



REPORT OF

THE

STATE AUDITOR

Department of Personnel & Administration
Division of Administrative Hearings

Performance Audit
November 2004

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STATE OF COLORADO

JOANNE HILL, CPA
State Auditor

OFFICE OF THE STATE AUDITOR
303.869.2800
FAX 303.869.3060

Legislative Services Building
200 East 14th Avenue
Denver, Colorado 80203-2211

November 1, 2004

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Division of Administrative Hearings and the workers' compensation hearing process. This audit was conducted pursuant to Section 8-47-101(3)(d)(II) et seq., C.R.S., which requires the Office of the State Auditor to conduct a performance review of the Administrative Law Judges who hear workers' compensation cases in the Division of Administrative Hearings.

The report presents our findings, conclusions, and recommendations, and the responses of the Division of Administrative Hearings, the Division of Workers' Compensation, and the Department of Personnel & Administration.

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JOANNE HILL, CPA
State Auditor

**Division of Administrative Hearings
Department of Personnel & Administration
Performance Audit
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Authority, Purpose, and Scope

This performance audit was conducted pursuant to Section 8-47-101(3)(d)(II) et seq., C.R.S., which requires the Office of the State Auditor to conduct a performance review of the Administrative Law Judges (ALJs) who hear workers' compensation cases in the Division of Administrative Hearings. The audit work, performed from June through October 2004, was conducted in accordance with generally accepted governmental auditing standards. Our audit reviewed the following issues, as mandated by statute:

- The timeliness of the workers' compensation hearings process.
- The workload or number of cases assigned to each Administrative Law Judge.
- The number of decisions that are reversed upon appeal.
- The public perception of the performance of the Division of Administrative Hearings with respect to matters arising under the "Workers' Compensation Act of Colorado."

We acknowledge the assistance and cooperation extended by management and staff at the Division of Administrative Hearings, the Division of Workers' Compensation, and the Department of Personnel & Administration.

Overview

The Division of Administrative Hearings (the Division), located within the Department of Personnel & Administration, provides an administrative law adjudication system in Colorado that is offered as an expedited alternative to the judicial courts. The Division adjudicates hearings for cases related to the rules and procedures of more than 50 state agencies, counties, boards, and other entities. The Division's 18 ALJs are assigned to one of two units based on defined areas of law: the Workers' Compensation Unit, which conducts workers' compensation hearings, and the General Services Unit, which handles all other types of cases. Hearings related to workers' compensation disputes constitute about 58 percent of the Division's workload, and are conducted throughout the State. The Division is cash funded and uses a cost allocation model to bill user agencies for their proportional share of the Division's total operating costs. In Fiscal Year 2004, the Division was appropriated approximately \$3.5 million and 39.3 FTE, and ALJs conducted about 3,800 workers' compensation hearings and issued nearly 9,000 decisions.

For further information on this report, contact the Office of the State Auditor at 303.869.2800.

Summary of Audit Findings

Our audit included follow up on 13 recommendations from the Office of the State Auditor's performance audit of the administrative hearings process completed in November 2000. Our November 2000 audit recommended that the Division evaluate and implement an alternative funding and billing structure, eliminate administrative backlogs, and improve workload distribution among ALJs. We found that the Division has made improvements in these and additional areas since the prior audit. However, our 2004 review found that further improvements in the hearing process, customer service, and administrative processes are needed.

Hearing Process

We evaluated the timeliness of workers' compensation hearings and decisions based on statutory deadlines, and also reviewed the number of decisions reversed on appeal. We found:

- **The timeliness of hearings and decisions has decreased since Fiscal Year 2000.** Statute requires the Division to conduct all hearings within 160 days of the date litigants apply for a hearing. We found that 19 percent of workers' compensation hearings did not meet this deadline, compared to 11 percent in Fiscal Year 2000. The average number of days elapsed from the application date to the hearing has increased from 112 days to 132 days, or 18 percent since Fiscal Year 2000. Further, the average number of days from final oral arguments until the date the ALJ issued a decision has increased from 31 to 42 days since Fiscal Year 2000. We found that some ALJs allowed attorneys as many as 70 days after closing arguments to submit additional case-related documentation before issuing a decision, further delaying the hearing process.
- **The percentage of decisions reversed on appeal has increased since Fiscal Year 2000.** From Fiscal Year 2000 to 2004, the percentage of decisions that were reversed or remanded back to the Division for further proceedings increased from 18 to 21 percent. We also found that 22 percent of reversals and remands were due to procedural or administrative errors. The Division does not currently track procedural or administrative errors to identify trends or improve its processes.

Customer Service

We evaluated the Division's customer service function, including its practices for assisting litigants with understanding and navigating the hearing process. We found:

- **The workers' compensation hearing information that the Division provides through brochures, pamphlets, and Web pages is fragmented and confusing.** Currently there is no single electronic or hard copy source of critical information outlining the hearing process, required timelines, or application instructions and deadlines. In addition, litigants are not

consistently informed of the appeals process or the resources that are available to assist them, such as facilitators or Prehearing ALJs. Finally, we found that very few of the Division's informational materials are available in other languages.

- **The Division does not advise pro se litigants they will be held to the same standards as an attorney.** Pro se litigants are parties who choose to represent themselves during the hearing process without the assistance of an attorney. Twenty-one percent of claimants responding to our Public Perception Survey stated that they were unaware the hearing process would be difficult without an attorney.

Administration

We reviewed the Division's internal procedures and controls and noted three areas for improvement:

- **The Division's information system for tracking hearing data is inadequate.** The Division of Administrative Hearings currently relies on an aged Legacy data system maintained by the Division of Workers' Compensation. We found that the flexibility and content of this system are too limited for the Division of Administrative Hearings to efficiently manage its operations or identify causes of untimely hearings. As a result, the Division of Administrative Hearings is procuring a new system that will maintain data useful to both divisions. As such, the two divisions must work together on the design of the new system to ensure it meets the data needs of both divisions.
- **The Division needs to strengthen its internal controls related to travel and motor pool use.** We found that the Department of Personnel & Administration allows Division Directors to approve their own travel reimbursements, although state fiscal rules require that an approving authority, such as a supervisor, sign reimbursements. In addition, the Division does not consistently reconcile travel requests to motor pool documentation to ensure staff have approval to use the vehicles and to ensure vehicles are used only for the dates approved.
- **Hearing files are not transmitted to the Industrial Claim Appeals Panel in accordance with statutory timelines.** Statute requires the Division to transmit all appellate files to the Industrial Claim Appeals Panel within 30 days after litigants file final briefs. We found that 30 to 40 percent of appellate files from the Colorado Springs regional office are not delivered within the 30-day statutory time limit.

Our recommendations and the responses of the Division of Administrative Hearings, the Division of Workers' Compensation, and the Department of Personnel & Administration can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	19	Continue to improve the Web-based docketing system; collect and monitor hearing data to determine the causes of untimely hearings by region; and assess the appropriateness of statutory timelines and seek statutory change if necessary.	The Division of Administrative Hearings	Agree	April 1, 2005
2	21	Establish a standard deadline by which attorneys must submit their final documents.	The Division of Administrative Hearings	Agree	October 21, 2004
3	24	Continue to analyze reversal and remand decisions and use this information to determine trends and improve administrative processes; continue to use reversal and remand data when evaluating ALJ performance; and address common reasons for reversals and remands through staff training.	The Division of Administrative Hearings	Agree	October 21, 2004
4	32	Provide clear and consistent information to all litigants; review the customer service function and develop multiple assistance resources; determine the types of assistance staff can provide without constituting legal advice; and train and assign staff to serve as facilitators.	The Division of Administrative Hearings	Agree	April 1, 2005
5	34	Include a notice in informational materials and on the Division's Web site that pro se litigants will be held to the same standards as an attorney and may be at a disadvantage if they choose to litigate without an attorney.	The Division of Administrative Hearings	Agree	April 1, 2005

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
6	37	Include input from the Division of Workers' Compensation to ensure that the new information system meets the data needs of both divisions, conduct systems-related testing, and provide training to appropriate staff.	The Division of Administrative Hearings	Agree	April 1, 2005
7	37	Determine the data elements needed to manage workers' compensation claims, work with the Division of Administrative Hearings to determine the most efficient way to collect these data, and participate in system-related testing and training efforts.	The Division of Workers' Compensation	Agree	January 2005
8	41	Improve the review process of travel and motor pool requests; reconcile travel and motor pool documentation to COFRS; and monitor regional travel expenditures to control costs.	The Department of Personnel & Administration/ The Division of Administrative Hearings	Agree	November 2004
9	42	Require the Colorado Springs regional office to mail appellate files to the Industrial Claim Appeals Panel and track file submissions to ensure compliance with the 30-day statutory time limit.	The Division of Administrative Hearings	Agree	October 21, 2004

Description of the Division of Administrative Hearings

Background

The Colorado Division of Administrative Hearings (the Division) was statutorily created in 1976 to provide an accessible, independent, and cost-effective administrative law adjudication system in Colorado. An administrative law adjudication system is a hearings and appeals system for cases involving governmental agencies' rules and procedures, and is offered as an expedited alternative to the judicial courts. The Division, located within the Department of Personnel & Administration (the Department), includes a central panel of Administrative Law Judges (ALJs) that adjudicates hearings for more than 50 state agencies, counties, boards, and other entities, including the Departments of Human Services, Regulatory Agencies, Health Care Policy and Financing, and the Division of Workers' Compensation (Department of Labor and Employment).

