

California State Auditor

B U R E A U O F S T A T E A U D I T S

State Personnel Board:

Its Management of Disciplinary Hearings Has Improved, but Further Changes Are Necessary



March 1999
98114

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CALIFORNIA STATE AUDITOR

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March 23, 1999

98114

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the effectiveness of the State Personnel Board (board) in managing disciplinary hearings. This report concludes that the board has improved the time it takes to resolve disciplinary appeals and has streamlined its efforts on these appeals. However, further efforts are needed to improve the time it takes to resolve other employment-related appeals and reduce workload on some disciplinary appeals. Several factors contributed to delays in processing appeals, including staffing deficiencies, a vacant management position for 16 months, an inadequate caseload tracking system, and outdated workload standards and strategic plan. Finally, this report concludes that overall, appellants do not appear to be dissatisfied with the board's fairness in handling appeals.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kurt R. Sjoberg".

KURT R. SJOBERG
State Auditor

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SUMMARY

Audit Highlights . . .

The following was revealed during our review of the State Personnel Board (SPB):

- ☑ *Although the SPB has reduced the time it takes to review evidentiary appeals, it does not complete review of nonevidentiary appeals within time limits.*
 - ☑ *The SPB can further streamline the appeals review process and reduce its work by fully implementing an abbreviated approach to minor actions and probationary appeals.*
-

RESULTS IN BRIEF

While it has reduced the time to review appeals by state employees disputing disciplinary action, the State Personnel Board (SPB) needs to further improve its management of the appeals process. Prompt closure of appeal cases helps the SPB ensure that it corrects any employment problems faced by state employees who have been victims of improper discipline.

The SPB administers the system of civil service employment within California government. Its responsibilities include enforcing civil service statutes, prescribing probationary periods and classifications for state jobs, and reviewing disciplinary actions that state departments have taken against employees. When a department terminates, suspends, or demotes an employee, the employee can appeal this action to the SPB, which consists of a five-member board and a staff of administrative law judges, hearing officers, attorneys, and analysts. The SPB hears appeals and then confirms, reverses, or modifies the department's action.

California law requires the SPB to resolve "evidentiary appeals," or appeals requiring the formal presentation of evidence before an administrative law judge, within 180 days after the appeals are made. The SPB has established its own time limits for completing reviews of "nonevidentiary appeals," or those cases that need only informal hearings or reviews of written documentation submitted by the disputing parties.

The SPB, on average, continues to meet the statutory time limit for reviewing evidentiary appeals; however, it does not resolve nonevidentiary appeals as promptly. Delays in processing nonevidentiary appeals occurred partly because it does not meet the intermediate deadlines established by management. Also, a growing caseload combined with staffing deficiencies has hindered appeal processing. A 16-month vacancy in a key management position also limited managers' abilities to monitor staff performance. Further, the system to track the appeals caseload is flawed because it does not regularly produce management reports needed to evaluate the progress of appeals. The system also fails to track interim deadlines, while inaccuracies limit its

usefulness. Finally, the SPB does not have updated caseload standards that allow managers to ensure that staff complete their cases expeditiously.

Not only does the SPB need to continue working to prevent delays in its appeals review process, but it could also increase its efficiency by further streamlining its evidentiary appeals process. It could still comply with state law yet reduce its work on rejection during probation appeals and some types of evidentiary appeals. Such a reduction would allow the SPB to use its resources to resolve serious appeals more promptly.

Although it has established an expedited process for reviewing minor disciplinary actions such as formal reprimands and pay reductions, the SPB limits the use of this process to appeals by employees excluded from collective bargaining. It could also reduce the work on appeals by employees terminated during their probationary periods by applying the less formal process it uses for nonevidentiary appeals. Additionally, the staff could save time by requiring that disputing parties confirm their attendance at hearings.

Although the SPB needs to resolve some cases more quickly, employees who submit appeals do not seem dissatisfied with the SPB's fairness in handling disciplinary cases. Both state law and the SPB's administrative procedures provide remedies for appellants who question the SPB's handling of their cases. Employees in only three appeal cases we reviewed asked to file charges against SPB employees for misconduct. Also, state law effective January 1, 1999, protects appellants by stipulating a code of conduct for administrative law judges.

RECOMMENDATIONS

To make certain that it reviews disciplinary cases within the time limits established by state law and its own management, the State Personnel Board (SPB) should take the following steps:

- Update the caseload standards it uses to monitor staff performance so that it identifies inefficiencies as soon as possible.

- Proceed with its planned acquisition and implementation of a new system for tracking cases and automating review schedules. This system should allow management to check whether staff meets intermediate deadlines, and it should generate accurate reports that show the progress of each case.

To further streamline its appeal process, the SPB should revise its procedures in the following ways:

- Apply the expedited process it uses for some evidentiary cases to all employee appeals related to minor disciplinary actions.
- Use its process for nonevidentiary appeals when it evaluates appeals by employees terminated during their probationary periods.
- Direct state employees appealing terminations that occurred during probationary periods to establish merit for appeals before the SPB schedules the employees' hearings.
- Require the parties involved in disciplinary or employment disputes to confirm their attendance at hearings so that SPB staff does not waste resources.

