



State of Delaware  
Department of Labor

**23<sup>rd</sup> Annual Report**  
**on the**  
**Status of Workers' Compensation**  
**Case Management**

## 2020 Highlights

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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 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 2020, three issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. The Office of Workers' Compensation was challenged with maintaining the seamless transition of operations during this pandemic. The OWC continued to serve both internal and external clients while the building was closed to the public. The OWC changed the platform for hearings to WebEx (virtual hearings). Live Hearings continue as deemed necessary. Both hearing rooms in Fox Valley & Dover have been outfitted with the necessary PPE's in place.
2. From an operational standpoint, the Office of Workers' Compensation has continued its modernization efforts. The Office of Workers' Compensation has started the process of digitizing all current and purged files. In 2019, the launch of accepting Petitions electronically was introduced through the on-line portal system. The submission of First Report of Injuries and requests for public documents capabilities is available in the portal, as well. The online portal is 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.

3. The Office of Workers' Compensation introduced a new email box for the acceptance of agreements & receipts. This new process has proven effective as the turnaround time from mail submission to completion is cut in half.

OWC is continuing to look at additional ways of streamlining processes for the benefit of both staff and members of the public.

The Office of Workers Compensation takes pride in its updated 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/>

# Health Care Payment System - Year in Review 2020

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The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its twelfth anniversary on May 23, 2020. 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 2020, the WCOP did not meet. Its subcommittees met 6 times.

The OWC medical component supports the operations of the HCPS. In 2020, 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.

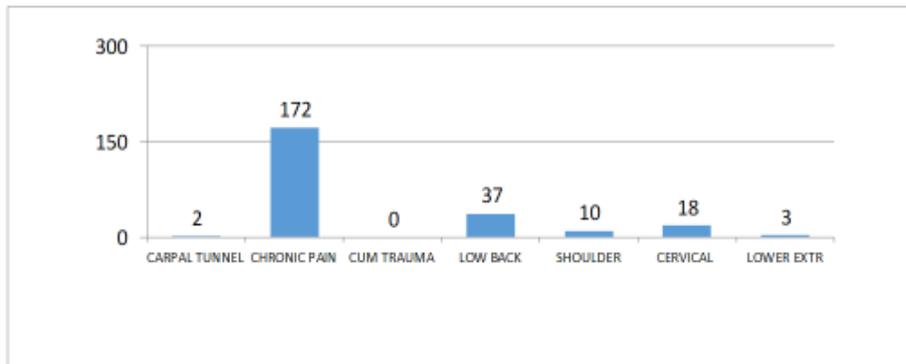
**Utilization review (UR)** provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within 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 2019, OWC received 296 requests for utilization review. In 2020, OWC received 225 requests for utilization review, which constituted an 23.99% decrease. In 2019, OWC received 165 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 2020, OWC received 140 Petitions to Appeal a Utilization Review. The percentage rate of appeal for 2020 was approximately 47%. 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 2020 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) 2020 UR Practice Guidelines through 12/31/20

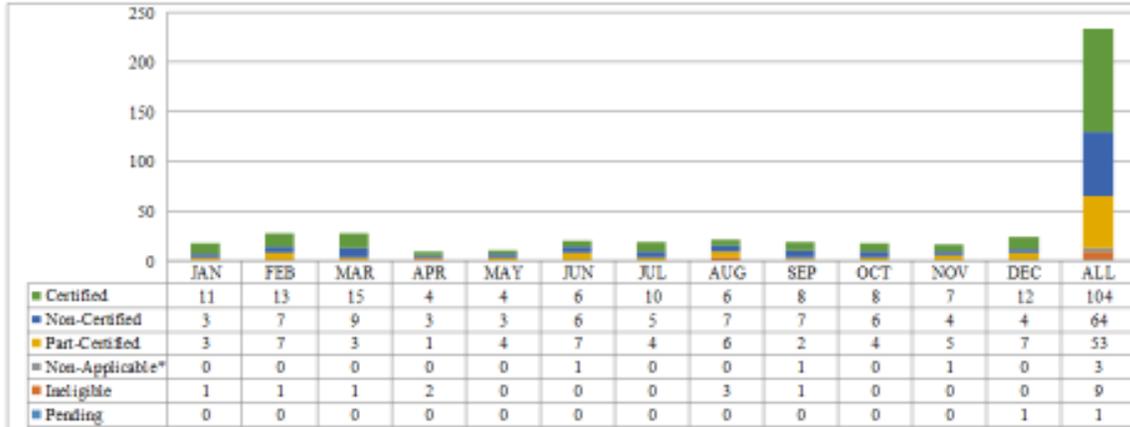
UR statistics are compiled on a one-month lag based on date of receipt.



