



Navigator

Spring 2016

WELCOME TO HARTFORD THE CAPITAL OF “THE CONSTITUTION STATE”

The City of Hartford, which is located at the end of the navigable portion of the Connecticut River, was settled in 1623 as a Dutch trading post called House of Hope. In 1636, a group of English settlers led by the Reverend Thomas Hooker left Massachusetts and formed a colony here. The settlers made peace with the local Algonquin Native Americans, who called the town Saukiog, and renamed it after Hertford, England. Because it is located on the Connecticut River, Hartford grew into an important trading center in distributing molasses, spices, coffee and rum from warehouses in the city's thriving merchant district to England, the West Indies and the Far East.

The nation's oldest public art museum, the Wadsworth Athenaeum, where we are hosting our Tuesday night outing, was founded in 1844. Supported by prominent benefactors, such as J.P. Morgan, the museum grew to become one of the top ten art museums in the country. Author Mark Twain, in describing why he relocated to Hartford, stated “of all the beautiful towns it has been my fortune to see, this is the chief.” The Mark Twain House and Museum was Twain's residence from 1874 to 1891, and where he wrote his best-known works, including The Adventures of Tom Sawyer, The Prince and the Pauper, Life on the Mississippi, Adventures of Huckleberry Finn, A Tramp Abroad, and A Connecticut Yankee in King Arthur's Court. While you are in Hartford, take the opportunity to visit the 45,000-square-foot Webster Bank Museum Center at The Mark Twain House & Museum, where you can learn more about Mark Twain, his family, the historic house, and the author's legacy.

Today, Hartford is in the midst of a revitalization spearheaded by a newly elected Mayor who wants to welcome visitors to a city that now hosts its own baseball team, the Yard Goats. The name Yard Goat has its origin in the railroad industry, which was an integral part of Hartford's history, and is a serious workhorse locomotive moving and shuffling cars from track to track in the rail yard keeping things in order. For those sport enthusiasts, there will be a home stand during the NAUIAP conference at the Yard Goats recently built stadium, which is located across the street from the Hartford Hilton, where our conference is being held.





But the best kept secret about Hartford is its multi-cultural entertainment venues and restaurant choices. On our website, we have provided a dining guide that shows conference attendees affordable ways to experience the finest dining in New England, from Thai to Japanese, from Mexican to Cajun, from Italian to Irish, from American Fusion to down home cooking. You can also experience fabulous entertainment if you decide to take in a show at the Infinity Hall, the Bushnell Theater, or Theater Works. Or you can kick back at Black Eye Sally's on Monday or Wednesday evening when the restaurant hosts the local jazz and blues scene.

Finally, and most important, our agenda committee has designed a conference agenda that will definitely appeal to lower and higher authority members, and representatives who appear before us. Returning to our stage is the incomparable Angela Bullard from California's Appeals Division. Her presentation this year is entitled, "Lower and Higher Authority Working Together." Other topics that are sure to pique our members' interest are: "Worker Misclassification in the Age of Uber," "Meaningful Access to the UI System," "Successful Strategies for Avoiding Recession Backlogs," "HIPPA Concerns in UI Cases," "Challenges and Best Practices for the Higher Authority," and "Latest Trends in Misconduct Cases (Social Media, Legalized Marijuana).

And remember that Hartford is an easy drive to other New England vacation destinations; New York City, Boston, the beaches of Cape Cod, or the mountains of New Hampshire and Vermont. In the words of one of New England's most iconic poets and philosophers, Henry David Thoreau, in describing the woods of New England: "Talk of mysteries! — Think of our life in nature, — daily to be shown matter, to come in contact with it, — rocks, trees, wind on our cheeks! The solid earth! The actual world! The *common sense*! *Contact! Contact! Who are we? Where are we?*"

NOTICE

ELECTION OF BOARD OF GOVERNORS SET FOR HARTFORD, CT

The NAUIAP Board of Governors proposes the following slate of officers for the 2016-2017 term. The slate will be considered and voted upon by the NAUIAP membership at the general membership meeting at the Hartford, CT Training Conference to be held from June 19th to June 23rd, 2016. The current President Elect position is vacant so the President position will be voted upon first pursuant to the NAUIAP Constitution and By-Laws. Kathryn Todd (OH) will remain on the Board for one year as the Past President.

