



Navigator

Spring 2018

NAUIAP TRAINING CONFERENCE IN ANNAPOLIS, MARYLAND JUNE 17 - JUNE 21, 2018

Dan Doherty, Senior Hearing Examiner with the Lower Appeals Division of the Maryland Department of Labor, Licensing and Regulation NAUIAP Board Treasurer

The Board of Governors of NAUIAP cordially invites you to charming Annapolis, Maryland for its 38th Annual Education and Training Conference. The following information will help you plan your visit in June.



Getting from Baltimore-Washington International Thurgood Marshall Airport

A few notes about ground transportation from BWI Airport to Annapolis. The Light Rail at BWI Airport, while it connects with Baltimore, does not connect with Annapolis, so do not use the Light Rail. There is bus service to Annapolis, but taking it is not convenient; so again, steer clear. Your options are the standard taxi ride; Uber, Lyft, or connecting with a shuttle. Shuttle Fare (www.shuttlefare.com) has a program on their website to get a quote and schedule a ride to Annapolis. Crofton Coach & Courier (www.coachandcourier.com) is another excellent option for scheduling transportation to and from BWI Airport.

Visitors Guide

Want to know more about Annapolis and the Chesapeake Bay? The Annapolis Visitor Center's "Visitors Guide" introduces you to the many communities, activities, events, and attractions in and around Annapolis. The handy reference tool includes a complete listing of accommodations, restaurants, shopping options, and services. To view this year's guide online, visit www.visitannapolis.org/forms/visitors-guide and follow the link or request to receive one in the mail, or to access the guide online by clicking [HERE](#).

Water Taxi Information

When you are in Annapolis, a trip around the City Dock area by water is a treat. The Annapolis Harbor water taxis are operated during the warmer months and can be boarded at City Dock, as well as other public and commercial shoreline destinations. Call the Water Taxi dispatcher at 410-263-0033. View more Water Taxi information on [Cruise On the Bay](#).

Dining, Drinks and Entertainment

A great source of information about where to eat and drink when in 'Naptown is the Annapolis Visitor Center. Their website (visitannapolis.org) has great links to local restaurants and bars, as well as information on events and entertainment options in the downtown area. Annapolis is very walkable, so no need to worry about transportation once you get here. However, if you get tired or Mother Nature is not cooperating, try the Circulator. It is a trolley that quickly and efficiently moves individuals around Annapolis, allowing the public to enjoy the unique shops, the food and entertainment, the historic charm and maritime attractions. The Circulator makes convenient stops along its route and is in service Monday through Saturday – 7:30 a.m. to 11:00 p.m. and Sunday – 8:00 a.m. to 8:00 p.m. The Circulator runs on a 20-minute interval. (annapolisparking.com/circulator-alternative-transportation/).

Frederick Douglass Bicentennial Celebration

Of special note, celebrate the life and times of the first African American to gain international prominence as a social crusader during the Frederick Douglass Bicentennial Celebration throughout the State of Maryland in 2018. The City of Annapolis is fortunate to feature The Banneker-Douglass Museum, the State's official museum of African American heritage.

REGISTER NOW

nauiap.org/member-event/2018-conference-annapolis-maryland/

\$495 Pricing includes:

One-Year Individual Membership

STATE MEMBERSHIP:

Small \$500 to enroll 1 to 25 members

Medium \$1000 to enroll 26 to 75 members

Large \$1500 to enroll 76 plus

ANNAPOLIS CONFERENCE AGENDA HIGHLIGHTS

The planned agenda is packed with sessions you won't want to miss!

- **Department of Labor Update** by Jim Garner, Deputy Administrator – Employment and Training Administration, Office of Unemployment Insurance
- **Recent Trends in Reasonable Assurance Cases**, featuring a representative from USDOL Employment and Training Administration
- **UI Appeals & Self-Assessment Update** by Corey Pitts and Candace Edens, USDOL, Employment and Training Administration, Office of Unemployment Insurance
- **Recent Trends of Misconduct Cases Involving Social Media**
- **Recent Developments and Trends in Drug Testing Cases**
- **Regional Break Out Sessions** conducted by Regional Representatives, USDOL Employment and Training Administration

NOTICE

ELECTION OF BOARD OF GOVERNORS SET FOR ANNAPOLIS, MARYLAND

The NAUIAP Board of Governors proposes the following slate of officers for the 2018-2019 term. The slate will be considered and voted upon by the NAUIAP membership at the general membership meeting at the Annapolis, Maryland Training Conference to be held from June 17th to June 21st, 2018. Jayson Myers (NY) will remain on the Board for one year as the Past President.

