



Navigator

Spring 2019

Save the Date! The 2019 NAUIAP Training Conference Indianapolis, Indiana • June 23 through 27, 2019

Stefanie Price, Director, Appeals
Indiana Department of Workforce Development

This year's NAUIAP Training Conference, June 23-27, 2019, will be held in Indianapolis, Indiana at the Crowne Plaza Hotel, Downtown Indianapolis. Hotel rooms can be booked by calling 317-631-2221. Hotel rooms are available for \$125/night. If you are interested in the limited number of train car hotel rooms, those are available for \$139/night.

There are many ways to get to the Crowne Plaza Hotel, Downtown Indianapolis from the Indianapolis International Airport. One can always pick an Uber, Lyft or 15-minute cab ride (usually about \$35 fare). Another option would be to use the Go Express Airport Shuttle, a non-stop bus service that runs every 30 minutes from 5 am to 11 pm for only \$12 one way. Go to https://goexpresstravel.com/indy_express to register online. The shuttle will drop passengers off at the Omni hotel, which is a couple of blocks from the Crowne Plaza.

During your stay in Downtown Indianapolis, there are many ways to visit other areas. Besides Uber, Lyft, or cab, one can use Blue Indy. Blue Indy is an electric car-share service with cars located all around the city. You can pick one up in downtown Indianapolis, drive it around and drop it off at another charging station. For more information, please go

to <https://www.blue-indy.com/>. With the Cultural Trail and many bike paths available, guests can rent bikes through the Pacers Bike Share Program. <https://www.pacersbikeshare.org/top-nav-pages/home>. Lastly, Downtown Indianapolis is a very walkable city to reach many attractions and restaurants from the hotel.

For a great resource on dining, drinks and entertainment, go to <https://www.visitindy.com/>. Be sure to visit St. Elmo's Steakhouse, known for their World Famous Shrimp cocktail. Reservations are recommended. Some other recommendations would be Shapiro's Delicatessen, a restaurant opened for over 100 years known for its sandwiches, soups, and other kosher delicacies like corned beef and pastrami; Café Patachou, a farm-to-table menu for breakfast or lunch; Bazbeaux Pizza, a restaurant opened since 1986 that provides traditional and unique pizzas; Harry and Izzy's, a casual updated version of St. Elmo; Blue Beard, a restaurant with an eclectic menu of dishes derived from local farms; Livery, a horse stable turned Latin-inspired restaurant; Rathskeller, an authentic German restaurant and bier garden inside the historic Athenaeum on Mass. Ave.; and many more!

This year's NAUIAP Training Conference in Indianapolis, Indiana, is still only \$495

*Some of the agenda items planned for
this year's conference include:*

- Judicial Demeanor, Bias, and Prejudice (a look at ETA criteria numbers 21, 22, and 23)
- Higher Authority Best Practices — Depth and Breadth of Review
- Recent Trends in Trade Adjustment Act Cases
- And many more!

Register online at www.NAUIAP.org.
Pricing includes one-year Individual Membership.

NAUIAP

NATIONAL ASSOCIATION OF UNEMPLOYMENT INSURANCE
APPEALS PROFESSIONALS

STATE MEMBERSHIP

Small - \$500

to enroll 1 to 25 members

Medium - \$1000

to enroll 26 to 75 members

Large - \$1500

to enroll 76 plus

Members enjoy access to training webinars,
the Navigator, and more!

PRESIDENT'S COLUMN

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



Greetings, fellow members! Spring is finally here, and we have much to look forward to in the coming months. On Thursday, April 18, 2019, at 3:00 p.m. EST, NAUIAP will offer its second webinar. The topic will be Assessing and Addressing Credibility, and the presenter will be Judge Courtney Beebe from the Washington Office of Administrative Hearings.

The 2019 Annual Training Conference in Indianapolis is only a few months away, and the Board of Governors is busy working on the agenda. In addition to other great topics, the conference will include presentations covering best practices for managing reduced budgets and resources, analyzing off-duty misconduct, and UI Appeals updates from the U.S. Department of Labor. We will soon share a more detailed agenda and information regarding how to register for the conference. I hope you will make plans to attend!

Over the past few weeks, I have been reflecting on the history of NAUIAP. As I type this column, within my view is a binder of materials from the 1992 Annual Training Conference held in Kalispell, Montana. Perhaps it's because I have been serving as President, but I feel the weight of responsibility and the honor that comes with being part of an organization with such a long and successful history. Since its creation in 1981, NAUIAP (formerly NAUIAB) has grown to include over 600 members representing 43 states, Washington, D.C., and Canada, and I think I can find support for the declaration that there is no better network of professionals who are experts in the field of UI appeals law specifically. NAUIAP does not have a dedicated administrative staff or a physical office, but it has navigated recessions, changes in leadership, and updates to technology and infrastructure to exist today as a leading organization in the field. I am proud to lead NAUIAP for this period, and I will do all that I can to ensure it continues to evolve and grow stronger for years to come.

Many current members of NAUIAP attended the early conferences, and I think it would be good for us to try to memorialize some of those experiences. I have some ideas regarding how we can do that (to include some special festivities in 2021 for the 40th anniversary of the organization's creation) but, in the meantime, I'd like to hear from you. If anyone is interested in sharing ideas regarding how to reconnect with former members who have retired, how to preserve the history of the organization, or anything else you think would be useful, please feel free to email me at Amanda.Hunter@raac.myflorida.com. I look forward to seeing everyone in Indianapolis!

