



# California Unemployment Insurance Appeals Board:

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

November 2008 Report 2008-103



CALIFORNIA  
STATE AUDITOR

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November 20, 2008

2008-103

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the California Unemployment Insurance Appeals Board's (appeals board) hiring, procurement, and administrative practices.

This report concludes that the appeals board's hiring managers were not always allowed to consider all applicants for a given position because of a freeze on outside hires and did not consistently document their reasons for hiring a particular candidate. In addition, 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. Deficiencies in the appeals board's hiring practices may contribute to this perception among employees. In response to concerns about nepotism, the appeals board recently adopted a more restrictive policy stating that it retains the right to refuse to appoint a person to a position whose relationship to another appeals board employee has the potential for creating an adverse impact on supervision, security, or morale, or involves a potential conflict of interest. However, we believe that the appeals board cannot currently enforce its new nepotism policy against persons who are not presently 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. Furthermore, over roughly the past five years employees submitted few equal employment opportunity (EEO) complaints or grievances, and 40 percent of employees who responded to our survey 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.

We also found that a former board may have violated conflict of interest laws. As required by audit standards, we referred the matter to the Sacramento County District Attorney and the California Attorney General for their consideration. Finally, 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.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

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. For fiscal year 2007–08, the appeals board employed about 650 staff, with an annual budget exceeding \$80 million. Representatives of the appeals board requested an audit of their organization because of concerns over alleged administrative wrongdoing or irregularities, the prevalence of familial relationships, and the potential for misuse of state property.

Our review of the appeals board's hiring process found that hiring managers were not always allowed to consider all 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 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.

Familial relationships among appeals board employees appear to have a negative impact on many employees' perceptions of their workplace. Specifically, 25 percent of the employees who responded to our survey indicated that their supervisor or manager was related to another appeals board employee. In addition, 35 percent of respondents indicated that familial relationships were having a negative effect on their workplace. More significantly, nearly half of the responding employees believed that hiring and promotion practices were compromised by familial relationships or employee favoritism. Deficiencies in the appeals board's hiring practices may contribute to this perception among employees.

In response to concerns about nepotism, the appeals board recently adopted a more restrictive policy stating that it retains the right to refuse to appoint a person to a position whose relationship to another appeals board employee has the potential for creating an adverse impact on supervision, security, or morale, or involves a potential conflict of interest. However, according to our legal counsel, the appeals board cannot currently enforce this policy

### 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.*

*continued on next page . . .*

» *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.*

against persons who are not presently employed by the appeals board because the policy should have been submitted to the State's Office of Administrative Law for approval as a regulation.

We also evaluated the appeals board's equal employment opportunity (EEO) complaint process and grievance process and found that they 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 10 formal employment grievances and 14 formal EEO complaints 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 indicated that the degree of fear varied depending on employees' work location, position, and tenure with the organization. Moreover, 23 percent of survey respondents indicated that they were not aware of how to file a grievance, and 11 percent of respondents were not aware of the appeals board's EEO policy. 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.

We found that a former board member may have violated conflict of interest laws. In accordance with audit standards that state law requires us to follow, we referred the matter to the Sacramento County District Attorney and the California Attorney General for their consideration.

Furthermore, we found that 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. In particular, we found that the former executive director was reimbursed for travel expenses that did not always appear to be in the State's best interest. For example, 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. In addition, we found that the appeals board may have inappropriately reimbursed the former executive director for expenses that appear to be associated with travel between his home and headquarters.

The appeals board does appear to comply with state leasing and purchasing requirements when it acquires office space, furniture, and equipment. However, it spends approximately \$5,000 per month for parking spaces without having established procedures to ensure that these spaces are used only for appropriate purposes. In addition, the appeals board's use of three leased state vehicles and associated fuel cards appears reasonable and allowable. Finally, we found that the appeals board currently cannot locate all of the information technology and communications equipment that its records reflect.

### Recommendations

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, the appeals board should take the following steps:

- Prepare and formally adopt a comprehensive hiring manual that incorporates the State Personnel Board's guidelines. The manual should include a requirement that managers document each of the steps in the hiring process.
- Require managers to document their reasons for selecting a particular candidate.
- Maintain documentation related to the hiring process for a period of at least two years, as required by state regulations, so it can demonstrate that the hiring process was based on merit and each candidate's fitness for the job.
- Before implementing another freeze on outside hires, 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.

The appeals board should not attempt to enforce its recently adopted nepotism policy against persons who are not currently employed by the appeals board, as it is unenforceable. Because this policy affects persons outside of the organization, the appeals board should submit a new version of this regulation to the Office of Administrative Law for approval.

To ensure that employees understand their right to file an EEO complaint or grievance, and to reduce any associated fear of retaliation, the appeals board should do the following:

- Notify employees annually of its EEO complaint and grievance procedures, including the protections from retaliation. For example, the appeals board should remind employees that they could pursue such complaints or grievances with certain outside entities, especially if they believe they may have been retaliated against.
- Consider conducting training in this area on a periodic basis.

To ensure that employees are reimbursed only for appropriate and authorized travel expenses, the appeals board should 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, the appeals board should ensure that employees are reimbursed only for those lodging costs that comply with the Department of Personnel Administration's regulations.

In addition, the appeals board should review all 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 did not comply with regulations established by the Department of Personnel Administration, it should seek recovery from the former executive director.

The appeals board should develop and implement procedures to ensure that its paid parking spaces are used only for authorized purposes.

The appeals board should resolve the inconsistencies between the results of its recent survey of information technology and communications equipment and its asset management records.

### **Agency Comments**

The appeals board agrees that our recommendations reflect reasonable suggestions for addressing the issues raised in our report. In addition, the appeals board indicates that it has already begun taking actions to implement some of our recommendations. Finally, the appeals board asserts that because some of our recommendations may require formal action by its board members, it will present the entire report to the board members for their review and action at the earliest possible opportunity.

## Introduction

### Background

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 (Employment Development). The appeals board is required to hear appeals and render its decisions on the determinations within mandated timelines.

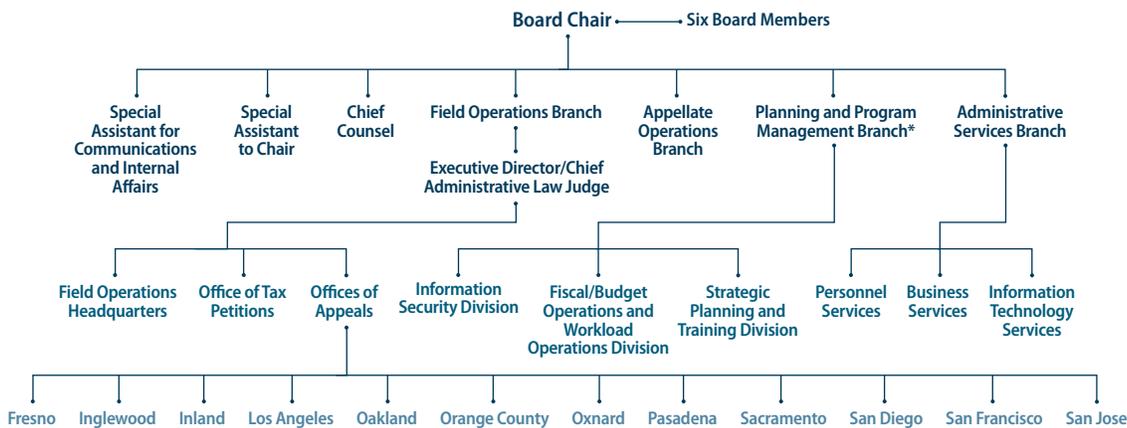
Although the appeals board is a division within Employment Development, to ensure that it is independent, the California Unemployment Insurance Code (UI code) limits the authority of the director of Employment Development over the appeals board. For example, the UI code specifies that all appeals board personnel be appointed, directed, and controlled by the appeals board or its authorized delegates rather than the director of Employment Development. Moreover, the appeals board prepares its own budget, which the director of Employment Development cannot change without the agreement of the appeals board. However, Employment Development does provide fiscal and some business services support for the appeals board. For example, Employment Development processes payments for the appeals board, including reimbursements of travel claims and payments for the procurement of goods. In addition, the California Government Code stipulates that the secretary of the Labor and Workforce Development Agency generally oversees Employment Development and the appeals board.

As set forth in the UI code, the appeals board consists of seven members, five appointed by the governor and subject to Senate confirmation and one each appointed by the Senate Rules Committee and the Speaker of the Assembly. All appeals board memberships are full-time positions. Two board members must be attorneys admitted to the California State Bar. The governor designates the chair of the appeals board from among the board members. Each appeals board member serves for a term of four years. If a board position becomes vacant, the relevant appointing power designates a replacement for the remainder of the term. Board members may authorize deputies or agents to run certain daily operations of the appeals board.

In fiscal year 2007–08, the appeals board members oversaw approximately 650 employees with an annual budget exceeding \$80 million, organized into the Field Operations Branch (Field Operations), Appellate Operations Branch, Planning and Program Management Branch, and Administrative Services Branch, as

shown in Figure 1. Field Operations functions as the first level of appeal for claimants, employers, and Employment Development, and it holds in-person and phone hearings across the State. Appeals board members function as the second level of appeal and are assisted by administrative law judges in the Appellate Operations Branch. The Planning and Program Management Branch<sup>1</sup> provides workload analysis, budgetary functions, training, and other services. The Administrative Services Branch oversees business services, personnel services, and information technology. The appeals board's organization also includes an executive director/chief administrative law judge, a chief counsel, a special assistant for communications and internal affairs, and a special assistant to the chair.

**Figure 1**  
**Organization Chart of the California Unemployment Insurance Appeals Board**



Source: California Unemployment Insurance Appeals Board (appeals board).

\* As of October 14, 2008, the Planning and Program Management Branch was disbanded and its functions were integrated into the Field Operations and Administrative Services branches or a new division. In addition, the appeals board bifurcated the executive director/chief administrative law judge position. The executive director is now responsible for the Appellate Operations and Administrative Services branches, and the Information Technology and Information Security divisions; whereas, the chief administrative law judge is responsible for the Field Operations Branch.

The chief administrative law judge (chief) is responsible for Field Operations and in November 2000, appeals board members gave the chief the concurrent position of executive director. However, in July 2008, the board voted 4 to 1 to terminate the appointment of the chief/executive director. According to the acting executive director,

<sup>1</sup> As of October 14, 2008, the Planning and Program Management Branch was disbanded and its functions were integrated into the Field Operations and Administrative Services branches or a new division.

in a separate closed board meeting, the board agreed to bifurcate the chief and executive director positions; both positions are currently filled on an interim basis.

The appeals board is headquartered in Sacramento, with the Field Operations headquarters, and the Appellate Operations, Administrative Services, and Planning and Program Management branches residing there. As shown in Figure 1, Field Operations includes 12 Offices of Appeals (field offices) that provide local, in-person services across the State. Field Operations also has 39 off-site hearing facilities located throughout California in which its administrative law judges hear cases.

### **The Appeals Board's Process for Hiring Employees**

Because nearly all of its employees are civil servants, the appeals board follows a merit-based system of employment to determine an applicant's fitness to perform work in specific positions. State regulations generally require agencies to develop and maintain a program to hire employees based upon the specifications in the State Personnel Board's *Merit Selection Manual*. This manual specifies how agencies must administer exams to establish a pool of eligible employees and then recommends selection procedures agencies should use, such as conducting hiring interviews, reference checks, and reviews of work history, to identify the candidate best suited to fill the vacant position.

At the appeals board we found that these processes were divided into three phases: the exam phase, in which the appeals board's personnel services unit (personnel services) or the State Personnel Board administers competitive examinations<sup>2</sup> to establish eligibility lists; the pre-hiring phase, which includes functions performed centrally by personnel services in Sacramento; and the hiring phase, which includes functions performed by the specific manager in the office or other location in which the employee will work. A manager needing to fill a vacant position forwards a request to Sacramento to obtain clearance from the executive director or chair and budget staff in the Planning and Program Management Branch. Personnel services advertises the position, receives applications, and verifies the eligibility of each applicant. Eligibility is based on whether the applicant has passed an exam or is within transfer range from a similar classification at the appeals board or at another state agency. Personnel services then forwards the eligible applications to the manager for the hiring phase. The manager generally

<sup>2</sup> Appeals board staff stated that they generally administer exams according to an annual exam plan rather than when they need to fill a vacancy.

conducts interviews and performs reference checks to determine the best candidate to fill the position. Under the California Code of Regulations, the appeals board must maintain documents related to the hiring phase for two years. The pre-hiring and hiring phases are used to fill vacancies by hiring employees new to state service, promoting current appeals board employees, and accepting employees transferring from other state agencies.

