

Twelfth Supplement to Memorandum 94-11

**Administrative Adjudication: Exemption Request of California
Unemployment Insurance Appeals Board**

Attached is a letter from the California Unemployment Insurance Appeals Board requesting exemption from the new Administrative Procedure Act. CUIAB is presently exempt from the APA. See Gov't Code § 11501. Also attached are the statutes that apply to CUIAB.

CUIAB believes it conducts more than 60 percent of all state administrative hearings. It points out that state unemployment insurance systems must conform to federal law. Nonconformity may result in severe penalties. Federal law requires 60 percent of all first level benefit cases to be decided within 30 days of initiation, and 80 percent of all first level benefit cases to be decided within 45 days of initiation. CUIAB is concerned the proposed new APA will "create a more cumbersome and technical adjudication system" than it currently uses, and thus make it more difficult for it to conform to federal mandates.

CUIAB points out that it was exempted from the original APA when it was enacted in 1945. CUIAB says this was "a considered decision on the part of the legislature and is as valid today as it was then." However, the proposed new APA has more flexibility than the existing APA. For example, the conference hearing procedure in the proposed act provides agencies an informal and expeditious procedure to resolve minor disputes. The proposed conference hearing process is a simplified administrative adjudication with no prehearing conference or discovery. The presiding officer limits witnesses, testimony, evidence, rebuttal, and argument. Cross-examination is ordinarily not permitted. The agency may by regulation authorize the use of the conference hearing procedure under circumstances it determines, if its use does not violate a statute or the federal or state constitution. See proposed Section 647.110(c). It seems to the staff that the conference hearing process would be suited to the CUIAB hearing procedure described in its letter — the administrative law judge draws out the facts from the parties and there usually very little cross-examination.

CUIAB is concerned about the provisions for pleadings. Under the proposed APA, any person may make an application for an agency decision. Proposed

Section 642.220. The agency then issues an initial pleading. Proposed Section 642.310. CUIAB says this model does not describe its hearing process. CUIAB's statute says its hearings are commenced by petition or appeal. Unemp. Ins. Code § 404 (Exhibit, p. 7.) The manner in which petitions and appeals are presented are determined by rules prescribed by the appeals board. *Id.* § 1951 (Exhibit, p. 10.) But the proposed new APA permits agencies by regulation to modify the pleading provisions or make them inapplicable. Proposed Section 642.110. So the pleading provisions should not be a problem for CUIAB.

CUIAB is concerned the notice provisions in the proposed new APA allow too much time for it to comply with federal mandates. CUIAB appears most concerned with the provision extending the prescribed period of notice by five days when service is by mail. Proposed Section 613.230. In Memorandum 94-13, the staff recommended we address this concern by revising Section 613.230 to make clear it is only the times specified in this statute that are extended by five days. If an agency adopts its own time periods by regulation or if a special statute is applicable to it, the agency may determine whether or not the time is extended for mailed notices.

CUIAB has a problem with the provisions on issuance and review of decisions, proposed Sections 649.110-649.250. Under these sections, the presiding officer submits a proposed decision in writing to the agency head who may adopt or modify it. The final decision is subject to administrative review by the agency which may issue a final decision, remand the matter for further proceedings, or reject the proposed decision without remand. CUIAB says under its procedures the decision of the administrative law judge is final unless appealed within 20 days. If appealed, it is reviewed by the appeals board which may affirm, reverse, remand, or modify the decision. There is no further administrative review. See Unemp. Ins. Code § 410 (Exhibit, p. 9). Proposed Section 649.210 permits agencies by regulation either to mandate administrative review or to preclude or limit administrative review of a proposed or final decision. This will permit CUIAB to adopt regulations continuing its present scheme for administrative review.

CUIAB and a number of other agencies have been concerned with the prosecutorial tone of the proposed new APA. This may cause a problem when the statute is applied in a nonprosecutorial context. The staff agrees this is a problem with the draft as a whole. The staff proposes to recast the proposed

statute to make it more neutral in tone as to the character of the proceeding. This may eliminate a number of objections to the draft.