Organizational Structure

The Division has three regional hearing offices located in Denver, Grand Junction, and Colorado Springs. The main office in Denver has 14 ALJs who also hear cases in Boulder, Greeley, and Fort Collins, and occasionally in other regional offices when hearing schedules are heavy. The Western regional office in Grand Junction has two ALJs who also hear cases in Glenwood Springs and Durango. The Southern regional office in Colorado Springs has two ALJs who also hear cases in Pueblo and Alamosa.

The Division has two functional units based on defined areas of law—the Workers' Compensation Unit and the General Services Unit. The Workers' Compensation Unit conducts formal hearings of workers' compensation disputes that are not settled through the dispute resolution processes available at the Division of Workers' Compensation. The General Services Unit hears all other types of cases. These cases include disputes over a county or state official's decision to deny or change an individual's benefits under programs such as Food Stamps, Colorado Works, and Medicaid, as well as disputes between a state licensing board and an individual holding or applying for a professional license. Generally, ALJs are assigned to a specific unit that specializes in an area of administrative law. In addition, the Division has administrative staff who handle docketing, security, and other administrative functions.

Budget and Funding

In Fiscal Year 2004 the Division was appropriated approximately \$3.5 million and 39.3 FTE, including 12 workers' compensation ALJs. The following table shows the Division's appropriations and FTE for Fiscal Years 2000 through 2004.

Division of Administrative Hearings Appropriations and FTE Fiscal Years 2000 Through 2004					
	2000	2001	2002	2003	2004
Cash Funds Exempt (in millions)	\$2.7	\$2.9	\$3.2	\$3.3	\$3.1
Central Appropriations* (in millions)	\$0.5	\$0.4	\$0.4	\$0.4	\$0.4
TOTAL	\$3.2	\$3.3	\$3.6	\$3.7	\$3.5
FTE	38.8	38.5	40.3	39.8	39.3
Source: Financial Data Warehouse and Department of Personnel & Administration data.					
* The Department of Personnel & Administration's Executive Office centrally appropriates these funds to the Division of Administrative Hearings for items such as leased space, salary increases, and legal services.					

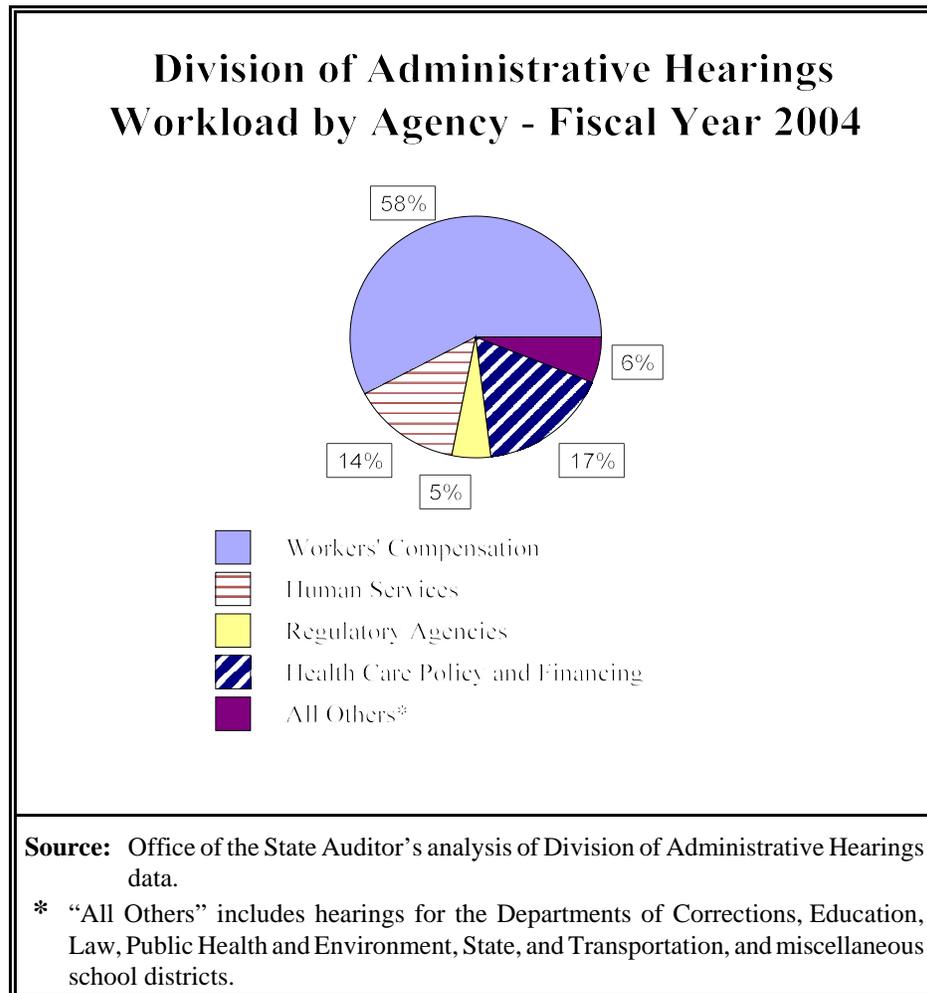
The Division, which is cash-funded, uses a Cost Allocation Model to bill agencies for adjudication services. The user agencies receive an appropriation to purchase the Division's services. The Division bills the agencies for a proportional share of its total operating costs, including rent, salaries, and legal services. Each agency's proportional share is based on prior fiscal year workload percentages. For example, workers' compensation cases accounted for 58 percent of the Division's Fiscal Year 2004 workload. Therefore, in Fiscal Year 2005 the amount billed to the Division of Workers' Compensation will be equal to 58 percent of the Division's total operating costs. The Division bills agencies on a monthly basis for one-twelfth of the agencies' total Long Bill appropriation, and provides the agencies a monthly accounting of actual hours worked. Each January, the Department conducts a "true-up" of distributions and costs, and recommends funding adjustments for the remainder of the fiscal year through the supplemental budget process. The "true-up" is designed to capture more accurate costs and more current client utilization rates than can be captured when allocations are first set.

The following table shows the breakdown of the Division's revenue by its user agencies for Fiscal Years 2000 through 2004.

Division of Administrative Hearings Revenue by User Agencies Fiscal Years 2000 Through 2004					
Agency	2000	2001	2002	2003	2004
Workers' Compensation	\$1,673,560	\$2,104,620	\$2,335,520	\$2,143,480	\$2,081,820
Human Services	711,400	413,150	476,550	583,410	544,730
Regulatory Agencies	216,990	201,930	241,020	278,520	240,830
Health Care Policy and Financing	210,380	186,300	333,670	536,990	660,590
Other ¹	146,870	161,150	200,660	169,960	165,920
TOTAL ²	\$2,959,200	\$3,067,150	\$3,587,420	\$3,712,360	\$3,693,890
<p>Source: Financial Data Warehouse and Division of Administrative Hearings data.</p> <p>¹ "Other" includes hearings for the Departments of Corrections, Education, Law, Public Health and Environment, State, and Transportation, and miscellaneous school districts.</p> <p>² Revenue amounts are not equal to the amounts originally appropriated for each year due to the addition of centrally appropriated items from the Department's Executive Office, such as leased space, salary increases, and legal services. In addition, revenue collections are based on estimated expenditures not actual expenditures. Any over- or under-collections are accounted for the following year.</p>					

Hearing and Workload Statistics

As the following chart indicates, 58 percent of the Division's workload involves workers' compensation disputes, such as termination for cause, disputes over benefits, penalty hearings, and compensability. The remainder of the hearings held by the Division relate to disputes arising in the other agencies.



