



State of Delaware  
Department of Labor

**24th Annual Report  
on the  
Status of Workers' Compensation  
Case Management**

**January, 2022**

## 2021 Highlights

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The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases. The Department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Workers' Compensation Oversight Panel for their substantial efforts in fine-tuning the Health Care Payment System, and the members of the Delaware General Assembly for their ongoing support.

Reflecting on the work accomplished in 2021, three issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. OWC continues to work to address the problem of employers operating in Delaware without workers' compensation insurance coverage with the hiring of 3 (one for each county) Labor Law Enforcement Officers in Spring of 2021. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. The efforts of this unit secured over 215 Workers Compensation policies that covered previously uninsured employees working in the State of Delaware.
2. From an operational standpoint, the Office of Workers' Compensation has continued its modernization efforts. The Office of Workers' Compensation has finished the process of digitizing all purged files. In 2019, the launch of accepting Petitions electronically was introduced through the on-line portal system. The submission of First Report of Injuries and requests for public documents capabilities is available in the portal, as well. The online portal is used by insurance carriers to submit direct paid loss information and the statement of premiums. The self-insured businesses use the online portal to submit payroll classifications. This electronic submission is in lieu of paper document submission which then required staff to input the data. The Office is in the process of exploring the acceptance of Pre-Trial Memos

electronically from stakeholders as well as the file exchange of First Report of Injury with the State of Delaware's third-party administrator, PMA.

The Office of Workers' Compensation introduced a new email box for the acceptance of Agreements & Receipts and First Report of Injuries. This new process has proven effective as the turnaround time from mail submission to completion is cut in half. The processing of agreement and receipt documents was transferred from the fiscal unit to the Workers' Compensation unit in the Fall of 2021.

3. The Workers' Compensation Fund (Second Injury Fund) is a fund that the Department of Labor, Office of Workers' Compensation oversees. The Workers' Compensation Fund provides lost wage payments to Claimants either while litigation is pending or when Claimant has incurred a second injury. Within the last year, the Office of Workers' Compensation has obtained dedicated legal resources for the Workers' Compensation Fund. From June 2021 to December 2021, the Workers' Compensation Fund has been able to recoup more wage payments than ever in its history and has been able to reduce the bi-monthly wage payments in half the amount as compared to a year ago.

OWC is continuing to look at additional ways of streamlining processes for the benefit of members of the public as well as staff.

The Office of Workers Compensation takes pride in its updated website full of valuable information and links, including a list of available services, the ability to search for employer insurance coverage, access to the Workers' Compensation Act, frequently asked questions, and forms:

<http://dia.delawareworks.com/workers-comp/>

# Health Care Payment System - Year in Review 2021

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The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its twelfth anniversary on May 23, 2021. The 6 major components of the HCPS, which fall under the purview of the Workers' Compensation Oversight Panel and its subcommittees, are:

1. A Fee Schedule
2. Health Care Practice Guidelines
3. A Utilization Review program
4. A Certification process for health care providers
5. Forms for employers and health care providers
6. Data Collection

The 24 member WCOP contains representatives from the medical, legal, labor, business, and insurance communities, including the Secretary of Labor and Insurance Commissioner. Since its expansion in July 2014, the Panel has convened without one of the "insurance carrier" representatives. Currently, the Panel has one Insurance Carrier vacancy and one Medical Society – At Large vacancy.

In 2021, the WCOP did not meet. Its subcommittees met 3 times.

The OWC medical component supports the operations of the HCPS. In 2021, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. These contacts primarily came from the "providers," "carriers," "other states/entities," and "general" categories. Provider certification represented the largest number of contacts.

The Department of Labor's website contains comprehensive information on all five components of the HCPS, as well as links to send e-mail questions, subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data,

download forms, access the Administrative Code (“the regulations”), access to the Workers’ Compensation Act and complete the required continuing education course for certified health care providers.

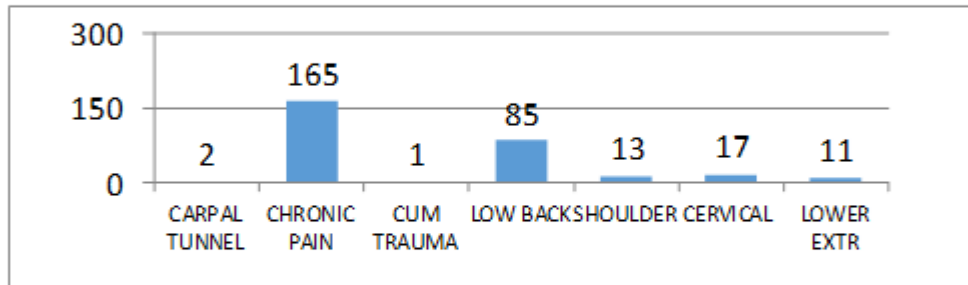
**Utilization review (UR)** provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course for a specific worker’s injury. OWC deems a UR request “ineligible” when the request falls outside the specified purview of UR or does not comply with the “required content, presentation and binding method” for materials submitted for review. The like-specialist reviewer deems a UR request “non-applicable” when the appropriate practice guideline does not address the treatment under review.

In 2020, OWC received 225 requests for utilization review. In 2021 YTD, OWC received 249 requests for utilization review, which constituted an 9.64% increase. In 2020, OWC received 140 Petitions to Appeal a Utilization Review. These appeals were filed in approximately 62% of the cases where utilization review had been requested. The vast majority of these appeals were later withdrawn prior to being heard by the Industrial Accident Board. In 2021, OWC received 158 Petitions to Appeal a Utilization Review. The percentage rate of appeal for 2021 was approximately 63.45%. Also similar to the prior year, the great majority of appeals filed were later withdrawn before going to a hearing with the Industrial Accident Board.

