

DOL-JBA Meeting minutes from our trip to Washington D.C. to meet with the OALJ, BRB and OWCP from 10/19/22

A. OWCP Meeting

1. Efforts to increase efficiency: Jurisdictional changes to the DOL including the consolidation of all districts in 2020 to the Eastern, Southern and Western Districts.
2. It was announced that 12 new claims examiners have been hired and “onboarded” with many of them being able to work remotely, thus increasing flexibility, and based upon recent metrics, increase productivity of CE’s as well.
3. The DOL has tried over the last year to spread the work out more evenly amongst claims examiners as their metrics revealed some districts were far busier than others, and as of August of 2022 the DOL is pleased to note their efforts have been successful in reducing workloads for CEs and increasing expediency in handling and responding to claims. 97% of all CEs now work remotely. Also, CE lists of telephone numbers or contact information will not be disseminated to protect CEs as OWCP policy prevents such information from being share due to security concerns.
4. IT Modernization: EComp is now live for claimants to access.
5. SEAportal now has a new claim submission method to provide more options and make this method of submission easier.
6. Global waiver has been a success and will be expanded.
7. A question was raised about changing address information with claims and the form 215a is being amended to address this issue, but it has not come online yet, so David Abeijon advised that an email could be sent to him to assist with this process. It was also discussed if an LS-215a can include the claimant’s date of birth, but we were told that would involve IT involvement.
8. A redesigned internet site makes it easier to navigate and DBA waivers have been redesigned.
9. Settlements: There was discussion about settling cases and concern about how to handle conditions not referenced on the LS202 or LS203, but that come to light through discovery. The OWCP representative recommended that an amended LS203 or LS202 should be filed referencing these new conditions and that the 8(i) settlement must reflect consideration for these new conditions to ensure the 8(i) settlement is approved. However, the OWCP representatives also said if you attach a deposition transcript of the claimant and point to the new conditions raised within the deposition and reference same in the 8(i) settlement with consideration given, that will suffice with the DOL and will preclude the need for amended LS202s or LS203s from being filed.

10. Ecomp system/technology issues: According to Antonio Rios lots of claimants do not own computers or are not computer savvy, so these claimants can access same through the use of a Release, which is being crafted presently by the DOL.
11. Requests for old DOL cases from (FRC) is still available and scanned into the system.
12. Foreign national life expectancy question: An economist used by the DOL helps with this process and the DOL relies upon information from the World Health Organization, which is accessible online. One question raised about Kosovo and the fact that while claimants may live there it is not an officially recognized state, and some people will look to Bosnia and apply their WHO information to assess claims.
13. Question about attendant care for claimants: According to the OWCP representatives, if a spouse or child of the claimant wishes to be compensated for “attendant care”, this may be permissible provided those providing “attendant care” have “credentials” such as being a nurse as per 20 CFR 61.105(d).
14. Question concerning deficiency notices of 8(i) settlements: A discussion was had with OWCP representatives about how helpful it would be to receive a telephone call from the claims examiner to try and correct an 8(i) settlement *before* a deficiency notice is issued. The OWCP representatives made clear that this would be preferable, and while CEs are encouraged to follow this practice, it is not necessarily uniform throughout the system. However, this communication would only be helpful if the flaws in the 8(i) are easily corrected like a typographical error as opposed to something far more substantive.
15. Question about approving 8(f)s without voc rehab information: The OWCP was told that in the Southern District the CEs are being told that 8(f)s cannot be approved unless there is voc rehab in place, even though the Act only specifies the need for medical information to be provided to substantiate a claim for 8(f) relief and not voc rehab. The OWCP representatives said they would look into the matter.

B. OALJ Meeting

1. Could OALJ issue an update to Judge Henley’s Administrative Notice addressing foreign evidence? Not at this time since ALJs have “decisional independence” concerning such matters, although Judge Alamanza, who was present at the meeting, made clear the attorney can demonstrate all steps taken to ensure testimony is gathered appropriately, which could include an attorney affidavit, to see that unsworn testimony is admissible. This could also include a video of unsworn testimony, or a transcript of unsworn testimony leading to a stipulation from the parties of the testimony being accepted yet unsworn. The stipulation could lay out the facts and make clear that if the witness were called to testify in court this is what they would say. Judge Alamanza discussed the “concept of an

oath” and said there are two parts to it to include the following: (1) appeal to conscience; (2) reminder of penalty of perjury.

