

State of Delaware

Department of Labor

17th Annual Report

on the

Status of Workers' Compensation

Case Management

2014 Highlights

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 as well as the Hearing Officers 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 2014, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. In July 2014, HB 373 established the Workers' Compensation Oversight Panel in a continued effort at cost containment and reduction of the workers' compensation insurance rates in Delaware. The Panel worked diligently on the creation of a Medicare relative value based fee schedule. The Panel will continue to meet in 2015 to both evaluate the results of its efforts thus far, as well as to continue to find ways to reduce the aggregate workers' compensation medical expenses to meet the statutorily set goal of a 33% reduction by January 31, 2017.
2. From an operational standpoint, OWC had some impressive accomplishments. Despite a slight increase in the number of petitions filed in 2014, the average dispositional speed for the processing of a petition remained the same as in 2013. In addition, the number of pending petitions at the end of the year decreased from the number pending at the end of 2013. The agency saw only 41 appeals to Superior Court. OWC also experienced stability in the average dispositional speed for processing petitions as well as in the number of petitions filed. In 2014, OWC began the process of updating the SCARS case management system to a more user friendly system and a system that will capture statistics on UR appeal petitions.

Year in Review 2014

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its sixth anniversary on May 23, 2014. The Governor appointed Health Care Advisory Panel (HCAP) established and maintained the HCPS in accordance with 19 Del. C. §2322 until July 15, 2014, when House Bill 373 established an expanded Workers' Compensation Oversight Panel (Panel) to include the former Data Collection Committee. These 6 major components of the HCPS now fall under the purview of the Panel and its subcommittees:

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

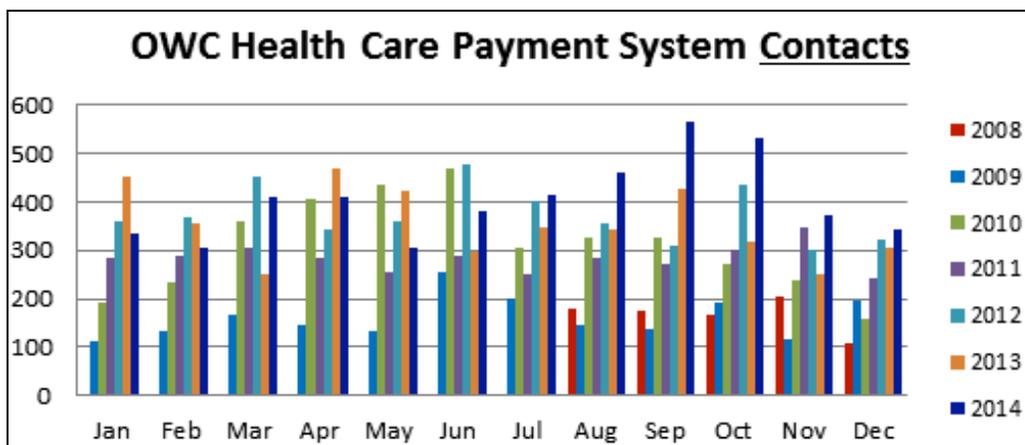
The 24 member Panel contains representatives from the medical, legal, labor, business and insurance communities, including the Secretary of Labor and Insurance Commissioner. Since its expansion in July 2014, the Panel convened without one of the "insurance carrier" representatives.

In 2014, the HCAP and its subcommittees met 9 times. The expanded Panel met 3 times and its subcommittees met 4 times. Smaller subgroups of both panels diligently worked under tight deadlines to establish a regulatory framework for the new fee schedules mandated in H373.

HB 373 represented the second year of concerted cost containment efforts from the Governor; the Delaware legislature; the legislatively established Workers' Compensation Task Force, the HCAP and its expanded Panel; the Department of Labor, and the Department of Insurance. In addition to combining the HCAP and Data Collection Committee into one expanded Workers' Compensation Oversight Panel (Panel), HB373 placed the Ratepayer Advocate under the Panel's purview;

mandated the creation of Medicare relative value based fee schedules for all Delaware workers' compensation funded procedures, treatments, and services; and required a 33% reduction in aggregate workers' compensation medical expenses. Spread over 3 years (20% in year 1, 5% in year 2, and 8% in year 3), the 33% reduction required an actuarial verification for year 1 and will culminate on January 31, 2017, with individual caps on fees based upon specified percentages of Medicare.

