



State of Delaware

Department of Labor

19th Annual Report

on the

Status of Workers' Compensation

Case Management

2016 Highlights

The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases. The department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Workers' Compensation Oversight Panel for their substantial efforts in fine-tuning the Health Care Payment System, and the members of the Delaware General Assembly for their ongoing support.

Reflecting on the work accomplished in 2016, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. In December 2016, the Workers' Compensation Oversight Panel voted to accept the recommendation of the Fee Schedule Subcommittee for a uniform 13.5% reduction of the current fee schedule. This reduction was to be obtained by bringing the reimbursements for certain procedures to rates no greater than percentages of Medicare as specified in Title 19, §2322B(3)(b) and then applying reductions to the remaining health care codes and services so as to achieve an overall 13.5% reduction. These reductions were reflected in the fee schedule beginning January 31, 2017 and complete the third and final phase of the three Fee Schedule reductions required by statute. The purpose of this last reduction is expected to meet the 33% reduction in aggregate workers' compensation medical expenses that is required by Title 19, §2322B(3)(a).
2. From an operational standpoint, OWC has achieved some impressive accomplishments. Despite an increase in the number of petitions filed in 2016, the average dispositional speed for the processing of a petition decreased by 30 days. The number of pending petitions at the end of the year remained basically the same as the number pending at end of 2015. The agency saw only 41 appeals to Superior Court. The SCARS case management system update has been implemented and the office is beginning to take advantage of the many new features. In addition, OWC is continuing to look at additional ways of streamlining processes.

Year in Review 2016

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its eighth anniversary on May 23, 2016. The 6 major components of the HCPS, which fall under the purview of the Workers' Compensation Oversight Panel and its subcommittees, are:

1. A Fee Schedule
2. Health Care Practice Guidelines
3. A Utilization Review program
4. A Certification process for health care providers
5. Forms for employers and health care providers
6. Data Collection

The 24 member WCOP contains representatives from the medical, legal, labor, business and insurance communities, including the Secretary of Labor and Insurance Commissioner. Since its expansion in July 2014, the Panel has convened without one of the "insurance carrier" representatives.

In 2016, the WCOP and its subcommittees met 10 times in total. The Panel met 4 times and its subcommittees met 6 times.

The OWC medical component supports the operations of the HCPS. In 2016, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. Increased volume in 2016 primarily came from the "providers," "carriers," "other states/entities," and "general" categories. Provider certification and fee schedule represented the largest number of contacts.

The Department of Labor's website contains comprehensive information on all five components of the HCPS, as well as links to send e-mail questions, subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data, download forms, access the Administrative Code ("the regulations"), access to the

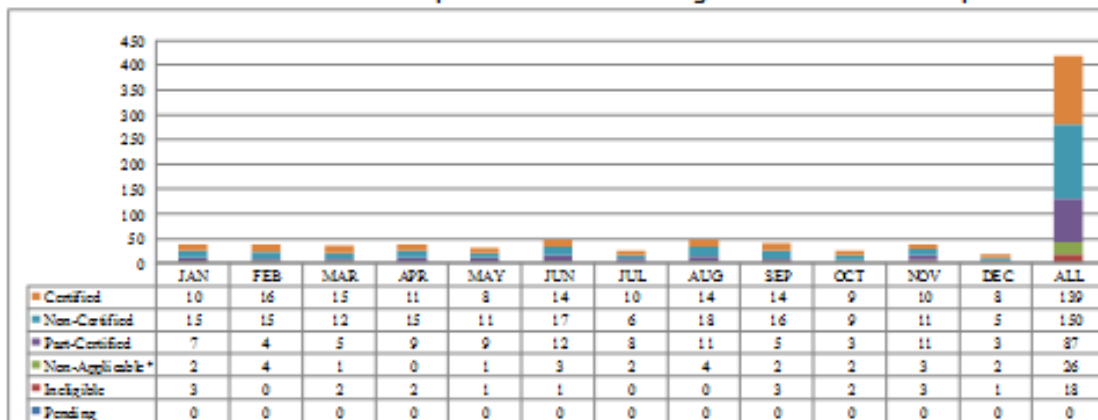
Workers' Compensation Act and complete the required continuing education course for certified health care providers.

Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course for a specific worker's injury. OWC deems a UR request "ineligible" when the request falls outside the specified purview of UR or does not comply with the "required content, presentation and binding method" for materials submitted for review. The like-specialist reviewer deems a UR request "non-applicable" when the appropriate practice guideline does not address the treatment under review.