Another aspect of the state civil service system is the promotion in place, in which an employee's position classification changes. The Department of Personnel Administration (Personnel Administration) generally permits state agencies to promote employees in place when the duties of a position increase to an extent that qualifies for a higher civil service classification. For example, appeals board staff said they have been delegated authority from Personnel Administration to promote an employee from an administrative law judge I to an administrative law judge II when the employee has gained the experience necessary to manage an increased and more complex case workload. In addition, the appeals board can make internal transfers that involve reassigning an existing employee to another position in the same class or in a comparable class within the appeals board. In both cases, with clearance from the executive director and the budget staff, personnel services reviews the proposed duty statement for the employee to determine whether it meets the requirements for the proposed reclassification and verifies the employee's eligibility for the new classification. The appeals board is not required to advertise openings for promotions in place or transfers.

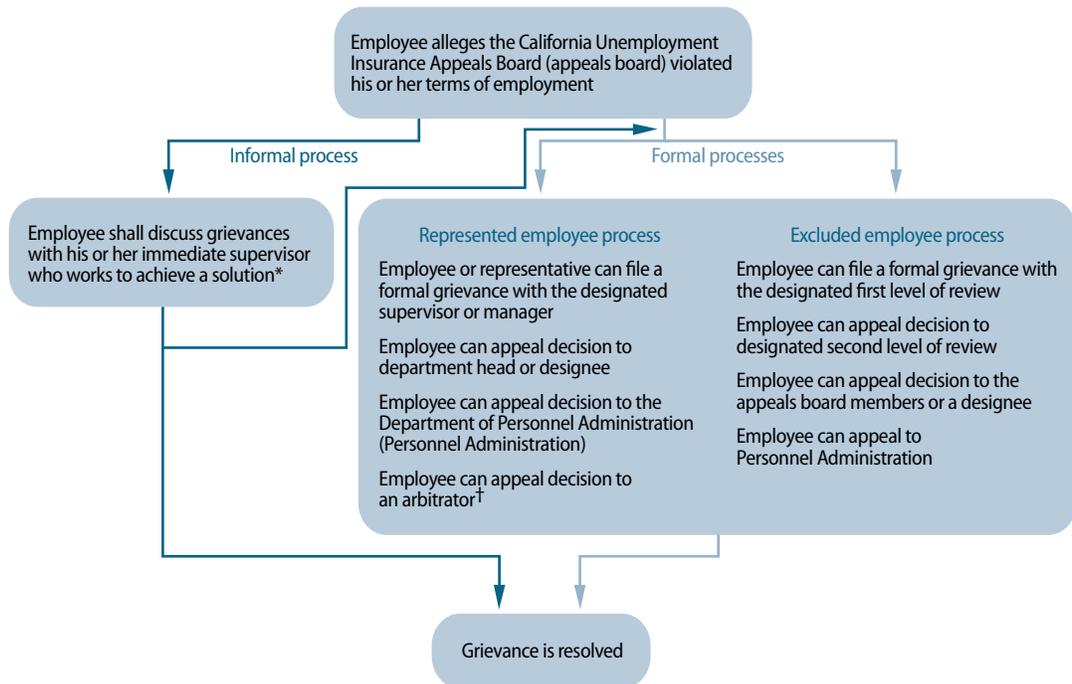
### **The Appeals Board's Grievance Process and Equal Employment Opportunity Complaint Process**

Appeals board employees can file complaints, including those alleging violations of their terms of employment (grievances) and those alleging violations of equal employment opportunity (EEO) laws that prohibit employment discrimination (EEO complaints). With respect to grievances, bargaining unit agreements and rules established by Personnel Administration define separate processes for employees represented by bargaining units and those that are not represented. For example, an employee represented by a bargaining unit may file a grievance alleging that the State violated the terms of his or her employment contract. An employee not represented by a bargaining unit (known as an excluded employee) can file a grievance alleging that the State violated Personnel Administration rules. EEO complaints can be pursued by employees who feel that they have been discriminated against in state employment practices, in violation of federal and state antidiscrimination laws and regulations. An appeals board

employee can file an EEO complaint alleging harassment or discrimination based on a protected status, such as race, religious affiliation, gender, or other protected characteristics.

As shown in Figure 2, the process for resolving grievances is fairly similar for represented and excluded employees. An employee can initiate an informal grievance by bringing the issue to the attention of his or her immediate supervisor. Alternatively, the appeals board allows employees to bring informal grievances to a different supervisor, if the issue in question involves the employee's immediate supervisor. If the employee and supervisor cannot resolve the issue, the employee can file a formal grievance with a designated supervisor, manager, or first level reviewer. Once a decision on the formal grievance has been made, the employee has several options for appeal, as illustrated in the figure.

**Figure 2**  
**Process for Filing a Grievance at the California Unemployment Insurance Appeals Board**



Sources: Bargaining unit agreements; California Code of Regulations, Title 2, Section 599.859.

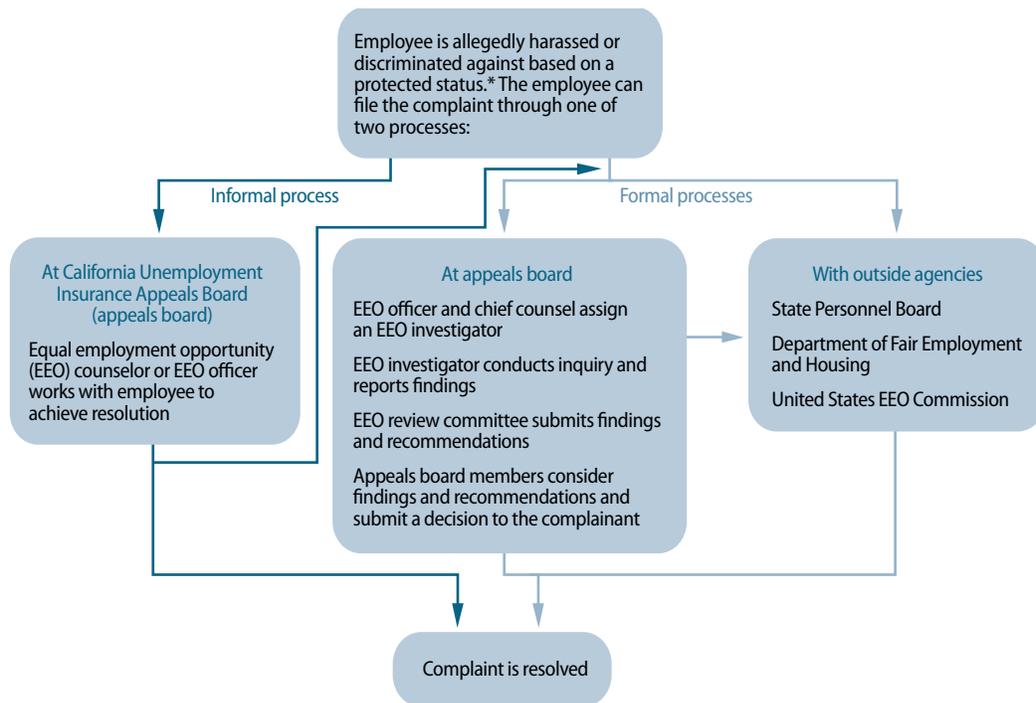
Note: Under bargaining unit agreements, the parties to a grievance may mutually agree to waive any step of the grievance process.

\* Alternatively, the appeals board allows employees to bring informal grievances to someone other than their immediate supervisor.

<sup>†</sup> Represented employees may submit the grievance to arbitration if not satisfied with Personnel Administration's decision. The arbitrator will be mutually agreed upon or selected from a panel of arbitrators provided by one of two predetermined entities noted in the bargaining unit agreements.

Similarly, the EEO complaint process gives employees several options for filing complaints, as shown in Figure 3. Informally, an employee can file a complaint with the appeals board's EEO counselor. The formal process within the appeals board involves an EEO officer, the chief counsel, an EEO investigator, an EEO review committee, and appeals board members. An appeal can be made to the State Personnel Board if the complaint cannot be resolved within the appeals board or if the complainant is not satisfied with the appeals board's decision. Further, at any time an employee may file an EEO complaint with the State Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. The goal of both the grievance process and EEO complaint process is to resolve complaints at the lowest level possible.

**Figure 3**  
**Process for Filing an Equal Employment Opportunity Complaint at the California Unemployment Insurance Appeals Board**



Sources: Appeals board's policy for resolving discrimination complaints, and the California Code of Regulations, Title 2, sections 547, 547.1, etc.

\* Some protected characteristics are race, religious affiliation, gender, or national origin.

### **The Appeals Board's Process for Reimbursing Its Employees' Travel Costs**

The California Government Code authorizes the director of Personnel Administration to establish travel regulations for state employees. These regulations define criteria for determining the appropriate reimbursement of an employee's authorized expenses incurred while traveling on official state business. For example, Personnel Administration travel regulations detail permitted parking, meal, and lodging expenses and specify when receipts are necessary for reimbursement. The regulations also require state agencies to determine the necessity for travel, specifying that any travel must be in the best interest of the State. Further, the regulations delegate to state agencies the responsibility for determining the methods of travel and lodging, and the location of the travel.

In addition to Personnel Administration travel regulations, the appeals board has a travel manual that contains travel rules and guidelines to aid employees in completing and submitting their travel claims. The travel manual states that travel expense reimbursements shall be governed by the State's travel laws and by any applicable bargaining unit agreements. Appeals board employees are required to follow the guidance in this travel manual. The travel manual instructs employees to submit travel claims to their supervisor after travel has occurred. Supervisors are then responsible for approving the claims and forwarding them to Employment Development for payment. Employment Development's travel unit processes and pays the claims based on the rules contained in its own manual.

### **The Appeals Board's Process for Procuring Office Space and Equipment**

Through its business services unit (business services), the appeals board follows the State's procurement system, which is structured to foster competition and ensure that unless otherwise justified, state agencies secure the highest-quality goods for the lowest offered price. The *State Administrative Manual* (administrative manual) and the *State Contracting Manual* (contracting manual) provide guidance to, and place certain requirements on, state agencies to ensure that procurements of goods and services are made in the best interest of the State.

To fulfill its mission, the appeals board maintains multiple locations throughout the State, many of which are leased office buildings. Under the State's real estate procurement process, the Department of General Services' Real Estate Services Division (Real Estate Services) oversees the State's acquisition of real property, including the leasing of office space. A state agency initiates the lease process

by delivering a completed request, which includes a justification to Real Estate Services. Real Estate Services then negotiates a lease on the state agency's behalf, procures the property, and provides an executed lease agreement to the agency.

When buying products such as office furniture, state law requires a state agency to first attempt to buy products from the Prison Industry Authority (Prison Industry). If Prison Industry is unable to provide a specific item, such as an ergonomic desk chair, the state agency must obtain a waiver from Prison Industry before procuring the product from a commercial vendor. After Prison Industry determines that it cannot provide the product, the state agency can procure the product through a leveraged purchase agreement—a prebid state contract for a good or service. Alternatively, the agency must solicit competitive bids to buy the product through the process prescribed by state law and the State's administrative and contracting manuals. Generally, the competitive bidding process for products requires a minimum of two vendor bids, depending on the dollar amount and type of purchase, and the agency must buy the product from the lowest responsible bidder.

### **The Appeals Board's Use of State Vehicles and Fuel Cards**

State departments may lease vehicles on a long-term basis through the Department of General Services' Office of Fleet and Asset Management (Fleet Management) for official state business. To instruct state agencies on the leasing and use of state-owned vehicles, Fleet Management uses its Fleet Handbook, the administrative manual, and various management memos.

Fleet Management provides vehicles in response to written requests from state agencies that justify their vehicle needs. State agencies are required to maintain a monthly travel log for each vehicle, including the names of the drivers and the beginning and ending mileage, and to submit the information to Fleet Management every month. According to the assistant chief of Fleet Management, it charges a monthly flat rate plus a mileage rate for each leased vehicle. The charges for vehicles leased to the appeals board go directly to Employment Development for payment.

The assistant chief also stated that Fleet Management provides a fuel card with each leased state vehicle that is to be used for that vehicle only. The card can be used to purchase fuel, fluids, lubricants, and two basic car washes per month, along with certain other items and services in emergency situations only. He also stated that the bank that issues the fuel cards sends Fleet Management invoices for payment. In addition, the bank issues Fleet Management weekly and monthly exception reports that note

specified patterns in usage based on predetermined criteria that are designed to identify unreasonable or fraudulent transactions. According to Fleet Management's contract administrator, these reports are analyzed to detect possible misuse. Any unauthorized charges on fuel cards belonging to vehicles leased from Fleet Management are charged back to the respective state agency. In any such cases, it is the agency's responsibility to recover the inappropriate charge from the driver.

### **Scope and Methodology**

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 EEO complaints are set up in a manner that allows employees to avoid the fear of retaliation.

The audit committee also 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.

