



State of Delaware

Department of Labor

11th Annual Report

on the

Status of Workers' Compensation

Case Management

March 6, 2009

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 Workers' 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, Deputy Director
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Year in Review 2008

The Governor appointed Health Care Advisory Panel (HCAP) established a Workers' Compensation Health Care Payment System (HCPS) for Delaware, in accordance with 19 Del. C. §2322. This new system went into effect on May 23, 2008, and includes 5 major components:

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

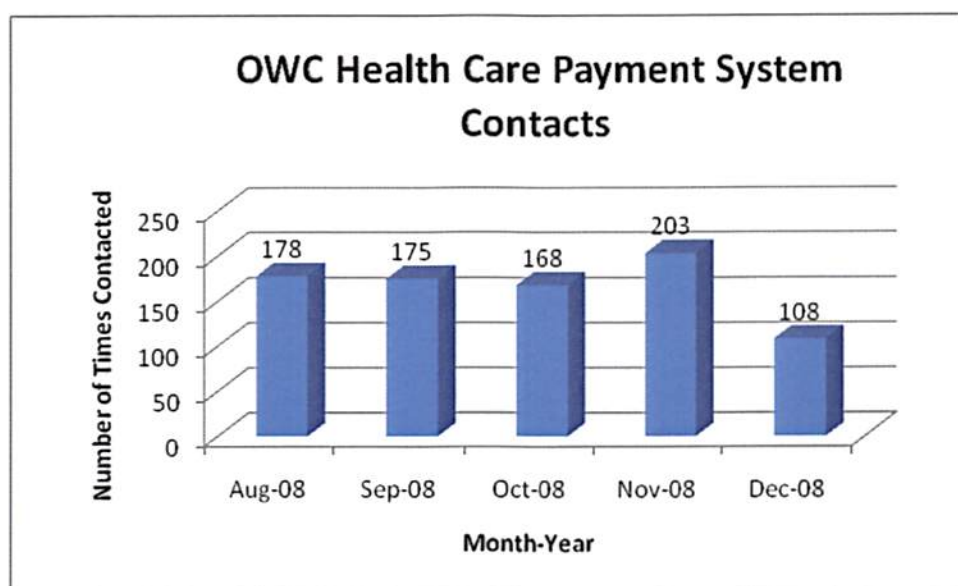
The Health Care Advisory Panel (HCAP) is a seventeen member panel with representatives from the medical, legal, labor, business and insurance communities, whose purpose is to develop and maintain a health care system that eliminates outlier charges and streamlines payments.

In 2008, the full HCAP met seven times. In addition to the full Panel meetings, the five subcommittees within the HCAP (one for each of the five components listed above) met numerous times. There were 11 official meetings of the various subcommittees, as well as additional subgroup gatherings of the medical and legal experts to create and revise comprehensive administrative regulations and discuss ideas for future subcommittee and full Panel meetings. The Office of Workers' Compensation held 2 Public Hearings in 2008, prior to the approval of the Administrative Regulations for the HCPS.

In order to manage, coordinate and support the new Health Care Payment System, the Office of Workers' Compensation was approved for and subsequently hired two new positions: Medical Component Manager and HCAP Coordinator. An

Administrative Specialist II was reassigned from the administrative area to the medical component area.

The Office of Workers' Compensation fielded a significant number of telephone calls, letters and electronic mail regarding the Health Care Payment System (HCPS) in 2008. Since the OWC began gathering HCPS contact statistics in August 2008, there were a total of 832 contacts initiated by health care providers, insurance carriers, employers, injured workers, legislative representatives and general callers.