NOTICE

ELECTION OF BOARD OF GOVERNORS SET FOR INDIANAPOLIS, INDIANA

The NAUIAP Board of Governors proposes the following slate of officers for the 2019-2020 term. The slate will be considered and voted upon by the NAUIAP membership at the general membership meeting at the Indianapolis, Indiana Training Conference to be held from June 23 – 27, 2019. Amanda Hunter (FL) will remain on the Board for one year as the Past President.

OFFICERS:

President – Ed Steinmetz (WA)
President Elect – Paul Fitzgerald (MA)
First Vice President – Dan Doherty (MD)
Second Vice President – John Lohuis (OR)
Secretary – Melissa Butler (TX)
Treasurer – Dan Doherty (MD)

AT LARGE MEMBERS:

Kathryn Todd (OH)
Jayson Myers (NY)
Emily Chafa (IA)
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 Indianapolis, IN, 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 22, 2019. Please submit your vote via the NAUIAP website to the website administrator under the "Contact" heading.

26 YEARS OF NAUIAP: A REFLECTION

Marilyn White, Appellate Services Administrator,
Arizona Department of Economic Security

Many years ago, as President of NAUIAP, I wrote an article about the importance to each of us in maintaining our professionalism and proactively furthering our careers. I noted that our organization, NAUIAP, was the best place to start such a journey. Now, nearly 15 years later, this still is true.

NAUIAP is the single best source of job-specific training to which we have access. It also affords a wonderful way to network and make lifelong friends. Each conference offers quality speakers, timely topics, national updates and multiple opportunities to learn from our peers. Indianapolis will be my 26th conference and I have every confidence that I will, as I have every other year, learn something new and enlightening. And, for those of you in need of CLE, NAUIAP truly is a one-stop shop, offering about 20 hours of that valuable commodity, including ethics, at each conference.

As we get closer to the conference in June, there are some things you may be able to do to increase awareness of the value of attending NAUIAP and, perhaps, increase the opportunity for funding. Make sure your Chief, Chair, Director, Secretary, Commissioner, or whomever, knows about NAUIAP. Forward the Navigator; provide a copy of the last few years' agendas; write a brief description of the conference; tell them something you learned; offer to make a presentation to your colleagues based on conference content; emphasize the value of having direct contact with USDOL staff and with national peers; note the importance of understanding trends and the DOL budgetary methodology; proffer the value in a state membership with access to the new webinars and other valuable information for members on the website. The more value you can demonstrate in attending these conferences, the more likely you are to receive permission and funding.

Speaking of funding - it is a wonderful thing when we can receive funding from our state to attend a training conference. We all know, however, that this sometimes can be difficult if not impossible. I strongly encourage you to consider investing in your own professional development by funding yourself if your state will not do so. I promise you it is and will be money well-spent, personally and professionally.

It is important to know and remember: "It takes a village..." These conferences have value because an Agenda committee spends time developing topics, finding speakers, and arranging the sessions in a logical and useful manner. Many workshop topics arise from comments or suggestions made by members. The Navigator is the result of contributions from many individuals across the country. The NAUIAP website is helpful and informative because of the work of a committee of members. The new webinars are wonderful extensions of the NAUIAP mission. These, and other committees, provide input, content and support to the Board of Governors. The Board of Governors produces the annual conference based on what the membership wants and needs. The membership, however, is what drives the organization. Attending the conference, participating on a committee, becoming a member of the Board is how each of us can add strength to NAUIAP. Without the support of each member and each conference attendee, there would be no conference, no Navigator, no webinar, no web-site, no nothing.

NAUIAP is a completely voluntary, non-profit, self-funded organization. No Board Member or committee member receives compensation for their participation. NAUIAP is not subsidized by states or by USDOL. NAUIAP relies upon the registration fees from each conference to fund that conference's activities. NAUIAP relies upon the host state personnel to help produce each conference. A volunteer organization, like NAUIAP, needs volunteers. Please consider being one of those volunteers and help NAUIAP continue to be the premier training organization for UI appeals professionals.

NAUIAP Board of Governors

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Spotlight

SPOTLIGHT ON ARIZONA

Paula Tipton Wallin, Administrative Law Judge Appellate Service Administration,
Arizona Department of Economic Security

Welcome to the State of Arizona, home of geological wonders – the Grand Canyon, Sedona’s Red Clay Mountain, the Petrified Forest and Canyon De Chelly, and Tucson, Arizona the only US city to gain UNESCO global award for its Southern Arizona Food (a blend of Native American, Mexican and Spanish cuisine). Arizona is also home to the Appellate Services Administration (ASA) within the Department of Economic Security (DES), a human service agency that originated in 1972.

When our ASA Administrator, Marilyn White, came on board in February 2015, she had a hornet’s nest of issues to resolve. Previously, processing and scheduling procedures held back certain aged cases. Marilyn restructured the program goals and methods and required the oldest case scheduled first and all decision to get promptly processed. The numbers below show the strategic success and Arizona was released from the DOL CAP it was on for years for our thirty-day timeliness measure. This article must also mention Marilyn’s hard work sorting through files and handling the Court of Appeals scrutiny after it was discovered that a staff member chose to hide rather than process appeals to the Court of Appeals for several years.

