



# **State of Delaware Department of Labor**

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**10th Annual Report  
on the  
Status of Workers'  
Compensation  
Case Management**

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3/6/09

February 12, 2008

*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 Health Care Advisory Panel for their substantial work on implementing the new Worker's Compensation legislation, the Workers' Compensation Advisory Council for their contributions and the members of the Delaware General Assembly for their ongoing support.*

*James G. Cagle, Jr., Director  
Division of Industrial Affairs*

*John F. Kirk, III, Administrator  
Office of Workers' Compensation*

# Full HCAP

1/28/08	5th
3/10/08	6th
4/14/08	7th + Public Hearings
10/10/08	8th
11/10/08	9th
12/8/08	10th

# Sub-committees met

numerous times to  
Forms  
F/S  
UR  
chose companies  
RFP  
P/G most freq,  
highest cost.  
PC

# Public Hearings

# SC:

1/14/08  
1/22  
2/11  
3/3  
6/9  
6/23  
8/8  
9/29

*New positions  
created in 2008?  
Public Hearings?*

## **Year in Review 2007**

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In January 2007 a working group (the group became known as the Core Group) consisting of members of the administration, and members of the labor, business, legal and medical communities presented a compromise workers' compensation reform bill to Governor Minner. The bill featured indemnity, other non-medical, medical and rate filing reform provisions.

On January 17, 2007 Governor Minner signed Delaware's first comprehensive workers' compensation reform into law. Senate Bill 1, sponsored by the full membership of the Senate and House of Representatives made the following comprehensive changes to Delaware's workers' compensation system:

- Authorized the Department of Insurance to order restitution against or for the benefit of a self insured employer regarding insurance fraud.
- ✓ • Directed that a new workers' compensation rating plan be filed with the Insurance Commissioner within a specified period of time after the effective date of the medical payment system.
- Created a system for the collection of data concerning injury reports, mandatory insurance requirements, health care treatments and costs.
- ✓ • Clarified the calculation of wage and compensation rates, especially for workers with limited work histories.
- ✓ • Clarified the obligations of independent contractors and subcontractors with respect to maintaining workers' compensation insurance.
- Required affidavits for attorney fees that are subject to an award from the Industrial Accident Board.
- Authorized employers/insurance carriers to make payments of indemnity and medical benefits without prejudice while preserving the right to contest compensability of the claim.
- Provided a process that will allow for the suspension of benefits to workers who are incarcerated due to criminal conviction.

*subheading to  
HCPs  
moving forward*

- ✓• Required that contractors doing substantial work within Delaware ensure that workers are adequately insured pursuant to Delaware statute. \* workplace fraud w/ labor law enforcement
- ✓• Formalized a workplace safety program that is already in place in the Department of Insurance.
- ✓• Created Delaware's first comprehensive workers' compensation medical payment system that will reduce costs to employers while protecting the rights of injured workers to receive quality medical care.

Senate Bill 1 established the Health Care Advisory Panel (HCAP,) a seventeen member panel with representatives from the medical, legal, labor, business and insurance communities. The purpose of the Panel is to develop and maintain a health care system that eliminates outlier charges and streamlines payments pursuant to 19Del.C§2322B(a) by "creating a presumption of acceptability of charges implemented through a transparent process, involving relevant parties, that prospectively responds to the cost of maintaining a health care practice, eliminating cost shifting among health care service categories and avoiding institutionalization of upward rate creep." The five major components of the medical payment system that are being developed by the HCAP 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

The HCAP first met on May 23, 2007 and has frequently met since the first meeting. On November 14, 2007, Secretary of Labor Thomas B. Sharp approved the recommendations of the HCAP regarding Forms and the Fee Schedule and further approved an effective date of May 23, 2008.

The Office of Workers' Compensation redesigned its automated computer system for case processing. The system, *Scheduling Case Management Accounting Reporting System, (SCARS)* is a web based system and replaced the old system on June 1, 2007.

The Office of Workers' Compensation continues to maintain its "no backlog" status. A backlog is defined as more than four months worth of petitions. Note: the actual number of petitions was not available as of the writing of this report due to a data conversion between the old and new computer system. This information will be available in the 2009 status report.

