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AGENCY STRATEGIC PLAN

Mission Statement and Statutory Authority References

The Board of Industrial Insurance Appeals (BIIA) was created in 1949 to hear appeals from decisions made by the Department of Labor and Industries (DLI). The mission of the BIIA is to serve the public by resolving appeals in a consistent, impartial, timely, and efficient manner.

The Board of Industrial Insurance Appeals was established as a separate and independent agency from DLI to ensure the impartiality and fairness of the dispute resolution process. As an administrative tribunal, the BIIA provides a faster and less expensive forum than available through the court system. The BIIA is able to provide a consistent and predictable service through the expertise of the judges and staff who specialize in the subject matter of the dispute.

Most adjudicatory agencies in our state conduct proceedings under the provisions of the Administrative Procedures Act (APA). The BIIA does not follow the less formal APA. We are required by statute to use the Superior Court Rules of civil procedure and evidence. This makes our proceedings similar to a bench trial in superior court.

Statutory Authority

BIIA jurisdiction involves several specialized areas of law: (1) industrial insurance cases (workers' compensation), RCW Title 51, which includes assessment of industrial insurance premiums for State Fund employers and service provider appeals; (2) citations issued under RCW 49.17, the Washington Industrial Safety and Health Act (WISHA); (3)

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assessments and penalties issued under RCW 49.70, the Worker and Community Right To Know Act; (4) decisions affecting compensation of innocent victims of crime, RCW 7.68; (5) safety appeals for late night retail establishments, RCW 49.22; (6) Charter Boat Safety Act, RCW 88.04; (7) Washington State Explosives Act, RCW 70.74; (8) asbestos health and safety, RCW 49.26; (9) limited appeals under LEOFF, RCW 41.26, and (10) death benefits for certain public employees, RCW 41.40, RCW 41.32, RCW, 41.35 and RCW 41.04.

Benefits of Dispute Resolution

The appeal process provided by the BIIA has many benefits for workers, employers and other customers throughout the state. The vast majority of the customers of the BIIA are able to avoid the expense and time required to pursue a dispute in the court system. The agency's process also benefits our crowded state judicial system by providing an alternate forum for thousands of disputes each year. The parties to a dispute benefit by receiving dispute resolution services from people who are experts in the particular field of law and hearings before judges similarly expert. Employing the rules of Superior Court, in procedure and evidence, helps ensure impartiality and fairness by providing each party complete access to information and predictability of process. The BIIA also strives for consistency by publishing its significant decisions.

The Dispute Resolution Process

Workers, employers, and other parties who dispute DLI orders have a limited time within which to file appeals with the BIIA. Once an appeal is filed, the BIIA has up to sixty days to accept (grant) or deny the appeal. Specially trained support staff first develop historical summaries and prepare case files.

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An appeal is then assigned to an industrial appeals judge who has expertise in mediation and settlement skills (a mediation/review judge). All industrial appeals judges are required to be active or judicial members of the Washington State Bar Association and must be knowledgeable in all subject areas for which the BIIA has jurisdiction.

The BIIA makes every effort to obtain an agreed resolution of every dispute. Settled cases provide a more predictable and timely result for the parties and cannot be further appealed. This reduces demand on the appellate function of the courts. Settlements are also the most efficient use of the resources of both the parties and the BIIA. The BIIA mediation process uses various methods of alternate dispute resolution (ADR) to facilitate and encourage an agreed result, but the agency cannot impose a settlement. The decision to settle is exclusively the prerogative of the parties to an appeal.

In the event an appeal is not settled or dismissed, the case is assigned to an industrial appeals judge (a hearings judge) for a hearing on the merits of the appeal. The hearing process is adversarial in nature; attorneys represent over 90% of all parties. While the hearing process is technical and applies the rules of Superior Court, the BIIA facilitates the presentation of witnesses and evidence by accommodating the scheduling of expert witnesses at different times and locations and by accepting testimony in the form of depositions.

As required by law, hearings are held in the county of the worker's injury, or in the county of residence of the worker, or elsewhere for the convenience of the parties and witnesses. All such hearings are, by law, required to be reported verbatim and transcribed. The BIIA record forms the basis for all subsequent levels of appellate review.

