fails to take timely and appropriate action." The court held that the homophobic comments by the manager had the effect of creating an offensive working environment for the claimant.

The court reasoned that, prior to terminating his employment, the claimant informed the employer of his concerns about the manager's comments. The court cited McNabb v. Cub Foods, 352 N.W.2d 378 (Minn. 1984), which held that the "failure of management to timely discipline employees is strong evidence of acquiescence in discriminatory practices by subordinates. An employer must act to prevent and correct harassment when it becomes aware of the problem."

Because the claimant brought his concerns to the owner and was offered no reasonable assurance or "expectation of assistance," the court ruled that the claimant had good cause to quit the employment.

CONGRESS ENACTS RELIGIOUS FREEDOM RESTORATION ACT, OVERCOMES PEYOTE CASE

By Tim McArdle
California Insurance Appeals Board

On November 16, 1993, President Clinton signed into law Public Law 103-141, the Religious Freedom Restoration Act of 1993. Congress' intent in enacting the law is to overcome the Supreme Court's Decision in Employment Division v. Smith, 494 U.S. 872 (1990) and to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) to situations where governmental action substantially burdens the free exercise of religion.

The Smith case was the subject of an article in the May, 1990 edition of the NAUIAB newsletter. In Smith, in a six to three decision, the United States Supreme Court ruled that the State of Oregon could deny unemployment insurance benefits to claimants who were discharged for ingesting the hallucinogenic drug peyote during a religious ceremony. The claimants were counselors at a private drug rehabilitation clinic. Both were members of the Native American Church. The use of peyote is sacramental in the Native American Church, whose members believe that the peyote plant embodies their deity. When the claimants informed their supervisor that they had ingested peyote, they were discharged pursuant to the clinic's drug policy.

The Oregon Appeals Board denied benefits on the ground the claimants had been discharged for work connected misconduct. The Oregon Supreme Court, in a decision by 1993 NAUIAB Conference keynote speaker Justice W. Michael Gillette, reversed, holding that the denial of benefits for the religious use of peyote violated the free-exercise clause of the First Amendment. The Employment Division appealed to the U.S. Supreme Court which remanded the case for a ruling as to whether the religious use of peyote is legal in Oregon. On remand, the Oregon court held that, although possession of peyote is a felony under state law, the First Amendment prohibits its enforcement. Again, the Employment Division appealed.

The claimants relied heavily on the U.S. Supreme Court's decision in Sherbert v. Verner. In that case, the court applied a balancing test which requires first, that a person claiming a free exercise religion right show that the application of the law in question significantly burdens the free exercise of his or her religion. If so, the state then must demonstrate that the constraint is the least restrictive way of achieving a compelling state interest. In applying this balancing test, the court held that the state (South Carolina in this instance) could not deny benefits to a woman who had refused to be available for Saturday work because her religion forbade working on Saturday. In three subsequent cases, (Thomas v. Review Board of Indiana, 450 U.S. 707, 1981; Hobbie v. Unemployment Appeals Commission of Florida, 480 U.S. 136, 1987; Frazee v. Illinois Department of Employment Security, 489 U.S. 829, 1989), the court applied the principle that a state may not condition the payment of UI benefits on the sacrificing of one's religious beliefs.

This line of authority notwithstanding, the Supreme Court reversed and ruled for the Employment Division. Justice Scalia, writing for the court, refused to apply the Sherbert compelling interest balancing test. He observed that Sherbert and its progeny did not involve an across the board criminal prohibition on a particular form of conduct. "The government's ability to enforce generally applicable prohibitions of socially harmful conduct . . . cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development (citation omitted). To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the state's interest is compelling . . . contradicts both constitutional tradition and common sense." (Id., at 8.)

In a dissenting opinion, Justice Blackmun stated, ". . . [the majority] effectuates a wholesale overturning of settled case law concerning the religion clauses of our Constitution. One hopes that the court is aware of the consequences, and that its result is not a product of overreaction to the serious problems the country's drug crisis has generated." (Id., at 22.)