In 2015, OWC received 397 requests for utilization review. In 2016, OWC received 372 requests for utilization review, which constituted a 6% decrease.

OWC Health Care Payment System (HCPS) 2016 Utilization Review Program*

UR statistics are compiled on a one-month lag based on date of receipt.



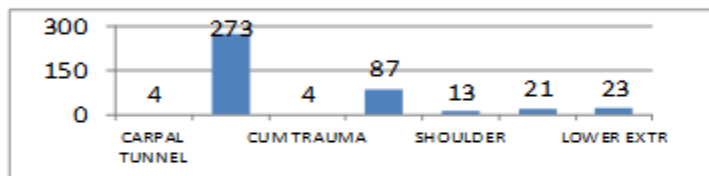
*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12 for instances when the injury does fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	34	38	32	35	27	41	24	42	36	19	31	18
Total - YTD	34	70	102	137	164	205	229	271	308	326	368	372
Total - Since 6/23/08	2704	2740	2772	2807	2834	2875	2898	2941	2978	2995	3028	3042

Chronic pain treatment, particularly pain medication, continued in 2016 to represent the treatment most challenged through utilization review. OWC participates on the Prescription Drug Action Committee (PDAC), which continued moving forward its recommendations to reduce prescription drug abuse in Delaware.

**OWC Health Care Payment System (HCPs)
2016 UR Practice Guidelines
through 12/31/16**

UR statistics are compiled on a one-month lag based on date of receipt.

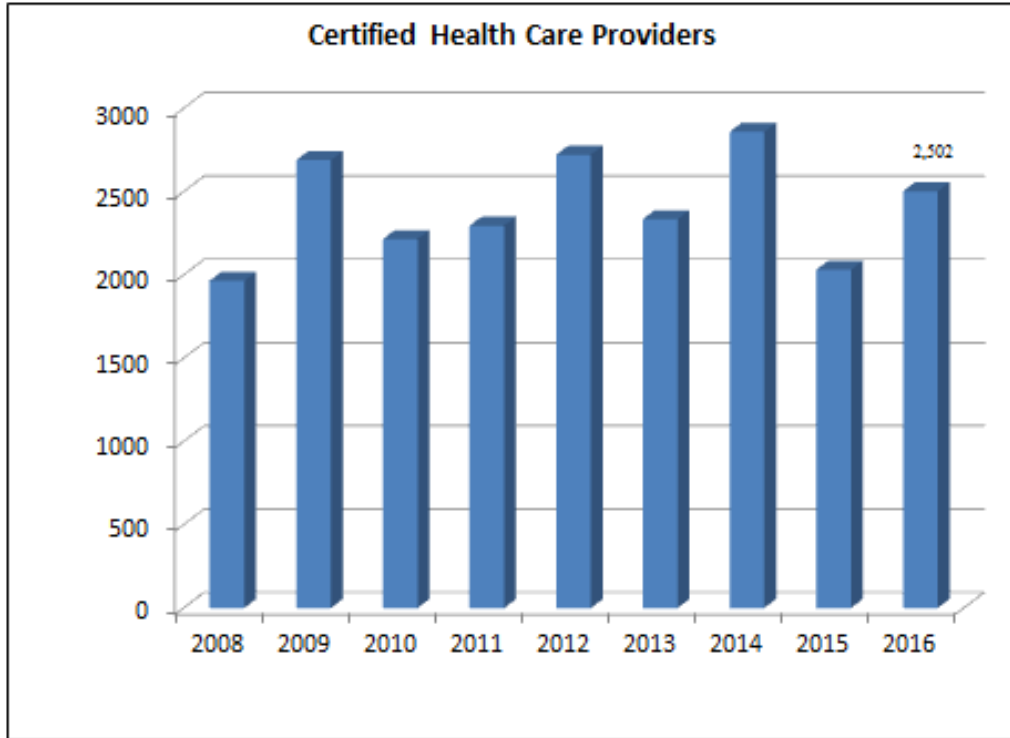


•Individual UR requests may involve multiple Practice Guidelines.

In an effort to further utilize available technology the OWC Utilization Review program is now sending review requests to all of our UR contractors via secure email instead of certified mail. In addition to the contractor receiving the UR request in a shorter period of time, this change is also allowing OWC to realize a large cost savings by no longer sending the large number of documents included in a UR request through certified mail. In addition to sending UR requests via secure email, additional savings have been attained by scanning and storing all UR files on a shared network drive eliminating the need for storage of paper files.