- Individual UR requests may involve multiple Practice Guidelines.

## OWC Health Care Payment System (HCPS) 2020 Utilization Review Program\*

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

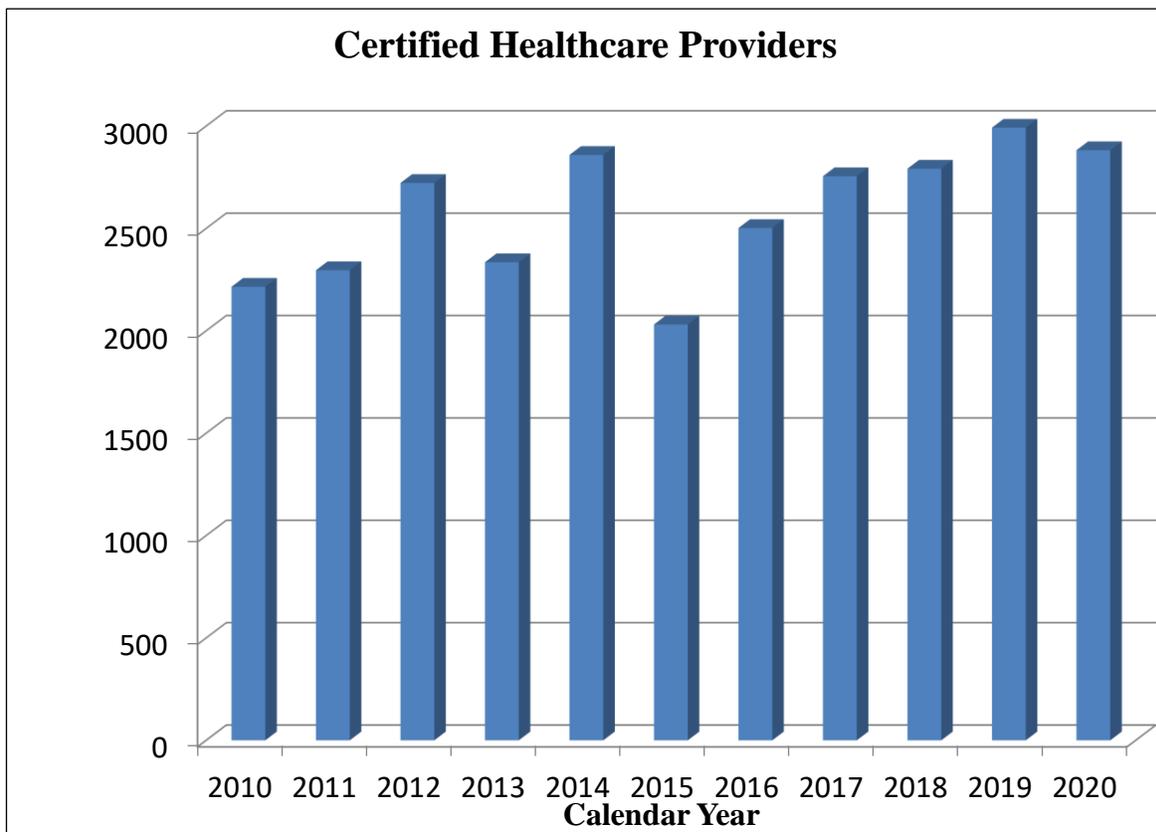


\*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12, for instances when the injury does fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	17	25	28	10	11	20	19	19	19	18	15	24
Total - YTD	17	42	70	80	91	111	130	149	168	186	201	225
Total - Since 5/23/08	4034	4059	4087	4097	4108	4128	4147	4166	4185	4203	4218	4242

The OWC Utilization Review program continues to expand electronic processing of 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 fluctuated within the last year. In 2019 there were 2,992 certified providers and that number decreased to 2,822 in 2020. 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. 2020 marked the seventh year of this change, which helps providers’ better track the recertification deadline, also the Workers Compensation Provider Certification Course was updated to reflect any Workers Compensation regulation that may have occurred during 2020.