Chronic pain treatment, particularly pain medication, continued in 2021 to represent the treatment most challenged through utilization review. OWC participates on the Prescription Drug Action Committee (PDAC), which continued moving forward its recommendations to reduce prescription drug abuse in Delaware.

## OWC Health Care Payment System (HCPS) 2021 UR Practice Guidelines through 12/31/21

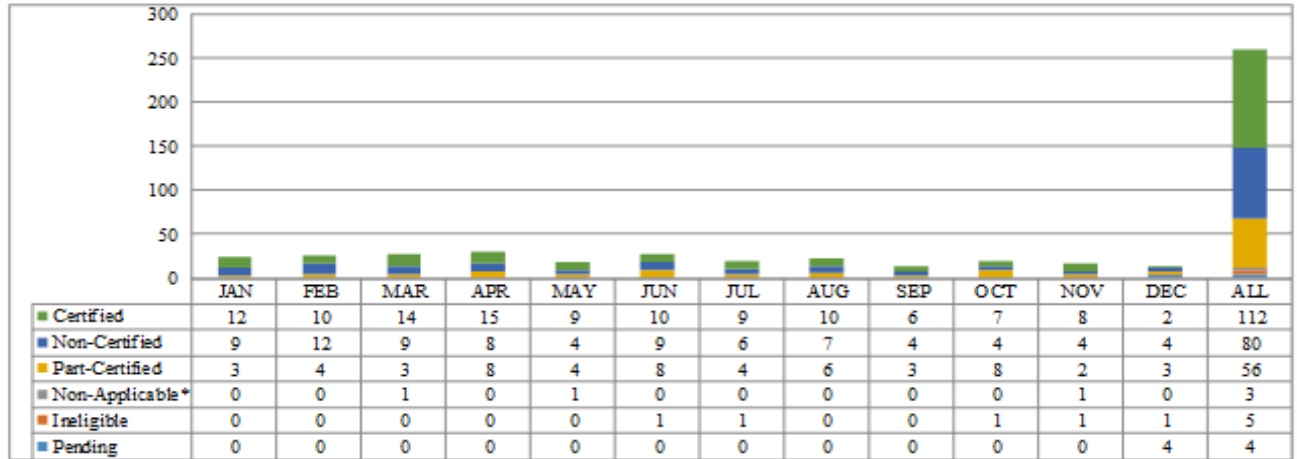
UR statistics are compiled on a one-month lag based on date of receipt.



•Individual UR requests may involve multiple Practice Guidelines.

## OWC Health Care Payment System (HCPS) 2021 Utilization Review Program\*

UR statistics are compiled on a one-month lag based on date of receipt.

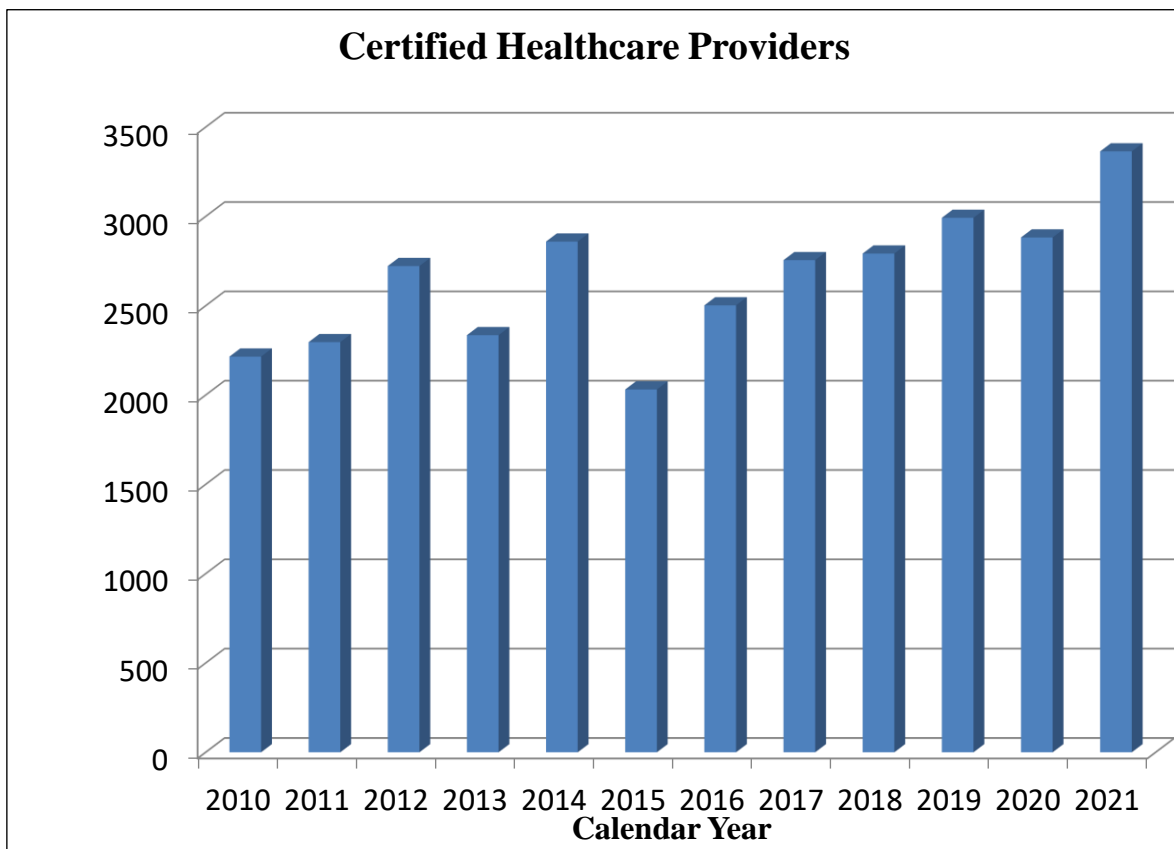


\*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12, for instances when the injury does fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	21	24	26	31	17	28	20	23	13	19	14	13
Total - YTD	21	45	71	102	119	147	167	190	203	222	236	249
Total - Since 5/23/08	4263	4287	4313	4344	4361	4389	4409	4432	4445	4464	4478	4491