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Following the completion of hearings, the hearings judge issues a Proposed Decision and Order (PD&O). This order must contain findings of fact and conclusions of law on all contested issues raised by the appeal. Any party who disagrees with the result of the Proposed Decision and Order may file a Petition for Review (PFR) with the three-member Board. If no petition is filed, the Board must adopt the Proposed Decision and Order as its final order. In such a case, no further appeal to the courts may be taken.

If a PFR is filed requesting review of the PD&O, the Board members must act within twenty days to grant or deny review. To assist the Board members in this function, a staff of industrial appeals judges (review judges) reviews the entire record. Based on this review, a recommendation is made to the Board members regarding whether they should grant the PFR and further review the appeal. If the Board denies the PFR, the PD&O is adopted as the final order of the Board. If the Board grants the PFR, the Board further reviews and analyzes the record and issues a formal Decision and Order.

A Decision and Order (D&O) is based upon a review by the three Board members of the proposed decision, the PFR, and the record of the appeal. The D&O contains a review and analysis of the evidence and applicable law. By statute, the Board's final D&O must be entered within 180 days of the filing of a PFR.

If a party disagrees with the denial of the PFR or with the Board's final D&O, a further appeal may be taken to Superior Court. In that event, the Board must forward a certified copy of the entire record of the BIIA proceedings to the parties and to the Superior Court. In recent years, only 4-6% of final BIIA orders are appealed to Superior Court. The appeal in Superior Court is based exclusively on the record established at the BIIA. The parties may also appeal any other final order of the BIIA including Orders Denying Appeal, Orders Fixing Interest, and Orders Fixing Attorney Fees.

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Vision, Goals and Strategies

The Vision of the Board of Industrial Insurance Appeals is to provide:

- A respected, unbiased forum for the resolution of disputes; and
- A desirable place to work, supportive of our mission and consistent with our values.

In furtherance of our vision and mission, the BIIA will:

1. Improve our processes to meet the needs of our customers.
2. Use information and technology to improve agency performance.
3. Foster a culture of excellent performance, accountability and professional development.

On the following page we have prepared a table that shows how our goals and strategies align with the statewide results developed through the Priorities of Government approach to budgeting.

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Table 1: Goals Matched to Statewide Results

BIIA Goals and Strategies	Statewide Result
<p>To improve our processes to meet the needs of our customers</p> <ul style="list-style-type: none"> ▪ GMAP ▪ Multi Track ▪ Expand on-line filing of new appeals ▪ Review and update Pro Se video/DVD ▪ Hold Public Forums in 2006 ▪ Board CLE in 2005 ▪ Plain Talk Initiative ▪ Enterprise Risk Management <p>OFM Activity Inventory: Hearings, Review, New Appeals, Mediation, Administration</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively
<p>Foster a culture of excellent performance, accountability and professional development.</p> <ul style="list-style-type: none"> ▪ GMAP ▪ Evaluate support staff positions in conjunction with Multi-Track project ▪ Update Affirmative Action Plan ▪ Implement HRMS <p>OFM Activity Inventory: Hearings, Review, New Appeals, Mediation, Administration</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively
<p>Use information and technology to improve agency performance</p> <ul style="list-style-type: none"> ▪ Expand on-line filing of new appeals ▪ Make information available to Spanish-speaking individuals <p>OFM Activity Inventory: Hearings, Review, New Appeals, Mediation, Administration</p>	<ul style="list-style-type: none"> ➤ Improve the economic vitality of businesses and individuals ➤ Improve the ability of state government to achieve its results efficiently and effectively

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Strategies

We are committed to being accountable to our stakeholders and customers by seeking input and providing information regarding our services. We also are committed to improving processes, having developed and implemented many measures saving time and money over the past several biennia. We are making information and services more accessible and understandable to all customers. Some ongoing and more recent strategies are listed below.

- To make the dispute resolution process as efficient and effective as possible, we regularly meet and share information with representatives of the Department of Labor and Industries and the Attorney General's Office.
- We are training our extended management team (Managers and supervisors), consistent with the requirements of HB 1970 (Washington State Quality Award) and equipping them with the necessary tools for early compliance.
- We have provided enhanced online research capabilities to our staff and customers.
- We implemented Internet filing of appeals through our homepage and will expand filing options.
- We provide ongoing legal training to our staff using recognized experts in the field. (IAIABC Worker Compensation College, National Judicial College, Alternative Dispute Resolution Training for Mediation Judges).
- We are reviewing and updating our Pro Se video/DVD.
- We launched an agency Intranet website which contains useful information for our staff. This includes event schedules, performance information, access to legal research, computing tips, agency newsletters and other information for staff.
- The BIIA held a Continuing Legal Education seminar in October 2005, to educate practitioners on our processes and relevant areas of the law.