We should adopt the following section to preserve CUIAB's ability to use its own hearing officers and to adopt regulations varying the APA:

Unemp. Ins. Code § 414 (added). Adjudicative proceedings

414. An adjudicative proceeding of the appeals board is exempt from the requirement that it be conducted by an administrative law judge employed by the Office of Administrative Hearings.

Comment. Section 414 preserves the effect of former Government Code Section 11501 to the extent that section required use of Office of Administrative Hearings hearing personnel under the adjudicative proceeding provisions of the Administrative Procedure Act. Adjudicative proceedings of the Unemployment Insurance Appeals Board are governed by the Administrative Procedure Act, but need not be conducted by the Office of Administrative Hearings. See Gov't Code § 641.110 (when adjudicative proceeding required).

Respectfully submitted,

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AUG 27 1993

State of California - Health and Welfare Agency

File: _____
Key: _____

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August 27, 1993

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Dear Members of the California Law Revision Commission:

This is the California Unemployment Insurance Appeals Board (CUIAB or Appeals Board) comments with regard to the Law Revision Commission's tentative recommendation concerning administrative adjudication by State agencies. Because these comments focus on how the tentative recommendation would affect CUIAB operations, it is necessary to explain how the CUIAB currently operates.

The CUIAB is separate from the Employment Development Department. It adjudicates determinations made by the Employment Development Department regarding unemployment insurance, disability insurance and related tax matters. The issue of separation of function, a significant element in the tentative recommendation, has no application to the Appeals Board as EDD and the Appeals Board are functionally separate.

State unemployment insurance systems must be in conformity with federal laws and rules. States that fail to conform to federal law and rules are subject to severe penalties. Federal law, rules and court decisions set forth standards to assure that all administrative appeals affecting benefit rights are heard and decided with the greatest promptness that is administratively feasible. Failure to meet these standards can result in the Department of Labor stopping payment from the unemployment fund to the state (California paid out approximately 2 billion dollars in benefits last year) and can result in doubling the payroll tax paid by employers. Currently, the Board meets federal standards. The Board is concerned that the tentative recommendations, with its emphasis on an elaborate adjudicative process, would interfere with the CUIAB's ability to meet federal standards.

The CUIAB has approximately 180 administrative law judges, who last year, issued approximately 230,000 first level decisions. Additionally, the Board issued approximately 20,000 appellate or second level decisions. Hearings are informal and typically parties represent themselves, although in some cases they are represented by others. Only in rare

cases are parties represented by attorneys. The process begins with a determination issued by the Employment Development Department either granting or denying benefits. That determination may be appealed to the CUIAB. Although EDD is always a party to any such appeal, EDD only infrequently appears at the hearing. When it does appear it typically explains its reasons for deciding the way it did. It is the responsibility of the administrative law judge to draw out the facts from all parties present at the hearing. There is usual very little cross examination although parties often follow-up questions asked by the administrative law judge. While parties have the right to be represented and the right to cross examination the hearings are more in the nature of fact finding. There is no "accusation" and there is no prosecutorial flavor to the proceeding unlike the tentative recommendation.

The Unemployment Insurance Appeals Board and the unemployment insurance system were established as part of the Social Security Act in 1936. Thus, it predates the APA. It is the CUIAB's contention that the exclusion of the CUIAB from the APA was a considered decision on the part of the legislature and is as valid today as it was then. This is so because the nature of the hearing is different than that set out in the APA.

Although the CUIAB does not have precise statistics, an informal survey of other agencies leads us to believe that the CUIAB holds more than 60 percent of all State administrative hearings. The model set forth in the tentative recommendation is more suitable for a license revocation hearing than the hearing done by this agency. The APA model is not suitable for this agency. In fact, given the great number of cases done by this agency, it serves no real purpose to force the Board to adopt the APA.

It is helpful to be able to opt out of certain provisions of the proposed tentative recommendations. This is a partial but not complete solution. To opt out, the Appeals Board must promulgate regulations. In addition, the tentative recommendations will require new regulations. The CUIAB already has duly promulgated regulations governing its procedures. Because this agency's processes are so antipathetic to the model embodied in the tentative recommendations, in our view, this agency would be forced to opt out of all possible provisions and go through the process of re-instituting regulations.