The OWC medical component supports the operations of the HCPS. In 2014, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. The 4,837 total contacts in 2014 represented a 14% increase over the 4,240 total contacts recorded in 2013. The increased volume in 2014 primarily came from the "providers," "carriers," "other states/entities," and "general" categories. Some of the continued high volume may be attributed to the significant statutory and regulatory changes mandated in HB373 and the subsequent regulatory changes needed to establish the new fee schedules.

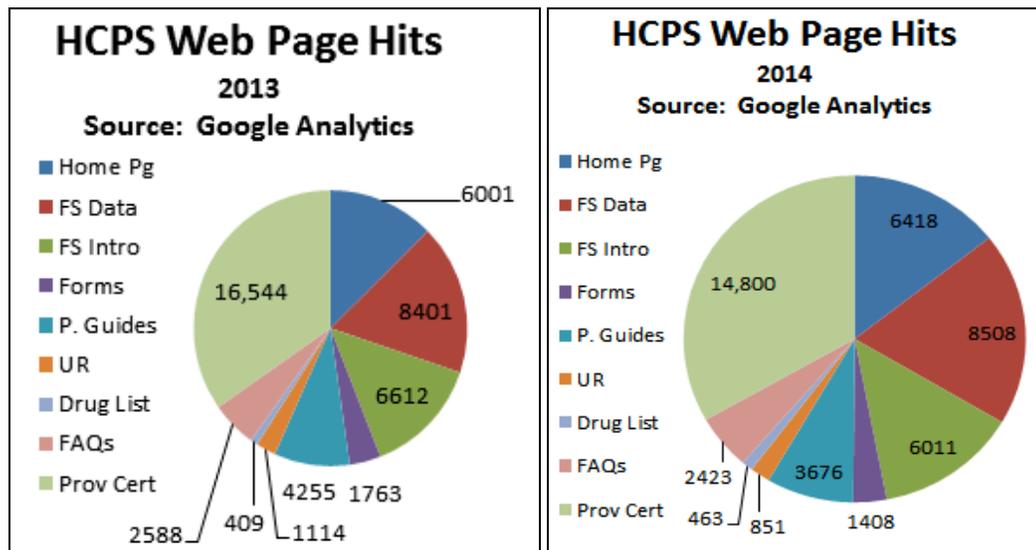


The Department of Labor's website contains comprehensive information on all components of the HCPS, including links to e-mail questions; subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data, download forms; access the Administrative Code ("the regulations"); access the

Workers' Compensation Act; and complete the required continuing education course for certified health care providers.



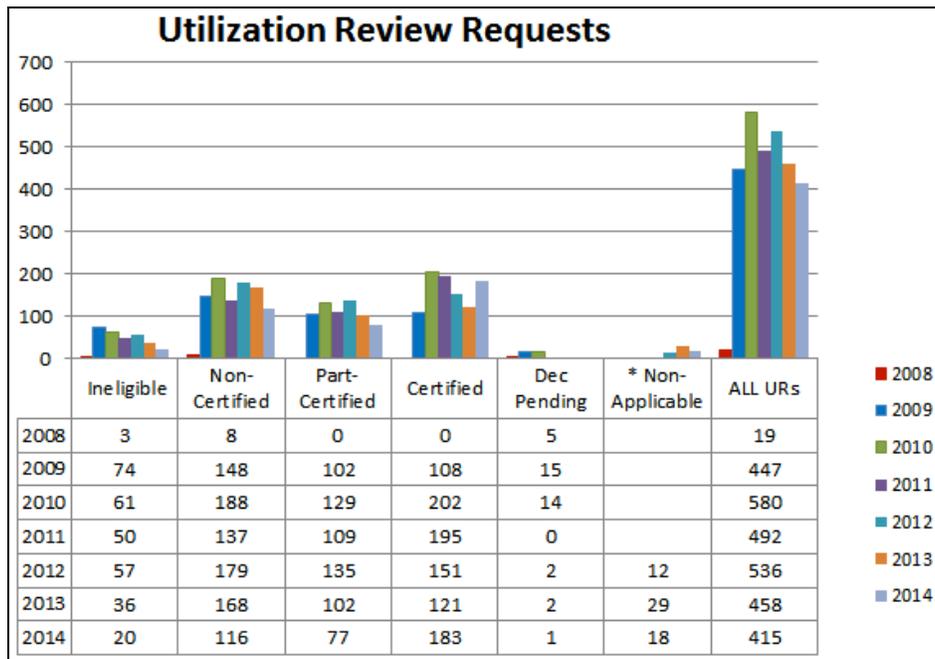
In 2014, the HCPS web pages received a total of 44,558 “unique visitors”, which represented a 7% decrease over the 47,687 “unique visitors” reported in 2013. The *Google Analytics* program defines “unique visitors” as unduplicated (counted only once) visitors to the website over a specific time period. This drop stemmed from two months of glitches in the program, which resulted in lost “unique visitors” counts for the provider certification and frequently asked questions pages. The provider certification and fee schedule data pages continued to represent the largest number of “unique visitors”.