The Division conducts two types of workers' compensation hearings:

- **Merit Hearings** are hearings in which witnesses are sworn in and testimony is taken. At the conclusion of the hearing, the ALJ issues a final order that is intended to resolve a substantive issue. Merit hearings require an application for hearing by one of the parties.
- **Procedural Hearings** are hearings for procedural matters in which no witnesses are sworn and no testimony is taken. These are usually brief and include matters such as motions to continue the merit hearing at a later date. Procedural hearings result in one or more procedural decisions and do not require a separate hearing application.

The total number of workers' compensation cases docketed, hearings held, and decisions issued has decreased since Fiscal Year 1996, as shown in the following

table. The Division attributes this decrease to an increase in case complexity. According to management, multiple issues are now included in a single hearing rather than holding separate hearings for each issue.

Division of Administrative Hearings Workers' Compensation Workload Statistics				
	Fiscal Year 1996	Fiscal Year 2000	Fiscal Year 2004	Percent Change Fiscal Year 1996- 2004
Cases Docketed	11,426	12,039	10,839	-5%
Total Hearings Held	5,682	2,865	3,773	-34%
Merit Hearings	2,117	1,325	1,587	-25%
Procedural Hearings	3,565	1,540	2,186	-39%
Decisions Issued	11,680	11,866	8,957	-23%
Merit	4,246	2,099	2,090	-51%
Procedural	7,434	9,767	6,867	-8%
Source: Office of the State Auditor's analysis of Division of Administrative Hearings data.				

According to Division data, each workers' compensation ALJ conducted an average of 148 merit hearings in Fiscal Year 2004. In addition, workers' compensation ALJs spent, on average, three hours preparing written orders for every one hour spent in the hearing.

Audit Scope and Methodology

Section 8-47-101(3)(d)(II), C.R.S., requires the Office of the State Auditor to conduct a performance review of the ALJs who hear workers' compensation cases in the Division of Administrative Hearings. According to statute, the review should include the following issues:

- The time elapsed from the date of hearing until the decision is given by the Administrative Law Judge.
- The time elapsed from the point at which the file is complete and the case is ready for order, until the decision is given by the Administrative Law Judge.

- The number of decisions that are reversed upon appeal to the Industrial Claim Appeals Panel and to the Court of Appeals.
- The number of cases assigned to each Administrative Law Judge.
- The public perception of the quality of the performance of the Division of Administrative Hearings with respect to matters arising under the “Workers' Compensation Act of Colorado.”

The Office of the State Auditor conducted the first audit of workers' compensation hearings in 1992. Performance audits followed in 1997 and 2000. The current audit, along with the three prior audits, includes information on the five statutorily mandated factors with recommendations for improving the Division's operations and practices.

Hearings

Chapter 1

Background

The Division of Administrative Hearings (the Division) is responsible for hearing all formal workers' compensation administrative hearings in the State. Workers' compensation hearings involve disputes over medical and wage benefits; liability for claims; and penalties for violations of orders, rule, or statute. To request a hearing, a party must submit a completed application to the Division. The Division reviews the application for accuracy and completeness, and if the form is complete, Division staff or the parties set a hearing date.

During a workers' compensation hearing, an Administrative Law Judge (ALJ) presides over the proceeding by hearing each side's arguments and witness testimony, reviewing evidence, weighing the facts of the case, and reviewing briefs and supplemental information (which may be submitted after the evidentiary hearing). Following a hearing, the ALJ issues a final order (decision). Each of the parties has the right to request that the ALJ review the order and reconsider his or her decision. In addition, either party may appeal the ALJ's decision to the Industrial Claim Appeals Panel within the Department of Labor and Employment, to the Colorado Court of Appeals, and ultimately to the Colorado Supreme Court.

In accordance with Section 8-47-101(3)(d)(II), C.R.S., our audit reviewed the timeliness of the workers' compensation hearing process, including the length of time between an application for hearing and the hearing itself, and the time from the conclusion of the hearing to the date the final decision is issued by the judge. We also examined the number of ALJ decisions reversed through appeals to the Industrial Claim Appeals Panel and the Court of Appeals. We identified areas for improvement in both timeliness and reversals, as discussed in the remainder of this chapter.

Timeliness

A workers' compensation hearing begins with an application for hearing and proceeds through the following three phases: (1) the period between the date of an application for hearing and the date the hearing is held, (2) the period during which the hearing is conducted, and (3) the period between the conclusion of the hearing and the date the ALJ issues a final decision. Because the intent of the Workers' Compensation Act is to ensure the quick and efficient delivery of benefits to injured workers, the General Assembly implemented statutory time limits for two of these three phases. Due process considerations preclude time limits on phase two (the hearing itself), because ALJs must give litigants sufficient time to call all relevant witnesses and present their arguments in full. As a result, our review of statutory time limits focused on evaluating the timeliness of phases one and three of the hearing process.

Our audit of Fiscal Year 2004 timeliness data found that similar to 2000, the Division falls short of some statutory requirements for both hearings and orders (decisions). Untimely hearings and orders are a concern, since they could result in delayed medical benefits to injured workers and compromise their recovery and overall health. For example, according to our Public Perception Survey results (which are further discussed in Chapter 2), one claimant (injured worker) stated that the hearing process was drawn out and this jeopardized his medical condition. An untimely process could also impair employers' productivity if the workers' injuries prevent them from returning to work at full capacity. Overall, the parties responding to our Public Perception Survey rated timeliness of hearings a 3.7 on a 7 point scale, and timeliness of decisions a 3.8, which indicates improvement since our 2000 survey. A rating of 4 and above is considered acceptable; therefore, these timeliness ratings are still below the acceptable range. In the sections below we discuss the problems we found related to hearing and decision timeliness.

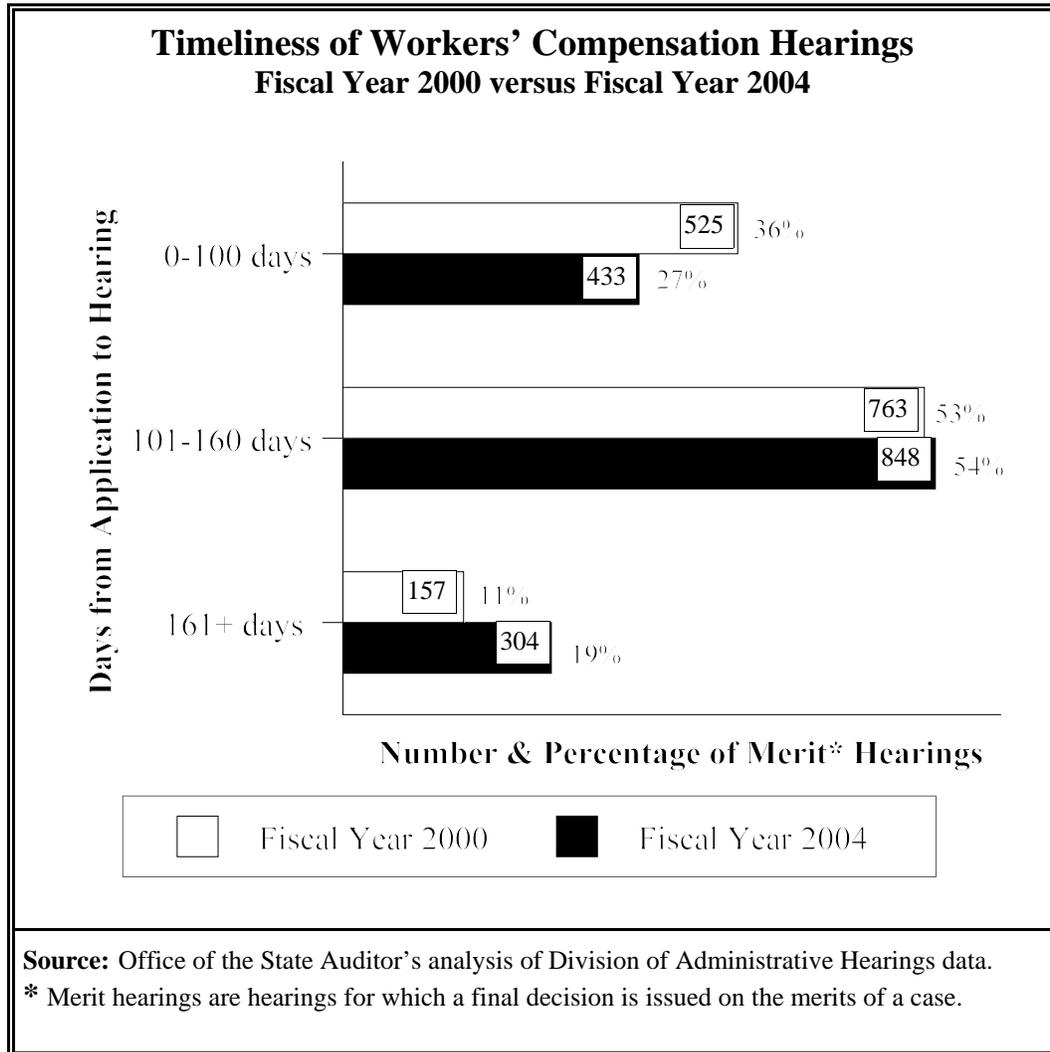
Meeting Deadlines: Application to Hearing