2. What is the time frame between the Notice of Docketing by the National Office and the Notice of Assignment by the assigned district court? The process is streamlined now to get cases assigned to district offices more promptly. There was a large backlog created by Covid-19 but the ALJs are confident of getting that backlog cleared “in a few months.” Of course, you can begin the discovery process once the Notice of Docketing is received. If there are any delays with cases being docketed, Judge Alamanza said he would accept an email to look into such matters.
3. Does the OALJ have a uniform position on commissions for foreign national testimony? No. This is not expected until the BRB or federal courts address these issues.
4. Will the National Office decide motions after issuing a Notice of Docketing but before assignment of a case to a district court? National office would only rule on such motions if they qualify as an “emergency” and are “rarely” done.
5. Can OALJ district offices identify the specific judge assigned to the case at the start of the district office assignment? This gets into how each district office runs things according to the District Chief, which is not uniform throughout the OALJ system. Judge Alamanza said he would discuss this issue with the District Chiefs to try and get everyone on the same page.
6. The new initial Notice of District Office Assignment and Scheduling Order (“Notice”) from Covington, Louisiana addresses expert disclosures. Claimant’s must disclose experts 30 days before Employers. Is it possible to either (1) allow simultaneous disclosures, or (2) flip the disclosure deadlines, with the employer disclosing its expert first? It was made clear this was *not* and issue raised by the whole DOL-JBA, but rather, a few members within our organization. Judge Alamanza promised to raise this issue with Chief Judge Rosenow.
7. Are OALJ Longshore/DBA cases on the decline/upswing? Overall, there is an upswing with a small decrease in Longshore, but DBA filings are still “very high.” In 2022 there are 1,350 Longshore cases docketed, and 5,150 DBA cases docketed. Judge Alamanza reminded all of us that the OALJ just not just deal with DBA and Longshore cases, but also Black Lung, whistleblower and even immigration cases. As for black lung cases, they cannot settle, and all of them go to formal hearings, and so a large portion of the OALJs time is spent on Black Lung cases.
8. Is there any need or movement to hiring new/more Judges? Status of Judge requirements and replacements? Presently there are 43 ALJs, with 42% of those ALJs having joined the ranks since 2018. They do not anticipate hiring any new ALJs anytime soon.
9. Technological question: is OALJ close to resolving the date restriction on the OALJ website’s keyword search? According to IT people for the OALJ it has been

“partially resolved” with a new “banner” letting people known of the issue and that it is being worked on.

10. Is it possible to implement a judge specific filter on the OALJ website’s keyword search? The OALJ is not implementing additional search filters but using current search tools and employing double quotes and other methods should accomplish this objective without the need for implementing additional filters.
11. On eFile, do pictures show up in black and white or color? Pictures and documents submitted via eFile will be displayed “as is.”
12. On eFile, is there a way for parties to remove cases from appearing on the dashboard once the case resolved, or one OALJ jurisdiction ends? This is not possible at present, but users can filter cases by status to accomplish this same result.

C. BRB Meeting

1. Can the BRB offer clarification on the steps litigants should take to physically remand a claim back to an OALJ? When a decision is remanded the BRB holds the file for 60 days, which is a timeline that was created when there were no electronic submissions. Now, the process is electronic and the ALJ and BRB are able to access documents simultaneously. Accordingly, 95% of the BRB is now digital according to the BRB representatives.
2. Can the BRB adjust its website to identify subsequent history for cases and remove published cases that were later reversed or vacated? According to the BRB representatives, this issue has been raised with IT and “is more complicated than you would think.” The BRB representatives advised that circuit courts do not always vacate, as they may just change a portion of the BRB decision, thus making this issue very challenging. It was discussed that Westlaw or Lexis could be used to shepardize cases that would remove one less matter for the BRB to track and provide on their website, when these aforementioned services already can provide the same information. Also, the Longshore Deskbook is updated every February and August every year.
3. How many Longshore/DBA cases are on the docket? Presently there are 63 Longshore cases and 38 DBA cases presently pending. According to the BRB representatives, a higher percentage of Longshore cases are litigated as opposed to DBA.
4. What determines if the BRB publishes a decision? This is subjective and the BRB does not have a hard and fast rule for such a determination, but the subjective decision if they believe the case is “interesting” and worthy of being published. If a party wants a Decision published they can always file a Motion with the BRB seeking the Decision being published and the BRB will consider such a Motion.

5. Can a BRB remand a case to a different ALJ? This is very rare and is not done *sua sponte*, but only if it is requested, and there is a “very high bar” to determine if such a request is warranted, such as allegations of bias.
6. BRB representatives called for more “effective briefing” from practitioners
According to the BRB representatives, they said that some briefs tend to be more “ponderous” than needed, with massive fact sections that seem to have almost nothing to do with the arguments being made. The BRB representatives reminded all of us that they get a lot of case and are not conversant with all of them, and that briefs should “stick to the point” and do so in a brief and precise manner, and that lots of citations to the record is helpful and appreciated.
7. Interesting BRB decisions anticipated in the near future include a medical marijuana case and a “fundamental question” on how a Section 20(a) presumption is applied.