OFFICERS:

President – Tim Dangerfield (SC)
 President Elect – Jayson Myers (NY)
 First Vice President – Amanda Hunter (FL)
 Second Vice President – Sabrina Rahn (IN)
 Secretary – Brad Collins (AR)
 Treasurer – Dan Doherty (MD)

AT LARGE MEMBERS:

Pam Taguchi (HI)
 Chris Seppanen (MI)
 Ed Steinmetz (WA)

PROXY VOTING

The Constitution and By-Laws of NAUIAP are available on the website at www.nauiap.org. If you are unable to attend the annual meeting in Hartford, CT, you may cast your vote by proxy. To be eligible to vote, you must be an active member of NAUIAP and current in payment of all annual dues as of June 18th, 2016. Please submit your vote via the NAUIAP website to the website administrator under the "Contact" heading.



President's column By Kathryn Todd, Ohio

"Volunteers do not necessarily have the time, they just have the heart!"
- Elizabeth Andrew

What is the NAUIAP Board of Governors? Who is eligible? What do they do? How are they selected? What are the financial expectations of a Board position, and is it too much work? If you have ever thought about volunteering for the Board but weren't quite sure what the position entailed? *Keep reading for more information!!*

The NAUIAP Board of Governors (BOG) is an annually elected Board governed by the NAUIAP Constitution and By-Laws. The By-Laws establish the qualifications for the Board Members and the method of election. Any active member of NAUIAP is qualified to serve on the Board of Governors. An eligible NAUIAP active member is any individual who regularly performs at least one of the following functions:

- 1) decides lower and/or higher authority UI cases;
- 2) as a lower or higher authority employee, assists in decision issuance or defense of decisions in court
- 3) and/or directly supervises lower or higher authority hearing officers.

The Board of Governors is charged with the administration of the Association. Its duties are to foster, advocate and advance the broad principles of unemployment insurance with particular emphasis on the appellate processes. To exchange ideas, methods and procedures with the National and Regional offices of the US Department of Labor as well as providing information and study materials for the continuing education of members of the Association. These primary objectives and many others are set forth in the Association By-Laws and govern all activities of the BOG.

The annual Board slate is selected by the current members of the Board, published in the Spring newsletter and voted upon by the membership in attendance at the summer training conference. Members are selected based upon diversity factors such as a balance of higher and lower authority, state size, DOL region, and personal skill and ability. Individuals selected to be Board members have previously provided service to the Association by volunteering for a committee, writing an article for the newsletter, speaking at the training conference or other volunteer activities.

The BOG has a meeting in the Spring and Fall of each year as well as the annual summer training conference. These meetings are in-person at a location selected by the Board President and all members are expected to attend. A quorum of members is necessary to vote upon all motions. The meetings last 3 days and all business of the Association is discussed and voted upon as necessary. All travel expenses to attend the meetings are the responsibility of the member or member agency. The meetings are busy and a great deal of work is accomplished, but the members truly enjoy the discussions and are deeply committed to the Association.

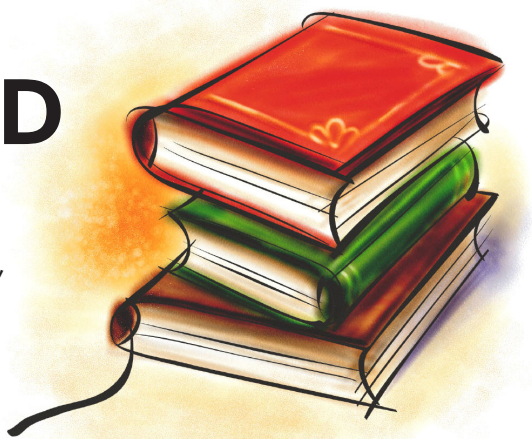
However, the collegiality of working with 11 other states is not all the position offers. The advantages to the member state of a board position are extraordinary. The board members regularly touch base with U.S. Department of Labor personnel, NASWA leaders, and all states UI Boards, department leaders and staff members. The BOG members get constant up to date legislative information affecting the UI world, DOL current appeals policies and priorities, state best practices and national legal development updates. The BOG members can get in touch with policy or decision makers from all states in a matter of minutes!! Information is invaluable in today's fast paced UI environment and there is a wealth of information exchanged.