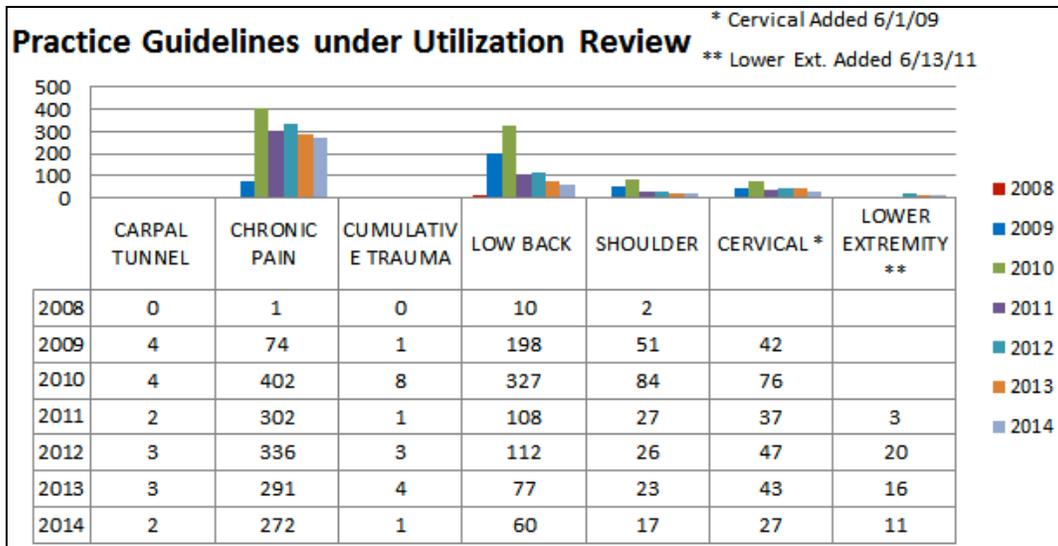
Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may then appeal UR determinations to challenge the assumption that treatment specified within 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 instructions. The like-specialist reviewer deems a UR request “non-applicable” when the appropriate practice guideline does not address the treatment under review.

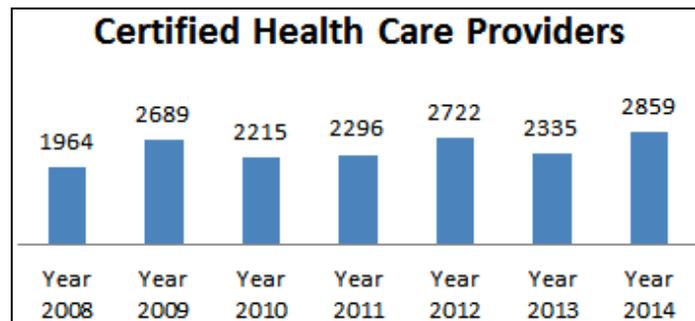
In 2014, OWC received 415 requests for utilization review, which represented a 9% decrease from the previous year.



Of the 390 total practice guidelines involved in utilization review last year, chronic pain treatment, particularly prescription pain medication, continued to represent the treatment most challenged (70%). OWC participated on the Prescription Drug Action Committee (PDAC), which continued moving forward its recommendations to reduce prescription drug abuse in Delaware.



