National Association of Unemployment Insurance Appeals Professionals



2013 Blockbuster Training Conference Applauded

The reviews are in: the 2013 NAUIAP Annual Training Conference scored both critical acclaim and box office success! Despite the Federal Sequester, state budgetary concerns and travel restrictions in UI appeals agencies across the nation, almost 200 attendees, representing 32 States, converged in



Conference hosts from the Califor-

nia Unemployment Insurance Appeals Board (CUIAB) welcomed faithful NAUIAP members and new friends to the ultimate meeting destination: the Loews Hollywood Hotel. At the Iuxurious Hollywood and Highland complex, attendees enjoyed picture-perfect weather, treats catered by famous Wolfgang Puck and countless Hollywood attractions. Some unexpected gems were sharing the conference hotel with the top 2013 NFL draft picks, in town for the NFLPA Rookie Premiere and the world premiere of Star Trek: Into Darkness at Grauman's Chinese Theater, complete with massive movie sets and film stars posing on the red carpet. (Who expects to meet Spock at NAUIAP?)



At the heart of all this fun, it was the carefully scripted educational agenda that really stole the show. Organizers decided to take advantage of California connections and seek out renowned experts and exceptional presenters in the LA area. Rather than the traditional nuts-and-bolts UI appeals topics, these experts provided first-hand knowledge of the most timely and relevant big-picture issues challenging UI appeals professionals today.

Training Highlights included:

- Donzaleigh Abernathy-Historical Perspective on Prejudice and Social Injustice.
- Danielle Pierce from NLRB on Social Media Employment Issues.
- Dr. John Treuting- Relating the Science of Toxicology to Forensic Drug Testing.
- Hon. LeRoy Simmon's discourse on Ethics: Judicial Bias
- Lt. Brian Smith-Analytic Interviewing Techniques
- John F. Muffler, Administrator of the National Center for Judicial Security presenting "Targeted Violence Towards Judicial Officers"
- Maurice Emsellem- NELP Policy Co-Director-Present and Future UI Policy

The NAUIAP membership was hungry for information from the USDOL, and our friend Stephanie Garcia made a special trip from DC to provide the National UI Activities and the UI Appeals Program update.

The California Unemployment Insurance Appeals Board was honored to host the NAUIAP 2013 Training Conference and pleased that attendees enjoyed the event. We encourage members to start planning now for the next UI appeals educational opportunity, as NAUIAP goes to historic and lovely Charleston, SC in 2014!!!!



President's Column

Then and Now By Alice Mitchell, President, Georgia



It was the spring of 1993 when I was called into my then boss's office and told I would be attending a NAUIAB (now NAUIAP) Conference that summer. I had no idea what he was talking about, but I smiled and said yes, of course, and that I was looking forward to attending. Later, one of my colleagues at work enlightened me about the conference and assured me I would enjoy it.

I remember walking into the Loews Giorgio Hotel in Denver, Colorado in June of that year feeling slightly nervous and unsure of myself. I was relatively new to UI Appeals and did not know anyone.

During the Sunday night welcome reception, Joyce Pang, former Chief in Hawaii, befriended me and introduced me to many attendees who shared the same issues, concerns, personnel matters, legal questions and federal timeliness challenges I had. By the end of the training conference I knew I had found a home, both in terms of friends and professional development. By the time I left to return to Oklahoma, I had a new outlook on life.

Fast forward twenty years later to the summer of 2013. Our California delegation just hosted another outstanding conference (at another Loews Hotel) under the dedicated leadership of Angela Bullard, Past- President of NAUIAB, and Elise Rose, one of our current Board of Governors members.

In all these many years I have never changed my first impression of our organization. NAUIAP has provided me with many new life-long friends and greatly enhanced my professional development. I cannot say enough good things about NAUIAP. I will say, without a doubt, NAUIAP conferences always provide UI Appeals professionals with what they need to perform their jobs better. Always!