AGENCY COMMENT

The State Personnel Board agrees with our recommendations and findings. ■

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INTRODUCTION

BACKGROUND

The State Personnel Board (SPB), whose authority is set forth in the California Constitution, is responsible for administering the system of civil service employment within California state government. The SPB consists of a five-member board and a staff of attorneys, administrative law judges, hearing officers, analysts, and other support staff. Each board member is appointed by the governor and confirmed by the California Senate for a 10-year term. The SPB's responsibilities include enforcing civil service statutes, prescribing probationary periods and classifications for state jobs, and reviewing disciplinary actions that state departments have taken against employees.

This report focuses on the time required for the SPB to review appeals filed by state employees and on its management of its appeals caseload. When an employee objects to employment-related action taken by a state department that has hired him or her, the employee may file an appeal to have the matter reviewed by the SPB. In many appeals, employees challenge disciplinary actions, called "adverse actions," that employing departments have taken against the employees. Other actions that employees may appeal involve alleged discrimination, complaints that departments have improperly retaliated against the employees for reporting that departments were guilty of improper governmental activities, and requests from citizens or state employees that charges be filed against particular employees. Individuals may also appeal the results of examinations required for employment or promotion by state departments.

THE SPB'S APPEALS PROCESS

The SPB developed regulations prescribing the various methods it follows in handling state employees' appeals, and it established the Division of Appeals to manage the appeals. In serious appeals of adverse actions, such as demotion or termination, the parties must present evidence before an administrative law judge, who functions within state government and presides over administrative disputes such as employment-related disputes.

The SPB refers to cases involving presentation of evidence as “evidentiary hearings,” and these formal cases normally encompass such appeals of adverse actions as dismissals, demotions, suspensions, rejections during probation, and appeals of other significant employment actions.

<p>Methods for Resolving Appeals</p> <p>Evidentiary Hearings</p> <ul style="list-style-type: none"> • Review by an administrative law judge through a full formal hearing. • Disputing parties present evidence. • Appeals of dismissals, demotions, suspensions, and rejections during probation. <p>Investigatory Hearings</p> <ul style="list-style-type: none"> • Review by an administrative law judge through less formal hearing. • Parties present evidence limited to 180 minutes. • Appeals of minor disciplinary actions by employees excluded from collective bargaining. <p>Nonevidentiary Process</p> <ul style="list-style-type: none"> • Review by analyst through written submission of opposing parties or review by hearing officer in an informal hearing. • Appeals of employment selection or working conditions.

The SPB uses less formal hearings to handle appeals by certain classifications of employees about less serious adverse actions such as official reprimands, five-day suspensions without pay, and reductions in pay up to 5 percent for four months or less. These less formal hearings, or “investigatory hearings,” require the presentation of evidence before an administrative law judge but typically take less time than a full evidentiary hearing.

Additionally, the SPB addresses some appeals with its “nonevidentiary” process in which SPB hearing officers or analysts review the written submissions of the opposing parties. Requiring less formal procedures than the SPB uses for evidentiary hearings, these cases typically involve disputes about employment selection or working conditions. For example, appellants may contest the results of examinations for state employment if they believe the examinations were conducted unfairly.

For fiscal year 1997-98, the SPB spent about \$5 million to conduct evidentiary and nonevidentiary appeals. Table 1 on the following page illustrates that the SPB received more than 4,900 evidentiary and nonevidentiary appeals during fiscal year 1997-98, and completed more than 4,800 appeal reviews.

After the Division of Appeals compiles the documents related to each appeal, conducts any necessary hearing, and renders a proposed decision, the division forwards the appeal to the five-member board for consideration. If it agrees with the result and reasoning in the proposed decision, the board will adopt the decision as its own. If the board disagrees, it will issue its own decision, modify the decision, or direct the Division of Appeals to hear additional evidence and produce a new decision.

TABLE 1

Number of Appeals Received and Reviews Completed by the State Personnel Board

Fiscal Year	Appeals Received	Appeal Reviews Completed
1995-96	5,238	4,534
1996-97	5,754	5,394
1997-98	4,944	4,828

Once the SPB has rendered a final decision, the appellant has exhausted what the State refers to as “administrative remedies.” In other words, the appellant has met the requirement to attempt resolution of the dispute within the civil service system. If the appellant is dissatisfied with the decision rendered by the SPB, the appellant may pursue the case further in the superior court system. Although the SPB completes reviews of more than 4,500 appeals annually, very few appellants continue their cases in Superior Court.

We reviewed the SPB’s data on closed court cases and on those near closure for fiscal year 1997-98 to learn the results. The SPB’s records showed 73 cases closed or were near closure. Appellants were withdrawing their appeals in 6 cases. For 1 case, the SPB did not take an active role, and was not informed of the outcome by the litigating parties. For 53, or 80 percent of the remaining 66 cases, the courts confirmed the SPB’s position. Specifically, the courts denied or dismissed appeals in 49 cases and affirmed the SPB’s decision in 4 cases. Finally, for 10 cases, the courts returned the case to the SPB for further hearing. The courts granted the appellants’ requests or reversed all or part of the SPB’s decisions in only 3 of the 66 cases that closed or were near closing during fiscal year 1997-98.

TIME LIMITS FOR THE SPB’S REVIEW OF APPEALS

The California Government Code requires the SPB to complete its review of an appeal within six months from the date the appeal was filed. The code allows a 45-day extension following

this deadline in certain instances. Table 2 outlines other deadlines that guide the timeliness of SPB actions.