The number of certified health care providers increased 22% by the end of 2014. Biennial compliance with the statutorily-mandated, biennial continuing education course represented the most common reason providers lost their certification in the HCPS. In September 2013, the anchor date for completion of the course changed from the provider’s initial certification date to the general provider type’s license renewal date, which also cycles biennially. 2014 marked the first full year of this change, which helped providers better track the deadline.



The Office of Workers Compensation takes immense pride in its 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:

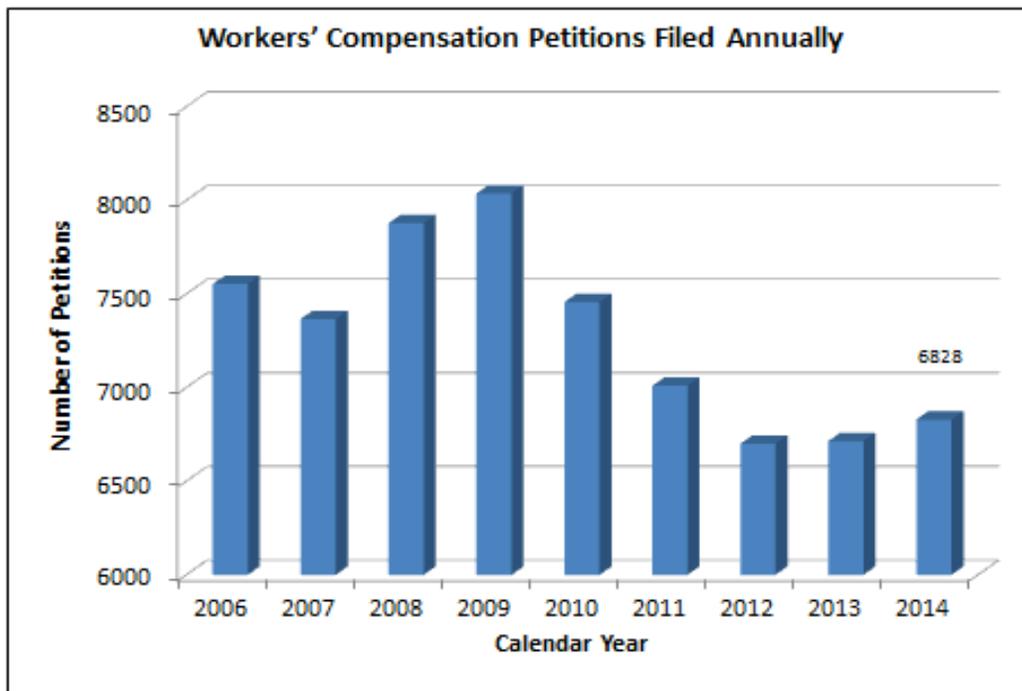
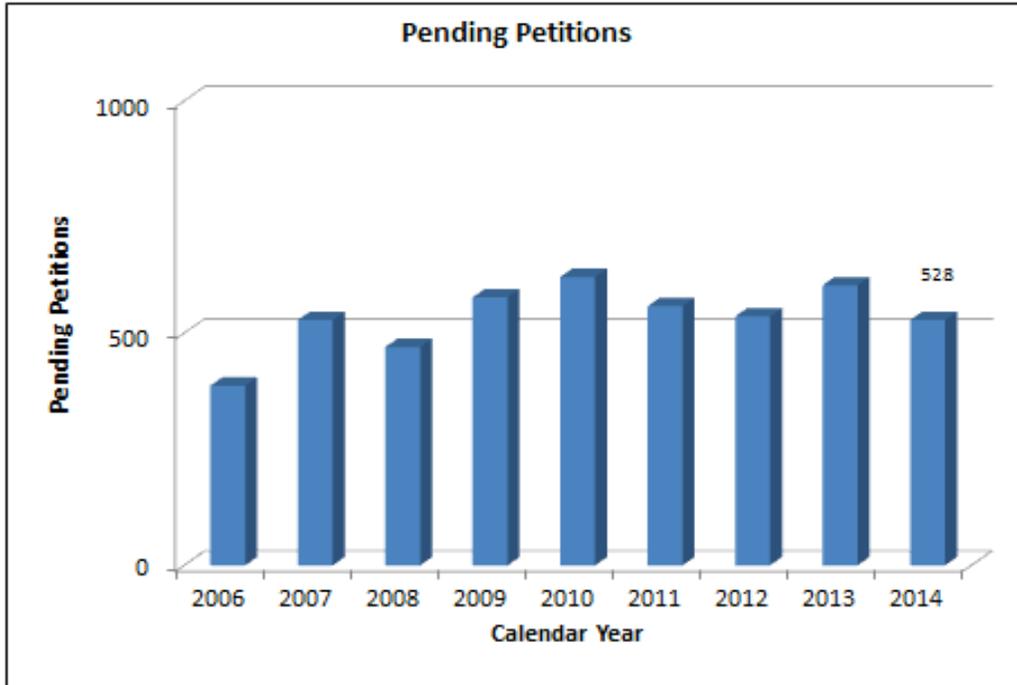
<http://dia.delawareworks.com/workers-comp/>