OFFICERS:

President – Amanda Hunter (FL)
President Elect – Ed Steinmetz (WA)
First Vice President – Vacant
Second Vice President – Sabrina Rahn (IN)
Secretary – Vacant
Treasurer – Dan Doherty (MD)

AT LARGE MEMBERS:

Melissa Butler (TX)
Paul Fitzgerald (MA)
Kathryn Todd (OH)
Vacant
Vacant

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 Annapolis, MD, 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 16, 2018. Please submit your vote via the NAUIAP website to the website administrator under the "Contact" heading.

*Many thanks to our sponsor
for their generous support!*



President's Column

Jayson Myers, Chief Administrative Law Judge U.I. Appeals Board, New York



In performing our unemployment insurance appeals responsibilities, we are constantly aware of the measurements that are taken of our Lower Authority work.

With respect to quantity, the standards are mailing 60 percent of decisions within 30 days, 80 percent within 45 days and maintaining an average case age of pending appeals of no more than 30 days. With respect to quality, the standard is 80 percent of cases receiving a passing score of 85 in the federal quality review.

But it is that third measurement that looms continuously over our work: what do our customers—claimants, employers and our state agencies—think of our work? Do they complain and, in so doing, criticize a hearing officer and indirectly the supervision and training of hearing officers in general?

That third measurement usually comes in the form of appeals to the Higher Authority or the courts or in specific complaint letters written to the appeals chiefs. Those letters sometimes include concerns of claimants or employers who state that they were not given a chance to be heard or even that it was obvious that the hearing officer was not listening to what they had to say. These are the types of letters that make us cringe because we are all working terribly hard to create and maintain appeals systems that reflect fairness and that are intended to satisfy our customers.

This third type of measurement is also so concerning to us because it is individualized to the hearing officer and often the particular issues in the case and therefore may be a more elusive target to address through training and coaching. We strive to establish rules and procedures that emphasize fairness and yet the flow of these letters never fully stops.

ETA Handbook criterion no. 21 concerning attitude sets some standards for putting the parties at ease so that there can be a free and full flow of material information at the hearing. But in-hearing decisions by hearing officers as to relevance and materiality are common and necessary, and parties sometimes do not come away with an appreciation of why some of their testimony is discounted or curtailed and why more of the testimony of the adversary is accepted.

The level of attentiveness of the hearing officer is so important in conveying to the parties that they are being heard. That level must be apparent to the parties because the perception of how they are being treated is their perception, not the hearing officer's. How do they gain that perception? It comes from the things the hearing officer says and does during the hearing and then in the decision.

Judging is a stressful profession. We all regret but understand that anger, frustration, distraction or fatigue are going to sometimes find their way into a hearing officer's mindset at some point. It is important that the hearing officer monitor him or herself for these and overcome these negative influences in order for the appeal process to continue in the healthiest way.

Strong interpersonal skills are a key component in a hearing officer's total skill set. The ability to talk to people in plain language is a large part of "proving" to parties that they have been heard. Explaining in peculiarly legal terminology will only dizzy the skeptical party and not build that important bridge of trust. When we hire hearing officers we have to look for interpersonal skills. Those skills can be reflected in the person's work experience, extra-work activities or in the interview itself.

Listening in general, and more importantly the appearance of listening, is a big part of customer service. You can demonstrate that you have listened by addressing the unsuccessful party's main contention in the decision. You also want to prove it during the hearing so that the parties leave the hearing with a sense that government has fulfilled its mission.

During the hearing, the only ways to prove you are "leaning forward" and listening are through verbal and nonverbal cues at an in-person hearing (meaningful head nods or expressions such as "I understand") or through verbal cues in a telephone hearing ("I understand" or, even better at the conclusion of a party or witness' testimony, "I understand your position that the manager Jane was not in the room at that time"). Although New York is a state that continues to emphasize the in-person hearing, I submit that the vacuum that can occur in a phone hearing has to be filled by the hearing officer's responsive and meaningful verbal cues to the parties. Then, in the decision, there should be at least some follow-through by explaining why the unsuccessful party's main contention was not accepted.