ASA consists of Unemployment Insurance (UI), Public Assistance (PA) and the Appeals Board (the Board). A party dissatisfied with a Deputy’s decision appeals to the Office of Appeals (OA). A party dissatisfied with the Administrative Law Judge’s (ALJ) decision appeals to the Board. ASA-UI averages 21 full and part-time ALJs with 2-4 Presiding ALJs (PALJ) in Phoenix and Tucson. Recently ASA restructured. One of our PALJ stepped into the newly created Chief of Appeals role. Two new PALJs’ replaced the former PALJ position for a total of 3 UI-PALJs. The Chief reports to the ASA Administrator.

The Board conducts final agency review for PA and UI cases. Appeals are discretionary with the Arizona Court of Appeals. The Board has original jurisdiction of UI Tax decisions on employer liability contributions to the UI fund - appeals are made to the Arizona Tax Court. The Board also has original authority on work stoppage or labor disputes; these appeals are also discretionary with the Arizona Court of Appeals.

The Board adheres to the Public Meeting Act and notices are published electronically. The Board is working closely with the Court of Appeals on a project to allow ASA to transfer Applications and files electronically through a direct portal. There are three Supervisory Board Members who typically rotate the Chairman’s position every two years and one and three quarters ALJs to assist with decision writing and tax hearings. ALJs and Board Members fluctuate with inventory with as many as nine ALJs and four Board Members when inventory was high. Board members review and write their own decisions. In 2018, the Board disposed of 1,548 cases.

In the UI-OA, a minimum of 25 hour-long case slots a week are assigned an ALJ. A separation case is allocated 45 minutes for completion, single party cases 15 minutes, and an extra 15 minutes per hour for Interpreter cases. Hearings slots start at 8:00 am with 4:30 pm as the last possible hearing slot. The Administrator requires same day decision due-outs with a 4:00 pm mail cut-off and an 8:00 pm email cut-off. Most Judges telecommute coming into the office one day a week. Many Judges utilize a four ten-hour work week. Arizona uses an “orphan” system for ALJs to move a hearing the ALJ cannot hear into the orphan queue, and any ALJ free adopts that hearing upon consent of the parties to approve the substitution of Judges. Appeals case files are digitized and can be accessed and viewed by any ALJ from work or home through a secure website.

In 2006, ASA went to an internally developed APS processing system, and electronic filing and email decisions are encouraged. Currently, ASA is looking into the viability of cloud-based processing. Recently the State has moved to the Arizona Management System (AMS) to ensure that Arizona’s government is more efficient and accountable by utilizing LEAN management principals.

Support staff prepare the electronic appeal files, schedule hearings, register the parties, process and mail Notices with Exhibits and decisions to all parties, answer telephone inquiries, and close cases within APS. Additional support staff process Appeals to the Board and Court of Appeals. By Court Order, all Court of Appeals Applications and files must be submitted within 30 days of the date of Application. In 2017-2018 the UI team disposed of 83.13% appeals within 30 days and 98.4% within 45 days and the Board disposed 58.34% within 45 days and 93.9% within 75 days. In 2018 the UI-OA received 20,565 appeals, disposed of 20,375 appeals and 1,316 appeal remained pending.

In 2017, the local unemployment rate in Arizona was 5.1% via Bureau of Labor and Statistics compared to the national UI rate of 4.3%. In 2018, local UI in Arizona was 4.9 % with a national rate of 3.8%. In January 2019, the preliminary Arizona rate moved back up to 5.1%.

This is just a brief snapshot of Arizona’s ASA. If you have any questions about our UI or Appeal Programs, please feel free to contact me or anyone else in ASA. If you are visiting the State, and in the area, we would love to have you stop in and show you around.

RECOGNIZING AND STOPPING DOMINATING BEHAVIORS IN HEARINGS

Munazza Humayun, Unemployment Law Judge,
Minnesota Department of Employment and Economic Development

One of the regrets that lingers from my early years as an Unemployment Law Judge is my failure to respond firmly enough when an attorney rudely rebuked a witness in a hearing before me.

The (male) attorney for the employer was cross-examining the claimant, a woman who had alleged that she quit her job because her male boss invited her and the rest of her (male) team to a celebratory outing at a strip club, got drunk once there, asked her to give him a ride home, and, after getting into her car, groped her. At one point during the hearing, the claimant said she agreed to give the boss a ride home when he requested it because she did not know what else to do in that situation. The employer's attorney retorted, "Well, I know my wife wouldn't put herself in that situation in the first place."

After I picked my jaw up from the floor – thankfully, within a couple of seconds – I told the attorney his comment was utterly inappropriate and I would not tolerate any more gratuitous comments from him, especially ones of that sort. I believe, now, that the correct response would have been to eject the attorney from the hearing. I know now that the attorney in that hearing knew exactly what he was doing. He intended to intimidate the witness, to unsettle her, and he did this in a poignantly gendered fashion. It was an attempt to dominate.

Although this incident was an extreme and egregious example, dominating behaviors come in various guises and occur with some frequency in unemployment-benefit hearings. They happen in hearings with attorneys and those with unrepresented parties. Not all dominating behaviors are as deliberate as the one in the above example, of course. The most common such behavior is interrupting or speaking over another person in the hearing. That other person is often a witness; it is sometimes the hearing officer. More often than not, that person—the interrupted—is a woman.

