

California Unemployment Insurance Appeals Board

Its Weak Policies and Practices Could Undermine Employment Opportunity and Lead to the Misuse of State Resources

REPORT NUMBER 2008-103, NOVEMBER 2008

California Unemployment Insurance Appeals Board's response as of November 2009

The California Unemployment Insurance Appeals Board (appeals board) is a quasi-judicial agency created in 1953 to conduct hearings and issue decisions to resolve disputed unemployment and disability determinations and tax-liability assessments made by the Employment Development Department. The appeals board is overseen by a seven-member board or its authorized deputies or agents. The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the appeals board's hiring, procurement, and administrative practices. Specifically, the audit committee asked that we review and evaluate the appeals board's hiring policies to determine whether its policies and procedures comply with applicable laws and regulations. In addition, the audit committee asked us to examine a sample of hires, promotions, and transfers to determine if each one complied with applicable laws, regulations, policies, and procedures.

The audit committee also requested that we determine the prevalence of familial relationships among appeals board employees, to the extent possible. In addition, we were asked to determine whether the appeals board's processes for handling grievances and equal employment opportunity (EEO) complaints are set up in a manner that allows employees to avoid the fear of retaliation. Furthermore, the audit committee asked us to review and evaluate the appeals board's procurement practices for office space, furniture, and other administrative purchases to ensure that they align with applicable laws, regulations, and appeals board policies. Finally, the audit committee asked us to review the appeals board's use of state property such as vehicles and fuel cards and determine whether such use is reasonable and allowable per applicable laws.

Finding #1: Although the appeals board's pre-hiring process identifies eligible candidates, managers did not consistently document the reasons for their hiring decisions.

We determined that the appeals board's pre-hiring process generally ensures that individuals it hires, promotes, and transfers are eligible for their positions. However, hiring managers were not always able to consider all of the applicants for a given position because of a freeze on outside hires. In addition, managers did not consistently document each of the steps in the hiring process or their reasons for hiring a particular candidate, making it difficult for an outside party to understand why the appeals board selected particular candidates. For example, there was no evidence that managers conducted interviews

Audit Highlights . . .

Our review of the California Unemployment Insurance Appeals Board's (appeals board) hiring, procurement, and administrative practices found that:

- » *Hiring managers were not always allowed to consider all applicants for a given position because of a freeze on outside hires.*
- » *Hiring managers did not consistently document their reason for hiring a particular candidate.*
- » *Nearly half of the employees who responded to our survey believed that the appeals board's hiring and promotion practices were compromised by familial relationships or employee favoritism.*
- » *The appeals board cannot currently enforce its new nepotism policy on persons who are not currently employed by the appeals board because the new policy should have been submitted to the State's Office of Administrative Law for approval as a regulation.*
- » *Employees submitted few equal employment opportunity (EEO) complaints or grievances during roughly the past five years, and 40 percent of employees responding to our survey indicated that they would have some fear of retaliation from their supervisors or upper management if they were to file either EEO complaints or grievances.*

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» *Certain weaknesses in the appeals board's controls over travel expenses prevent it from demonstrating the business purpose of some travel expenses and resulted in some questionable costs that may need to be recovered.*

» *The appeals board expends approximately \$5,000 per month for parking spaces, but it has not established any procedures to ensure that these spaces are only used for appropriate purposes.*

for some hires, most notably when hiring two former board members as administrative law judges. Consequently, the appeals board is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded to all candidates.

To better ensure that its hiring decisions are fair and that employment opportunity is afforded to all eligible candidates, and to minimize employees' perceptions that its practices are compromised by familial relationships or employee favoritism, we recommended that the appeals board do the following:

- Prepare and formally adopt a comprehensive hiring manual that incorporates the State Personnel Board's guidelines and that specifically directs hiring managers to do the following:
 - Conduct and score hiring interviews using a structured interview format and a corresponding rating scale, and benchmark answers that describe the responses that reflect each level of performance on the rating scale.
 - Maintain documentation of each of the steps in the hiring process for at least two years. For example, managers should maintain all applications received from eligible applicants and should preserve notes related to interviews and reference checks.
 - Forward a memo to the appeals board's personnel services unit that documents the results of the hiring process, including the names of the candidates interviewed, the dates of the interviews, the names of the individuals on the interview panel, and the panel's selection, along with an explanation of why that candidate was chosen. After the appeals board approves hiring the selected candidate, the personnel services unit should maintain this memo for a period of two or more years so that it can demonstrate that the hiring process was based on merit and the candidate's fitness for the job.
- Before implementing another soft hiring freeze, the appeals board should carefully consider whether the projected budgetary advantages outweigh the risk that it may not hire the strongest and most qualified candidates during any such freeze.