We audit our hearing officers' work randomly at about three and one-half times the frequency required by USDOL. We are working presently on establishing customer service criteria consistent with Handbook 382 but specifically attuned to the level of engagement with and responsiveness to the parties at the hearing.

Since we work in the public sector, we must always strive to demonstrate that we are worthy of the public's trust. The level of engagement that we and all our hearing officers reflect through our performance is a huge part of this. The objective of minimizing customer dissatisfaction can be daunting, but it is also so rewarding when we know we have provided that admirable level of service. It is why we come to work every day.

ANNAPOLIS, MD

We are only two months or so from our 2018 conference in Annapolis. This conference promises to build on my message of increasing NAUIAP's training mission.

We are going to focus several of our sessions on those federal quality criteria for which there was the greatest scoring disparity at the last national appeals review. We will also have an update on the appeals self-assessment process that is going on right now in every state. On Thursday, the final day of the conference, we will discuss how NAUIAP can become a more constant training presence throughout the year. We have some exciting ideas to explore with the attendees.

Sessions on identify theft, reasonable assurance for educational employees, drug testing and social media will update us as to the latest guidance and trends in those areas.

Our evening event at the Naval Academy promises to be a warm and meaningful occasion for us as public servants.

Most of all, the annual conference gives all of us an opportunity to catch up with each other, chat in person and exchange experiences, learn of the latest developments in the states, and share best practices that can enhance our states' operations.

Registration information can be found at [Register](#) on the NAUIAP website. I look forward to seeing all of you in Annapolis.



COMMITTEE SPOTLIGHT: The Website & Technology Committee

Amanda Hunter, Deputy General Counsel and Clerk
Florida Reemployment Assistance Appeals Commission

STRUCTURE

One chairperson and seven members currently serve on the Website & Technology Committee. The Chair of the committee serves on the Board of Governors and was appointed by the President. During the 2017 annual conference, several members expressed an interest in serving on the committee, and we continue to welcome additional committee members. If you are interested in serving on the Website & Technology Committee, please send an email to Amanda.Hunter@raac.myflorida.com. There will also be a sign-up sheet at this year's annual conference in Annapolis, Maryland.

DUTIES

The NAUIAP Website & Technology Committee is primarily responsible for ensuring the organization's website and technology resources function optimally. During the year, the committee responds to inquiries from members and facilitates access to conference materials and other useful unemployment insurance resources that are stored on the website. The NAUIAP website is maintained by an external web development company, but members who serve on the Website & Technology committee play an important role in identifying areas of the website that need improvement, testing website modifications, and suggesting new features to improve the website's utility.

Did you know the NAUIAP website also has a private forum that can be used by members to discuss ideas? If you'd like

to try using it, login to the website with your username and password, select the Forum link, and post a New Topic for discussion.

In addition to assisting with the NAUIAP website, the Website & Technology Committee develops and operates the NAUIAP conference mobile application, also called the "NAUIapp." The NAUIapp was first implemented during the 2016 conference in Hartford, Connecticut, and it has become a great way for conference attendees to connect with peers and access conference materials electronically.

TIME COMMITMENT

Members of the Website & Technology Committee communicate with each other intermittently via email. The time commitment is less than one hour per month, and it typically involves members of the committee reporting issues as they discover them and making recommendations for improvements. The chair of the committee subsequently communicates with the organization's web developer, as needed.

We are committed to continuous improvement of NAUIAP's website and technology resources, and we would love to hear your ideas. If you'd like to share any suggestions with the committee, please feel free to send an email to info@nauiap.org.

State Spotlight

Spotlight on Nebraska

Katie Thurber, C.L.S.S.Y.B
General Counsel
Nebraska Department of Labor

In Nebraska all unemployment benefit and tax lower authority appeals are handled by the Nebraska Department of Labor's appeal tribunal. The appeal tribunal is supervised by the General Counsel for the Department, Katie Thurber. Nebraska currently has three hearing officers, one chief clerk, and two administrative staff assistants. From January 1, 2017, to December 31, 2017, approximately 4,550 lower authority appeals hearings were filed with approximately 4,477 cases being resolved. Nebraska's appeal tribunal conducts nearly all hearings over the telephone. Hearing officers have the authority to allow an in-person hearing. In-person hearings are held in Lincoln.

