



State of Delaware Department of Labor

5th Annual Report on the Status of Workers' Compensation Case Management

February 10, 2003

The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases despite another record high number of petitions being filed. The department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Workers' Compensation Advisory Council for their contributions and the Delaware General Assembly for it's ongoing support.

*James G. Cagle, Director
Division of Industrial Affairs*

*John F. Kirk III, Administrator
Office of Workers' Compensation*

Year in Review 2002

The Department of Labor and the Industrial Accident Board (IAB) continue to reduce the pending case inventory despite another record high number of petitions filed. For the first time in the history of the office the number of petitions filed for CY 2002 surpassed 6,400, (a 6% increase from CY 2001.) The actual number of petitions was 6,420.

The Office of Workers' Compensation continues to maintain its "no backlog" status. A "backlog" is defined as more than four months' worth of petitions. As of January 1, 2003, that number would have been 2,140 but only 1,201 were pending.

The workers' compensation specialist assisted 1,245 injured workers (as compared to 1,410 in CY 2001 and 1,290 in CY 2000) in processing their claims for benefits. She also provided technical assistance to 2,192 callers (up from 2,046 in CY 2001 and 1,741 in CY 2000.) The other contacts included attorneys, insurance carriers and employers.

Governor Minner filled two Industrial Accident Board vacancies by appointing Alice M. Mitchell in January 2002 and Victor R. Epolito in June 2002.

Hearing officers conducted hearings in 956 cases which would otherwise had to have been heard by the IAB.

The workers' compensation statute was amended by House Bill 263 which removed workers' compensation insurance regulations from Title 19 (Labor) and placed them in Title 18 (Insurance).

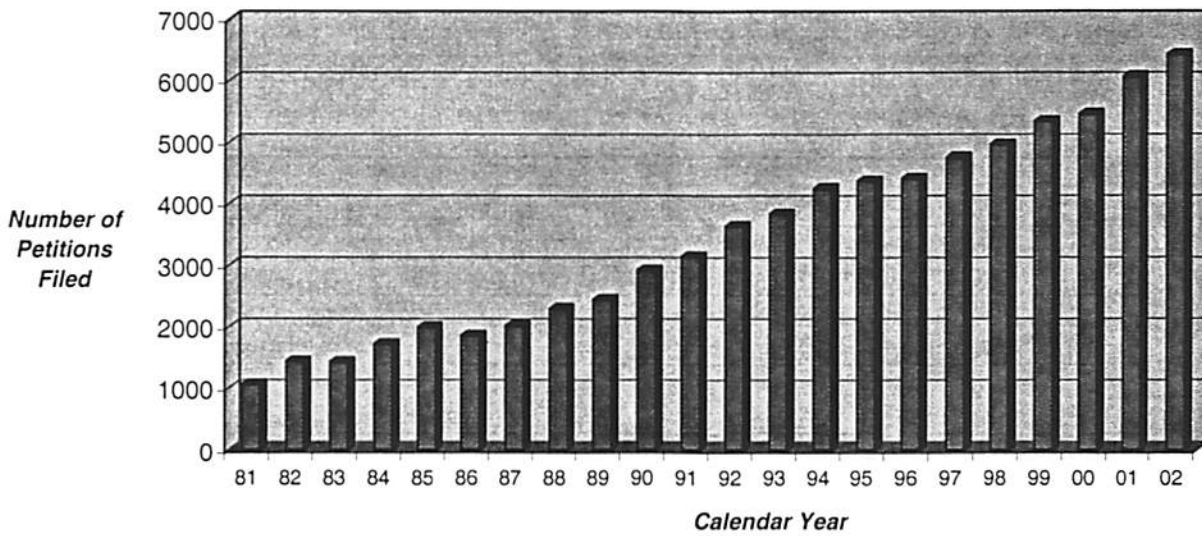
The Office of Workers' Compensation and the Office of Labor Law Enforcement moved to a new location in the Windsor Building, 24 N. W. Front Street, Milford in February 2002.

The Worker's Compensation Advisory Council met three times in 2002.