We certainly hope this has whetted your appetite for more information on joining the BOG or volunteering your skills!!! It is important to the Association to have committed volunteers to ensure the future vitality of NAUIAP. It is important to us all....volunteer today and make a difference!!



A GOOD READ

By Cynthia Thornton,
California



The Secret Chord: A Novel by Geraldine Brooks. This is a fictionalized account of King David. While it's not as readable as some of Brook's other work, it provides a fairly easy to read account of the life of King David that hews accurately to the biblical account of King David's life. If you like historical fiction, this book is a good read.

The Lowland by Jhumpa Lahiri. This is the story of two very different brothers born in India. One brother is a risk taking revolutionary and the other is the dutiful brother who leaves home for Rhode Island to research at a University. It is a tribute to Lahiri's story telling ability that readers remain on the edge of their seats in anticipation as to what will happen to the brothers.

The Water Knife by Paolo Bacigalupi. Given the water situation in California, this book had to be written. It takes place in a post-apocalyptic world in which the West has run out of water, Arizona has been quarantined and various factions in Nevada are fighting to get their hands on water that the big bad California-types control. It is an adventure story with cliff hanger moments and well-drawn characters.

The Invention of Wings by Sue Kidd Monk. First a caveat: readers HATED the version with notes so get the book WITHOUT the Oprah Winfrey notes. This is a novel about Sarah Grimke, a Southern aristocrat whose father is a South Carolina Supreme Court judge. Sarah Grimke is a person who actually lived in South Carolina just before the civil war. Sarah is an anomaly during that time in that she is an abolitionist, but is nonetheless given a slave named Handful for her 11th birthday. The book provides a fascinating look into the abolitionist movement and the interplay between that and the women's rights movement. The book is well written and tells a gripping story.

The Sixth Extinction: An Unnatural History by Elizabeth Kolbert. The thesis of this book is that we are currently in the middle of the sixth great extinction. The book details the five prior extinctions then presents the evidence that we are in the middle of the sixth. I loved the book but be aware that my son (who recommended the book to me) said that the book felt like a repeatedly learning about new interesting and very cool species only to find out they were going extinct. He said it was a constant, "Wow! That's really cool. Bummer. They're gone." I thought the book was fascinating.

NAUIAP Board of Governors

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How Not To Invite Reversal

By Gregory Ives, Appeal Tribunal Chairman II (NH)

Nobody likes to have a decision reversed. Trying to not be reversed is like a monkey on our backs. We will try all sorts of techniques so parties will not appeal our decisions, or, if there is an appeal, that we do not get reversed.



We have all had hearings with disputed facts. Was the claimant told to go home or did the claimant leave without notice? If we choose some facts over others, a party may dispute the decision because, allegedly, we “left out” facts.



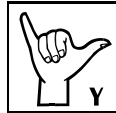
To make everyone happy, a hearing officer may “parrot” the testimony in the Facts almost like a transcript of testimony. That way, everyone knew that the testimony was heard. Then, to be crystal clear, we re-state the facts in the Rationale/Conclusion portion of the decision.

However, to do our job well, we need to choose which facts we believe. Finding facts requires us to make specific, relevant, and material findings of what we find to be true. Recited testimony does not find facts. It merely recites testimony. If we parrot what everyone said to us, how will anyone reading the decision know on which facts is the decision based?

As the Findings section is for those specific, relevant, and material facts found to be true, include only the more credible version of disputed information as Fact. WHAT do you believe?