The OWC Utilization Review program continues to expand electronic processing of the requests for utilization review. The review requests continue to be sent to all of our UR contractors via secure email instead of certified mail. All of these processes allow the contractor to receive the UR request in a shorter period of time and OWC has been able to realize a large cost savings by no longer sending the large number of documents included in a UR request through certified mail. In addition to sending UR requests via secure email, additional savings have been attained by scanning and storing all UR files on a shared network drive eliminating the need for storage of paper files.

The number of certified health care providers has increased within the last year. In 2020 there were 2,822 certified providers and that number has increased by 19% to 3,364 in 2021. There are 39 areas of practice represented among the certified providers. Biennial compliance with the statutorily mandated continuing education course was the most common reason providers lost their certification. The anchor date for completion of the course will remain the provider's professional license renewal date. 2021 marked the eighth year of this change, which helps providers' better track the recertification deadline, also the Workers Compensation Provider Certification Course was revamped to reflect any Workers Compensation regulation that may have occurred during the previous and current year.





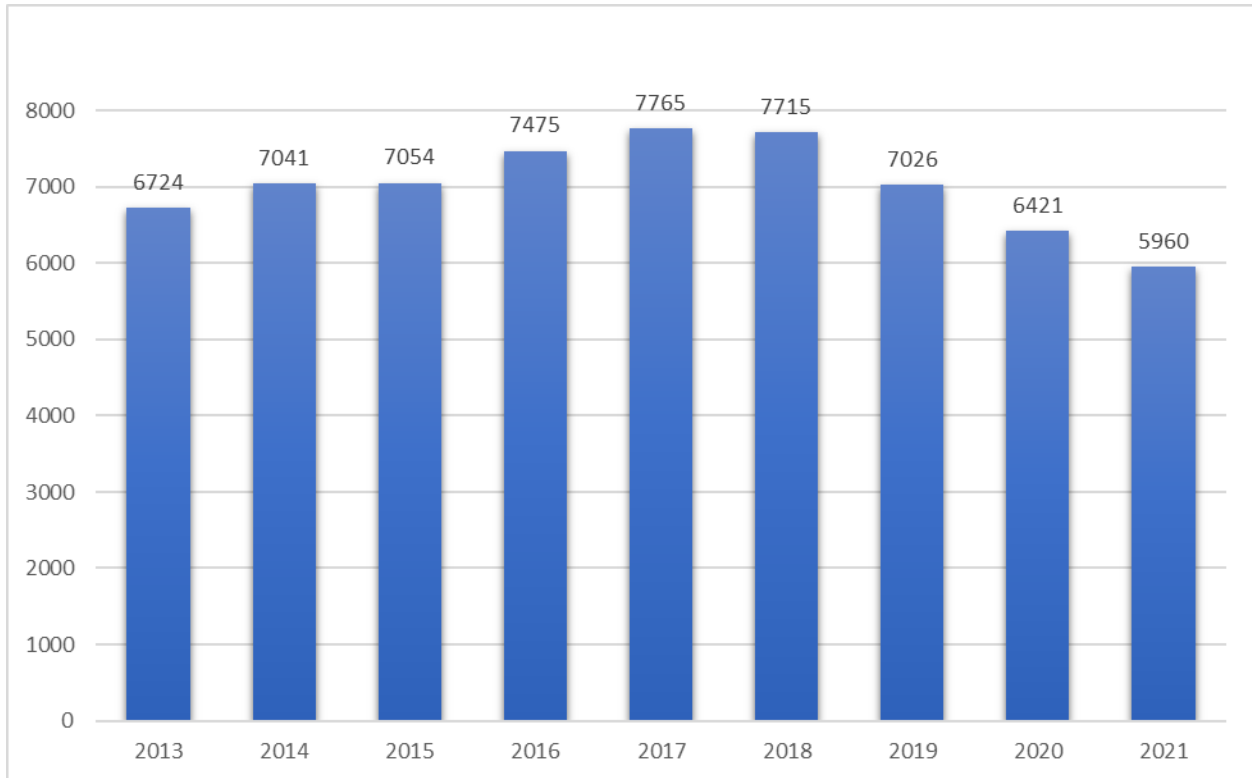
In 2021, approximately 3,576 stakeholders participated in OWC's ListServ, which represents a increase over the 3,142 subscribers at the end of 2020, partly due to the COVID -19 pandemic. The OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email.

