

Employment Development Department

It Should Improve Its Efforts to Minimize Avoidable Appeals of Its Eligibility Determinations for Unemployment Insurance Benefits

Report 2014-101

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August 28, 2014

2014-101

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 (audit committee), the California State Auditor (state auditor) presents this audit report concerning appeals of the Employment Development Department's (EDD) eligibility determinations for unemployment insurance benefits. Specifically, we were asked to identify any trends in the reasons cited in the California Unemployment Insurance Appeals Board's (appeals board) decisions that overturned EDD's determinations in favor of the appellant. In addition, the audit committee asked us to determine whether any EDD policies and procedures may contribute to the number of successful appeals.

This report concludes that appeals of EDD's determinations are frequently successful and EDD should improve its efforts to minimize avoidable appeals of its determinations. Each appeal of an EDD determination may involve multiple legal issues that must be decided separately. As a result, there is not a one-to-one relationship between the number of individuals who appeal and the number of decisions the appeals board makes and reports. Of the more than 1.4 million decisions the appeals board made from July 2010 through April 2014 on initial appeals, 91 percent were filed by claimants, and the appeals board decided in favor of the claimants between 45 percent and 51 percent of the time. We reviewed 90 successful appeals, which included over 300 separate legal issues that the appeals board decided. We found that the appeals board frequently overturned EDD's determinations that claimants made false statements to receive benefits because EDD had not adequately established that the statements were made willfully. If EDD were to adequately establish that false statements were made willfully before making a disqualifying determination that requires repayment of benefits and a penalty, it could significantly reduce the number of its determinations that the appeals board overturns.

In addition, EDD does not always successfully contact claimants and employers to gather necessary information prior to making its determinations. Furthermore, we found that EDD rarely attends appeal hearings, which may make the appeals process more favorable toward appellants than it otherwise would be. Because EDD and the appeals board each have a responsibility to provide eligible claimants with unemployment benefits in a timely manner, both entities should cooperate to the extent possible to identify and correct any policies, procedures, or practices that may be contributing to avoidable appeals and delays in providing benefits.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

To obtain unemployment benefits in California, individuals (claimants) file an unemployment claim through the Employment Development Department (EDD), which determines whether the claimant is eligible to receive benefits. EDD provides unemployment insurance benefits to individuals in California who are totally or partially unemployed through no fault of their own and who meet other state requirements. Employers finance the unemployment insurance program (unemployment program) through their payment of state and federal unemployment taxes. A claimant or employer contesting EDD's eligibility determination may appeal the decision to the California Unemployment Insurance Appeals Board (appeals board). The appeals board's field operations branch functions as the first level of appeal for claimants and employers, and its administrative law judges (ALJs) hold in-person and telephone hearings across the State. The second level of appeal consists of appeals board members, who consider the decisions the ALJs made at the first level.

Appeals of EDD's benefit determinations for the unemployment program are frequently successful. Our review found that for first-level appeals, the appeals board frequently decides in favor of claimants. Of the more than 390,000 decisions the appeals board made in each of the last three full fiscal years and of the nearly 230,000 decisions made between July 1, 2013 and April 23, 2014 at the first level, 91 percent were from appeals filed by claimants, and the appeals board decided in favor of claimants between 45 percent and 51 percent of the time. Consequently, those claimants may have waited unnecessarily to receive their unemployment benefits. The appeals board decided in favor of employers somewhat less frequently—between 32 percent and 34 percent of the time when they appealed at the first level. The appeals board's total costs declined from \$97.7 million in fiscal year 2010–11 to \$83.4 million in fiscal year 2013–14. Minimizing avoidable appeals could reduce these costs. At the second level, however, the appeals board frequently upholds the decisions that its ALJs made at the first level.

Each appeal of an EDD decision may involve multiple legal issues that must be decided separately. As a result, there is not a one-to-one relationship between the number of individuals who appeal and the number of decisions the appeals board makes and reports. For example, each year from fiscal years 2010–11 through 2013–14, the number of decisions was nearly double the number of appeals at the first level.

Audit Highlights . . .

Our audit of appeals of the Employment Development Department's (EDD) unemployment insurance benefits eligibility determinations revealed the following:

- » *The California Unemployment Insurance Appeals Board (appeals board) frequently decides in favor of claimants who initiate first-level appeals of EDD's benefit determinations for the unemployment insurance program.*
- » *The appeals board frequently overturns EDD determinations that claimants made false statements as EDD does not adequately establish that the statements were made willfully.*
- » *EDD does not always successfully contact claimants and employers before making its benefits eligibility determinations.*
- » *EDD and the appeals board do not systematically identify trends in the reasons that EDD's benefit determinations are overturned on appeal.*

We reviewed 90 successful appeals, which included 348 separate legal issues that the appeals board decided at the first level.¹ More than half of all the appeals board's decisions we reviewed related to EDD's determinations regarding false statements, overpayments, and penalties. We found that the appeals board frequently overturns (that is, reverses, modifies, or remands) EDD's determinations that claimants made false statements in order to receive benefits. The appeals board reversed 119 of these determinations, modified or remanded 46, and affirmed only 20. When overturning EDD's determinations regarding false statements, the appeals board repeatedly cited two of its precedent benefit decisions—decisions containing the appeals board's definitive expression of unemployment law—in which it found that EDD had not adequately established that claimants' statements were willful. Although EDD's training materials and benefit determination guide are consistent with these precedents, EDD staff do not always apply these principles when making determinations regarding false statements. If EDD were to adequately establish that false statements were made willfully before making a disqualifying decision that requires repayment and a penalty, it could significantly reduce the number of its determinations that the appeals board overturns.

Because EDD initially grants or denies unemployment benefits based in part on the reasons claimants leave their last job, the more information EDD staff gathers about those reasons, the more likely it is that its determinations will be accurate and will withstand a challenge on appeal. However, EDD does not always successfully contact claimants and employers before making its benefits eligibility determinations. EDD contended that because it is obligated by federal and state laws to provide claimants with timely determinations, after making what it considers to be reasonable attempts to contact claimants and employers, it has to make eligibility determinations based on the best information available at the time of the decision.

Additionally, attendance at the appeal hearing by the claimant, employer, or EDD can significantly affect the outcome of the appeal. Direct evidence provided at the hearing is generally given greater weight than hearsay evidence—that is, evidence in the form of a statement made other than by a witness testifying at a hearing. The hearing also provides the ALJs an opportunity to assess the credibility of the testimony the claimants and employers provide. We found that EDD rarely attends hearings. By not attending the hearings, EDD does not provide any active counter-argument to appellants' testimonies, which may make the appeals process more favorable toward appellants than it otherwise would be.

¹ We considered an appeal to be *successful* if the appeals board decided one or more of the legal issues in favor of the appellant (that is, the claimant, the employer, or EDD).

As confirmation of our findings, we obtained a 2012 internal review by EDD's audit and evaluation division that also cited these problems. Specifically, the review found that EDD staff did not always establish the necessary elements of a false statement under the law and often did not perform sufficient fact-finding when making eligibility determinations. Although the review contained several recommendations for improving EDD's processes, EDD has not implemented any of them.

Because EDD and the appeals board each have a responsibility to provide eligible claimants with unemployment benefits in a timely manner, we believe both entities should cooperate to the extent possible to identify and correct any policies, procedures, or practices that may be leading to avoidable appeals and delays in providing benefits. The fact that so many claimants successfully appeal EDD's eligibility determinations strongly suggests that there are problems with the process that need to be addressed. However, EDD and the appeals board do not systematically identify trends in the reasons that EDD's benefit determinations are overturned on appeal. EDD contends that it is limited by its single client database, which cannot capture this information. Further, EDD does not regularly review appeals board decisions in issue areas with high rates of overturned decisions to determine why those types of appeals are frequently successful. Since the appeals board already tracks in its database whether appeals were favorable or unfavorable for all legal issue areas, we believe it should begin periodically aggregating and making these data available to EDD. EDD could then use these data to identify the appeal issue areas where its determinations are most frequently overturned, and it could use that information to strengthen its training program and explore opportunities to correct any weaknesses in its process that may be leading to avoidable appeals.

Recommendations

To reduce the number of its determinations that are overturned on appeal, EDD should do the following:

- Change its practices to ensure that its staff have demonstrated that all of the necessary elements of a false statement are adequately supported before disqualifying a claimant for unemployment benefits or assessing the associated penalty on that basis. To do this, EDD should update its training to further emphasize that false statement disqualifications, especially those resulting from wage reporting, cannot be assessed unless all of the elements are present.

- Ensure that determinations are supported by sufficient fact-finding and relevant evidence by increasing the required number of attempts to reach claimants by telephone or e-mail before making a determination.
- Identify those types of appeals that could be most influenced by EDD's attendance at the appeal hearing, and analyze the feasibility and cost-effectiveness of participating in those hearings by telephone.

To identify and correct any policies, procedures, or practices that may be contributing to avoidable appeals filed by claimants and employers and thereby provide eligible claimants with unemployment benefits in a timelier manner, the appeals board and EDD should do the following:

- By September 1, 2014, the appeals board should aggregate the outcomes associated with each of the legal issues that it decided during fiscal year 2013–14 and make these data available to EDD. In addition, the appeals board should make similar updated data available to EDD twice each fiscal year thereafter.
- Using the appeals board's data from fiscal year 2013–14, EDD should identify the legal issues where its determinations are most frequently overturned, and use these data to establish initial performance benchmarks. In addition, similar to the review that EDD's audit and evaluation division performed in 2012, EDD should then review samples of its overturned determinations and the appeals board's decisions on these legal issues to identify trends in the reasons the appeals board cites for overturning EDD's determinations. With this information, EDD should review its policies, practices, and training related to these areas and identify and correct any weaknesses that may be contributing to the overturning of determinations. By April 1, 2015, EDD should report to the Legislature on the results of this review and any changes it plans to make to its determination process.

Agency Comments

EDD generally agreed with our recommendations. However, EDD disagreed with our finding that it does not always follow precedent benefit decisions and does not always gather necessary information before denying benefits. The appeals board agreed to implement our recommendation.

Introduction

Background

The Employment Development Department (EDD) administers the unemployment insurance program (unemployment program) based on the federal Social Security Act of 1935, which established a national unemployment program intended to provide temporary financial assistance to unemployed workers who meet the requirements of state law. Each state administers an unemployment program consistent with the criteria the federal government established, and each state's program is subject to ongoing federal oversight. To be eligible for unemployment benefits in California, an individual must meet the monetary eligibility requirement by having earned enough wages during the base period to establish a claim, as described in the text box. In addition, an individual must meet nonmonetary eligibility requirements, such as being totally or partially unemployed through no fault of his or her own, physically able to work, actively seeking suitable work, and available to accept work. In addition, he or she must meet these eligibility requirements for each week that benefits are claimed.

Monetary Eligibility Requirements for Unemployment Insurance Benefits:

- A claimant must have earned at least \$1,300 in the highest quarter of either the standard base period—the first four of the last five completed calendar quarters—or the alternate base period—the last four completed calendar quarters.

or

- A claimant must have earned at least \$900 in the highest quarter of the base period and have total base period earnings of 1.25 times the highest quarter earnings.

Source: California Unemployment Insurance Code.

To finance the unemployment program, employers pay state unemployment taxes, ranging between 1.5 percent and 6.2 percent, on the first \$7,000 in wages paid to each employee in a calendar year. The tax rate depends on the employer's experience rating—a measure of the stability of the employer's employment history and the potential for future unemployment—and the condition of the state unemployment insurance trust fund. The state unemployment tax is deposited into this fund, from which the State pays benefits to unemployed workers (claimants). EDD paid \$6.1 billion in total unemployment benefits for fiscal year 2013–14. The annual number of initial claims that EDD received between fiscal years 2010–11 and 2013–14 declined from 8.7 million to 4.8 million. The number of claimants who appealed during this period declined from nearly 197,000 to more than 109,000 at the first level and from more than 15,000 to nearly 5,900 at the second level.² When employers appealed, the number of claimants associated with those appeals decreased from 38,000 to more than 15,000 at the first level and from nearly 5,000 to more than 2,000 at the second level.