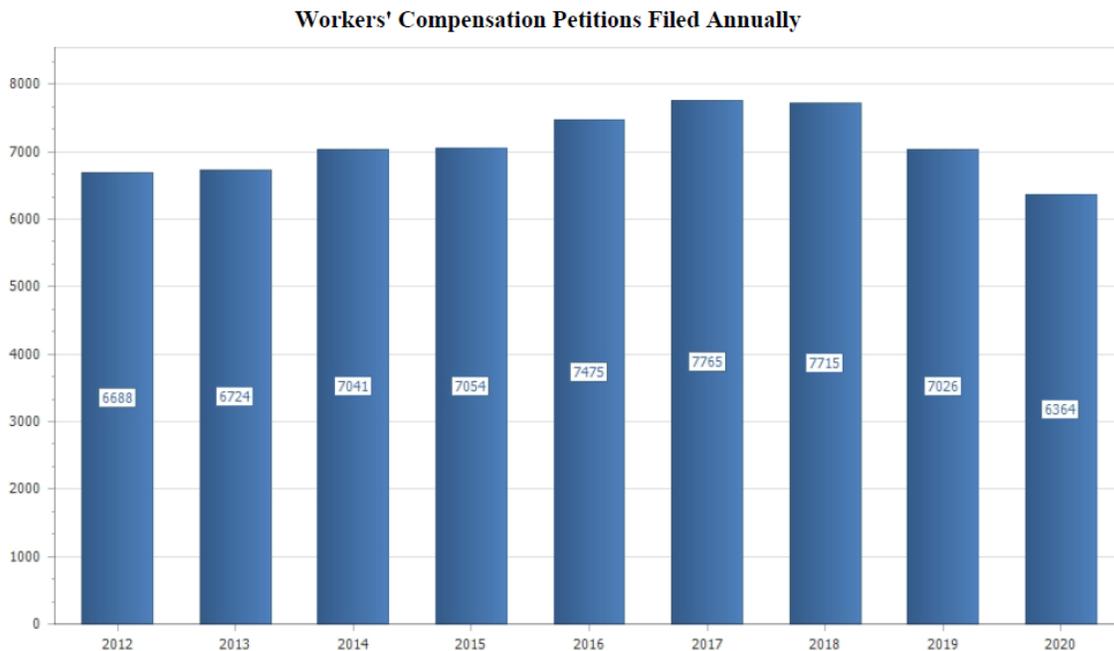
In 2012, OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. OWC continues to participate in this agreement.

In 2020, approximately 3,142 stakeholders participated in OWC's ListServ, which represents a 12% increase over the 2,800 subscribers at the end of 2019, partly due to the COVID -19 pandemic. The OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email.

## Petitions Filed Annually

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During 2020, a total of 6364 petitions were filed. This is a very slight decrease compared to 2019 (8%) but is an anomaly statistically due to the usual circumstances in 2020.