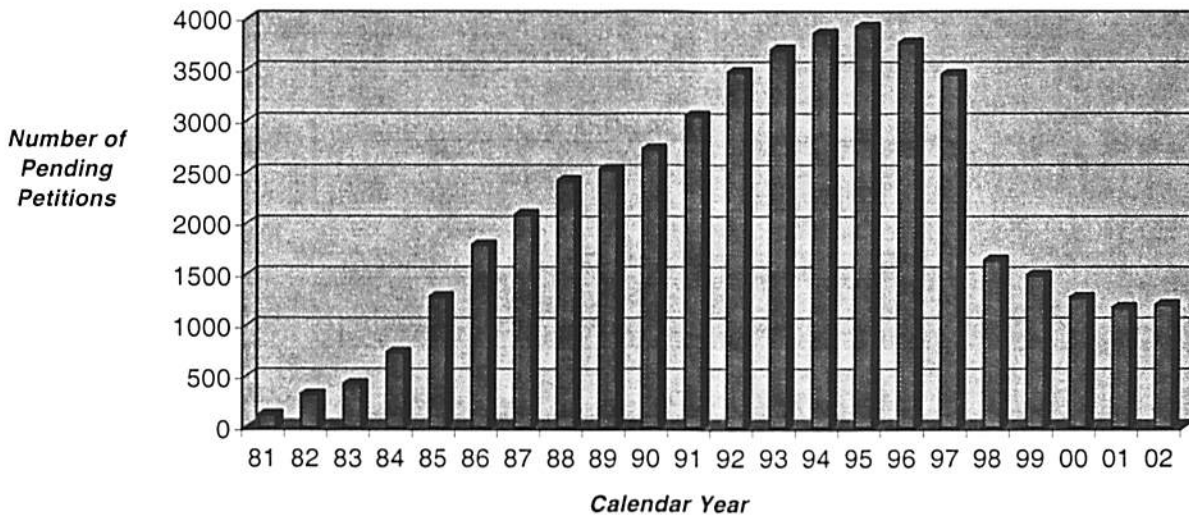
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Despite a record number of petitions filed in 2002 (more than 6,400), the agency continues to maintain a "no backlog" of cases.

Workers' Compensation Petitions Filed Annually



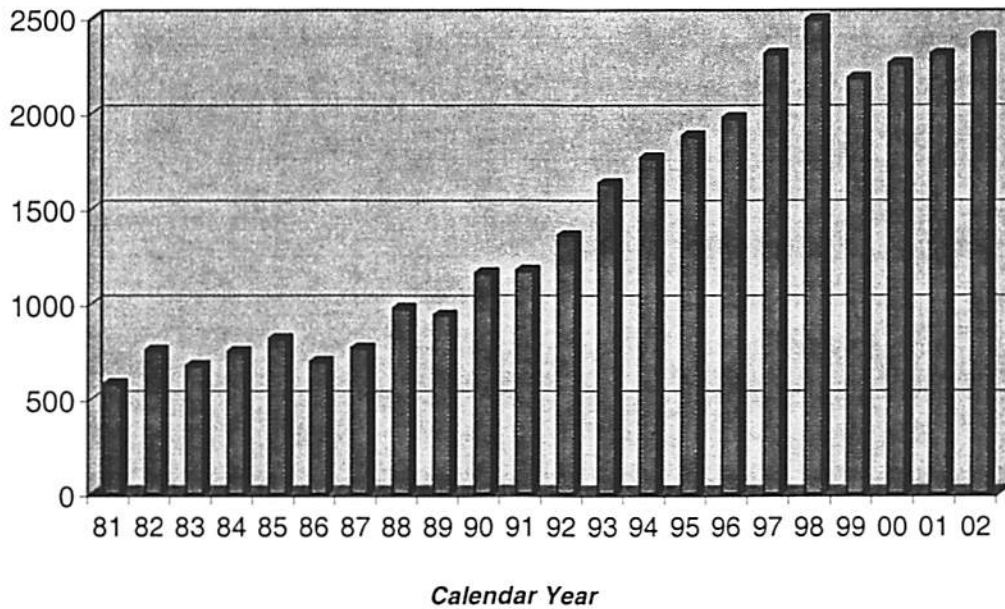
Pending Petitions



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.

Petitions Heard by Board or Hearing Officer



Continuances

During calendar year 2002, a total of 193 continuances were granted (compared with 201 continuances in 2001, 176 continuances in 2000 and 179 continuances in 1999).

The grounds for the continuances were as follows:

- The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency) 145

- A justifiable substitution of counsel for a party 11

- Any unforeseen circumstances beyond the control of the parties:
 - Employee missed employer-scheduled medical exam 20
 - Records unavailable for review by parties prior to hearing 7
 - Defendant(s)/issues added prior to hearing 5
 - Overbooked calendar 2
 - Additional medical testing needed 1
 - Board member had a conflict of interest 1
 - Bomb threat at Carvel State Office Building 1

Board Member Activities*

During 2002, individual board members were scheduled to conduct hearings on the following number of days:

| | Days Scheduled |
|--------------------------|----------------|
| Barber | 188 |
| Daniello | 160 |
| Epolito ¹ | 77 |
| Groundland | 179 |
| Levitt | 154 |
| Mitchell, A ² | 116 |
| Mitchell, J | 139 |
| Murowany | 157 |
| Robinson ³ | 3 |
| Seward | 159 |
| Wilson | 143 |