Hearing officers conducted hearings in 1,562 cases which would otherwise had to have been heard by the IAB, an increase of 4% from CY 2006.

The workers' compensation specialists assisted 1845 injured workers (as compared to 1,552 in CY2006, 1,422 in CY 2005, 1,470 in CY 2004, 1,285 in CY 2003 and 1,245 in CY 2002) in processing their claims for benefits. They also provided technical assistance to 6,959 callers. The other contacts included attorneys, insurance carriers and employers. The agency had 11,707 parties electronically requesting assistance this year.

*convert to chart.*

Despite the high number of petitions filed in 2007 (more than 7,300), the agency continues to maintain a "no backlog" of cases.

INT. WORKERS  
1,770

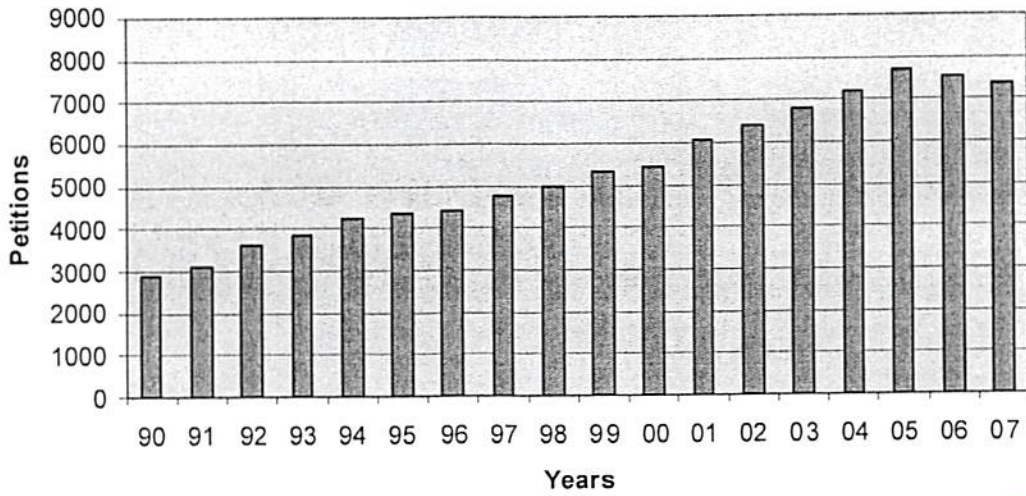
CALLERS  
~~9,253~~  
~~10,232~~  
8,755

Total calls  
- Claimant calls  
(already counted)  
8,755

EMAILS  
~~14,094~~  
14,078

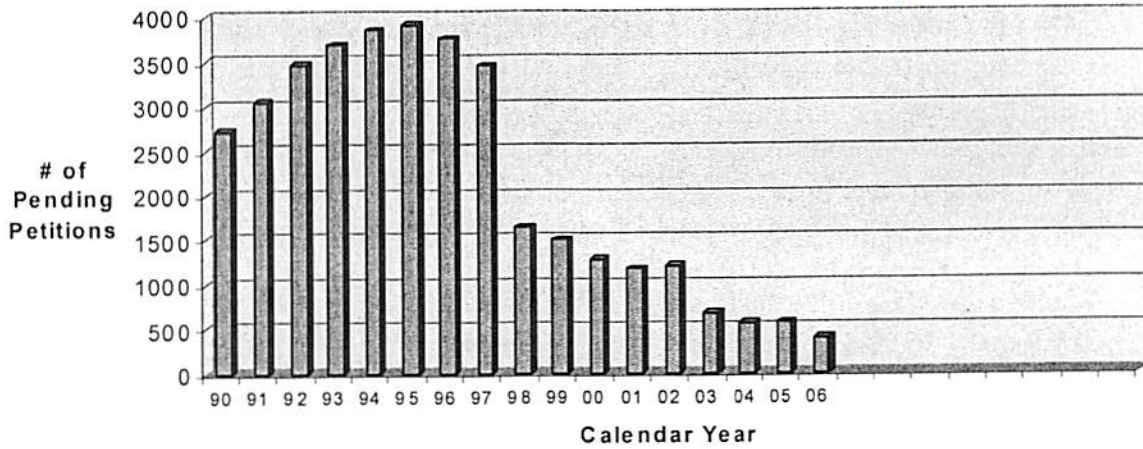
Total emails  
- claimant emails  
14,078