² Because of the timing of our data request, fiscal year 2013–14 contains data only through April 23, 2014.

The California Unemployment Insurance Appeals Board (appeals board) is a quasi-judicial agency created in 1943 to conduct hearings and issue decisions to resolve disputed EDD unemployment determinations. Although the appeals board is a division within EDD, to ensure that it is independent, state law limits the authority the EDD director has over the appeals board. For example, state law specifies that all appeals board personnel be appointed, directed, and controlled by the appeals board or its authorized delegates rather than by the director of EDD. Moreover, the appeals board prepares its own budget, which the director of EDD cannot change without the agreement of the appeals board members. The secretary of the Labor and Workforce Development Agency has general oversight responsibility for EDD and for the appeals board.

The appeals board consists of five members—three appointed by the governor and subject to Senate confirmation and one each appointed by the Senate Committee on Rules and by the Speaker of the Assembly. Beginning in 2013, all newly appointed appeals board members must be attorneys admitted to practice in any state of the United States. The governor designates the chair of the appeals board from among the board members. Each appeals board member serves full-time for a term of four years and then until reappointed for an additional four-year term or until his or her successor is appointed. Currently, one board position is vacant. The appeals board is headquartered in Sacramento, with the field operations headquarters, the appellate operations, and the executive office branches residing there. Field operations includes 12 Offices of Appeal (field offices) that provide local, in-person services, such as hearings, across the State. Field operations also has 37 off-site hearing facilities located throughout California, where its administrative law judges (ALJs) hear first-level appeals. We discuss the appeals process in the next section.

Most of the appeals board's funding comes from the federal unemployment administration fund. Employers contribute to this fund by paying a federal tax on the first \$7,000 of each employee's annual wages; the tax rate can vary based on the condition of the state's unemployment insurance trust fund. The federal government then distributes these funds to the states to pay for the administration of the unemployment program. The appeals board also receives some state-appropriated funds for administering the unemployment program. The appeals board's expenditures have been decreasing over the last five fiscal years. As Table 1 shows, the appeals board's expenditures in fiscal year 2010–11 were approximately \$98 million, and they declined to \$83 million for fiscal year 2013–14. For fiscal year 2014–15, the appeals board's expenditures are projected to decline to \$58 million. The number of first-level appeals has also been decreasing. According to the appeals board's chief counsel, based on its analysis of declining workload and declining funding,

the appeals board projects a workload reduction of 17.8 percent in fiscal year 2014–15. Because of a required budget reduction of \$13.8 million for fiscal years 2013–14 and 2014–15, the appeals board significantly reduced its operating expenses and did not backfill for considerable staff attrition. Because very little of this attrition occurred in the ALJ classifications and the ALJs’ caseload has decreased, the appeals board plans to reduce its ALJ staff by 50 positions.

Table 1
California Unemployment Insurance Appeals Board Expenditures by Funding Source
Fiscal Years 2010–11 Through 2014–15

	FISCAL YEAR				
	2010–11	2011–12	2012–13	2013–14	2014–15*
Federal Unemployment Administration Fund	\$92,706,492	\$87,665,370	\$85,875,584	\$78,873,929	\$53,750,000
State Disability Insurance Fund	4,649,254	4,460,766	3,966,129	2,802,680	3,783,000
State General Fund	189,783	257,838	209,395	270,372	348,000
Reimbursements	99,231	83,091	116,230	1,457,303	77,000
Federal Consolidated Workforce Program Fund	23,313	18,347	4,106	3,579	54,000
Miscellaneous funds	–	67	721	2,563	–
Totals	\$97,668,073	\$92,485,479	\$90,172,165	\$83,410,426	\$58,012,000

Source: Expenditure reports provided by the Employment Development Department.

* Projected expenditures for fiscal year 2014–15.

Process for Determining Eligibility for Unemployment Program Benefits

When a claimant files an initial unemployment claim through EDD’s Web site, over the phone, or by mail or fax, EDD must determine whether the claimant meets the monetary and nonmonetary eligibility requirements to receive benefits within the time frames the U.S. Department of Labor (federal labor department) specifies. After a claim is filed, EDD automatically mails a written notice to the claimant acknowledging that an unemployment insurance claim was filed and summarizing the information the claimant provided to EDD. A second notice is mailed informing the claimant of the weekly and maximum benefit amounts he or she will be entitled to receive if he or she meets the eligibility requirements. EDD also sends a notice to the claimant’s most recent employer, who is given 10 days to submit any facts that may affect the claimant’s eligibility for benefits. When the first payment is issued to the claimant, EDD also mails

a notice to the claimant's base period employer(s).³ The base period employer(s) has 15 days to submit any facts that may affect charges to the employer's account or the claimant's eligibility for benefits. The 10- and 15-day response periods may be extended if an employer can establish good cause for an extension. If an employer responds in a timely way to the relevant EDD notice, the employer is identified as a party to the claim and is entitled to a notice of determination and/or ruling from which the employer can file an appeal if the employer is adversely affected. However, if the most recent or base period employer(s) does not respond in a timely way and does not establish good cause for filing late information, the employer(s) is not considered a party to the decision and does not have the right to appeal it. Further, should the claimant file an appeal on the decision, that employer will not receive a notice of appeal hearing.

As shown in Figure 1, once a claim is filed, if EDD determines that the claimant meets all eligibility requirements and the claimant has submitted the proper certifications for ongoing benefits, benefits are awarded. The claimant must complete and submit a continued claim certification form to EDD for each week that benefits are claimed, certifying that he or she is meeting the nonmonetary eligibility requirements. A continued claim certification form allows claimants to certify for up to two weeks of benefits at a time. However, if EDD identifies a potential eligibility issue either at the initial claim filing or during any other point in the claim, EDD will schedule a phone eligibility determination interview, during which staff perform additional fact-finding by contacting the claimant, the employer, and/or other interested parties to determine eligibility.

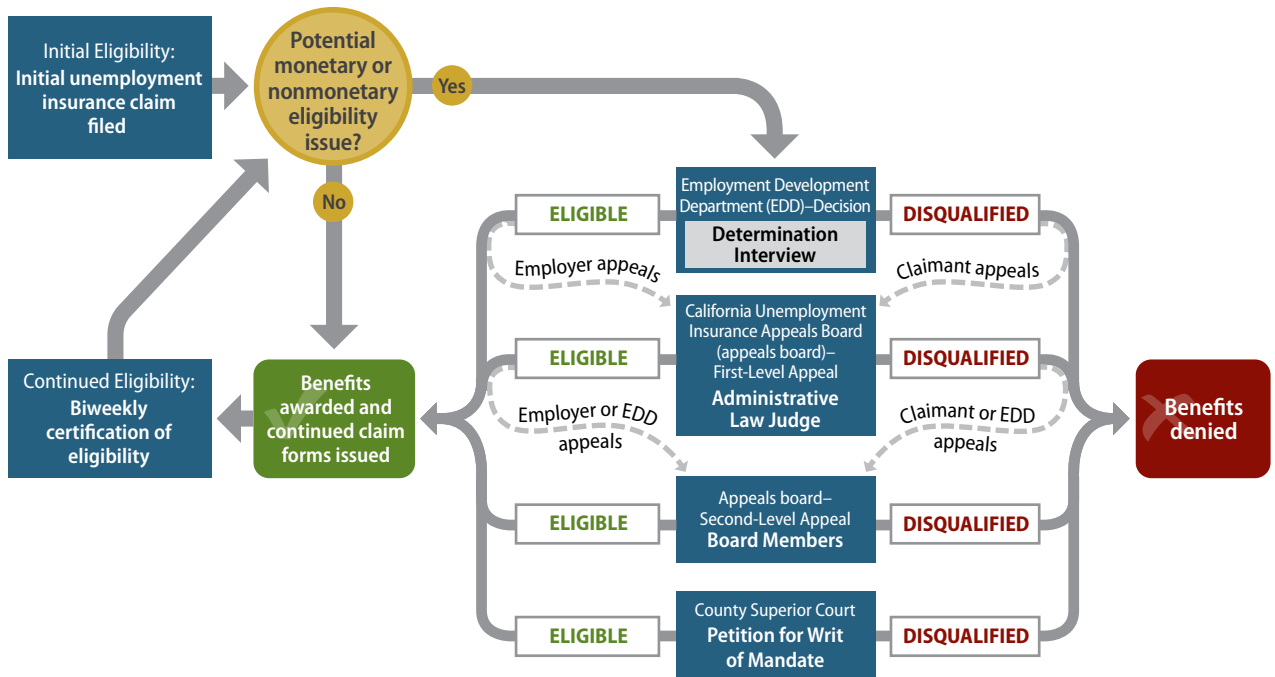
An employer or claimant contesting EDD's eligibility determination may appeal the decision to the appeals board. The appeals board's field operations branch functions as the first level of appeal for claimants and employers, and its ALJs hold in-person and telephone hearings across the State. Appeals board members function as the second level of appeal and are assisted by ALJs in the appeals board's appellate operations branch. Because a second-level appeal contests the ALJ's decision at the first level, EDD is entitled to appeal to the second level if it disagrees with the first-level decision. For instance, if the first-level ALJ overturns—which can include a decision to reverse, modify, or remand—EDD's determination that a claimant is ineligible for benefits, EDD can appeal that decision to the second level.⁴ At this second level of appeal, two or more board members review the first-level decision and come to a conclusion. There is no hearing

³ In some cases, the most recent employer and the base period employer may be the same party.

⁴ A *remanded determination* is one that is returned to EDD for reconsideration or other action.

at the second level, and new or additional evidence is generally not admitted. The appeals board notifies all parties of its decision in writing and also notifies parties that they may file a Petition for Writ of Mandate in superior court.

Figure 1
Process for Determining Eligibility for Unemployment Insurance Benefits



During the determination interview, EDD staff perform fact-finding by contacting the claimant, employer, and other interested parties to determine eligibility.

Sources: Diagram provided by EDD and the California Unemployment Insurance Code, Section 1336.

When the appeals board receives an appeal, which may contain multiple legal issues, it reviews the facts of the appeal and decides each legal issue separately. Thus, there is not a one-to-one relationship between the number of individuals who appeal and the number of decisions the appeals board makes and reports. As Table 2 on page 11 shows, from fiscal year 2010–11 through 2013–14, the number of decisions each year was nearly double the number of appeals at the first level of appeal. For example, a common scenario is that a claimant fails to report wages earned during a week for which he or she claims benefits. Based on these wages, EDD then determines that the individual is ineligible for full benefits and also determines that the individual both withheld information by not reporting the wages and received

Common Legal Issues Decided on Appeal

Voluntary Quit: Claimants are disqualified if they voluntarily quit their jobs without good cause.

Misconduct: Claimants are disqualified if discharged for misconduct.

Able and Available: Claimants must be able, available, and willing to accept suitable work to receive benefits.

Wage Reporting: Claimants must report any wages earned; benefit amounts are reduced accordingly.

False Statement: Claimants are disqualified if they willfully make a false statement or representation they know is false or fail to report a material fact to get benefits.

Overpayment: Claimants must repay benefits that exceed the amount they are entitled to receive.

Penalty: Claimants who are overpaid because they made a false statement are assessed a penalty equal to 30 percent of the repayment amount.

Sources: California Unemployment Insurance Code, sections 1256, 1253, 1279, 1257(a), 1375, 1375.1; California Code of Regulations, Title 22, sections 1256-1, 1256-3, 1256-30, 1253(c)-1, and 1326-6(b)(2).

an overpayment—both of which are additional legal issues to be decided when the claimant appeals EDD’s determination that he or she is ineligible for benefits. When the appeals board receives the appeal under this scenario, it splits it into three legal issues, and the ALJ decides each issue separately. Some common legal issues are shown in the text box. The appeals board categorizes its decision on each legal issue as either favorable or unfavorable to the appellant (that is, the claimant, the employer, or EDD). For example, at the first level of appeal, a favorable decision—when the appellant is successful—may include a decision to reverse, modify, or remand EDD’s eligibility determination. Conversely, an unfavorable decision—when the appellant is unsuccessful—affirms EDD’s initial determination. At the second level of appeal, a favorable decision reverses, modifies, or remands the first-level ALJ’s decision, while an unfavorable decision affirms the ALJ’s decision.