Individual board members actually conducted hearings on the following number of days:

| | Days |
|--------------------------|------|
| Barber | 31 |
| Daniello | 84 |
| Epolito ¹ | 23 |
| Groundland | 112 |
| Levitt | 66 |
| Mitchell, A ² | 65 |
| Mitchell, J | 66 |
| Murowany | 83 |
| Robinson ³ | 2 |
| Seward | 61 |
| Wilson | 70 |

Available for hearings:

¹ Epolito 6 out of 12 months

² A. Mitchell 11 out of 12 months

³ Robinson 1 out of 12 months

* Scheduled days versus actual days differ due to case settlements and continuances

Caseload of Individual Hearing Officers

| Hearing Officer: | Number of Decisions & Orders Written: |
|--------------------------------|--|
| G. Alderson¹ | 89 |
| C. Baum | 127 |
| J. Bucklin | 127 |
| J. Schneikart | 98 |
| P. Schwartz | 115 |
| K. Starr² | 22 |
| L. Wilson³ | 10 |
| [J. Polk, Chief] | 25 |

¹ G. Alderson 10 out of 12 months

² K. Starr 2 out of 12 months

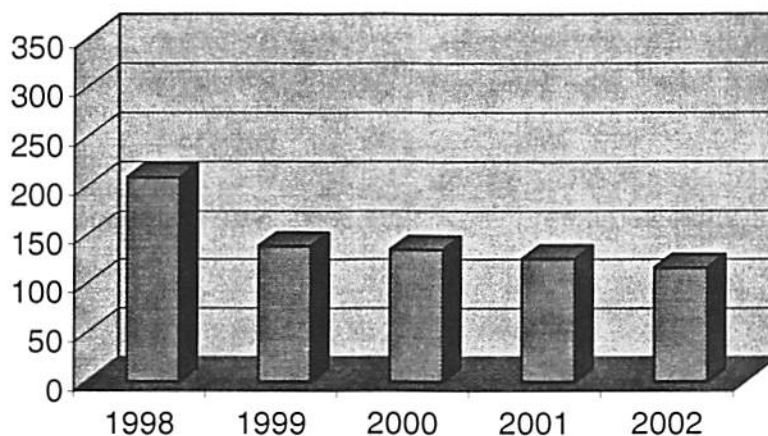
³ L. Wilson 3 out of 12 months

Compliance with Hearing & Decisional Deadlines

- **3,631** petitions requiring hearing within 120 days were filed in 2002. Of those, 97% were heard or settled within the statutory timeframe. The remaining 3% were not heard within the 120 days due to continuances granted for valid reasons.
- **422** cases requiring a written decision within 14 days from the Board or hearing officers' decision were heard in 2002. The statutory requirements were met in 99.8% of those cases.

Analysis of Dispositional Speed

The 2002 average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 116 days (down from 125 days in 2001, 134 days in 2000, 138 days in 1999 and 209 in 1998).



Summary of Appeals

(Status of appeals taken as of December, 2002)

Since the Workers' Compensation Improvement Act of 1997 took effect, the Board (or Hearing Officers) have rendered 2192 decisions on the merits. 471 of those decisions (21.49%) were appealed (an average of 94.2 per year). 408 of those appeals have been resolved. Only 63 have been reversed and/or remanded, in whole or in part. This represents a "reversal rate" of only 2.87% of all decisions rendered.

| <u>Year Appeal Taken In</u> | <u>1998</u> | <u>1999</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|-----------------------------------|-------------|-------------|-------------|-------------|-------------|
| <u>Total Number of Decisions:</u> | 520 | 442 | 406 | 402 | 422 |
| <u>Total Number of Appeals:</u> | 85 | 103 | 83 | 92 | 108 |
| <u>Affirmed:</u> | 42 | 56 | 35 | 44 | 14 |
| <u>Reversed and/or Remanded:</u> | 8 | 19 | 15 | 16 | 5 |
| <u>Dismissed/Withdrawn:</u> | 35 | 28 | 33 | 27 | 31 |
| <u>Pending:¹</u> | 0 | 0 | 0 | 5 | 58 |

CUMULATIVE

| | |
|-----------------------------------|------|
| <u>Total Number of Decisions:</u> | 2192 |
| <u>Total Number of Appeals:</u> | 471 |
| <u>Affirmed:</u> | 191 |
| <u>Reversed and/or Remanded</u> | 63 |
| <u>Dismissed/Withdrawn</u> | 154 |
| <u>Pending:</u> | 63 |

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 2000, 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

Legislation

The Department of Labor proposes no legislative change at this time.