Studies show that in a wide variety of communication settings, men interrupt more often than women overall, and men and women both interrupt their female communication partners more than male communication partners. No one – not United States senators, not Supreme Court justices – is immune. Recent analyses of Supreme Court oral arguments even show advocates interrupting female Supreme Court justices at a higher rate than they interrupt male justices.¹ Purposeful or not, interrupting another's speech and speaking over another often exhibit a lack of respect for the speaker.² But the effects go beyond mere annoyance or mild offense. Research on information-gathering interview techniques shows that repeated interruptions in the middle of a narrative response can make a witness a much more passive participant than she would otherwise be, because they disrupt the natural process of searching through memory. The witness is relegated to providing brief answers and waiting for the next question

instead of providing unsolicited but useful information, and this reduces the amount of information the witness provides.³ This passivity is also likely to produce a more fragmented – as opposed to narrative – style of testimony, which has been shown in some experiments to negatively impact the witness's credibility; both legally trained and non-lawyer audiences evaluate a witness as less competent when the witness testifies in a fragmented style (frequent questions followed by short answers).⁴

Some interruptions in unemployment appeal hearings are necessary. When a witness provides a non-responsive answer to a question, or ventures into subjects unrelated to the issue on appeal, interruptions may be needed to steer the discussion back on course. But as hearing officers, we must recognize and put a stop to interruptions that are not necessary, such as those on cross-examination when a witness is not allowed to complete her responsive answer or explanation, or when a witness starts answering a party's question before the latter has finished asking her question. This is important not only to maintain order in the hearing, but also to ensure that the record is fully and clearly developed.⁵ When an unnecessary interruption or other inappropriate behavior happens, you can choose to respond in a way that effectively stops the inappropriate behavior and reestablishes the expectation of respect. Here is how:

Do:

- 1. Give an instruction at the outset if you anticipate interruptions.** Sometimes, the exhibits submitted before the hearing will alert you to the intensity of the conflict you can anticipate at the hearing. When you see signs before or at the beginning of the hearing that the parties are highly emotional and likely to act in a combative or aggressive manner during the hearing, acknowledge at the beginning that you know there are many facts in dispute and you wish to hear from both sides about what happened. Tell the parties you will give them both a chance to tell you everything they wish to tell you and that is relevant, but that you need to have only one person speaking at a time. Validate their feelings, and suggest an alternative to interrupting; for example, "I understand it's difficult to hear the other side making claims that you think are untrue. When you hear something you disagree with, make a written note for yourself so you can address it later in your testimony, but please don't interrupt while another person is speaking."
- 2. Actively listen.** Interruptions are easier to nip in the bud if you notice them as soon as they happen.
- 3. Call out the interruption.** Make it known you noticed that the person speaking was not finished. (A simple, "Let [me / her / him] finish," should accomplish this. But not "I'm sorry, let me / her / him finish.")

- 4. Admonish repeat or egregious offenders on the record.** The U.S. Department of Labor, in its guidelines for measuring appeal hearing quality, advises: "The hearing officer must firmly prevent a disruptive individual from interrupting the flow of testimony. The hearing officer should advise all parties that they are not permitted to comment or audibly react to the testimony of another, and should progressively warn disruptive individuals that such behavior may result in either a continuance of the hearing, or in an extreme case, exclusion from the hearing, if permitted under state law." Use your judgment, and be tactful but firm.
- 5. Be even-handed.** Be mindful throughout the hearing so that you don't inadvertently give one side or one witness more leeway than any other.
- 6. Be attuned to the power dynamics in the hearing.** I have held hearings in which witnesses referred to opposing female witnesses as "the gals that are on the phone right now." One of these "gals" was the Director of Nursing at a health care organization; another was the Vice President of Human Resources. My tolerance for such forms of address – especially when they have the purpose or effect of diminishing a witness's expertise, knowledge, or authority – is low. It is okay to tell witnesses you expect everyone to display a modicum of respect for opposing witnesses and the process, and that includes not referring to others in ways that infantilize. (You might say, for example, "Ms. X, I would like you to use Ms. Y and Ms. Z's names when you talk about them instead of calling them 'gals.' It is more respectful. I'm going to ask them to be similarly respectful when talking about you.")
- 7. In your decision, articulate why you found a witness's material testimony credible or not credible.** As discussed above, a witness's credibility may sometimes suffer as a consequence of excessive interruption of her narrative answers by the questioner and her resulting unwillingness to spontaneously volunteer any information. There is a way to ensure that you don't let this become

the dispositive factor in your evaluation of the witness's credibility, and it is simple: write down why you believe or don't believe a witness. Social psychology research on decision-making indicates that when we know we have to justify our reasons for reaching a conclusion to an audience that may have its own preferences and agendas, we engage in more elaborate cognitive processing of information to reach decisions that can be defended, and are less likely to rely on simple heuristics. If you have to explain in writing why you did not believe a witness's testimony, you are less likely to rely on some unarticulated gut feeling or reaction to the witness's testimony when deciding whom to believe.

Don't:

- 1. Unnecessarily interrupt yourself.** This is also one criterion the Department of Labor uses to evaluate the quality of unemployment insurance appeal hearings. Interrupt only when an answer becomes nonresponsive or when necessary to stop disruptive behavior from others.
- 2. Apologize for stopping inappropriate behavior.** Stopping inappropriate behavior is a valid exercise and an assertion of your authority as the hearing officer. It is important that you deliver your instruction not in an indirect, conditional, deferential, or interrogatory form, but in an imperative sentence.⁶ If you catch yourself prefacing your exercise of your authority with an apology or other indicator of hyper-politeness, practice delivering your instructions without saying, "Sorry" "I'm sorry," "Excuse me," "Maybe," "May I ask you to," or other similar phrases. (See also #3 in the list of "Do's," above.)

