



State of Delaware

Department of Labor

22nd Annual Report

on the

Status of Workers' Compensation

Case Management

2019 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 for their service 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 support.

Reflecting on the work accomplished in 2019, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. From an operational standpoint, the Office of Workers' Compensation has continued modernization efforts. In 2019, Office of Workers' compensation gave attorneys and parties the ability to file petitions electronically through the online portal. Presently, under fifty percent of local attorneys are filing electronically, and the goal is to increase online filings and email submissions when possible.
2. OWC continues to provide an online portal through which attorneys, insurance carriers and members of the public can submit requests for copies of public documents and submit First Reports of Injury. This online portal can also be 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. OWC is continuing to look at additional ways of streamlining processes for the benefit of both staff and members of the public.

Health Care Payment System - Year in Review 2019

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its eleventh anniversary on May 23, 2019. 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 also has two Public Member vacancies and one Medical Society – At Large vacancy.

In 2019, the WCOP met 1 time. Its subcommittees met 4 times.

The OWC medical component supports the operations of the HCPS. In 2018, 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.

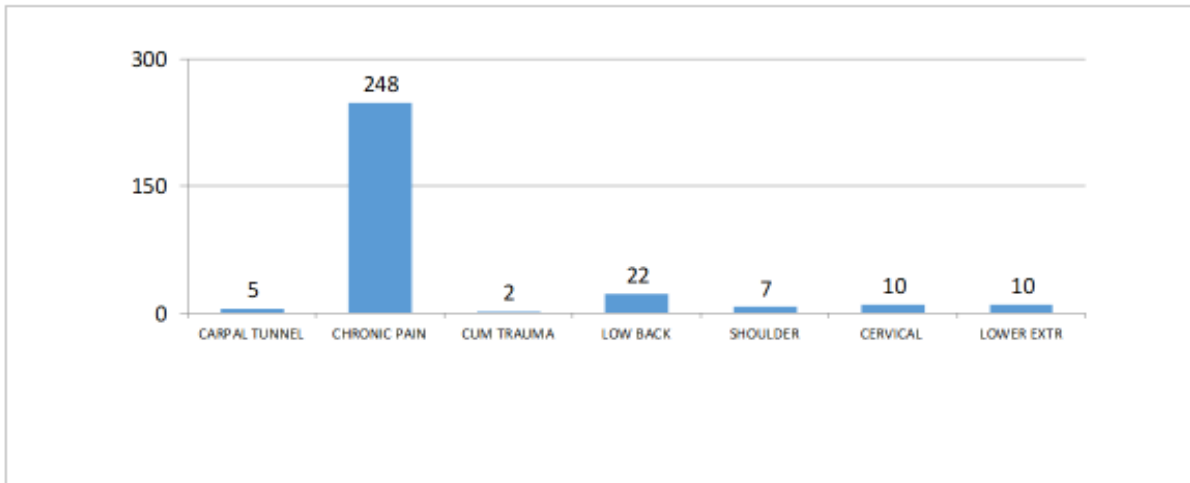
Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within a 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 2018, OWC received 358 requests for utilization review. In 2019, OWC received 296 requests for utilization review, which constituted a 17.3% decrease. In 2018, OWC received 203 Petitions to Appeal a Utilization Review. These appeals were filed in approximately 56% 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 2019, OWC received 165 Petitions to Appeal a Utilization Review. The percentage rate of appeal remained the same as the prior year. Also similar to the prior year, the great majority of appeals filed were later withdrawn before getting to a hearing with the Industrial Accident Board.

Chronic pain treatment, particularly pain medication, continued in 2019 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) 2019 UR Practice Guidelines through 12/31/19