Congress apparently took its cue from Justice Blackmun's lament. The statement of Congressional findings makes it clear that the purpose of the act is to restore the Sherbert compelling interest test. The key provision of the act is found at section 3(b) and is a codification of the compelling interest test. The section provides as follows:

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person - (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

The act further provides that it applies even to rules of general applicability. It applies to governmental action by a branch, department, agency, instrumentality, and an official of the United States, a state, or a subdivision of a state. A person whose free exercise of religion has been burdened by governmental action may assert that action in a claim or defense in a judicial proceeding and obtain appropriate relief against the governmental entity. Federal courts may, at their discretion, award reasonable attorney's fees to the prevailing party, other than the government. Costs and fees incurred in the course of adjudication under the Federal Administrative Procedures Act may also be awarded.

While both Sherbert and Smith addressed matters concerning unemployment insurance eligibility, and the Religious Freedom Restoration Act is a direct response to those decisions, the act has potential implications that go across the entire spectrum of governmental action. For unemployment appeals, however, the act lifts a cloud of uncertainty that has existed since the Smith decision was issued.

The act is the subject of an excellent Unemployment Insurance Program Letter, No. 28-94, issued June 13, 1994. The act is codified at 42 U.S.C. § 2000bb note.

CONNECTICUT FAMILY AND MEDICAL LEAVE ACT – PART ONE

by Joan K. Willin, Attorney
Principal Appeals Referee and Hearing Officer, Connecticut Department of Labor

At a time of decreasing UI appeals and increased funding pressures, adjudication of state Family and Medical Leave cases offers important opportunities for our Appeals Divisions.

Since Connecticut's enactment of a state Family and Medical Leave Act in 1990, Family and Medical Leave cases have provided professional staff development as well as important alternative federal funding. Service as Hearing Officers in Family and Medical Leave Act cases has resulted in professional upgrading of appeals staff and commensurate increase in compensation and professional status.

These cases require the application of new substantive and procedural law including the Uniform Administrative Procedures Act and Labor Department Contested Case Regulations. Appeals staff, as Hearing Officers appointed by the Labor Commissioner, have issued several decisions of first impression interpreting Connecticut's Family and Medical Leave Act. In addition, Hearing Officers of Family and Medical Leave Act cases are called upon to exercise mediation skills in settling cases.

This article summarizes provisions of Connecticut's Family and Medical Leave Act, highlights differences between the state and federal laws, and between the Hearing Officer's role in the Family and Medical Leave cases as contrasted to UI Appeals. In addition, I will survey some important Connecticut Family and Medical Leave Act decisions.

Connecticut's Act

Connecticut's Family and Medical Leave Act provides eligible employees with up to sixteen weeks of unpaid family and/or medical leave within a two year period. The law became effective July 1, 1990 and provided for a three year phase-in regarding the number of weeks of leave and the size of employers affected.

Leave entitlement is reduced by any other leave or benefits taken by the employee.

There are essentially two types of cases adjudicated under the Family and Medical Leave Act: 1) cases involving a denial of a leave request; and 2) those alleging adverse action resulted from an employee's exercise of rights under the Family and Medical Leave Act.

Comparing the Federal and Connecticut Law

With the enactment of the Federal law in August of 1993, questions have arisen regarding the interaction between the State and Federal Statutes. In Connecticut, we have developed a detailed chart comparing the laws which, along with copies of decisions and extensive resource and training materials, may be obtained from me on request. The following briefly highlights some of the differences: Connecticut's law covers employers with 75 or more employees whereas Federal law extends to employers with 50 and more employees; Connecticut law provides for 16 weeks of leave entitlement within a two year period, Federal law provides for 12 weeks within a one year period; Federal law requires employer continuation of group health insurance coverage, Connecticut law does not; Federal law specifically provides for intermittent leave whereas Connecticut law does not. Connecticut law uses the phrase "serious illness"; the Federal law refers to "serious health condition." Leave to care for a parent-in-law is included under Connecticut's law but not the Federal Statute. In the event of a dispute regarding whether an employee has a qualifying illness, Federal law provides for a third "tie-breaker" doctor whereas Connecticut law does not. Under Federal law, an employer may deny restoration of a job to certain highly compensated employees under specified circumstances whereas Connecticut law does not provide such an exemption. There are differences regarding who qualifies as an eligible employee and the method of requesting leaves and filing complaints. The Federal law stipulates that the more generous provisions apply where the laws conflict. Thus, the laws must be read together to determine which provides greater leave rights in a particular situation.