The perception of fairness in the hearing, as well as the actual fairness of the process, is an important measure of our effectiveness as hearing officers. Ensuring that all parties feel heard and respected, and noticing and calling out inappropriate dominating behaviors, are therefore critical to our effectiveness.

¹ Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379 (2017).

² There are other types of conversational interruptions, such as those rapport-oriented interruptions designed to display mutuality, understanding, or empathy. For more on the different types of interruptions, see Julia A. Goldberg, *Interrupting the Discourse on Interruptions: An Analysis in Terms of Relationally Neutral, Power and Rapport-Oriented Acts*, 14 J. PRAGMATICS 883 (1990).

³ R. Edward Geiselman & Ronald P. Fisher, *Interviewing Witnesses and Victims*, in INVESTIGATIVE INTERVIEWING: HANDBOOK OF BEST PRACTICES (Michael St.-Yves, 2014).

⁴ John M. Conley, William M. O'Barr, & E. Allan Lind, *The Power of Language: Presentation Style in the Courtroom*, 1978 DUKE L.J. 1375, 1388-89.

⁵ Consider the following example, a cross-examination by a claimant's attorney of the employer witness, the owner of a trucking company. The claimant had been fired for causing several accidents that damaged the truck.

Q. The first incident you referred to, who found him at fault?

A. Um, three companies...

Q. There was no....

Aand...

Q. There was no ticket issued, was there?

The development of the record suffers when the witness is not allowed to complete her (responsive) answer about which three companies found the employee to be at fault for the accident—a significant fact—and when the hearing officer does not step in to ensure that the witness is allowed to finish her answer.

⁶ For a fascinating review of sociolinguistic research on and theory of direct and indirect speech patterns, power, and gender, see Janet E. Ainsworth, *In A Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259 (1993). Ainsworth examines what has been called "the female register," characterized by use of lexical hedges ("I think," "I guess," "sort of"), use of tag questions ("X is Y, isn't it?"), use of modal verbs ("may," "might," "could"), avoidance of imperatives and the use of indirect interrogatives as a substitute for the imperative, and rising intonation used in declarative statements. (Jacobi and Schweers' analysis of Supreme Court oral arguments reveals that some aspects of the "female register" made an appearance even in questions female Supreme Court justices asked from the bench during their earlier years on the Court. Jacobi & Schweers, *supra* note 1, at 1447-48.)

PREDICTING SUCCESS IN GEORGIA

BERNISHA VAN HORN, CHIEF, U.I. APPEALS TRIBUNAL
GEORGIA DEPARTMENT OF LABOR

Finding the right candidate for your team can be a challenging task to say the least. Here in the State of Georgia, we have refined our selection practices in a way that is producing quality candidates. Our prior practice of one interview resulted in new hires, but they were not always successful on the job. We all have heard, "The definition of insanity is doing the same thing over and over again, and expecting different results." We cannot expect a different outcome, without doing something different. We knew we wanted to try a different approach.

We began by reviewing the job requirements for Administrative Hearing Officers (AHO). We changed our minimum requirements to at least ten years of unemployment insurance (U.I.) claims adjudication experience or a law degree, for candidates from outside the agency. Previously, potential candidates could have five years of (U.I.) claims adjudication experience, or a law degree. We have found the additional experience or education enables new recruits to adapt faster and perform better in their new role.

Secondly, we reviewed the questions asked during our interview process. We decided to add some situational questions that are unique to the AHO position to the non-specific general employment questions. The situational questions give us insight into the candidate's past experience, characteristics, and personal values. Additionally, we now review the questions after each cycle of interviews and, if necessary, make changes to meet the current needs of our department.

In addition to the new experience requirement and the constant review of interview questions, we have also added a skill test. Candidates who successfully pass the first interview are invited for a "second interview," which is a simulation of a "real-life" hearing. They are given a redacted case file for review, and supplies to take notes, if they desire. (Due to the confidential nature of our hearings, we remove all identifying information from the case files prior to the skills test.) They listen to the main facts of a hearing, and then write a decision in a timed setting. After time is up, the candidates must return all provided materials, including their notes. The skills test allows us to conduct a holistic evaluation under real-life limitations.

During our evaluation process, we not only read their written decision, we also consider their thought process and how they arrived at their conclusion by reviewing their notes. The skill test requires candidates to identify essential details of a case, listen attentively, draw appropriate conclusions, and write a quality decision under the time and writing constraints required of an AHO daily. A hearing officer's job can be stressful. Therefore, we need to make sure our candidates can handle the inherent stress of the job.

In summary, I recommend the following practices for selecting successful candidates:

1. **Consider your current results.** *Are you selecting the right candidates for the job?*
2. **Review your job requirements.** *Do your current candidates have the level of education and knowledge needed to quickly achieve proficiency after training?*
3. **Review your current interview practices.** *Are you asking questions that reveal the experience, skills, abilities, characteristics, and personal values that are needed to perform the job successfully?*
4. **Use a mixed approach of interviews and skill testing.** *Are your interview questions and testing relevant to the position?*
5. **Review your selection practices after each interview cycle.** *Is your candidate selection process keeping up with the changing needs of the business?*
6. **Do not be afraid to start over.** *You can always change the interview questions, number of interviews and skills testing to meet your organization's evolving needs. Are you willing to continually do something different to achieve the outcomes you desire?*

We cannot predict with 100 percent accuracy how successful a person will be in a job. However, through our current practices, we are finding quality individuals who, after training, are proving to be great additions to our team.