Reviews of EDD’s Determinations and the Appeals Board’s Decisions

The federal labor department requires that EDD and the appeals board meet specific performance levels for both the timeliness and the quality of their determinations and appeal decisions. In addition, EDD and the appeals board are required to periodically report to the federal labor department on their performance against these standards. Annually, EDD must submit a State Quality Service Plan (quality plan) that serves as the grant document through which states receive administrative funding. If EDD or the appeals board fails to meet their respective performance levels, their quality plan must address those deficiencies.

To meet federal timeliness standards, EDD must make at least 80 percent of its determinations within 21 days after it becomes aware of any issues that have the potential to affect the claimant’s eligibility for benefits. However, since fiscal year 2010–11, EDD has almost always failed to meet this federal timeliness standard.

Similarly, the appeals board must make at least 60 percent of its first-level decisions within 30 days of the date the appeal was filed, and at least 80 percent within 45 days of that date to meet federal timeliness standards. While the appeals board reached

its 45-day standard beginning in April 2012, it more recently came into compliance with the 30-day standard in February 2013. Additionally, the average age of pending first-level appeals cannot exceed 30 days and pending second-level appeals cannot exceed 40 days. Beginning in 2012 the appeals board reached the acceptable level of performance for aging of pending first-level appeals and has remained at acceptable levels since then and has generally met the acceptable aging for pending second-level appeals since fiscal year 2010–11.

Table 2
First-Level Appeals Versus Decisions

	FISCAL YEAR			
	2010–11	2011–12	2012–13	2013–14
Total first-level appeals	246,199	227,793	222,262	179,192
Total first-level decisions	428,397	406,686	390,343	229,244*

Sources: California State Auditor’s analysis of data obtained from the California Unemployment Insurance Appeals Board’s Enhanced California Appeals Tracking System, and appeal counts provided by the Employment Development Department.

* Because of the timing of our data request, fiscal year 2013–14 contains data only through April 23, 2014.

EDD’s determinations and the appeals board’s decisions must also meet certain federal quality standards. For example, the federal labor department requires that at least 75 percent of a quarterly sample of 100 determinations obtain at least a minimum quality score when EDD reviews them. Similarly, the appeals board is required to assess the quality of first-level appeals using a metric the federal labor department designed to assess the fairness of the hearing and the quality of the ALJ’s fact-finding. Each case is assigned a score, and at least 80 percent of appeals must achieve a minimum quality score to satisfy the federal requirement. With the exception of the first two quarters of fiscal year 2010–11, EDD has met federal quality standards for the last four fiscal years. Similarly, since fiscal year 2010–11, the appeals board has consistently met federal standards.

However, the quality review does not assess whether the determinations were overturned on appeal and if so, why, and thus they do not provide information that EDD can use to reduce the substantial portion of appeals that are successful. The quality review scores a sample of determinations on 24 elements, only five of which apply to the fact-finding aspect of determining eligibility. Specifically, for those elements EDD assesses whether it made “reasonable attempts” to gather all relevant and critical facts before making a determination. EDD’s policy, which exceeds the

federal requirement, defines reasonable attempts to include leaving a single message when a claimant does not answer the phone for the scheduled determination interview. Thus, EDD can meet these elements by attempting to contact a claimant or employer regardless of whether it was successful in making contact with the respective party.

The federal labor department also requires EDD to participate in a program known as Benefit Accuracy Measurement (BAM). Among other things, the BAM measures the accuracy of denied claims by verifying the facts in the case file, obtaining any missing information, and identifying errors in the process that led to improper denials. According to the chief of the unemployment program policy and projects section, EDD has used the BAM results to identify areas for potential improvements, such as improving its training on separation issues. However, the BAM exercise is not targeted to identify why determinations are overturned on appeal.

Additionally, EDD performs quarterly managerial reviews of eligibility determinations. Specifically, EDD managers select a random sample of 15 determinations completed each quarter by each fully trained determination staff member. These evaluations measure whether determinations are meeting basic quality standards, such as making a reasonable attempt to obtain critical information from the relevant parties and conducting adequate fact-finding to make a proper decision. However, the review does not target determinations that result in an appeal and thus does not seek to identify whether an appeal could have been avoided. For example, staff who make a reasonable attempt to contact a claimant or employer are scored the same as staff who successfully make contact and obtain critical information required from the relevant parties. Because of heavy workloads and its need to meet federal timeliness standards, EDD suspended the quarterly reviews in January 2013 and did not resume them until April 2014, leaving a large gap during which determinations did not receive this managerial oversight at all.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to review the reasons why EDD's unemployment insurance benefit determinations are frequently overturned on appeal. We list the objectives that the audit committee approved and the methods we used to address them in Table 3. Our fieldwork included work at three appeals board field offices: Fresno, Sacramento, and San Diego. Because of the timing of

our data request for this audit, the data we obtained from the appeals board’s Enhanced California Appeals Tracking System (eCATS) includes data from July 1, 2010 through April 23, 2014.

Table 3
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	<ul style="list-style-type: none"> • Reviewed relevant laws, rules, regulations, and other background materials pertaining to the Employment Development Department (EDD) and California Unemployment Insurance Appeals Board (appeals board). • Interviewed key officials.
2 For the past four years, identify the number of unemployment insurance appeals submitted by claimants and employers, and determine the percentage of successful appeals of EDD’s determinations.	Using appeals data covering the period from July 1, 2010 through April 23, 2014, we calculated the total number of appeal decisions and the number and percentage of successful appeal decisions for each appellant type (that is, claimant, employer, and EDD).
3 For the past four years, determine, to the extent possible, any trends in the reasons cited in appeals board decisions that overturned EDD’s determination in favor of the appellant (such as statutes cited, whether claimants were represented by counsel, whether the employer failed to appear).	<ul style="list-style-type: none"> • Using the appeals board’s data, we selected from each of the three appeals board Offices of Appeals we visited—Fresno, Sacramento, and San Diego—the case files of 30 appellants who had at least one issue decided in their favor. In those 90 case files, there were a total of 348 decisions. We reviewed the reasons cited by the appeals board in each of those 348 decisions to identify any trends. • Using appeals data we identified factors that were common in successful appeals, such as whether parties attended the appeal hearing.
4 Determine the extent to which EDD and/or the appeals board have reviewed the trends in objective 3 and taken steps to minimize the number of EDD’s determinations that are overturned on appeal.	<ul style="list-style-type: none"> • Interviewed key EDD and appeals board staff to determine what procedures they use to identify trends in the appeals board’s reasons for overturning EDD’s determinations, and the extent to which EDD uses that information to improve its process in a way that would reduce avoidable appeals. • Assessed a 2012 review of EDD’s determination process conducted by its audits and evaluation division, and interviewed key EDD staff to determine if EDD implemented any of the review’s recommendations for improvement. • Reviewed EDD’s and the appeals board’s performance in meeting federal timeliness and quality standards for the last four fiscal years.
5 Determine whether any of EDD’s policies and procedures may contribute to the number of successful appeals.	As part of our review of 348 appeals board decisions, we assessed whether any of EDD’s policies or practices contributed to avoidable appeals. We also interviewed key EDD and appeals board officials to obtain their perspective on this issue.
6 Review and assess any other issues that are significant to the audit.	Using the appeals data, calculated the average duration of first-level and second-level appeals during our audit period.

Sources: California State Auditor’s analysis of the Joint Legislative Audit Committee audit request number 2014-101, and information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the appeals board’s eCATS. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions,

or recommendations. We performed data-set verification procedures and electronic testing of key data elements and did not identify any issues. We did not perform accuracy and completeness testing of the eCATS data because the source documents required for this testing are stored by the appeals board's field offices located throughout the State, making such testing cost-prohibitive.

Consequently, we found the data from the eCATS database was of undetermined reliability for the purposes of determining, at both the first and second levels of appeal, the number and percentage of favorable and unfavorable decisions, the average length of appeals, and the unique number of claimants when the appellant was the claimant or the employer. Moreover, we also used these data to identify parties that participated in hearings for first-level appeals and to select determinations for testing. We also used the eCats data for the purpose of determining the legal issues most frequently decided by the appeals board. Nevertheless, we used data from the eCATS database, as they represent the best available source of data related to unemployment insurance appeals.

Audit Results

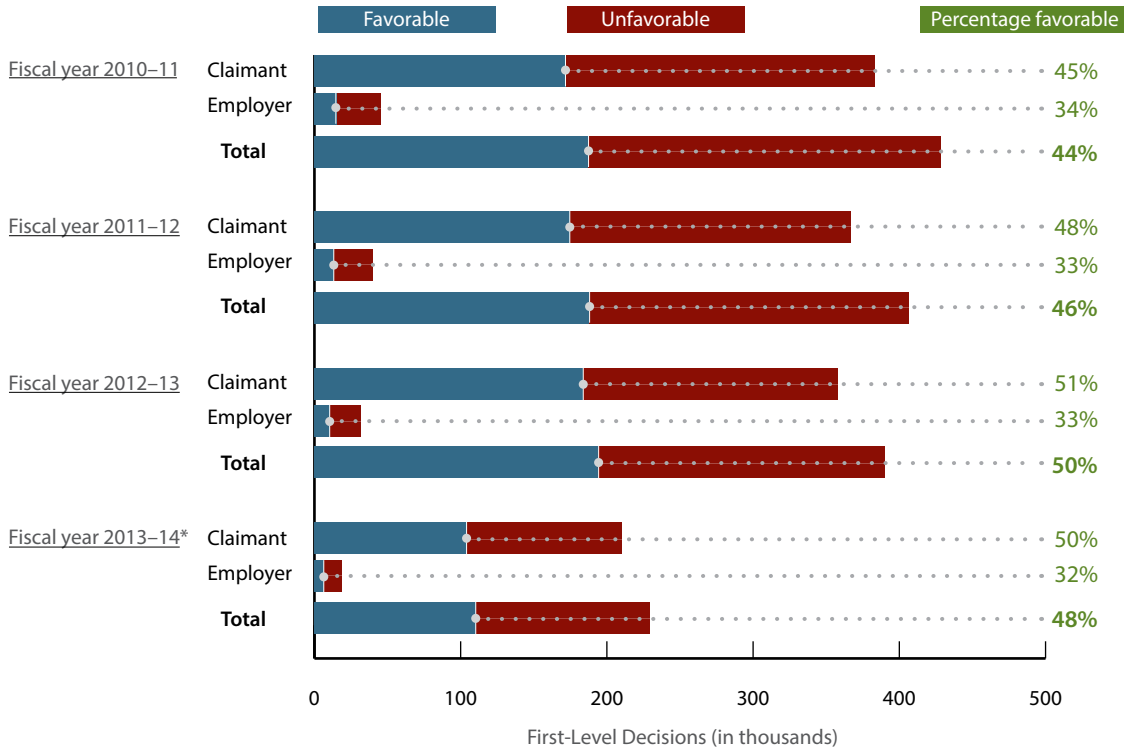
Appeals of the Employment Development Department's Benefit Determinations for the Unemployment Insurance Program Are Frequently Successful

The California Unemployment Insurance Appeals Board (appeals board) frequently decides in favor of claimants who initiate first-level appeals of the benefit determinations of the Employment Development Department's (EDD) unemployment insurance program (unemployment program). The rate at which the appeals board overturns—that is, reverses, modifies, or remands—EDD's determinations is significant because claimants who appeal must wait a considerable amount of time for the appeals board's decision. Specifically, from July 2010 through April 2014, claimants at the first level had to wait an average of 51 days from the time EDD received their appeals until the appeals board mailed its decision letters, while at the second level, claimants waited a total of 58 days on average.⁵ Because so many appeals were successful, some individuals (claimants) may have waited unnecessarily to receive their unemployment benefits. As shown in Table 1 on page 7 in the Introduction, the appeals board's expenditures declined from \$97.7 million in fiscal year 2010–11 to \$83.4 million in fiscal year 2013–14. Minimizing avoidable appeals could reduce these costs.

