

State of Delaware

Department of Labor

12th Annual Report

on the

Status of Workers' Compensation

Case Management

March 3, 2010

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
Office of Workers' Compensation*

Year in Review 2009

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its first anniversary on May 23, 2009. The Governor appointed Health Care Advisory Panel (HCAP) established and maintains the HCPS in accordance with 19 Del.C. §2322. The HCPS consists of 5 major components:

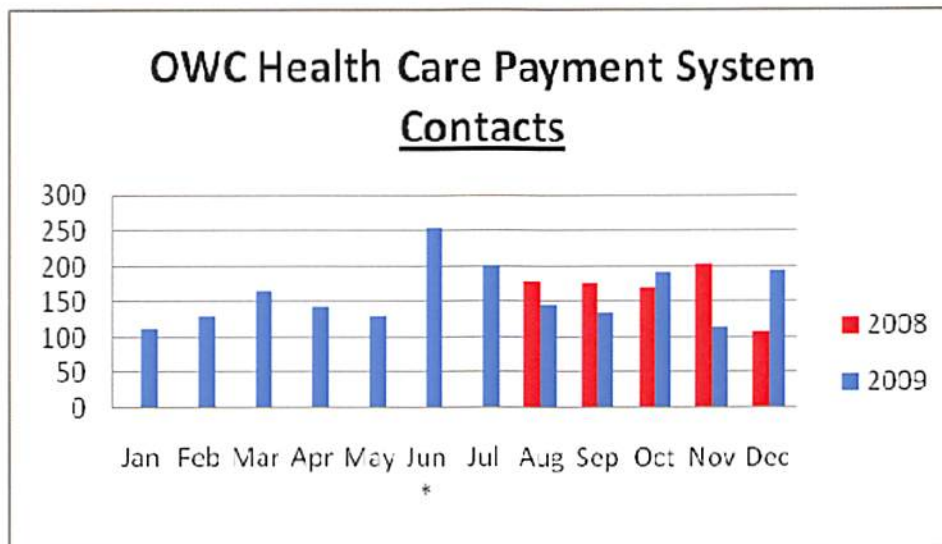
1. A Fee Schedule
2. Health Care Practice Guidelines
3. A Utilization Review program
4. A Certification process for health care providers
5. Forms for employers and health care providers

The 17 member HCAP contains representatives from the medical, legal, labor, business and insurance communities; however, the insurance industry has not provided a representative since that vacancy occurred in July 2009.

In 2009, the HCAP met four times. In addition to the full Panel meetings, the five subcommittees within the HCAP that represent the five major components listed above met seven times, and numerous smaller sub work groups comprised of medical and legal experts met to work on specific issues. The Office of Workers' Compensation (OWC) held 1 Public Meeting in 2009, prior to the approval of comprehensive updates to the HCPS Administrative Code ("the regulations").

The OWC medical component – Medical Component Manager, HCAP Coordinator, and Administrative Specialist II - continues to support the operations of the HCPS. This unit operated short-handed for most of 2009 when the HCAP Coordinator accepted a promotional opportunity and then the Administrative Specialist successfully competed for that position, which left another vacancy until mid December 2009. The medical component unit pushes hard to keep up with the phenomenal growth in the complexity and breadth of the HCPS as you will note in the statistics and accomplishments included in this annual report.