Quick Response (QR) Code to OWC's website

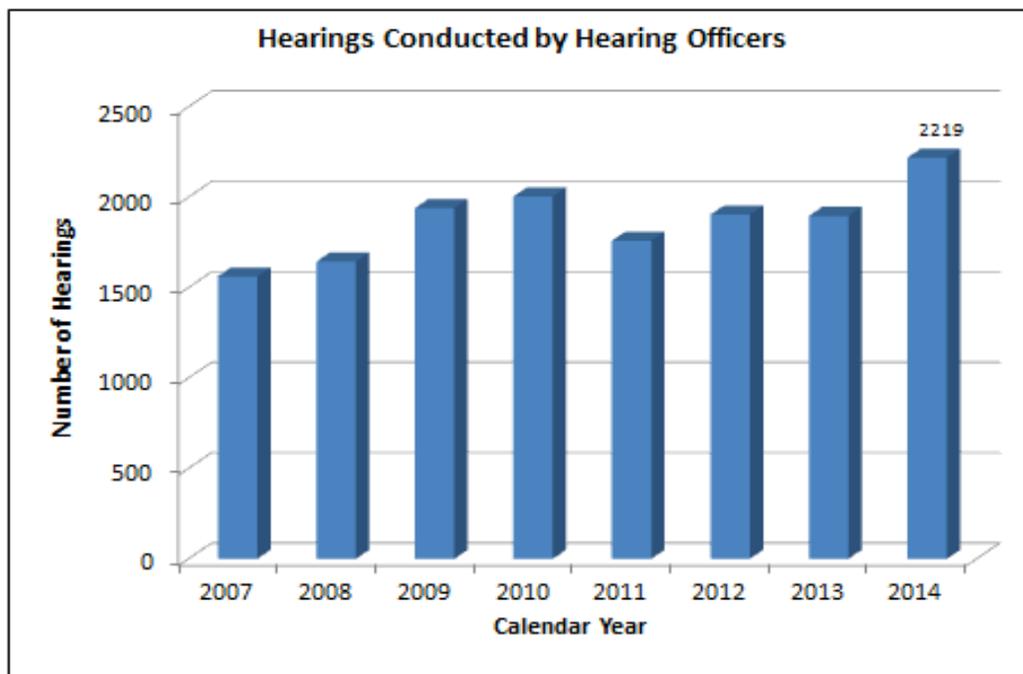
In 2014, approximately 1,800 stakeholders participated in OWC's ListServ, which represents a 20% increase over the 1,500 subscribers at the end of 2013. Launched in 2009, the OWC ListServ provides a no-cost, quick, and effective tool to communicate important changes and information concerning Delaware workers' compensation. In support of Governor Markell's initiative for state agencies to use social media as a communication tool, OWC also maintains a Facebook page at www.facebook.com/DelawareOWC.

During 2014, the Office of Workers' Compensation successfully maintained its "no backlog" status. A backlog is defined as more than four months' worth of petitions. A total of 6,828 petitions were filed in 2014.