For past issues
of the
Navigator

VISIT
www.naviap.org

OREGON'S ADJUDICATION WORKGROUP

By J. S. Cromwell, Chair
Oregon Employment Appeals Board

Oregon's Office of Administrative Hearings (OAH) and Employment Appeals Board (EAB) are administratively housed within the Employment Department, and share many administrative functions and services, like budget, facilities, procurement, and information technology systems. As a practical matter, our offices must also appropriately share customer information and correspondence while efficiently moving cases through Oregon's three-tiered UI adjudication and appeals process. Even though the UI adjudication and appeals process in Oregon involves three separate offices, parties often view the entire process as their "case." At any given time, many are not aware that their case is proceeding through a three-tiered process and they frequently do not know which office is handling their case. When that happens, for example, parties will direct correspondence intended for EAB to the UI division, send a request intended for OAH to EAB, or ask OAH a question intended for the UI division, leaving it to our offices to determine how to ensure that customer correspondence and inquiries arrive at their intended destination.

Keeping all levels of Oregon's adjudication and appeals process running smoothly, and helping our claimants and employers navigate the process, requires that UI and appeals professionals with programmatic and subject matter expertise continuously engage with each other. Our offices have found that only by regularly communicating and collaborating with each other on matters of shared interest can we ensure that the administrative and electronic systems we depend upon to process our work continue to function, and, likewise, ensure the continuous flow of appropriate customer information between our offices. Oregon's Adjudication Workgroup provides a forum for that exchange of information, and provides a mechanism through which we collaborate to resolve matters involving our shared systems and procedures.

Originated in December 2010, the Adjudication Workgroup was founded on two guiding principles: find ways to administer the shared aspects of the adjudication process more efficiently, and try to make the process easier for our shared customers to navigate. Membership includes the UI division director, EAB chair, and chief ALJ from OAH. OAH's UI presiding ALJ and UI operations manager regularly attend Adjudication Workgroup meetings. From the UI division, members of UI division management, operations and program support staff, policy and systems staff, and a fiscal analyst regularly attend. The group is expertly supported by an Executive Support Specialist who prepares the agenda, coordinates the meetings and meeting locations, tracks action items, prepares and disseminates meeting materials, takes the minutes, keeps every meeting on track, and ensures that all issues raised before the group remain active until the group agrees the issue has been resolved.

For at least a half-dozen years, the Adjudication Workgroup has met on a monthly or near-monthly basis to facilitate process discussions around how the UI appeal process can best serve the public. David Gerstenfeld, the UI division director, described the Adjudication Workgroup's functions to include keeping each division "informed about changes or matters of note in each area; discussing where issues for our own areas or our customers are being observed and discuss how to address them; plan for anticipated changes; [and] discuss issues that could increase the efficiency or quality of services including things that might reduce the need for as many issues to be appealed."

The group meets to share, discuss, address, and resolve a myriad shared administrative and procedural issues. In recent years topics have included, for example, budget, RJM, appeal-function MPUs, workload and backlog data, administrative rule amendments and resulting planned procedural changes, feedback from customers that implicates the flow of work between adjudication and appeals offices or suggests that shared processes are not working as intended, information or advice from the Department of Labor, the development and implementation of lower and higher authority appeals' case management systems, updates about relevant staffing changes, coordinating implementation of shared workflow changes, notifying other divisions of policy changes, and engaging with each other to ensure that processes that involve two or more divisions work for all involved.

Implementing the Adjudication Workgroup as a forum to address such issues has helped all three tiers of Oregon's UI adjudication and appeals process achieve better outcomes than we might otherwise have reached. The Adjudication Workgroup is a regularly scheduled meeting, so each participant has each meeting on their calendar months in advance and need not schedule separate meetings every time an issue arises. Participants approach the Adjudication Workgroup meetings confident that the other participants will reliably attend, have the technical and subject matter expertise necessary to discuss issues involving our shared processes, and possess the positional authority to address and efficiently resolve most of the issues that arise. Through the meetings, participants have developed relationships with each other founded on trust and respect. That foundation makes the Adjudication Workgroup a safe place to raise problems, ask questions, and resolve issues, allowing the group to discover and abate problems before they can affect our customers. In sum, the Adjudication Workgroup allows the UI division, OAH, and EAB to maximize administrative efficiencies and minimize the occurrence of negative impacts or unintended consequences on the customers we serve.

The Adjudication Workgroup faces challenges, of course. Participation requires a significant investment of time and resources to allow individuals from the UI benefits division, OAH, and EAB the time to participate meaningfully in meetings. Each section invests additional time outside the monthly meetings to research and work the problems identified through the Adjudication Workgroup, then brings their work product back to the group meetings. When it comes to matters affecting budget, each level of the adjudication and appeals process may have a different viewpoint or interest; sometimes competition over shared finite resources can make for challenging discussions. Of key importance to the group's participants is to work our shared problems while carefully respecting our mutual need to maintain the independence of our policy- and decision-making functions. The group's foundation of trust and respect helps ensure productive discussions, and facilitate peaceful resolutions when disputes arise.

Despite the challenges, consensus is that the Adjudication Workgroup is a successful endeavor. As David Gerstenfeld explained, "Systemically the UI program is able to better prepare for process changes and to identify and address process challenges our customers are seeing more quickly." He also noted that the Adjudication Workgroup approach to engagement between the adjudication and appeals offices has allowed for improved communication between those offices, a better understanding of each other's processes, and, ultimately, a more coordinated approach to change that minimizes the occurrence of unintended consequences on our offices and, most importantly, our customers.