Statutes apply the following specific time limits to the period from the date of the application for hearing to the date the hearing is held:

- **Scheduling limits.** The Division or the litigants must schedule their hearing to occur within 80 to 100 days of the date of the application. [Section 8-43-209(1), C.R.S.] Parties may schedule a hearing to occur within 40 days of the application if an ALJ has granted a motion to expedite the hearing. [Section 8-43-203(1)(a), C.R.S.]

- **Extension limits.** The 100-day time limit to start the hearing can be extended in certain circumstances. When the disputing parties agree to delay the hearing, statute entitles them to one extension of 60 days. If one party requests an extension and the other does not agree, the requesting party must show good cause for the delay. The ALJ may then grant extensions of up to 20 days, or in extreme cases such as permanent total disability or some occupational disease, the ALJ may grant one extension of up to 60 days. [Section 8-47-209, C.R.S.]
- **Maximum time limits.** All hearings must occur within a maximum of 160 days after the application date, including any extensions of time as discussed above. [Section 8-43-215(1), C.R.S.]

We calculated the number of hearings held within 100 days of the application, between 100 and 160 days from the application, and the number of hearings held more than 160 days after the application, which exceeds the statutory maximum. We found that the percentage of hearings held within 100 days of the application date has decreased, and the percentage held after the 160-day maximum has increased, as illustrated in the following chart.



In Fiscal Year 2004, 304 workers' compensation hearings (19 percent) were not held within the 160-day maximum time limit. This is an increase of 94 percent since 2000, when we found that 157 workers' compensation hearings (11 percent) did not meet statutory time limits. The average number of days elapsed between application and hearing date has also increased, from 112 days in Fiscal Year 2000 to 132 days in Fiscal Year 2004.

We also found there were delays in commencing hearings in some remote areas of the State. For example, hearings in Durango occurred an average of 174 days from the application date, and hearings in Alamosa occurred an average of 156 days after the application. Timeliness of hearings by region in Fiscal Years 2000 and 2004 is displayed in the table below.

Average Days From Application To Hearing by Region Fiscal Years 2000 and 2004			
Hearing City	2004	2000	Percent Change From 2000 to 2004
Durango	174	90	93%
Alamosa	156	NA ¹	NA
Fort Collins	138	127	9%
Greeley	130	114	14%
Colorado Springs	125	105	19%
Pueblo	122	127	-4%
Denver	120	103	17%
Grand Junction	114	106	8%
Boulder	113	101	12%
Glenwood Springs	95	95	0%
STATEWIDE AVERAGE²	132	112	18%
Source: Office of the State Auditor's analysis of Division of Workers' Compensation data.			
¹ The Division did not hold hearings in Alamosa in Fiscal Year 2000.			
² The average number of days from application to hearing was calculated using a weighted average to account for the actual number of hearings held in each region.			

We identified several factors that have contributed to timeliness issues. First, the Division's online docketing system does not restrict parties' choice of hearing dates to within 100 days of the application date. Parties may schedule their hearing by calling the Division directly or by using a Web site calendar to identify what hearing dates are available in their region. This system does not track the original application date and limit the number of days offered for hearing based on the application date. The Web site provides parties with all available docket dates within 100 days of the date the parties look online, rather than dates within 100 days from the date of their application. For example, parties may apply for a hearing and then wait 20 days to look online for a hearing date. They can then select a hearing date 100 days away. In this case, the hearing would not begin until 120 days after the application date, even though the parties have not requested an extension allowing them to exceed the 100-day statutory limit. We reviewed a sample of 60 late hearings in Fiscal Year 2004 and found that in 44 cases (73 percent), the parties did

not schedule their original hearing within 100 days of the date of application. As we discuss in Chapter 3, the Division has contracted with a vendor to purchase a new information system that should improve Web-based docketing and enforce statutory timelines.

Second, the Division does not provide a sufficient number of docket days in remote regions to accommodate hearings within the statutory time frame. For example, the Division tries to offer one docket day in Alamosa every three months and typically two days each month in Durango. These cities have the least timely hearings in the State. Further, the Division did not schedule any docket days in Durango during four months of Fiscal Year 2004, forcing litigants to select original hearing dates as much as 60 days beyond the 100-day limit, and to reschedule continued hearings beyond the 160-day maximum. In 2003 the Division offered parties in Durango the option of hearing a case by telephone with a Denver ALJ if the case might otherwise be rescheduled. However, according to Division staff, few parties have chosen this option.

Third, the trailing docket system delays hearings beyond the statutory deadlines. The Division schedules multiple hearings for each docket time slot in anticipation that some cases will be settled in advance or that some parties will not show up on the date of the hearing. Consequently, when several parties show up for hearings booked in the same time slot, one or more of the hearings must either be heard by a backup ALJ or be “bumped” from the docket. In Denver, backup judges are available to hear cases when this occurs; however, the regional locations do not have backup ALJs to accommodate overbooked dockets. As a result, when cases are “bumped” in some regions it may be two to three months before the next hearing can be docketed. The Division lacks data showing the frequency with which cases are bumped in each region to determine whether certain regions should book fewer hearings into the same time slot.

A final reason for the decrease in timeliness of hearings is a growing number of extensions of time granted by ALJs. In Fiscal Year 2004 ALJs granted more than 2,000 motions for extensions of time, an increase of nearly 130 percent since Fiscal Year 2001. According to Division staff, one reason extensions are being requested more frequently is due to the increased complexity of the hearing process. For example, staff have stated that most attorneys prepare multiple issues for litigation at one hearing, rather than disputing each individual issue at several separate hearings. Further, over the past several years changes in case law and statute have implemented additional evidentiary requirements and have, overall, made the hearing process more complicated. As a result, attorneys require more time to prepare for a hearing and more frequently request extensions. Although extensions may increase the average time from application to hearing, they can benefit the parties by allowing adequate preparation time. Additionally, House Bill 03-1322, which was passed in the 2003 Legislative Session, expanded the litigants’ rights to extensions by

requiring ALJs to grant extensions if both parties agree. Claimants whose benefits could be delayed by extensions are still protected by statute, which requires the opposing party to show good cause for the extension when the claimant objects to the delay.

Currently Division data are too limited to determine the extent to which the docket schedule, the trailing docket system, bumping, or extensions are contributing to the decrease in hearing timeliness. In addition, the limited data make it difficult for the Division to determine if the statutory deadlines, many of which were established in Fiscal Year 1991, are still appropriate considering the increased complexity of the hearing process. As we discuss later in this report, the Division needs to improve the data it collects and analyzes to assess why timeliness has decreased. With these data, the Division could determine whether staffing and docketing practices should be changed in specific regions to ensure that hearings are held timely. Additionally, the Division could assess whether statutory time limits are still appropriate, and determine if statutory changes are needed.

Recommendation No. 1:

The Division of Administrative Hearings should improve hearing timeliness by:

- a. Continuing to improve its Web-based docketing system to ensure the system enforces statutory time limits.
- b. Collecting and monitoring hearing data to determine the causes of untimely hearings by region, such as extensions, overbooked trailing dockets, or insufficient docket days.
- c. Assessing the appropriateness of current statutory timelines and proposing statutory changes if necessary.

Division of Administrative Hearings Response:

- a. Agree. Implementation Date: Ongoing – October 21, 2004.
- b. Agree. Implementation Date: April 1, 2005.
- c. Agree. Implementation Date: Ongoing.