As Figure 2 on the following page shows, from fiscal year 2010–11 through 2012–13 and for July 2013 through April 2014, the rate at which the appeals board issued first-level appeal decisions in favor of claimants ranged from nearly 45 percent to 51 percent. In contrast, the appeals board issued first-level decisions in favor of employers approximately 32 percent to 34 percent of the time. The vast majority of first-level decisions were associated with appeals filed by claimants which, according to the appeals board's chief counsel, is not surprising because employers can only appeal a narrower set of issues. Specifically, 91 percent of the appeals board's first-level decisions from July 1, 2010 through April 23, 2014 were in response to appeals claimants had filed. As explained in the Introduction, there is not a one-to-one relationship between the number of appeals that the appeals board receives and the number of decisions it issues. For example, one claimant's or employer's appeal could include multiple legal issues that the appeals board would adjudicate separately. Consequently, the appeals board could issue favorable and unfavorable decisions on separate legal issues related to a single appeal.

⁵ As described in the Scope and Methodology section of the Introduction, the information we obtained from the appeals board's Enhanced California Appeals Tracking System is for the period July 1, 2010 through April 23, 2014.

Figure 2
First-Level Appeal Decisions by Appellant Type
Fiscal Years 2010–11 Through 2013–14

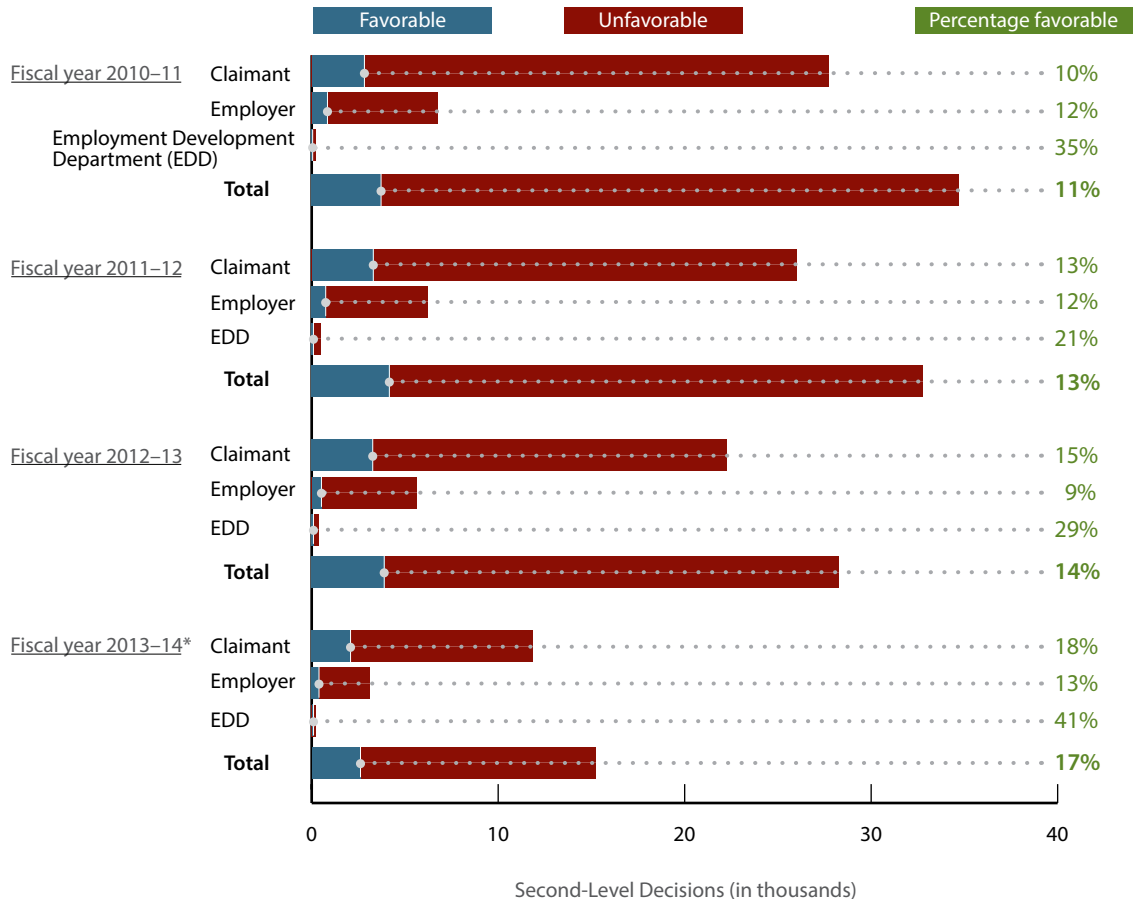


Source: California State Auditor's analysis of data obtained from the California Unemployment Insurance Appeals Board's Enhanced California Appeals Tracking System.

* Because of the timing of our data request, fiscal year 2013–14 contains data only through April 23, 2014.

As Figure 3 shows, at the second level the appeals board frequently upheld the decisions that its administrative law judges (ALJs) made at the first level. Although a large majority of second-level decisions were in response to appeals claimants had filed, claimants were successful only 10 percent to 18 percent of the time from July 1, 2010 through April 23, 2014. In addition, although EDD infrequently filed an appeal at the second level, the appeals board issued decisions in favor of EDD at a higher rate than its rates in favor of claimants or employers. Specifically, the appeals board issued decisions in favor of EDD approximately 21 percent to 41 percent of the time. Employers who filed second-level appeals were successful only approximately 9 percent to 13 percent of the time.

Figure 3
Second-Level Appeal Decisions by Appellant Type
Fiscal Years 2010–11 Through 2013–14



Source: California State Auditor’s analysis of data obtained from the California Unemployment Insurance Appeals Board’s Enhanced California Appeals Tracking System.

* Because of the timing of our data request, fiscal year 2013–14 contains data only through April 23, 2014.

EDD Does Not Always Follow Precedent Benefit Decisions and Does Not Always Gather Necessary Information Before Denying Unemployment Benefits

To identify trends in the reasons appeals were successful, we reviewed 90 successful appeals, which included over 300 separate legal issues that the appeals board decided.⁶ We found that EDD’s eligibility determinations relating to several sections of the California Unemployment Insurance Code (UI code) were frequently overturned. EDD often determined that claimants had made false statements to obtain benefits but the appeals board determined

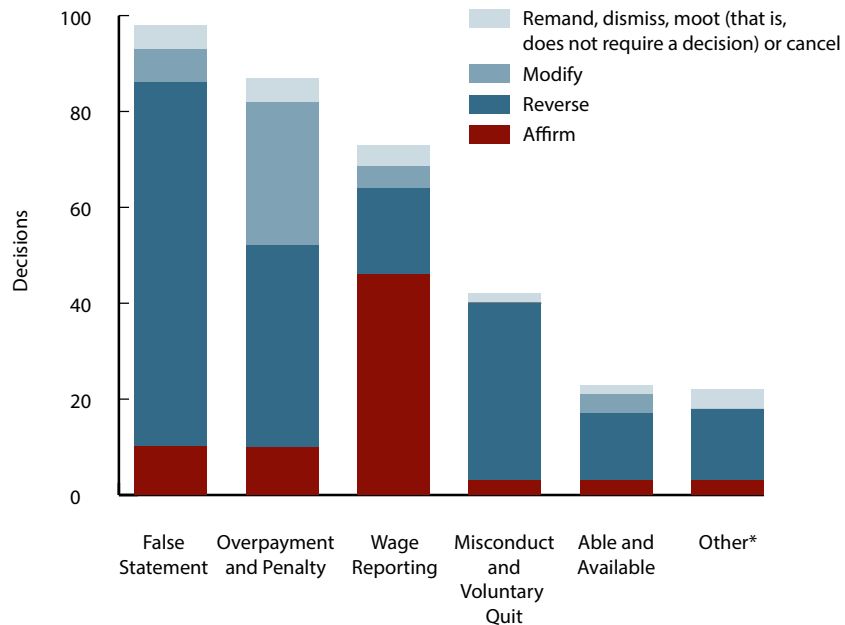
⁶ We considered an appeal to be successful if the appeals board decided one or more of the legal issues in favor of the appellant.

that EDD did not adequately establish that those statements were willful. EDD also does not always successfully contact claimants and employers before making its benefit eligibility determinations.

EDD’s Determinations Related to False Statements Are Frequently Overturned on Appeal Because It Does Not Adequately Establish That the Statements Were Made Willfully in Keeping With Precedent Benefit Decisions

The appeals board frequently overturns EDD’s determinations that claimants made false statements in order to receive benefits. Under state law, when for the purpose of receiving benefits a claimant willfully makes a false statement with actual knowledge that it is untrue or withholds a fact that is essential to EDD to determine eligibility (false statement), the claimant is disqualified for benefits. The claimant is required to repay any benefits received as a result of the false statement and must pay a 30 percent penalty on those benefits. The 90 files we reviewed included 348 first-level decisions the appeals board made from fiscal year 2010–11 through 2013–14. Of these, more than half related to EDD’s determinations regarding false statements, overpayments, and penalties. The appeals board reversed 119 of these determinations, modified or remanded 46, and affirmed only 20. Figure 4 summarizes the outcomes of the decisions for the files we reviewed.

Figure 4
First-Level Decision Outcomes From the 90 Appeal Files We Reviewed



Source: California State Auditor’s review of 90 appeal files from the California Unemployment Insurance Appeals Board.

* Other includes decisions on issues related to irregular reporting, school employees seeking benefits over summer recess, and participation in reemployment activities, among other issues.

Most of these decisions resulted from EDD determining that the claimant incorrectly reported wages, which EDD generally treated as a false statement. When a claimant earns wages while drawing unemployment benefits, he or she is required to report the earnings using a continued claim certification form. These wages are then deducted from the claimant's weekly benefits. Every quarter EDD compares the wages that claimants have reported to the wages that employers reported, and if there is a discrepancy, EDD notifies the claimant. If the claimant does not respond to this notice by correcting the discrepancy, he or she may be disqualified for benefits and must repay any benefits received in the meantime as well as pay a penalty if EDD determines that the discrepancy was because of a false statement.

According to the chief of the unemployment program policy and projects section (UI policy chief) at EDD, unreported or underreported wages are a leading cause of benefit overpayments in California, so EDD takes wage reporting errors seriously. However, EDD must show it is more likely than not that a claimant's false statement was made willfully in order for it to disqualify the claimant and assess the penalty described in the previous paragraph; therefore, if EDD staff have reason to believe that the claimant simply made an error in reporting his or her wages, they should not deny benefits or assess penalties. It is likely that some omissions and errors on continued claim forms are, in fact, mistakes that do not constitute false statements. If EDD were to adequately establish that false statements were made willfully before making a disqualifying decision that requires repayment and a penalty, it could significantly reduce the number of its determinations that the appeals board overturns.

From time to time, the appeals board issues a precedent benefit decision containing its definitive expression of unemployment law. EDD is legally bound to follow these precedents when making benefit determinations. When overturning EDD's determinations regarding false statements, the appeals board repeatedly cited two precedent benefit decisions that indicate that EDD had not adequately established that the claimant made a false statement willfully. The most frequently cited decision established that a claimant is entitled to the presumption of innocence, that simple negligence or an innocent mistake does not constitute willfulness, and that the burden of proving a willful false statement is on EDD.