## **Office of Workers' Compensation**

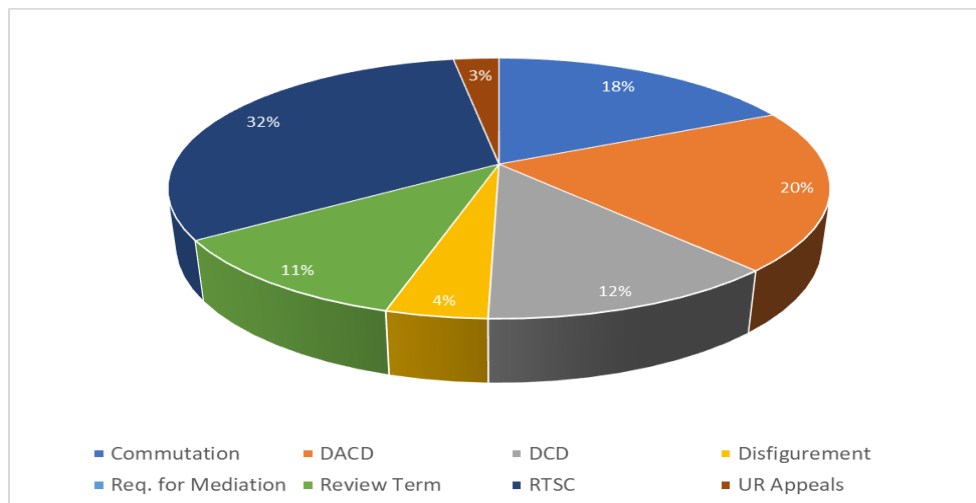
The Workers' Compensation Specialists continued to assist callers, even if the Specialist was working remotely. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The Office of Workers' Compensation processed 2452 requests for copies of public documents. OWC processed 12,988 First Report of Injury. Only 3% were filed electronically. OWC is exploring ways to allow the interfacing of the FRI to our current system.

## Petitions Filed Annually

During 2021, a total of 5960 petitions were filed. This is a very slight decrease compared to 2020 (8%) but is an anomaly statistically due to the unusual circumstances that continued in 2021.