To determine whether the appeals board's policies and procedures for hiring, promotion, and transfer are appropriate, we reviewed applicable laws and regulations and interviewed a deputy director, managers, a supervisor, and other staff at the appeals board. We selected the Sacramento, San Diego, and Inland (Rancho Cucamonga) locations for further testing, based on the number of hires, promotions, and transfers occurring at those locations and information provided by executive management at the appeals board. We also spoke with managers in the three selected locations and reviewed documentation they maintained regarding their hiring practices. For the three locations, we judgmentally selected a sample of 27 advertised positions and six unadvertised positions (promotions in place or intradepartmental transfers), generally occurring between June 2006 and April 2008. Two of

the 27 advertised positions were filled by former board members in 2004 and 2005. For each hire, we reviewed personnel transaction documents at personnel services in Sacramento. These 33 positions tested included 11 support staff, 11 administrative law judges, seven analysts, three legal support supervisors, and one staff services manager drawn from across the various appeals board branches.

To determine the prevalence of familial relationships and employees' fear of retaliation associated with the filing of grievances and EEO complaints at the appeals board, we surveyed all 639 employees and seven board members working as of April 2008. The Appendix lists the survey questions and aggregates certain of the responses. We received 399 responses; however, we removed some responses, such as those from duplicate e-mail addresses and those responses that came from e-mail addresses that were different from those to which we originally sent the survey. This reduced the total to 355 responses, a response rate of 55 percent. It is possible that some employees declined to respond because the survey was not mandatory or confidential, which limits our ability to accurately reflect the views of the entire workforce at the appeals board.

As part of our survey, we gave employees the option of providing information about the region in which they worked, their employee classification, the branch in which they worked, and the length of time they have been employed by the appeals board, as further discussed in the Appendix. We present an analysis based on this information; however, we did not test the accuracy of the information reported by respondents.

To assess whether the appeals board's grievance and EEO complaint processes are designed to reduce the fear of retaliation, we reviewed the appeals board's policies and procedures, and relevant state laws and regulations, to determine whether the processes are designed in a way to reduce the fear of retaliation. To understand the quantity and nature of grievances and EEO complaints, we also obtained the appeals board's summary of grievances and EEO complaints filed over roughly the last five years.

To gain an understanding of the appeals board's expenses, we interviewed its executive management and obtained the appeals board's operating expense and equipment records for July 2005 through March 2008. According to those records, which are maintained by Employment Development, these expenses for this period totaled \$35 million, of which approximately \$25 million, or 71 percent, was for travel costs, office space rent, office equipment, and information technology and communications equipment (IT equipment). Approximately \$2.5 million of these costs were travel expenses.

To evaluate the appeals board's policies and procedures for ensuring that travel expense reimbursements are reasonable and allowable, we reviewed relevant laws, regulations, and policies, and interviewed appeals board and Employment Development staff that handle travel claims. We also reviewed Employment Development's accounting data related to travel costs from July 2005 to March 2008 and identified individuals with substantial travel expense reimbursements. We then judgmentally selected 20 of these travel expense reimbursements to test their compliance with Personnel Administration regulations and the appeals board's travel policies and procedures.

To gain an understanding of the applicable requirements governing the appeals board's procurement process for office space, we reviewed relevant laws, regulations, state administrative and contracting manuals, and policies. We also interviewed staff in the appeals board's business services unit. Of the 35 appeals board leases as of April 2008, we examined 10 executed from August 2001 through April 2008 for evidence that the appeals board followed state requirements. In addition, we determined whether the selected leases followed Real Estate Services processes by reviewing Real Estate Services requests, accompanying justifications, and executed lease agreements.

To determine whether the appeals board's procurement practices for office equipment and furniture are in accordance with applicable laws and other requirements, we tested 28 procurements. We selected our sample using Employment Development accounting data from July 2005 through March 2008 that detailed procurements by appeals board field offices and branches.

To determine whether the appeals board's use of three leased state vehicles and associated fuel cards was reasonable and allowable, we interviewed appeals board and Fleet Management staff and reviewed any applicable laws, regulations, policies and procedures, and the administrative manual. We also inspected the two vehicles located in Sacramento and San Diego and verified that the mileage stated on the travel log agreed with each vehicle's respective odometer and confirmed that the two vehicles' equipment numbers agreed with Fleet Management's records. Additionally, we reviewed certain activity reports generated by Fleet Management showing charges for the fuel cards assigned to the three state vehicles.

In addition, appeals board management alerted us that a recent survey of IT equipment did not reconcile with existing records. Consequently, we interviewed appeals board management and appropriate staff to determine the extent of this problem and the appeals board's plan for resolving these discrepancies.

The appeals board provided data that we used to perform certain analyses of the EEO complaints and grievances, office space leases, and IT equipment that it maintains in electronic applications. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the reliability of computer-processed data. However, we did not assess whether all the information we used from each of the appeals board's electronic listings was reliable for the purposes of our audit because the number of items was minimal or our use of this data was only for descriptive purposes. To gain some assurance on the data's accuracy, we compared the number of EEO complaints and grievance filings on the appeals board's listings to the filing rate reported in our survey. In addition, we obtained hard-copy documentation of 10 of the appeals board's 35 office lease agreements and compared them to information contained in the electronic listings. Because we selected the office space lease sample judgmentally, we cannot quantify how confident we are with the accuracy of the data in total; however, we found no material errors and therefore have some assurance of the data's accuracy. Furthermore, during our audit work we did not note any material errors in any of these electronic listings.

Finally, to select our sample of hires, promotions, and transfers, we used appeals board-maintained spreadsheets known as blue-slip logs, which list personnel transactions. In addition, we used reports provided by Employment Development from its accounting system for our sample of office equipment and furniture procurements and travel expense reimbursements. To ensure that we had a complete listing of all staff employed as of April 23, 2008, we used a report generated by the appeals board from the State Controller's Office's management information retrieval system. Because we used these systems only for the purpose of selecting a sample of transactions to review, we did not test the accuracy of the data in these systems. However, to ensure that the data from which we drew our samples was complete, we obtained haphazard samples of hard-copy documents and ensured that they were present in the data. From this testing we determined that the data systems were sufficiently reliable for our purposes.

# Chapter 1

## FAMILIAL RELATIONSHIPS CONTRIBUTE TO SOME EMPLOYEES' PERCEPTIONS THAT THE APPEALS BOARD'S HIRING AND PROMOTION PRACTICES ARE COMPROMISED

### Chapter Summary

The California Unemployment Insurance Appeals Board (appeals board) generally ensures that the individuals it hires, promotes, and transfers are eligible for their positions and that vacancies are advertised. However, we found that hiring managers were not always able to consider all 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 justification for selecting a particular candidate. Consequently, the appeals board is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded to all candidates.

Furthermore, 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 our survey indicated that their supervisor or manager was related to another appeals board employee, and nearly half believed that hiring and promotion practices were compromised by familial relationships or employee favoritism. Moreover, over a third 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, we believe this policy should have been submitted to the State's Office of Administrative Law for approval, as it currently is not enforceable against persons not employed by the appeals board.

The appeals board's processes for filing equal employment opportunity (EEO) complaints and grievances 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 employees have filed few grievances or EEO complaints. The low filing rate might be explained by the fact that many appeals board employees responding to our survey indicated that they would fear retaliation from their supervisors or upper management if they were to file an EEO complaint or grievance. Moreover, about one-fourth of survey respondents were not aware of how to file a grievance, and about one-tenth were not aware of

the appeals board's EEO policy. Thus, we believe the appeals board could do a better job of informing employees of these processes and explaining the protections they provide.

We also found that a former board may have violated conflict of interest laws. In accordance with audit standards that state law requires us to follow, we referred the matter to the Sacramento County District Attorney and the California Attorney General for their consideration.

### **Although the Appeals Board's Prehiring Process Identifies Eligible Candidates, Managers Did Not Consistently Document the Reasons for Their Hiring Decisions**

We determined that the appeals board's prehiring 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. Additionally, managers have not consistently documented each of the steps in the hiring process, or the basis for their decisions to hire a specific candidate, making it difficult for an outside party to understand why the appeals board selected particular candidates. Therefore, the appeals board is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded to all candidates.

#### **Civil Service Selection Processes at the California Unemployment Insurance Appeals Board**

**New hires, promotions, and interdepartmental transfers**—Used to fill vacant positions. Subject to the following phases:

- **Exam phase**—Personnel services or the State Personnel Board administers competitive examinations to establish eligibility lists.
- **Prehiring phase**—Personnel services contacts candidates on eligibility lists, advertises position, collects applications, and verifies eligibility of all candidates.
- **Hiring phase**—Managers review applications of eligible candidates and should conduct interviews to select the best candidate.

**Promotions in place and intradepartmental transfers**—Do not require advertisement or interviews; however, personnel services must verify eligibility of candidate.

Sources: State law, the State Personnel Board's *Merit Selection Manual*, and appeals board staff.

#### ***The Personnel Services Unit Ensured That Hires, Promotions, and Transfers Were Eligible and That Vacancies Were Advertised***

Our review of 27 hiring decisions<sup>3</sup> that the appeals board made for advertised positions revealed that its personnel services unit (personnel services) generally performed prehiring duties that helped ensure that only qualified candidates were forwarded to managers for hiring consideration. The appeals board is required to follow the State's civil service selection process, which is outlined in state law and regulations and in the State Personnel Board's *Merit Selection Manual*. As shown in the textbox, personnel services

<sup>3</sup> We use the terms *hire* and *hiring decision* in this report to describe instances in which the appeals board filled a position by either appointing an employee new to state service, promoting a current appeals board employee, or transferring an employee from another state agency or from another appeals board position.

or the State Personnel Board administers exams to establish eligibility lists. When the appeals board subsequently decides to fill a position, personnel services must solicit and collect applications and verify the eligibility of each candidate. According to a manager in personnel services, the unit developed its own personnel management guide (internal guidelines) and provided it to supervisors in 2004 or 2005. The manager noted that the guide was in the process of being revised. The appeals board's informal pre-hiring and hiring processes appear to fulfill civil service obligations, if followed, even though the appeals board has not formally adopted them. We also reviewed six promotions in place or intradepartmental transfers related to unadvertised positions and found that the candidates were eligible for the positions to which they were promoted or transferred.

Although personnel services determined the eligibility of applicants before sending their applications to hiring managers for consideration, managers were not always permitted to consider all of the qualified candidates due to a freeze on outside hires, known as a soft hiring freeze. The former executive director/chief administrative law judge (former executive director) stated that he instituted the freeze between May 10, 2006, and February 14, 2008, to reduce personnel costs to help cover projected budget shortfalls. He asserted that exceptions were granted for certain administrative law judge positions, which could be filled only from the outside, and other positions that personnel services and managers could not fill from within the organization. He also stated that the strategy was discussed with board members but that they never formally approved this decision because they did not vote on the matter.

Our testing revealed that the appeals board still advertised positions when required by the *Merit Selection Manual* or the Department of Personnel Administration's (Personnel Administration) *State Restriction of Appointments* manual during the soft hiring freeze, but external applicants were not always considered by hiring managers. Specifically, for three of the 22 advertised positions that we reviewed that were filled during the period of the hiring freeze, only one internal candidate's application for each position was forwarded to the hiring manager, even though external candidates had also applied for these positions. In these instances, the manager hired the internal candidate without conducting interviews. For the remaining 19 hires, it appears that hiring managers conducted interviews for all but two. Internal candidates filled 10 of these positions, while external candidates were hired to fill the other nine positions, six of which were for administrative law judge I positions that, as described previously, could not be filled internally.

***For three of the 22 advertised positions that we reviewed that were filled during the period of the hiring freeze, only one internal candidate's application for each position was forwarded to the hiring manager, even though external candidates had also applied for these positions.***

State law does not require agencies to conduct hiring interviews for all applicants, even if personnel services found all candidates to be eligible for the position. Additionally, Personnel Administration authorizes agencies to freeze the hiring of outside candidates as a budgetary strategy. Nevertheless, because the appeals board did not always consider external candidates during the soft hiring freeze, it has no assurance that it hired the most qualified individuals. In addition, the appeals board may have misled external candidates by advertising open positions and accepting outside applications without intending to give these candidates employment consideration.

***Managers Did Not Consistently Document the Basis for Their Hiring Decisions, Making It Difficult to Prove That Employment Opportunity Was Afforded in All Circumstances***

State regulations direct agencies to hire employees based on candidates' merit and fitness to perform the job, as determined by selection procedures that may include conducting interviews. The State Personnel Board's *Guidelines for Developing and Conducting Structured Hiring Interviews* (interview guidelines) identify best practices for agencies to follow when developing and conducting valid and reliable hiring interviews. For example, the interview guidelines recommend that agencies develop a structured interview format, a corresponding rating scale, and benchmark answers that describe the responses that reflect each level of performance on the rating scale. If followed, these practices would help ensure that hiring managers identify the candidate who would best fill a given position. State regulations require that agencies maintain documentation of hires for two years, but they specify only that the standard state application plus personnel or employment referral records or files must be kept. The appeals board's internal guidelines and instructions direct hiring managers to maintain applications as well as notes from interviews and reference checks for two years. The internal guidelines further suggest the use of a rating scale and evaluation sheet. However, not all supervisors or managers appear to be aware of these internal guidelines.