TABLE 2

The State Personnel Board’s Time Limits for the Appeals Process	
SPB Action	Deadline
Final board decision on an appeal	90 days from completion of the hearing process
Render decision in appeals of discrimination, harassment, or retaliation	4 months from the date the appeal was filed
Notification to the appellant of proposed decision	10 days from when the Division of Appeals files the proposed decision with the board

THE SPB’S RESPONSE TO A LAWSUIT REGARDING ITS DELAYED COMPLETION OF APPEAL REVIEWS

In the past the SPB has struggled to complete its review of appeals in a timely fashion. The California Correctional Peace Officers Association (association) sued the SPB on behalf of association members because the SPB had not completed reviews of the members’ evidentiary appeals within six months, as required by law. In August 1995, the California Supreme Court ruled that the statutory requirement that the SPB render a decision within the six-month time limit is “directory,” not mandatory. This means that the SPB retains jurisdiction over the employee’s appeal even though it has failed to reach a decision within the six-month time limit. The court further ruled that an appellant who has not waived the time limit may request the courts to require the SPB to decide an appeal by a specified date. The court’s ruling leaves the SPB vulnerable to potential lawsuits for those appeals that it does not complete within the six-month time limit.

To mitigate the impact of the court’s ruling, respond to the backlog of existing cases, and to better ensure that it handles future appeals in a more timely manner, the SPB added staff. The *1994-95 Budget Act* provided the SPB with \$2.2 million in additional funds to cover the cost of operating the SPB’s Division of Appeals. The budget act provided \$1.6 million to “clean up” the backlogged appeals. With this new funding, the SPB added limited-term positions, including 9 administrative law judges and 15 support staff.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee asked the Bureau of State Audits to review the SPB’s management of its appeals caseload as well as its ability to conduct fair, unbiased hearings, reviews, and investigations of these appeals. To understand the SPB’s responsibilities, we reviewed applicable laws, rules, and regulations and the extent to which the SPB met its statutory and administrative duties. We focused on those laws and regulations that require the SPB to render timely decisions on employee appeals. To assess whether the SPB has rendered decisions promptly, we reviewed a sample of appeals and determined if the SPB met the statutory time limits for rendering decisions on appeal cases.

To evaluate the operation of the SPB’s Division of Appeals, we determined how the division manages its caseload. We reviewed the sufficiency of the division’s system for tracking appeals, and we interviewed the division’s managers about how they monitor the performance of unit’s staff of administrative law judges, hearing officers, and analysts to ensure they promptly complete the hearings, reviews, and investigations that the SPB assigns to them. We also reviewed the SPB’s strategic plan and asked about the existence of caseload standards for the Division of Appeals’ staff.

In addition, we assessed the steps the SPB has taken to ensure that it conducts hearings, reviews, and investigations in an unbiased, objective manner. In performing this analysis, we learned that the Political Reform Act’s conflict-of-interest provisions govern the SPB’s administrative law judges, hearing officers, and attorneys. The administrative law judges are also bound by the recently enacted California Code of Judicial Ethics, which established standards of behavior for all members of the State’s judiciary. Moreover, we examined those remedies that appellants have available when they believe they have been

victims of bias or discrimination at the hands of an SPB administrative law judge, hearing officer, attorney, analyst, or board member. We also tracked a sample of SPB rulings on appeals that the appellant decided to take to the next level of appeal, which is Superior Court, and learned the disposition of each case.

Finally, we observed that, in accordance with the California Government Code, Section 11126, the five-member board regularly meets in executive, or closed, session to discuss the particulars of proposed decisions on appeals that the SPB's administrative law judges have forwarded to them. The board conducts its other business in a public session, including when the board hears a case on its own or when board members vote on whether to accept or reject a proposed decision on an appeal. ■

AUDIT RESULTS

The State Personnel Board Can Further Improve the Efficiency of Its Appeals Review Process

SUMMARY

To be certain that it helps correct any employment problems faced by state employees who have been victims of improper discipline, the State Personnel Board (SPB) must review these employees' appeals promptly. Since the Milton Marks Commission on California State Government Organization and Economy (Little Hoover Commission) found in 1994 that the SPB was taking an average of 12.5 months to review cases requiring the presentation of evidence, the SPB has made progress in reducing the average time its five-member board and staff take to complete review of these evidentiary appeals. However, the SPB's management of appeals, particularly nonevidentiary appeals, needs further improvement. During fiscal year 1997-98, the SPB continued to meet the statutory time limit for its evidentiary cases, but it did not meet the time limit that it established for nonevidentiary cases. Delays in processing nonevidentiary cases occurred partly because the SPB's management of its cases included minimal reliance on caseload standards, use of flawed reports for tracking the age of a case, and a system for monitoring caseload with limited effectiveness. The SPB could also increase its efficiency by further streamlining its evidentiary appeals process. Specifically, the SPB could continue to comply with state law yet reduce its work related to rejection during probation appeals and on some types of evidentiary appeals. The SPB could additionally reduce staff members' work by requiring appellants to confirm attendance for scheduled hearings in an effort to lower the number of appellants not showing up for these hearings. Finally, state law and administrative procedures provide remedies for appellants who question the SPB's handling of their cases.

THE SPB HAS IMPROVED ITS HANDLING OF EVIDENTIARY APPEALS

State law requires the SPB to resolve evidentiary appeals within six months.