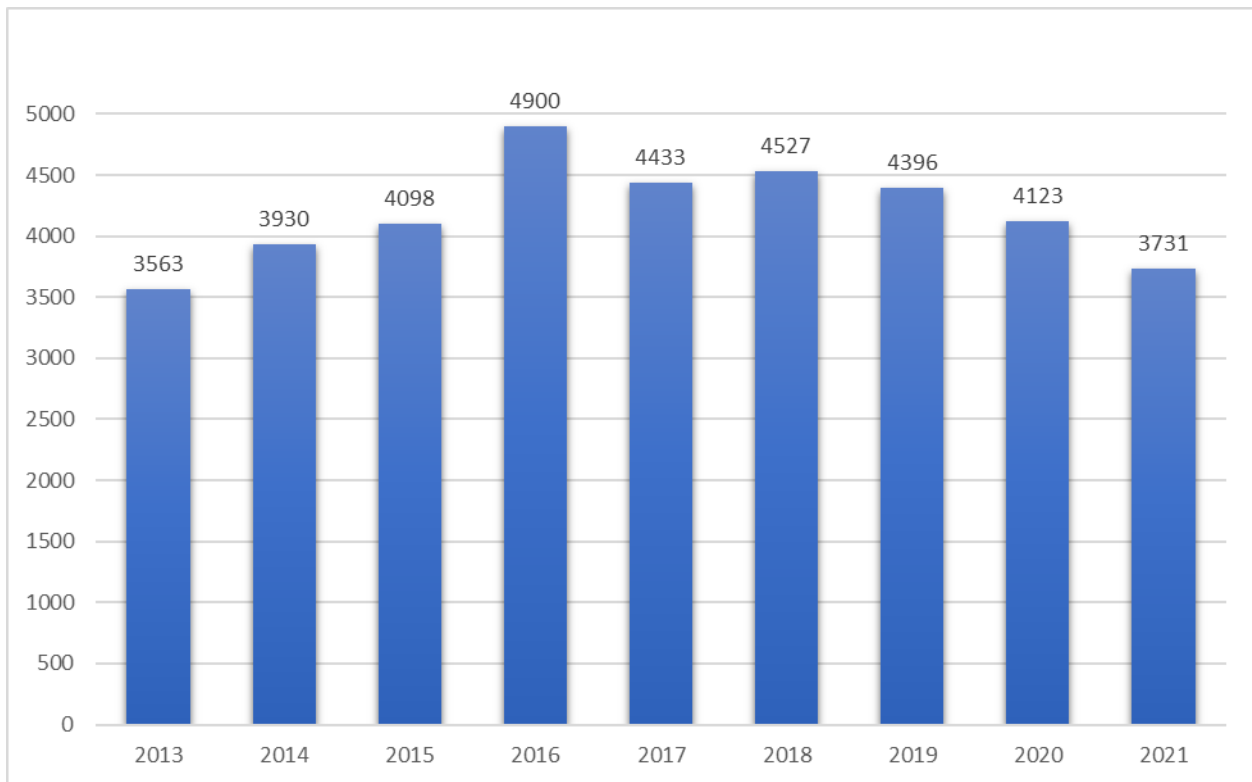
## Types of Petitions



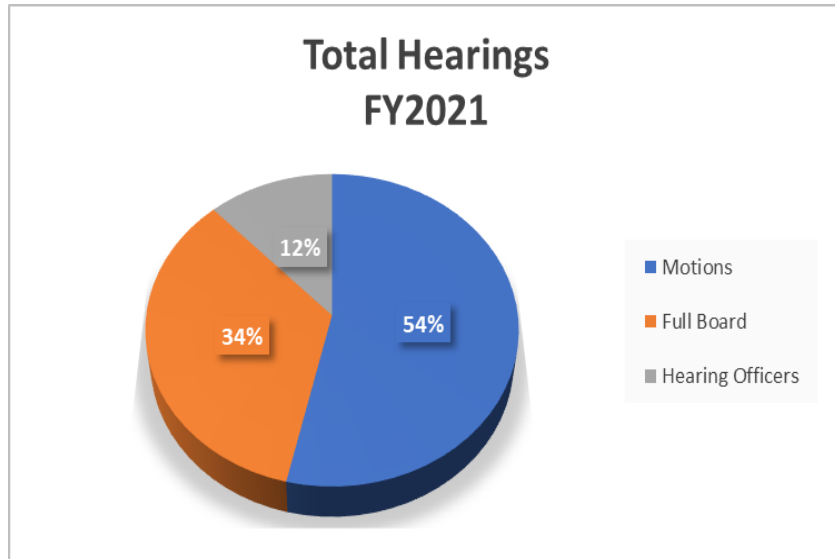
## Petitions Heard by the Board/Hearing Officers

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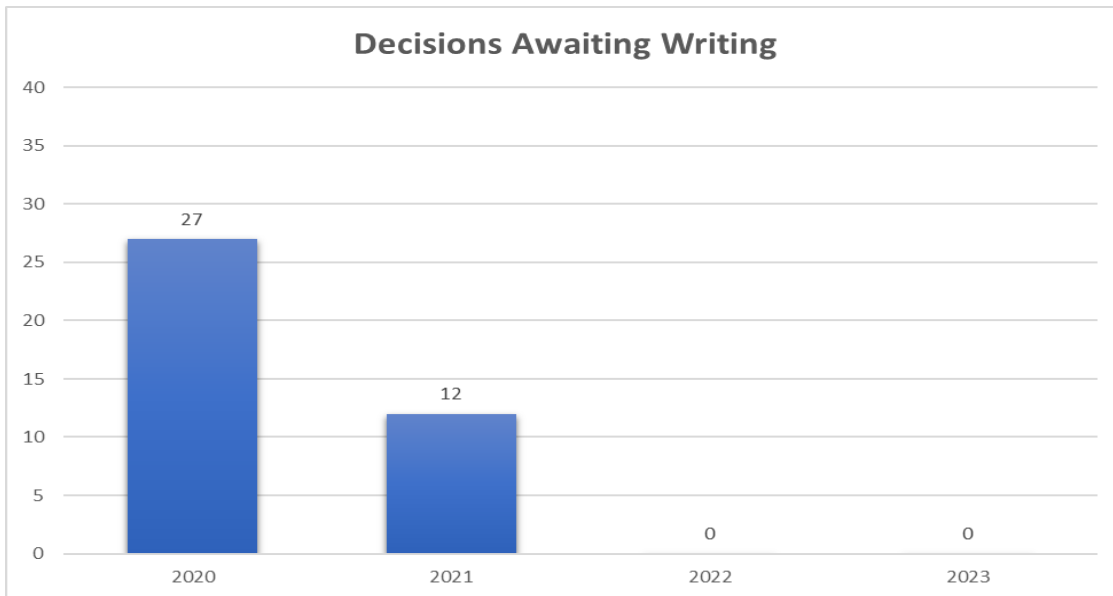
As seen in the chart on page 9, the number of petitions filed annually decreased 8% in calendar year 2021, as compared to 2020; while there was a decrease of 9% in Petitions heard in FY21. This statistic is for all petitions regardless of hearing type.



252 Merit hearings were conducted in 2021, at which 65 were conducted by solo Hearing Officers. There were 795 commutations reviewed by a solo Hearing Officer in 2021.



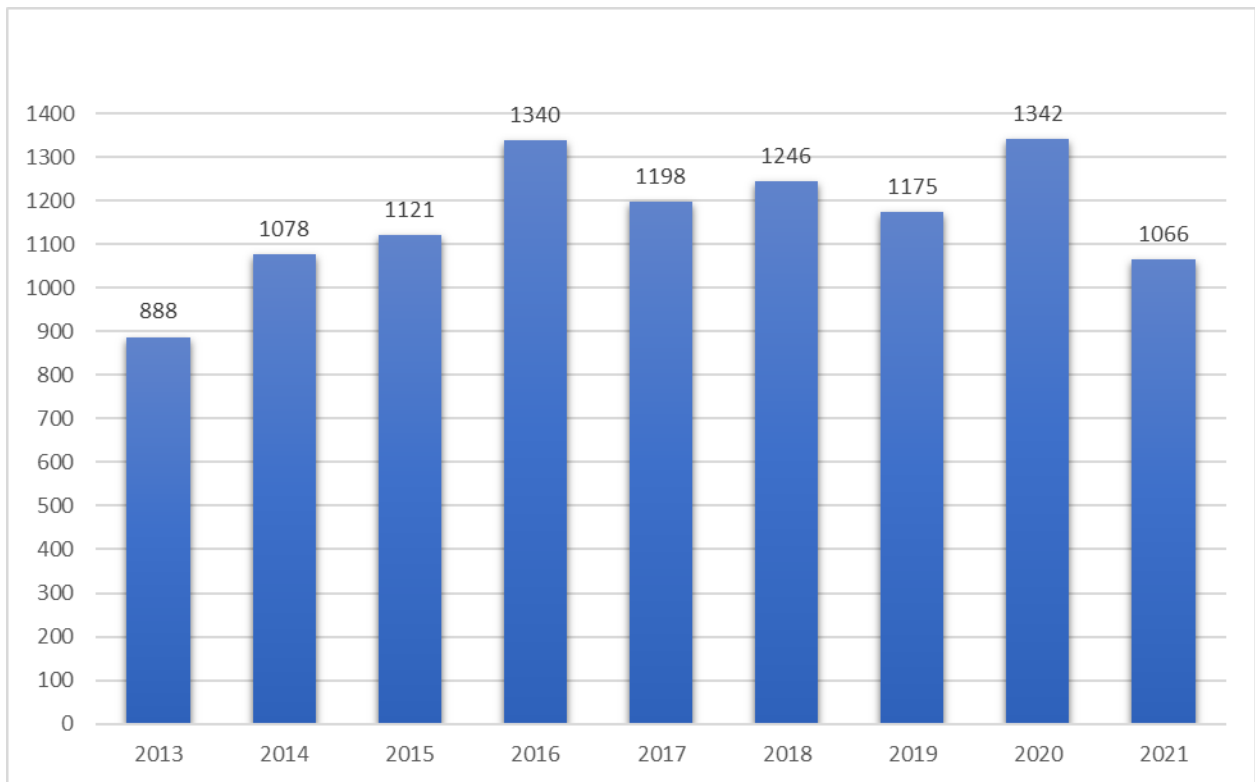
Currently, there are 12 decisions in the queue awaiting writing. During the year of 2021 and continuing into 2022, the OWC is “cleaning up” the entries of consolidated hearings to reflect a more accurate chart in our SCARS system.