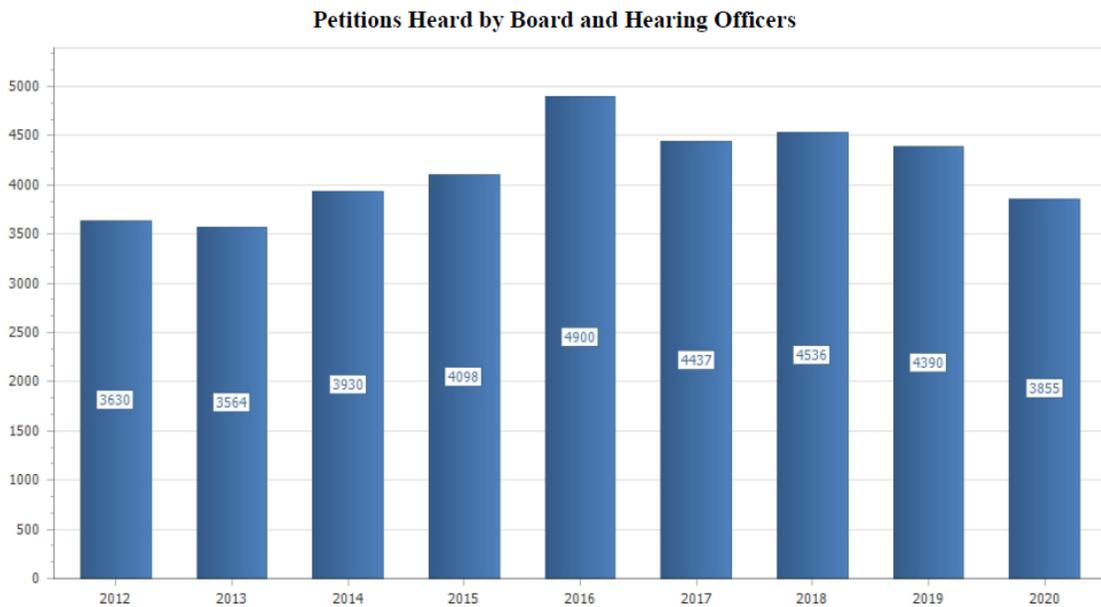


The workers' compensation specialists continued to assist callers, even if the Specialist was working remotely. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The Office of Workers' Compensation processed 1,666 requests for copies of public documents. OWC processed 11,758 First Report of Injury. Only 3% were filed electronically. OWC is exploring ways to allow the interfacing of the FRI to our current system.

## Petitions Heard by the Board/Hearing Officers

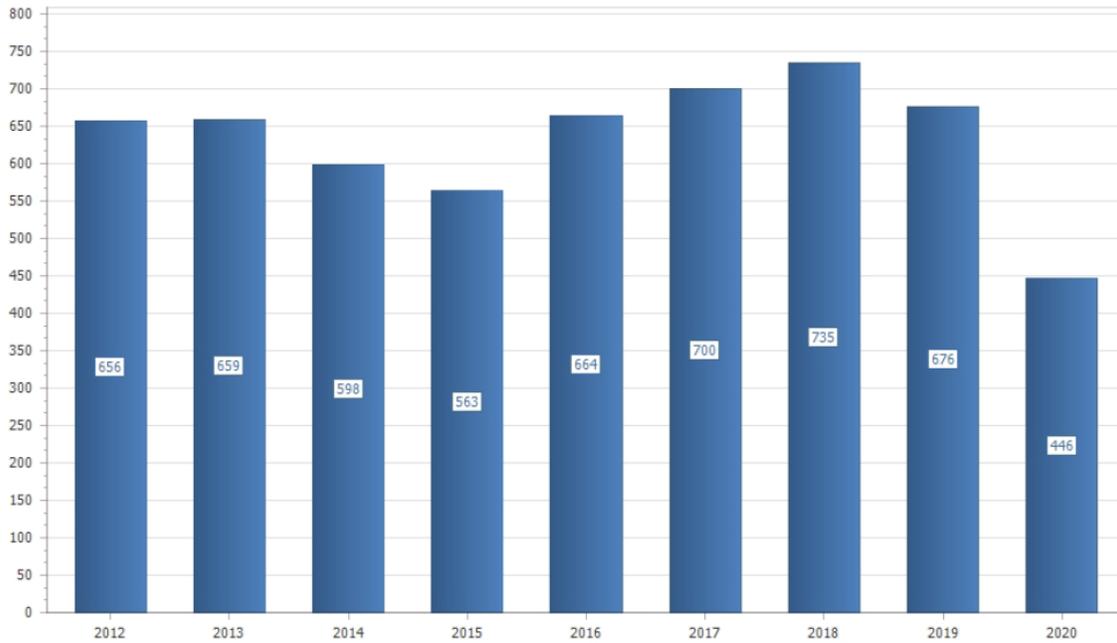
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As seen in the chart on page 9, the number of petitions filed annually decreased 8% in calendar year 2020, as compared to 2019, while there was a decrease of 11% in Petitions heard in FY20. This was in direct correlation to the halting of hearings for a 6 week period per the Board Order in response to the pandemic. This statistic is for all petitions regardless of hearing type.