Promulgating regulations poses difficulties to this and other agencies. Aside from the time and expense, the Office of Administrative Law will likely question any deviation from the model rules that the Office of Administrative Hearings is required to offer pursuant to this proposed legislation. This, in conjunction with whatever comments may be elicited from members of the public, will result in OAL evaluating the proposed regulations to determine whether the proffered regulations meet the "necessity" criteria. In effect, OAL,

which has no operational responsibility for the CUIAB, will be deciding issues that affect the Board's ability to operate.

In this vein, the proposed addition of Government Code section 11340.4 (page 110 of the tentative recommendation) significantly enhances the Office of Administrative Law's powers. OAL staff will be able to examine an agency's procedures and forms (which OAL regards as regulations) for the purpose of exposing "underground rules" which would then need to be adopted as regulations. The result will be a tremendous expansion of regulations in spite of the fact that one of the stated purposes of the Office of Administrative Law is to reduce the number of administrative regulations. (See Government Code section 11340.1.)

The model set forth in the tentative recommendation guarantees that this agency and others will opt out of all permissible provisions. Thus, this Board will have to re-promulgate its existing rules and adopt new rules "interpreting" various provisions of the tentative recommendations. If the reason for the tentative recommendation is convenience to the public, the Board's rules can easily be put together with similar procedural rules of other agencies in one place so that the public can easily find them.

Aside from the above, the Board has the following specific objections. These specific objections are not meant to be comprehensive. Tentative section 610.350, initial pleading, does not adequately describe the determinations made by EDD which are neither an accusation nor an institution of an investigation. Section 610.672 has no application to this agency because the CUIAB will set a hearing upon an appeal even if the appeal is not very specific. This section seems to require a greater degree of specificity than currently required by the Board and could be the kind of technicality that would put the Board out of conformity with federal rules.

Provisions concerning notice beginning with section 613.210 also raise potential problems in terms of compliance with federal standards. The difficulty is that this agency is required to hear and decide at least 60 percent of all first level benefit appeal decisions within 30 calendar days of the date of appeal and at least 80 percent of all first level benefit appeal decisions within 45 calendar days (20 CFR section 650.4). Appeals may be to the CUIAB field office or the EDD office. Most appeals are mailed or delivered to the EDD and it usually takes at least a few days for EDD to transmit the appeal to the CUIAB local office of appeals. That CUIAB office then mails a Notice of Hearing which requires the presence of parties. Under proposed section 613.230 the ten days Notice of Hearing would be extended by five days. Thus, the soonest a hearing could be held is about 17 or 18 calendar days after the appeal, leaving only 13 or 14 calendar days to hear the case and issue a decision.

Chapter 4, beginning with section 614.110 has no application to this agency. However, it is unclear whether the Board must follow these provisions, promulgate regulations saying they are not applicable, or simply ignore them.

With respect to Part 4, adjudicatory proceedings, Article 2, declaratory decisions, and Article 3, emergency decisions, it is difficult to see how these would apply to this agency. Again, there is some unclarity as to whether a provision that appears to have no application is nevertheless required to be implemented, whether regulations must be adopted indicating that such provision has no application, or whether the provision can be ignored because it is never applied.

As it now stands, the tentative recommendation does not permit agencies to opt out of Part 4, Chapter 9 which deals with issuance of decision, administrative review of decision and precedent decisions. The decision model set forth in this chapter differs drastically from the procedure employed by the CUIAB. The chapter assumes a proposed decision is issued by an administrative law judge from the Office of Administrative Hearings. That decision is then referred to the initiating agency for adoption or modification. That agency is required under section 649.110 to issue an final decision within 30 days.

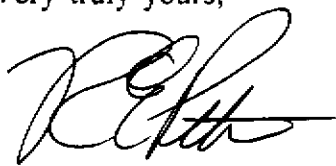
Appeals from the EDD decisions are set for hearing by the CUIAB. The decision of the administrative law judge is final unless it is appealed within 20 days. If it is appealed, the Appeals Board, acting as an appellate body, reviews the decision and a panel of Board Members affirms, reverses, remands or modifies the decision. By operation of Unemployment Insurance Code section 410, the Board's decision is final and the Board loses jurisdiction. Therefore, section 649.110 would appear to have no application to the Appeals Board and inclusion of this provision as part of the Board's operating procedure would simply create confusion. The same point can be made with respect to sections 649.130 and 649.140.