Since 1994, the SPB has eliminated its backlog of appeals and has reduced to six months the average time it needs to resolve evidentiary appeals. The Little Hoover Commission reported that in 1994 the SPB took an average of 12.5 months to complete reviews of appeals even though the California Government Code requires the SPB to resolve evidentiary appeals within six months. During fiscal year 1994-95, the SPB successfully increased its staff by obtaining temporary budget increases that enabled it to hire additional administrative law judges.

Prompt resolution of appeals is important because a state employee's job may be at stake. In its review of a departmental action against an employee, the SPB may reverse the action that led to the employee's appeal. If, for example, it finds that a department erred in terminating an employee, the SPB obviously needs to promptly review the employee's appeal so that the department can properly and quickly reinstate the employee. The more severe the disciplinary action, the more important the need to resolve the appeal promptly. In addition, appellants cannot seek solutions from the court system until these individuals have appealed their cases to the SPB. As a result, appellants depend on the SPB to render decisions, or they must wait for the 180-day time limit to expire.

THE SPB DOES NOT CONSISTENTLY MEET TIME LIMITS FOR RESOLVING APPEALS

In general, the SPB is meeting the statutory time limit of 180 days for completing its reviews of evidentiary appeals, but it is not meeting similar time limits for reviewing nonevidentiary appeals. The California Government Code requires that the SPB complete its review of evidentiary appeals within a reasonable time and specifies that a reasonable time is not to exceed 180 days from the filing of an appeal. Under certain circumstances, the SPB may extend this statutory time limit by 45 days. The SPB has established an informal deadline for completing its review of nonevidentiary appeals.

Table 3 illustrates that the SPB continues to comply with the statutory time limit of 180 days for completing its reviews of evidentiary appeals. Although, in our sample, we found 9 of 38 instances in which the SPB failed to meet the statutory time

limit. In addition, we confirmed that the SPB is generally not meeting the time limit for completing its reviews of nonevidentiary appeals. Specifically, it exceeded the 180-day time limit in 23, or 74 percent, of 31 cases we reviewed. Table 3 also illustrates that the SPB’s average time for resolving cases has increased for both types of appeals.

TABLE 3

**Average Time Needed by the
State Personnel Board to Resolve Appeals**

Fiscal Year	Evidentiary	Nonevidentiary
1995-96	160 days	236 days
1996-97	167 days	206 days
1997-98	177 days	239 days

THE SPB DOES NOT MEET ITS INTERMEDIATE DEADLINES

To help keep its appeal cases on schedule, the SPB has established several intermediate deadlines for evidentiary and nonevidentiary cases. Some of these deadlines specify within 30 days of the appeal’s postmark date staff are to open a case, schedule a hearing, and send a letter to the appellant acknowledging receipt of the appeal. Other deadlines direct staff to hold a hearing within 90 days of the appeal’s postmark date and to issue a final decision within 90 days of the final hearing date. In order for the five-member board to decide a case within 90 days of the hearing, administrative law judges must also promptly prepare their proposed decisions for the board’s review. Table 4 illustrates that for the cases we sampled, the SPB did not meet many intermediate deadlines, and these missed due dates resulted in cases that exceeded the SPB’s time limits.

For the cases we sampled, the SPB did not meet many of the intermediate deadlines, resulting in missed due dates.

TABLE 4

**Appeal Cases for Which the State Personnel Board
Did Not Meet Intermediate Deadlines¹**

Deadlines Missed by the State Personnel Board	Evidentiary	Nonevidentiary
Total cases reviewed	38	31
Cases not opened within 30 days of appeals' postmarks	0	2
Hearing notices not issued within 30 days of appeals' postmarks	8	N/A
Acknowledgment letters not sent within 30 days of appeals' postmarks	0	4
Hearings not held within 90 days of appeals' postmarks	10	N/A
Proposed decisions not written promptly after the hearings	4	N/A
Board meetings not held within 90 days of hearings	2	0
Decision notices not sent within 10 days of final decisions ²	2	3
Cases exceeding time limits ²	9	23

N/A = Not applicable

¹ This table does not include cases in which approved continuances were the only causes for delays.

² Deadline indicates a statutory requirement for evidentiary cases.

Because the SPB failed to meet intermediate deadlines, it was unable to complete its review of appeals within time limits. For one case, the SPB received the appeal on April 25, 1994, and staff did not send a notice of hearing until 204 days later, or 174 days past the intermediate deadline of 30 days. In another example, staff processed the case promptly through the hearing date, but the administrative law judge assigned to hear the case failed to prepare a proposed decision promptly after the hearing. In fact, the administrative law judge took 190 days to write the proposed decision. As a result, the case exceeded the statutory time limit by 102 days. In a third instance, SPB staff failed to work on a nonevidentiary appeal for several months, resulting in the case exceeding the administrative time limit by 215 days.

IMPEDIMENTS PREVENTED THE SPB FROM RESOLVING APPEALS PROMPTLY

Staffing deficiencies, flawed tracking of cases, and lack of caseload standards hamper the review of appeals.

Staffing deficiencies, flawed tracking of cases, and the absence of current caseload standards have hampered the SPB's review of appeals. As shown in Table 3, on page 13, the average time the SPB needs to resolve cases has increased over the last three fiscal years for both types of appeals. Most notably, the SPB took an average of 239 days to resolve nonevidentiary appeals during fiscal year 1997-98. The SPB attributes its failure to meet time limits for these cases to staffing deficiencies and unforeseen workload peaks.