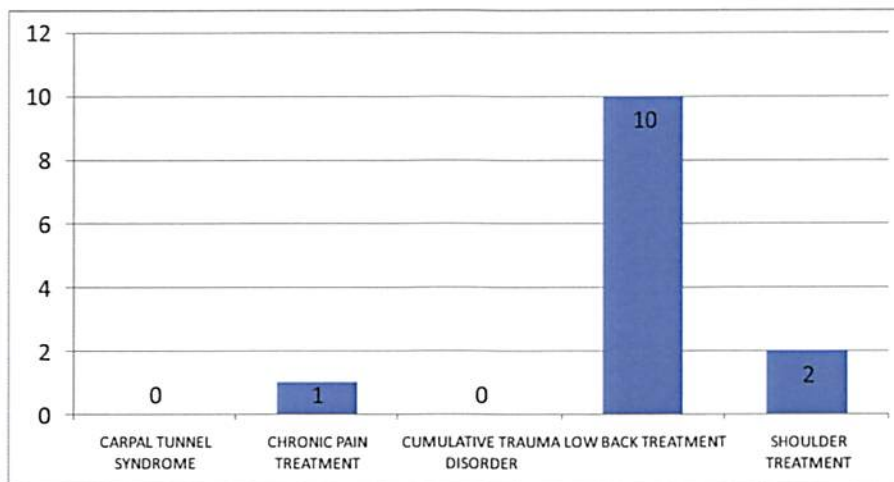


In 2008, The Office of Workers' Compensation received 16 requests for Utilization Reviews, which provide prompt resolution of issues related to treatment and/or compliance with the practice guidelines for those claims which have been acknowledged to be compensable. Only a self-insured employer or insurance carrier may request a utilization review.

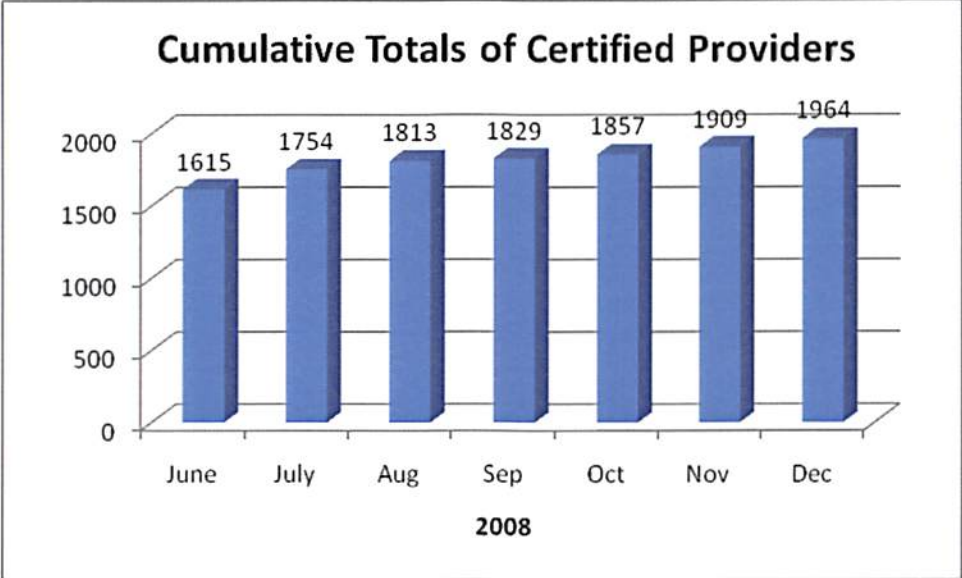
A significant increase in the number of requests for Utilization Review is expected in 2009, as requesting parties become more familiar with the process.

2008 Utilization Review Requests	
Determination	Number of Occurrences
Ineligible for UR (Provider not certified.)	2
Ineligible for UR (Nature of injury not one of the practice guidelines.)	1
Non-Certified by UR company (Treatment did not adhere to practice guidelines.)	8
Certified by UR company (Treatment did adhere to practice guidelines.)	0
Pending	5

OWC Health Care Payment System (HCPS)
2008 UR Practice Guidelines



In 2008, the Office of Workers' Compensation certified 1,964 providers. Under the HCPS, certification is required for a health care provider to provide treatment to an employee without the requirement that the health care provider first pre-authorize each health care procedure, office visit or health care service to be provided to the employee.