If you are new to UI Appeals, you owe it to yourselves to check us out. We are comprised of judicial and quasi-judicial employees within the state-federal UI program. We are the sole national organization dedicated entirely to the mission of promoting professionalism within the UI appeals program.

The UI program depends upon our expertise to correctly apply the law to the facts. If we are weak in our knowledge of the program, the program is weak. We must know our jobs well, perform them with excellence and represent our agencies with the highest degree of integrity. NAUIAP will help you accomplish these goals through our annual training conferences, website training materials and our Model Code of Ethics for Administrative Hearing Officers.

If you are a seasoned member of NAUIAP, your continued participation and involvement is critical and helps insure we remain a great organization. Together we have shared one of the most difficult periods of national economic downturn since the Great Depression and survived. Better days are ahead!

Join us in Charleston, South Carolina June 22, 2014 to June 26, 2014. Let your voice, your ideas and your recommendations be heard. We are listening and will greet you, as Joyce Pang greeted me, with welcome arms. You will never regret it!



The Spring NAUIAP conference attendees found viewing the HBO Documentary; Hard Times: Lost on Long Island

a "valuable departure from the usual". They pronounced the film "powerful," and "humbling" as a "reminder about what's at stake for people who lose their jobs." Many attendees planned to arrange for viewings of this "emotional" video by UI staff, adjudicators and judges across the country. We have attached the link for the film below.

http://www.blowbackproductions.com/film-archives/film-archive-gallery/ hardtimes-lost-on-long-island.html

Note Taking Tips for UI Hearings

By Chris Tyler, Chief Hearing Officer, Oklahoma

- Have you ever found yourself having to go back and listen to a recording because you don't remember exactly what was said or by whom?
- Have you ever wished that you were more effective at taking notes?

Like myself, I am sure many of us have struggled at some point or another at effectively taking notes while not detracting from listening and focusing on the hearing itself. In Oklahoma, we recently hired some new Hearing Officers who have asked me what the best way to take notes would be. I asked some of you in Los Angeles if you had any suggestions or strategies that you give your judges, hearing officers or referees when they ask this same question. After hearing what the professional Hearing Officers had to say, I decided that the best way to address the issue is to break it into three main pieces; note taking before the hearing, during the hearing and after the hearing.

Before the hearing...

This does not so much consist of notes per se, but rather an accumulation of various hearing preparation techniques. The first thing I tell new hearing officers is that they need to:

- Familiarize themselves with the file before the hearing. Sometimes you do not have much time to do so, but this time is very important.
- Review all the documents in the file. Make reference notes for yourself so you can quickly find any documents or materials in the file. This can be by writing down page numbers or using removable tabs. This allows you to be able to focus more on the content of the document instead of trying to find it.
- Write down questions that you want to ask the parties. This is easy to do as you are reviewing. It will help you ask more pointed questions and prevent you from forgetting to ask something that could be relevant and affect the outcome of the hearing itself.

The last bit of advice does not go to taking notes itself but creating an environment which allows you to take effective notes. This is very important!

Eliminate all distractions. Turn your cell phones off and put away anything that could draw your attention away from the hearing. I know that not every hearing is exciting or new, but doing this does help. If your state does telephonic hearings and you can use a headset, even better as the headset will cancel out some other noises. Once you eliminated possible distractions, begin your hearing.

During the hearing...