***For eight of the 27 advertised positions that we reviewed, the relevant manager or staff member could not provide any documentation that an interview took place.***

In fact, as shown in the Table, for eight of the 27 advertised positions that we reviewed, the relevant manager or staff member could not provide any documentation that an interview took place. Three of these eight hires occurred during the soft hiring freeze and, as noted in the previous section, only the sole internal candidate for each position was considered. Two of the eight were former board members. Of the remaining three cases, one manager said she participated in a panel interview for one of the hires but could not provide supporting documentation of the interview.

Managers responsible for the two others could not remember whether interviews took place and had no documentation of any such interviews.

**Table**  
**Hiring Process Deficiencies Related to 27 California Unemployment Insurance Appeals Board Hires for Advertised Positions**

	JOB CLASSIFICATION					TOTALS
	ADMINISTRATIVE LAW JUDGE	SUPPORT STAFF	ANALYST	SUPERVISOR	MANAGER	
<b>Total Advertised Hires</b>	<b>10</b>	<b>10</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>27</b>
No documentation explaining why selected candidate was chosen	8	8	3	1	1	21
No documentation that reference checks occurred	6	8	1	3	1	19
Managers did not keep applications of all eligible candidates	4	4	2	0	1	11
No documentation that hiring interviews occurred:	2	4	1	0	1	8
During the soft hiring freeze (May 2006-February 2008)*	0	2	1	0	0	3
Appearance that candidate may have been preselected*	0	2	0	0	0	2
Selected candidate was a former board member*	2	0	0	0	0	2
Manager stated that interview occurred*	0	0	0	0	1	1
Managers could not remember if interviews occurred*	0	2	0	0	0	2
Managers did not maintain notes from all interviews they conducted	2	2	0	0	0	4

Sources: Position action requests and other hiring documents of the California Unemployment Insurance Appeals Board (appeals board).

Note: This table summarizes the results of our testing of advertised positions that were filled by hiring employees new to state service, by promoting or transferring existing appeals board employees, or by transferring employees from other state agencies. This table does not include the results of our review of six unadvertised positions that were filled internally through promotions in place or intradepartmental transfers, as described in the previous section of our report.

\* Numbers are independent of one another and may also be a part of the other subgroup numbers.

In addition, for two of the eight hires with no documented interviews, the hiring managers' initial requests to the executive director to fill the positions already contained the names of the employees they wished to select. This may have occurred because of confusion on the part of the managers over the circumstances under which a position should be advertised and competitively filled, rather than filled without being advertised, as in the case of a promotion in place. However, in both cases, personnel services advertised these positions so that all eligible candidates would have an opportunity to compete for the jobs. Ultimately, the candidate whose name appeared on the initial request was selected for each of these positions. Although these two candidates may have been the most qualified for the positions, the fact that their names were included on the initial requests to fill the positions, combined with the absence of evidence that any interviews were conducted, leaves the appeals board vulnerable to allegations that the outcome of these hires was predetermined. In fact, one employee who responded to our survey commented, "People were/are discouraged

from putting in for promotional opportunities because when the announcement is sent everyone already usually knows who is being picked for the position.”

For the remaining 19 advertised positions that we reviewed, we did see evidence that managers conducted interviews using a set of standard questions, as recommended in the interview guidelines. However, for four of these hires we did not see evidence that hiring managers maintained interview notes for all of the candidates interviewed. In addition, we did not see evidence that these managers evaluated candidates using standard rating scales and benchmark answers for each question, as recommended by the interview guidelines. Although these hiring managers’ use of standard interview questions helped ensure that all interviewed applicants were given the same opportunity to demonstrate their fitness for these jobs, the absence of a scoring method contributed to the lack of documentation justifying why one candidate was hired over others or why that particular candidate was the most qualified.

In fact, we found that the appeals board’s files usually did not indicate why a particular candidate was hired. As shown in the Table, 21 of the 27 files we reviewed for advertised positions did not contain any documentation explaining why the successful candidates were selected for the positions. Generally, the interview panelists’ notes contained insufficient detail or clarity to reveal why the selected candidate was better suited for the position than other candidates. Furthermore, as the Table shows, files for 19 of the positions did not indicate whether reference checks had been conducted, which the *Merit Selection Manual* identifies as a selection procedure. We also noted that managers did not maintain all applications received for 11 of the 27 advertised positions we reviewed.

In contrast, we found that hiring managers in the San Diego field office sometimes maintained a copy of a detailed memo that was sent to the executive director requesting approval to offer a job to a particular candidate. These requests indicated which candidates were interviewed, who served on the interview panel, which candidate was selected, and why that candidate was selected. Internal procedures at the appeals board call for the executive director or the chair of the board to give final approval for a selected candidate before managers can offer the candidate the position. Therefore, other managers may have communicated their selections, and the corresponding reasons, to the executive director or board chair; however, we did not find documentation of these communications in the other files we reviewed. The San Diego field office’s examples of memos thoroughly documenting key aspects of the hiring process and justifying why the successful candidate

***We found that 21 of the 27 files we reviewed for advertised positions did not contain any documentation explaining why the successful candidates were selected for the positions.***

was chosen represent a best practice that the appeals board should implement at all of its locations, so that it can demonstrate that its hiring process is based on merit and fitness.

### **The Appeals Board Has Recently Sought to Establish Certain Restrictions Over the Hiring of Former Board Members**

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.

We spoke with the current presiding administrative law judge in charge of the Field Operations Branch headquarters to obtain some perspective on this hire, but he informed us that the former presiding administrative law judge who hired the board member is now deceased. The current presiding administrative law judge further stated that he did not recall any interviews being conducted for the position. We found evidence that personnel services had advertised the job and that other applications were received; however, we did not find any documentation that the appeals board conducted interviews for this position. The current presiding administrative law judge stated that the former board member was hired specifically to systematically review decisions made by other administrative law judges that had not been appealed to the board members, in compliance with the appeals board's obligations under California's Unemployment Insurance Code.

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 conflicts 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. The appeals board also has a nepotism policy, which we discuss in the next section, that it cannot fully enforce for the same reason.

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

*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.*

*Because the appeals board's two new policies affect persons outside the agency, they cannot be legally enforced against a person not presently employed by the appeals board and may subject the appeals board to litigation.*

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. Because the appeals board's two new policies affect persons outside the agency, they cannot legally be enforced against a person not presently employed by the appeals board and may thus subject the appeals board to litigation. As such, we believe that the appeals board should not enforce these policies and should submit new versions of these regulations to the Office of Administrative Law for approval so that it can fully enforce them.

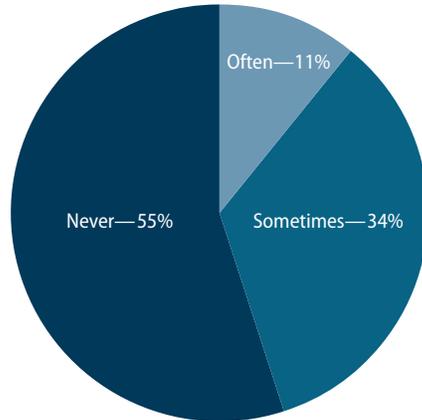
### **Many Appeals Board Employees Perceive Familial Relationships or Favoritism as Compromising Hiring Practices**

Familial relationships or alleged favoritism among employees at the appeals board appears to have a negative impact on many employees' perceptions of their workplace. For example, many employees responding to our survey reported that hiring and promotion practices were compromised by familial relationships or employee favoritism and that familial relationships created potential conflicts of interest and caused problems with supervision, security, or morale. Additionally, 25 percent of the respondents to our survey stated that their supervisor or manager was related to another employee at the appeals board.

As shown in Figure 4, 45 percent of the appeals board employees who responded to our survey believed that hiring and promotion practices were sometimes or often compromised by familial relationships or employee favoritism. Among the respondents who stated that their supervisor or manager was related to another appeals board employee, more than half believed that hiring and promotion practices were compromised.

As described in the previous section, we could not always determine whether managers followed hiring processes that would enable them to select the most eligible candidate for a certain position, because they do not consistently maintain documentation supporting their hiring decisions. Deficiencies in the appeals board's hiring practices may contribute to a perception on the part of some of its employees that hiring and promotion practices are compromised by familial relationships or employee favoritism. For example, one appeals board employee who responded to our survey stated, “Hiring and promotion practices appear to be based on family relationships, romantic relationships, or personal friendships. It completely destroys employee morale. Employees work for years with a high performance level and have no hope of

**Figure 4**  
**Frequency With Which Familial Relationships or Employee Favoritism**  
**Compromised Hiring and Promotion Practices, According to**  
**Survey Respondents**  
**(by Percentage of Respondents)**



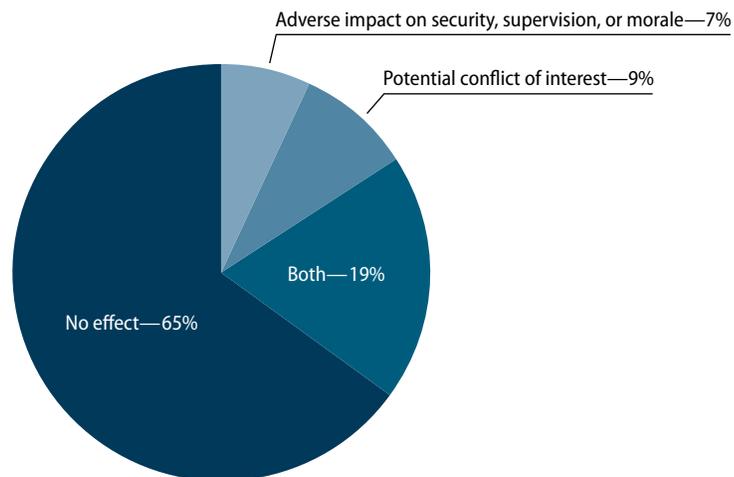
Source: California Unemployment Insurance Appeals Board employee responses to Bureau of State Audits' July 2008 survey.

ever getting a promotion. This practice has been going on so long that we are now into the second and third generation of relatives.” This employee went on to write, “Employees who have relatives in management will soon be on the fast track to promotions. They are treated much better than other employees from the beginning.” Other responding employees spoke about a general sense of unfairness or favoritism, regardless of whether an employee was related to another. For example, an employee commented, “Occasionally it was a joke when we saw a job announcement come out and we would say ‘I wonder who they want promoted now?’ . . .”

Although several responding employees expressed similar concerns about the appeals board’s hiring practices, some indicated that the appeals board tried to be fair. One employee stated, “I have worked for six state agencies in a span of more than 30 years. [The appeals board] is far and away the best managed, fairest agency of all.” Others expressed their feelings that allegations of familial relationships were either created or blown out of proportion to unfairly discredit the agency or its former management. For example, one employee stated, “There are no more familial relationships at the appeals board than any other state agency. This is a ‘problem’ manufactured by a handful of people with personal and/or political motives.”

Nevertheless, as Figure 5 illustrates, 35 percent of the respondents believed that familial relationships have a negative effect on supervision, security, or morale and/or created a potential conflict of interest. This perception varied by geographic location. Specifically, while 55 percent of respondents who said they were from the Sacramento region stated that familial relationships had adverse impacts, created a potential conflict of interest, or both, only 20 percent of respondents who said they were from Southern California and 33 percent who said they were from other Northern California regions stated that familial relationships posed these problems. We also found that these perceptions varied by employee classification. For example, only 16 percent of respondents who identified themselves as managers<sup>4</sup> and 25 percent of respondents who identified themselves as administrative law judges who responded to our survey reported that familial relationships had an adverse impact, created a potential conflict of interest, or both. In contrast, about 42 percent of respondents who identified themselves as analysts, support staff, or supervisors indicated that familial relationships created these problems. In response to a separate question, only 10 percent of all employees responding to the survey stated that familial relationships adversely affected their ability to work professionally.

**Figure 5**  
**Survey Respondents' Perceptions of the Effect of Familial Relationships on the Workplace**  
(by Percentage of Respondents)



Source: California Unemployment Insurance Appeals Board employee responses to Bureau of State Audits' July 2008 survey.

<sup>4</sup> Includes managers, presiding administrative law judges, and career executive assignments for purposes of identifying survey respondents.

Some employees indicated that not all familial relationships had adverse impacts or created a potential conflict of interest in the workplace. For example, one employee said, "I have worked with other employees who have familial relationships with upper management and other employees with no issues whatsoever. The majority of employees with familial relationships have the skills necessary for their positions and do a great job." However, as described previously, not all employees shared this perspective.