Although EDD's Benefit Determination Guide and training materials are consistent with this precedent, EDD staff do not always ensure that claimants' wage reporting errors or omissions were made willfully before determining that claimants made false statements. For example, one claimant who worked part-time while collecting unemployment benefits reported inaccurate wages for

It is likely that some omissions and errors on continued claim forms are, in fact, mistakes that do not constitute false statements.

several weeks. When EDD staff questioned the claimant about his wage reporting, the claimant told EDD staff that he was unsure of the week-by-week breakdown but that he thought he had reported his wages. EDD staff's rationale for disqualifying the claimant for benefits and assessing a false statement penalty, as documented in the record of the determination interview, was that the claimant "withheld wage information from EDD for the purpose of obtaining benefits." At the hearing, the ALJ determined that the claimant reported varying wage amounts that were less than or greater than his actual earnings for each week. However, the ALJ concluded that the inaccuracy of these reports was due to an innocent mistake on the claimant's part because the claimant struggled to determine exactly how to report the information. Consequently, the ALJ reversed EDD's determination that the claimant made a false statement, citing the aforementioned precedent benefit decision, and reversed the related penalty.

The second most frequently cited precedent benefit decision states that to do a thing willfully is to do it knowingly. EDD's training materials and Benefit Determination Guide reflect this principle, but it is not always reflected in the documentation supporting EDD's determinations. In several decisions where the ALJ cited this precedent in reversing EDD's determination, the claimant was the victim of identity theft or the employer incorrectly attributed wages to the claimant. For example, one claimant and his son worked for the same employer, and the employer erroneously attributed some of the son's wages to the father when reporting to EDD. The claimant reported no wages for the time in question. EDD detected the misreported son's wages and determined that the claimant's omission of the wages from his continued claim certification form constituted a false statement. Consequently, EDD determined that the claimant was ineligible for benefits for this time period and it notified the claimant that he was overpaid benefits totalling approximately \$1,000. EDD also assessed a false statement penalty of more than \$300. EDD staff's rationale for this assessment as stated in the interview record was that the claimant did not report wages correctly. The ALJ reversed EDD's determination that the claimant was ineligible for benefits and also reversed EDD's notice of overpayment and the associated penalty, citing in part the precedent establishing that in order to be willful, a statement must be made knowingly. In this case, the claimant's statement that he earned no wages during the weeks in question was true, so it could not have been made with the knowledge that it was false. Further, although EDD apparently received additional information from the claimant, including copies of his son's check stubs, EDD did not make a redetermination based on the new information, and the matter went to an appeal hearing.

In 2012 EDD's audit and evaluation division performed an internal review and found problems with its determinations regarding false statements.

Further, EDD's own internal review found problems with its determinations regarding false statements. In 2012 EDD's audit and evaluation division performed a two-phase review of 140 appeal

decisions in part to determine why the appeals board reversed EDD's determinations to deny claimants' benefits under several sections of the UI code, including the section governing false statements. As a part of its review, EDD examined 40 false statement determinations—20 with favorable outcomes and 20 with unfavorable ones—and found that in 23 cases the necessary elements of a false statement under the law were not present. The auditors concluded that EDD staff need to ensure that all of the elements of a false statement are met before making the determination and that additional training on false statements was necessary.

Some claimants have difficulty correctly reporting their wages to EDD using the continued claim certification form, which supports that omissions and errors may not be willful. According to the presiding ALJ of the Sacramento Office of Appeals, claimants sometimes have trouble understanding how to correctly fill out the continued claim certification forms, and sometimes mistakenly apply wages to the wrong work week. According to EDD, in 2012, 1.9 million out of 23.5 million paper continued claim certification forms it received had errors on them that required EDD to send the claimant a new form. Reporting wages earned but not yet received presents certain challenges for claimants. First, claimants have a short time before they must submit the continued claim certification form; therefore, some claimants have to report wages before receiving a pay stub against which to verify the amount they earned.

Second, EDD's reporting week goes from Sunday to Saturday, but if the employer's pay period is different—for example, if the employer's pay week goes from Monday to Sunday—claimants risk allocating some of the wages to the incorrect week. The materials that accompany the continued claim form do not specifically address this error. Although the materials instruct claimants to contact EDD for assistance in completing the form, it has historically been very difficult to reach someone at EDD by telephone, as described in the next section.

EDD Does Not Always Gather Necessary Information Before Determining Eligibility for Unemployment Benefits

Because EDD initially grants or denies unemployment benefits based in part on the reasons claimants leave their last job, the more information EDD staff gathers about those reasons, the more likely it is that its determinations will be accurate and will withstand a challenge on appeal. However, EDD does not always successfully contact claimants and employers before making its benefits eligibility determinations. According to EDD's policy, its staff must attempt to contact claimants in all cases in which there are eligibility questions to provide the claimants the opportunity

According to EDD, in 2012, 1.9 million out of 23.5 million paper continued claim certification forms it received had errors on them that required EDD to send the claimant a new form.

to be heard and to obtain the necessary information to make a proper decision based on the law. EDD's policy requires its staff to send a letter notifying the claimant that it has scheduled a telephone interview with the claimant during a two-hour window on a specified date to discuss the eligibility issues. EDD staff are also required to contact the employer any time the claimant presents information that could be adverse to the employer (such as information that affects charges to the employer's unemployment tax account) or that contradicts information the employer provided. If the claimant or employer does not answer EDD's call, EDD policy requires its staff to leave a message asking the relevant party to call back within 48 hours. If EDD staff are unable to leave a message for the claimant or employer (for example, if there is no answer or the telephone has been disconnected), they must send the applicable party a written request for information and suspend the determination for 10 calendar days. According to EDD's policy, its staff should not make determinations until all deadlines have passed to ensure that all parties are given a reasonable opportunity to provide information to EDD.

We found that EDD staff sometimes left the required messages, but the claimant and/or employers did not call back, and as a result, EDD made its determinations without interviewing these individuals. Because the employer bears the burden of establishing that the claimant was discharged for misconduct, it is essential that EDD contact the employer before determining that misconduct occurred. Nineteen of the 90 appeals that we reviewed involved the question of whether a claimant was discharged from the job for misconduct. In six of these cases, EDD determined whether claimants were discharged for misconduct and therefore would be ineligible for benefits without successfully contacting their former employers.

In one case that illustrates the issue, EDD determined that a claimant was discharged from her job for reasons that did not meet the definition of misconduct, based on the claimant's assertion that she was discharged for another reason. However, EDD made this determination and concluded that the claimant was thus eligible for benefits without successfully contacting the employer. Although EDD staff called the employer and left a voicemail requesting that the employer return the call within 48 hours, the employer did not call back and EDD made its determination shortly after the 48-hour period expired. The employer appealed, and at the hearing, its representative explained that the claimant was discharged due largely to chronic attendance problems for which the claimant had received multiple written and verbal warnings. The ALJ decided that the claimant's behavior constituted misconduct and noted

It is essential that EDD contact the employer before determining that misconduct occurred because the employer bears the burden of establishing that the claimant was discharged for misconduct.

that EDD erred when it made its determination. Consequently, the ALJ reversed EDD's determination, thereby denying the claimant unemployment benefits.

According to state law, an individual is disqualified for unemployment insurance benefits if he or she left a job voluntarily without good cause. However, we do not believe EDD can adequately assess whether a claimant left a job for good cause without successfully contacting the claimant and employer (unless the claimant provides information that is clearly self-disqualifying) to obtain both parties' explanations for why the claimant quit the job. Twenty of the 90 appeals that we reviewed involved the question of whether a claimant left the job without good cause. In four of these cases, EDD disqualified the claimants from receiving benefits without successfully contacting them. In four of the 20 cases, EDD also attempted unsuccessfully to contact employers, while in three additional cases EDD did not even attempt to call the employer.

In one such case, EDD determined that a claimant was ineligible for benefits because he quit his job without good cause. EDD made this decision after contacting the employer, whose explanation was simply that the claimant walked out. Although EDD scheduled a telephone eligibility interview with the claimant, the claimant did not answer the planned call. The claimant subsequently appealed, and in the hearing, explained that he was experiencing stress from his work and was advised by his doctor to find another job. He was also suffering from a mental health issue for which his doctor prescribed medication. He further explained that his mother was seriously ill and required assistance, and he was the only one available to care for her. The ALJ reversed EDD's determination, finding that the claimant had good cause for quitting, and the appeals board affirmed the decision when the employer appealed to the second level.

In its 2012 internal review, EDD's audit and evaluation division found that EDD staff often conducted insufficient fact-finding before deciding to deny claimants unemployment benefits. The audit and evaluation division analyzed 40 appeals—20 the appeals board affirmed and 20 it reversed—for which staff made determinations that claimants were ineligible for benefits because they were discharged for misconduct or quit voluntarily without good cause. In all 20 cases where the appeals board reversed EDD's decisions, the audit and evaluation division found that EDD staff performed insufficient fact-finding and/or did not conform to precedent benefit decisions or applicable regulations during the determination and/or pre-appeal process. Conversely, for 19 of the affirmed appeals, the audit and evaluation division found that EDD staff exercised due diligence when making its determination.

We believe EDD cannot adequately assess whether a claimant left a job for good cause without contacting the claimant and employer to obtain both parties' explanations.

The audit and evaluation division also found that staff did not always make reasonable attempts to contact claimants and/or employers to gather facts, and as a result, they based their initial determinations on available information, which was not sufficient. EDD has the opportunity to reconsider its initial determination when a claimant or employer files an appeal. However, in its internal review, the audit and evaluation division found that during the pre-appeal review process, EDD did not thoroughly reconsider its initial determinations after receiving appeals from claimants in 74 out of 140 cases. Because appeals sometimes contain additional relevant information, EDD is missing opportunities to reconsider its initial determinations, which likely results in ALJs hearing some avoidable appeals.

One reason for the difficulty EDD staff have in contacting claimants and employers may be that these parties are unable to reach EDD when they return an adjudicator's call. In our 2012 letter report titled *Employment Development Department: Its Unemployment Insurance Program Is Still Failing to Meet Acceptable Federal Performance Measures and Its Corrective Actions Have Fallen Short* (Report 2012-501), we found that millions of callers have difficulty accessing EDD's phone system and its agents. In fact, in fiscal year 2011-12, more than 17 million call attempts, or 24 percent of all calls, were blocked. Blocked calls are calls attempting to reach the phone system that cannot access it. We noted that there is not a one-to-one relationship between the number of call attempts and the number of callers because a single caller may be responsible for multiple call attempts.

In June 2013 EDD updated its policy to require staff to give their direct office telephone number only when leaving call back messages for claimants and employers and in all cases to provide at least a window of 48 business hours for the party to call back to provide information. Although the purpose of this change was to better ensure that claimants and employers are given every opportunity to provide EDD with information and evidence within a reasonable period of time, EDD is not tracking the extent to which this change is improving its determination process. According to EDD's UI policy chief, EDD is obligated by federal and state laws to provide claimants with timely benefit eligibility determinations. Therefore, she asserted that after making reasonable attempts to contact claimants and employers, EDD has to make determinations based on the best information available at the time the decision is made, which means that EDD sometimes must make eligibility decisions based on limited information.

However, at the conclusion of its review, the audit and evaluation division recommended that EDD ensure that determinations are supported by sufficient fact-finding and relevant evidence.

In addition, the audit and evaluation division recommended that EDD increase the required number of attempts to reach claimants by telephone or e-mail before staff make a determination in order to obtain additional facts during the initial determination or pre-appeal review processes. The audit and evaluation division also recommended that EDD allow additional time for its staff to process misconduct and voluntary quit cases, especially those that involve complex issues, to ensure that they obtain sufficient information to complete the determination. In addition, the audit and evaluation division concluded that improved due diligence during EDD's pre-appeal review process could eliminate or reduce the need for some appeals board hearings. However, EDD has not been able to demonstrate that it has taken any specific steps to implement these recommendations and, as described earlier, we found that some of the problems that its audit and evaluation division identified still exist.