The Office of Workers Compensation continues to maintain its website which contains valuable information and links, including a list of services available through the office, the ability to search for employer insurance coverage, frequently asked questions, and forms:

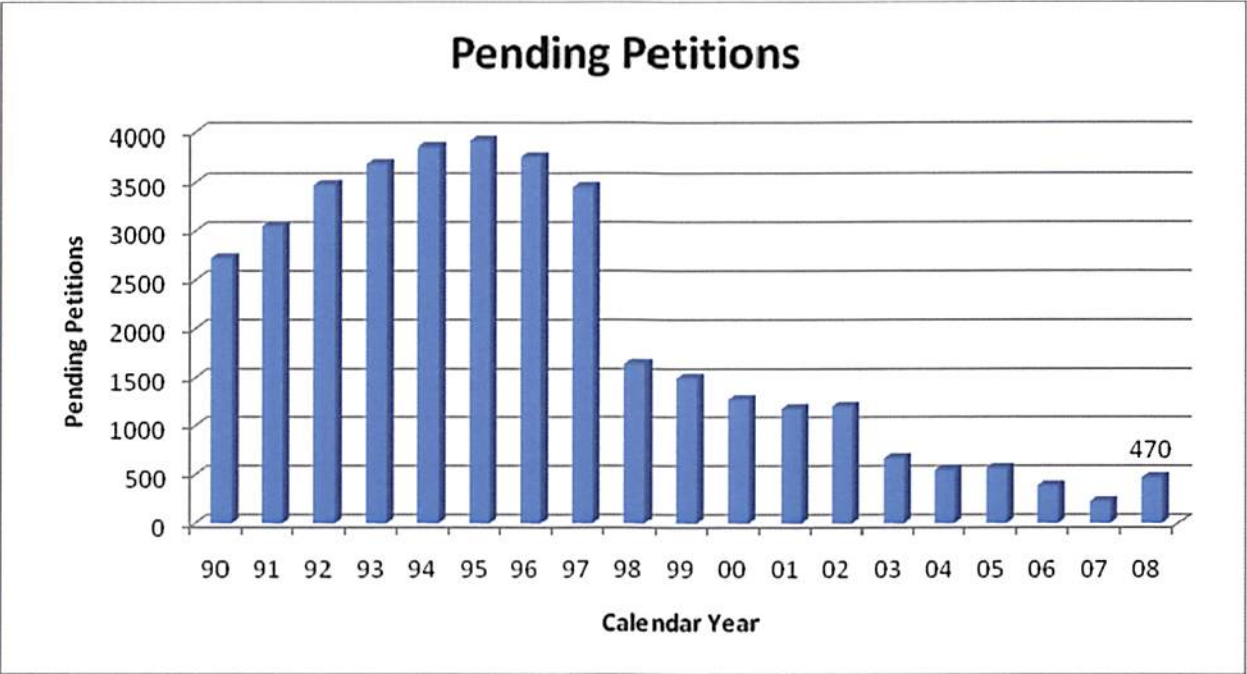
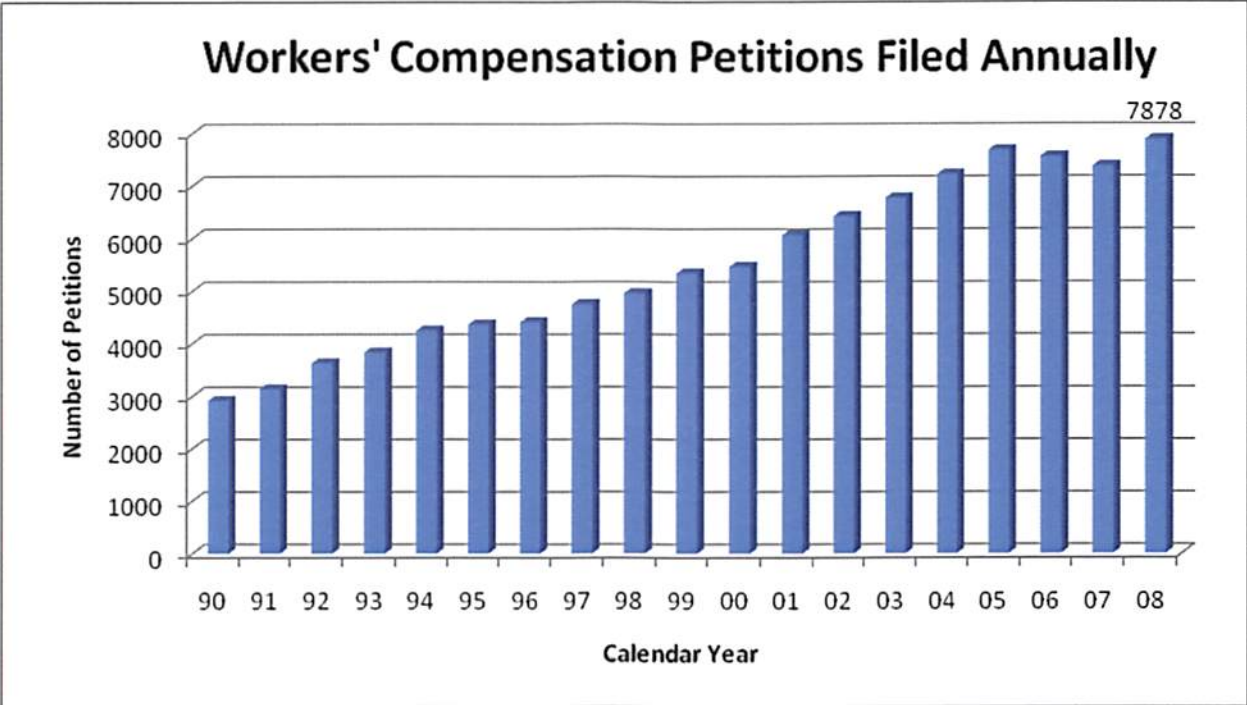
<http://www.delawareworks.com>