Interaction between Family and Medical Leave Act and other Statutes

In addition to being aware of the difference between Federal and State Family and Medical Leave Acts, a Hearing Officer in Family and Medical Leave Act adjudication must develop expertise in interpreting the Family and Medical Leave laws in light of other State and Federal Statutes, specifically discrimination laws. In one Connecticut Family and Medical Leave Act case, the overlap between the Family and Medical Leave Act and the State Pregnancy Disability Act is involved. Once again, Hearing Officers of these cases are faced with the challenge and opportunity of writing precedential law involving complex legal issues. Cooperation between state agencies requires further work. Connecticut's Family and Medical Leave Act regulations specifically mandate referral to the State Commissioner on Human Rights and Opportunities when a question of Pregnancy Disability is involved. Unfortunately, the CCHRO has no reciprocal regulation and due to case backlog, referrals are often delayed beyond the statutory filing period.

Procedure

In contrast to UI appeals governed by Appeals Division Regulations, Family and Medical Leave Act cases are adjudicated under the state Uniform Administrative Procedures Act and the Department of Labor's Contested Case Regulations.

To summarize, after an employee files a complaint with the Department of Labor, the Department of Labor's Wage and Workplace Standards Division investigates and determines whether there is reason to believe the employer violated the Act. If the Department of Labor determines that there is reason to believe such a violation has occurred, the Department of Labor will "prosecute" the case, that is, issue a formal Administrative Complaint and Hearing Notice as well as present evidence and carry the burden of proof at the hearing.

However, even if the Department of Labor determines no violation has occurred, the complainant has the right to a hearing. In such a "nonprosecution" case, the Department of Labor takes a less active role in the case although the Hearing Officer may call upon the Agency expertise and policy

positions by requesting briefs and written or oral argument on issues raised by the case. In addition, an attorney representing the Department of Labor may be invited to attend the hearing.

A key difference between UI and Family and Medical Leave Act cases is the settlement option. Department of Labor Contested Case Regulations and the U.A.P.A. provide for informal resolution of cases. Department of Labor regulations allow for settlement, consent order, or disposition by default or stipulation prior to the commencement of a hearing. The Hearing Office can perform an important role as mediator in obtaining a settlement of the case. In Connecticut, several cases have been successfully mediated by the Hearing Officer. In addition to providing a more expeditious and economical settlement for the parties, a settlement option may also prevent cases with difficult fact situations from going to court with the risk of "bad facts making bad law."

Another critical difference between UI and the Family and Medical Leave Act is the range of remedies possible. Unlike UI where Appeals Hearing Officers are limited to either awarding or denying claimant benefits and imposing or relieving employer charges, the Hearing Officer under the Family and Medical Leave Act is responsible for ordering such "make whole" relief as will remedy the harm incurred by the employee as a result of the employer's action including but not limited to restoration of any rights, benefits, entitlements or protections afforded by the Act, reinstatement, back pay and monetary compensation for any loss which was the direct result of the employer's violation, discharge or discrimination. Where reinstatement is not appropriate, "front pay" may be included in the panoply of remedies. An unresolved question under Connecticut's law is whether there is authority under Connecticut's Statute to award attorney's fees to a prevailing complainant. The area of remedies may require particular attention to training of Hearing Officers who have had no prior experience in fashioning remedies.