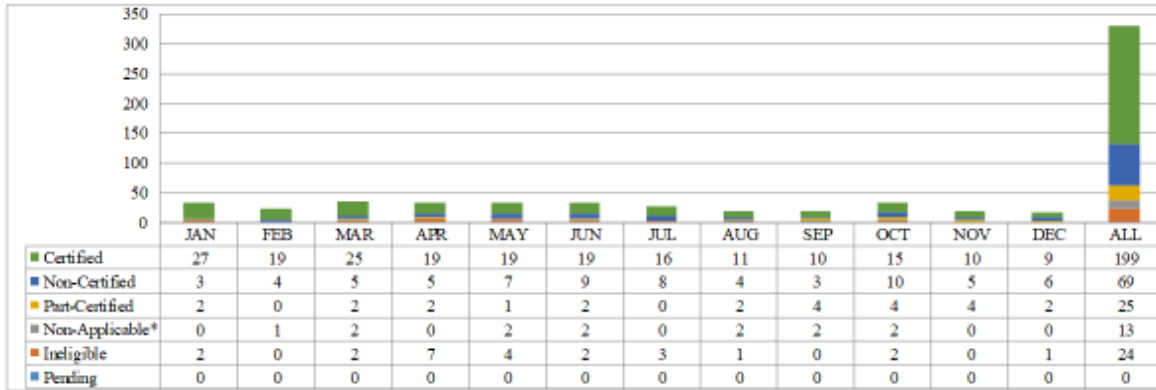
UR statistics are compiled on a one-month lag based on date of receipt.



•Individual UR requests may involve multiple Practice Guidelines.

OWC Health Care Payment System (HCPS) 2019 Utilization Review Program*

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

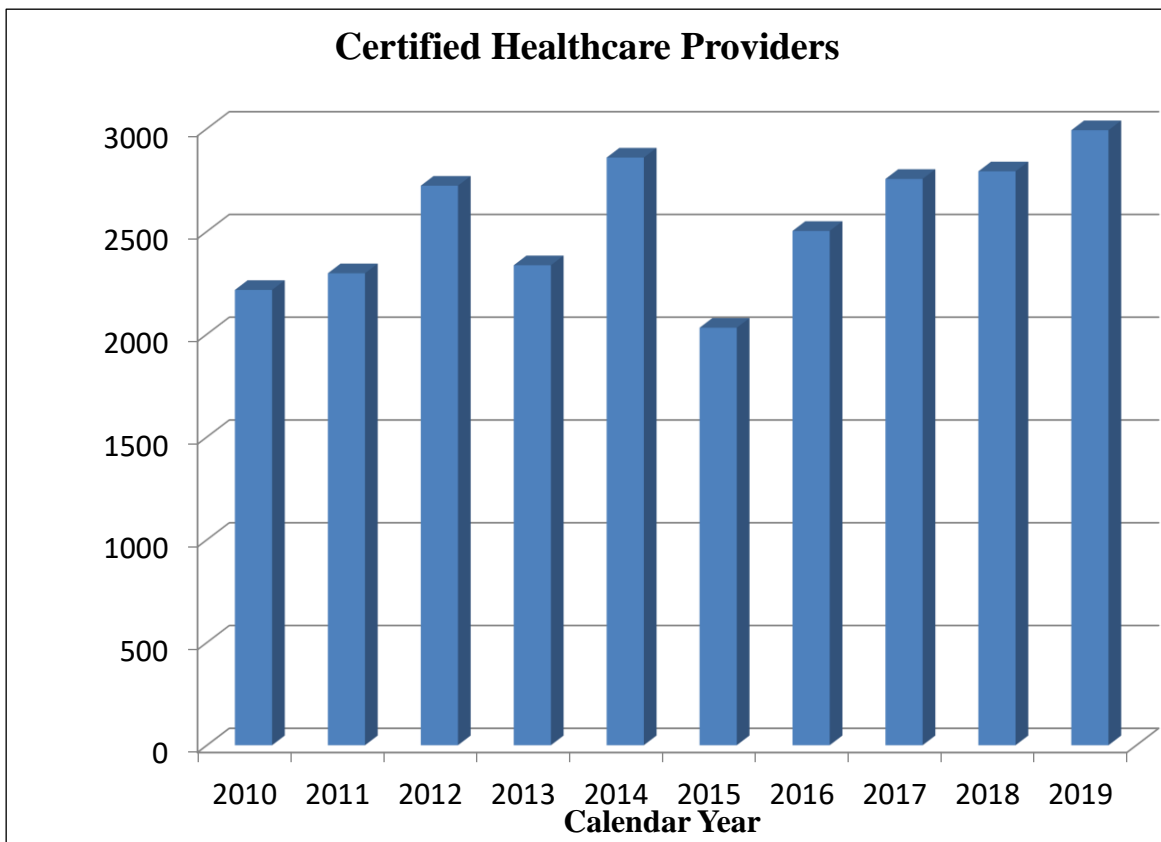


*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12, for instances when the injury **does** fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	31	23	33	26	27	31	24	18	18	29	19	17
Total - YTD	31	54	87	113	140	171	195	213	231	260	279	296
Total - Since 5/23/08	3752	3775	3808	3834	3861	3892	3916	3934	3952	3981	4000	4017

In an effort to further utilize available technology the OWC Utilization Review program now has the capability of receiving electronically 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 continued to increase in recent years. In 2018 there were 2,792 certified providers and that number increased to 2,992 in 2019. 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. 2019 marked the sixth full year of this change, which helps providers’ better track the recertification deadline.