In 2008, a comprehensive addition to the website was created to encompass all aspects of the Health Care Payment System, including an electronic mailbox for questions. The frequently asked questions and Provider Certification lists are updated weekly:

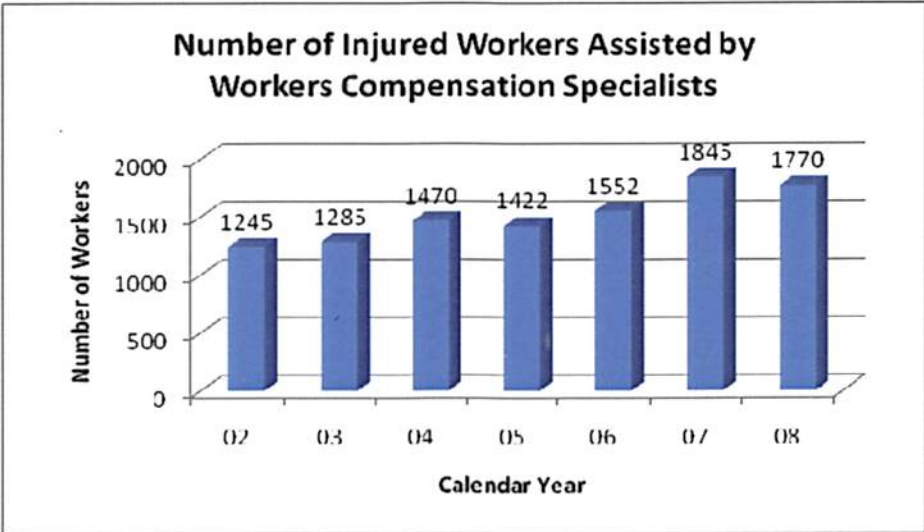
<http://dowc.ingenix.com/DWC.asp>

The Office of Workers' Compensation continues to refine its automated computer system, SCARS (Scheduling Case Management Accounting Reporting System), which replaced the old system on June 1, 2007. Discussions and proposals have begun for on-line filing of First Reports of Injury, which would be the initial step toward creating a paperless system.

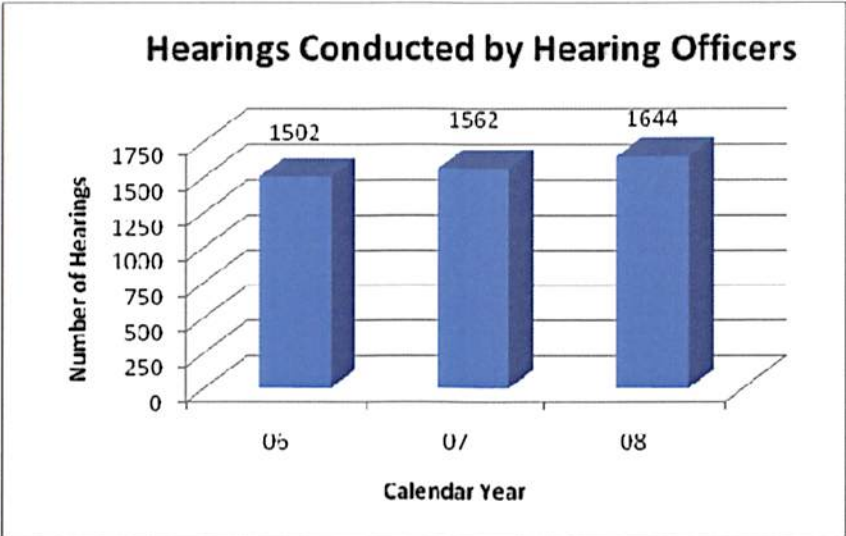
The Office of Worker’s Compensation continues to maintain its “no backlog” status, despite a record high of 7,878 petitions filed in 2008. A backlog is defined as more than four months worth of petitions.