- Use only one side of the paper to take notes. Lean government proponents and environmentalists might disagree but I find this makes it far easier to review the notes.
- While taking notes, put them in your own words. This tip comes with the caveat that you should do this only to the extent that doing so does not change any facts.
- Make notes as brief as possible. This can be done by making up your own system of shorthand and abbreviations. Some of the more common ones are &, # or no. (number), =, b/c (because), w/ (with), > <, i.e., etc. and ?. I often use a capitol P with a circle around it for policy and a capitol K for contract. Other methods that can be used when witnesses are talking fast is to use dashes " " to complete words or leave out vowels (lv -t vwls) Which ever method you choose to employ, be consistent, start with a small number of changes, and slowly increase them as you go. Before long your notes will start to look like this (B4 I8ng ur ÿ wil strt 2 L8k ÿths).
- Use the margins of your note paper to write down questions. Inevitably during the hearing, no matter how much preparation you have done beforehand, you will think of a question that you want to ask one of the parties.
- Do not erase or black something out. One line through whatever you want to disregard is sufficient.
- It is ok to be messy. Notes are meant to be discarded when you are finished with them. When you are taking notes, as long as you can read them do not waste the time to be neat.

After the Hearing...

- Quickly go back and review your notes. Clear up any illegibilities and or anything that you find confusing.
- Fill in any facts or words missing. Fill in facts where you used dashes before you forget what should be in the blanks

Hopefully each and every one of you can take something from this article and maybe try a new note taking skill that you have not used in the past. Just remember to use what works for you and if you try something and it doesn't work try something else. There is nothing that says you have to take notes a certain way or use a particular shorthand style.

for past issues of the Navigator

Employee Motivation in the World of Unemployment Insurance

By Sabrina Rahn, Director, UI Appeals, Indiana

I think it is safe to say that most states have had their fair share of high case loads over the past few years. In these situations, it is sometimes easy for staff to get frustrated and lose their motivation to perform at the high level that is expected from, and often required by, their department.

However, it is critical to have employees who value the work that they do and do it well. The process obviously begins with the hiring process and getting the right people for your positions. However, once you have the right people, how do you keep them functioning, happy, and motivated?

The first step is to realize that each person is unique and has different motivators. It is up to management to identify the motivators for each person and tailor the management style to meet the employees' needs. This is not always an easy task, but it rarely works when a manager uses the same management style across the board.



Often times an employee is motivated when they feel as though they have a say in matters. This can be achieved in a myriad of ways. Management can consult with employees on various issues, ask employees to lead special projects, or ask for suggestions for improvement. Management can even set up meetings and invite employees to submit questions/comments/suggestions in advance of the meeting. They can even submit their information anonymously if they want. Then management can address all submissions, as well as any other business matters, with the entire group. Many great ideas can come from this. After all, your frontline folks who perform the same tasks day in and day out are the ones in the best position to offer suggestions about how to improve their functionality. Although not all suggestions will be implemented, at least the employee knows the suggestion was heard and considered.

There is also the option of taking on those tasks that your employees do day in and day out yourself. Have you ever conducted a hearing? Do you know how to intake an appeal? Have you ever sat at the reception desk? Doing these tasks, even for a short time, will allow you to see the process in a new light. It not only shows employees that you are interested in what they do, which may be a motivator for some, but it will also give you a greater respect for the duties they perform. Who knows, you might even come away with a process improvement idea. Perhaps paramount to motivating your staff is to establish and maintain open lines of communication. Whether it is done through group meetings or one-on-ones, employees who are interested in their jobs want to be made aware of what is happening, not only department-wide, but also as it relates to them specifically. Management can use several tools to improve upon communication, and thereby improve upon motivation. Work profiles are a great starting point. When an employee knows what is expected of them and knows what they need to do to exceed that expectation, they are more likely to do so, especially if your state pays for performance. Money is always a big motivator, but your state may not currently have a system that ties yearly salary increases to performance ratings. Have no fear! There are other methods of motivation that work.

Recognition is a great motivator. Even if you cannot recognize their efforts monetarily through a pay for performance or spot bonus system, those who are doing outstanding jobs still need to be recognized. You can spotlight those who go above and beyond by highlighting their efforts in the next group meeting, giving them a jeans day pass, or creating categories and giving out certificates on a yearly basis. You can recognize the efforts of an entire department simply by bringing in food. People love free food! The possibilities of how you can recognize people are endless.