The number of certified health care providers increased from 2,031 in 2015 to 2,502 in 2016. This represents an 18% increase. Biennial compliance with the statutorily mandated continuing education course was the most common reason providers lost their certification. In September 2016, an updated provider

certificate course was released. The anchor date for completion of the course will remain the provider’s professional license renewal date. 2016 marked the third full year of this change, which helps providers better track the deadline.



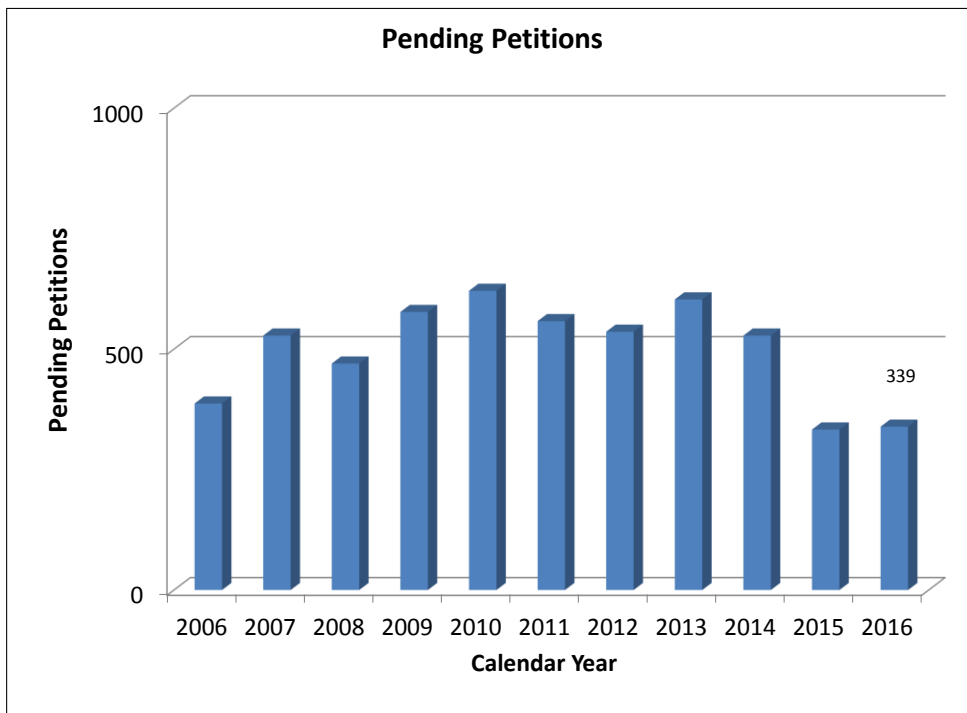
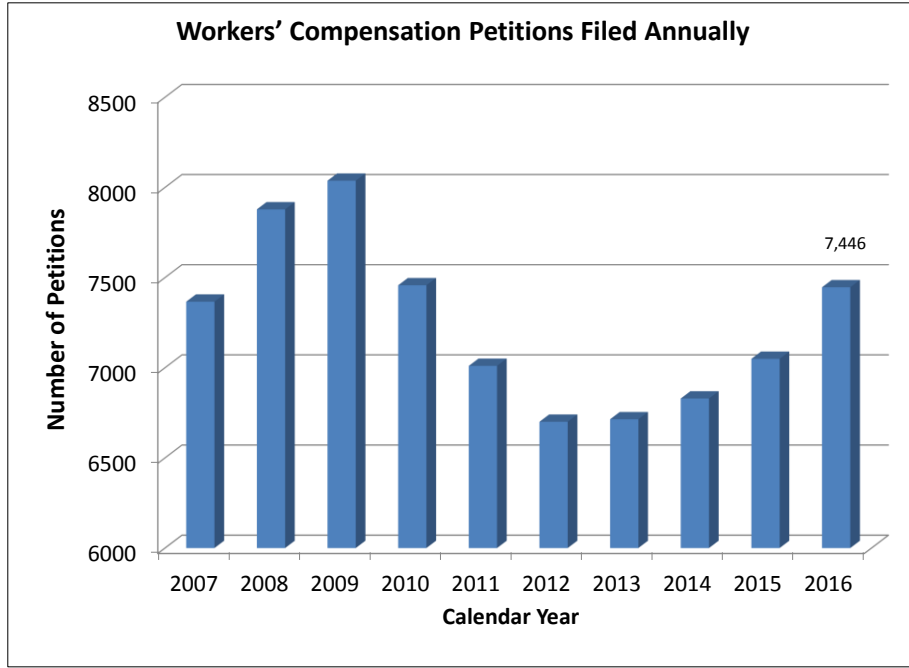
In 2012, OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers’ compensation benefits who may be subject to wage attachment for child support. OWC continues to participate in this agreement.