Survey results also suggest that familial relationships exist among both rank-and-file employees and supervisory and managerial employees. Although only 14 percent of the employees who responded to our survey indicated that they were related to another appeals board employee, 25 percent stated that their supervisor or manager was related to another employee. Employee perceptions that familial relationships are more prevalent among supervisory and management staff may partially explain why employees felt that hires and promotion practices were compromised. Although we also found that 51 percent of respondents identifying themselves as supervisors or managers indicated that at least one of their employees was related to another employee, only 9 percent of these respondents said they were reluctant to take disciplinary action against such an employee. One responding supervisor wrote, "In the past I have supervised up to five employees that were related to someone in some fashion and would not have a problem taking disciplinary measures against these employees should it be necessary."

To further ascertain the extent of familial relationships within the appeals board, we asked employees to voluntarily identify known relationships between employees related by blood, marriage, domestic partnership, or adoption if they believed the relationship could create an adverse impact on supervision, security, or morale or involve a potential conflict of interest. Employees responding to our survey provided the names of 94 colleagues who were allegedly related to another employee. These 94 names equate to nearly 15 percent of the 646 individuals who were employed by the appeals board as of April 2008. The most common relationship type reported was parents and children. Additionally, respondents listed several employees who were related to two or three other employees. Because we did not require respondents to answer this question, nor did we ask them to identify all known familial relationships, there could be other familial relationships within the appeals board that were not reported.

In February 2008 the board members adopted a more restrictive nepotism policy in response to concerns that were raised by an investigator looking into a personnel matter. Prior to that time, the appeals board's policy sought to prevent having employees directly supervise their relatives, a policy the former board chair stated was "woefully inadequate." The new policy, which was unanimously

*Employees responding to our survey provided the names of 94 colleagues who were allegedly related to another employee, equating to 15 percent of appeals board employees at the time of our survey.*

approved by the board members, states that the appeals board retains the right to refuse to appoint a person to a position whose relationship to another appeals board employee could potentially create an adverse impact on supervision, security, or morale or involves a potential conflict of interest. The new policy also specifies that the chair has the authority and responsibility to determine whether a potential for adverse impacts exists.

According to the acting executive director and other appeals board staff, the former board chair reviewed proposed hires for compliance with the new nepotism policy before authorizing a hiring manager to make a job offer and would sometimes speak to senior staff about the candidate if he or she was related to another employee. However, it appears that the process for determining whether a proposed hire was related to another employee varied by manager. Specifically, hiring managers at the Inland and Sacramento field offices told us that they would ask candidates during the hiring interview if they were related to another appeals board employee. In contrast, a hiring manager in San Diego told us she did not ask candidates about their relationships to other employees but could sometimes determine this through the candidates' responses to other questions. Additionally, the analyst who collected this information for the chair indicated that if the proposed candidate was already working at the appeals board, it could be "common knowledge" that he or she was related to another employee. She was otherwise unsure as to how managers made the determination that a proposed hire was related to another appeals board employee. As discussed in the previous section, 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.

### **Many Surveyed Employees Reported Fearing Retaliation if They Filed EEO Complaints or Grievances**

*According to appeals board's data, employees have filed few grievances or EEO complaints over roughly the last five years, and similarly, few survey respondents indicated that they had ever filed either an EEO complaint or grievance.*

As we discussed in the Introduction, 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, employees have filed few grievances or EEO complaints over roughly the last five years. In addition, few survey respondents indicated that they had ever filed either an EEO complaint or grievance.

The appeals board's processes for employees to file EEO complaints or grievances appear to be set up in a manner that should reduce the fear of retaliation. Employees can pursue either EEO complaints or grievances within the appeals board or appeal to outside entities,

such as Personnel Administration or the United States Equal Employment Opportunity Commission. In addition, employees are not required to initiate EEO complaints or grievances with their direct supervisors. According to the appeals board's labor relations officer, the appeals board's intranet site contains all of its policies and procedures related to EEO complaints and grievances. In addition, she asserted that supervisors give each new employee an orientation handbook that clearly describes both processes. We subsequently verified that the appeals board's intranet site and orientation handbook describe its EEO complaint process and grievance process. Furthermore, the appeals board has designated an EEO officer and a labor relations officer who manage EEO complaints and grievances, respectively. Finally, according to the appeals board's training coordinator, the appeals board periodically provides its supervisors and managers with EEO and grievance training.

The appeals board provided us with summary data for EEO complaints and grievances filed over roughly the last five years.<sup>5</sup> In total, the appeals board reported that employees filed only 10 formal employment grievances and six informal grievances. The appeals board's data also indicate that employees filed 14 formal EEO complaints, eight of which were filed with the federal Equal Employment Opportunity Commission, three with the State Department of Fair Employment and Housing, and the remaining three with the appeals board. Employees also filed seven informal EEO complaints during this period, according to the appeals board's data. The summary data indicated that six of the 24 formal grievances or EEO complaints alleged some form of retaliation. None of the remaining formal complaints appeared to be related to retaliation. Among the employees responding to our survey, only 5 percent indicated that they had ever filed a grievance. Likewise, only 2 percent of the respondents reported ever filing an EEO complaint. The number of grievances and EEO complaints may be low because of employees' fear of retaliation, or it could be indicative of some employees' lack of awareness of the complaint processes.

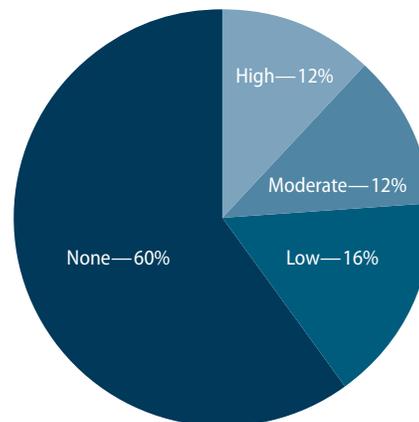
Indeed, as shown in Figure 6 on the following page, 40 percent of the employees who responded to our survey indicated that they would have some fear of retaliation from their supervisors or upper management if they were to file either an EEO complaint or grievance. We found that reported levels of this fear of retaliation varied depending on an employee's work location, position, and tenure with the organization. For example, a higher percentage of employees who said they worked in Sacramento or in other Northern California offices reported fearing retaliation than did employees

***The results of our survey showed that 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.***

<sup>5</sup> As discussed in the Introduction, we did not perform procedures to verify the completeness or accuracy of this appeals board data.

who reported working in Southern California offices. Specifically, 43 percent of the employees who said they were from Sacramento reported that they would fear retaliation if they filed a complaint, as did 48 percent of the employees who said they were from other Northern California offices, while only 34 percent of employees who said they were from Southern California offices reported this fear. Additionally, we found that employees who said they were working in the Appellate Operations Branch reported a higher level of fear than those who said they were working in other branches.

**Figure 6**  
**Level of Fear of Retaliation Among Survey Respondents if They Were to File a Grievance or Equal Employment Opportunity Complaint**  
**(by Percentage of Respondents)**



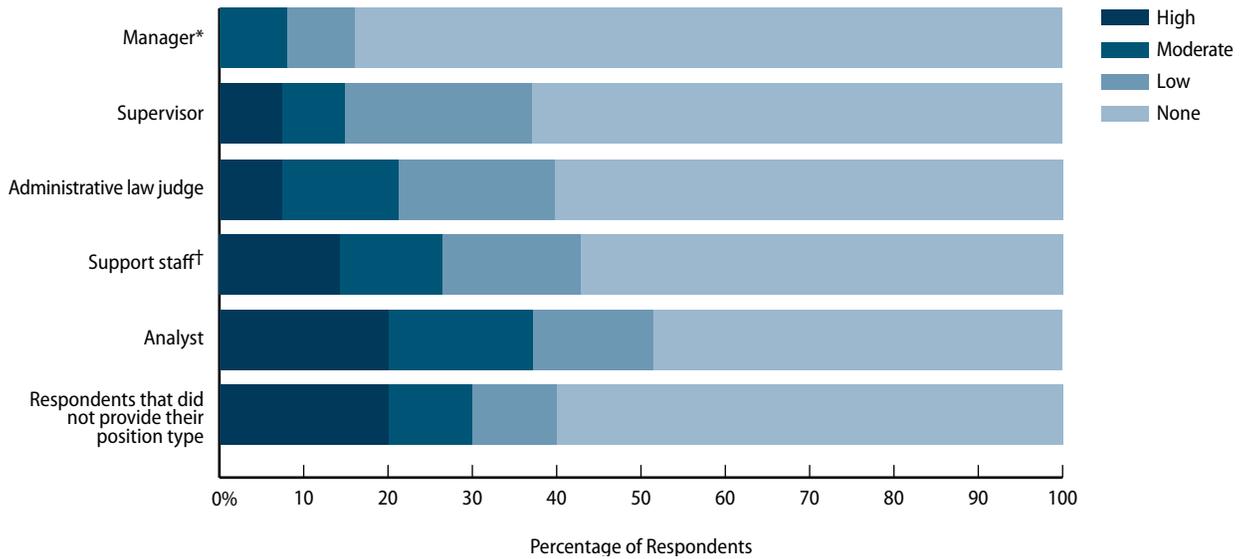
Source: California Unemployment Insurance Appeals Board employee responses to Bureau of State Audits' July 2008 survey.

As one might expect given their greater authority within the organization, managers reported the lowest level of fear of retaliation associated with filing grievances or EEO complaints, compared to employees in other positions. As shown in Figure 7, only 16 percent of respondents who indicated that they were managers reported either moderate or low levels of such fear, and none reported a high level of fear. In contrast, 51 percent of respondents identifying themselves as analysts said they would have some level of fear if they were to file an EEO complaint or grievance, with 20 percent indicating a high level of fear, the highest of any classification.

The level of fear reported also varied depending on the employee's length of service with the appeals board. For example, of the 26 employees who identified themselves as having 10 to 15 years of

service at the appeals board, 58 percent expressed some level of fear, compared to those who identified themselves as having worked there 10 years or less, of whom 38 percent reported some level of fear.

**Figure 7**  
**Reported Levels of Fear of Retaliation for Filing a Grievance or Equal Employment Opportunity Complaint (by Position Type)**



Source: California Unemployment Insurance Appeals Board employee responses to Bureau of State Audits' July 2008 survey.

\* Includes managers, presiding administrative law judges, or career executive assignments.

† Legal or other support staff (nonsupervisory).

Furthermore, two respondents indicated that employees might not trust that either the grievance process or the EEO complaint process would lead to an equitable outcome. Specifically, one employee wrote, "People who file grievances are quickly moved from our office to avoid problems. The problem remains but the innocent person is disrupted from their familiar work place and takes the consequence." Another employee wrote, "The appeals board's grievance and EEO process is a joke. They inform the other parties before the investigation starts, manipulate, hide, cover up information, and then have the audacity to come up with a decision that 'they' feel is fair to all parties."

However, only 8 percent of surveyed employees reported that a familial relationship had prevented them from filing a complaint because of fear of negative repercussions, seeming to dispel any concerns that familial relationships affected the EEO complaint process or grievance process. Notably, only 2 percent of respondents identifying themselves as administrative law judges

said that the presence of familial relationships prevented them from filing an EEO complaint or grievance because of fear of negative repercussions. However, one employee noted that he or she had never intended to file either type of complaint, regardless of whether familial relationships existed. Thus, some employees who answered “no” to this question may have meant “not applicable.” Other employees also commented that it was not familial relationships that inspired fear of retaliation, but other factors. For example, an employee wrote, “I am not sure today’s environment at [the appeals board] is healthy. [A prior] investigation that was performed left many people with a bad taste as if it were a setup and an opportunity for retaliation from people outside of our agency who had problems with [the appeals board].” A few others wrote that they feared retaliation from board members if they were to express disagreement or file a grievance, for example.

***Our survey revealed that 23 percent of survey respondents were not even aware of how to file a grievance and 11 percent were unaware of the appeals board’s EEO policy.***

A contributing factor to some employees’ fear of retaliation could be a lack of understanding of how either the grievance process or EEO complaint process functions and the protections afforded to employees who file EEO complaints or grievances. For example, our survey revealed that 23 percent of survey respondents were not even aware of how to file a grievance. Additionally, 11 percent of respondents were not aware of the appeals board’s EEO policy. As would be expected, our analysis of the survey results revealed that employees with longer work histories at the appeals board were more aware of the EEO policy than newer employees. Among employees who provided optional demographic information and indicated they had worked at the appeals board for less than five years, 16 percent were not aware of the EEO policy, compared with only 5 percent of employees who provided optional demographic information and identified themselves as having worked at the appeals board for more than 20 years. Consequently, opportunities exist for the appeals board to mitigate its employees’ fear of retaliation for filing complaints by thoroughly explaining the EEO complaint and grievance processes, and by having board members and senior staff express their commitment to following these processes diligently and protecting employees from any retaliation.