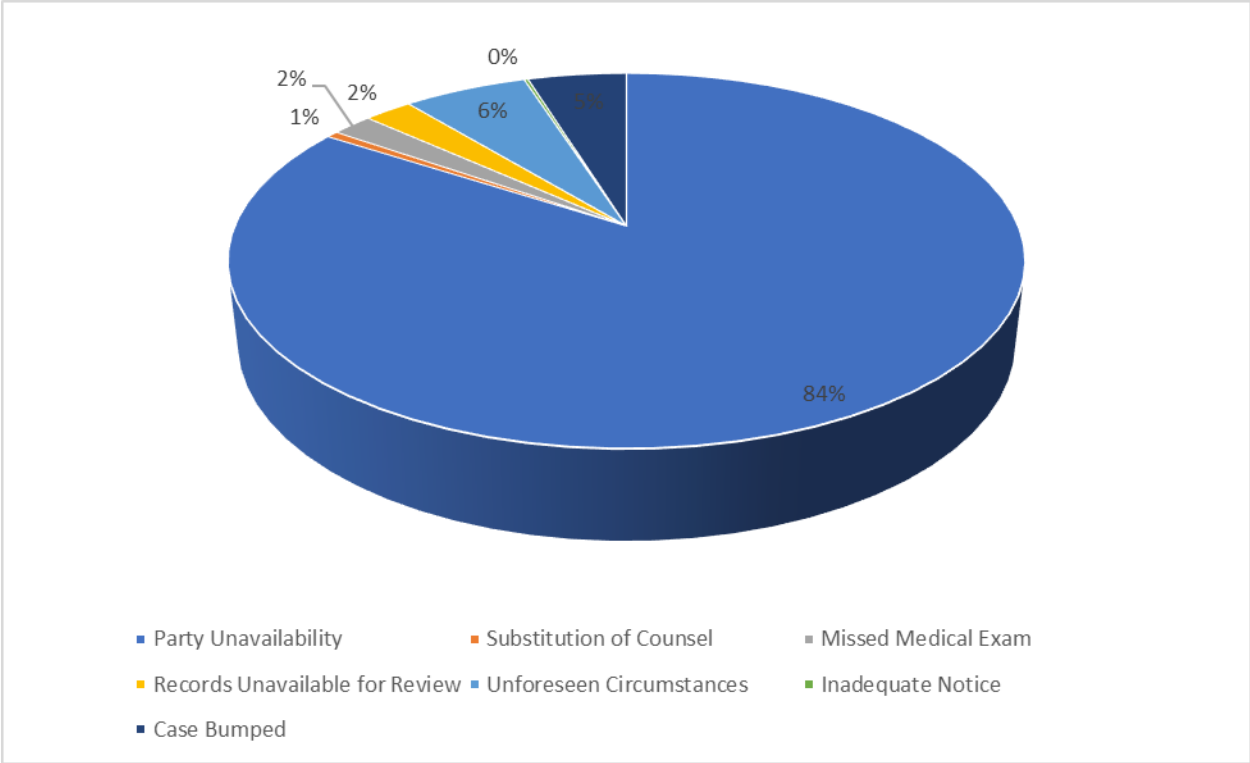
# Continuances

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In 2021, a total of 1,066 continuances were granted, which represents a 20% decrease from the 1,342 continuances granted in 2020. The mass majority of continuances continue to be caused by the unavailability of a medical witness and due to the pandemic.



<b>Grounds for Continuances</b>	<b>Number of Occurrences</b>
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	897
A justifiable substitution of counsel for a party	6
Any unforeseen circumstance beyond the control of the parties:	
<input type="checkbox"/> Employee missed employer-scheduled medical exam	21
<input type="checkbox"/> Records unavailable for review by parties prior to hearing	25
<input type="checkbox"/> Unforeseen circumstances	64
<input type="checkbox"/> Inadequate notice	2
<input type="checkbox"/> Case bumped	51



## Board Member Activities

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The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2021. Scheduled days versus actual days differ due to case settlements and continuances. The Board Members sat 40% of the scheduled time; a 2% increase over last year.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Dantzler	128	66
D’Anna	154	48
Freel	59	22
Fuller, Sr.*	96	50
Hare	129	56
Hartranft	160	60
Mauil	130	50
Mitchell	177	62
Murowany	165	61
Rodriguez*	77	33
Wilson	167	56
<b>Total:</b>	<b>1442</b>	<b>564</b>

- A. Rodriguez resigned effective June 30, 2021
- G. Fuller resigned effective October 8, 2021
- B. Freel was hired effective July 1, 2021

The following table shows the number of Hearings on the Merits conducted by each Board Member where a decision has been rendered. This chart does not include Legal Hearings; and multiple petitions heard within the same hearing.