Lack of Staff May Have Slowed Appeals Processing

During the past four years, staffing deficiencies may have contributed to the increased time needed for the SPB to complete reviews of nonevidentiary appeals. Table 5 illustrates that the SPB's caseload rose 23 percent between fiscal years 1993-94 and 1997-98, while its staff of hearing officers and analysts allocated to complete the work decreased 6.5 percent.

TABLE 5

Nonevidentiary Appeals Caseload Compared to Staffing Levels at the State Personnel Board

Fiscal Year	Number of New Appeals	Percentage Change From 1993-94	Number of Positions Filled	Percentage Change From 1993-94
1993-94	2,193	N/A	9.3	N/A
1997-98	2,700	23.1%	8.7	-6.5%

N/A = Not applicable

Wide Swings in Caseload Increase Time the SPB Needs for Nonevidentiary Appeals

Large fluctuations in the number of appeals that the SPB receives is another factor contributing to the increased time that it takes the SPB to resolve nonevidentiary appeals. For example, when a hiring state department conducts a major employment or promotional examination, the SPB typically receives numerous

appeals from candidates disputing the results of the examination. Appeals of examination results represented 43 percent of the nonevidentiary cases closed during fiscal year 1997-98. The SPB's average time for completing these appeals of examination results in 1997-98 was 226 days. According to the SPB, it processes large batches of appeals for the same examination together. While the batching process is an efficient way of handling the appeals, it still takes a substantial amount of time. The SPB says it does not always have staff available to begin work immediately on these large batches of examination appeals, resulting in delays in its processing of these cases.

To address the problems that accompany caseload fluctuation, the SPB plans to allocate to part-time intermittent status 1.3 newly approved positions in its nonevidentiary section. These permanent intermittent staff can work during periods of heavy workloads, and when the influx of cases slows, these employees can be placed on temporary hiatus. This solution allows the SPB to alleviate some of the overall increase in work and also enables it to better address peaks and valleys in its workload.

Vacant Management Position Burdened Other SPB Managers

In addition to maintaining an adequate number of staff to handle appeals, the SPB needs to keep its key management positions filled. Until February 1999, the SPB's Division of Appeals chief position was vacant for 16 months. The chief is responsible for planning, directing, and implementing the processes for resolving appeals as well as for ensuring the division's efficient, effective operation. The chief oversees several other managers who directly supervise essential division activities, including the investigation of various types of appeals, the conducting of evidentiary hearings, and the preparation of proposed decisions for the five-member board. Division managers are accountable to the chief for their staff's performance. However, without this oversight for such a long time, the division managers had to handle their own jobs as well as some of the chief's essential duties. In other words, the Division of Appeals management group was spread too thin and this situation limited the division's ability to oversee the prompt processing of appeals.

The Division of Appeals chief position was vacant for 16 months.

An Ineffective Caseload Tracking System Limits Management's Efforts

The current caseload tracking system does not routinely produce needed management reports.

Not only does the SPB need adequate staffing and management, but it also needs a system that it can use to ensure that appeals are progressing through the various steps of the process on time. However, flaws exist in the system that the SPB uses for tracking and monitoring appeals. The system does not regularly produce needed management reports or track interim deadlines, and inaccuracies limit the system's usefulness. With the data currently in the system, staff can produce periodic reports that measure the length of time a case has been opened, but the system does not currently monitor intermediate deadlines. For example, we reviewed one case that the SPB left open for 294 days without resolution. In this case, the SPB's chief administrative law judge needed to rule on whether the SPB should even accept this appeal because the employee filed the appeal late. However, this decision did not occur promptly, and if management had tracked the intermediate deadlines, the system would have highlighted delays in this case at 30 days and again at 90 days. The SPB typically sends hearing notices within 30 days after the filing of the appeal, and it generally holds hearings within 90 days after the appeal.

The SPB is currently obtaining a new caseload tracking system that will also include an automated scheduling system to replace the manual system now in place. The SPB's management anticipates selecting a solution for a new system by September 1999 and awarding, in December 1999, a contract for implementing the solution.

An Outdated Strategic Plan and Obsolete Caseload Standards Limit Management's Efforts to Ensure Efficiency

Finally, the SPB's strategic plan offers little guidance to those working in the Division of Appeals. A strategic plan should help direct an organization's efforts to achieve unified, measurable goals. The SPB's strategic plan includes broad goals without objectives to obtain each goal or plans to capture data for measuring progress toward the SPB's goals. The last plan, completed in July 1997, stated that SPB management will provide frequent updates to the original plan; however, as of February 1999, the SPB had provided no updates or results. According to the SPB, it is in the process of updating the strategic plan, and management anticipates completion by the annual budget hearing.

Similarly, the SPB lacks current caseload standards that profile how long staff should take to complete work assigned to them. Without such standards, even experienced SPB managers are less able to identify whether staff are completing their review of appeals in a timely fashion. The SPB relies informally on caseload standards from 1991, but these standards need updating. The SPB's caseload standards became outdated when it reorganized the Division of Appeals in 1996. As a result, it does not have current workload standards to measure staff performance accurately.