The workers' compensation specialists assisted 1,770 injured workers in processing their claims for benefits. They also provided assistance to 8,755 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 14,078 electronic requests for assistance this year.

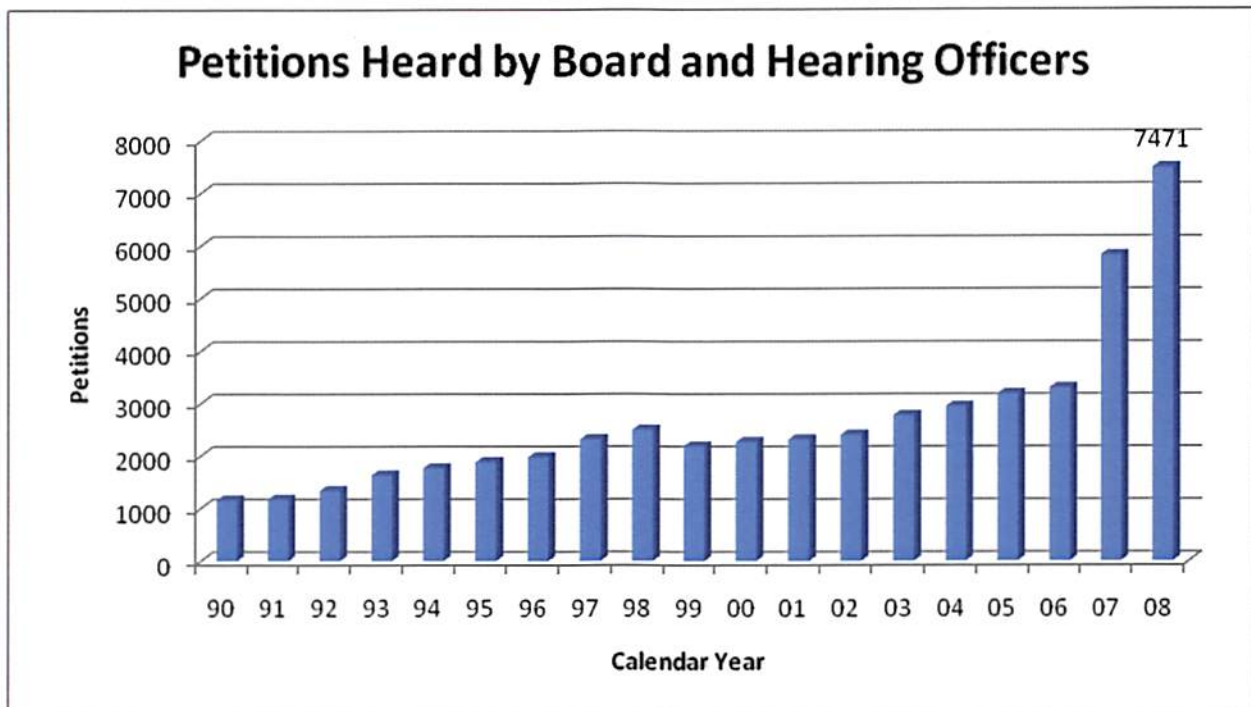


Hearing officers conducted hearings in 1,644 cases which would have otherwise been heard by the Industrial Accident Board (IAB). This represents a 5% increase from Calendar Year 2007.