Following the completion of the hearing process, the Hearing Officer issues a Proposed Final Decision. Parties may then file exceptions and/or request written and oral argument before the Commissioner. The Commissioner of Labor then may affirm, modify or reject the Hearing Officer's Proposed Decision. Appeal is to the Superior Court.

Part Two will present synopsis of significant cases in the next issue.

Family and Medical Leave Act Resources

Review of Connecticut's experience with the state's Family and Medical Leave Act to date evidences the benefits of adjudication of these cases by Appeals Division staff. Additional information regarding Connecticut's Law, and our experience with it, including copies of decisions and training material are available from me on request at (203) 566-1563.

TELECOMMUTING AT TEC - Part 2

By Maureen Bucek
Texas Commission Appeals

This is the second installment in a three-part series examining the telecommuting experience for the higher authority review legal staff at the Texas Employment Commission. Part 1 covered the nature of the at-home work and major benefits the agency derived from the telecommuting program.

Personal Benefits

A recent survey of telecommuting attorneys in the Commission Appeals Department reveals that they are unanimous in their appreciation of the program. Participants were asked to list benefits they derived from working at home. A sampling of responses best illustrates their contentedness and high regard for the program:

> Working at home allows me to spend more time with my young child. This enables me to play a greater role in her upbringing since the alternative is to have her placed in a child care facility for 8 or 9 hours per day. Working at home also drastically reduces child care expenses and other expenses such as transportation, meals outside of the home, etc. There are other benefits . . . such as working a more flexible schedule and working in a more relaxed, stress free environment.
>
> Elimination of commuting/parking problems: (a) by not commuting daily, save on car insurance, repair and gas, (b) had to either ride bus, spending money on bus fare and waiting at bus stops or had to search for parking space every two hours if drove car to work. [Paying for contract parking is not an available option for Commission employees; those with insufficient seniority to be assigned a parking space by the agency must park in metered spaces on surrounding streets and check/move car every two hours or risk a parking ticket.]
>
> (1) Fewer interruptions in work; (2) less contact with irritants in the workplace, resulting in less stress and better ability to deal with work; (3) less commuting time; (4) overall stress reduction; (5) less dress code compliance.

Board members at work: Left to right: David F. Kubli, James L. Pflasterer, Glenn Williams and Michael DiSanto.

SURVEYING CUSTOMER SATISFACTION: ARE THEY GETTING ANY?

By Allan A. Toubman, Maine
Chief Administrative Hearing Officer, Department of Labor

The Board of Governors of NAUIAB have agreed to encourage state participation in three surveys of its customers.

A question that came up repeatedly at hearings before the National Advisory Council on Unemployment Compensation (ACUC) is "why are there so many appeals." The response from the appeals community has been that the answer lies with the treatment customers receive at the initial level of review. In addition, those in appeals asked that there be a review of the quality of their work.

The National Concerns Committee of NAUIAB looked into these questions and concluded the best means to find the reasons for the number of

appeals and evaluate the quality of the appeals process was to ask our customers. Glen Williams, Chair of National Concerns, presented the initial survey instruments to the Board of Governors at its meeting on October 20-21. The Board voted to encourage state participation.

Others on the Committee who have worked on the survey are President Gordon Doig, Past-President Jim Pflasterer and Maine Chief Administrative Hearing Officer Allan A. Toubman. The Committee has received technical assistance from Dan McMurrer, a staff member with the ACUC.

There are three surveys: (1) lower authority prehearing, which asks why an appellant has appealed; (2) lower authority posthearing, which asks what the parties think of the lower authority process; and (3) higher authority posthearing which asks what the parties think of the higher authority process.

The three instruments require testing to assure that they are understood by the respondents and there is a high enough response rate. In November, Maine, Texas and New York will test the first two instruments. At the same time, Wisconsin, Texas and Connecticut will test the higher authority instruments.

The survey will be ready to go national by January 1, 1995. At that time the National Concerns Committee will provide all states with detailed information on how to proceed. If you have any questions regarding these surveys, call any of the individuals mentioned in this article.