Appeals Board's Action: Corrective action taken.

The appeals board issued a new hiring guide in January 2009, which prescribes the use of an interview format, rating scale, and benchmark answers. The guide also instructs that the recruitment file shall be maintained for two years. In addition, the appeals board created a request-for-hire form, which requires the hiring office to obtain and document appropriate approvals and to include on the form the following information: the number of applications received for the position; the number of applicants interviewed; whether an official personnel file was reviewed, references contacted, and if the

employee is related to an appeals board employee; and an explanation of why the proposed hire is the most qualified candidate. The appeals board asserts that this form will be maintained with the position action package in its personnel services unit for five years.

Furthermore, the appeals board reports that it agrees that before implementing another soft hiring freeze for budget reasons, it will consider whether the projected budgetary advantages outweigh the risk of possibly not hiring the most qualified candidates. The appeals board also agrees that it will present this option to the board members for their consideration since it would have an impact on the budget, and the board members have the responsibility for adopting and approving the budget.

Finding #2: The appeals board has recently sought to establish certain restrictions over the hiring of former board members and relatives.

The appeals board hired a former board member as a full-time permanent administrative law judge in December 2004, apparently without interviewing other qualified applicants. This individual had passed the administrative law judge civil service exam, making him eligible for the position, and we do not doubt that prior board service gave him unique insights into how unemployment insurance cases ought to be decided. However, the appeals board's past practice of hiring board members for civil service jobs could undermine its employees' faith in the civil service selection process.

Notwithstanding, the appeals board recently adopted a policy prohibiting the hiring of a board member into any civil service position at the appeals board for a period of one year from the last day of that individual's term as a board member. We believe this policy would mitigate the potential conflict of interest inherent in hiring board members as civil servants. However, the appeals board cannot currently enforce this policy because, according to our legal counsel, it is actually a regulation that should have been submitted to the State's Office of Administrative Law for approval. Specifically, the Administrative Procedures Act requires a state agency to submit proposed regulations to the Office of Administrative Law for legal review and public comment if the proposed regulation applies to people or entities outside the agency. Generally, regulations that have not been subjected to this process are considered to be "underground regulations" that cannot legally be enforced. Moreover, a person may bring a lawsuit to have a court declare an underground regulation invalid.

We also found that familial relationships among appeals board employees appear to have a negative impact on many employees' perceptions of their workplace. For example, one-fourth of the employees who responded to a survey that we sent to all 639 employees and seven board members working as of April 2008, indicated that their supervisor or manager was related to another appeals board employee, and nearly half of responding employees believed that hiring and promotion practices were compromised by familial relationships or employee favoritism. Moreover, over a third of respondents indicated that familial relationships have a negative effect on supervision, security, or morale and/or created potential conflicts of interest. The appeals board recently adopted a more restrictive nepotism policy specifying that it retains the right to refuse to appoint a person to a position when doing so might create an adverse impact on supervision, security, or morale or involves a potential conflict of interest. However, the appeals board cannot currently legally enforce its new nepotism policy against persons not presently employed by the appeals board because it constitutes an underground regulation.

We recommended that the appeals board rescind its recently adopted, but legally unenforceable, policy that prohibits hiring a board member into any civil service position at the appeals board for a period of one year from the last day of that individual's term as a board member. Likewise, it should not enforce its new nepotism policy against persons not presently employed by the appeals board. Because both of these policies affect persons outside of the organization, the appeals board should submit new versions of these regulations to the Office of Administrative Law for approval.

Appeals Board's Action: Partial corrective action taken.

In an October 2009 board meeting, the appeals board approved proposed regulations to mitigate the potential conflicts of interest inherent in hiring former board members as appeals board civil service employees. In the same meeting, the board also approved proposed regulations that would extend its nepotism policy to persons not currently employed by the appeals board. The appeals board reports that both proposed regulations are currently working their way through the adoption process and anticipates implementing these regulations in March or April 2010, depending on the timing of their approval by the Office of Administrative Law.

Finding #3: Many surveyed appeals board employees reported fearing retaliation if they filed EEO complaints or grievances.