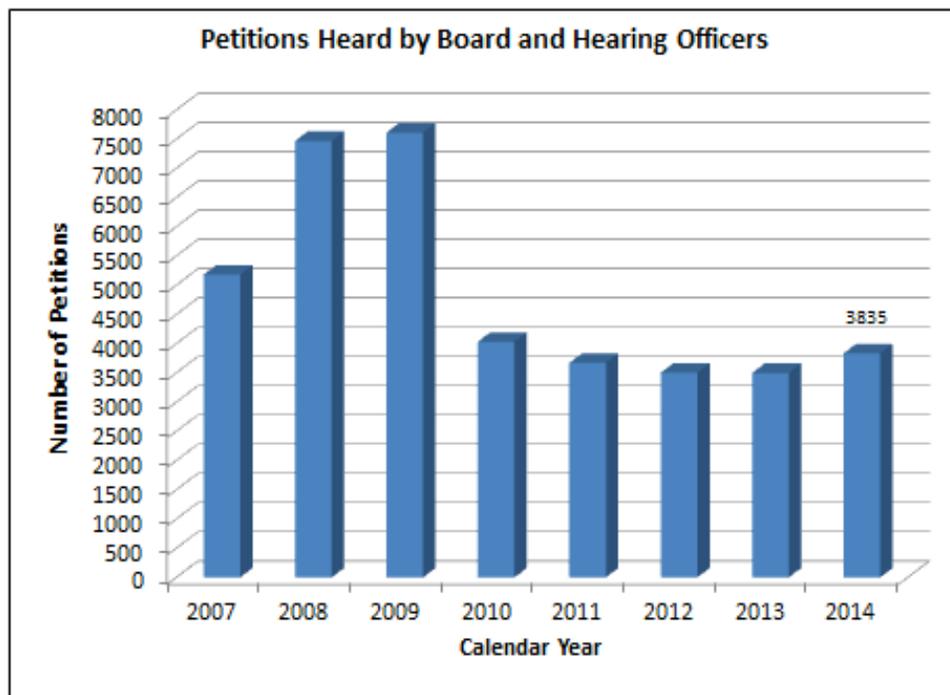
The workers' compensation specialists provided assistance to 4,257 callers. Other than injured workers, their additional contacts included attorneys, insurance carriers and employers. The agency received 24,965 electronic requests for assistance this year, as compared to 25,233 in 2013 and 23,468 in 2012. This high level of electronic requests continues to illustrate the public's preference for online information and electronic communication.

Hearing officers conducted hearings in 2,219 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



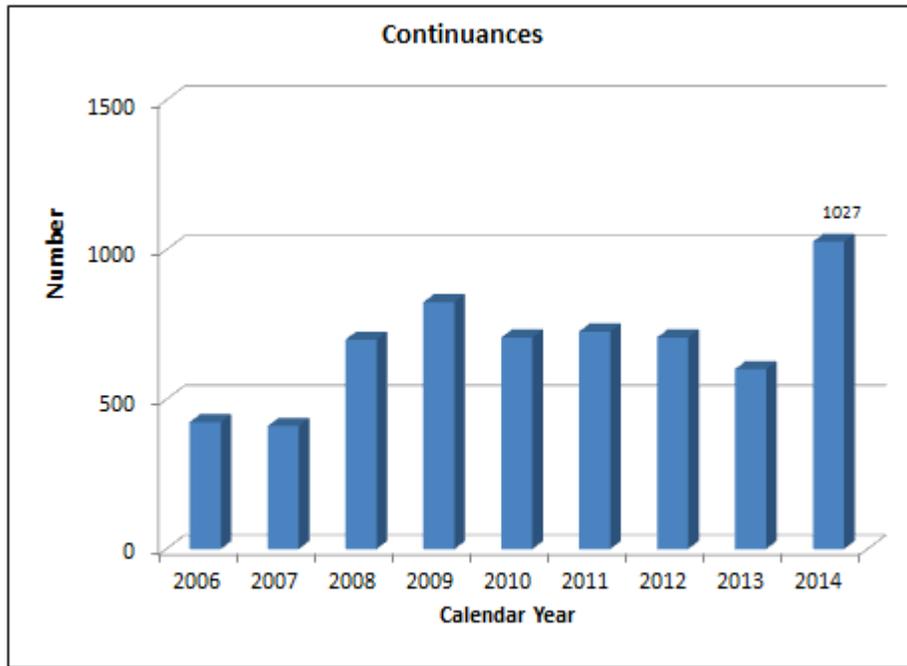
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page 7, the number of petitions filed annually remained relatively the same in calendar year 2014, as compared to 2013. The number of petitions heard by the Industrial Accident Board or by Hearing Officers increased slightly as shown on the graph below.