In 2016, approximately 2,026 stakeholders participated in OWC’s ListServ, which represents a 5% increase over the 1,921 subscribers at the end of 2015. The OWC ListServ provides a no-cost, quick, and effective tool to broadcast important changes and information via email. OWC also maintains a Facebook page at www.facebook.com/DelawareOWC.

The Office of Workers Compensation takes pride in its website full of valuable information and links, including a list of available services, the ability to search for employer insurance coverage, access to the Workers' Compensation Act, frequently asked questions, and forms:

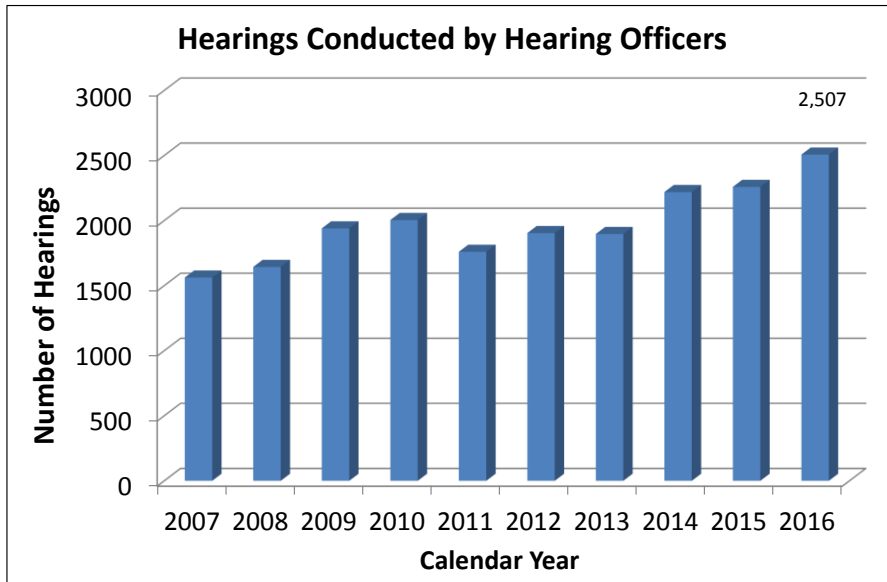
<http://dia.delawareworks.com/workers-comp/>

During 2016, the Office of Workers' Compensation successfully maintained its "no backlog" status. A backlog is defined as more than four months' worth of petitions. A total of 7,446 petitions were filed in 2016.



The workers' compensation specialists assisted 3,548 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 19,659 electronic requests for assistance this year, as compared to 18,104 in 2015 and 25,965 in 2014. This high level of electronic requests illustrates the public's preference for online information and electronic communication.

Hearing officers conducted hearings in 2,507 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



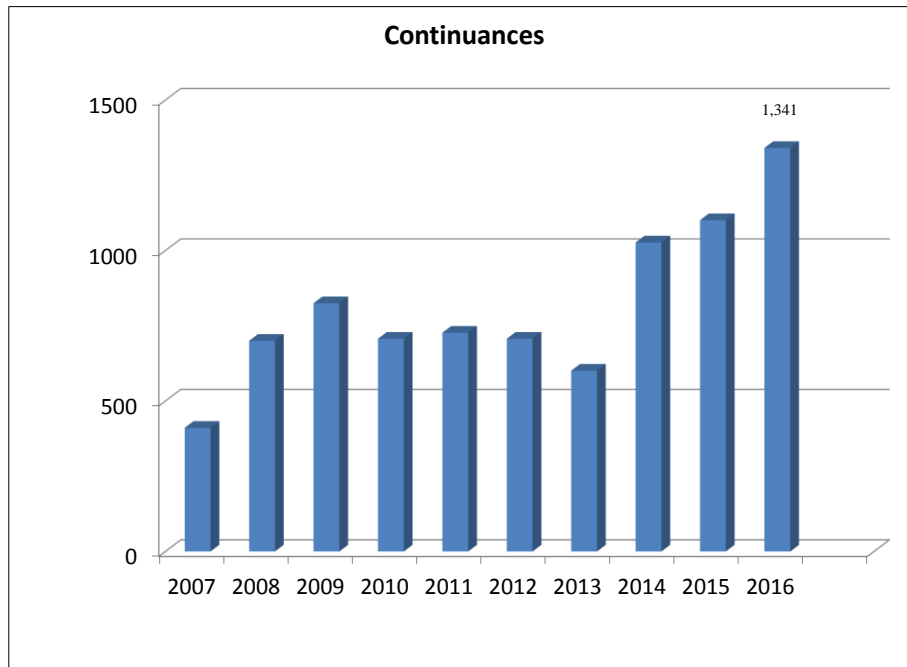
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page 6, the number of petitions filed annually increased by approximately 400 in calendar year 2016, as compared to 2015. The number of petitions heard by the Industrial Accident Board or by Hearing Officers also increased by 610 as shown on the graph below.