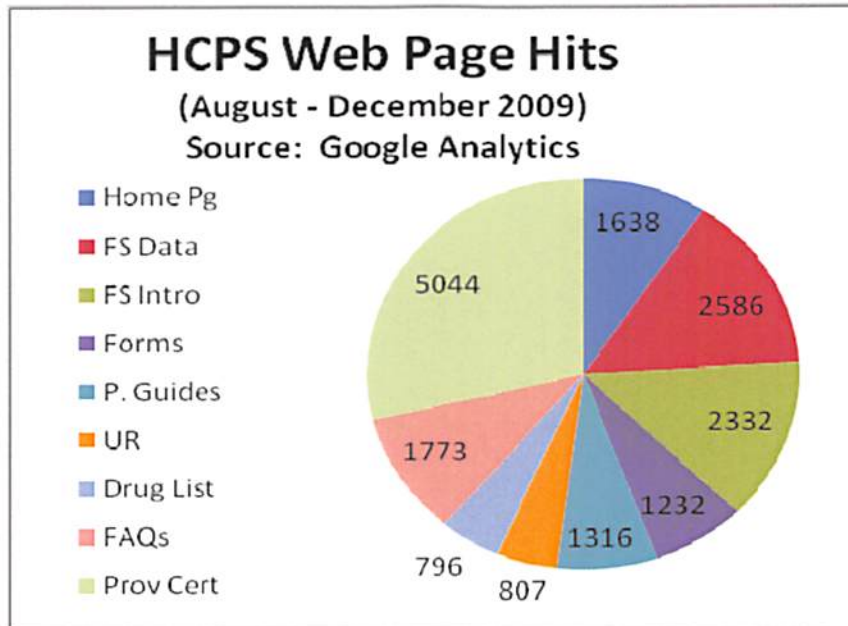
In 2009, the OWC fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. June contact information spiked because the DOL adopted recommendations from the HCAP for comprehensive updates and additions to the HCPS regulations, particularly updating the fee schedule introduction and guidelines, as well as adding a 6th health care practice guideline – cervical. November contacts significantly dropped because the law changed to update the fee data during the same month (January) as the American Medical Association (AMA) releases their published updates to the standard medical codes (CPT, HCPCS, ICD9). This change allowed OWC to make one comprehensive fee schedule update, versus two in one year.



The Department of Labor’s website contains web pages that give comprehensive information encompassing all aspects of the HCPS, including an electronic mailbox for questions and subscribe/unsubscribe buttons for the ListServ (new in 2009). The Provider Certification lists and frequently asked questions are updated weekly.

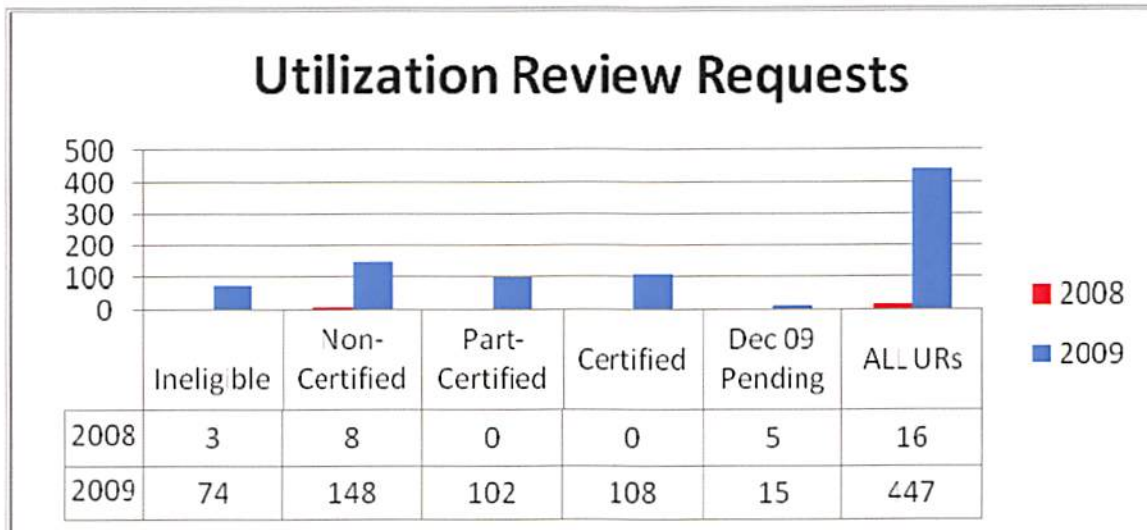
<http://dowc.ingenix.com/DWC.asp>

In August, the OWC began tracking the number of people who access information concerning the HCPS through the Department of Labor’s website. From August through December 2009, the HCPS pages on the website received 17,524 unique visits. The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period.