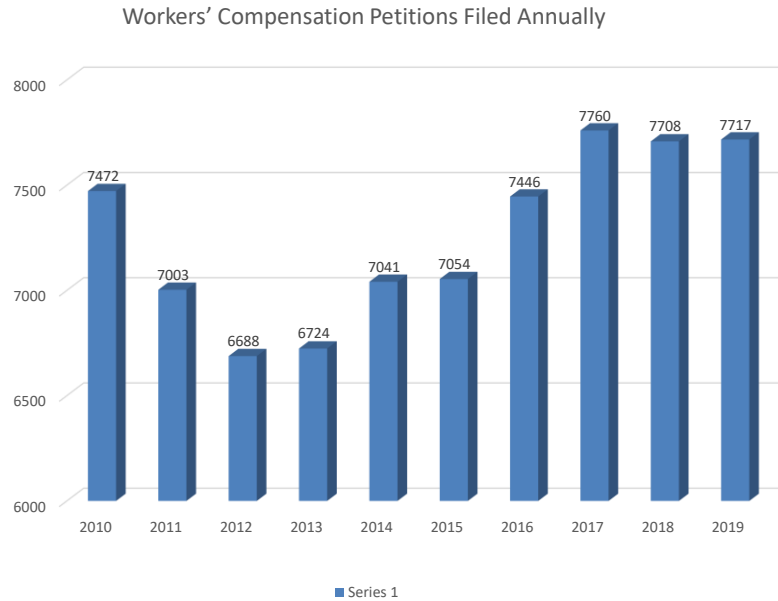
In 2012, OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. OWC continues to participate in this agreement.

In 2018, approximately 2,391 stakeholders participated in OWC's ListServ, which represents a 17% increase over the 2,800 subscribers at the end of 2019. The OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email.

The Office of Workers Compensation takes 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/>

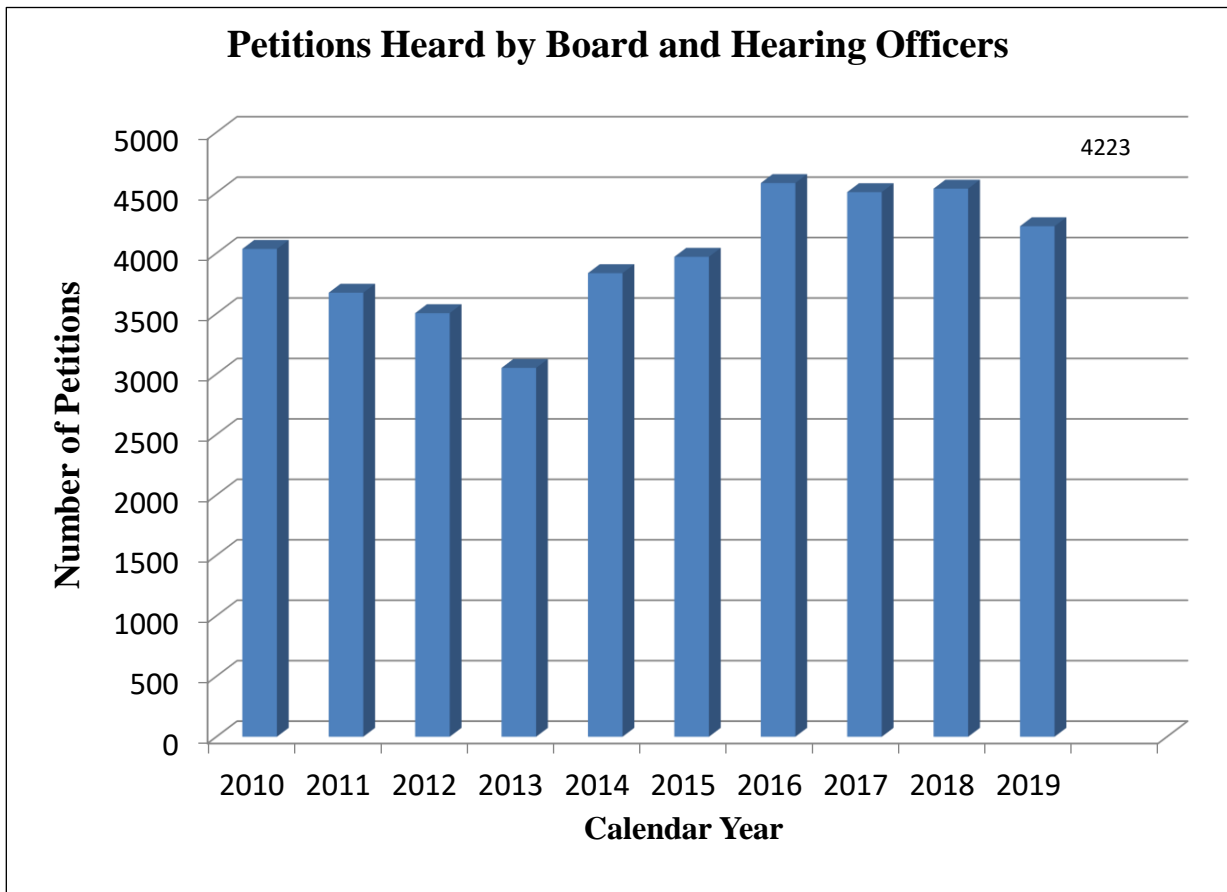
During 2019, a total of 7,717 petitions were filed. This is a very slight increase from 7,708 in 2018. The Office of Workers’ Compensation successfully maintained its “no backlog” status. A backlog is defined as more than four months’ worth of petitions.