THE BURDEN OF PROOF IN MISCONDUCT CASES IN WASHINGTON STATE

By Anthony J. Philippsen, Jr. Commissioner's Review Office, Washington

Indiana Board member George Baker's article in the August issue on the burden of proof certainly caught our attention in Washington state, where we will soon mark fifty years of adherence to the rule that the burden of proof is upon a claimant to establish entitlement to unemployment compensation. Jacobs v. Office of Unemployment Comp. & Placement, 27 Wn.2d 641, 179 P.2d 707 (1947). While that holding may not seem remarkable, one upshot is that, unlike the situation in Indiana, a Washington claimant who appeals a misconduct disqualification does not automatically prevail if his or her former employer does not appear for the hearing. The decision in Jacobs also underlies the Washington position that the burden of proving entitlement remains with a claimant even if his or her case is before an administrative law judge on the former employer's appeal, and that this burden never shifts during the fact-finding process.

In cases involving voluntary quits and procedural issues, which are mentioned in the article, Washington procedure is the same as the procedure followed in Indiana with respect to the burden of proof. Perhaps the only instance in which Washington procedure differs is in cases involving misconduct.

As does Indiana, Washington holds an employer to the burden of proving misconduct. In Washington, however, a distinction is drawn between this burden and the Jacobs burden of proving entitlement, with the result that it is not uncommon for a determination of misconduct to be upheld following a hearing at which the former employer does not appear. In such a case, the administrative law judge makes his or her decision on the basis of the claimant's testimony, some of which will usually be in the form of responses to questions which are based on documentation provided by the former employer. This procedure reflects the Washington position that the primary purpose of the hearing is to elicit all relevant information concerning the claim. It is also based on state precedential decisions holding that benefits hearings are not strictly adversarial proceedings between claimants and their former employers, but that the state is also a proper party, since it is statutorily charged with the responsibility to administer the trust fund from which benefits are paid. This responsibility includes ensuring that benefits are not paid to claimants not entitled to them, and is not affected by a party's nonappearance.

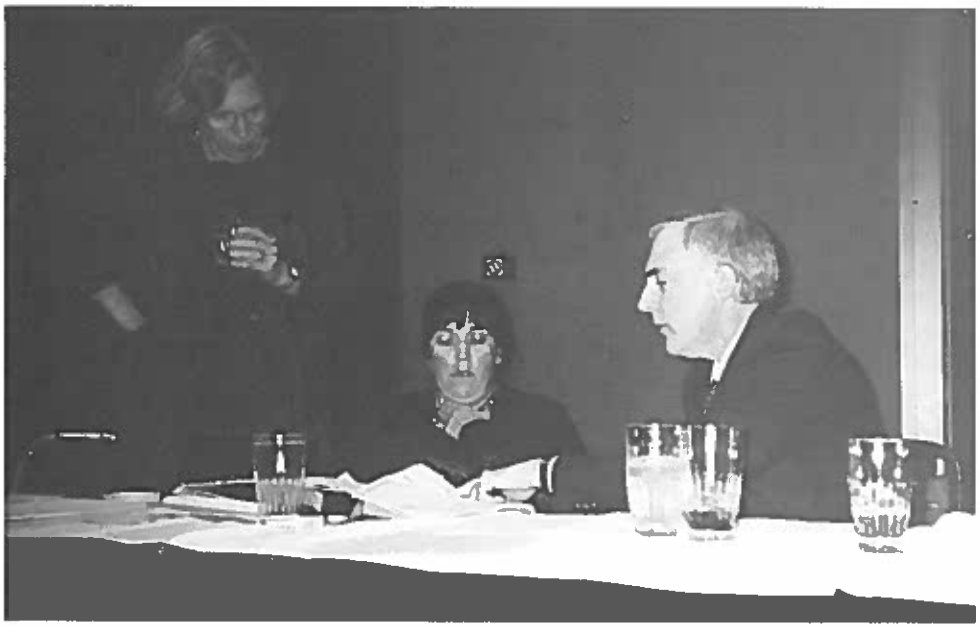
Participation in misconduct hearings in the role of trustee of the benefits fund also allows the state to act to prevent collusion between claimants and employers. This benefits employers who maintain the fund and pay the socialized costs, as well as claimants who are rightfully entitled to benefits.