The Division of Administrative Hearings previously identified the need to improve its technological capabilities to enhance Division operations through additional data collection and analysis. As such, the Division has contracted with a vendor to purchase a case management system that is scheduled to go online during the summer of 2005. The Division has already changed its

current Web-based docketing system (on October 21, 2004) to improve compliance with statutory time limits. The Division will continue to enhance its Web-based docketing capabilities with the implementation of the new case management system. The Division will also use its new information system to track the causes of delay in hearings. In this regard the Division will also consider the budgetary feasibility of increasing the frequency of Durango or Alamosa dockets. In order to do so, it may be necessary to increase the ALJ resources available to the Division. As the audit pointed out, the complexity of cases has increased in recent years. Therefore, the number of ALJ and paralegal hours spent by the Division has increased by 4.4 percent since 2000, however the number of FTE appropriated to the Division has remained fairly stable (1.3 percent increase). Finally, the Division will consult with its customers regarding the appropriateness of current statutory time limits.

Meeting Deadlines: Hearing to Decision

Statute requires ALJs to issue decisions (or final orders) within 30 days after the “conclusion of the hearing.” [Section 8-43-215(1), C.R.S.] However, statute does not specifically define “conclusion of the hearing.” As a result, there are two standards for assessing the timeliness of decisions: (1) the date of oral final arguments in a hearing until a decision is issued, or (2) the date all post-hearing submissions have been received by the ALJ until a decision is issued. Post-hearing submissions can include legal briefs, proposed orders, and position statements submitted after oral final arguments. The Division has adopted the second standard, when all filings and briefs have been received by the ALJ, to assess the timeliness of its decisions.

We reviewed the timeliness of all decisions issued in Fiscal Year 2004 using both statutory standards. We found that only 50 percent of ALJ decisions were issued within the statutory time limit when the “conclusion of a hearing” is interpreted as the date of oral final arguments. When using the date all post-hearing submissions have been received as the measure, we found that 95 percent of the ALJ decisions were issued within the 30-day time frame.

The Division believes its preferred measure, the date all post-hearing submissions have been received, is the most appropriate for the following reasons. First, the ALJ is required to consider certain documents submitted after a hearing, such as lay testimony and depositions from additional witnesses, to protect the due process rights of the litigants. The ALJs do not always have control over the timely submission of these documents. Second, most ALJs believe their decisions are of higher quality when they review all available submissions, including post-hearing legal briefs and

position statements, prior to drafting their decisions. The presiding ALJ has the discretion to set deadlines for the submission of these briefs and position statements from the litigant attorneys.

Our audit reviewed the number of hearings in which the ALJ requested legal briefs. We found that the percentage of hearings where the ALJ requested briefs increased from 21 percent in Fiscal Year 2000 to 33 percent in Fiscal Year 2004. In the same time period, the average number of days from hearing to decision increased 39 percent, from 31 to 43 days. As noted above, the ALJs are not required to limit the amount of time that attorneys have to submit briefs and supplemental materials. We reviewed a sample of 128 orders (about 6 percent of all orders issued in Fiscal Year 2004) and found that ALJs allowed an average of 22 days for attorneys to submit briefs. However, we found that some ALJs gave attorneys an average of more than 40 days after the date of the hearing to submit their briefs, and in some cases as long as 70 days. Typically, the ALJs who allowed the most time for the submission of briefs also had the least timely orders overall. Despite these delays, in our Public Perception Survey customers rated timeliness of decisions higher than in 2000.

Although allowing parties to submit briefs and additional documentation following a hearing may benefit the parties, we are concerned about the disparity of timeliness among ALJs. Without a Division-wide submission deadline, parties who appear before certain ALJs will receive decisions sooner than others. Additionally, some ALJs reported that attorneys sometimes pressure them to extend the time allowed for submitting briefs. Creating a deadline in rule or Division policy for the submission of briefs will protect parties from excessively late orders and prevent attorneys from determining their own deadlines for submitting briefs.

Recommendation No. 2:

The Division of Administrative Hearings should improve the timeliness of orders by establishing a standard deadline by which attorneys must submit their final documents, such as 20 days from the date of closing arguments.

Division of Administrative Hearings Response:

Agree. Implementation Date: October 21, 2004. While a judge must consider many valid factors when exercising his or her discretion in determining a date for post-hearing submissions, the Division of Administrative Hearings agrees that it is appropriate to establish a standard for this process. Therefore, the Division has already adopted a policy that legal briefs, proposed orders, and other post-hearing submissions must be

submitted within 15 calendar days of the hearing, unless a party demonstrates good cause for a longer period of time.

Appeals

Statute also requires the Office of the State Auditor to review the number of decisions that are reversed upon appeal to the Industrial Claim Appeals Panel (ICAP) and to the Court of Appeals. [Section 8-47-101(3)(d)(II), C.R.S.] We found that 432 of the Division's 1,580 workers' compensation merit hearings were appealed to the appellate level. Specifically, 334 workers' compensation decisions were appealed to ICAP and 98 decisions were appealed to the Court of Appeals. Together, ICAP and the Court of Appeals reversed 89 of the decisions appealed (21 percent). These reversals include remands, which are instances when the higher authority sends a decision back to the Division for further proceedings or to correct an error. As the following table shows, the percentage of decisions reversed on appeal in Fiscal Year 2004 increased since our 1997 and 2000 audits.

Comparison of ALJ Workers' Compensation Decisions That Were Appealed and Reversed			
Appeal and Reversal Data	1997 Audit	2000 Audit	Fiscal Year 2004
Decisions appealed to ICAP:			
Appeals	464	331	334
Reversals	81	65	82
Percent Reversed	17%	20%	25%
Decisions appealed to Court of Appeals:			
Appeals	137	44	98
Reversals	9	4	7
Percent Reversed	7%	9%	7%
Decisions appealed overall:			
Appeals	601	375	432
Reversals	90	69	89
Percent Reversed	15%	18%	21%
Source: Office of the State Auditor's analysis of Industrial Claim Appeals Panel data.			

The table shows that the reversal rate of appealed decisions has increased by about 3 percent each time we have conducted this audit. Because reversal rates have consistently risen about three percentage points every four years, it is important that the Division review reversal data and use this information to improve the quality of ALJ decisions.

Reversal Rates by ALJ

We also analyzed workers' compensation reversal rates for individual ALJs in Fiscal Year 2004 and compared them with the reversal rates from the 2000 audit. In Fiscal Year 2004 the reversal rates of individual ALJs ranged from a low of 2.6 percent to a high of 12.3 percent, while the Fiscal Year 2000 rates ranged from a low of 0 percent to a high of 10.7 percent. Overall, in Fiscal Year 2004 the combined reversal rate for all ALJs was 5.6 percent (89 reversals out of 1,580 merit hearings), an increase from the Fiscal Year 2000 rate of 5.2 percent (69 reversals out of 1,325 merit hearings).

The data show that reversals have increased for most of the ALJs that were conducting workers' compensation hearings during the 2000 audit. However, a reversal does not necessarily indicate a failure in an ALJ's performance. As we discuss below, some reversals occur due to procedural errors rather than legal issues. In addition, a reversal can indicate a disagreement by the higher authority on an unsettled or discretionary legal matter rather than an ALJ's misunderstanding of the law.

Currently the Division distributes information regarding each reversal to the ALJs and their supervisors. This allows the ALJ to determine why the original decision was reversed at the appellate level and learn from any mistakes. In addition, each ALJ's supervisor reviews the reversal and if the reversal was due to the ALJ's failure to identify or apply relevant or controlling law, then the supervisor meets with the ALJ and includes this information in the ALJ's performance review. It is important that the Division continue its review of individual ALJ decisions, and use this information to assess performance and provide training.

Procedural Reversals and Remands

Finally, our audit reviewed the ICAP reversals and remands during Fiscal Year 2004 to determine why they occurred. We found that in Fiscal Year 2004, 22 percent of reversals and remands were due to procedural problems. Similarly, in Fiscal Year 2000 procedural errors represented about 20 percent of all reversals and remands. Procedural errors or mistakes typically result in a remand, and can occur for a number of reasons. For example, procedural errors may result when the hearing

record is incomplete or when the ALJ needs to clarify information in the hearing record.

The Division currently tracks the reasons for reversals and remands when they relate to an ALJ's failure to identify or apply relevant or controlling law. However, the Division indicates that it does not track procedural reversals and remands, because they are administrative in nature. Since the Division does not track procedural errors, it is unable to identify trends or recurring problems with its administrative process.