Two members of the Board sit for each Hearing.

<b>Board Member</b>	<b>Number of Hearings on the Merits</b>
Dantzler	32
D'Anna	29
Freel	14
Fuller	20
Hare	30
Hartranft	43
Maul	32
Mitchell	43
Murowany	41
Rodriguez	18
Wilson	34
<b>Total</b>	<b>336</b>



## **Completed Caseload of Individual Hearing Officers**

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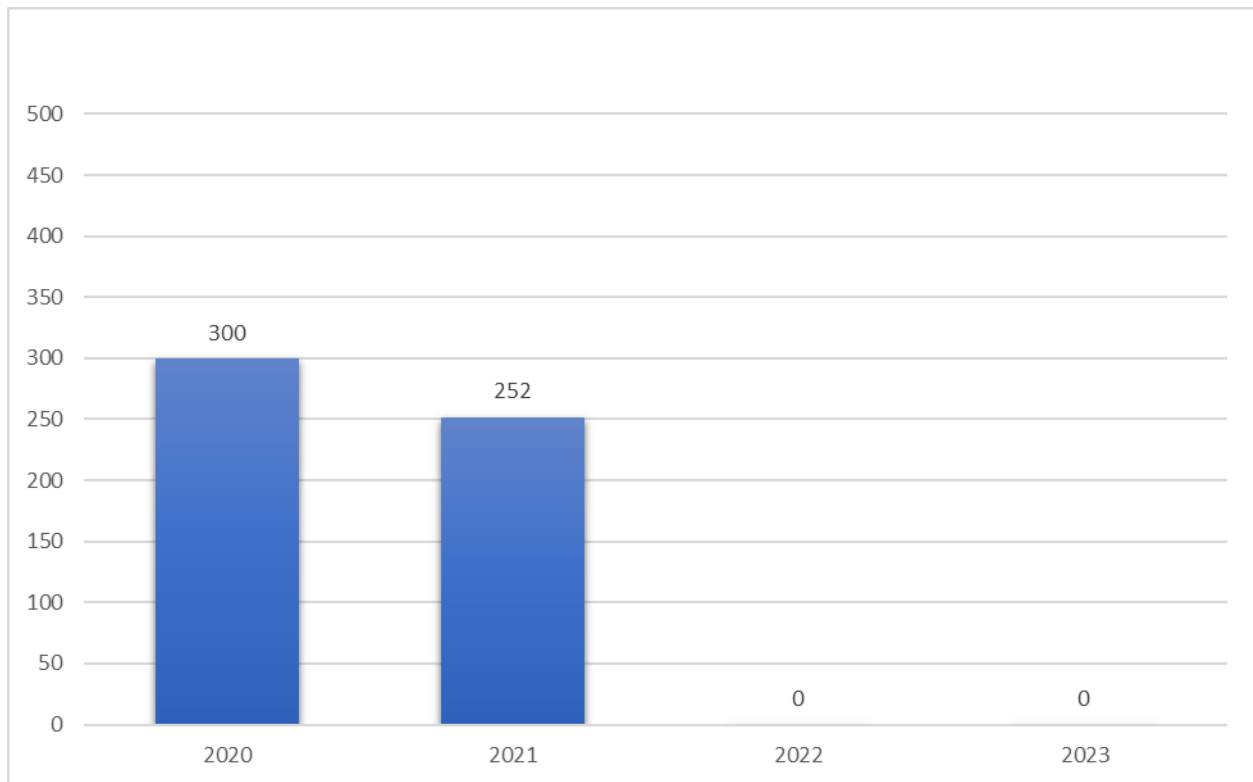
<b>Hearing Officer</b>	<b>Number of Decisions, Orders and Rearguments Written</b>
E. Boyle	30
J. Bucklin	42
A. Fowler	44
S. Mack	32
J. Pezzner	30
J. Schneikart	31
H. Williams	59
K. Wilson	39
C. Baum, Chief	48
<b>Total</b>	<b>355</b>

In 2021, hearing officers conducted no workers' compensation mediations pursuant to DEL. CODE ANN. tit. 19, § 2348A.