The appeals board's EEO complaint process and grievance process are designed to mitigate the threat of retaliation by allowing employees to file or appeal EEO complaints or grievances with designated personnel and outside agencies instead of their direct supervisors. However, appeals board data indicate that employees filed just 14 formal EEO complaints and 10 formal grievances over roughly the last five years. The fact that employees filed few EEO complaints or grievances was confirmed by our survey. Of the employees responding to our survey, only 2 percent indicated that they had ever filed an EEO complaint, with 5 percent indicating that they had ever filed a grievance. In fact, 40 percent of responding employees indicated that they would have some fear of retaliation from their supervisors or upper management if they were to file either an EEO complaint or grievance. The survey also indicated that the degree of fear varied depending on employees' work location, position, and tenure with the organization. Moreover, 11 percent of survey respondents were not aware of the appeals board's EEO policy and 23 percent of respondents indicated that they were not aware of how to file a grievance. Thus, we believe the appeals board could do a better job of informing employees of the grievance process and EEO complaint process and explaining that they both include specific protections from retaliation.

To ensure that employees understand their right to file either an EEO complaint or grievance, and to reduce any associated fear of retaliation, we recommended that the appeals board notify employees annually of its EEO complaint process and grievance process, including the protections from retaliation included in both. For example, the appeals board should remind employees that they could pursue either EEO complaints or grievances with certain outside entities, especially if they believe they may have been retaliated against. The appeals board should also update its employee handbook to better emphasize these processes and procedures, and consider conducting training in this area on a periodic basis.

Appeals Board's Action: Corrective action taken.

In January 2009 the appeals board issued a memo to all employees informing them of the EEO complaint and grievance process. The memo also notified employees that the appeals board had updated its intranet site to contain more detailed information about these processes, including the policy statements, a list of EEO counselors, and complainant rights. Finally, the appeals board reports that it provided EEO and grievance training in January 2009, and placed a copy of the training curriculum on its intranet site.

Finding #4: Weak controls over travel expenses have led to the questionable use of state resources.

Although the appeals board has developed travel policies and procedures and included them in a travel manual, its manual does not include some important controls over employee travel expense reimbursements. For example, it does not require supervisors to preapprove an employee's travel plans, nor does it explicitly require supervisors to subsequently review an employee's travel claim to ensure that the travel is in the State's best interest. In addition, the appeals board's travel manual does not provide guidance to employees on how to establish a headquarters designation. We also found

that employees did not always adequately document the business purpose of their travel. Specifically, when we reviewed a sample of 20 travel expense reimbursements from January 2006 to January 2008, we found that supervisors approved each of the underlying travel claims; however, for seven of these payments, totaling \$8,942, the supporting documents did not adequately state the business purpose of each trip. In addition, the appeals board's former executive director, who received three of the 20 travel payments in our sample, was reimbursed for travel that did not always appear to be in the State's best interest. We noted eight instances in which the appeals board reimbursed the former executive director for lodging costs that exceeded the State's allowed rates, including one occurrence for which it reimbursed him \$259 for the cost of staying one night at the Omni Hotel in San Diego, when the maximum standard rate allowed for this area was \$110.

Furthermore, we found that the appeals board may have inappropriately reimbursed the former executive director for expenses that appear to be associated with commuting between his home and headquarters, because the location of his headquarters is in question. The former executive director's three travel payments totaled \$6,311, and we found that \$2,233, or 35.4 percent, of these costs were for travel between Oakland, the headquarters location he designated on his travel claims and the city in which his residence is located, and Sacramento. In reviewing the former executive director's supporting documents related to these three travel payments, we also noted that the State paid rental car companies approximately \$977 for his use of rental cars to travel between Oakland and Sacramento. Although the former executive director designated the Oakland field office as his headquarters on the travel claims we reviewed, his employee history and other forms in his personnel file showed that his position was located in Sacramento County. Since the Department of Personnel Administration (Personnel Administration) regulations generally define headquarters as the place where an employee spends most of his or her workdays or where the employee returns upon completion of a special assignment, and because it appears that Sacramento was the former executive director's proper headquarters designation, we question whether he should have been reimbursed for travel from Oakland to Sacramento.

To ensure that employees are reimbursed only for appropriate and authorized travel expenses, we recommended that the appeals board strengthen its travel policies and procedures by requiring supervisors to preapprove employees' travel plans and to subsequently review their travel expense claims to ensure that all travel is in the State's best interest. In addition, it should update its travel manual to provide guidance to employees on how to properly designate their headquarters location. Furthermore, the appeals board should ensure that employees are reimbursed only for those lodging costs that comply with Personnel Administration's regulations.