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Attorneys, claims adjudicators, other professionals, and interested individuals attended these seminars.

- Four public forums are scheduled during 2006. These forums provide customers with the ability to ask questions about and provide input into our processes and procedures.
- The BIIA Chairperson reports regularly to the Workers Compensation Advisory Committee on key BIIA performance measures.
- The Business member and Labor member of the board meet regularly with their constituent groups to obtain input and feedback on agency activities.

In addition to the previously noted initiatives we have identified several long-term strategies to enable us to continue to provide excellent public service and fulfill our mission. We are testing additional alternative forms of dispute resolution to offer with the goal of more effectively meeting the needs of our customers and we are exploring using multiple tracks for the assignments of appeals. This process will provide a full spectrum of alternative dispute resolution services.

During the last (2003-05) Biennium, the BIIA developed and piloted a form that allowed our customers to file an appeal via our Internet homepage. We are re-engineering the Board of Appeals Information System (BAIS) to take advantage of this initiative. We anticipate expanding filing options as more e-forms and Internet based opportunities are identified by our staff and stakeholders.

We continue to review our forms and notices to determine which ones we need to translate into Spanish. The issue of expanding access to information and services in Spanish will persist at the BIIA as the state population of Spanish speaking workers increases.

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We are assessing our risk management practices to ensure a fully integrated approach to risk. We will be working with OFM to identify appropriate risk management education and identify gaps or issues in our current risk management program. One substantial part of this process is reviewing and updating our Disaster Recovery and Business Resumption plan. Recent events, in New Orleans and elsewhere, are a fresh reminder that worst-case scenarios sometimes do become reality. We intend to have a planned and tested response to potential crisis as part of our agency risk management program.

We recognize the importance of interagency cooperation with DLI and the Attorney General's Office and have established regular meetings with them. We will continue to participate in the Network of Adjudicatory Agencies to share information and learn from our counterparts in state government.

Appraisal of External Environment

We recognize that circumstances continually change in our environment and these changes can have an impact on our strategic plan and budget. We regularly assess our external environment so we can adjust our planning accordingly and respond promptly with needed changes.

Labor and Industries

The Department of Labor and Industries (DLI) has proposed strategies for the coming years that will have a direct impact on the BIIA. There are also some proposed legislative changes that would have a substantial impact on the BIIA. While we can identify circumstances that would have a specific impact on the BIIA, it is difficult to assess the impact now.

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In response to customer concerns about fraudulent claims, the DLI continues to increase efforts to detect and eliminate fraud and abuse by workers, employers and providers. These changes will likely result in more enforcement actions by DLI and more appeals to the BIIA.

Modification of the workers' compensation system is also continually being discussed. There will likely be general packages of proposals for the 2007 Legislature. Any legislative proposals could lead to changes in DLI's current operations and impact the appeals received at the BIIA.

We are working with the DLI on a pilot project in which they provide the BIIA with electronic access to information that is currently received from DLI on pages of microfiche. The DLI wants to reduce or eliminate the production of microfiche and this online access to claims and imaged documents will be a solid step in that direction.

Employers and Workers

Employer premiums and assessments and worker payroll contributions fund the dispute resolution program. These two constituencies, employers and workers, are the "owners" of this process. The constituencies, both as broad groups and as individual participants, expect a consistent, impartial, timely and efficient resolution of disputes.

In May 2000, the BIIA completed a survey of most attorneys who had been involved in the appeals process in the prior two years. For the most part they were satisfied or very satisfied with the appeals process. However, they consistently asked that the time required to reach resolution be shortened so that those they represent, the workers and employers, obtain resolution of their disputes in a timely fashion. The 2000 BIIA survey is consistent with more recent information from DLI that indicates that fairness, timeliness,

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and clarity of information in the claims process matter most to both employers and workers. The BIIA continues to seek improvement in these areas. Since 2000, the average weeks to complete an appeal through the BIIA process has been reduced by approximately 15%.