During our audit we identified one recurring procedural issue that the Division might have identified if it tracked procedural reversals and remands. We found that the Colorado Springs office was not routinely reviewing files for completeness prior to sending them to ICAP for review. As a result, during Fiscal Year 2004 the Colorado Springs office received five remands to "complete the record." This example illustrates a type of procedural error that the Division should identify and address. Procedural problems cause an administrative burden for the Division and ICAP because staff must correct each error and, following the correction, begin the appeals process again. Procedural errors may also delay benefits, medical attention, and the litigant's ability to return to work.

Overall, the Division has made improvements in tracking and utilizing reversal and remand information to improve ALJ decisions. The Division should continue to analyze the reasons for reversals and remands, and use this information to determine trends, evaluate ALJs, and provide further training. The Division should also begin reviewing procedural errors to determine ways to improve administrative processes and lower reversal and remand rates in the future.

Recommendation No. 3:

The Division of Administrative Hearings should work to lower reversal and remand rates by:

- a. Continuing to analyze reversal and remand decisions, including those related to procedural errors. The Division should use this information to determine trends, identify common reasons for reversals and remands, and improve administrative processes.
- b. Continuing to utilize reversal and remand data, as appropriate, when evaluating the performance of Administrative Law Judges.
- c. Addressing common reasons for reversals and remands through training for Administrative Law Judges and administrative staff.

Division of Administrative Hearings Response:

- a. Agree. Implementation Date: Ongoing – October 21, 2004.
- b. Agree. Implementation Date: Ongoing.
- c. Agree. Implementation Date: Ongoing.

The Division of Administrative Hearings will continue its longstanding practice of reviewing all reversals and remands, identifying common reasons for reversals and remands, and using this information for training purposes. In addition, the Division will review remands related to procedural issues. The Division will continue to analyze the reasons for reversals and remands as part of its performance evaluations of ALJs. The Division has instituted administrative processes to ensure that all records sent to ICAP are complete, regardless of the regional office in which the file originated.

Customer Service

Chapter 2

Background

The Division of Administrative Hearings (the Division) was statutorily created to provide an accessible means for state agencies and citizens to resolve disputes while avoiding the time and expense of litigation in district court. The goal of the Division is to provide effective administrative services through efficient case processing and case management, and to ensure that the due process rights of all litigants are respected. As such, it is important that the Division provide a high level of customer service to all parties involved in the hearing process.

Public Perception

In 2000 we reported on the public's perception of the Division and found that parties involved in the workers' compensation administrative hearings process had major concerns with the Division's operations and customer service. Since 2000, however, the Division has worked to improve its services and enhance the public's perception of its operations.

To evaluate current public perception, we surveyed approximately 700 individuals who had recent experience in the workers' compensation hearings process. Those surveyed had been involved in hearings conducted during Fiscal Year 2004, and included claimants, claimant attorneys, employers, employer attorneys, and insurance carriers. The survey measured perception of several factors including:

- Timeliness of hearings and decisions
- Fairness of procedures
- Complexity of the hearing process
- Professionalism of Division staff and ALJs
- Fairness of Division staff and ALJs
- ALJ expertise, neutrality, and demeanor
- Customer service
- Overall satisfaction

We received 234 survey responses, a 33 percent response rate. We used rating scales from 1 to 7 for each of the survey factors, with 1 being the least favorable response, and 7 being the most favorable response. For example, for fairness of procedures,

a rating of 1 means that procedures are “Very Unfair,” while a 7 means that procedures are “Very Fair.” According to our statistical methodology, a rating of 4 and above is in the acceptable range. Our survey also offered spaces for respondents to write additional comments.

Overall, parties responded that the Division’s performance shows some improvement since 2000. The average responses for the survey factors have remained fairly constant except for timeliness of decisions, which shows greater improvement. The following table compares the average responses for each survey factor for 2000 and 2004.

Public Perception Survey Results Average Ratings for 2000 and 2004		
Factor	2000 Results*	2004 Results
Timeliness of Hearings	3.6	3.7
Timeliness of Decisions	3.0	3.8
Complexity of the Process	NA	4.2
Fairness of Procedures	4.3	4.4
Fairness of ALJs	4.6	4.7
ALJ Neutrality	NA	4.7
ALJ Expertise	NA	4.9
Customer Service	NA	4.9
ALJ Demeanor	NA	5.0
Professionalism of Staff	4.9	5.1
Professionalism of ALJs	5.2	5.3
Fairness of Staff	5.0	5.3
Overall Satisfaction	NA	4.4
Source: Office of the State Auditor’s analysis of 2000 and 2004 Public Perception Survey results.		
* “NA” means the factor was not included in the 2000 Public Perception Survey.		

Although the Division has shown improvement in the factors measured in both time periods, we received many comments from parties who still have concerns with the hearing process. Specifically, 17 percent of the survey respondents (this includes claimants, attorneys, employers, and insurance carriers) commented on the complexity of the hearing process, indicating that the process can be difficult for all parties involved. Many claimants said that the process can be difficult to navigate, and other parties surveyed stated that the workers' compensation rules and timelines are difficult to understand.

We reviewed the Division's practices for assisting litigants with understanding and navigating the hearing process and found that improvements are needed. The Division should take a comprehensive look at its customer service function to take advantage of new technology and identify ways to make the hearing process more accessible and user-friendly. Although much of the complexity of the process is attributable to detailed statutes and rules governing the hearing process, and thus outside the Division's control, we identified a number of areas where the Division can improve the assistance it provides to litigants that may help them navigate the system more effectively.

Hearing Information

Currently the Division's system for making workers' compensation information available to the public through brochures, pamphlets, and Web pages is fragmented and confusing. Hearing information is dispersed among the Division's individual forms, its Web site, and pamphlets distributed by the Division of Workers' Compensation. No single electronic or hard copy source exists to obtain critical information outlining the hearing process, required timelines, or application instructions and deadlines.

In addition, very few written or electronic documents are available in other languages. The *Non-Lawyers' Guide* is the only written document available in both Spanish and English. The lack of translated materials places non-English speaking litigants at a disadvantage in the system. Of the 10 workers' compensation ALJs who responded to our survey, 9 stated that it would be useful to translate the Division's hearing informational materials and forms into other languages, particularly Spanish. In addition, two ALJs stated that language barriers are the biggest challenge some litigants face when navigating the hearing process.

Further, basic information, such as information on the appeals process, or the services provided by Prehearing ALJs and the Division of Workers' Compensation facilitators, is not provided to litigants consistently:

- **Appeals process.** ALJs typically provide litigants with information on appeals in their written orders. We found that the type and amount of information provided varies by judge. Some judges cite the workers' compensation appeals process statute, which informs litigants that they have the right to appeal. [Section 8-43-301, C.R.S.] Other judges provide the timeline for filing for an appeal.
- **Prehearing ALJs.** Prehearing ALJs at the Division of Workers' Compensation are available to litigants to conduct informal negotiation processes, help parties examine the strengths and weaknesses of their evidence and legal arguments, facilitate the exchange of information between parties, and clarify confusing issues for litigants. According to Division of Administrative Hearings ALJs, these services may, in some instances, substantially reduce the time required to conduct the hearing or eliminate the need to conduct a hearing altogether. Yet the Division does not have a method to consistently inform litigants of the availability of Division of Workers' Compensation Prehearing ALJs.
- **Facilitators.** The Colorado Code of Judicial Conduct, which is binding on the Division's ALJs, prohibits the Division from providing legal advice, so in-person and telephone assistance provided by the Division is limited. Since the Division is limited in the amount of assistance it can provide to litigants, the Division of Workers' Compensation assigns two facilitators to answer questions and assist litigants with completing applications at the Division of Administrative Hearings two-half days per week. The Division of Administrative Hearings has posted a sign in its lobby indicating that facilitators are available to assist litigants, but the Division does not include this information on its hearing application form, informational materials, or Web site. Further, when the Division sends an application rejection letter to litigants, the letter sent to attorneys states that a facilitator is available to assist them with completing the hearing application, but the letter sent to pro se applicants (litigants without legal representation) does not include this information.

These Division practices directly impact staff workload and cause delays for litigants. When key information is not available to assist litigants with completing applications and understanding requirements, litigants are more likely to make errors that could delay benefits or impact hearing outcomes. According to Division data, in Fiscal Year 2004 about 700 applications for hearing were rejected because they were incomplete or incorrect. Communicating the availability of assistance and improving the quality of information provided to litigants will likely increase the number of applications that are acceptable, reduce delays, and use staff resources more efficiently.