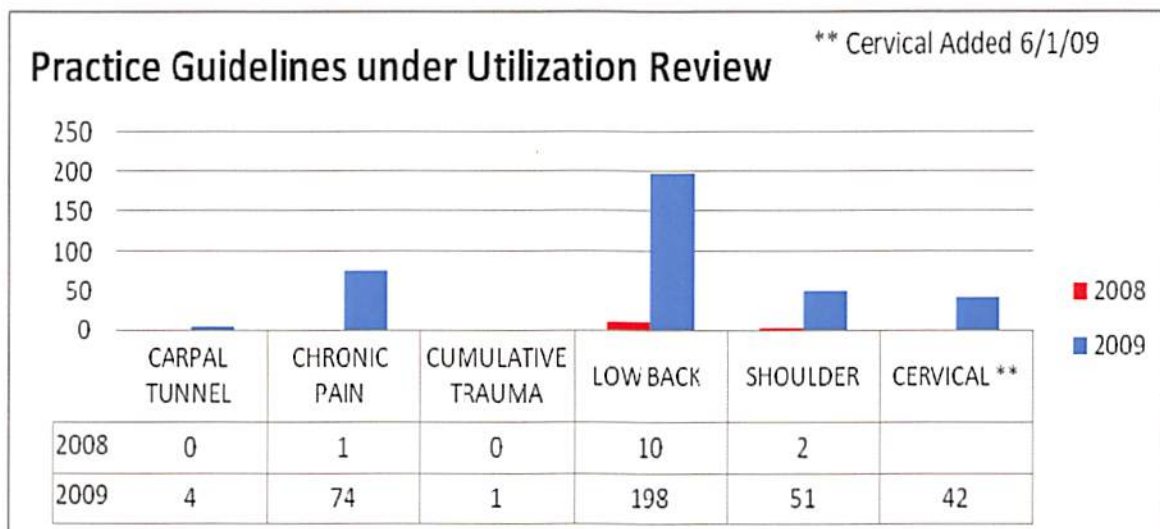


In 2009, the OWC received 447 requests for Utilization Review (UR) versus only 16 in 2008 (5/08 through 12/08), representing a significant increase in UR activity as parties became more familiar with the process. Utilization review provides prompt resolution of issues related to compliance with the practice guidelines for those claims which have been acknowledged as compensable. Only a self-insured employer or insurance carrier may request a utilization review. One by-product of the utilization review program has been an increase in UR appeals, which occur when any of the three parties (injured worker, certified health care provider, or payer) disputes the outcome of the review. Most appeals challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course of treatment for a specific worker’s injury. As the program moves forward, OWC hopes to see fewer appeals as parties work together to

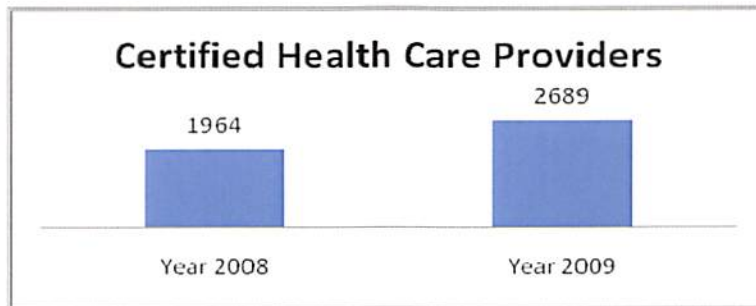
determine the best options for these types of “outlier” conditions, which may require treatment outside the practice guidelines.



In 2009, the “low back” practice guideline represented the treatment most challenged through the utilization review. The HCAP added the “cervical” practice guideline on June 1st, so these statistics reflect a six month total for cervical treatment. As users become more familiar with the process, the “chronic pain” practice guideline should begin to rival the most challenged treatment because many long-term injuries involve some type of pain management.