## Compliance with Hearing & Decisional Deadlines

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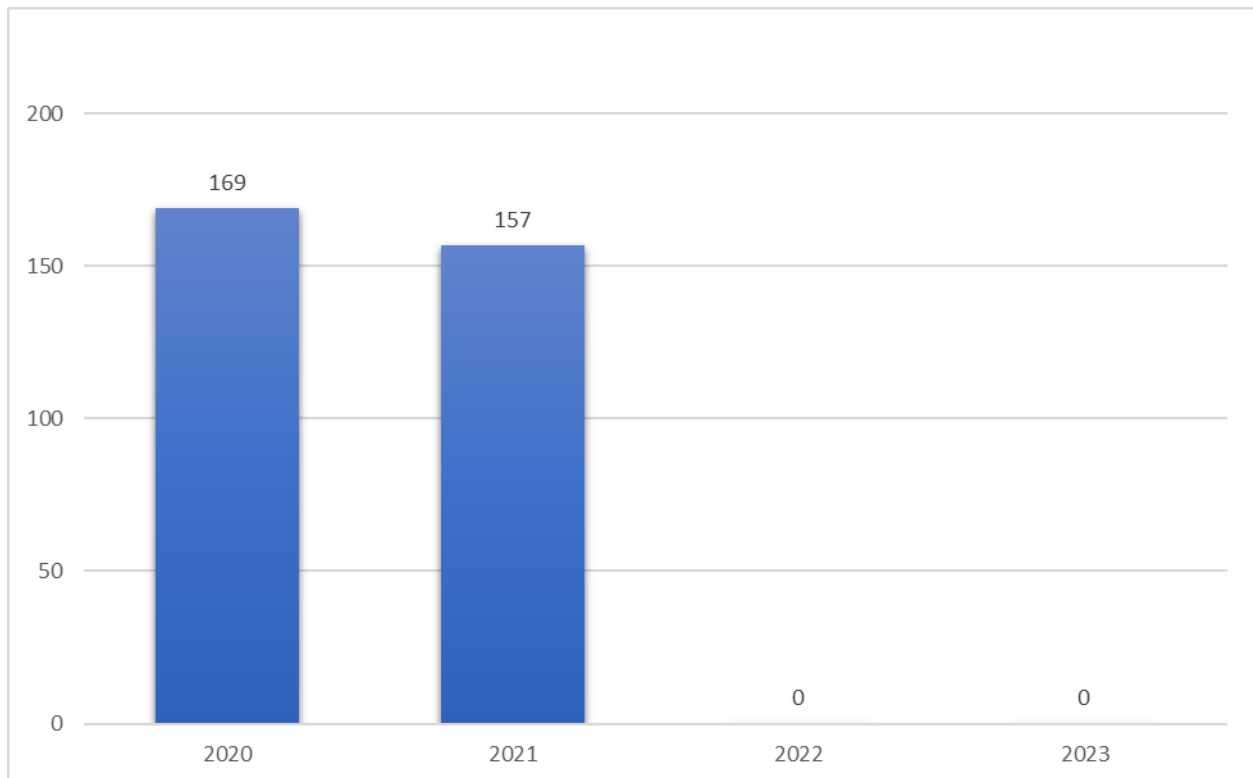
In 2021, 252 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The number of appeals continued to remain low, with only 35 appeals in 2021.



## Analysis of Dispositional Speed

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In 2021, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 151 days, compared to 170 in 2020. An 11% improvement. The agency is continuing its efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions.



# Summary of Appeals

(Status of appeals taken as of December 31, 2021)

In the last five years, the Board (or Hearing Officers) have rendered 1,594 decisions on the merits. Of those decisions, 202 (approximately 12.67%) were appealed (an average of 40.4 per year). 177 of those appeals have been resolved. Only 26 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only about 1.63% of all decisions rendered in those five years.

Year Appeal Taken In:	2017	2018	2019	2020	2021
Total Number of Decisions:	375	338	358	254	269
Total Number of Appeals:	29	46	47	45	35
Affirmed:	7	15	14	22	6
Reversed and/or Remanded:	4	10	9	3	0
Dismissed/Withdrawn:	18	21	23	16	9
Pending: <sup>1</sup>	0	0	1	4	20

Five-Year Cumulative	
Total Number of Decisions:	1594
Total Number of Appeals:	202
Affirmed:	64
Reversed and/or Remanded	26
Dismissed/Withdrawn	87
Pending:	25

<sup>1</sup> For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2018, some of those appeal results may change in the future because of decisions by the Supreme Court.

# Departmental Recommendations

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## Outreach

OWC continues to work to address the problem of employers operating in Delaware without workers' compensation insurance coverage. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. New pamphlets and videos are planned for 2022 to give employers an understanding of the requirements of the State of Delaware. This educational tool will address requirements for both in-state employers and employers out of state that are conducting business within Delaware. OWC is also reviewing current workers' compensation statutes to ensure that they contain the tools necessary to pursue non-compliant companies.

## Self-Insurance

The Office of Workers' Compensation is continuing its review of the workers' compensation self-insurance program in its entirety. When an employer is self-insured, the employer takes on the liability of paying any costs associated with a workers' compensation injury suffered by one of its employees instead of those costs being handled through an insurance carrier. OWC's immediate concern is to address the resulting situation for workers' compensation claimants when a self-insured employer files for bankruptcy. Even though self-insured employers are required to post a surety bond, OWC is finding that the bond amount is insufficient to cover the payment of all workers' compensation claims remaining after the company files for bankruptcy. This includes both payment for medical expenses as well as any indemnity benefits payable to the injured worker.

Another concern is how our statutes do not specify how the bond amount is to be calculated for self-insured employers. OWC is looking at having some consideration of the size of the company and the nature of the company's work.

A third area to be addressed is how the current statutes do not adequately address the manner in which claims are to be paid from the bond proceeds when a self-insured employer does file for bankruptcy. OWC would also like to address the lack of requirements for an employer to be granted self-insured status as well as the lack of a periodic review of an employer's self-insured status and whether that status or bond amount continues to be appropriate for the employer.

### Workers' Compensation Oversight Panel (WCOP)

On November 29, 2021, the Insurance Commissioner announced that workers' compensation rates for 2022 would decrease on average 20.01% for the residual market and 21.02 % for the voluntary market. This is the fifth consecutive year Workers' Compensation insurance rates have dropped. OWC will continue to provide the administrative support necessary for the Workers' Compensation Oversight Panel to further its efforts at reducing costs associated with the past increases in workers' compensation rates.