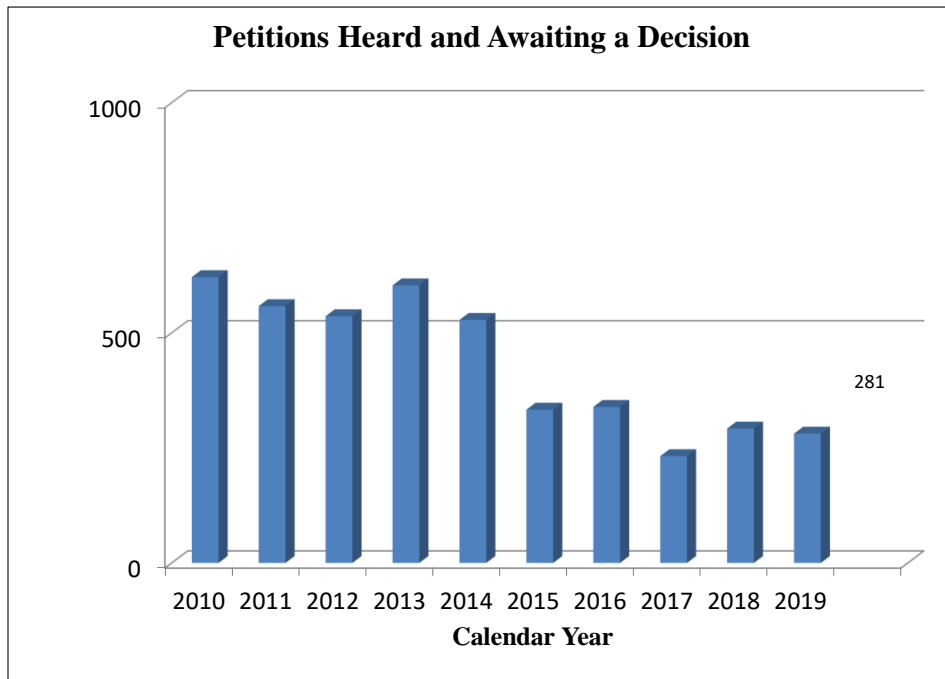
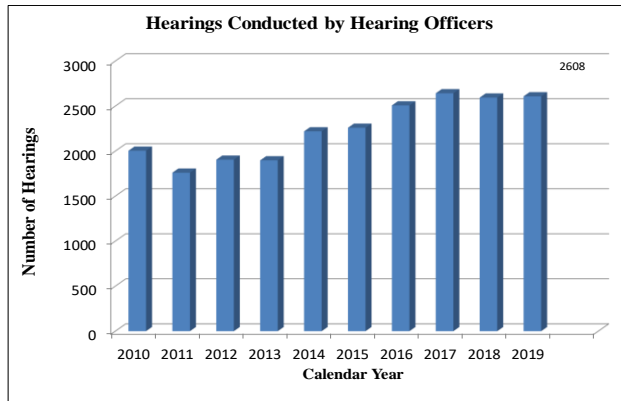
The workers’ compensation specialists assisted 2,492 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 17,480 electronic requests contacts this year, as compared to 19,659 in 2016 and 17,366 in 2017. This high level of electronic requests illustrates a preference for online information and electronic communication. The Office of Workers’ Compensation processed 1,798 requests for copies of public documents.