Finally, we also recommended that the appeals board review travel-related payments it made to its former executive director from the date of his appointment as executive director/chief administrative law judge in November 2000, to determine whether those payments were reasonable and allowable. To the extent that the appeals board identifies travel reimbursements that do not comply with regulations established by Personnel Administration, it should seek recovery from the former executive director.

Appeals Board's Action: Corrective action taken.

In December 2008 the appeals board updated its travel manual to require employees to obtain prior approval from their supervisor for any travel plans. In addition, the appeals board now requires supervisors to audit their employees' travel claims to determine the necessity, reasonableness, validity, completeness, and accuracy of the travel expenses. Furthermore, the appeals board updated its travel manual to include guidance to its employees on how to properly designate their headquarters location. Finally, the appeals board posted its new travel manual on its intranet.

The appeals board reports that it conducted a thorough review of the travel-related payments it made to its former executive director. In an October 2009 meeting, the board determined in a closed session that there was no wrongdoing by the former executive director, that he had followed all rules and procedures for filing travel claims, and had relied upon both the board and the Employment Development Department's approval of those claims. The board voted unanimously that it would not seek any reimbursement.

Finding #5: Although the appeals board appears to comply with state leasing and purchasing requirements, it needs to adopt controls over its paid parking spaces.

The appeals board appears to comply with state leasing and purchasing requirements when it acquires office space, furniture, and equipment. In addition, we found that the appeals board's use of three leased state vehicles and associated fuel cards appears reasonable and allowable. However, during our review of the lease agreements and discussions with the appeals board, we noted that the appeals board pays for parking spaces at various locations. Specifically, the appeals board maintains a total of 35 parking spaces at a cost of approximately \$5,000 per month at its offices in Oakland, San Francisco, Los Angeles, Inglewood, and Sacramento. According to the acting executive director, the paid parking spaces were initially intended to accommodate state vehicles, visiting Employment Development Department staff who are attending hearings, and claimants. However, the appeals board leases only three state vehicles, one each for the Sacramento, Orange County, and San Diego field office locations. In addition, the acting executive director is not aware of any appeals board policies or procedures governing the use of these paid parking spaces. Without such controls, the appeals board has little assurance that these paid parking spaces are being used for their intended purposes, and that employees are not inappropriately using them to park their privately owned vehicles at their headquarters.

We recommended that the appeals board develop and implement procedures to ensure that its paid parking spaces are used only for authorized purposes, and that employees are not inappropriately using them to park their privately owned vehicles at their headquarters.

Appeals Board's Action: Corrective action taken.

In January 2009 the appeals board issued new employee parking procedures to ensure that its paid parking spaces are only used for authorized purposes. In addition, the appeals board reports that it subsequently cancelled most of its paid parking spaces.

Finding #6: The appeals board does not adequately account for its information technology and communications equipment (IT equipment).

The appeals board cannot currently account for all of its IT equipment. According to the Employment Development Department's data, the appeals board spent nearly \$2 million on such equipment from July 2005 through March 2008. At the request of the acting executive director, the appeals board completed a limited IT equipment survey in February 2008. According to the acting executive director, the survey revealed that the appeals board was unable to determine with certainty the location of some of its IT equipment, including computers, cell phones, and personnel digital assistant devices (PDAs). For example, the survey indicated that the appeals board could not account for 10 of the 61 computers that its asset management records indicated were located at employee residences. These computers are used by appeals board staff, such as administrative law judges and typists, who have the ability to work from their homes when reviewing cases or typing decisions. Because the appeals board does not have accurate data on the number of computers, cell phones, and PDAs it possesses, it cannot appropriately gauge when it needs to make additional purchases of these items. In addition, the appeals board runs the risk that such IT equipment could be lost, stolen, or misused.

We recommended that the appeals board take steps to resolve the discrepancies between the IT equipment identified in its survey results and its asset management records.

Appeals Board's Action: Corrective action taken.

The appeals board reports that the statewide physical inventory of all its IT equipment was completed on December 30, 2009. The appeals board asserts that, with few exceptions, inconsistencies between the physical inventory and its asset management records were resolved. In addition, the appeals board states that it is in the process of assigning all IT equipment to the IT unit, which will then be tracked using a new electronic IT asset management system.