THE SPB SLOWS THE REVIEW PROCESS BY PERFORMING MORE WORK THAN REQUIRED

The evidentiary appeals process can be expedited by expanding the use of the streamlined process, thus matching workload to the severity of the cases.

The SPB could further expedite the evidentiary appeals process by limiting its efforts in cases for which appellants dispute minor disciplinary actions. It could expand the streamlined process used to review appeals by employees excluded from collective bargaining. The limited use of this streamlined process is a result of union and Department of Personnel Administration opposition, and because few cases have gone through the new process. The SPB could use this process for all minor disciplinary appeals—regardless of whether the appellants belong to unions—so that the amount of time and money the SPB spends matches the severity of the cases. Further, it could reassign some evidentiary appeals to the nonevidentiary process, which requires fewer resources than does the evidentiary process.

The SPB Could Expand Its Streamlined Process for Hearing Appeals of Minor Disciplinary Actions

State law gives the SPB discretion to investigate certain types of appeals with or without a hearing; however, it limits investigating without full hearings, appeals of minor disciplinary actions against employees excluded from collective bargaining. For fiscal year 1997-98, evidentiary appeals represented 49 percent of cases closed. Of these evidentiary cases, 18 percent related to minor disciplinary actions, including official or formal reprimands, suspensions for five days or less, and reductions in pay of 5 percent during four months or less.

In 1995, the Little Hoover Commission criticized the SPB for conducting the same comprehensive reviews of minor disciplinary actions that employees had appealed as the SPB performed for more severe actions. The SPB responded by streamlining its

The law gives the SPB discretion to investigate certain types of appeals with or without a hearing.

review on appeals of minor actions. In 1997, the SPB established an expedited process for reviewing minor actions appealed by employees excluded from collective bargaining. The expedited process, which it designed to reduce the resources spent on appeals of minor disciplinary actions, includes an investigatory hearing before an administrative law judge. This investigatory hearing process also requires resolution within 90 days of an appeal's filing, rather than the 180 days that is typical for full evidentiary hearings. In addition, the process limits investigatory hearings to 180 minutes, allowing each side 90 minutes to present its case. The administrative law judge is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure; instead, the SPB expects the judge to conduct the hearing in a manner necessary to reach a just, proper decision. The expedited process requires the administrative law judge to issue a proposed decision to the five-member board within 15 calendar days after the hearing.

According to the SPB, it has not applied to all employees the expedited hearing process for minor disciplinary actions because most unions are opposed. Also, the Department of Personnel Administration has taken the position that it should bargain with the unions about any changes to the hearing process. The SPB additionally stated that few cases have gone through the expedited process, and full evaluation with suggestions from the parties involved has not occurred. In other words, the SPB cannot yet determine whether further modification of the process is desirable.

Evaluating the results of actual cases reviewed by the SPB under the expedited process is an idea that has merit. If the evaluation shows that the new process still protects appellants' interests, we see no reason to delay expanding the expedited process to include all employee appeals of minor disciplinary actions.

The SPB Could Reassign Some Appeals to the Nonevidentiary Process

The SPB can further streamline its appeals caseload by reassigning one type of appeals from the evidentiary process, which requires a full hearing before an administrative law judge, to the nonevidentiary process, which is not as labor-intensive. State law allows the SPB to exercise its discretion in handling appeals in which appellants dispute their departments' decisions to reject them during the probationary periods of new jobs. The SPB may handle these appeals with or without hearings. These

appeals represented 11 percent of evidentiary cases closed during fiscal year 1997-98. Technically, a state department is not disciplining an employee who has started a new job and does not pass probation. Instead, the employee's failure to pass probation is equivalent to failing selection for the new job. However, the SPB continues to process such appeals through the full evidentiary process even though it agrees that an employee who has not passed probation has not received disciplinary action. Furthermore, the SPB does not require an appellant who disputes his or her rejection during probation to establish a basis that may prompt overturning of their rejection before the SPB schedules a full hearing. Appellants must prove that the employing departments erred in rejecting them during probation and that the departments based the rejections on fraud, discrimination, bad faith, or absence any substantial evidence to support the rejection.

Because most probationary appeals never make it to a hearing, the SPB could reduce its workload by processing these as nonevidentiary.

Because a large percentage of appeals about rejections during probationary periods never make it to the hearing, the SPB could reduce its workload by processing these appeals as nonevidentiary. Our audit revealed that 63 percent of the appeals involving rejections during probation were settled or withdrawn before the hearing date. Also, for 10 appeals sampled, only 1 of the 10 hearings scheduled actually took place. Two appellants did not show up for the hearing, 3 hearings were canceled because of settlement discussions or no jurisdiction by the SPB, two appellants voluntarily resigned their positions before the effective dates of their rejections, and one appellant withdrew his appeal before the scheduled hearing took place. The simple fact that many appeals of this type never go to formal hearings provides compelling evidence that the SPB could change the way it processes such appeals.

THE SPB COULD AVOID WASTING STAFF TIME BY CONFIRMING HEARINGS

In addition to modifying the way it processes appeals, the SPB needs to change one aspect of the way it schedules hearings. Currently, the SPB spends unnecessary time scheduling and preparing for hearings that never take place. Occasionally, an appellant does not show up for his or her hearing appointment, and the SPB must cancel the hearing. The SPB does not require appellants or the disciplining departments to confirm their attendance for initial evidentiary hearings. During fiscal year 1997-98, the SPB closed 43 evidentiary appeals when the

The SPB does not require appellants or the disciplining departments to confirm attendance at initial evidentiary hearings.

appellants did not show up for their hearings and had failed to notify the SPB. However, staff had already gone to the trouble of arranging for hearing rooms, and the administrative law judges and the responding departments, not knowing any better, had shown up for the hearing. When these situations occur, the administrative law judges waste time preparing for the case, and the responding departments, counsel, and relevant witnesses have also wasted their time and effort.