### Workers' Compensation Petitions Filed Annually



*What is a pending petition?*

### Pending Petitions



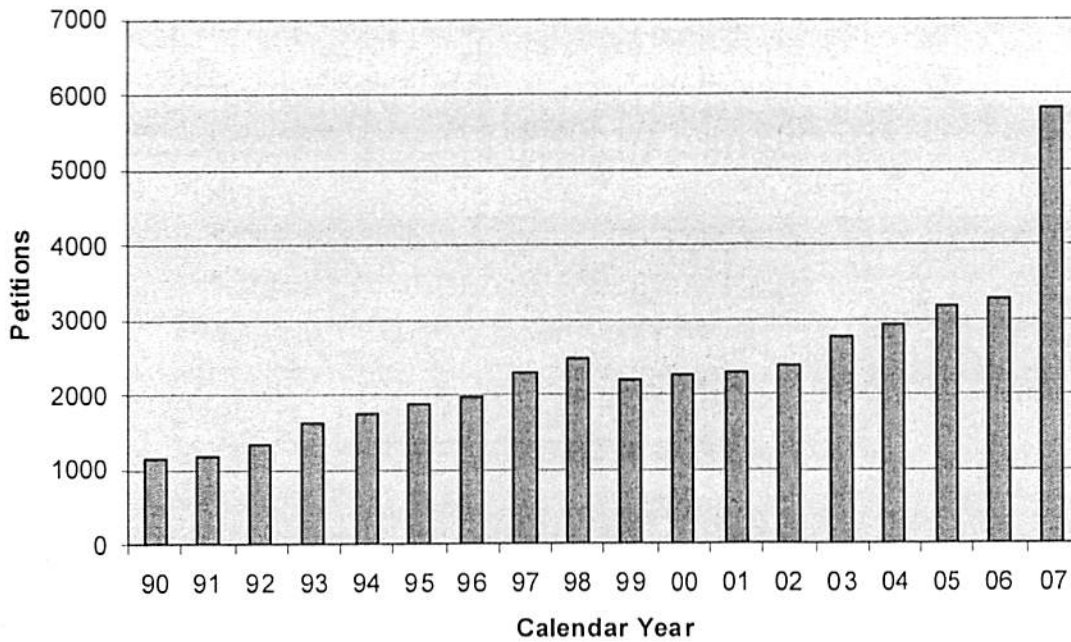
('07 Data is not currently available due to data conversion.  
'07 data will be published in 2009 report.)

## Petitions Heard by the Board/Hearing Officers

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The number of petitions heard by the Board or by Hearing Officers increased as shown on the graph below. The number of settlements prior to hearing also continues to increase.

Petitions Heard by Board and Hearing Officers





## Continuances

During calendar year 2007, a total of 411 continuances were granted (compared with 424 continuances in 2006, 452 continuances in 2005, 323 continuances in 2004, 255 continuances in 2003, 193 continuances in 2002, 201 continuances in 2001 and 176 continuances in 2000).

*convert to chart.*

The grounds for the continuances were as follows:

• The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	335
• A justifiable substitution of counsel for a party	18
• Any unforeseen circumstances beyond the control of the parties:	
Employee missed employer-scheduled medical exam	31
Records unavailable for review by parties prior to hearing	16
Defendant(s)/issues added prior to hearing	6
Additional medical testing	4
Inadequate notice of hearing	1

*Table.*

During 2007, individual board members were scheduled to conduct hearings on the following number of days:

### Board Member Activities\*

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	Days Scheduled
Barber	163
Bowen	154
Daniello	162
** Doto	60
Epolito	149
Groundland	166
Levitt	118
Mitchell	143
*** Murowany	76
Seward	124
Shannon	146

Individual board members actually conducted hearings on the following number of days:

	Days
Barber	68
Bowen	48
Daniello	54
** Doto	49
Epolito	63
Groundland	96
Levitt	52
Mitchell	70
*** Murowany	31
Seward	38
Shannon	56

\* Scheduled days versus actual days differ due to case settlements and continuances

\*\* Appointed to the Board on 6/28/07.