The Division should improve its customer service function by providing clear and consistent information through multiple, accessible sources, including technology. Specifically, the Division should consider:

- Developing an easy-to-use guide to the hearing process, available in hard copy and online, including links to relevant documents and statutes. This guide should outline the hearing process and each party's responsibilities, and include application instructions, required timelines, and deadlines. Guides should be available in the Division's office and on its Web site, and distributed to the Division of Workers' Compensation.
- Conducting a comprehensive review of all online and hard copy hearing information for consistency and standardizing the information available to litigants. The review should consider the need to translate hearing information into other languages. The Division has developed a focus group to determine the languages frequently spoken during hearings. This information should be used to identify the languages and documents requiring translation.
- Offering online application filing. The Division could provide an automated electronic filing process with drop-down fields on the application form to simplify the process for applicants.
- Establishing an information kiosk with a computer station and online capabilities. This kiosk should offer easy access to all written and online hearing information.
- Providing personal assistance through its own facilitator and other appropriate Division staff. With the proper training, the Division could expand in-person and telephone assistance without crossing the line between customer service and legal advice. The Division could train its staff to offer litigants standardized application and process-related information. Additionally, the Division should identify other sources of information and assistance, such as information provided by the Division of Workers' Compensation, and refer litigants to other resources as appropriate.

Recommendation No. 4:

The Division of Administrative Hearings should improve its customer service by:

- a. Providing clear and consistent hearing, appeals, Prehearing Administrative Law Judge, and facilitator information to all litigants. Hearing materials, forms, and online information should inform litigants that a variety of resources are available to assist all parties.
- b. Reviewing its customer service function and developing multiple, accessible resources to improve assistance. This could include implementing a comprehensive guide to the workers' compensation hearing process, translating hearing materials into other languages, offering online application filing, and establishing an information kiosk with a computer terminal and access to online information.
- c. Continuing to determine the types of assistance staff can provide to litigants without constituting legal advice, clarifying what hearing and application process-related assistance is appropriate, and assigning staff to serve as facilitators. Additionally, staff should be trained on the types of assistance available from other sources, such as the Division of Workers' Compensation, and refer litigants to those sources as appropriate.

Division of Administrative Hearings Response:

- a. Agree. Implementation Date: April 1, 2005.
- b. Agree. Implementation Date: Ongoing.
- c. Agree. Implementation Date: Ongoing.

The Division of Administrative Hearings continually reviews its customer service functions. The Division is highly motivated to make available useful resources for its customers. In early 2004 the Division established a task force to look into interpretation and language issues. The Division is committed to identify languages other than Spanish that are spoken by a significant number of litigants and to assist in translating materials into those languages. The Division will continue to explore the feasibility and cost of online filing and an information kiosk. The Division's ongoing staff training will emphasize enabling staff to answer hearing and application related inquiries without giving legal advice, and to make referrals to other appropriate sources of assistance.

Pro Se Advisement

Pro se litigants are parties who choose to represent themselves during the hearing process without the assistance of an attorney. According to the Division, about 8 to 9 percent of litigants are pro se. In most cases, pro se litigants are injured workers (or claimants). However, some employers (or respondents) also choose to litigate pro se. Our review of the workers' compensation hearing process found that pro se litigants may be at a disadvantage compared with litigants who have obtained legal representation. Based on our survey results of claimants, attorneys, employers, and insurance carriers, we found:

- Of 234 claimants, attorneys, employers, and insurance carriers surveyed, 24 (10 percent) stated the process is complex without attorney representation.
- Of 61 claimants responding to the survey, 13 (21 percent) stated that they were unaware that the hearing process would be difficult without attorney representation. Some stated that at the beginning of the process they believed they could navigate the system without an attorney.

When pro se litigants enter the administrative hearing process, they may not understand that they could be at a disadvantage compared with other parties. This may affect hearing timeliness and outcomes. Two other states we contacted—Virginia and Indiana—notify litigants that they may be at a disadvantage in the hearing process without an attorney's assistance. Minnesota provides materials informing pro se litigants that they will be held to the same standards as an attorney. In addition, the Colorado Judicial Branch provides materials to appellants explaining that the workers' compensation appeals proceedings are "complex and usually require the help of an attorney to present the appropriate legal arguments in the proper form."

The Division should develop a similar pro se advisement informing parties that they must be well-versed in the workers' compensation rules and laws and that they will be held to the same standards as an attorney. This advisement should also inform pro se litigants that they may be at a disadvantage during the hearing process without an attorney. The Division should include this message in its written informational materials and on its Web site.

Recommendation No. 5:

The Division of Administrative Hearings should include a notice in its informational materials and on its Web site that pro se litigants will be held to the same standards as an attorney and may be at a disadvantage if they choose to litigate without an attorney.

Division of Administrative Hearings Response:

Agree. Implementation Date: April 1, 2005. The Division of Administrative Hearings will adapt the Judicial Branch language, and make it available to pro se litigants.

Administration

Chapter 3

Background

During the audit we reviewed the Division of Administrative Hearings' internal processes, procedures, and controls, and identified three areas for improvement. The Division should improve its hearing information systems, its management of travel expenditures, and its methods for transferring case information to the appellate levels.

Information Systems

The Division of Administrative Hearings enters workers' compensation hearing data into a system that is controlled and maintained by the Division of Workers' Compensation (DOWC). This shared database, which we will refer to as the Legacy System, was established on the General Government Computing Center mainframe in 1991, when the administrative hearings process was the responsibility of DOWC. The Legacy System was designed to assist in regulating the entire workers' compensation system, and not specifically to schedule the docket or manage litigation. We reviewed the Legacy System and found that the data contained in the system are limited and that, overall, the system lacks the capabilities both divisions need to properly manage hearings and claims.

The Division of Administrative Hearings uses the Legacy System to track some aspects of the workers' compensation hearing process. For example, the system tracks basic information on applications, hearing dates, and hearing cancellations. However, the system lacks the capacity to assist the Division with some of its daily activities, such as adjusting courtroom schedules, identifying docketing conflicts, managing ALJ workload, or flagging untimely hearings and orders. Currently the Division must handle these tasks manually. Further, the Legacy System cannot provide comprehensive data useful for decision making, such as the causes of untimely hearings as discussed in Chapter 1. Without this information, the Division cannot determine what operational or staffing changes are needed to ensure that hearings occur within the statutory deadlines.

The Division of Workers' Compensation uses the Legacy System to support all of its operations, including claims oversight, budget submissions, and research reports. Hearing data are critical to the functioning of DOWC's larger workers' compensation claims database. Once Division of Administrative Hearings staff enter hearing data into the Legacy System, the data electronically populate several additional fields within the system that are used daily by DOWC to manage claims and analyze trends. Although DOWC relies upon data contained in the Legacy System, as discussed in our 2004 audit of DOWC, the system does not have sufficient capabilities to adequately manage information needed by DOWC for data analysis and decision making. For example, Division of Administrative Hearings staff enter dozens of codes into the system to summarize the disputed workers' compensation issues, but these codes are too vague to determine common causes of litigation. As a result, some of the hearing data collected in the Legacy System are not useful to either division.

The Division of Administrative Hearings is in the process of procuring its own distinct hearing data system, and will implement it by the summer of 2005 in order to remedy the problems it currently faces with the Legacy System. We reviewed the Division's plans and found that the new system should improve operational efficiency and data analysis. For example, the new system should allow the Division to accomplish the following tasks, which are currently unavailable:

- Schedule the docket electronically, taking into consideration the time limits within which each type of hearing must be held, as well as ALJ and hearing room availability, and past and future workload assignments.
- Track the frequency with which applications for hearing are rejected and the reasons for rejection, as discussed in Chapter 1.
- Automatically notify ALJs when hearings drop from their docket schedule and when upcoming orders are approaching their statutory deadlines.

Since hearing data are critical to DOWC's operations, the Division of Administrative Hearings' new data system must also be useful and accessible to DOWC. Specifically, it is important that the new system interface with the Legacy System to provide DOWC with data on the progress of individual claims and system-wide litigation trends. The new system must also transfer key hearing data back into the Legacy System to populate the data fields used by DOWC staff. Finally, the new system must share the prehearing data. Although Prehearing ALJs are employed by DOWC, many prehearing processes, such as rulings on procedural motions, are linked to the work of the Division of Administrative Hearings. Unless the new system is designed to electronically transfer critical hearing data to DOWC and the Legacy System, Division of Administrative Hearings staff may be required to enter

the same data into both the new system and the Legacy System for both divisions to function properly.