In section 649.150 the tentative language refers to Article 8 but we believe this is a typographical error and should refer instead to Article 2. Pursuant to 649.150(b), which in turns refers to 649.210, an agency such as ours arguably could articulate the procedure that we now use by regulation. This however is not clear. In any case, the provisions of Article 1 and Article 2 of Chapter 9 may not be able to be made to conform with the CUIAB's existing procedure or could be made to conform with existing procedure only with great difficulty and confusion. As always, the more difficult the process, the more likely the Board will be unable to meet federal standards.

Other problems raised by Chapter 9 deal with regulations that would probably have to be implemented in order to make clear the procedures which would implement the proposed statute. For example, 649.230(b) provides "the reviewing authority shall allow each party an opportunity to present a written brief or an oral argument as determined by the reviewing authority." As this provision is written, a regulation is required setting standards for granting oral argument or written brief requests. In addition, OAL regards "forms" as regulations and presumably all forms used by the Appeals Board would have to be submitted for OAL review. The tentative recommendation would thus spawn numerous new regulations. While putting everything in regulation may be a good idea, a balance needs to be struck between voluminous and complicated regulations required and any real improvement in the adjudication process.

The CUIAB hears more cases than other State agency in any given year. It hears more than 60 percent of all cases heard by State agencies. The model replicated in the tentative recommendations is not appropriate to this agency. Perhaps, the correct model the Commission should adopt is the CUIAB model. Other agencies that more closely conform to the existing APA can opt out of that model. In the CUIAB's view, the tentative recommendations will conflict or make it more difficult for the CUIAB to conform to federal mandates, cause the Board to spend time, energy and resources seeking to mold its processes to a hostile model and in general to create a more cumbersome and technical adjudication system. These negatives do not seem to be balanced by a corresponding positive. The laws governing the Board and the EDD are readily available in the Unemployment Insurance Code, the rules for both agencies are readily available. Many thousands of "customers" are satisfied with the process. If it is desirable to have all rules regarding adjudications in one place such a goal can be accomplished without the wholesale revision proposed by the tentative recommendations. Finally, and perhaps an unintended result of the tentative recommendations, is the broad expansion of the powers of the Office of Administrative Law and its conversion into an investigative agency. It is for all of these reasons that the CUIAB sees little value to subjecting itself to any of the tentative recommendations and it would seek to be exempted from them.

Very truly yours,



R. E. PETERSEN , Chief Counsel

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Exhibit

Statutes Applicable to California Unemployment Insurance Appeals Board

Unemp. Ins. Code § 401. Appeals Board; appointment of members; compensation

401. There is in the department an Appeals Division consisting of the California Unemployment Insurance Appeals Board and its employees. The appeals board consists of seven members. Five members shall be appointed by the Governor, subject to the approval of the Senate. One member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate Rules Committee. Two of the members of the appeals board shall be attorneys at law admitted to practice in the State of California. The other members need not be attorneys. Each member of the board shall devote his full time to the performance of his duties. The chairman and each member of the board shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. The Governor shall designate the chairman of the appeals board from the membership of the appeals board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The chairman shall designate a member of the appeals board to act as chairman in his absence.

Unemp. Ins. Code § 402. Terms of members of appeals board; filling vacancy

402. Each member of the appeals board shall serve for a term of four years and until his successor is appointed and qualifies. The term of office of each member of the board appointed pursuant to the 1967 amendment to this section shall also be for four years; provided, however, that of the two board members first appointed pursuant to such amendments, one shall be appointed for a term which shall expire July 1, 1970, and one for a term which shall expire July 1, 1971.

A vacancy shall be filled by the appointing power by appointment for the unexpired term. A vacancy filled by the Governor shall be subject to the approval of the Senate.

Unemp. Ins. Code § 403. Appeals Division; personnel; budget; operation

403. All personnel of the Appeals Division shall be appointed, directed and controlled only by the appeals board or its authorized deputies or agents to whom it may delegate such powers.