Petitions Heard by the Board/Hearing Officers

The number of petitions heard by the Industrial Accident Board or by Hearing Officers showed a slight decrease from 4,534 to 4,223 in 2019 as shown on the graph below.

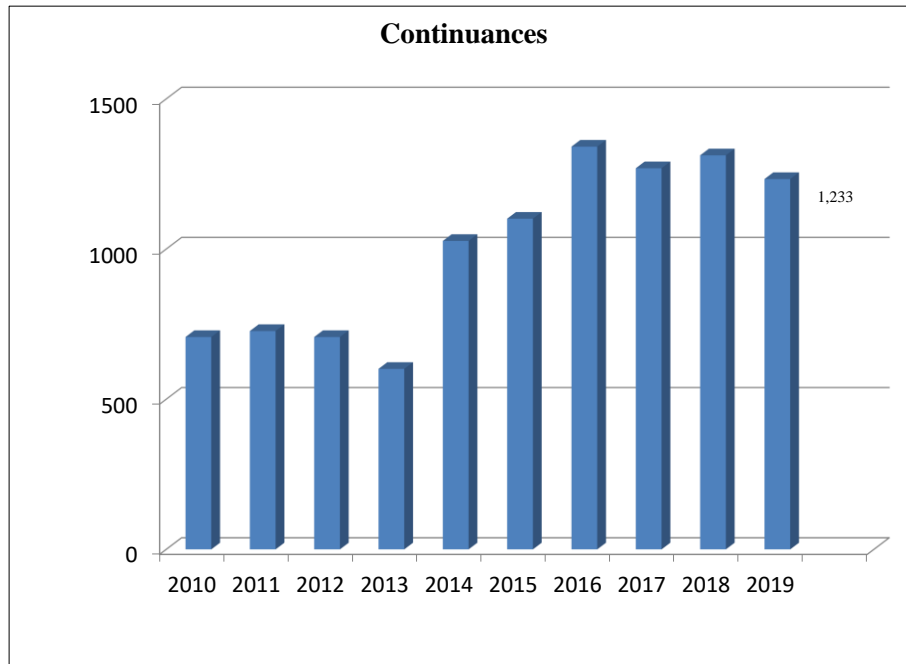


Hearing officers conducted hearings in 2,608 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



Continuances

In 2019, a total of 1,233 continuances were granted, which decreased from 2018 which had 1,312 continuances granted. The great majority of continuances continue to be 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)	973
A justifiable substitution of counsel for a party	12
Any unforeseen circumstance beyond the control of the parties:	57
• Employee missed employer-scheduled medical exam	30
• Records unavailable for review by parties prior to hearing	32
• Unforeseen circumstances	57
• Inadequate notice	10
• Case bumped	60

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 2019. 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
Angelique Rodriguez	101	48
Unavailable	1	0
Dantzler	123	53
D'Anna	166	84
Fuller	118	76
Hare	135	63
Hartranft	151	78
Mauil	134	64
Mitchell	183	91
Murowany	167	78
Wilson	164	88

*Gemma Buckley retired March 15, 2019

**Angelique Rodriguez was appointed effective March 27, 2019

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

Board Member	Number of Hearings on the Merits
Rodriguez	46
Dantzler	45
D'Anna	106
Fuller	67
Hare	69
Hartranft	110
Mauil	55
Mitchell	127
Murowany	110
Wilson	119