Giving official recognition, such as through certificates, or providing employees with opportunities to lead special projects also allows an employee to develop their skills and even add to their resume. While we would all love to keep our best, most motivated employees, the reality is that they will not all stay with us until they retire. However, they may stay a little longer than expected if they are given the opportunity to fine tune or gain new skills in their current positions.

I do not by any means claim to be an expert in the subject of motivation. It is a very difficult task for any manager, regardless of your management experience, but I believe it is key in creating a properly functioning department. It is always worth the time for a manager to reflect upon their role in their employees' performance, as managers often focus solely on what the employees can do to improve their own performance.

Uniformity Of Decisions

By David Lee, Alabama

Given the same set of facts in two separate unemployment hearings, the outcome should logically be the same. It is hoped that the decision will be the correct one. Different jurisdictions of the US Courts of Appeal make different decisions on interpretation of law. Members of the U. S. Supreme Court do not always individually agree although their final joint decision does establish the ultimate interpretation. At the unemployment hearing level, hearing officers are expected to follow the decisions of higher authorities which

establish precedent. These include appellate authorities of both the federal and state governments. Uniformity of interpretation and fairness of the decision are the goal.

Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." Generally, decisions of higher courts are mandatory precedent on lower courts within a particular jurisdiction —that is, the principle announced by a higher court is followed in later cases. This common law tradition, the doctrine of Stare Decisis (stand by decided matters) serves as guidance on how to decide similar cases.

Appellate courts typically create precedent. Decisions of the United States Supreme Court are generally binding on all other courts in the U.S. While state courts must follow decisions of the U.S. Supreme Court on issues of federal law, federal courts must follow decisions of the courts of each state on issues of that state's law. State courts in the United States are not considered inferior to federal courts, but rather constitute a parallel court system. A federal court interpreting state law is bound by prior decisions of the state supreme court.

The use of precedent has been justified as providing predictability, stability, fairness, and efficiency in the law. Precedence provides for the expectation that the outcome will be the same in similar cases. To help in developing uniformity of decisions, there are many

resources one can turn to for help and guidance. Many states have adopted an Administrative Code. These are regulations of the executive branch, but are approved at public hearing. They are considered to have the effect of law unless they should be contrary to law, in which case they are subordinate. They are considered binding in most jurisdictions on the decision of the hearing officers particularly when the hearing officer is a part of the executive branch.

> Other aids include references to appellate court decisions, particularly those of state appellate courts. Some state agencies may develop resource publications of those decisions applicable to just to their agency, both for reference and for training.

Decisions of higher tribunals, which generally establish precedent for lower authority, are a good source for uniformity of decisions. While decisions of fellow hearing officers, opinions of agency counsel and of attorneys general, and agency interpretative regulations and policy statements are not binding; they are to be given favorable consideration. Hearing officers are encouraged to discuss cases among themselves in order to develop uniform interpretation.

The ability to review other the decisions of higher authorities, as well as, fellow hearing officer's decisions can also aid in developing uniformity of decisions. Some states have published precedent case manuals for this purpose.

While uniformity of interpretation can ultimately be reached by repeated appeal to the next level, that is often an expensive and time consuming task. Hearing officers, who are adequately and continuously trained, and have appropriate reference resources not only make consistently uniform decisions, their decisions are likely to be in compliance with established precedent.

Excerpts taken from "A Guide to Unemployment Insurance Benefit Appeals, Principles and Procedures", US DOL

Congratulations to David Lee on his retirement!!

Another Wonderful Conference Site???? Sign Up Now to Host in 2015!!!

The NAUIAP Board of Governors will consider preliminary bids from prospective host states for the annual conference to be held in 2015. The bidding states that pre-qualify will then present their proposals to the full membership.

These are some of the factors the Board considers:

• **Geographic Diversity** – We try to hold conferences in diverse parts of the country, taking into consideration the natural beauty of the area, historical and/or cultural sites, affordable pricing, and interesting outings.