The Conclusion should contain the reason(s) for that belief. For the party that does not prevail, these credibility conclusions really make a difference. Resolve the credibility conflict. WHO you believe? WHY you believe some facts over others?



Because it is your job to decide the facts, if you parrot testimony instead of finding facts, you are inviting a reversal, or at least a remand.



It is usually the hearing officer's authority to decide credibility and the resulting findings of fact. Generally, courts will not second-guess the hearing officer's interpretation of credibility and facts. Without the actual Findings, or without the credibility reasons for the Findings, if a party disputes the case, the case may be reversed.

A judge will find it much easier not to remand or reverse your decision if the judge does not need to speculate why you relied on a particular witness or evidence and the record supports specific findings of fact.

For past issues of the Navigator

www.nauiap.org

State Spotlight

MAINE

In Maine, the lower level appeals are performed through the Division of Administrative Hearings, which is part of the Bureau of Unemployment Compensation. The Division is headed by the Chief Hearing Officer, followed by the Senior Hearing Officer. There are currently seven full-time hearing officers located in four separate areas of the State. The only position within the Division that is required to be held by a licensed attorney is the Chief Hearing Officer position. The Division processed approximately 6500 appeals for 2015. The majority of the hearings are held via telephone, though when necessary the Hearing Officers will hold in person hearings at a variety of locations throughout the State.

The higher level appeals are performed by the Unemployment Insurance Commission which statutorily consists of three members appointed by the Governor: the Chair who heads the unit, an employer representative and an employee representative. The Commission has the authority to hold hearings or remand case back to the Division for additional evidence. The Commission also has rule making authority to create rules in relation to the Maine Employment Security law.

– provided by Jodie Craig, Maine, Senior Administrative Hearing Officer

COLORADO

In Colorado, Higher Authority appeals are heard by the Industrial Claims Appeals Office (ICAO). The ICAO is a separate Division and the “panel”, is made up of five administrative law judges who are hired through the standard state hiring process. The panel reviews both unemployment insurance and worker’s compensation decisions. ICAO decisions are appealable to the Colorado Court of Appeals.

Lower authority appeals are part of Colorado’s Division of Unemployment Insurance and consists of 21 hearing officers, 2 supervisors, a Chief of Appeals as well as administrative staff. Most hearing officers are licensed Colorado attorneys but a few came from the ranks of experienced adjudication staff. Most hearings are conducted in Denver, but we do have hearing offices in Colorado Springs, Pueblo, Longmont and Grand Junction. The majority of hearings are conducted by telephone but, historically, we have had approximately 25%-30% in-person participation. We are considering allowing a limited number of hearing officers telework. Last year, we conducted approximately 19,000 hearings.

– provided by Darin Mullen, Colorado, Appeals Branch Manager

ALABAMA

The Alabama Department of Labor has a lower and higher authority appeals process. The Hearings and Appeals Division, Appeals Tribunal, processes lower authority appeals on unemployment insurance claims, and schedules and conducts quasi-judicial hearings for the Alabama Department of Labor. Our mission is to preserve the integrity of the State of Alabama and the Department of Labor by delivering quality service to the public, and ensure due-process is provided to all interested parties in the administrative hearing. The Division is staffed with 35 employees. The Director, Venessa Watkins, is assisted by one (1) Chief Administrative Hearing Officer, Steve Trawick, who supervises twelve (12) Administrative Hearing Officers. Other support staff is comprised of two (2) managers, three (3) claims examiners, two (2) docket clerks, and fourteen (14) administrative support assistants. While the majority of the appeal cases involve contested determinations on unemployment compensation claims, the Division, also, decides cases related to departmental personnel matters, and other due-process hearings relative to the operations of the Department. Hearings on contested unemployment compensation claims are conducted via teleconference, unless special accommodations are required. Hearings are conducted five days a week. On average, each Hearing Officers hears approximately 25 cases weekly.

– provided by Venessa Watkins, Alabama, Director, Hearings and Appeals Division