Continuances

In 2016, a total of 1,341 continuances were granted, which represents a 18% increase from the 1,101 continuances granted in 2015. This great majority of continuances are caused by the unavailability of a medical witness.



Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	911
A justifiable substitution of counsel for a party	7
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	58
• Records unavailable for review by parties prior to hearing	55
• Unforeseen circumstances	86
• Inadequate notice	10
• Case bumped	211

Board Member Activities

The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2016. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Buckley	147	94
Brady	108	68
Crane	118	76
Daniello	182	104
Dantzler	120	81
Doto	168	74
Groundland *	70	51
Hare	135	75
Hartranft **	81	35
Mauil	129	72
Mitchell	188	90

* Retired effective 5/31/16

** Term Began 6/29/16

The following table shows the number of Hearings on the Merits conducted by each Board Member.

Board Member	Number of Hearings on the Merits
Buckley	92
Brady	63
Crane	72
Daniello	115
Dantzler	76
Doto	70
Groundland	50
Hare	69
Hartranft	43
Mauil	68
Mitchell	94

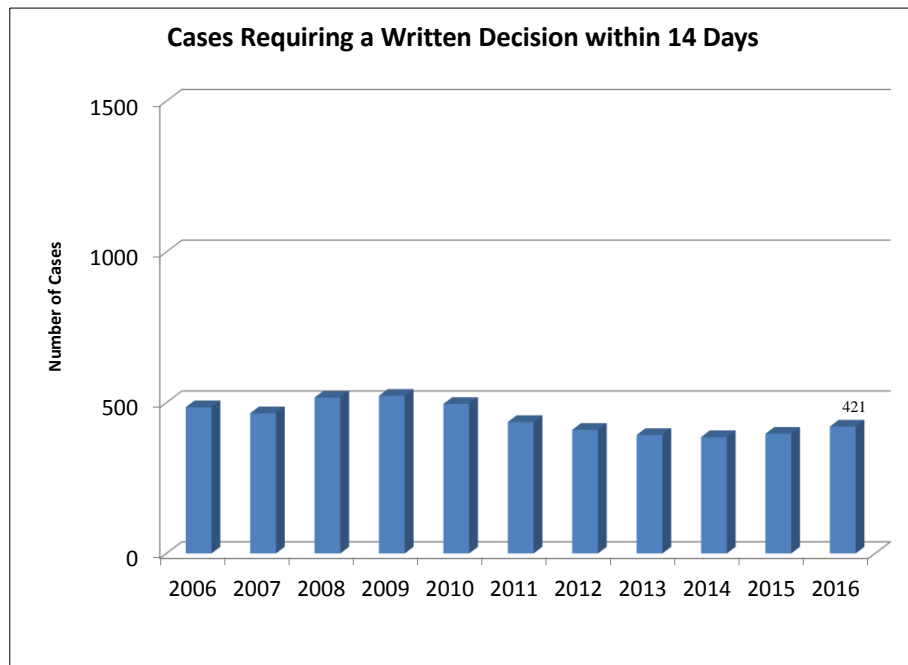
Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle *	67
J. Bucklin	66
S. Mack	50
D. Massaro	56
J. Pezzner *	44
J. Schneikart *	50
H. Williams	75
K. Wilson	50
C. Baum, Chief	77
Total	535

* In addition, in 2016, E. Boyle, J. Pezzner and J. Schneikart each did a workers' compensation mediation pursuant to DEL.CODE ANN. Tit. 19, §2348A.