Continuances

In 2014, a total of 1,027 continuances were granted, which represents a 58% increase from the 601 continuances granted in 2013. This increase was primarily caused by the unavailability of a medical witness.



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)	767
A justifiable substitution of counsel for a party	2
Any unforeseen circumstance beyond the control of the parties:	99
• Employee missed employer-scheduled medical exam	87
• Records unavailable for review by parties prior to hearing	39
• Consolidation of issues	19
• Inadequate notice	10
• Case pending settlement	4

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 2014. 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
Brady	127	53
Daniello	156	88
Dantzler	159	69
Doto	151	85
Epolito*	60	26
Groundland	147	93
Hare	150	62
Mauil	92	33
Medinilla	153	80
A. Mitchell*	43	31
R. Mitchell	77	34
Shannon	155	80

* Terms Expired 3/19/14

The following table shows the number of Hearings on the Merits conducted by each Board Member.

Board Member	Number of Hearings on the Merits
Brady	42
Daniello	87
Dantzler	61
Doto	103
Epolito	25
Groundland	86
Hare	62
Mauil	31
Medinilla	75
A. Mitchell	23
R. Mitchell	34
Shannon	74

Case load of Individual Hearing Officers

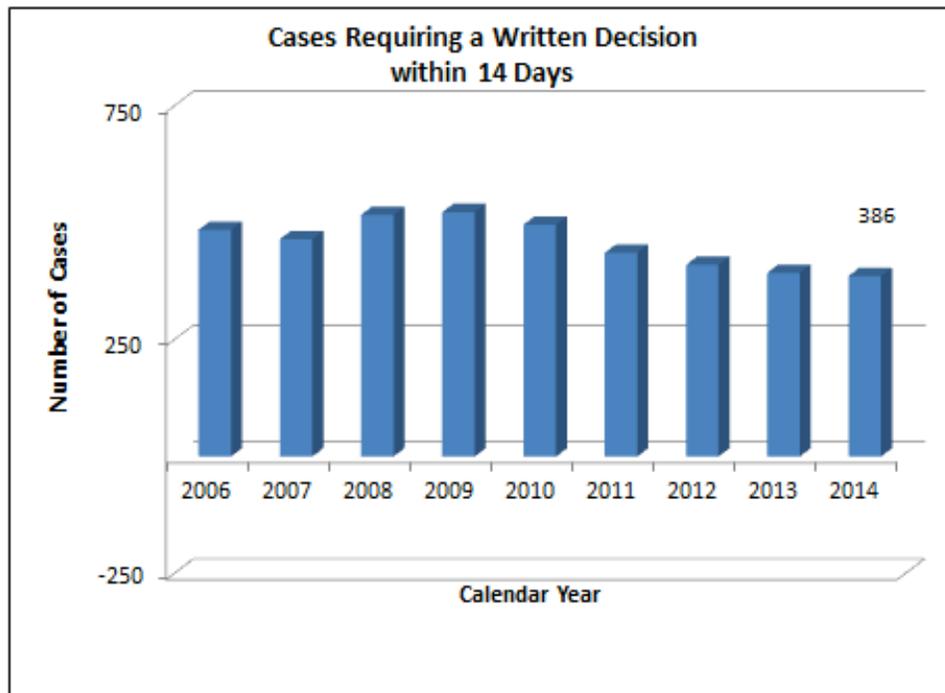
Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle	50
J. Bucklin	63
A. Fowler*	14
S. Mack	43
D. Massaro	56
J. Pezzner	47
J. Schneikart	44
H. Williams**	35
K. Wilson	54
C. Baum, Chief	67
Total	473

* Resigned from DOL on April 11, 2014.