Attendance at Appeal Hearings Appears to Significantly Affect Appeal Outcomes

Attendance at the appeal hearing by the claimant, employer, or EDD can significantly influence the outcome of the appeal. According to the appeals board's chief counsel, in part, this is because direct evidence provided at the hearing is generally given greater weight than hearsay evidence—that is, evidence in the form of a statement made other than by a witness while testifying at a hearing. In addition, the hearing is the first opportunity that claimants and employers have to explain the circumstances underlying the appeal in person, under oath. He also stated that it is especially important for the party that bears the burden of proof to attend the hearing since, all else being equal, that party would lose as a matter of law. The hearing also provides the ALJs an opportunity to assess the credibility of the testimony the claimants or employers provide. As Table 4 on the following page shows, during the period from fiscal years 2010–11 through 2013–14, more than 60 percent of the decisions were favorable to the claimant when the claimant appealing the determination was the only attendee. When both the claimant and the employer attended the hearing, the rate at which the ALJ decided in favor of the claimant ranged from 50 percent to 58 percent on average. During the same period, when the employer appealed, most frequently both the claimant and the employer attended the hearing. As Table 5 on the following page shows, when this was the case, the employer won less frequently—between 33 percent and 36 percent of the time—than when only the employer attended—between 69 percent and 71 percent of the time. Thus, it appears that the claimant's appearance and testimony has a significant impact on the outcome of the hearing.

From July 2010 through April 2014, more than 60 percent of the decisions were favorable to the claimant when the claimant appealing the determination was the only attendee at the appeal hearing.

Table 4
Favorable Decisions When the Claimant Appealed, by Hearing Attendees

FISCAL YEAR		HEARING ATTENDED BY:			
		CLAIMANT, EMPLOYER, AND EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)	CLAIMANT AND EMPLOYER	CLAIMANT AND EDD	CLAIMANT ONLY
2010–11	Favorable	15	19,355	576	139,617
	Total	33	38,441	1,488	230,729
	Percentage favorable	45	50	39	61
2011–12	Favorable	10	20,438	711	142,129
	Total	31	37,670	1,535	226,648
	Percentage favorable	32	54	46	63
2012–13	Favorable	39	19,178	616	151,821
	Total	56	33,710	1,532	225,901
	Percentage favorable	70	57	40	67
2013–14*	Favorable	24	11,575	463	84,702
	Total	31	19,956	1,145	127,276
	Percentage favorable	77	58	40	67

Source: California State Auditor's analysis of data obtained from the California Unemployment Insurance Appeals Board's (appeals board) Enhanced California Appeals Tracking System.

Note: The appeals board generally dismisses hearings when the appellant does not appear, which results in an unfavorable decision.

* Because of the timing of our data request, fiscal year 2013–14 only contains data through April 23, 2014.

Table 5
Favorable Decisions When the Employer Appealed, by Hearing Attendees

FISCAL YEAR		HEARING ATTENDED BY:			
		CLAIMANT, EMPLOYER, AND EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)	CLAIMANT AND EMPLOYER	EMPLOYER AND EDD	EMPLOYER ONLY
2010–11	Favorable	34	7,015	17	7,316
	Total	161	19,485	43	10,550
	Percentage favorable	21	36	40	69
2011–12	Favorable	37	6,092	18	6,398
	Total	152	17,209	52	9,207
	Percentage favorable	24	35	35	69
2012–13	Favorable	58	4,586	25	5,181
	Total	160	13,625	49	7,523
	Percentage favorable	36	34	51	69
2013–14*	Favorable	29	2,606	14	3,258
	Total	115	7,852	31	4,592
	Percentage favorable	25	33	45	71

Source: California State Auditor's analysis of data obtained from the California Unemployment Insurance Appeals Board's (appeals board) Enhanced California Appeals Tracking System.

Note: The appeals board generally dismisses hearings when the appellant does not appear, which results in an unfavorable decision.

* Because of the timing of our data request, fiscal year 2013–14 only contains data through April 23, 2014.

EDD staff attended less than 1 percent of hearings, which are only held at the first-level, from July 1, 2010 through April 23, 2014. According to the appeals board's chief counsel, by not attending the hearings, EDD does not provide any active counter-argument to appellants' testimonies, which may make the appeals process more favorable toward appellants than it otherwise would be. He also stated that ALJs hear a significant number of cases in which EDD's expertise is missing. In addition, there are circumstances where claimants or employers provide new information during the hearing, but because EDD is not there to respond, the ALJ addresses the evidence before him or her, irrespective of whether EDD would have made a different eligibility determination based on the new evidence.

The appeals board does not track in its electronic database whether claimants or employers bring attorneys or other third-party representatives to appeal hearings, but it does record this information in the individual case files. For the 90 appeal files we reviewed, we found that two claimants who appealed had third-party representatives attend the appeal hearing, and both were successful. On the other hand, nine employers had third-party representatives attend the hearing. In three of those instances, the claimant had appealed and won. In the other six instances, the employer had appealed and won.

Neither EDD nor the Appeals Board Tracks Trends in the Reasons That So Many of EDD's Benefit Determinations Are Overturned on Appeal

Neither EDD nor the appeals board systematically tracks trends in the reasons that so many of EDD's benefit determinations are overturned on appeal. EDD's single client database was not designed to capture this information. The appeals board uses a database, in part to track federally required data, including the outcomes of its appeals. However, this database does not capture the appeals board's reasons for its decisions, and the appeals board asserted that aggregating and tracking this information and providing it to EDD could pose a challenge with its requirement to maintain neutrality.

EDD Does Not Systematically Identify and Address Trends in the Appeals Board's Reasons for Overturning Its Benefit Determinations

EDD does not systematically identify trends in the reasons that the appeals board cites for overturning its benefit eligibility determinations, and it is thus unable to use such data to determine whether any of its policies or procedures may be contributing to avoidable appeals. The appeals board provides EDD with written

EDD staff attended less than 1 percent of appeal hearings from July 1, 2010 through April 23, 2014, potentially making the appeals process more favorable toward appellants because there is no active counter-argument to appellants' testimonies.

decisions that include its rationale for reversing, modifying, or remanding EDD's initial benefit eligibility determinations; however, EDD does not have a mechanism for systematically analyzing these reasons to identify any opportunities to improve its policies, practices, or training programs so that it could minimize the number of eligibility determinations that the appeals board overturns. For example, EDD does not compile these reasons in a central database. According to EDD's UI policy chief, its single client database cannot capture the reasons the appeals board cites for overturning EDD's benefit determinations. In addition, she stated that the appeals board provides its decisions to EDD in PDF format, and thus EDD would have to manually enter this information into a tracking database. She also acknowledged that the appeals board provides data electronically that includes some information regarding the outcomes of the specific legal issues the appeals board decides. However, she asserted that EDD captures these data in a system with no reporting functionality, and thus EDD cannot query these data.

EDD does not regularly review samples of the appeals board's decisions in issue areas with high rates of overturned determinations to assess why those types of appeals are frequently successful.

In addition, EDD does not regularly review samples of the appeals board's decisions in issue areas with high rates of overturned determinations to assess why those types of appeals are frequently successful. When EDD's audit and evaluation division performed the previously discussed 2012 internal review, it identified several problems with EDD's determination and pre-appeal review processes. For example, the audit and evaluation division found that EDD staff often conducted insufficient fact-finding and/or did not conform to precedent benefit decisions and regulations when deciding to deny claimants' benefits. As we discuss in the previous section, the audit and evaluation division also identified several opportunities for EDD to improve its determination process, which underscores the importance of this type of review.

According to the UI policy chief, EDD currently reviews the written decisions of the appeals board's ALJs to determine the appropriate action to take to implement the decisions, including paying benefits to claimants and reducing overpayments and/or penalties claimants owe. EDD also assesses whether to appeal the ALJ's decisions to the second level of the appeals board. In addition, she asserted that EDD's appeals unit monitors the appeals board's decisions on a case-by-case basis to identify local and anecdotal trends and any common mistakes that its staff may be making. However, we do not believe this process is an effective substitute for collecting and analyzing information in a comprehensive manner or periodically reviewing risk-based samples of the appeals board's decisions to identify trends in the reasons the appeals board cites for overturning EDD's determinations, which EDD could then use to systematically identify and address any weaknesses in its process.

The Appeals Board Does Not Track Trends in Its Reasons for Overturning EDD's Benefit Determinations or Communicate Such Trends to EDD

The appeals board does not systematically aggregate and track the reasons why it overturns EDD's benefit eligibility determinations on appeal and is therefore currently unable to provide these comprehensive data to EDD, which EDD could use to assess its policies and procedures to identify areas for improvement. The appeals board uses a database in part to track data that it is required to report monthly to the federal labor department, including the number of decisions that were in favor of appellants. However, this database was not designed to capture the appeals board's reasons for those decisions. In addition, although the appeals board's database captures whether an appeal was favorable or unfavorable, it does not capture whether a favorable appeal reversed or modified the determination.

According to the appeals board's chief counsel, aggregating and tracking the reasons that it overturns EDD's benefit determinations and providing this information to EDD could pose a challenge with its requirement to maintain neutrality and could establish bias. He stated that the appeals board's role as an independent quasi-judicial agency is to consider appeals on an individual basis without bias toward any one of the parties, and that its ALJs are bound by the California Code of Judicial Ethics to assure neutrality and due process for all parties. In addition, he asserted that since EDD is a party in each of the appeals, the appeals board must exercise caution when communicating with EDD to avoid bias or the appearance of bias. In light of the appeals board's initial concerns, we are not suggesting that it begin providing to EDD aggregated data on its reasons for overturning EDD's determinations. Rather, as described in the next section, we are recommending that the appeals board periodically aggregate and make available to EDD data that it already collects regarding the outcomes of individual legal issues.

The appeals board does send EDD and all other parties to an appeal written decisions that set forth the findings of fact for each case and the reasons for the ALJ's decisions. In addition to this information on individual appeals, the appeals board's chief counsel stated that the appeals board issues precedent benefit decisions in part to address problems, clear up common ambiguities, and explain new areas of interpretation of unemployment insurance statutes. He believes that EDD could use this information to identify trends in the reasons that the appeals board overturns EDD's benefit determinations and to identify areas for improvement. However, as described previously, EDD does not have a method for systematically capturing and aggregating the appeals board's reasons for overturning EDD's benefit determinations.

Although the appeals board's database captures whether an appeal was favorable or unfavorable, it does not capture whether a favorable appeal reversed or modified the determination.

The fact that so many claimants successfully appeal EDD's eligibility determinations strongly suggests that there are problems with the process that need to be addressed.

Consequently, EDD cannot effectively identify trends in these reasons and use that knowledge to look for opportunities to improve its policies and practices.

The Appeals Board Does Not Provide EDD With Aggregate Information It Could Use to Correct Any Policies or Procedures That May Be Contributing to Avoidable Appeals

EDD and the appeals board each have the responsibility to ensure that eligible claimants receive unemployment benefits in a timely manner. The fact that so many claimants successfully appeal EDD's eligibility determinations strongly suggests that there are problems with the process that need to be addressed. Thus, both entities should cooperate to the extent possible to identify and correct any policies, procedures, or practices that may be leading to avoidable appeals and delays in providing benefits. However, as discussed previously, neither EDD nor the appeals board are adequately monitoring the reasons so many appeals are successful. This is particularly important because, from July 2010 through April 2014, claimants that initiated first-level appeals waited an average of 51 days for the appeals board's decisions during which time they may not have been able to receive unemployment benefits. In addition, as shown in Table 1 on page 7 in the Introduction, the appeals board's expenditures declined from \$97.7 million in fiscal year 2010–11 to \$83.4 million in fiscal year 2013–14, and minimizing avoidable appeals could reduce these costs.

The appeals board's database contains data regarding whether appeals were favorable or unfavorable for every unemployment insurance legal issue, and we believe it should begin periodically aggregating and making these data available to EDD. EDD could use these data to identify the appeal issue areas with the highest number of overturned determinations. Similar to the review that EDD's audit and evaluation division performed in 2012, EDD could then review samples of its determinations and the appeals board's decisions in these issue areas to identify trends in the reasons the appeals board cites for overturning EDD's determinations. With this information, EDD could review its policies, practices, and training related to these areas and identify and correct any weaknesses that may be contributing to the overturning of determinations. For example, as shown in Table 6, from fiscal year 2010–11 through 2013–14, a large volume of first-level appeals related to overpayments, false statements, and associated penalties were frequently successful. We believe these issue types would be good candidates for EDD to include in its initial review, especially since we found problems in these areas, as described in previous sections.