Finally, employees who fear retaliation from their supervisor or upper management may have chosen not to respond to our survey, meaning that their numbers could be understated in our results. We required each respondent to provide his or her official appeals board e-mail address so that we could ensure that only appeals board employees responded to our survey and could identify and remove any duplicate responses. Although we told employees of our intention to report only aggregate survey data in this report, some employees may have chosen not to respond to our survey because they were concerned that their responses would become public. In fact, one presiding administrative law judge said at a July 2008 board meeting that some

employees did not want to provide any written comments or chose not to respond to our survey at all because they feared retaliation if their responses became known.

### **A Former Board May Have Violated Conflict of Interest Laws**

According to our legal counsel, a former board may have violated state conflict of interest laws when it approved a contract that a former board member had a financial interest in. California Government Code, Section 1090 (Section 1090), generally prohibits entities such as the board and its members from making contracts in which a member of the board has a financial interest, with certain exceptions. Courts say that a contract made in violation of the prohibition in Section 1090 is void, and that the financially interested board member must return any payments, plus interest, received under the void contract. Generally, any party can void the contract except the financially interested person. State law also specifies that willfully making a contract in violation of Section 1090 is a crime. Another state conflict of interest law, the Political Reform Act of 1974, prohibits a public official from making, participating in, or in any way attempting to influence a governmental decision in which the public official has a financial interest. We believe the facts warrant an investigation of whether a conflict of interest violation of Section 1090 or any other state conflict of interest law occurred.

Under audit standards, we must refer such possible violations to appropriate authorities. Accordingly, we have referred this matter to the Sacramento County District Attorney and the California Attorney General for their consideration.

### **Recommendations**

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, the appeals board should 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, personnel services 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.

The appeals board should 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.

To ensure that employees understand their right to file either an EEO complaint or grievance, and to reduce any associated fear of retaliation, the appeals board should do the following:

- 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.
- Update its employee handbook to better emphasize these processes and procedures.
- Consider conducting training in this area on a periodic basis.

## Chapter 2

### WEAKNESSES IN CERTAIN INTERNAL CONTROLS RESULT IN QUESTIONABLE USES OF STATE RESOURCES

#### Chapter Summary

To carry out its mission, the California Unemployment Insurance Appeals Board (appeals board) incurs expenses that it must pay in accordance with various state laws and regulations designed to ensure that the use of state resources is necessary and appropriate. Our review focused on travel-related expenses, including the use of state-owned vehicles and fuel charge cards, and expenses the appeals board incurred to lease, furnish, and equip its office spaces. Although we found that the appeals board adhered to many state requirements in procuring and paying for these items, improvements are needed.

We found that certain weaknesses in its controls over travel expenses prevented the appeals board from demonstrating the business purpose of some travel expenses and resulted in some questionable costs that may need to be recovered. In particular, we found that the former chief administrative law judge/executive director (former executive director) was reimbursed for travel expenses that did not always appear to be in the State's best interest. For example, 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. In addition, we found that the appeals board may have inappropriately reimbursed the former executive director for expenses that appear to be associated with travel between his home and headquarters.

We did find that the appeals board appropriately arranged for the lease of office space by negotiating lease agreements through the Department of General Services. However, it expends approximately \$5,000 per month for parking spaces without having established any procedures to ensure that these spaces are used only for appropriate purposes. We also noted that the appeals board's purchases of office furniture and equipment complied with applicable laws and other requirements, and it involved the Prison Industry Authority or ensured a competitive process when procuring these items. In addition, the appeals board's use of three leased state vehicles and associated fuel cards appears

reasonable and allowable. Finally, we found that the appeals board currently cannot locate all of the information technology and communications equipment that its records reflect.

### **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. Furthermore, we found that the former executive director was reimbursed for travel expenses that did not always appear to be in the State's best interest. Finally, despite learning in February 2007 that an employee received unauthorized travel payments, the appeals board has failed to implement new travel policies and procedures that would mitigate the risk of making similar unauthorized travel payments.

*The former executive director was reimbursed for travel expenses that did not always appear to be in the State's best interest.*

State regulations generally authorize each agency to determine the necessity and method of travel on official state business, to ensure that the travel is in the State's best interest. Additionally, state employees must specify on their travel claims the purpose of the trip, and the approving officer must ascertain that the travel expenses were necessary and reasonable. Employee travel expense reimbursements must be made in accordance with the travel regulations set by the Department of Personnel Administration (Personnel Administration). In the case of certain employees, the signature of the officer approving the travel and payment is certification that the approving party has authorized the travel, that the travel expenses were incurred in order to conduct official state business, and that the items claimed are appropriate and in keeping with Personnel Administration regulations.

The appeals board has established a travel manual stating that employees will be reimbursed for travel expenses in accordance with state travel laws and any applicable bargaining unit agreements. However, the appeals board's travel manual does not contain adequate controls over travel expense reimbursements. For example, its travel manual does not require supervisors to preapprove employees' travel plans to ensure that they are in the best interest of the State. In addition, the travel manual does not

explicitly require supervisors to subsequently review an employee's travel claim to verify its validity and accuracy, and to ensure that the employee's travel expenses were incurred as a result of conducting official state business.

Consequently, 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, the supporting documents did not adequately state the business purpose of each trip. Specifically, we found that the business purpose of the travel expense was not sufficiently documented for \$8,942, or 24.7 percent, of the \$36,244 in travel expense payments we reviewed. For example, the special assistant to the chair received a travel expense payment of \$2,857 for rental car and gas charges. It appears that the executive director or his designee approved this payment, even though the underlying travel claim did not include a description of the business purpose of these charges. When employees do not adequately document the business purpose of expenses on their travel claims, their supervisors are less able to ensure that the claimed expenses were in the best interest of the State. We also noted that when the Employment Development Department (Employment Development) processed the underlying travel claims, it reduced five of the 20 travel expense reimbursements by a combined amount of \$256 because it deemed those charges to be unallowable.

In response to our concerns, the deputy director of the Administrative Services Branch (administrative director) acknowledged that the appeals board should update its travel manual to include additional controls over the travel reimbursement process. Specifically, she agreed that the travel manual should be updated to require preapproval of employees' travel plans and to clarify the supervisory approval process to ensure that travel expense claims are justified and valid. The administrative director expects to incorporate these changes into the existing travel manual by November 2008.

***Certain Travel Expenses Claimed by the Former Executive Director Appear to Be Unnecessary and Wasteful***

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. First, we noticed that the business purpose of each of the trips for which he claimed reimbursement was not always adequately documented. More importantly, we also noted that all three of his travel payments included reimbursements for lodging expenses that exceeded the State's maximum allowed lodging rates.

***The business purpose of the travel expense was not sufficiently documented for seven of 20 travel expense payments we reviewed, totaling \$8,942.***

The appeals board's travel manual incorporates the maximum lodging rates that state employees can claim reimbursement for, as established by Personnel Administration regulations and collective bargaining agreements. For example, state employees who incur overnight lodging expenses while on official state business can generally claim reimbursement of up to \$84 per night, plus tax, with a receipt. The lodging rates are higher in certain designated high-cost geographic areas such as Los Angeles and San Diego, where employees can be reimbursed for nightly lodging rates up to \$110. In addition, in April 2006, Personnel Administration delegated authority to departments to internally approve excess lodging rate requests of up to \$140 per night for regular travel. However, employees are required to make a good faith effort to obtain lodging at or below the state rate. A "good faith" effort is defined as making contact with at least three moderately priced lodging establishments. Finally, employees must obtain approval from their department and Personnel Administration at least 10 days prior to a trip taking place for lodging rates for regular travel that exceed \$140 per night.

We noted eight instances in which the former executive director was reimbursed for lodging costs that exceeded the State's allowed rates. In each of these cases, an appeals board representative approved his excess lodging rate request. For example, in one case a former board chair approved the executive director's request to stay at the Omni Hotel in San Diego at a cost of \$259 for the first night. In this case, Personnel Administration also approved the former executive director's request for the excess lodging rate; however, this approval was not obtained until the day before the hotel stay. In another example, the chief counsel approved the executive director's request to stay at the Ritz-Carlton hotel in Pasadena for one night at a rate of \$160. The standard maximum state rate for San Diego and Los Angeles is \$110, as described earlier. The executive director's request for an excess lodging rate at the Ritz-Carlton indicated that the reason for the higher rate was that no alternative lodging was available. He further indicated that he had attempted to obtain lodging at two Hilton hotels and one Sheraton hotel, but they were either sold out or were not offering the state rate because they were more than 85 percent occupied. Nevertheless, we are not convinced that contacting these hotels constitutes a good faith effort to obtain lodging with a "moderately priced" establishment. Furthermore, when the former executive director subsequently sent his travel claim to Employment Development for payment, it reduced his hotel reimbursement to \$140 because he had not received prior approval from Personnel Administration for the higher lodging rate.

In a third instance, the administrative director approved the former executive director's request to stay at a hotel in Sacramento for one night at a rate of \$169, although the standard maximum state rate for Sacramento is \$84 a night. In this case, the former executive director did obtain approval from Personnel Administration, although he did not obtain this approval 10 days before travel, as required. We question whether these lodging costs were necessary and in the best interest of the State.

In the other five cases, an appeals board representative approved the former executive director's excess lodging rate requests. In these cases, it was not necessary to obtain Personnel Administration's approval because the requested lodging rates were not greater than \$140, and thus were within the appeals board's delegated authority.

The *State Administrative Manual* (administrative manual) specifies that employees traveling on official business should use the most economical method of transportation. However, we found that the former executive director incurred commercial rental car charges that were unnecessary. For example, on one of his travel claims he indicated that on Sunday, November 5, 2006, he drove his personal car 364 miles on a day trip to the Fresno field office at a cost to the State of \$162. On the same day, his rental agreement indicates that he picked up a rental car at the Oakland airport at 2:49 p.m. His travel itinerary shows that he then used the rental car on Monday and Tuesday for day trips from Oakland to Sacramento. On Wednesday he parked the vehicle at the Oakland airport while he flew to Southern California for a meeting at the Orange County field office. Upon his return from Southern California the same day, he picked the car up and paid \$22 for parking at the airport. The following morning he returned the rental car to the vendor at the Oakland airport. We noted a similar occurrence in which the former executive director parked a rental car at the Oakland airport while he flew to Southern California for one day and then returned the vehicle to the rental car vendor at the Oakland airport the following day. We believe that the rental car expenses and parking charges that the State incurred while the executive director was not using the rental cars for state business were unnecessary and wasteful. In total, these unnecessary costs amounted to approximately \$148.

Furthermore, we also 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. We reviewed three of the former executive director's travel expense reimbursements, totaling \$6,311,<sup>6</sup> and

*The appeals board may have inappropriately reimbursed the former executive director \$2,233 for expenses that appear to be associated with commuting between his home and headquarters.*

<sup>6</sup> According to Employment Development's data, the former executive director was reimbursed approximately \$40,000 for state travel expenses from July 2005 to March 2008.

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.

Regulations established by Personnel Administration require that a headquarters be designated for each state officer and employee. The headquarters is generally defined by Personnel Administration as the place where the officer or employee spends the largest portion of his or her regular working hours or the place to which he or she returns on completion of special assignments. In addition, Personnel Administration's travel regulations generally prohibit state agencies from reimbursing an employee for expenses arising from travel between the employee's home and headquarters. 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.

In our efforts to follow up on the true location of the former executive director's headquarters, we found that the appeal board's chief counsel, who is located in Sacramento, approved all of the former executive director's travel claims that we reviewed. The chief counsel stated that he was under the belief that a former chair or the board had approved the former executive director's designation of Oakland as his headquarters, thereby enabling him to claim travel expenses between Oakland and Sacramento. He was not aware of any documentation concerning this arrangement. However, he stated that he was under the impression that the former executive director's personnel file documented his designation of the Oakland office as his headquarters, although he did not verify this by reviewing any such documentation. He also stated that it was his understanding that the former executive director maintained an office at the Oakland field office, but he had never seen the office. Finally, he stated that when approving the former executive director's travel, he looked for support that the trips had occurred, but he did not question the justification or purpose of the travel. Rather, he relied on the former executive director's secretary to properly complete the former executive director's travel expense claims and requests for excess lodging rate approval.