In response to Executive Order 03-01, Service Delivery, the BIIA has refined its strategy to capture information from customers. We have developed a customer complaint tracking system that allows us to identify repeat issues, respond timely and improve internal processes.

Interpreter Lawsuit

A Superior Court judge for King County recently issued an order directing the BIIA to pay for a worker's interpreter expenses throughout the appeal process. The BIIA pays for interpreters in appeals by non-English speaking workers. The Court ordered that in addition to this expense, the BIIA and Department of Labor and Industries should pay for interpreter expenses incurred when the appellant testifies, when that person is in attendance when other witnesses testify, and as necessary to prepare for and otherwise participate in the appeal. Similar issues as in this case are pending before the Court of Appeals. A decision is not expected prior to January 2008. The potential impact of this litigation on the BIIA budget could be in the millions of dollars. The BIIA will have discussions with the Department of Labor and Industries, the Attorney General and OFM as this case proceeds.

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Trends in Customer Characteristics

The Hispanic population in Washington continues to grow. We have provided a Spanish voicemail box for our Spanish-speaking customers and have translated many forms into Spanish. We are reviewing other forms and notices to determine if they should be updated or translated into Spanish. The issue of expanding access to information and services in Spanish will continue at the BIIA as the state population of Spanish speaking workers continues to increase.

Strategy and Capacity Assessment

The Board of Industrial Insurance Appeals has a capable, experienced management team that communicates very effectively. We also have a highly professional, well-educated and committed workforce. This enables us to take a reasoned, inclusive and analytical approach in developing strategies that address critical issues and risks, and to identify opportunities for improvement.

One issue that poses a problem with our workforce is the ability to retain and attract experienced worker compensation professionals. Our current workforce profile is significantly older than the state agency average. We currently have 55 Industrial Appeals Judges (IAJ). By the end of the 2009-2011 Biennium approximately 35% of the IAJs will either have at least 30 years of state service or be at least 65 years old. While the BIIA is a destination employer and can successfully compete with other employers for talent based on organizational culture and our ability to provide an intellectually challenging environment, we cannot compete in the salary arena with other state agencies such as the Attorney General, or with private sector employers. This will become an increasingly severe problem in the near future.

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The work of the BIIA and our goals and strategies rely on responsible investments in technology. We use the DIS IT Portfolio to align our technology investments with our strategic plan and business needs. Our goal is to make sure our IT investments are sound, provide operational efficiencies and are effective.

Washington Works continues to have a significant impact throughout the BIIA.

- The new HR Management System will provide a challenge for HR staff and Payroll staff. A major effort is under way to ensure that the transition to the new system is smooth.
- The outcome of the 07-09 Collective Bargaining negotiations is yet to be determined. We are continuing to communicate with the Labor Relations Office.

Performance Assessment

The BIIA continues to be successful in providing outstanding service to our customers and stakeholders. An external consultant hired in 2003 by OFM (KPMG), assessed our performance in six key areas. The areas assessed include: program effectiveness, quality and process management, internal and external customer satisfaction, independent and internal audit functions, fiscal productivity and efficiency, and statutory and regulatory compliance. We received the highest possible rating in each category.

In addition to this external review of the BIIA performance, we have two primary external performance measures, both related to timeliness. The first measure is “average weeks to completion (AWC) for an industrial insurance appeal.” The second measure is “average weeks to completion (AWC) for a WISHA appeal.” The AWC is the average time it takes for an appeal to reach final resolution measured from the date the appeal is filed. During the past two fiscal years, our actual performance in these areas met or exceeded the target we established. We track performance monthly. Agency staff is kept informed of

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performance results at monthly, quarterly and annual meetings. If we are under performing, an analysis is performed to determine what steps need to be taken to reach our targets.

Another mechanism we use to obtain information on agency performance is the Department of Personnel Employee Survey. We completed the DOP Employee Survey in April 2006. Nearly 70% of the agency employees participated and the results were outstanding. On a scale of 1-5, with 5 being the highest score, we had an overall agency average score of 4.32, exceeding our last survey score of 4.28. The agency average was above 4.00 in every category. According to representatives at DOP, these are outstanding results. They rank among the best in state government.