In 2009, OWC certified 725 more health care providers in the Delaware Workers' Compensation Health Care Payment System (HCPS). The number of certified providers added each year should continue to decline, as more of the whole Delaware health care provider complement chooses to participate in the HCPS. Many certified health care providers must complete a continuing education course in 2010 in order to maintain their certification. The HCPS may see some attrition from those providers who do not complete the course.



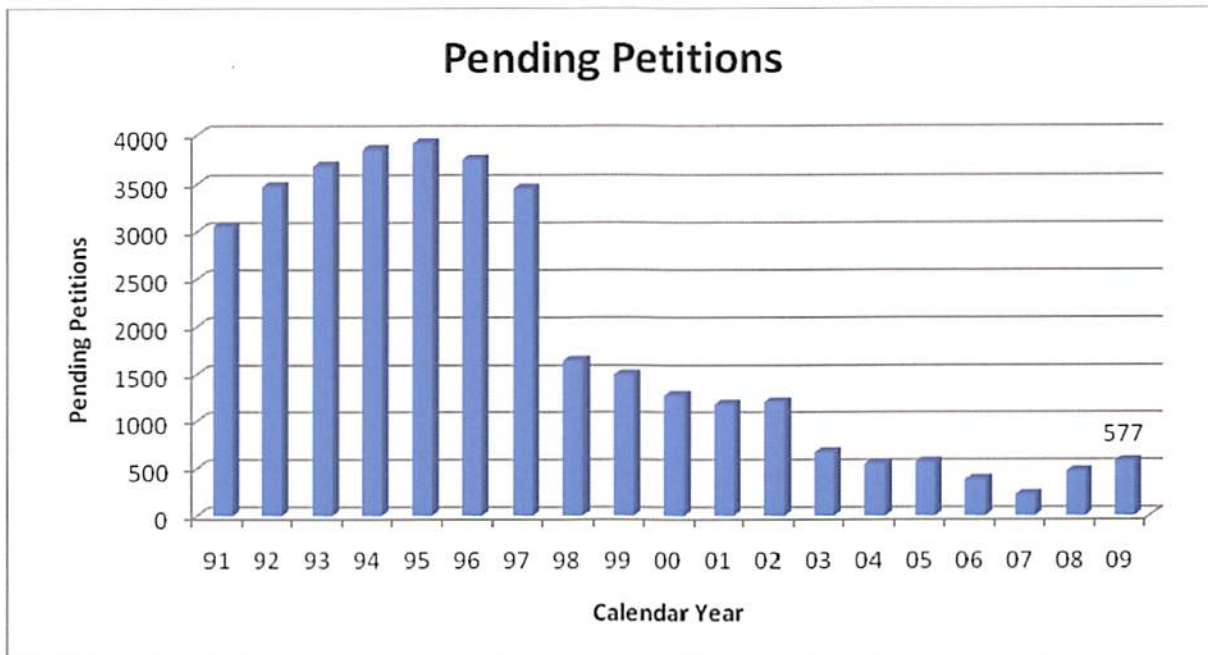
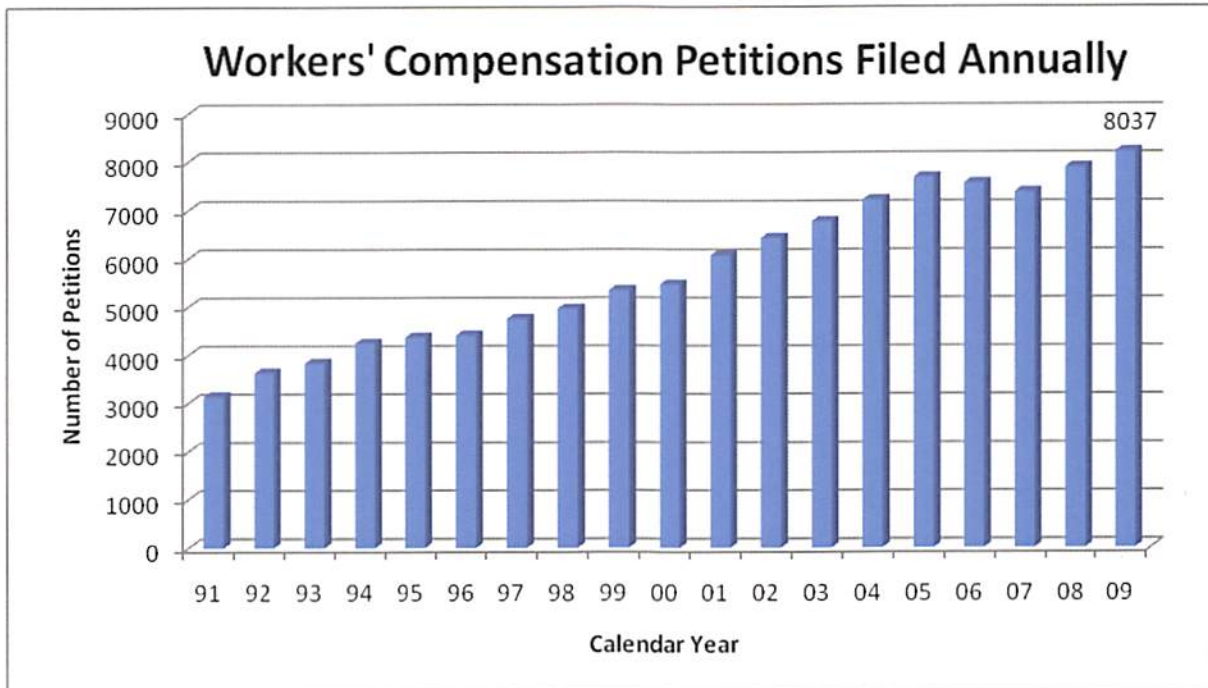
The Office of Workers Compensation continues to maintain its website which contains valuable information and links, including a list of services available through the office, the ability to search for employer insurance coverage, frequently asked questions, and forms:

<http://www.delawareworks.com>

The OWC continues to refine its automated computer system, SCARS (Scheduling Case Management Accounting Reporting System). The electronic filing of First Reports of Injury and fiscal information will be online in early 2010.

The agency implemented an investigative procedure in conjunction with the Office of Labor Law Enforcement to identify and prosecute uninsured employers. In Calendar Year 2009, seventy-five (75) potential uninsured employers were investigated by the OWC.

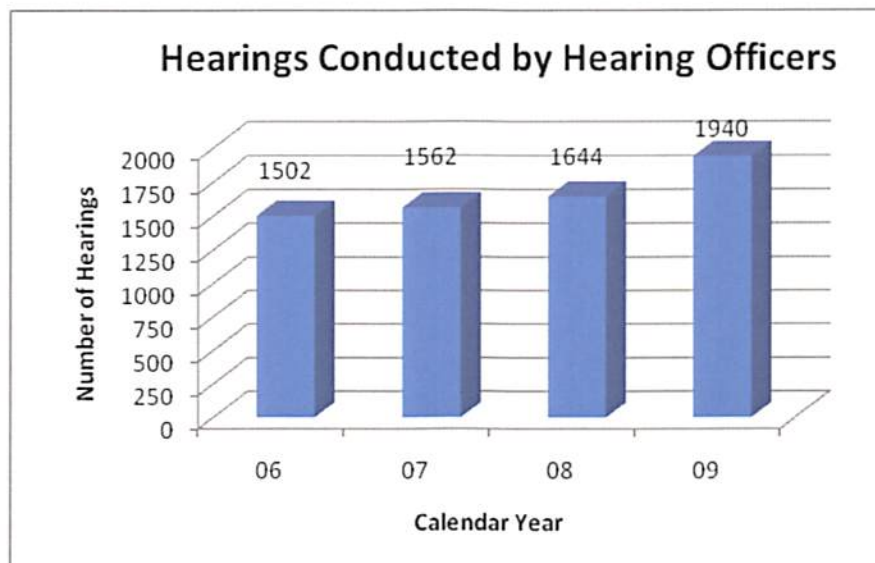
The Office of Worker’s Compensation continues to maintain its “no backlog” status, despite a record high of 8,037 petitions filed in 2009. A backlog is defined as more than four months worth of petitions.