• **Convenience to Major or Regional Airport** – The location should be reasonably accessible by air, and should offer convenient shuttle or cab service between the airport and conference hotel.

• Adequate Hotel and Conference Facilities – This includes hotel amenities, guest room rates, food cost for meals and breaks, cost of ballroom and breakout rooms (and whether these will be discounted or complimentary in exchange for a guaranteed minimum number of hotel guest rooms), and complimentary rooms.

• Availability of Restaurants, Shopping, Recreational Opportunities, and Cultural Attractions – The locale should offer a choice of activities in addition to those included in the conference itself, so that family members will have something interesting to do while you attend conference.

• Availability of Local Talent for Speakers – The availability of conference speakers in the locale, such as university professors, attorneys, judges, and inspirational speakers.

Also important is the support of your state administration, as there are certain administrative expenses borne by the host state, as well as staffing the conference registration desk and providing computers and audio-visual equipment.

If you are interested in being a conference host, please refer to the Operations Manual, prepare your preliminary bid, and send it to Alice Mitchell, electronically to http://nauiap.org. If you have other questions, you may contact Alice at (404) 232-3960.

Not this year? Start planning now to be the first to submit a bid for 2016!



Join us for the 2014 Conference in Charleston, South Carolina June 22nd - 26th

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A Good Read

Cynthia Thorton, California



The Art of Fielding: A Novel by Chad Harbach I.Do.Not.Like.Baseball. So I avoided reading this book for what seemed like years. Guess what? I really liked the book. It's only peripherally about baseball. The story follows a talented young ball player from North Dakota and is more about his life than about baseball. The hook is that the book excerpts portions of "The Art of Fielding" by Aparicio Rodriguez which have surprising relevance to our daily life.

Clean Gut: The Breakthrough Plan for Eliminating the Root Cause of Disease and Revolutionizing Your Health by Alejandro Junger, M.D. A doctor living in Los Angeles wrote this book. The theory is that the bacteria in your gut can keep you healthy or make you sick. The book includes a thirty day "gut cleansing" diet to change gut bacteria that is so Draconian that I have not worked up the energy to try it yet. (You can bet that when I do try it, my husband will be suffering right along with me!) The book is recommended by a number of prominent doctors for the treatment of various types of cancers, Lupus, etc. The book is centered around people with various illnesses, but one of the author's friends who was perfectly healthy tried the diet and his reaction after doing the diet was, 'Even breathing is pleasurable.' I was interested in the book for weight loss purposes because I read this study (not mentioned in the book, but it should have been) where bacteria from the guts of slender people was transplanted into the guts of obese people. Without changes in diet or exercise, every one of the obese people lost significantly more weight than the control group. (This greatly appeals to me because I've always firmly believed that there was some magic no-side-effect weight loss secret!). Anyway, the diet itself looks like a pain in the gut to follow, but it's only for thirty days, so as soon as I can talk my husband into it, I'm trying it!

An Inconvenient Wife by Megan Chance

This is an interesting novel set in New York City in 1884. After a young wealthy society woman marries, control of her fortune becomes an issue. During this period in history, one of the methods to obtain control of a woman's fortune was to have them committed to an asylum. This novel follows that story line. The main character (the wife) is by no means perfect and does nothing to protect herself from this tactic. This main character is complex in that she has some real issues and really does love her husband. The novel follows the story of the wife through the entire ordeal.

A Visit from the Goon Squad by Jennifer Egan

This novel follows a kleptomaniac who initially works as a young legal secretary for a man in the music business. Each chapter advances the story by inhabiting a different character and giving that character's viewpoint. The story itself is fairly good, but being able to tell the story from the different character's viewpoints is exceptional. This is a fairly easy and quick read (don't other people abbreviate this to "good Summer read"?).