Nebraska is unique because it does not have a higher authority. All appeals of the lower authority are appealed in accordance with Nebraska's Administrative Procedure Act and are appealed directly to state district court. An appeal of the lower authority decision must be filed with the appropriate state district court within 30 days of the decision being issued. The Commissioner for the Nebraska Department of Labor is a party to all appeals at the district court and is represented at appeal proceedings by the Nebraska Department of Labor's legal counsel. In 2017, nine cases were appealed to district court.

For past issues of the
Navigator

VISIT
www.nauiap.org

NAUIAP Board of Governors

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Employed, but not working

Christine Steffen, Supervising Unemployment Law Judge; Megan Flynn, Unemployment Law Judge;
Munazza Humayun, Unemployment Law Judge, Minnesota Department of Employment and Economic Development

In most cases, in the world of unemployment insurance, when a person is out of work due to no fault of their own for three months, they are likely eligible to receive unemployment benefits. A claimant who finishes up work on Friday, is not offered work on Saturdays or Sundays, but plans to return Monday, is not laid off. That is a weekend. What happens, however, when someone's schedule isn't a typical work week, Monday through Friday? Where is the line between a weekend and a layoff?

In Minnesota, atypical work arrangements are not squarely contemplated by our statute. We are considering proposing legislation to ensure consistency and transparency in how we approach analyzing eligibility for unemployment benefits.

Minnesota Unemployment Insurance Law provides two types of separations; quits and discharges.

Minnesota law defines a quit as follows:

"A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's." Minnesota Statutes, section 268.095, subdivision 2(a).

Minnesota law defines a discharge as follows:

"A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. A layoff because of lack of work is a discharge." Minnesota Statutes, section 268.095, subdivision 5(a).

Minnesota law also considers leaves of absences and suspensions. Minnesota Statutes, section 268.085, subdivisions 13 and 13a. A leave of absence is defined as follows:

"A leave of absence is a temporary stopping of work that has been approved by the employer. A voluntary leave of absence is not a quit and an involuntary leave of absence is not a discharge from employment for purposes of section 268.095. "

Our statute does not define a suspension, though often we consider a suspension to be a period of time that an employee is not working, initiated and controlled by the employer, because of the employee's behavior.

But what happens when a person is not working, but does not fit neatly into one of these definitions?

For example, imagine an on-call worker. Many businesses

employ a person who works if someone else calls in sick, or if there is some other business need. There may be no set schedule. For such a person who applies for unemployment benefits, Minnesota must determine how to characterize events when this person finishes her last scheduled shift, and has no more shifts scheduled in the future. What is the impact on eligibility? Is this claimant laid off due to lack of work? She is still on the employer's on-call list and can be called to work at any time. She maintains a connection with the employer; after all, she may pick up a shift at any moment. Often in these scenarios, employers protest our declaration that such an employee has been discharged or laid off; it does not comport with their 'real world' understanding of their relationship to the worker.

To build on this hypothetical, imagine the same on-call worker. She finishes her shift on January 2. Her next shift is scheduled for January 18. What is her status between January 3 and January 17? Has she separated from employment? Is she laid off due to lack of work? Or, is there another explanation that better describes the scenario? Is she not working temporarily but intends to return to work in the future?

Imagine an employer that has periodic shut downs. For example, the employer is closed December 23 through January 2 each year, and July 1 through July 9 each year. Are the workers "laid off" during these breaks? Have they separated from employment? In the past, in nearly all of these scenarios, Minnesota has determined that these claimants were laid off/discharged from employment. In the event of a worker who asks to go from a regular set-schedule to purely on-call, Minnesota generally finds such a worker to have quit employment.

We have discussed these questions internally and several of our attorneys have offered suggestions on amending the statute to more clearly define status. Included are:

Proposed statutory addition for workers temporarily not working:

Minnesota Statutes, section 268.085, subdivision 13d. Employed, not working.

(a) An applicant who does on-call or other intermittent work for an employer, or who is not working for an employer due to a temporary work stoppage or other temporary circumstance, shall be considered "employed, not working" for that employer. An applicant who is "employed, not working" for an employer is not separated from that employer under section 268.095. An applicant who is "employed, not working" is not ineligible to receive unemployment benefits under this subdivision.

¹ Minnesota, like many states, has a specific statute to address separations from temporary staffing agencies, under Minnesota Statutes, section 268.085, subdivision 2(e).