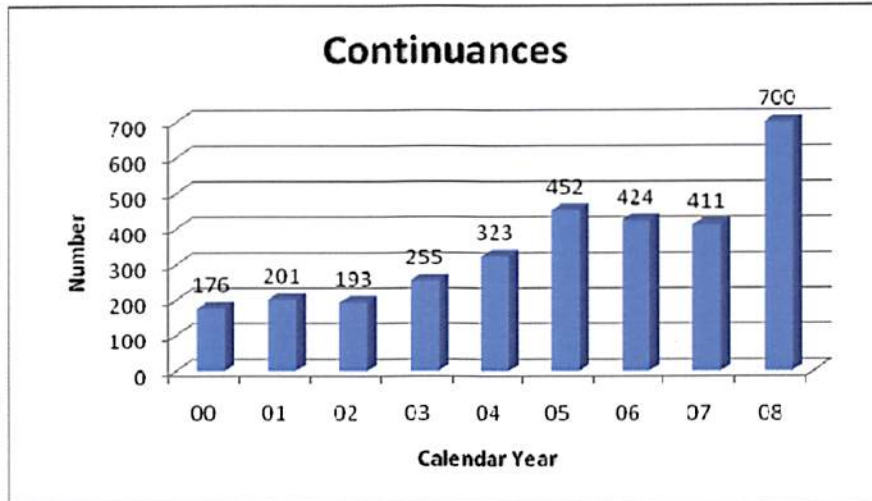
Petitions Heard by the Board/Hearing Officers

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.



Continuances

During calendar year 2008, a total of 700 continuances were granted.



Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	572
A justifiable substitution of counsel for a party	15
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	55
• Records unavailable for review by parties prior to hearing	41
• Defendant(s) or issues added prior to hearing	5
• Consolidation of issues	3
• Additional medical testing	7
• Case pending settlement through commutation	1
• IAB member conflict of interest with witness	1

Board Member Activities

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 2008. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Barber	136	76
Bowen	127	71
Daniello	135	60
Dantzler**	107	60
Doto	155	78
Epolito	134	76
Groundland	178	123
Levitt***	11	6
Mitchell	163	80
Seward	152	91
Shannon	170	89

** Appointed to the Board on 2/1/2008

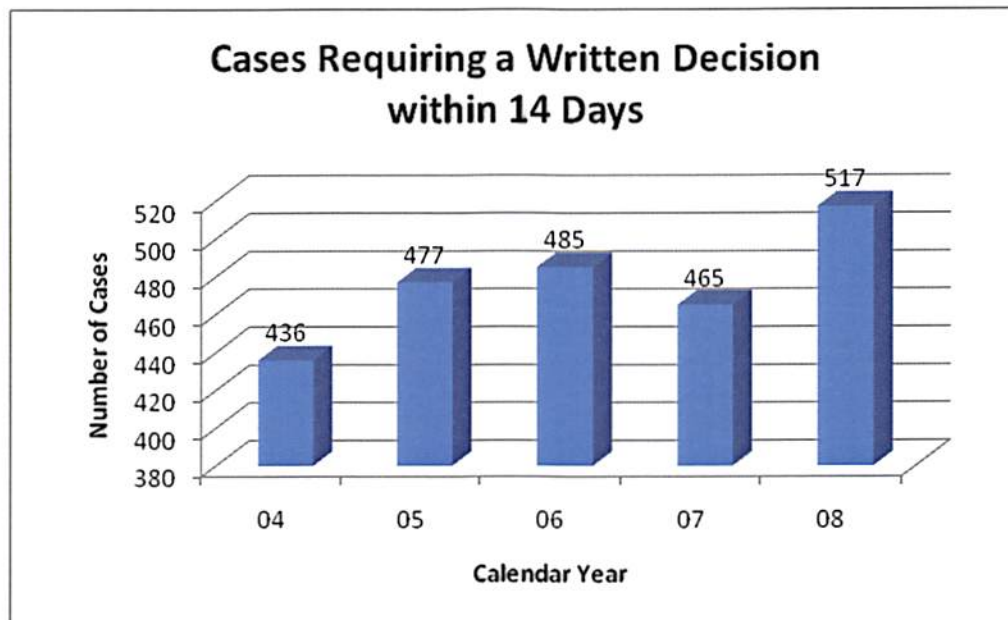
*** Retired 1/31/08

Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
L. Anderson	47
J. Bucklin	91
S. Mack	57
D. Massaro	58
N. Palladino	64
J. Pezzner	78
J. Schneikart	63
K. Wilson	67
C. Baum, Chief	91
Total	616