The appeals board shall prepare a budget covering the necessary administrative costs of the Appeals Division. Such budget shall not be subject to change by the director except as agreed to by the appeals board. In the event that agreement

cannot be reached, the final decision shall rest with the Governor. The director shall furnish the equipment, supplies, housing and nonpersonal and housekeeping services required by the Appeals Division and shall perform such other mechanics of administration as the appeals board and the director may agree upon.

Unemp. Ins. Code § 404. Administrative law judges

404. The appeals board, or the executive officer subject to its direction and control to whom it delegates such responsibility, shall appoint and direct the activities of one or more impartial administrative law judges who shall hear and render a decision in every matter in which a petition is filed with, or an appeal is taken to, an administrative law judge as provided in this division. The compensation of the administrative law judges shall be fixed by the State Personnel Board at a rate comparable to that of other administrative law judges or hearing officers in state service whose duties and responsibilities are comparable, without regard to whether such other positions have membership in the State Bar of California as a prerequisite to appointment. No administrative law judge shall participate in any case in which he is an interested party.

Unemp. Ins. Code § 405. Chief administrative law judge

405. The appeals board shall appoint a chief administrative law judge who shall be a member in good standing of the State Bar of California.

Unemp. Ins. Code § 406. Duties of chief administrative law judge

406. The duties of the chief administrative law judge include:

(a) Serving as the chief executive of the board in the administration of the activities of administrative law judges and their staffs.

(b) Maintaining a continuous review of the decisions of administrative law judges from which no appeal is taken to uncover decisions which appear inconsistent with the law, with established judicial decisions, with prior decisions of the board or with each other and recommending such cases to the appeals board for certification to itself for a further hearing.

Unemp. Ins. Code § 407. Delegation of authority as to evidence; powers of board and representatives

407. In any case before it, the appeals board may delegate to any one of its members or to a special examiner or administrative law judge the taking or hearing of evidence. The appeals board and its duly authorized representatives in the performance of its duties under this division shall have the powers of a head of a department as set forth in Sections 11180 to 11191, inclusive, of the Government Code.

Unemp. Ins. Code § 408. Decisions and orders in writing

408. All decisions and orders of the Appeals Board shall be in writing.

Unemp. Ins. Code § 409. Assignment and determination of cases; contents and publication of decisions

409. The chairman shall assign cases before the board to any two members thereof for consideration and decision. Assignments by the chairman of members to such cases shall be rotated on such a basis so as to equalize the workload of the members but with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continuous composition of members. Except as otherwise provided, the decision of the two members assigned the case shall be the decision of the appeals board. In the event that the two members do not concur in the decision, the chairman or another member of the board designated by the chairman shall be assigned to the panel and shall resolve the impasse. A case shall be considered and decided by the appeals board acting as a whole at the request of any member of the appeals board.

The appeals board shall meet as a whole at such times as the chairman may direct to consider and pass on such matters as the chairman may bring before it, and to consider and decide cases which present issues of first impression or which will enable the appeals board to achieve uniformity of decisions by the respective members.

The appeals board, acting as a whole, may designate certain of its decisions as precedents. The appeals board, acting as a whole, may on its own motion reconsider a previously issued decision solely to determine whether or not such decision shall be designated as a precedent decision. Decisions of the appeals board acting as a whole shall be by a majority vote of its members. The director and the appeals board administrative law judges shall be controlled by such precedents except as modified by judicial review.

The decisions of the appeals board shall contain a statement of the facts upon which the decision is based, and a statement of the decision itself and the reasons therefor. If the appeals board issues decisions other than those designated as precedent decisions, anything incorporated in such decisions shall be physically attached to and be made a part of such decisions. All decisions designated as precedents shall be published in such manner as to make them available for public use. The appeals board may make such reasonable charge for publications as it deems necessary to defray the cost of their publication and distribution.

Unemp. Ins. Code § 409.1. Modification of decisions reversed or declared invalid

409.1. If a final judgment of a court of competent jurisdiction reverses or declares invalid a precedent decision of the appeals board issued under Section 409 or this section, the appeals board, acting as a whole, shall promptly modify the precedent decision to conform in all respects to the judgment of the court. The modified precedent decision shall supersede the prior precedent decision for all purposes. The appeals board shall promptly notify the director, the administrative law judges of the appeals board, and all other subscribers to the precedent decisions, of the modified precedent decision.