In one case we reviewed, an employee union sent a standard form letter appealing a disciplinary action on behalf of one member. The union sent a subsequent letter, five days later, informing the SPB that it would not represent the employee in the appeal. In our view, when the SPB learned that the union was not going to provide an attorney, the SPB should have confirmed the appellant's attendance. In this case, instead of confirming whether the employee intended to continue the appeal, the SPB automatically scheduled a hearing, and the employee failed to attend.

To find out how other state departments handle hearing appointments, we interviewed three other departments that have administrative hearing processes. All three departments had processes to ensure that disputing parties confirm attendance at initial hearings. The SPB could reduce the number of appellants failing to show up for hearings by establishing a confirmation process for the initial hearing.

THE SPB WORKS TO ENSURE FAIR HEARINGS

To assist state employees and departments waiting for resolution of their disputes, the SPB needs to ensure that it completes its reviews of appeals in a fair, unbiased manner. Therefore, during the audit we asked the SPB what provisions it has in place to ensure that it handles appeals in equitable manner. We learned that the SPB has several formal and informal remedies available to appellants that help ensure that staff provide fair, unbiased services. In addition, state law provides protocols for the administrative law judges in conducting hearings. As of January 1, 1999, a code of conduct is applicable to all administrative law judges.

State law provides two formal administrative remedies to parties who believe that SPB staff did not process their cases fairly. Specifically, the appellant or disciplining department may

Appellants who believe staff did not process their cases fairly may petition the five-member board for a rehearing of the decision.

petition the five-member board for a rehearing of the decision. If it grants a rehearing, the board will rehear the case itself or assign the rehearing to an authorized representative, usually an administrative law judge. If an administrative law judge rehears the case, the basis for the rehearing is reviewed in a hearing similar to the original hearing. If the board rehears the case itself, it may allow the parties the opportunity to provide written or oral argument and may decide the case upon the record, including the transcript from the original hearing, with or without taking additional evidence.

The second administrative remedy available to dissatisfied appellants is a request to file charges. State law permits any person, with the consent of the five-member board, to file charges asking that adverse action be taken against a state employee, including an administrative law judge or hearing officer of the SPB. The basis for the charges cannot include issues covered by the State's employee grievance or other merit appeals processes and must be submitted within one year of the event(s) that led to the filing.

To assess the appellants' and disciplining departments' levels of satisfaction with the SPB, we obtained information on the number of requests to file charges and petitions for rehearing as well as the related results. Overall, appellants do not seem dissatisfied with the SPB's fairness in handling appeals. According to the SPB, only three requests to file charges related to misconduct by an administrative law judge. However, after reviewing one request and its related case file, the SPB concluded that the appellant's request was based strictly on the appellant's dissatisfaction with the administrative law judge's decision and not on the handling of the case. The SPB therefore denied the request. The second request was withdrawn, and the third request is pending. For fiscal year 1997-98, there were 36 petitions for rehearing; however, staff could not provide the number of petitions that related to staff misconduct in handling the cases. As a result, we examined 5 of the 36 cases and found that none of the 5 cases related to SPB staff misconduct. Typically, an appellant's petition for rehearing relates to concerns with the disciplining department's handling of the case.

To further ensure that hearings of appeals are conducted in a fair, unbiased manner, the SPB adheres to certain provisions of the Administrative Procedures Act (act). The act outlines a "Bill of Rights" that establishes protocols for hearing conduct.

Some of the protocols outlined relate to giving proper notice to involved parties of the action, opening hearings to the public, and restricting communications between the judge and one of the disputing parties when the other party is not present.

According to the chief counsel, the SPB also has an informal process available to appellants or disciplining departments that believe the SPB mishandled their cases. If they have a problem with an administrative law judge or the way a hearing was conducted, the parties can contact a member of the management team which consists of the chief administrative law judge, the chief legal counsel, executive director, or assistant executive officer. The chief counsel stated that it is quite rare for members of SPB's management team to receive complaints about the mishandling of an appeal.

Recent legislation enacting a code of conduct in the California Government Code for state administrative law judges, including SPB's administrative law judges, will likely increase the assurance of fair hearings. This new legislation, which became effective January 1, 1999, imposes on the State's administrative law judges many of the provisions found in the California Code of Judicial Ethics. It states that violation of these provisions by an administrative law judge could result in discipline under the State Civil Service Act. In February 1999, following enactment of the new legislation, the SPB issued a memo to its administrative law judges informing them about the new code of ethics.

Recent legislation enacts a code of conduct for administrative law judges.

RECOMMENDATIONS

To better ensure that it processes appeal cases within statutory and administrative time limits, the State Personnel Board (SPB) should take the following steps:

- Update caseload standards so that it can more effectively monitor staff performance to ensure it identifies potential inefficiencies as soon as possible.
- Continue efforts to obtain and implement a new caseload tracking system that includes the ability to monitor staff performance of intermediate deadlines, generate accurate reports about the age of a case, and automate the scheduling system.