***The appeals board's chief counsel stated that when approving the former executive director's travel, he looked for support that the trips had occurred, but he did not question the justification or purpose of the travel.***

We also talked to the former executive director about his designation of the Oakland field office as his headquarters. He stated that when he was assigned to Sacramento to work as assistant chief administrative law judge, the chair of the board at

the time told him to use Oakland as his headquarters. When he was later asked to take the position of chief administrative law judge, he told us that the executive director at the time permitted him to keep his headquarters as Oakland and to use rental cars and/or claim mileage, hotel expense, and per diem (meals and incidentals) when working in Sacramento. When the board subsequently asked him to assume the additional responsibilities of executive director in November 2000, the chair at that time allowed him to continue this arrangement. He also stated that it was his understanding that Personnel Administration rules allowed the appointing power (in this case, the board members) to designate an excluded employee's headquarters, which is the location in which the employee spends more than 50 percent of his or her time. He further stated that he had tried to work in Sacramento on Mondays and Tuesdays and typically spent the other three days at various field offices, including Oakland or San Francisco, or worked from his home. However, he later clarified that oftentimes he worked only one day a week in Sacramento, and that there were weeks when he worked solely in the field. He said that he did not spend 50 percent or more of his time at any one location, so the prior board approved Oakland as his headquarters. Finally, he stated that he probably would not have accepted the position if he had been required to work from Sacramento full-time. When we contacted the chair at the time this employee was made executive director, she confirmed that she had allowed the former executive director to continue to designate Oakland as his headquarters. She also stated that she subsequently transferred the authority to approve the former executive director's travel claims to the chief counsel, since he was more experienced with the travel rules than she was.

When we discussed this issue with the former chair of the board, who served in that capacity from August 2007 through July 2008, he said that he went through several of the former executive director's travel claims and felt that the expenses were generally not in the best interest of the State. Rather, the expenses appeared to him to have been generally incurred in the interest of the former executive director. He also said that he feels the board chair or vice chair should have approved the former executive director's travel claims and that more scrutiny should have been applied in their review. In addition, he indicated that he had no firsthand knowledge of the former executive director reporting to the Oakland office as his regular place of work, and he said that he called the presiding administrative law judge of the Oakland field office, who confirmed that the former executive director did not have an office in that facility. The former executive director did have a designated office in Sacramento. The former chair subsequently met with the former executive director in January 2008 and told him that his headquarters designation would be the Sacramento

***The former chair stated that after he reviewed several of the former executive director's travel claims, he felt that the expenses were generally not in the best interest of the State.***

office. He further told the former executive director that he would be preapproving any of the former executive director's future travel plans and also would be approving his travel claims.

Since 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. Prior to his departure from the appeals board on July 31, 2008, the most recent chair said that the board would seek reimbursement from the former executive director for his travel expenses between Oakland and Sacramento.

We also found that the appeals board's travel manual does not provide guidance to employees and supervisors on how to establish a headquarters designation. The administrative director acknowledged that the travel manual should be revised to clarify this process. In addition, she stated that personnel services will try to develop a form for individuals to complete upon appointment to the appeals board that would designate their headquarters location. However, she also asserted that the appeals board relies on Employment Development to verify the appropriateness of an employee's headquarters as claimed on their travel claims.

When we asked Employment Development's travel supervisor about this issue, she stated that travel auditors verify the claimed headquarters by comparing the information on the travel claim to employee payroll information containing the employee's location. She also said that when an employee's stated headquarters on a travel claim does not agree with the employee's payroll information, the travel auditors confirm the employee's headquarters by contacting the approving authority or the traveler. However, the travel supervisor indicated that the appeals board's supervisors and managers are responsible for performing the first-level audit and should scrutinize the travel claim, including the stated headquarters. Because the appeals board's travel manual does not currently contain directions for designating an employee's headquarters and does not require supervisors and managers to assess the accuracy of employees' designations of their headquarters on travel claims, it is not adequately ensuring that employees are claiming travel expense reimbursements only when they are working away from their actual headquarters location.

***The appeals board does not require supervisors and managers to assess the accuracy of employees' designations of their headquarters on travel claims, and thus is not adequately ensuring that employees are only reimbursed for travel expenses when working away from their actual headquarters location.***

***The Appeals Board Failed to Strengthen Its Travel Controls After an Employee Exploited a Weakness***

Despite becoming aware of weaknesses in its controls related to the proper approval of travel expenses, the appeals board failed to modify its travel policies and procedures. Specifically, in February 2007, a representative from Employment Development's travel unit questioned the appeals board about certain travel expenses of one of its employees. The appeals board researched the issue and determined that the employee had not submitted documentation for these travel expenses to anyone at the appeals board for approval. Instead, the employee had, over a period of time, submitted numerous travel expense documents directly to Employment Development for payment. Despite being aware of this situation since February 2007, the appeals board has not yet modified its travel policies and procedures to ensure that this does not happen in the future.

The deputy director of the appeals board's Planning and Program Management branch, who has since retired, stated that Employment Development is planning to implement a new automated travel expense reimbursement system in January 2009. Among other features, this Web-based system will electronically route travel claims to appropriate individuals for approval. She believes that this is the ultimate solution to the weakness discussed above. However, the administrative director indicated that in the interim, the appeals board plans to enhance controls over travel payments by routing travel advances and claim checks to a central person who will verify that the employee should be receiving the travel payment.

**Although the Appeals Board Appears to Comply With State Leasing and Purchasing Requirements, It Needs to Adopt Controls Over Its Paid Parking Spaces**

We found that the appeals board appears to comply with state leasing and purchasing requirements when it acquires office space, furniture, and equipment. In particular, the lease agreements it entered into to acquire office space between August 2001 and April 2008 were appropriately executed through the Department of General Services' Real Estate Services Division (Real Estate Services). However, although the appeals board spends approximately \$5,000 per month for parking spaces, it has not established any procedures to ensure that these spaces are used only for appropriate purposes. Finally, the appeals board's use of three leased state vehicles and associated fuel cards appears reasonable and allowable.

*Despite being aware of this situation since February 2007, the appeals board has not yet modified its travel policies and procedures to ensure that this does not happen in the future.*

***The Appeals Board Appears to Adhere to the State Administrative Manual When Leasing Office Space but Needs to Adopt Controls Over Its Paid Parking Spaces***

The appeals board appears to comply with administrative manual requirements when leasing office space. As described in the Introduction, Real Estate Services oversees the State's acquisition of leased office space. State agencies submit a request accompanied by a justification to Real Estate Services for additional space. According to the appeals board's data, its office lease expense totals \$8.4 million annually in accordance with 35 active office lease agreements as of April 2008.<sup>7</sup> Our review of 10 lease agreements that the appeals board entered into between August 2001 and April 2008 noted that the appeals board initiated the lease process by providing Real Estate Services a lease request that included supporting justification. We also noted that the leases were all properly finalized, as evidenced by executed lease agreements.

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 staff who are attending hearings, and claimants. However, as we note in a later discussion, 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.

***The appeals board has little assurance that the paid parking spaces that it provides, at a cost of approximately \$5,000 per month, are used only for appropriate purposes.***

State regulations, appeals board policies, and the administrative manual provide that only employees using state-owned or privately owned vehicles on official state business may be reimbursed for certain parking charges when incurred at their designated headquarters, and bargaining unit agreements require compliance with these regulations. For example, employees could receive parking expense reimbursement for parking at their headquarters if they were driving a state-owned vehicle; were called back to

<sup>7</sup> As discussed in the Introduction, we did not perform procedures to verify the completeness or accuracy of this appeals board data.

work, necessitating more than one trip to their headquarters on a normal work day; or were scheduled to work on a normal day off. The acting executive director recognizes the need to adopt procedures that will ensure that the appeals board's paid parking spaces are used only for appropriate purposes, and she asserted that she plans to work with the board members and staff to develop and implement such procedures.

***The Appeals Board Appears to Adhere to Applicable State Requirements When Purchasing Office Furniture and Equipment***

We found that the appeals board's purchases of office equipment complied with applicable laws and other requirements, as described in the Introduction. The State's procurement methods for office equipment generally require that state agencies buy items through the Prison Industry Authority (Prison Industry), leveraged purchase agreements, or competitive bids. We reviewed 28 procurements, totaling approximately \$84,000, including purchases of furniture, such as chairs and a file cabinet, and office equipment, such as a fax machine and a copier. Of the 28 procurements, 14 were made through Prison Industry, nine were competitively bid, and five were obtained through leveraged purchase agreements. For furniture purchases, the appeals board received the required waiver from Prison Industry when it could not provide the items. When purchasing through a competitive bidding process, the appeals board obtained at least two price quotes, when required. Finally, we found that the appeals board sometimes purchased its office electronics, such as a copy machine, through leveraged purchase agreements.

***The Appeals Board's Use of Leased State Vehicles and Associated Fuel Cards Appears Reasonable and Allowable***

The appeals board's use of three state vehicles under long-term lease from the Department of General Services' Office of Fleet and Asset Management (Fleet Management) appears to be reasonable and allowable. Specifically, the acting executive director stated that the three vehicles are available for employees' use for the following reasons: outside mail runs at the Sacramento location, travel to off-site hearing facilities by administrative law judges from the San Diego location, and business-related travel by staff of the information technology services unit in Southern California. We found that appeals board employees completed monthly travel logs for each of the three leased vehicles and provided the information to Fleet Management, as required.

*We also found that the appeals board recently reduced the number of vehicles that it had been leasing from 10 to three.*

We also found that there was a significant reduction in the number of vehicles the appeals board leases, as it was leasing 10 vehicles as recently as August 2007. According to the administrative director, appeals board analysts download invoices for the leased state vehicles from the Department of General Services' Web site and forward these invoices to the responsible manager for his or her review and approval of the charges. This control improves the appeals board's ability to ensure that its use of the vehicles is justified and in the State's best interest.

As described further in the Introduction, Fleet Management also provides fuel cards for agencies to use with each leased state vehicle. In addition, Fleet Management receives, and pays, the invoices associated with these fuel cards and monitors the charges for any inappropriate use. Fleet Management follows up with agencies as needed to resolve any potential misuse and will charge back agencies for any unauthorized purchases. In such cases, it is the agency's responsibility to recover the inappropriate charges from the driver.

We talked to the Fleet Management contract administrator who is responsible for monitoring fuel card usage for all cars owned by the Department of General Services. She reviewed the activity reports for the fuel cards assigned to the three vehicles currently leased by the appeals board, for the period July 2007 through April 2008, and stated that she did not see any activity that would meet the criteria for inclusion on an exception report or that generated any concern about possible abuse. In addition, she indicated that she had no record of any correspondence from her office to the appeals board concerning the use of the fuel cards for the vehicles leased to the appeals board. Therefore, it appears that the appeals board's use of these fuel cards is reasonable and allowable.

### **The Appeals Board Does Not Adequately Account for Its Information Technology and Communications Equipment**

The appeals board cannot currently account for all of its information technology and communications equipment (IT equipment). According to Employment Development'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 personal 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 managements records indicated were located at employee residences.<sup>8</sup> 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.

The appeals board's asset management analyst is responsible for conducting physical inventories of all state property, including IT equipment, belonging to the appeals board. She stated that she is currently in the process of conducting these inventories, and anticipates completing the entire inventory by June 30, 2009.

The appeals board's Information Technology Services (IT unit) is responsible for managing and tracking its computers and peripheral equipment such as printers and monitors. The chief information officer stated during our interview that he believes IT equipment should be assigned to the IT unit, and that the asset tracking process should be changed from a manual paper process to an automated electronic process, which would eliminate some redundant paperwork and duplication of inventory records. However, according to the acting executive director, the appeals board will consider whether it will implement this proposal or instead consider other alternatives to address its inventory discrepancies.

## Recommendations

To ensure that employees are reimbursed only for appropriate and authorized travel expenses, the appeals board should 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.

<sup>8</sup> As discussed in the Introduction, we did not perform procedures to verify the completeness or accuracy of this appeals board data.

In addition, the appeals board should 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.

The appeals board should 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.

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

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of the report.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: November 20, 2008

Staff: Michael Tilden, CPA, Project Manager  
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Katie Tully

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

## Appendix

### **SURVEY RESPONSES FROM EMPLOYEES AT THE CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**

Table A on the following pages presents certain responses to a survey we distributed to employees working at the California Unemployment Insurance Appeals Board (appeals board) as of April 23, 2008. The survey asked questions regarding the processes for filing equal employment opportunity (EEO) complaints and grievances, as well as employees' perceptions of familial relationships among the appeals board staff. To distribute the survey, the appeals board's Information Technology Services provided a listing of all employees' e-mail addresses. We analyzed the list provided to capture only employees working at the appeals board as of April 23, 2008.

Of the 646 employees surveyed, we received 399 responses, but excluded a total of 44. Some of these responses were excluded because the employee did not complete all of the required survey questions, and some were from e-mail addresses to which we did not distribute the survey. Further, because some employees responded to our survey more than once, we included only the first survey response, unless they requested that we use a subsequent response. We analyzed the remaining 355 responses, which represented a response rate of 55 percent of the employees surveyed. We compiled and analyzed the results that are presented here. As part of our survey, we provided employees with the option of providing additional information about the region in which they worked, their employee classification, the branch in which they worked, and the length of time they have been employed by the appeals board.