Table 6
Legal Issues Most Frequently Decided by the California Unemployment Insurance Appeals Board at the First Level
Fiscal Years 2010–11 Through 2013–14

LEGAL ISSUES	TOTAL LEGAL ISSUES DISPUTED	FAVORABLE COUNT	PERCENTAGE
Misconduct and Voluntary Quit	370,162	180,397	49%
Overpayment	246,360	133,901	54
False Statement	230,896	125,684	54
Penalty	202,886	108,914	54
Irregular Reporting	141,339	91,056	64
Able and Available	126,139	64,191	51
Wage Reporting	161,663	31,631	20

Source: California State Auditor's analysis of data obtained from the California Unemployment Insurance Appeals Board's Enhanced California Appeals Tracking System.

Note: Because of the timing of our data request, fiscal year 2013–14 only contains data through April 23, 2014.

Recommendations

To reduce the number of its determinations that are overturned on appeal, EDD should do the following:

- Change its practices to ensure that its staff have demonstrated that all of the necessary elements of a false statement are adequately supported before disqualifying a claimant for unemployment benefits or assessing the associated 30 percent penalty on that basis. To do this, EDD should update its training to further emphasize that false statement disqualifications, especially those resulting from wage reporting, cannot be assessed unless all of the elements are present.
- Revise its Web site and the materials that accompany the continued claim form to provide specific instructions to claimants on how to avoid common errors that claimants make when reporting wages, such as the error of applying some wages to the incorrect week.
- Ensure that determinations are supported by sufficient fact-finding and relevant evidence by increasing the required number of attempts to reach claimants by telephone or e-mail before making a determination.
- Allow additional time for its staff to process misconduct and voluntary quit cases, especially those that involve complex issues.

- Improve its due diligence during the pre-appeal review process by considering appellants' reasons for appealing and by contacting claimants, employers, and third parties when necessary to obtain clarifying information that could result in a redetermination, which could eliminate or reduce the need for some appeals board hearings.
- Identify those types of appeals that could be most influenced by EDD staff attendance at the appeal hearing, and analyze the feasibility and cost-effectiveness of participating in those hearings by telephone.

To identify and correct any policies, procedures, or practices that may be contributing to avoidable appeals filed by claimants and employers and thereby provide eligible claimants with unemployment benefits in a timelier manner, the appeals board and EDD should do the following:

- By September 1, 2014, the appeals board should aggregate the outcomes associated with each of the legal issues that it decided during fiscal year 2013–14 and make these data available to EDD. In addition, the appeals board should make similar updated data available to EDD twice each fiscal year thereafter.
- Using the appeals board's data from fiscal year 2013–14, EDD should identify the legal issues where its determinations are most frequently overturned, and use these data to establish initial performance benchmarks. In addition, similar to the review that EDD's audit and evaluation division performed in 2012, EDD should then review samples of its overturned determinations and the appeals board's decisions on these legal issues to identify trends in the reasons the appeals board cites for overturning EDD's determinations. With this information, EDD should review its policies, practices, and training related to these areas and identify and correct any weaknesses that may be contributing to the overturning of determinations. By April 1, 2015, EDD should report to the Legislature on the results of this review and any changes it plans to make to its determination process.
- EDD should use the semiannual data that the appeals board provides to determine whether changes it makes to its process result in reductions in the percentage of its determinations that are overturned on appeal. EDD should also review these data to determine whether it needs to conduct additional reviews of its determinations and the appeals board's decisions to identify additional opportunities for improvement. EDD should report these results to the Legislature annually.

We conducted this audit 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: August 28, 2014

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

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STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Edmund G. Brown Jr. • SECRETARY David Lanier

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Investment Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

August 11, 2014

Elaine M. Howle, CPA*
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

Enclose are separate responses from the Employment Development Department and the California Unemployment Insurance Appeals Board to your draft report, titled "Employment Development Department: It Should Improve Its Efforts to Minimize Avoidable Appeals of Its Unemployment Insurance Benefit Eligibility Determinations."

Should you have questions regarding either response please contact Elena Gonzales, Executive Director, CUIAB at (916) 263-6798 or Greg Riggs, Deputy Director, Employment Development Department, PACB at (916) 654-7014.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian McMahon".

Brian McMahon, Undersecretary
Labor & Workforce Development Agency

* California State Auditor's comments begin on page 43.

California Labor and Workforce Development Agency



Edmund G. Brown Jr.
Governor

August 11, 2014

Ms. Elaine M. Howle
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle;

As Director of the Employment Development Department (EDD), I want to thank you for the opportunity to respond to the California State Auditor (CSA) report entitled: "Employment Development Department: It Should Improve Its Efforts to Minimize Avoidable Appeals of Its Unemployment Insurance Benefit Eligibility Determinations."

This response includes additional information based on our experience with administering the nation's largest Unemployment Insurance (UI) Program, as well as our response to the report's recommendations. Before engaging in a more detailed discussion of the report, I want to take this opportunity to acknowledge the CSA's role in promoting the efficient and effective management of the UI Fund, and, in particular the assigned auditors, for completing the review of California's UI Program appeals process.

Over the four year audit period ending June 2014, Californians filed over 26.8 million UI claims. As a result, we paid over 55.5 billion dollars in benefits. In the over 26.8 million claims, 3.26 percent of the total claims resulted in appeals being filed with the Appeals Board. While this percentage appears to be high, we take our responsibility seriously to protect the integrity of the UI Fund. We also understand the importance of promptly paying benefits when due as required by federal and state law and believe that no one should be denied benefits unnecessarily. Thus, we are constantly looking for opportunities to strengthen the claim process, including the eligibility determination decisions we make.

In 2012, we took the initiative to perform an internal review of the eligibility determinations that result in appeals to the California Unemployment Insurance Appeals Board (Appeals Board). The purpose of the review was to provide us with additional information in order for our staff to make the best benefit eligibility decisions possible. We used the information obtained from the review to revise our procedures to ensure that claimants are afforded more opportunity to participate in their eligibility interviews. For example, we implemented the policy to give claimants who are unavailable at the time of their pre-scheduled phone interview another 48 hours to respond by leaving a phone message with the direct phone number of the EDD interviewer. In 2015, we will implement a system to provide an automated phone call reminder to claimants of their upcoming eligibility determination appointment with the goal of increasing claimants' participation in the eligibility determination process.

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Additionally, in March 2014, we initiated a UI Business Process Innovation project to provide an approach to reviewing, rethinking, and possibly redesigning our UI business processes to help achieve significant improvements in performance.

We disagree with the report's finding that the Department does not always follow Precedent Benefit Decisions and does not always gather necessary information before denying benefits. As indicated in the CSA audit report, our training materials correctly cite to the Appeals Board's precedent decisions. In making our determinations, our staff conduct fact-finding and identify significant facts on which their decision is based. In our experience, each claim presents a unique set of facts. Our staff are trained to document these facts. To improve the claims process and reduce the number of decisions overturned on appeal, we will reemphasize to staff the importance of ensuring that facts leading to the decision are fully documented to support our determinations in accordance with the precedent decisions.

We would also like to add clarity to CSA's use of the term "successful" when referring to an appeals outcome. As we read the report, the CSA appears to be using the term successful to describe Appeals Board decisions that reverse, modify or remand a decision to the EDD for further consideration. However, as demonstrated in the report, 90 individuals had their appeals reviewed by the CSA. These 90 appeals included 347 separate legal issues that were decided by the Appeals Board, which means that many of those individuals had multiple legal issues considered by the Appeals Board. In one individual's appeal that the CSA shared with us, the Appeals Board considered seven separate legal issues for that individual. The Administrative Law Judge affirmed the EDD's determinations on five of the seven legal issues, reversed one determination in its entirety, and modified one determination. The CSA considered this claimant's appeal to be successful despite the fact that, in affirming five of the determinations, this claimant was still found ineligible to receive UI benefits. We bring attention to this fact because it illustrates that, while an appeal decision may be designated as successful or favorable, it does not necessarily mean the appellant or claimant is eligible to receive benefits.

RESPONSE TO THE REPORT'S RECOMMENDATIONS

The following are the EDD's responses to the report's recommendations.

Recommendation One: Change its practices to ensure that its staff have demonstrated that all of the necessary elements of a false statement (California Unemployment Insurance Code Section 1257[a]) are adequately supported before disqualifying a claimant for unemployment benefits or assessing the associated 30 percent penalty. To do this, EDD should update its training to further emphasize that false statement disqualifications, especially those resulting from wage reporting, cannot be assessed unless all of the elements are present.

The EDD agrees that by updating our training regarding the application of Unemployment Insurance Code Section 1257(a), the number of false statement determinations that are overturned on appeal may be reduced. The first phase of this process will involve updating

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and delivering training to staff statewide by the end of 2014. Additionally, in 2015, the EDD will conduct a more comprehensive review of our Section 1257(a) policies and procedures and will update those as needed, in addition to updating our training.

Recommendation Two: Revise its website and materials that accompany the continued claim form to provide specific instructions to claimants on how to avoid common errors that claimants make when reporting wages, such as the error of applying wages to the incorrect week.

The EDD agrees with this recommendation, and, has in fact already implemented this recommendation by taking the following actions:

- ⑤
- In early 2014, we created a new web page dedicated to providing a detailed explanation and visual examples of how to complete the continued claim form, including instructions to claimants on how to avoid common errors when reporting work and wages and understanding and correcting work and wage reporting issues on reissued continued claim forms.
 - In early 2014, we introduced a new step-by-step guide about how to certify for ongoing unemployment benefits that is mailed to all UI claimants. This publication provides a detailed explanation of the questions asked on the continued claim certification to help claimants understand the questions. The publication includes a detailed explanation of how to report work and earnings to the EDD.
 - In the spring 2015, we will be launching our new UI Online services that will include enhancements to our online certification process. The enhanced UI Online certification will provide extensive instructions and help text to assist claimants in properly completing claim certifications, including instructions on reporting work and wages to the EDD.
 - We continue to look for opportunities to update our website to provide information to help claimants understand their rights and responsibilities when collecting UI benefits as well as the other services EDD provides.

Recommendation Three: Ensure that determinations are supported by sufficient fact finding and relevant evidence by increasing the required number of attempts to reach claimants by telephone or email before a determination is made.

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The EDD agrees that determinations must be supported by sufficient fact finding and relevant evidence. We plan to conduct additional training of our staff of the importance of adequate fact finding and better documentation of our findings, including a training on properly summarizing facts in support of our legal decisions that is currently planned and will be delivered to staff statewide by September 2014. We further agree that claimants' responses contribute to better fact finding and documentation. Towards that goal, in 2015, we will be implementing a new system to provide a phone call reminder to claimants of their upcoming eligibility determination appointment. This will be in addition to the multiple notifications we

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already currently provide claimants, including a written notification of the determination appointment including the date and time of the interview, a phone call to the claimant at the time of the interview, and, if unable to speak with the claimant, leaving a message providing the claimant with opportunity to return the call within 48 business hours along with the direct phone number of the EDD interviewer.

Additionally, among the other benefits the UI Online services will provide to claimants beginning in the spring 2015, UI Online will display appointments to claimants, and provide them with the ability to directly access and view their claim information, as well as reschedule their determination appointments, without having the talk to an EDD representative. The EDD is also exploring other routes for communicating with claimants through the UI Online system, such as by sending them reminder messages about their appointments.

Recommendation Four: Allow additional time for its staff to process misconduct and voluntary quit cases, especially those that involve complex issues.

The EDD agrees that adequate time should be allowed for staff to process misconduct and voluntary quit issues. Our staff are currently allowed the time needed to complete determinations including those that involve complex issues. We will work with our managers and staff to ensure a common understanding of the time that should be allotted for staff to complete their work, and provide training and tips to assist staff in getting their work completed. This will be in conjunction with our various other training efforts. An additional effort to assist staff in completing their work is to streamline or eliminate processes, which will provide staff with more time to complete their assignments.