The workers' compensation specialists assisted 1,927 injured workers in processing their claims for benefits. They also provided assistance to 8,953 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 13,140 electronic requests for assistance this year.

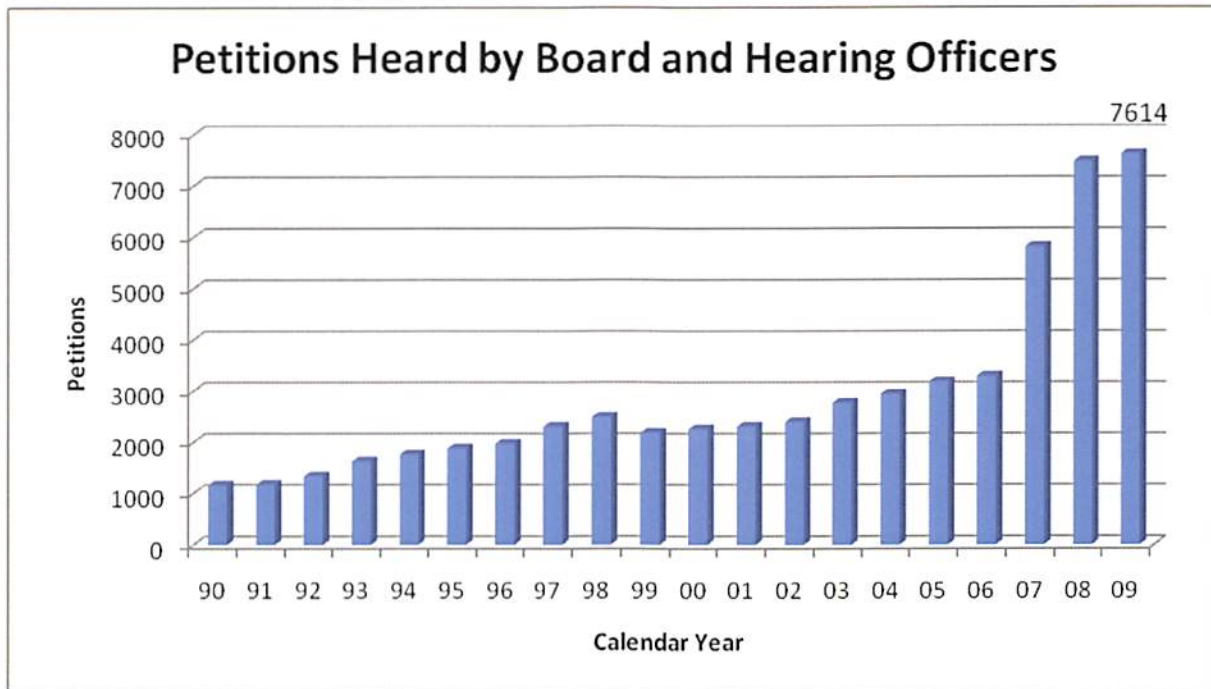


Hearing officers conducted hearings in 1,940 cases which would have otherwise been heard by the Industrial Accident Board (IAB). This represents an 18% increase from Calendar Year 2008.