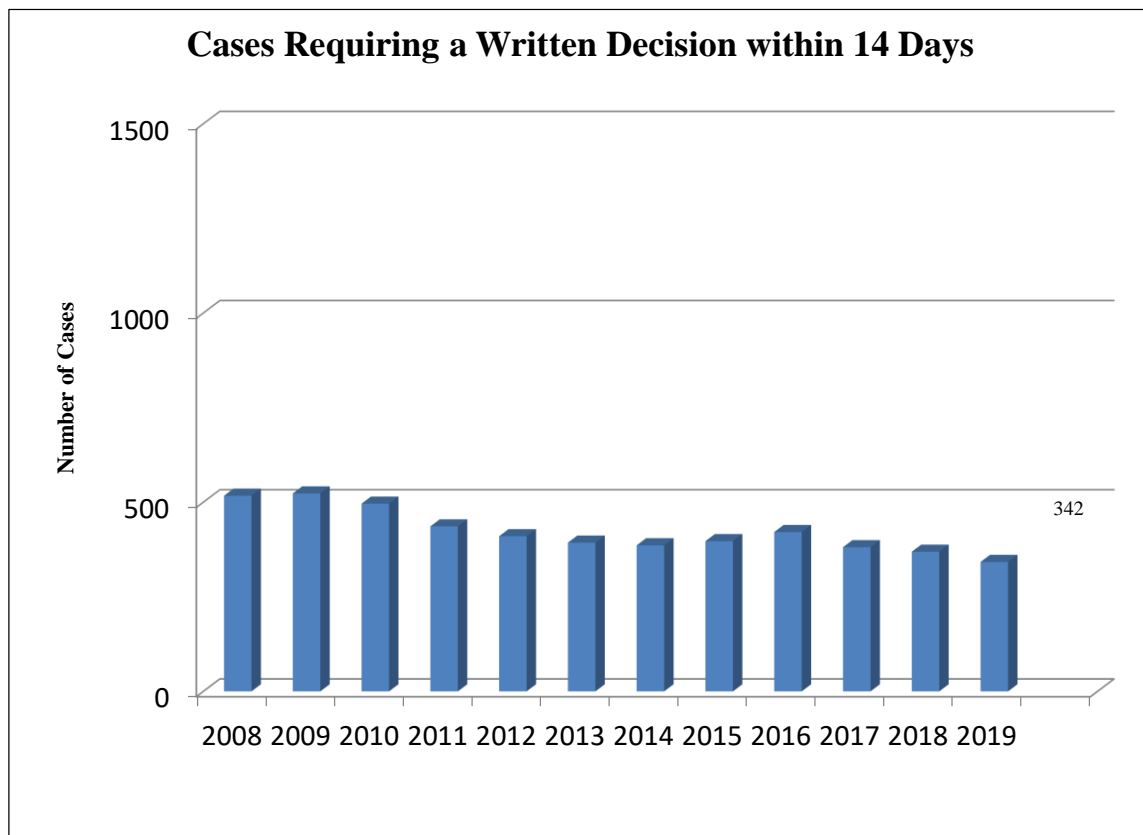
Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle*	45
J. Bucklin	59
S. Mack	47
D. Massaro*	45
J. Pezzner	50
J. Schneikart*	44
H. Williams	65
K. Wilson*	45
C. Baum, Chief	60
Total	460

* In addition, in 2019, E. Boyle, D. Massaro, J. Pezzner (2), J. Schneikart and K. Wilson conducted workers' compensation mediations pursuant to DEL. CODE ANN. tit. 19, § 2348A.