Hearing officers conducted 446 hearings. These include merit hearing as well as stipulated commutation orders.

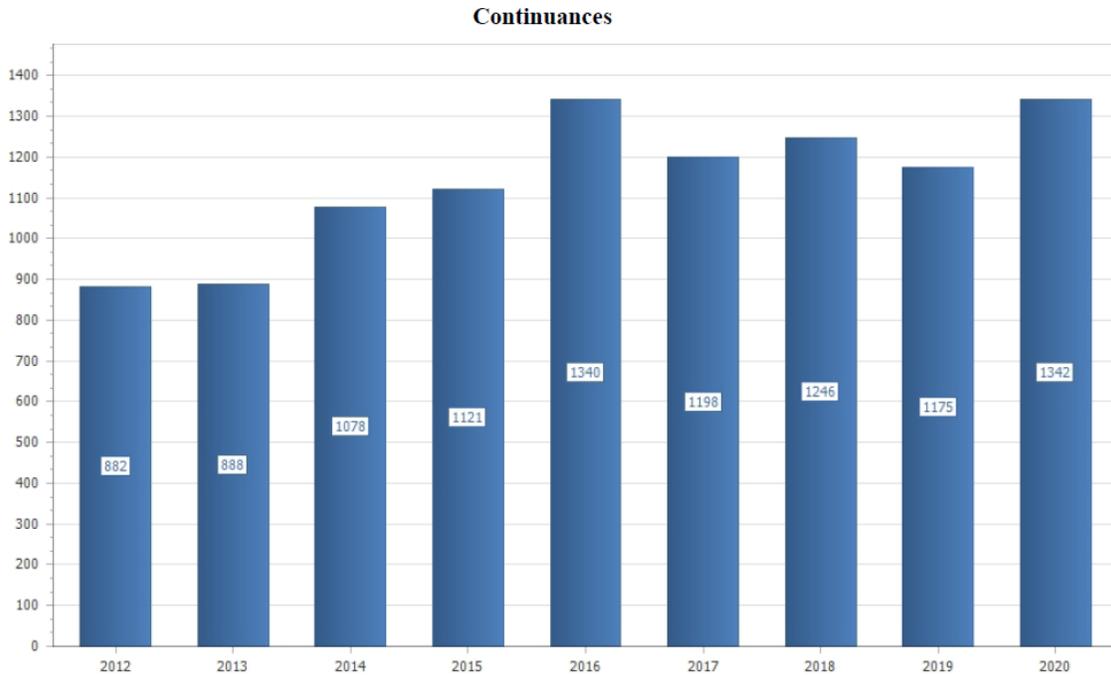
**Hearings Conducted by Hearing Officers**



Currently, there are 27 decisions in the queue awaiting writing. During the year of 2020 and going into 2021, the OWC is “cleaning up” the entries of consolidated hearings to reflect a more accurate chart in our SCARS system.

# Continuances

In 2020, a total of 1,341 continuances were granted, which represents a 15% increase from the 1,175 continuances granted in 2019. The mass majority of continuances continue to be caused by the unavailability of a medical witness and due to the pandemic.