Although the Division of Administrative Hearings will control the new system, it is essential that DOWC be integrally involved in its design, testing, and implementation. This will allow an efficient transition and eliminate the need for costly duplicate data entry into two separate systems. Additionally, DOWC should identify the data elements needed to manage its operations. This should include clarifying data definitions, eliminating duplicative data fields, and discarding data elements that are not useful to either division. DOWC should provide this information to the vendor and the Division of Administrative Hearings to ensure the new system captures these data. Finally, following the system restructuring, both divisions should coordinate to provide systems-related testing and training to their staff.

Recommendation No. 6:

The Division of Administrative Hearings should include input from the Division of Workers' Compensation to ensure that the new information system meets the data needs of both divisions, manages hearing and prehearing data efficiently, and avoids duplicate data entry. Systems-related testing should be conducted and training should be provided to appropriate staff.

Division of Administrative Hearings Response:

Agree. Implementation Date: Ongoing – April 1, 2005. The Division of Administrative Hearings will continue to coordinate with the Division of Workers' Compensation with the goal that the new information system meets the data needs of both divisions, manages prehearing and hearing data efficiently, and avoids duplicate data entry. The Division will also coordinate with the Division of Workers' Compensation in systems testing and staff training on the new system.

Recommendation No. 7:

The Division of Workers' Compensation should determine the hearing and prehearing data elements needed to manage workers' compensation claims and work with the Division of Administrative Hearings to determine the most efficient way to collect these data. The Division of Workers' Compensation should also participate in system-related testing and training efforts, as appropriate.

Division of Workers' Compensation Response:

Agree. Implementation Date: January 2005. The Division of Workers' Compensation will review hearing and prehearing data elements to ensure that only essential elements are required. The Division of Workers' Compensation projects that this initial phase, the study of data elements to determine what is essential, will be completed by January 2005.

Fiscal Controls

It is important that the Division track and monitor expenditures, since it bills agencies that use its services a proportional share of its total costs. We reviewed the Division's methods for monitoring expenditures and found that it needs to strengthen internal controls related to travel and motor pool vehicle use.

Travel

The Division offers workers' compensation hearings in three regional offices and in several other cities around the State. As a result, ALJs must often travel to these other locations to hear workers' compensation cases. Division staff also travel out-of-state from time to time for training and conferences. In Fiscal Year 2004 the Division's travel expenses totaled about \$15,260, as the following table shows. In-state travel expenses were about \$12,120, while out-of-state travel expenses totaled about \$3,140.

Division of Administrative Hearings Travel Expenditures by Region Fiscal Year 2004	
In-State	Travel Expenditures
Denver (Denver, Boulder, Greeley, and Fort Collins)	\$3,490
Western (Durango, Grand Junction, and Glenwood Springs)	\$5,140
Southern (Colorado Springs, Alamosa, and Pueblo)	\$3,490
In-State Total	\$12,120
Out-of-State	\$3,140
TOTAL	\$15,260
Source: Office of the State Auditor’s analysis of Division of Administrative Hearings travel documentation.	

We reviewed the Division’s Fiscal Year 2004 travel documentation for 18 trips. Our sample included a review of each of the Division’s out-of-state trips (3 total) and a random sample of 15 in-state trips. We identified the following concerns with the controls over these expenses:

- In 3 of the 15 sampled in-state trips, the Division Director signed his or her own travel reimbursement. This occurred because the Department of Personnel & Administration currently allows division directors to approve their own travel reimbursements. Although an accountant in the Department’s Executive Office reviews the reimbursements for mathematical and account code accuracy, state fiscal rules require that an approving authority, such as a supervisor, sign travel reimbursements. While we did not find any evidence of improper expenditures, supervisory approval ensures that reimbursements are appropriate and eliminates any possible appearance of impropriety.
- One in-state trip reimbursement was not calculated correctly. The reimbursement was overpaid by about \$50. It is important that the Department of Personnel & Administration, which reviews these reimbursements, ensures that they are calculated correctly.

We also found that the Division does not reconcile its travel documentation to the State's COFRS system to ensure that travel expenditures are accurate. In addition, the Division does not formally track travel expenditures by regional office to determine ways to make travel to regions more efficient. The Division should reconcile travel documentation to COFRS and track regional travel costs to monitor regional expenditures. The Division could also use this information when assessing the number of docket days that should be held in each region as discussed in Chapter 1.

Motor Pool

Our audit evaluated the Division's practices for managing the use of state motor pool vehicles in accordance with state fiscal rules and Division practices. The Division requires ALJs to submit two forms when requesting a motor pool vehicle: a travel request form signed by the supervisor and a Central Services motor pool form verifying the actual days the vehicle was used. During the audit we asked the Division to provide all forms submitted during Fiscal Year 2004 for our review. Staff informed us that ALJs do not consistently turn in their request forms or motor pool forms. In the course of our review, we identified the following problems with motor pool vehicle requests:

- Of the eight ALJs who used a state motor pool vehicle during Fiscal Year 2004, seven failed to turn in a motor pool form at least once during the year.
- Of the 45 travel request forms turned in by ALJs, 19 (42 percent) did not have a corresponding Central Services motor pool form.
- Of the 41 Central Services motor pool forms turned in by ALJs, 15 (37 percent) did not have a corresponding travel request form.
- Of the 41 Central Services motor pool forms turned in by ALJs, only 3 (7 percent) had been signed by the ALJ's supervisor (requesting authority signature).
- The dates on one Central Services motor pool form did not match the dates on the Division's travel request form. The ALJ kept the vehicle longer than approved.

When ALJs do not submit all of the required motor pool request forms, Division management cannot reconcile travel requests to the Central Services motor pool forms to ensure that ALJs traveled on the dates requested and that the amount paid to Central Services was appropriate. Therefore, the Division needs to strengthen its controls over the motor pool request process by ensuring that ALJs submit both a

travel request form and a Central Services motor pool form when state motor pool vehicles are used. The Division should also ensure that a supervisor signs and approves the Central Services motor pool form. Further, the Division should reconcile the two forms to ensure the vehicle was used during the dates requested. Finally, the Division should reconcile the motor pool documentation to the amount charged by Central Services and recorded in COFRS. These reconciliations ensure that the Division is charged correctly for motor pool use, that staff use the vehicles only for the amount of time approved, and that travel expenditures are accurate.

Recommendation No. 8:

The Department of Personnel & Administration and the Division of Administrative Hearings should strengthen internal controls over travel expenditures by:

- a. Improving their review process of all travel and motor pool requests to ensure requests are approved and reimbursement amounts are calculated correctly.
- b. Reconciling travel and motor pool documentation to COFRS to ensure that reimbursement amounts and billings are correct.
- c. Monitoring regional travel expenditures to control regional costs.

Department of Personnel & Administration and Division of Administrative Hearings Response:

Agree. Implementation Date: November 2004. The Department is in the process of implementing a department-wide travel policy. This policy includes a requirement that the Department's Executive Director or Deputy Executive Director review travel reimbursement requests submitted by division directors. The Division has already instituted new procedures to improve its review process for motor pool requests. The Division will implement procedures to better reconcile travel expenses and track expenses by region.

File Transmission

As discussed in Chapter 1, litigants in the workers' compensation hearings process may appeal the ALJs' decisions to the Industrial Claim Appeals Panel (ICAP). According to Section 8-43-301(4), C.R.S., the Division must transmit case files to ICAP within 30 days after the litigants file final briefs. We found that the Division's Colorado Springs regional office does not transmit appellate files to ICAP within the 30-day statutory time limit. Division staff do not keep records tracking file submissions, but report that about 30 to 40 percent of files from the Colorado Springs office are not delivered within the 30-day time limit. Currently the Colorado Springs office relies on staff traveling between Colorado Springs and Denver to transmit the files when schedules allow. This causes a backlog and delay in the appellate process for litigants and makes it difficult for ICAP to meet its own statutory deadlines for issuing decisions. Instead of relying on staff to transmit files, the Colorado Springs office should mail the files and track the date of file submissions to ensure it complies with the 30-day statutory time limit.

Recommendation No. 9:

The Division of Administrative Hearings should require its Colorado Springs regional office to mail appellate files to the Industrial Claim Appeals Panel and track the date of file submissions to ensure it complies with the 30-day statutory time limit.

Division of Administrative Hearings Response:

Agree. Implementation Date: October 21, 2004. The Division will ensure that files are submitted by the Colorado Springs regional office to ICAP in a timely manner. The Division will track the date of file submissions to ensure compliance with the 30-day statutory time limit.

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