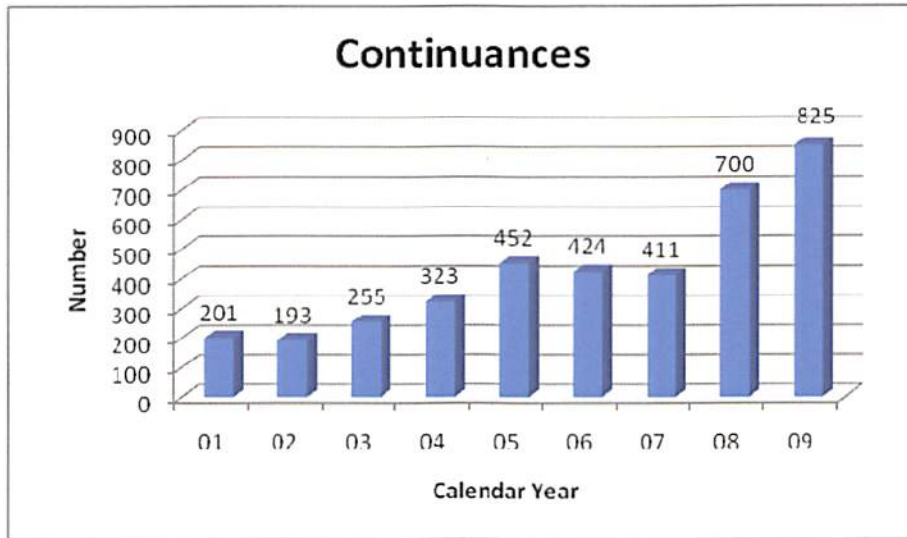
Petitions Heard by the Board/Hearing Officers

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 2009, a total of 825 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)	630
A justifiable substitution of counsel for a party	31
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	59
• Records unavailable for review by parties prior to hearing	60
• Defendant(s) or issues added prior to hearing	4
• Consolidation of issues	5
• Additional medical testing	11
• Case pending settlement	1
• IAB member conflict of interest with witness	1
• Employer witness recanted testimony	1
• Case pending appeal of Utilization Review	2
• Employer bankruptcy; cases put "on hold" status	19
• State offices closed due to inclement weather	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 2009. 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	119	71
Bowen	140	66
Daniello	175	99
Dantzler	109	59
del Tufo*	21	14
Doto	168	85
Epolito	121	69
Groundland	178	129
Mitchell	157	87
Seward**	86	43
Shannon	174	95

* Appointed to the Board on 9/22/09

** Retired 7/31/09

Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
L. Anderson	77
J. Bucklin	94
A. Fowler*	25
S. Mack	74
D. Massaro	67
N. Palladino**	32
J. Pezzner	68
J. Schneikart	60
K. Wilson***	58
C. Baum, Chief	92
Total	647