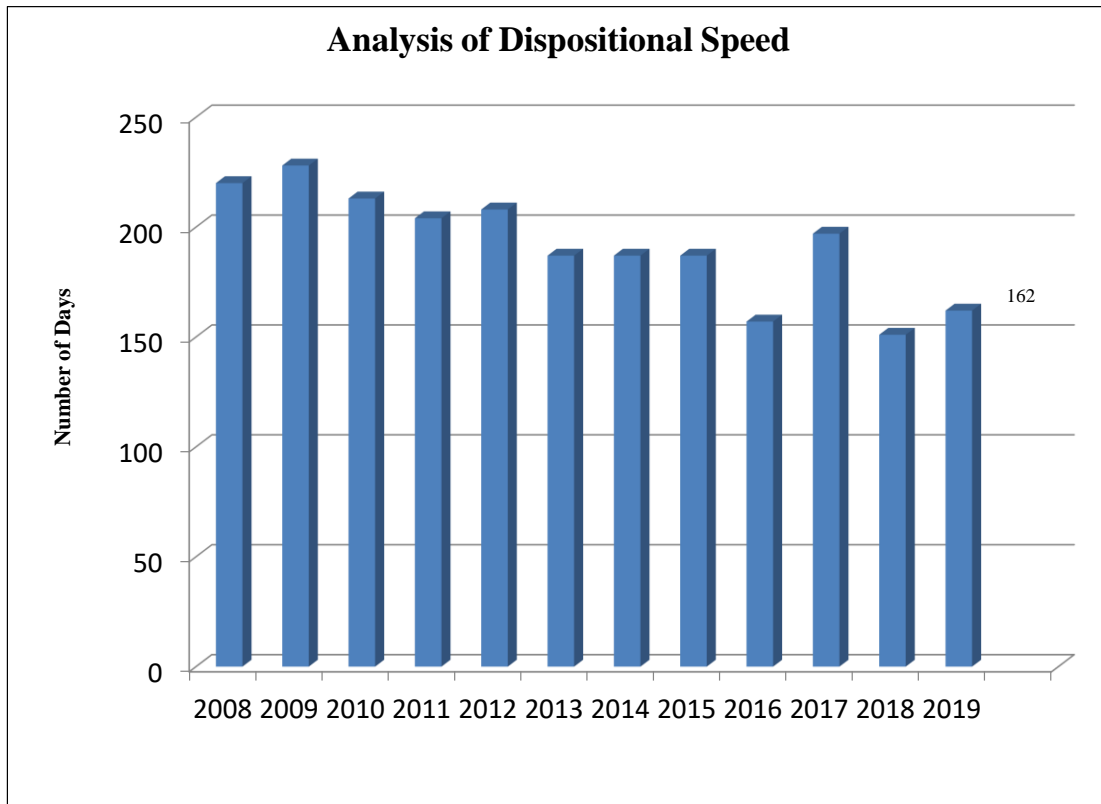
Compliance with Hearing & Decisional Deadlines

In 2019, 342 cases were heard which required a written decision within 14 days from the IAB or hearing officers a decrease from 2018 which had 369 cases.



Analysis of Dispositional Speed

In 2019, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 162 days. 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, 2019)

In the last five years, the Board (or Hearing Officers) have rendered 1863 decisions on the merits. Of those decisions, 200 (approximately 10.73%) were appealed (an average of 40 per year). 177 of those appeals have been resolved. Only 22 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only about 1.18% of all decisions rendered in those five years.

<u>Year Appeal Taken In:</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>Total Number of Decisions:</u>	<u>393</u>	<u>399</u>	<u>375</u>	<u>338</u>	<u>358</u>
<u>Total Number of Appeals:</u>	<u>37</u>	<u>41</u>	<u>29</u>	<u>46</u>	<u>47</u>
<u>Affirmed:</u>	<u>22</u>	<u>16</u>	<u>7</u>	<u>16</u>	<u>5</u>
<u>Reversed and/or Remanded:</u>	<u>3</u>	<u>3</u>	<u>4</u>	<u>9</u>	<u>3</u>
<u>Dismissed/Withdrawn:</u>	<u>12</u>	<u>22</u>	<u>18</u>	<u>21</u>	<u>16</u>
<u>Pending:¹</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>23</u>

FIVE-YEAR CUMULATIVE

<u>Total Number of Decisions:</u>	<u>1,863</u>
<u>Total Number of Appeals:</u>	<u>200</u>
<u>Affirmed:</u>	<u>66</u>
<u>Reversed and/or Remanded:</u>	<u>22</u>
<u>Dismissed/Withdrawn:</u>	<u>89</u>
<u>Pending:</u>	<u>23</u>

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 2018, some of those appeal results may change in the future because of decisions by the Supreme Court.

Departmental Recommendations

Workers' Compensation Oversight Panel (WCOP)

On October 22, 2018, the Insurance Commissioner announced that workers' compensation rates for 2019 would decrease 7.29% for the residual market and 10% for the voluntary market . 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.

Uninsured Employers

OWC continues to work to address the problem of employers in Delaware operating without workers' compensation insurance coverage. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. Further steps have been taken to fine employers who repeatedly refuse to obtain proper coverage. 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.