** Hired by DOL on June 30, 2014.

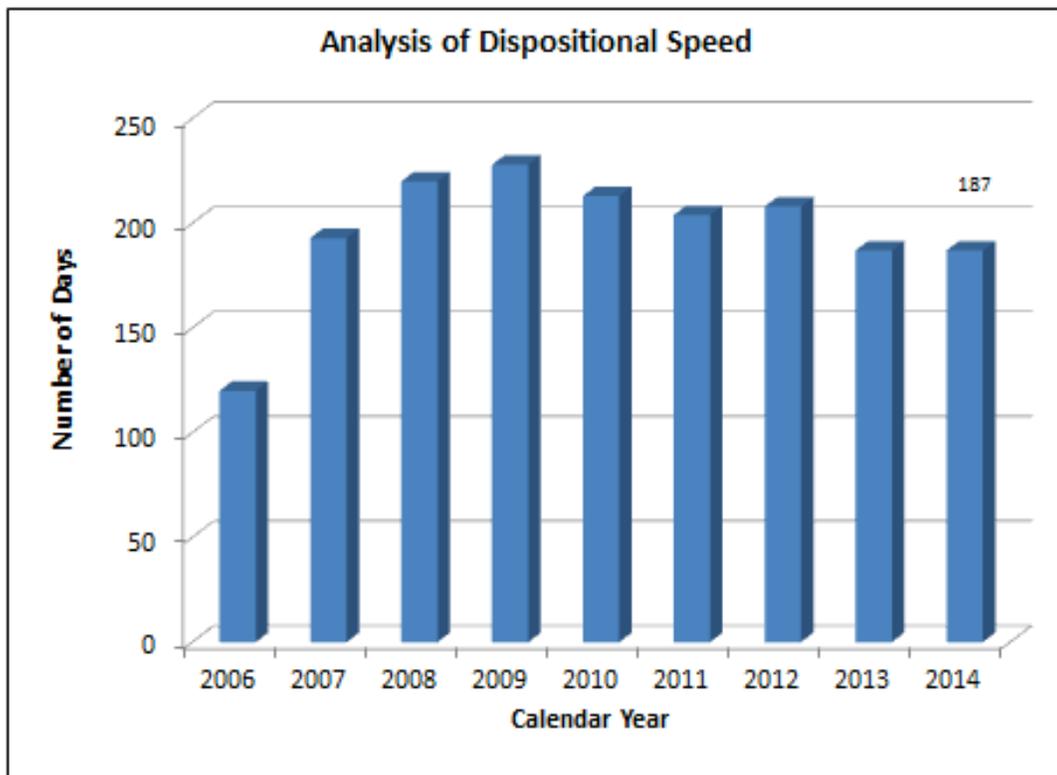
Compliance with Hearing & Decisional Deadlines

In 2014, 386 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency met the 14-day requirement in the vast majority of cases. The number of appeals continued to remain low, with 41 appeals in 2014, which is only a slight increase over 2013.



Analysis of Dispositional Speed

In 2014, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 187 days. The agency's efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions has allowed this average to remain steady from 2013 to 2014.



Summary of Appeals

(Status of appeals taken as of December 31, 2014)

In the last five years, the Board or Hearing Officers have rendered 2,259 decisions on the merits. 274 of those decisions (approximately 12.13%) were appealed (an average of 54.8 per year). 253 of those appeals have been resolved. Only 31 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **1.37%** of all decisions rendered in those five years.

Year Appeal Taken In	2010	2011	2012	2013	2014
Total Number of Decisions	629	437	429	394	370
Total Number of Appeals	66	67	62	38	41
Affirmed	29	30	33	23	8
Reversed and/or Remanded	13	7	5	5	1
Dismissed/Withdrawn	24	29	24	9	13
Pending: ¹	0	1	0	1	19

Five-Year Cumulative	
Total Number of Decisions:	2,259
Total Number of Appeals:	274
Affirmed:	123
Reversed and/or Remanded	3
Dismissed/Withdrawn	99
Pending:	21

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 2010, some of those appeal results may change in the future because of decisions by the Supreme Court.

Departmental Recommendations

Workers' Compensation Oversight Panel

On January 28, 2015, the Insurance Commission announced decreases in workers' compensation rates of 9.7% in the residual (assigned risk) market and 11.5% in the voluntary market. These decreases are retroactive to December 1, 2014 for new and renewal business. 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 increases in workers' compensation rates during the past several years.

Case Management

OWC will continue its work on updating our case management software. The completed update is expected by September 2015 and will consist of a more user friendly appearance as well as the ability to better track Utilization Review statistics.

Uninsured Employers

OWC is working to address the problem of employers in Delaware operating without workers' compensation insurance coverage. Our efforts have begun with steps to educate employers about workers' compensation and what is required of them. OWC will also be reviewing the current workers' compensation statutes to ensure that they contain the tools necessary to pursue non-compliant companies.