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)	1,047
A justifiable substitution of counsel for a party	12
Any unforeseen circumstance beyond the control of the parties:	
<input type="checkbox"/> Employee missed employer-scheduled medical exam	30
<input type="checkbox"/> Records unavailable for review by parties prior to hearing	27
<input type="checkbox"/> Unforeseen circumstances	98
<input type="checkbox"/> Inadequate notice	2
<input type="checkbox"/> Case bumped	126

## Board Member Activities

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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 2020. Scheduled days versus actual days differ due to case settlements and continuances. The Board Members sat 38% of the scheduled time.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Dantzler	117	57
D'Anna	156	46
Fuller, Sr.	117	62
Hare	123	56
Hartranft	154	52
Maul	126	54
Mitchell	168	59
Murowany	154	54
Rodriguez	127	35
Wilson	161	52
<b>Total: 38%</b>	1403	527

The following table shows the number of Hearings on the Merits conducted by each Board Member where a decision has been rendered. This chart does not include Legal Hearings; and multiple petitions heard within the same hearing. Two members of the Board sit for each Hearing.

<b>Board Member</b>	<b>Number of Hearings on the Merits</b>
Dantzler	38
D'Anna	51
Fuller	40
Hare	39
Hartranft	58
Maul	32
Mitchell	63
Murowany	61
Rodriguez	39
Wilson	53
<b>Total</b>	<b>474</b>

## Completed Caseload of Individual Hearing Officers

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Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle	30
J. Bucklin	50
A. Fowler*	13
S. Mack	33
D. Massaro**	11
J. Pezzner	29
J. Schneikart	30
H. Williams	57
K. Wilson	42
C. Baum, Chief	43
<b>Total</b>	<b>338</b>

\*Hired effective September 28, 2020.

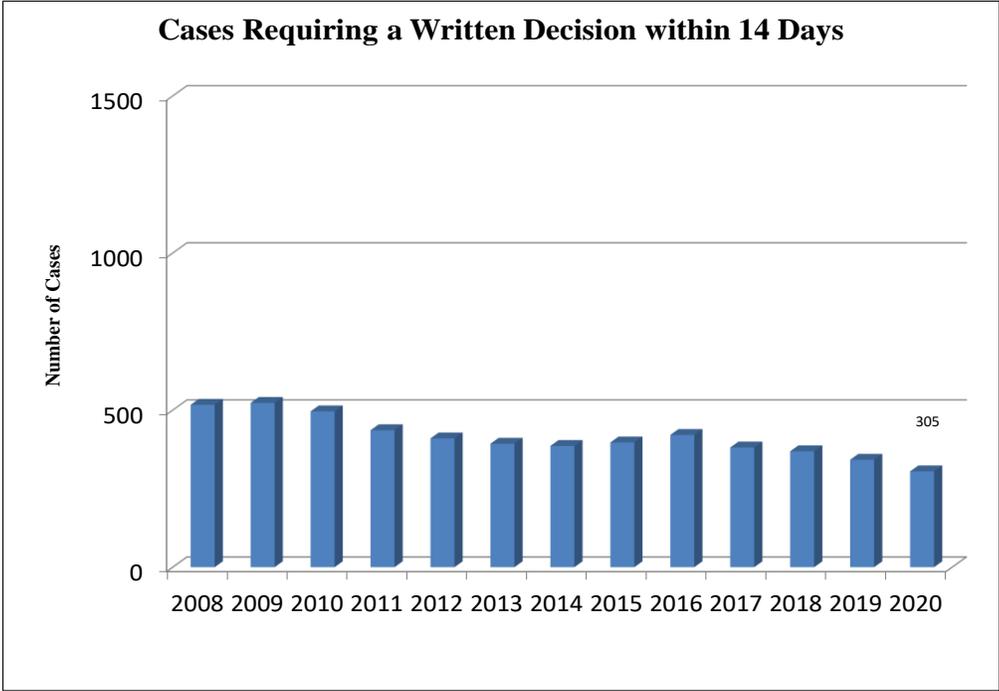
\*\*Retired effective June 30, 2020.

In 2020, hearing officers conducted no workers' compensation mediations pursuant to DEL. CODE ANN. tit. 19, § 2348A.