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Recommendation Five: Improve its due diligence during the pre-appeal review process by considering appellants' reasons for appealing and contacting claimants, employers, and third parties when necessary to obtain clarifying information that could result in a redetermination, which could eliminate or reduce the need for some Appeals Board hearings.

The EDD recognizes that there are always opportunities for improvement. We are exploring ways to enhance our policies and procedures with regards to determining when additional facts provided by claimants and employers, including third party evidence, warrant a redetermination of the issue under appeal so as to mitigate the need for some appeals hearings.

Recommendation Six: Identify those types of appeals that could be most influenced by its attendance at the appeal hearing, and analyze the feasibility and cost-effectiveness of participating in those hearings by telephone.

The EDD agrees to identify appeals and analyzing the feasibility and cost-effectiveness of participating in hearings by phone. Depending on the outcome of the analysis, the EDD may

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need to pursue additional funding and resources or consider the impact to other services it provides, such as our ability to answer customer calls.

Recommendation Seven: By September 1, 2014, the appeals board should aggregate the outcomes associated with each of the legal issues that it decided during fiscal year 2013-14 and make this data available to EDD. In addition, the appeals board should make similar updated data available to EDD twice each fiscal year thereafter.

⑧ The EDD agrees with the State Auditor's finding that, at present, the Appeals Board's data is of undetermined reliability. The Appeals Board's categorization of its decisions on any legal issue as favorable or unfavorable to the appellant is of dubious value, as a favorable decision, may mean that our determinations were reversed, remanded, or modified. We must receive useful aggregated data in a usable format in order that we can use the data to address trends in Appeals Board decisions.

The EDD cannot further comment on this recommendation until we see the level of depth of the data and whether the data is detailed and meaningful enough in order for us to identify trends. If the data provides enough detail, we will use the data to identify patterns and trends for the legal issues where our determinations are most frequently overturned.

Recommendation Eight: Using the appeal board's data from fiscal year 2013-2014, EDD should identify the legal issues with the highest volumes and turnover rates, and should use this data to establish initial performance benchmarks. In addition, similar to the review that EDD's audit and evaluation division performed in 2012, EDD should then review samples of its determinations and the appeals board's decisions on these legal issues to identify trends in the reasons cited by the appeals board for overturning EDD's determinations. With this information, EDD should review its policies, practices, and training related to these areas to identify and correct any weaknesses that may be contributing to determinations being overturned. By April 1, 2015, EDD should report to the Legislature on the results of this review and any changes it plans to make to its determinations process.

⑨ Again, the EDD cannot comment on this recommendation until we see the level of depth of the data and whether the data is detailed and meaningful enough in order for us to identify trends. If the data provides enough detail, we will agree to use the data to identify patterns and trends for the legal issues where our determinations are most frequently overturned. With this information, we would then review our policies, practices, and training to strengthen our determinations.

⑩ While we understand the importance of reporting to the Legislature, we cannot commit to meeting a reporting date of April 1, 2015. Even if the first set of data is provided to us by September 2014, it would not be feasible for us to conduct the level of analysis appropriate to determine the causes of the overturn rate for UI determinations. If we are able to get the information necessary, we will conduct the analysis and report on the outcome as soon as possible.

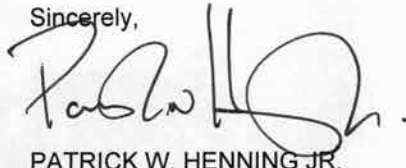
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Recommendation Nine: EDD should use the biennial data that the appeals board provides to determine whether any of the changes it may make to its process result in any reduction in the percentage of its determinations that are overturned on appeal. EDD should also review this data to determine whether it is necessary to conduct additional reviews of its determinations and the appeal board's decisions to identify additional opportunities for improvement. EDD should report these results to the Legislature annually.

Assuming the EDD obtains the detailed data required to perform meaningful analysis of the reasons determinations are overturned on appeal, the EDD will be glad to report our findings and opportunities for improvement to the Legislature. The EDD routinely reports on the UI Program to the Legislature annually during the budgetary process. We will discuss the appeals process improvements, or any other UI processes the Legislature deems necessary using the budgetary process as the reporting vehicle, or with any other legislative committee.

We thank the California State Auditor staff for their professionalism and openness during this audit. If you have any questions with the update, please contact Gregory M. Riggs at (916) 654- 7014.

Sincerely,



PATRICK W. HENNING JR.
Director

cc: David Lanier, Labor and Workforce Development Agency

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE EMPLOYMENT DEVELOPMENT DEPARTMENT

To provide clarity and perspective, we are commenting on the Employment Development Department's (EDD) response to our audit. The numbers below correspond to the numbers we have placed in the margin of EDD's response.

EDD's comments here are not consistent with the evidence we obtained during our audit. As we state on page 25, EDD could not demonstrate that it took any specific steps to implement the recommendations from its 2012 internal review. In addition, when we discussed the June 2013 revision to EDD's policy for contacting claimants with the deputy director of the Unemployment Insurance Branch, she stated that the policy was not revised in response to the 2012 internal review. In fact, EDD's previous policy for contacting claimants already included the requirement that staff give claimants 48 hours to respond to telephone messages to return its call whenever EDD does not have sufficient information to make a determination.

①

We stand by our conclusion that EDD does not always follow precedent benefit decisions. Based on our review of several files, and in particular the facts and the California Unemployment Insurance Appeals Board's (appeals board) decisions related to those files, it was clear to our legal counsel that EDD employees, while they may be taught the appropriate legal precedents, are not applying them correctly. Accordingly, we do not believe that the issue is merely a lack of proper documentation.

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We stand by our conclusion that EDD does not always gather necessary information before denying benefits. As we state on page 21, EDD does not always successfully contact claimants and employers prior to making its benefits eligibility determinations. Additionally, as we state on page 24, EDD's chief of the unemployment insurance program policy and projects section acknowledged that EDD sometimes must make eligibility decisions based on limited information. Finally, as we state on page 23, during its own 2012 internal review, EDD's auditors found that staff often conducted insufficient fact-finding before deciding to deny claimants unemployment benefits.

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In completing our quality control process, we revised the number of first-level decisions from 347 to 348.

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- ⑤ Although EDD has made an excellent start, we believe it has not completely implemented our recommendation. As we state on page 21, the materials that accompany the continued claim form do not specifically address the error of claimants allocating some wages to the wrong week. We also reviewed EDD's new step-by-step guide on how to certify for ongoing unemployment benefits and its new Web page, but neither of these resources directly address what claimants should do in the event that their pay week is not the same as EDD's mandatory reporting week.
- ⑥ EDD's response does not entirely address our recommendation. We agree that providing additional training to its staff on the importance of adequate fact finding and sending messages to claimants reminding them of their upcoming eligibility determination appointments would be beneficial. However, we also agree with EDD's audit and evaluation division's recommendation that it increase the required number of attempts to reach claimants by telephone or e-mail to obtain additional facts before making eligibility determinations.
- ⑦ We disagree with EDD's assertion that it currently allows its staff the time needed to complete determinations that involve complex issues. As we state on pages 21 to 25, we found that EDD does not always successfully contact claimants and employers before making its benefits eligibility determinations in cases that involved the question of whether a claimant was discharged for misconduct or left a job without good cause. Consequently, we agree with the recommendation of EDD's audit and evaluation division that EDD allow additional time for its staff to process misconduct and voluntary quit cases, especially those that involve complex issues, to ensure that they obtain sufficient information to complete the determination. We look forward to receiving additional details from EDD in its 60-day response on its efforts to provide staff with more time to complete their assignments by streamlining or eliminating processes.
- ⑧ As we state on page 14, we found that the appeals board's data were of undetermined reliability because we did not perform accuracy and completeness testing of the data. The reason we did not perform such testing was that the source documents required for this testing are stored by the appeals board's field offices located throughout the State, making such testing cost-prohibitive. Nevertheless, the appeals board's data represent the best available source of information related to unemployment insurance appeals and as such should be used to identify policies, procedures, or practices that may be contributing to avoidable appeals.

We strongly disagree with EDD's characterization that the appeals board's data is of dubious value. The appeals board's database indicates whether appeals were favorable or unfavorable for every unemployment insurance legal issue. We believe EDD could use these aggregated data to identify the appeal issue areas with the highest number of overturned determinations, as we did in Table 6 on page 31. Using this information, EDD could review samples of its determinations and the appeals board's decisions in these issue areas to identify trends in the reasons the appeals board cites for overturning EDD's determinations. With this information, EDD could review its policies, practices, and training related to these areas to identify and correct any weakness that may be contributing to the overturning of its determinations. This is essentially the process that we used to select and review the 90 appeals we selected for our analysis. This process is also similar to the methodology that EDD's audit and evaluation division used in 2012 to identify several opportunities for EDD to improve its determination process.

⑨

The appeals board agreed in its response to make the first set of data available to EDD by September 1, 2014, and we believe seven months is sufficient time for EDD to perform a meaningful analysis and report its preliminary findings and progress to the Legislature. We look forward to EDD providing a specific date for completing its analysis when it provides its 60-day response to our report.

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State of California - Edmund G. Brown, Jr. Governor
California Labor & Workforce Development Agency

California Unemployment Insurance Appeals Board
2400 Venture Oaks Way, Suite 300
Sacramento, CA 95833

August 11, 2014

Ms. Elaine M. Howle
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Audit Report 2014-101 Employment Development Department: It Should Improve Its Efforts to Minimize Avoidable Appeals of Its Unemployment Insurance Benefit Eligibility Determinations

Dear Ms. Howle,

The California Unemployment Insurance Appeals Board (CUIAB) has received the report on the Bureau of State Audits (BSA) Audit #2014-101 on the Employment Development Department and its Unemployment Insurance benefit eligibility determinations. Thank you for the opportunity to respond to the audit report. In the report, there was only recommendation that called for action to be taken by CUIAB. We provide our response below.

Issue: To identify and correct any policies, procedures, or practices that may be contributing to avoidable appeals and thereby better ensure that eligible claimants receive unemployment benefits in a timely manner.

Recommendation: By September 1, 2014, the appeals board should aggregate the outcomes associated with each of the legal issues that it decided during fiscal year 2013-14 and make this data available to EDD. In addition, the appeals board should make similar updated data available to EDD twice each fiscal year thereafter.

Response: We will implement BSA's recommendation. We will make available to EDD aggregated unemployment insurance (UI) benefit appeal outcome data for fiscal year 2013-14 on our public website by September 1, 2014. Further, we will make similar aggregated data available to EDD twice each fiscal year thereafter.

CUIAB notes that the aggregated UI benefit appeal outcome data is subject to some limitations that may include:

- UI benefit determinations that are not appealed are not in CUIAB's data. CUIAB only has the limited appeal population of data as that is where CUIAB intersects with EDD.
- CUIAB's database tracks appeal decision outcome based on whether the outcome is favorable or unfavorable to the appellant. There are additional sub-categories for both favorable and unfavorable decisions that are not tracked in CUIAB's database. This information may be found in the hard copy appeal decision.
- Information on why an Administrative Law Judge reaches the appeal decision is documented in the hard copy appeal decision.

Bureau of State Audits Report 2014-101
August 11, 2014

- Material facts and additional evidence received during a hearing is frequently discussed in the appeal decision issued by the Administrative Law Judge and is maintained in hard copy appeal case files at CUIAB.

Lastly, we would like to offer the following statistics in response to the multi-year average offered in the report, which may better reflect the achievements that CUIAB has accomplished in providing timely service as we dealt with years of unprecedented workload levels due to the recent recession. CUIAB implemented a number of improvements to its processes that have improved the wait time for appeal decisions from an average of 70 days in FY 2010-2011 to an average of 39 days in FY 2013-2014.

Please feel free to contact me if you have any questions.

Sincerely,



Elena E. Gonzales
Executive Director/Chief Administrative Law Judge

cc: Secretary David Lanier, Labor and Workforce Development Agency
Chair Robert Dresser, California Unemployment Insurance Appeals Board