Key to the group's success, he said, is "a general willingness on the part of participants to engage, to listen to the concerns and needs from each other and to be willing to talk about creative problem solving. I will also add deep expertise from the attendees and the willingness to pull in

others with specialized knowledge when needed." Tammy Ready, Executive Support Specialist and Assistant to the Deputy Director for UI Benefits, agreed, stating that the group is successful because of its ability to "discuss items, process, and changes that could affect all levels of the appeals process [which] is key to the success of the group, and the appeals process overall." She added that the open dialogue between all levels of the appeals process works because "[e]veryone assumes good intentions, and always has the citizens of Oregon in mind, while trying to maintain . . . a fiscally responsible process that is as easy as possible to navigate for the public."

According to Gerstenfeld, the Adjudication Workgroup concept "might be worth sharing for other states' benefits, that the workgroup has evolved out of an original approach that was intended to deal with a lack of coordination between the various layers, some very strong disagreements on how some matters should be handled, and the concern that this was creating real hardships or challenges for the workers and employers in the UI system." The ability of the UI division, OAH, and EAB to collaboratively and efficiently address and resolve problems has vastly improved since then, largely due to the effectiveness of Oregon's Adjudication Workgroup. As Ready so aptly stated, "It really is an amazing and necessary process. It's not all rainbows and unicorns, but the discussion and issues are necessary for the ongoing success of the [adjudication and appeals] process as a whole."

Special thanks to David Gerstenfeld, Oregon Employment Department Division Director for Unemployment Insurance, and Tammy Ready, Executive Support Specialist and Assistant to the Deputy Director for UI Benefits, for their contributions to this article. Thanks also to Oregon's Adjudication Workgroup for consenting to preparation of this article.

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RESOLVING BACKLOGS – HOW TO DO MORE WITH EXISTING RESOURCES

Sasha Mackin, Supervising Unemployment Law Judge,
Minnesota Department of Employment and Economic Development

Although most states' UI appellate programs are close to their lowest workloads in a decade, budgets are similarly decreased. In Minnesota, our staffing levels, mainly through attrition, have shrunk to about half of recessionary levels. Like many states, workloads can ebb and flow with unforeseen events, like extreme weather or natural disasters, or events like the longest federal government shutdown in history. We perch atop a bubble of continued economic growth that we anticipate will pop; after all, aren't we overdue for another recession? The latest reports show economists predict roughly a 30 percent chance of recession in 2019, but a greater chance in 2020. All of these factors mean that at some point we face the prospect of doing more with less, at least until budgets catch up.

To plan for the next recession, we can reflect on the lessons we learned during the Great Recession. I was hired January 2008, some 11 years ago, as the 12th unemployment law judge in a hiring class of 12. Before, Minnesota had only hired in ones and twos, and had no formal training program. We had just launched the new computer system in 2007. In the last ten years we hired other large classes with varying degrees of success; some classes stuck around and performed well and other classes seemed to leave within two years. To meet the needs of the recession-level caseload in the beginning, we mostly just threw bodies at the work. Over time, we had the space and time to experiment and hone our processes. What we learned during the recession and the post-recession years can fit in broad camps.

ATTRACTING AND RETAINING TALENT

We learned how to hire and train a large group in a shorter period of time. We improved our hiring processes in general, starting with crafting a better job posting. It can be easy to get in the habit of recycling job postings, because that's what you've always used to hire. But looking again with a critical eye can be helpful. What is a true minimum qualification? What qualifications are preferred, and should they actually be mandatory qualifications? It is also helpful to consider your recruitment strategy. Where are these postings? Should you be reaching out to law schools, local bar organizations, or even your existing hearing officers to see if they have recommendations? In Minnesota, all judges must be licensed attorneys.

We have revamped our interview questions more than once to ask behavior-based questions. How well can we determine whether a candidate will be able to keep up with the pace and grind of cases? How well can we determine whether a candidate will agonize over every decision; or, the opposite, will make quick decisions without the appropriate amount of reflection and analysis? We have found that asking for examples of the job behavior we expect leads to better hires and better performance on the job. We have adopted another strategy in our interviews – not to “hide the ball” about why we're asking what it is we're asking. There are no “gotcha”

questions. For each interview question we ask, we explain in a few sentences what the context is for a specific job task. In this way, we lay bare what the job is, and what the job isn't. This helps us be candid about what type of person excels in this role, and helps the candidates self-select if the job really doesn't mesh with their working style or skills and abilities. We also ask interviewees to take a timed writing exam. We have found in the past that a writing sample can be so heavily edited that it is not a true reflection of writing ability.

Once we have selected our hires, we embark on a formal training program that we revise for each hiring class. Our last iteration had classroom-style lecture to introduce the law, the computer system, and hearing skills that lasted approximately two months. After our new hires learned the basics, we narrowed instruction to specific case types (quits, discharges) and then we assigned a week of hearings on those topics to the judges to practice what they learned. Training is ongoing with refresher trainings scheduled routinely, where we invite more experienced judges to participate so they can mentor and relearn themselves, a given topic.

Given our ability to fit in more learning with our current caseload, we have adopted a culture of training. We hold formal trainings on various topics on a quarterly basis, and also hold a “brown-bag” lunch each quarter where judges are invited to lead a discussion on a topic. We will not have this luxury in a recession, so we are trying to take advantage of skills-building and professional development when we can.