State Spotlight

NEW HAMPSHIRE

The State of New Hampshire has both lower and higher authority benefit appeals. The Appeal Tribunal is the lower authority and the Appellate Board is the higher authority. Tribunal decisions are appealable first to the Commissioner as a request for a reopening, then to the Governor appointed Appellate Board, and ultimately to New Hampshire Supreme Court. Tribunal hearing officers also preside at Administrative Hearings regarding UI tax issues and compromise requests. The Tribunal reports to the Administrator of the Appeal Tribunal, who reports to the Commissioner of New Hampshire Employment Security.

The Tribunal staff consists of:

- Four (4) permanent, two (2) temporary, and one (1) part-time Hearing Officers
- One (1) permanent Hearing Officer II/Trainer
- One (1) Administrator/Chief Hearing Officer
- Six (6) permanent support staff
- Annual caseload is @ 4773

As a result of recent Supplemental Budget Request Grants, the Tribunal implemented an automated reminder system for hearings; automated decisions; and video conferencing. Agency leadership includes Erika Randmere, Administrator of the Appeal Tribunal and George M. Copadis, Commissioner.

HAWAII

Hawaii has only a lower authority agency, called the Employment Security Appeals Referees' Office (ESARO); we handle both benefit and tax appeals. ESARO decisions can be appealed to the circuit courts (of general jurisdiction), followed by the appellate courts. Parties on Oahu are scheduled to participate in person; all others are scheduled by telephone. Parties on other islands who timely request an in-person hearing in their county, however, are entitled to it by state law.

Our annual workload of approximately 4800 appeals is handled by four full-time officers, two per diem officers (up to 9 days/month), and the chief appeals officer (as needed). Individual workload is about 25 appeals per week or its prorated equivalent. Support staff consists of one secretary/office manager, one full-time office assistant/clerk, and one part-time office assistant/clerk.

Our on-line appeals system is near completion and should be operational in late summer 2013. Contrary to popular belief/rumor, we do not conduct hearings on the beach.

ESARO is headed by Pamela Toguchi, Chief Appeals Officer. ESARO falls under Dwight Takamine, Director of the Department of Labor and Industrial Relations.

SOUTH CAROLINA

South Carolina has both a Lower Authority and Higher Authority Appeals department. Lower Authority, also known as the Appeal Tribunal, consists of support staff and Administrative Hearing Officers. The Appeal Tribunal handles UI benefit, tax, trade and SOD (Set-Off Debt) cases. Higher Authority Appeals is the appeals processing or administrative arm for the Appellate Panel. Higher Authority consists of support staff and a Hearing Officer/writing staff who are responsible for preparing proposed decisions for the Appellate Panel.

The Appellate Panel is a three-member body elected to four-year terms by the state legislature and is by statute separate and distinct from the agency's divisions. Appeal Tribunal decisions are appealable first to the Appellate Panel, which is the final finder-of-fact for the agency. Appellate Panel decisions are appealable to the Administrative Law Court, then to the SC Court of Appeals and the SC Supreme Court. The Lower and Higher Authority Appeals departments report to the Assistant Executive Director for the Appellate Division, who reports to the Executive Director of the SC Department of Employment and Workforce.

Lower Authority consists of:

- Thirteen (13) Hearing Officers (currently in the process of hiring a pool of temporary, hourly Hearing Officers to deal with the backlog)
- One (1) Chief Administrative Hearing Officer
- Eight (8) support staff
- One (1) support staff supervisor
- Annual caseload is approximately 22,000+

Higher Authority consists of:

- Four (4) Hearing Officers/writers
- One (1) Higher Authority Manager
- Two (2) support staff
- Agency leadership includes Romi Robinson, Chief Administrative Hearing Officer and Cheryl Stanton, Executive Director.

<u>Committees</u>

Conference Agenda, Elise Rose (CA) Marketing and Membership, Karl Jahnke (OK) Newsletter, Kathryn Todd (OH) Planning and Projects, Craig Gustafson (MN) Website and Technology, David Scrimm (MT)

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