\*\*\* Term expired 6/28/07

## **Caseload of Individual Hearing Officers**

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<b>Hearing Officer:</b>	<b>Number of Decisions &amp; Orders Written:</b>
L. Anderson	78
J. Bucklin	111
S. Mack	70
D. Massaro **	33
N. Palladino	74
J. Pezzner *	37
J. Schneikart	63
K. Wilson **	25
C. Baum, Chief	92
<b>Contract Attorneys:</b>	
W. O'Brien	18

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\* Hired on March 5, 2007

\*\* Hired on June 11, 2007

## Compliance with Hearing & Decisional Deadlines

- 120 day petition information not available due to data conversion – 2007 data will be published in 2009 report.

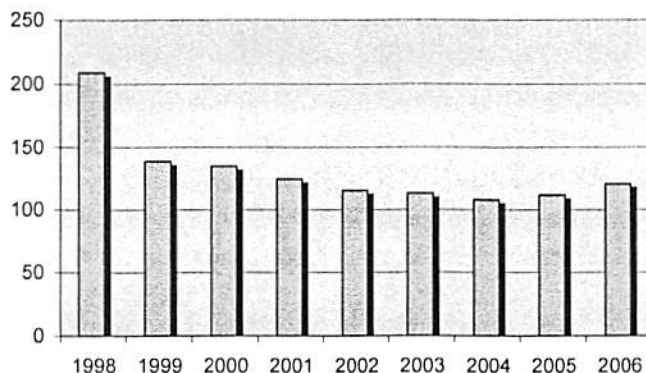
- <sup>517</sup> ~~465~~ cases requiring a written decision within 14 days from the IAB or hearing officers' decisions were heard in 2007, as compared to 485 in 2006, 477 in 2005 and 436 in 2004.) The agency did not meet the 14 day requirement in all cases, despite the fact that more written decisions were issued (<sup>661</sup> ~~661~~) than in any of the prior six years. This delay is attributable to problems with personnel vacancies (in the first half of the year) and because appellate court rulings have continued to require a greater degree of sophistication in the decisions. The greater time devoted to writing the decisions, however, has resulted in another benefit: in 2007 a record low number of decisions were appealed to Superior Court (53, as compared to 2002 when 109 decisions were appealed.)

*The number of appeals continues to remain low; with 71 appeals in 2008.*

### Analysis of Dispositional Speed

From January 1 2007 to June 30, 2007 the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was ~~114~~ <sup>220 days</sup> days, (as compared to 120 days in 2006, 112 days in 2005, 108 days in 2004, 113 days in 2003 and 116 days in 2002.) The second half of 2007 data is not yet available due to the data conversion in the new computer system.

*193 day in 2007,*



*107 '08  
193 220*

## Summary of Appeals

(Status of appeals taken as of December 31, 2007)

In the last five years, the Board (or Hearing Officers) has rendered 2,206 decisions on the merits. 397 of those decisions (18%) were appealed (an average of 79.4 per year). 361 of those appeals have been resolved. Only 57 decisions have been reversed and/or remanded, in whole or in part. This represents a "reversal rate" of only 2.5% of all decisions rendered in those five years.

<u>Year Appeal Taken In</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
<u>Total Number of Decisions:</u>	440	436	452	459	419
<u>Total Number of Appeals:</u>	86	89	101	69	53
<u>Affirmed:</u>	43	41	62	9	5
<u>Reversed and/or Remanded:</u>	16	19	8	3	3
<u>Dismissed/Withdrawn:</u>	27	29	28	17	13
<u>Pending:<sup>1</sup></u>	0	0	3	40	32

### CUMULATIVE

<u>Total Number of Decisions:</u>	2206
<u>Total Number of Appeals:</u>	397
<u>Affirmed:</u>	180
<u>Reversed and/or Remanded:</u>	57
<u>Dismissed/Withdrawn:</u>	124
<u>Pending:</u>	36

<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 2003, some of those appeal results may change in the future because of decisions by the Supreme Court.

## **Departmental Recommendations for Legislative Action or Board Rule Change**

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### **Board Rule Change**

The Department of Labor will meet with the Industrial Accident Board in 2008 to assist in amending the board rules to comply with the new statute.