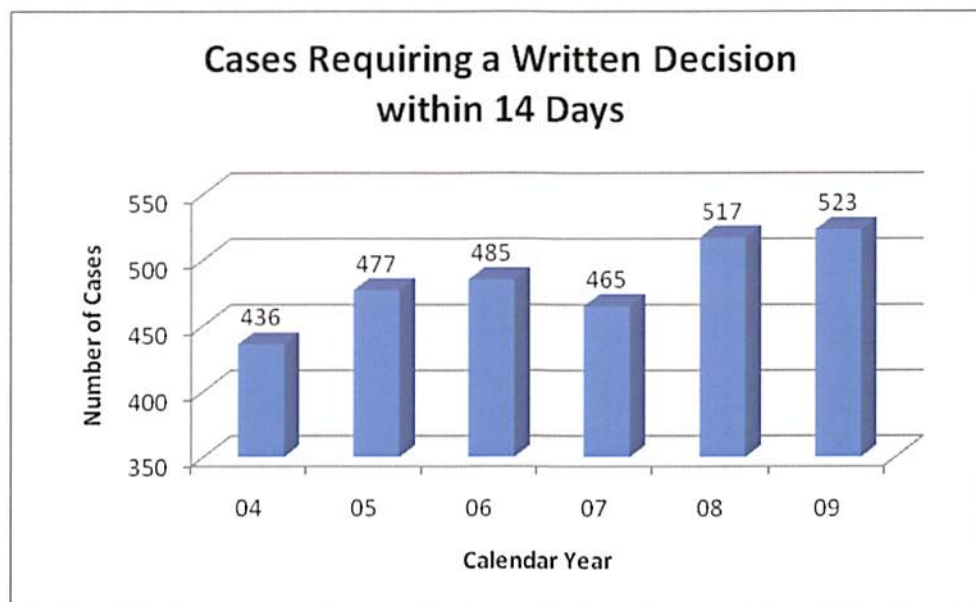
* Hired by the agency on 10/25/09

** Resigned from the agency on 5/22/09

*** FMLA leave from 1/30-4/26/09

Compliance with Hearing & Decisional Deadlines

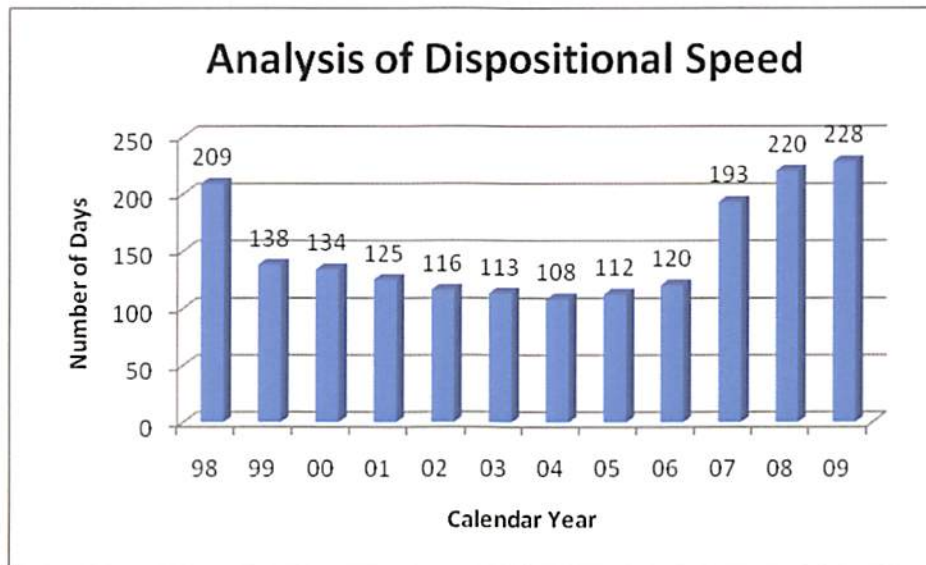
In 2009, 523 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency did not meet the 14-day requirement in all cases, despite the fact that 647 writings were issued, which included 471 written decisions. This delay is attributable to the ever-increasing 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 62 appeals in 2009.



Analysis of Dispositional Speed

From January 1, 2009 to December 31, 2009, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 228 days. The number of days has increased for a variety of reasons:

- The number of hearings continues to increase with a record filing of more than 8,000 petitions.
- The agency had two vacant positions during this period and was unable to hire due to the hiring freeze.
- 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, 2009)

In the last five years, the Board or Hearing Officers have rendered 2,272 decisions on the merits. 358 of those decisions (approximately 15.75%) were appealed (an average of 71.6 per year). 318 of those appeals have been resolved. Only 39 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only 1.7% of all decisions rendered in those five years.

Year Appeal Taken In:	2005	2006	2007	2008	2009
Total Number of Decisions:	452	459	419	471	471
Total Number of Appeals:	101	68	53	74	62
Affirmed:	63	30	19	31	6
Reversed and/or Remanded:	10	11	8	10	0
Dismissed/Withdrawn:	28	27	25	28	22
Pending: ¹	0	0	1	5	34

Five-Year Cumulative	
Total Number of Decisions:	2272
Total Number of Appeals:	358
Affirmed:	149
Reversed and/or Remanded	39
Dismissed/Withdrawn	130
Pending:	40

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 2010 to assist in amending the board rules to comply with the new statute.

Based on recommendations of the Health Care Advisory Panel (HCAP), the department will recommend "housekeeping" legislation regarding the medical payment system.