PROCESS IMPROVEMENT

Beside improvements in recruiting and training hearing officers, Minnesota has dedicated time to multiple process improvements. From documenting business processes to innovating where we can, we are both planning for succession and recession. Developing relationships with your agency's technology staff is critical. Most importantly, we strive for an environment of creativity and where we can tolerate mistakes or failure in order to find successes.

Among many of the ideas we are trying:

- We are piloting a paperless office, at least for the judges who conduct hearings and can see the documents uploaded to the Department's system.
- We teach computer efficiency skills like keyboarding shortcuts and the use of autocorrect short cuts (such as setting Word to replace “em” with “employment misconduct.”)
- We train staff to prepare hearings far enough in advance to avoid unnecessary hearings/fewer continuances.
- When appeals rise but not dramatically, we have asked for volunteers to take on a few more cases a week until the

numbers even out. When numbers rise more, or judges have volunteered too long, we ask everyone to pitch in.

- We have instituted a back-up judge system. The backup has no assigned hearings for the week, and can pick up hearings for judges who are unexpectedly out, or who have other hearings running long that would otherwise be continued. We have learned to increase our backup judges to two in the winter, when staff can be more affected by illness, snow days, and the polar vortex.
- We have completely reorganized our administrative staff, including cross-training all staff on tasks and streamlining processes where possible. Writing down business processes is a big step, both to capture knowledge and make processes consistent and easy to critique for efficiency.
- We have adopted a centralized email address and inbox for support staff to work out from, which is used for all things from requests and questions from Judges and other parts of the program, to Appeals staff calling in absent (so the front-line staff can quickly reassign work).
- We have compiled a list on what additional documents we want in a file in advance of the hearing (things like screen shots of information from the UI computer system) and are working on memorializing that list into a business process complete with step-by-step instructions on how to find the information on the computer system.
- While we don't always want to cultivate specialization, we occasionally assign certain case types to specific judges who can be trusted to do them right and efficiently.
- We accept certain issues will take longer and allow space for those to be completed well.
- We try to use the technology to our advantage. This means working with our IT folks to generate system reports on all kinds of data sets; things that help us manage performance and watch for trends.
- We have identified places that a technological fix might eliminate a problem. For instance, Minnesota's online appeal system was causing confusion for some applicants who did not successfully complete the online appeal process, and was the source of many hearings on timeliness. We partnered with our technology folks to completely redesign the online appeal process. Being involved as subject matter experts in design was critical to our success; after several years we rarely encounter this scenario now.

PERFORMANCE MANAGEMENT AND LEADERSHIP

Asking your team to do more with less is only possible when your team believes in the mission and is inspired by leadership to take a deep breath and continue to drive towards the goal. Leaders need to engender a culture of excellence and community, rather than autonomy. Our mission speaks for itself; when the economy is taking a hit and leaving many of our citizens in its wake, we are there to pick them up and help them to get back on their feet. This isn't always easy to remember when the workload volume balloons and days are long and grinding. When we create community and achieve credibility with our team, it's easier to keep that mission in the forefront of our minds.

Part of developing a culture of excellence is setting expectations for quality, and the second critical part is helping everyone get there. Our training philosophy has come to match these values. We have done refresher training for seasoned hearing officers and audited more work to ensure there are not broad misunderstandings or misapplications. In our community of excellence, we encourage collegiality and a safe space to share ideas, but we also practice clear communication and set expectations.

We are constructive with criticism and celebrate successes. We take performance reviews seriously and employ SMART goals to ensure staff are achieving the desired metrics. We track data and share the results with staff. We don't limit review to an annual performance review, but rather take the approach that performance and professional development is an ongoing conversation. Recently, each supervisor schedules a "one-on-one" with each staff, once per quarter. One of the tools our agency provides to reward employees is a monetary quarterly achievement award. We make a managerial commitment to award that to employees who meet the criteria on a quarterly basis. We encourage and support professional development, including sending judges to the NAUIAP Conference. We try to remind folks in times of high caseloads that our work is cyclical, and it will not always be so busy. We have parties and potlucks often, and try to laugh and not take ourselves too seriously. We encourage self-care.

FOR THE FUTURE?

We have had some brainstorming sessions to discuss ideas and innovations for an eventual recession. One idea we have discussed but not tried, is to hold "cattle call" hearings, or, scheduling multiple hearings for the same time to take advantage of otherwise empty hearing slots from no-shows. Other states have done this with success, utilizing a pool of pre-screened single-party or uncomplicated cases, for hearing officers to pick up as they have down time.

Although we have a case-management system where online appeals are automatically assigned via an algorithm, we are experimenting with more support-staff manipulation of the schedule, such as back-filling in holes, or allowing the system to schedule to a 'dummy judge' that can be redistributed to fill in holes. We have discussed sending interrogatories or special questionnaires to develop a record prior to a hearing to avoid continuances. We have also discussed having paralegals or legal interns prepare certain case types that often require document supplementation so that they can contact parties well in advance of the hearing to send in contracts and other evidence. Allowing for hearing officers to work overtime and/or more creative schedules, such as early morning, evening, or weekend hearings, could accommodate more customers.

We know the work volume will increase and because of the budgeting scheme, we will not have the appropriate amount of staff at a moment's notice. We are confident, however, that our approach of preparing our existing staff for excellence, ensuring we are always pursuing efficiency and innovation, and having the tools in place to hire the right staff when the need arises, we will be well-positioned to tackle future challenges.