Mr. Baker's article concludes with a discussion of four ways in which Indiana's requirement that the burdened party appear is advantageous to the hearing and review processes. These same advantages inhere in the Washington system. Regarding the expediting of the hearing and review processes, a burdened party's nonappearance will result in a default except in misconduct cases as explained above. As for effectiveness of administrative law judge interrogation and consistency, Washington administrative law judges realize that in keeping with the purpose of the hearing, their primary role is that of fact-finder. In misconduct cases, consistency is attained in that, regardless of whether the former employer appears, there are certain basic aspects of the case that must be examined, and administrative law judges, upon familiarizing themselves with the applicable statutes, regulations, and judicial and precedential administrative decisions, follow a fairly uniform line of questioning depending upon the nature of the alleged misconduct.

Assuming, as Mr. Baker maintains, that questioning the non-burdened party in the absence of the burdened party tends to penalize honest parties, it should be noted that under Washington's trust theory, the public interest in the unemployment insurance system is weighed against the expediency of summarily awarding benefits upon a former employer-respondent's nonappearance.

On the final point, an administrative law judge under the Washington system need not be placed in the position of prosecutor and jury. An administrative law judge can conduct an efficient examination of a claimant in a misconduct case in a former employer's absence without going outside his or her role as fact-finder and without prejudicing the claimant's rights. In these situations, the administrative law judge's participation conforms to the principle enunciated in Jacobs and avoids any circumstance wherein procedural considerations are followed in derogation of the employer community's, and, ultimately, the public's financial interest in the unemployment insurance system.

Having said all this, Washington review judges nonetheless believe that it might be time to examine the usefulness of the concepts of the burden of proof, the burden of going forward, the duty to establish a prima facie case, and perhaps other procedural considerations, and that the 1995 national meeting would provide an excellent opportunity for this.



Planning the details for the 1995 NAUIAB Conference in Albuquerque. Left to right, Elizabeth A. Graham, Donna Tores and Gordon A. Doig.

1995 NAUIAB CONFERENCE

by Donna Torres, New Mexico

The 1995 NAUIAB Annual Conference will be held in Albuquerque, New Mexico, June 4-8, 1995. The conference will be held at the Sheraton Old Town. The hotel has set aside rooms at a special rate of $80 per night, plus tax, for single or double. Reserve no later than May 14, 1995, to be eligible for the special rate. The room rate is applicable three days prior and after the conference. Reservations are to be made directly to the hotel at 1-800-237-2133. Reservation requests must identify affiliation with NAUIAB.

CLIP AND MAIL

MEMBERSHIP APPLICATION/RENEWAL

For new members: Please complete the attached application in full and return with $25.00 annual membership fee to: Betty A. Graham, c/o Appeals, Post Office Box 8988, Denver, Colorado 80201.

For members renewing their membership: Please update any information which has changes, such as phone number, title, address, etc., and return application with $25.00 annual membership fee.

Name _____

Home Address _____

City _____ State _____ Zip _____

Title of Position _____ Complete Name of Agency _____

Business Address _____

City _____ State _____ Zip _____

Do you want correspondence sent to home ☐ business ☐ ? Are you currently a member? Yes ☐ No ☐ _____

Publications Committee

The next deadline for publication of the newsletters if February 15, 1995. If you have any articles to contribute, please contact one of the individuals named below. Letters to the Editor should be sent directly to the Publications Chair and will be printed as space allows.

Teresa M. Morris, WA
Publications Chair, FAX: 206 493-9520
If possible, please submit articles on a diskette in WordPerfect 5.1 or 6.0 format.

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