(b) If an employer does not offer an applicant who is “employed, not working” to return to work that is to be performed within 30 calendar days of the applicant’s last day of work for that employer, the applicant is discharged from the employment under section 268.095, subdivision 4. The discharge is effective the last day of work the applicant actually performed work. An offer for work that is withdrawn or postponed is not an opportunity to return to work under this paragraph. If an applicant who is “employed, not working” decides to end the employment relationship with an employer, that applicant has quit the employment under section 268.095, subdivision 1.

(c) This subdivision does not apply to:

(1) an applicant who is suspended under section 268.085, subdivision 13,

(2) an applicant who is on a leave of absence under section 268.085, subdivision 13a,

(3) an applicant who is impacted by a labor dispute under section 268.085, subdivision 13b, or

(4) the employment of an applicant by a staffing service under section 268.035, subdivision 21d.

(d) The provisions of section 268.085, subdivision 13c, apply to an applicant who is “employed, not working” for an employer.

(e) Notwithstanding anything else in this subdivision, an applicant subject to subdivision 7 or subdivision 8 of this section shall be deemed “employed, not working” during the time period between academic years or terms, as long as the applicant has an offer to resume employment in the next academic year or term. An applicant is subject to subdivision 7 or subdivision 8 regardless of whether the applicant is “employed, not working” or discharged from the employment.

This would require small changes to two statutes:

Subd. 13c. Offers of suitable employment.

(c) This subdivision only applies to offers of suitable employment with a new or a former employer and does not apply to any type of job transfers, position reassignments, or changes in job duties or responsibilities during the course of employment with an employer. This subdivision applies to an applicant who is “employed, not working” under subdivision 13d of this section.

Subd. 5. Discharge defined.

(a) A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. Subject to the provisions of section 268.085, subdivision 13d, a layoff because of lack of work is a discharge. A suspension from employment without pay of more than 30 calendar days is a discharge.

A different proposal set out time lines:

Layoff: A layoff is when the employer has no more work available to the applicant for at least 14 calendar days because of lack of work. A layoff is a discharge from employment as of the last day the applicant performed actual work.

Furlough: A furlough is a temporary break in employment for an employee when the employer has no work available to the employee. A furlough is 13 calendar days or less. A furlough is a discharge from employment as of the last day the applicant performed actual work.

How do other states handle this? Do you have temporary out-of-work provisions in your law or case law? If you would be willing to share your state’s way of handling these situations, we would appreciate it. We will include the responses in the next newsletter. Please email responses to Christine.steffen@state.mn.us.

We may include responses in a follow-up story in a future edition of the *Navigator*.

² Section 268.095 addresses quits and discharges from employment.

³ Minnesota has a practice of assigning these types of questions of legal analysis and/or policy to a “work group” of attorneys to help provide feedback and guidance. This ensures a wider opportunity for feedback and buy-in, and also provides additional opportunities for staff development.

⁴These subdivisions reference the educational wage limitation under Minnesota Statutes, section 268.085, subdivision 7 and 8.

Profiling President-Elect Amanda Hunter

Amanda P. Hunter, Deputy General Counsel and Clerk
Florida Reemployment Assistance Appeals Commission



NAUIAP's President-Elect, Amanda P. Hunter, has worked in Florida's public sector as a government attorney for nearly 12 years. In August 2010, she began her career in unemployment insurance appeals as a Senior Attorney for the Florida Reemployment Assistance Appeals Commission. She was later promoted to her current position of Deputy General Counsel and Agency Clerk.

As Clerk of the Commission, Amanda manages the administrative unit that docket new appeals and processes briefs, motions, and other legal documents filed with the Commission. She also manages the Commission's federal reporting and information technology resources, and she is responsible for the accurate and timely filing of the record on appeal with Florida's five District Courts of Appeal.

After she attended her first NAUIAP Conference in Charleston, South Carolina, Amanda was eager to become more involved in the organization. She joined the NAUIAP Board of Governors in June 2015, and she currently serves as Chair of the Website & Technology Committee. She has been instrumental in implementing a mobile app for NAUIAP's annual conference, and she has enjoyed engaging with and assisting NAUIAP's members with IT issues throughout the year.

Amanda graduated with honors from Florida Agricultural & Mechanical University with a degree in Business Administration, and she earned a Juris Doctor from the Florida State University College of Law. Amanda is a tea enthusiast and, in her spare time, she enjoys traveling, reading, and watching collegiate and professional basketball.



www.tripadvisor.com/LocationPhotos-g29494-Annapolis_Maryland.html
getinmymouf.com/2015/09/10-hours-in-annapolis-md/
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