**Table A**  
Survey Results Related to Grievances, Equal Employment Opportunity Complaints, and Familial Relationships

		PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES	
Are you aware of the California Unemployment Insurance Appeals Board's (appeals board) process for employees to file a grievance?		77%	23%	
Are you aware of the appeals board's equal employment opportunity (EEO) policy?		89%	11%	
		NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS	
Have you ever filed a grievance or EEO complaint with the appeals board?				
COMPLAINTS	Grievance	15	4%	
	EEO complaint	4	1%	
	Both	3	1%	
	Neither	333	94%	
	Are you satisfied with the grievance process at the appeals board?*			
	Not satisfied	10	3%	
	Somewhat satisfied	4	1%	
	Completely satisfied	3	1%	
	Are you satisfied with the EEO complaint process at the appeals board?*	0 <sup>†</sup>	0 <sup>†</sup>	
	Do you fear retaliation from your supervisor or upper management if you file a grievance or EEO complaint?			
High	41	12%		
Moderate	44	12%		
Low	58	16%		
None	212	60%		
		PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES	
Are you related to anyone else who works for the appeals board?		14%	86%	
Is your immediate supervisor or manager related to another employee who works at the appeals board?		25%	75%	
If you are a supervisor or manager, are any of your employees related to another person who works at the appeals board?		51%	49%	
Are familial relationships adversely impacting your ability to work professionally?		10%	90%	
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to <i>an appeals board employee</i> . <sup>‡</sup>		72 respondents	20% responded	
Has the presence of familial relationships prevented you from filing a grievance or EEO complaint because you feared negative repercussions?		8%	92%	
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to <i>an appeals board employee</i> . <sup>‡</sup>		45 respondents	13% responded	
FAMILIAL RELATIONSHIPS	If you are a supervisor or manager, have you ever been reluctant to take disciplinary action against an employee because of his or her familial relationship to another employee of the appeals board?	9%	91%	
			NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
	Do familial relationships among current appeals board employees create either of the following?			
	Adverse impact on supervision, security, or morale	23	7%	
	Potential conflict of interest	31	9%	
	Both	69	19%	
	Neither	232	65%	
	Are the appeals board's hiring and promotion practices compromised by familial relationships or employee favoritism?			
	Never	196	55%	
	Sometimes	119	34%	
Often	40	11%		
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to <i>an appeals board employee</i> . <sup>‡</sup>		146	41%	
We also asked respondents to identify up to 10 known relationships between appeals board employees related by blood, marriage, domestic partnership, or adoption and to only identify relationships that have the potential to create an adverse impact on supervision, security, or morale, or involve a potential conflict of interest. <sup>‡</sup>		93 <sup>§</sup>	26%	

	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
How long have you worked for the appeals board?		
Less than five years	64	18%
5 - 10 years	87	25%
10 - 15 years	26	7%
15 - 20 years	110	31%
More than 20 years	55	15%
Declined to answer	13	4%
Select the region where your office is located		
Sacramento	119	34%
Southern California <sup>II</sup>	143	40%
Other Northern California <sup>#</sup>	79	22%
Declined to answer	14	4%
In which branch do you work?		
Executive Office, Administration, IT, or Planning and Program Management	73	21%
Field Operations, including Regional Support Unit	210	59%
Appellate Operations	53	15%
Declined to answer	19	5%
Please select your role		
Legal or other support staff (nonsupervisory)	140	39%
Analyst	35	10%
Administrative law judge (ALJ)	108	30%
Supervisor	27	8%
Manager, Presiding ALJ, or Career Executive Assignment	25	7%
Declined to answer	20	6%

DEMOGRAPHIC INFORMATION<sup>†</sup>

Sources: Appeals board employee responses to the Bureau of State Audits' July 2008 survey distributed to 646 appeals board employees as of April 2008.

\* Additional optional questions for respondents who indicated *grievance, EEO complaint, or both* to "Have you ever filed a grievance or EEO complaint with the appeals board?"

† Respondents did not provide any responses to this question.

‡ Optional survey questions.

§ Identified one or more relationships.

II Inglewood, Inland, Los Angeles, Orange County, Oxnard, Pasadena, and San Diego field offices.

# Fresno, Oakland, San Francisco, and San Jose field offices.

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*(Agency response provided as text only.)*

California Labor and Workforce Development Agency  
801 K Street, Suite 2101  
Sacramento, California 95814

November 6, 2008

Elaine M. Howle  
State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

RE: Audit #2008-103 California Unemployment Insurance Appeals Board: Its Weak Policies and Practices Could Undermine Employment Opportunity and Lead to the Misuse of State Resources

Dear Ms. Howle,

The Labor and Workforce Development Agency has received the Bureau of State Audits' report on California Unemployment Insurance Appeals Board and expresses its appreciation for the Bureau's diligent work in undertaking the difficult task of evaluating the Board's management practices and their impact on state employees.

The Bureau's report confirms the serious issues that had been raised by current and former members of the Board earlier this year, prompting this audit. Of great concern is the Bureau's finding that 45 percent of the employees responding to the Bureau's surveys believed that hiring and promotion practices were sometimes or often compromised by familial relationships or favoritism, and that over one third perceived systemic nepotistic hiring practices having a negative effect on their workplace. The report has identified practices that are antithetical to the merit principal of state service, and which foster a negative work environment that impairs the Board's ability to efficiently discharge its public responsibilities. The Labor and Workforce Development Agency shares the Bureau's concerns over the issues well-documented in the report, and fully supports measures the Board has taken and will continue to take, in effort to remedy these systemic issues for the ultimate benefit of both the state's employees and the public it serves.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,

(Signed by: Doug Hoffner)

Doug Hoffner  
Acting Secretary

California Unemployment Insurance Appeals Board  
Office of the Acting Executive Director  
2400 Venture Oaks Way, Suite 300  
Sacramento, CA 94244-2750

November 6, 2008

Elaine M. Howle, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

**Re: BSA Report**

Dear Ms. Howle:

Enclosed is CUIAB's response to the Bureau of State Audit's recommendations contained in the audit report. As discussed, the Labor and Workforce Development Agency is submitting our written responses on our behalf.

Sincerely,

(Signed by: Jehan Flagg)

JEHAN FLAGG  
Acting Executive Director

Enclosure:

CUIAB management has reviewed the following BSA recommendations and agrees that they reflect reasonable suggestions for addressing the issues raised by the audit requested by the Board. As further explained below, CUIAB has already begun actions to implement specific recommendations. As others may require formal action by CUIAB, the entire report will be presented to the Board for its review and action at the earliest possible opportunity.

#### **BSA Recommendations: Summary Portion**

**Recommendation:** The appeals board can not enforce its recently adopted nepotism policy against persons who are not currently employed by the appeals board, as it is currently unenforceable. Because this policy affects persons outside of the organization, the appeals board should submit a new version of this regulation to the Office of Administrative Law (OAL) for approval.

**Response:** We agree with this recommendation and CUIAB will apply its current nepotism policy only to persons employed by CUIAB. Also, CUIAB will immediately address the possibility of promulgating a nepotism regulation under the Administrative Procedures Act process that would extend the policy to persons not currently employed by CUIAB.

#### **BSA Recommendations for Chapter 1: Familial Relationships Contribute to Some Employees' Perceptions That the Appeals Board's Hiring and Promotion Practices are Compromised**

**Recommendation:** The appeals board should not enforce its recently adopted policy which seeks to establish restrictions over the hiring of former board members because according to BSA's legal counsel, it is a regulation that should have been submitted to the State's Office of Administrative Law (OAL) for approval.

**Response:** We agree with this recommendation and CUIAB will immediately explore promulgation of a regulation under the Administrative Procedures Act process to mitigate the potential conflicts of interest inherent in hiring former board members as CUIAB civil service employees.

**Recommendation:** 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, 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 individual 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, personnel services 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.

**Response:** We agree with this recommendation. CUIAB is already taking measures to ensure that managers and supervisors are familiar with the Board's updated hiring guide. The guide's procedures include an interview format, rating scale and benchmark answers. The guide instructs that the recruitment file shall be maintained for two years.

Additionally, CUIAB has created and begun utilizing a form called *Request for Hire* in which the hiring office must get the appropriate approvals and provide on the form the following information: How many applications were received for the position; how many applicants were interviewed; if the Official Personnel File has been reviewed; were references contacted; if the employee is related to a CUIAB employee; and an explanation for why the proposed hire is the most qualified candidate. This form will be maintained with the position action package in Personnel Services for five years.

**Recommendation:** 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.

**Response:** We agree with this recommendation that before enacting a soft hiring freeze for budget reasons, we should: a) consider whether the projected budgetary advantages outweigh the risk of possibly not hiring the most qualified candidates; and b) present to the Board Members this option for their consideration since it has an impact on the budget, and the Board Members have the responsibility for adopting and approving the budget.

**Recommendation:** To ensure employees understand their right to file an EEO complaint or grievance, and to reduce any associated fear of retaliation, the appeals board should do the following:

- Notify employees of its EEO complaint and grievance procedures, including the protections from retaliation. For example, the appeals board should remind employees that they could pursue such complaints with certain outside entities, especially if they believe they may have been retaliated against.
- Update its employee handbook to better emphasize these procedures.
- Consider conducting training in this area on a periodic basis.

**Response:** We agree that a reminder, along with some form of education, would benefit CUIAB staff. In the short term, CUIAB's intranet site will be updated to reflect this information, and a memo will be issued from the acting executive director to all employees informing them of the process. CUIAB is exploring additional measures including creating an on-line tutorial regarding EEO complaint and grievance procedures, and protections from retaliation, which would require each employee to "sign-in and out" as verification he/she has completed the tutorial. Additionally, CUIAB is currently in the process of updating its employee handbook concerning EEO procedures, and anticipates it will be completed by December, 2008.

## Recommendations for Chapter 2: Weaknesses in Certain Internal Controls Result in Questionable Uses of State Resources

**Recommendation:** To ensure employees are reimbursed only for appropriate and authorized travel expenses, the appeals board:

- Should strengthen its travel policy by requiring supervisors to pre-approve employees' travel plans; review their travel expense claims to ensure all travel is in the State's best interest; update its travel policy to provide guidance to employees on how to properly designate their headquarters location; ensure employees are only reimbursed for those lodging costs that comply with Personnel Administration's rules.
- The appeals board should review all travel-related payments it made to its former chief ALJ/executive director from the date of his appointment as chief administrative law judge in November 2000, to determine whether those payments were reasonable and allowable.
- To the extent the appeals board identifies travel reimbursements that do not comply with regulations established by Personnel Administration, it should seek recovery from the former chief ALJ/executive director.
- The appeals board should develop and implement procedures to ensure that its paid parking spaces are only used for authorized purposes, and that employees are not inappropriately using them to park their privately owned vehicles at their headquarters.

**Response:** We agree with this recommendation and have already begun updating CUIAB's travel policy, including guidance for employees. Updates to the Travel Handbook will be completed by the end of November, 2008 and posted to the intranet site. A memo will be distributed to all employees alerting them to the changes and asking them to review the travel handbook on the intranet. Further, a travel pre-approval form has been drafted, and is awaiting approval. A separate memo will be issued to managers and supervisors requiring them to use the travel pre-approval form, reminding them of their responsibility to carefully review travel expense claims; and review justifications for travel. Other long term solutions will be considered.

CUIAB intends to ask EDD for assistance in reviewing all travel-related payments it made to the former chief ALJ/executive director from the date of his appointment as chief ALJ in November 2000, to determine whether those payments were reasonable and allowable. CUIAB hopes that EDD will provide this review over the next 90 days, and to the extent we identify travel reimbursements that do not comply with regulations established by Personnel or that are not in the State's best interest, we will seek recovery from the former chief ALJ/executive director.

Additionally, we agree with the BSA's recommendation of the need to develop and implement procedures to ensure that paid parking spaces are only used for authorized purposes, and that employees are not inappropriately using them to park their privately owned vehicles at their headquarters. CUIAB has already begun developing procedures, which will be compliant with current regulations (that BSA shared with our Business Services unit). The procedures will be ready for review by the acting executive director at the end of November, 2008. Once the acting executive director reviews the procedures, she will present them to the Board Members for review and discussion.

**Recommendation:** The appeals board should take steps to resolve the discrepancies in its IT equipment between its survey results and its asset management records.

**Response:** We agree with this recommendation. IT and Business Services recognize that losing track of IT assets is a serious matter. The acting executive director is also committed to finding a solution and immediately implementing necessary changes. Persons with responsibilities from each unit will in the next 4 months identify ways to streamline the process of IT-related asset management; consider shifting responsibility from one unit to the other and explain how this would be done; and develop a timeline for any necessary transition.

In the meantime, the state-wide physical inventory of all CUIAB assets is underway. It is scheduled for completion by June 30, 2009. The process includes a reconciliation of the data collected during the physical inventory process. Once the physical inventory and reconciliation processes are completed, CUIAB will have a thorough and up to date accountability of all assets.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press