Unemp. Ins. Code § 409.2. Actions for declaratory relief as to validity of precedent decisions

409.2. Any interested person or organization may bring an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure to obtain a judicial declaration as to the validity of any precedent decision of the appeals board issued under Section 409 or 409.1.

Unemp. Ins. Code § 410. Finality of decisions; judicial review

410. A decision of the appeals board is final, except for such action as may be taken by a judicial tribunal as permitted or required by law. A decision of the appeals board is binding on the director with respect to the parties involved in the particular appeal.

The director shall have the right to seek judicial review from an appeals board decision irrespective of whether or not he or she appeared or participated in the appeal to the administrative law judge or to the appeals board.

Notwithstanding any other provision of law, the right of the director, or of any other party except as provided by Sections 1241, 1243, and 5313, to seek judicial review from an appeals board decision shall be exercised not later than six months after the date of the decision of the appeals board or the date on which the decision is designated as a precedent decision, whichever is later.

The appeals board shall attach to all of its decisions where a request for review may be taken, an explanation of the party's right to seek such review.

Unemp. Ins. Code § 411. Rule making power

411. The appeals board, acting as a whole, may promulgate rules or amend or rescind rules pertaining to hearing appeals and other matters falling within its jurisdiction. All such rules, amendments thereto, or repeals thereof, shall be made in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code.

Unemp. Ins. Code § 412. Transfer or removal of proceedings before mailing of administrative law judge's decision

~~412. (a) The appeals board acting as a whole may, by notice mailed to the~~ director and the parties prior to the mailing of an administrative law judge's decision on an appeal or petition under this division pending before any administrative law judge, on its own motion either:

- (1) Transfer the proceedings to another administrative law judge; or
- (2) Remove the proceedings to itself for review and decision.

(b) If the appeals board removes any proceedings to itself for review and decision pursuant to this section, the appeals board may order the taking of additional evidence and may affirm, reverse, modify, or set aside any findings or action of the department from which the appeal or petition to the administrative law judge was taken in the proceedings. The appeals board shall promptly notify the department and the parties to the proceedings of its order or decision.

Unemp. Ins. Code § 413. Remand or removal of proceedings after mailing of administrative law judge's decision

413. (a) The appeals board acting as a whole may, by notice mailed to the director and the parties not later than 30 days after the mailing of an administrative law judge's decision on an appeal or petition under this division to the administrative law judge, on its own motion either:

(1) Set aside the decision of the administrative law judge and remand the proceedings to another administrative law judge for review and decision; or

(2) Remove the proceedings to itself for review and decision.

(b) If the appeals board removes any proceedings to itself for review and decision pursuant to this section, the appeals board may order the taking of additional evidence and may affirm, reverse, modify or set aside the decision of the administrative law judge. The appeals board shall promptly notify the department and the parties to the proceedings of its order or decision.

(c) Notwithstanding any other provision of this division, no decision of an administrative law judge under this division shall be final if the appeals board pursuant to this section sets aside such decision or removes the proceedings to itself for review and decision.

Unemp. Ins. Code § 1223. Hearing; notice; decision

1223. If any petition is filed under this article within the time and meeting requirements prescribed, an administrative law judge shall review the matter and, if requested by the petitioner, shall grant a hearing. A hearing is not required on a petition if a prior hearing has been afforded the petitioner involving the same issues, but regardless of any prior proceedings, if the petitioner files an affidavit setting forth new and additional evidence in support of his or her petition, an administrative law judge may grant an additional hearing. The administrative law judge shall give at least 20 days' notice of the time and place of the hearing on a petition by delivering or mailing the notice to the petitioner and to the director. The time of notice may be shortened with the consent of the parties. The administrative law judge shall render a decision in the matter and may decrease or increase the amount of any assessment under review. Every employing unit or person which is a party to the petition and the director shall be promptly notified of the administrative law judge's decision, together with his or her reasons therefor.