Compliance with Hearing & Decisional Deadlines

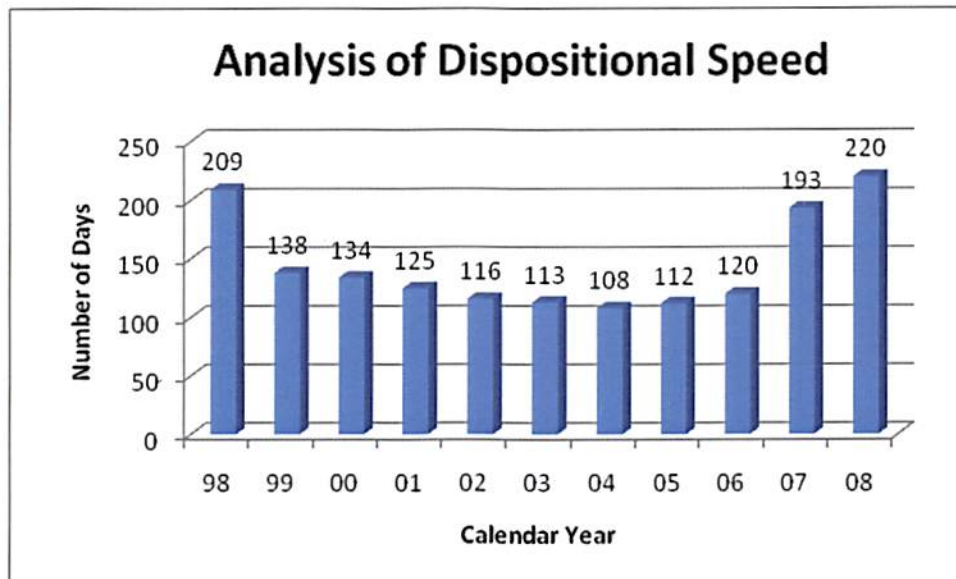
In 2008, 517 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency did not meet the 14-day requirement in all cases, despite the fact that 616 writings were issued, which included more written decisions (471) than were issued in any of the ten prior years. This delay is attributable to the ever-increasing number of cases and because appellate court rulings have continued to require a greater degree of sophistication in the decisions. The number of appeals continued to remain low, with only 71 appeals in 2008.



Analysis of Dispositional Speed

From January 1, 2008 to December 31, 2008, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 220 days. The number of days has increased for a variety of reasons:

- The number of hearings continues to increase.
- The complexity of the cases has increased, thus requiring additional writing time.
- Data contained in the new computer system contains outliers (e.g. occupational disease cases that remained open for over 1,000 days from filing of petition to resolution.)
- The Office of Workers' Compensation has addressed the increase and the time needed to issue decisions and has instituted several measures to alleviate the problem. Hearing officers are working to streamline the writing process which will help in reducing the time needed.



Summary of Appeals

(Status of appeals taken as of December 31, 2008)

In the last five years, the Board or Hearing Officers have rendered 2,237 decisions on the merits. 381 of those decisions (approximately 17%) were appealed (an average of 76.2 per year). 332 of those appeals have been resolved. Only 49 decisions have been reversed and/or remanded, in whole or in part. This represents a "reversal rate" of only 2.19% of all decisions rendered in those five years.

Year Appeal Taken In:	2004	2005	2006	2007	2008
Total Number of Decisions:	436	452	459	419	471
Total Number of Appeals:	89	101	68	52	71
Affirmed:	41	63	30	18	6
Reversed and/or Remanded:	19	10	11	7	2
Dismissed/Withdrawn:	29	28	27	23	18
Pending: ¹	0	0	0	4	45

Five-Year Cumulative	
Total Number of Decisions:	2237
Total Number of Appeals:	381
Affirmed:	158
Reversed and/or Remanded	49
Dismissed/Withdrawn	125
Pending:	49

¹ 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 2006, 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

Board Rule Change

The Department of Labor will meet with the Industrial Accident Board in 2009 to assist in amending the board rules to comply with the new statute.