To further streamline its appeals processes, the SPB should perform the following steps:

- Expand the expedited process it uses for evidentiary cases to encompass all employee appeals of minor disciplinary actions rather than continuing to limit this process to cases involving employees excluded from collective bargaining.
- Use its nonevidentiary process for appeals by employees whose departments terminated their employment during the employees' probationary periods.
- Require that employees appealing rejections that occurred during their probationary periods establish merit for their appeals before they schedule hearings.
- Require appellants and disciplining departments to confirm attendance for all hearings.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



KURT R. SJOBERG
State Auditor

Date: March 23, 1999

Staff: Steve Hendrickson, Audit Principal
Tammy Lozano, CPA
Vince Blackburn, Esq.
Aaron Bolin
Kathryn Lozano
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Agency's response to the report provided as text only:

State and Consumer Services Agency
Office of the Secretary
915 Capitol Mall, Suite 200
Sacramento, CA 95814

March 15, 1999

Kurt R. Sjoberg, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

RE: THE STATE PERSONNEL BOARD: ITS MANAGEMENT OF DISCIPLINARY
HEARINGS HAS IMPROVED, BUT FURTHER CHANGES ARE NECESSARY

Enclosed is our response prepared by the State Personnel Board to the Bureau of State Audits' Report No. 98114 entitled "The State Personnel Board: Its Management of Disciplinary Hearings Has Improved, But Further Changes are Necessary," as well as a copy of the response on a diskette.

If you have any questions or need additional information, please contact me at 653-2636.

Sincerely,

(Signed by: Aileen Adams)

Aileen Adams
Secretary

Enclosures

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California State Personnel Board
801 Capitol Mall
Sacramento, California 95814

TO: Kurt R. Sjoberg, State Auditor
Bureau of State Audits

FROM: Executive Office
State Personnel Board

SUBJECT: Response to Audit Report

This is in response to your Draft Audit Report entitled "The State Personnel Board: Its Management of Disciplinary Hearings Has Improved, but Further Changes are Necessary." Thank you for the advance copy and this opportunity to provide your office a reply.

The issues reflected in the report will aid the board in their efforts to further improve the processes for resolving appeals.

As the report acknowledges, improvements have been made in the timeliness of processing evidentiary cases. I am aware of the Board staff efforts to solve the burgeoning workload of Merit Appeals and anticipate progress on improving timeliness. We welcome your ideas and recommendations on making further improvements. I believe many of the recommendations have merit and we will work to implement them.

I appreciate the professional and comprehensive manner in which the audit was conducted and the well reasoned recommendations.

(Signed by: Walter Vaughn)

Walter Vaughn
Executive Officer
State Personnel Board

Attachment

**STATE PERSONNEL BOARD RESPONSE
TO BUREAU OF STATE AUDITS RECOMMENDATIONS**

Audit Recommendation:

“Update caseload standards so that the Board can more effectively monitor staff performance to ensure it identifies potential inefficiencies as soon as possible.”

Response:

We agree with this recommendation and are in the process of hiring a consultant to assist in the development of performance measures. The Board has already gathered preliminary data and expects to work with the consultant to develop and finalize measures.

The performance measures will be in place by March 2000.

Audit Recommendation:

“Continue efforts to obtain and implement a new caseload tracking system that includes the ability to monitor staff performance of intermediate deadlines, generate accurate reports about the age of a case, and automate the scheduling system.”

Response:

We agree with this recommendation. The 1999-00 Governor’s Budget already proposes a \$445,000 augmentation to the Board’s budget to purchase technology to support a new caseload tracking system. The requirements for the new system include an automated calendaring system, a real-time report generator with the ability to monitor key timelines and the ability to reduce record errors. We anticipate the bid being awarded in January 2000 with a completion date of January 2001.

Audit Recommendation:

“Expand the expedited process used for evidentiary cases to encompass all employee appeals of minor disciplinary actions rather than continuing to limit this process to cases involving employees who are not covered by unions.”

Response:

The Board agrees that there could be potential savings by expanding the use of the expedited process to include all employees.

The expedited process has been in use for approximately 12 months and only a limited number of appeals have been completed through this process. We will be conducting an evaluation of the expedited process including obtaining input from the parties before deciding to expand its use. We expect the evaluation will be completed by July 1999 and a decision will be made on modification and expansion of the process.

Audit Recommendation:

“Use the nonevidentiary process for appeals by employees whose departments terminated their employment during the employees’ probationary periods.”

Response:

The Board will be implementing this recommendation through a demonstration project with input from employees, unions and departments.

Audit Recommendation:

“Require that employees appealing rejections that occurred during their probationary periods establish merit for their appeals before they schedule hearings.”

Response:

This recommendation is already included in a current demonstration project within the Department of General Services (DGS) and is in use in several bargaining units. We will evaluate the use of this approach with input from the parties by the end of July 1999 and decide if it should be extended.

Audit Recommendation:

“Require appellants and disciplining departments to confirm attendance for all hearings.”

Response:

The Board concurs that this is an idea worth exploring. The Board currently requires parties to confirm attendance at nonevidentiary appeal hearings. The Board staff will expand the confirmation process to include evidentiary appeal hearings on a pilot basis by September 1, 1999 and complete an evaluation by December 1, 1999.