Unemp. Ins. Code § 1951. Presentation of disputed claims; consolidation for hearing

1951. The manner in which disputed claims, appeals and petitions shall be presented, the reports required thereon from the claimant and from any employing unit and the conduct of hearings and appeals shall be in accordance with rules prescribed by the appeals board. The appeals board shall require administrative law judges to consolidate for hearing cases with respect to which the alleged facts and the points of law are the same.

Unemp. Ins. Code § 1952. Evidence and procedure; record of proceedings

1952. The appeals board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties. A full and complete record shall be kept of all proceedings in connection with disputed claims. All testimony at any hearing held in this state upon a disputed claim arising under this division shall be recorded and, when feasible, by a reporter in shorthand or by machine writing. The testimony need not be transcribed unless the disputed claim is further appealed.

Unemp. Ins. Code § 1953. Powers of members of Appeals Board and other authorized officers

1953. In any proceeding, hearing, investigation or in the discharge of any duties imposed under this division any member of the appeals board, an administrative law judge and any authorized employee designated by it may administer oaths, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

Unemp. Ins. Code § 1954. Subpenas

1954. Obedience to subpoenas issued in accordance with this chapter may be enforced by application to the superior court as set forth in Article 2, Chapter 2, Part 1 of Division 3 of Title 2 of the Government Code.

Unemp. Ins. Code § 1955. Duty to testify and produce evidence; self-incrimination

1955. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records as required by a subpoena issued pursuant to this chapter on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. Nothing in this section exempts any individual from prosecution and punishment for perjury committed in so testifying.

Unemp. Ins. Code § 1956. Witness fees and other expenses

1956. Witnesses subpoenaed pursuant to this division shall be allowed the same fees which are prescribed in Section 68093 of the Government Code relative to proceedings in the superior court. Such fees and all expenses incurred in any proceeding, hearing, review or investigation by the director or the Appeals Board or the representative of either, except charges for services by counsel or other agent representing claimant, employer, or other interested person, shall be part of

the expenses of administering this division, and no individual claiming benefits shall be charged by the Appeals Board, or its representative, fees of any kind in any procedure under this division.

Unemp. Ins. Code § 1957. Right of claimant to be represented by counsel or agent; compensation

1957. Any individual claiming benefits in any proceedings before the appeals board or its authorized representative may be represented by counsel or agent but no such counsel or agent shall charge or receive for such services more than an amount approved by the appeals board. Any person who violates any provision of this section shall for each such violation be fined not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) or be imprisoned not more than six months or both.

Unemp. Ins. Code § 1957.5. Availability of printed forms

1957.5. The department shall make available without charge printed forms for the use of any individual claiming benefits to authorize a counsel or an agent to represent him in any proceedings before the appeals board or its administrative law judges or authorized representatives. If any claimant files an authorization for such representation with the appeals board or its administrative law judges, the appeals board or its administrative law judges shall, upon request by the claimant, serve copies of all notices and transcript pertinent to such proceedings on the claimant and his counsel or agent.

Unemp. Ins. Code § 1958. Costs

1958. No cost shall be awarded in hearings on appeal by the Appeals Board, but if in the opinion of the Appeals Board, the claimant or an employer has acted in bad faith and without reasonable basis for appeal, a penalty not exceeding 10 percent of the amount finally awarded on the appeal may be taxed against and deducted from the award by the Appeals Board and shall be placed in the Unemployment Fund. In those cases where a penalty is assessed against an employer his account, as maintained under this act, shall be debited with the amount of the penalty so assessed.

Unemp. Ins. Code § 1959. Delegation by Appeals Board of power as to investigation or hearing

1959. For the purpose of any investigation, hearing or proceeding under this division, the appeals board may delegate its power in relation thereto to any deputy, administrative law judge, or other person properly authorized in writing by it.

Unemp. Ins. Code § 1960. Effect of judgment or order in another proceeding

1960. Any finding of fact or law, judgment, conclusion, or final order made by a hearing officer, administrative law judge, or any person with the authority to make

findings of fact or law in any action or proceeding before the appeals board, shall not be conclusive or binding in any separate or subsequent action or proceeding, and shall not be used as evidence in any separate or subsequent action or proceeding, between an individual and his or her present or prior employer brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.