# Compliance with Hearing & Decisional Deadlines

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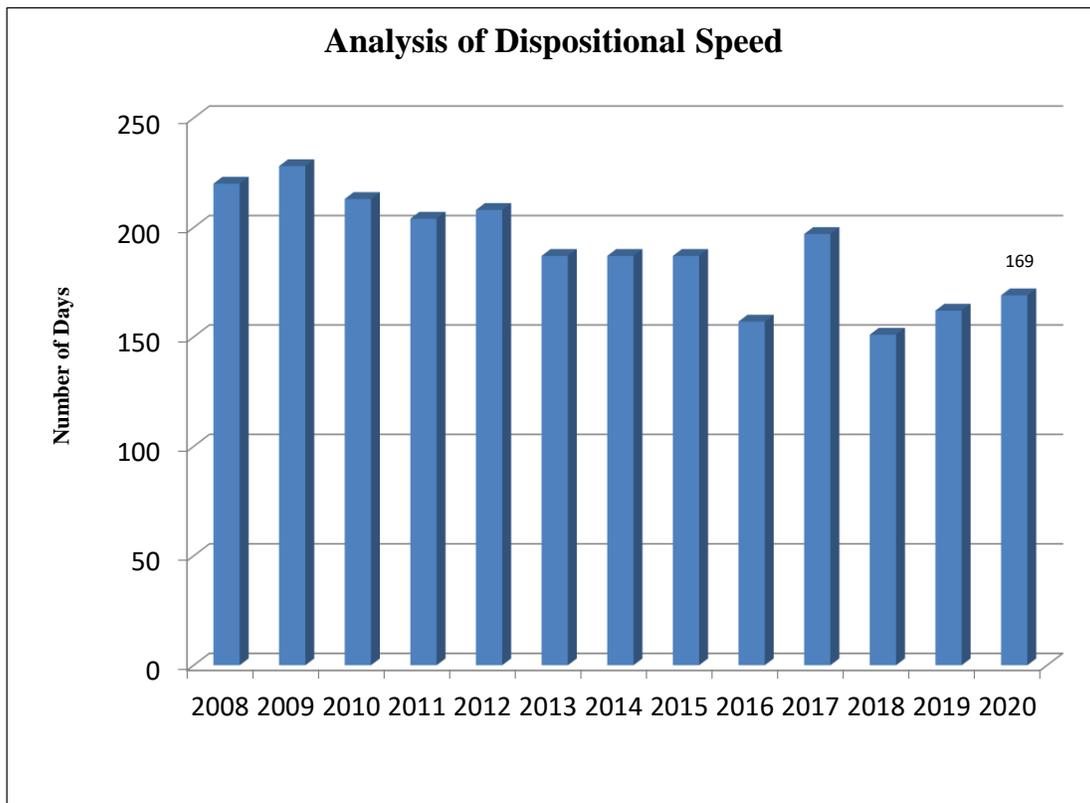
In 2020, 305 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The number of appeals continued to remain low, with only 45 appeals in 2020.



## Analysis of Dispositional Speed

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In 2020, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 169 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, 2020)

In the last five years, the Board (or Hearing Officers) have rendered 1724 decisions on the merits. Of those decisions, 208 (approximately 12.06%) were appealed (an average of 41.6 per year). 174 of those appeals have been resolved. Only 28 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only about 1.62% of all decisions rendered in those five years.

<b>Year Appeal Taken In:</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Total Number of Decisions:	399	375	338	358	254
Total Number of Appeals:	41	29	46	47	45
Affirmed:	16	7	15	13	1
Reversed and/or Remanded:	3	4	10	9	2
Dismissed/Withdrawn:	22	18	21	23	10
Pending: <sup>1</sup>	0	0	0	2	32

<b>Five-Year Cumulative</b>	
Total Number of Decisions:	1724
Total Number of Appeals:	208
Affirmed:	52
Reversed and/or Remanded	28
Dismissed/Withdrawn	94
Pending:	34

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

# Departmental Recommendations

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## Uninsured Employers

OWC continues to work to address the problem of employers operating in Delaware without workers' compensation insurance coverage with the future hiring of 3 (one for each county) Labor Law Enforcement Officers. 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.

### Workers' Compensation Oversight Panel (WCOP)

On October 27, 2020, the Insurance Commissioner announced that workers' compensation rates for 2021 would decrease 8.8% for the residual market and 11.56% for the voluntary market. This is the fourth consecutive year Workers' Compensation insurance rates have dropped. 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