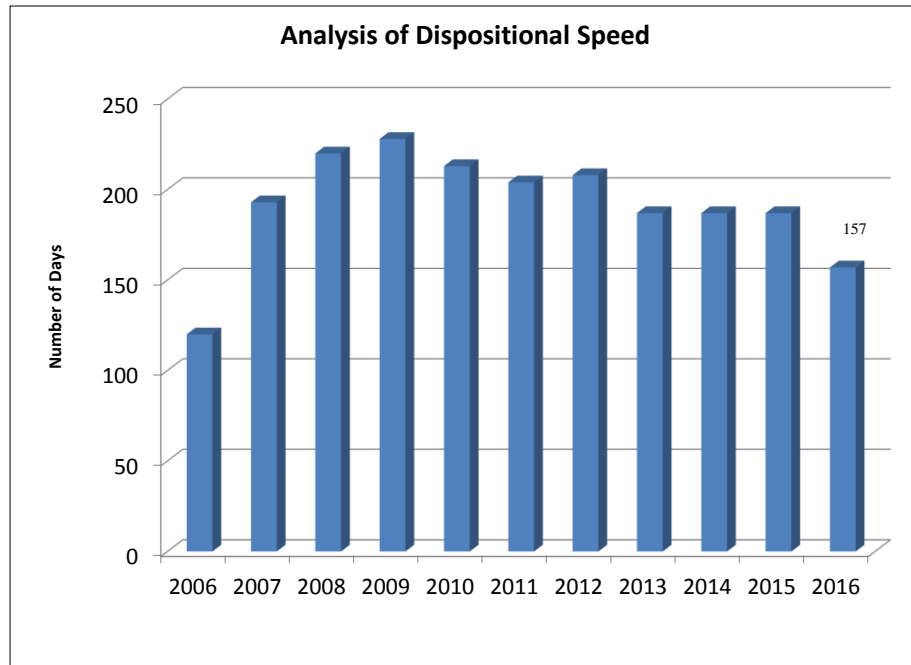
Compliance with Hearing & Decisional Deadlines

In 2016, 421 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The agency met the 14-day requirement in the vast majority of cases. The number of appeals continued to remain low, with only 41 appeals in 2016.



Analysis of Dispositional Speed

In 2016, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 157 days. The agency's efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions has allowed this average to decrease from 2015 to 2016.



Summary of Appeals

(Status of appeals taken as of December 31, 2016)

In the last five years, the Board (or Hearing Officers) have rendered 1,985 decisions on the merits. Of those decisions, 219 (approximately 11.03%) were appealed (an average of 43.8 per year). 186 of those appeals have been resolved. Only 14 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only **0.705%** of all decisions rendered in those five years.

Year Appeal Taken In:	2012	2013	2014	2015	2016
Total Number of Decisions:	429	394	370	393	399
Total Number of Appeals:	62	38	41	38	41
Affirmed:	33	23	18	8	2
Reversed and/or Remanded:	5	5	2	2	0
Dismissed/Withdrawn:	24	10	19	7	7
Pending: ¹	0	0	2	21	32

Five-Year Cumulative	
Total Number of Decisions:	21,985
Total Number of Appeals:	219
Affirmed:	99
Reversed and/or Remanded	14
Dismissed/Withdrawn	73
Pending:	33

¹ For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2015, some of those appeal results may change in the future because of decisions by the Supreme Court.

Departmental Recommendations

Workers' Compensation Oversight Panel (WCOP)

On October 12, 2016, the Insurance Commissioner announced that workers' compensation rates for 2017 would remain unchanged. For 2017, there were no changes in the overall levels of residual market rates and voluntary market loss costs. OWC will continue to provide the administrative support necessary for the Workers' Compensation Oversight Panel to further its efforts at reducing costs associated with the past increases in workers' compensation rates.

WCOP is continuing to research electronic billing for workers' compensation healthcare providers. Electronic billing would enable providers to receive payment for services more expeditiously.

Uninsured Employers

OWC continues to work to address the problem of employers in Delaware operating without workers' compensation insurance coverage. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. Further steps have been taken to fine employers who repeatedly refuse to obtain proper coverage. OWC is also reviewing current workers' compensation statutes to ensure that they contain the tools necessary to pursue non-compliant companies.

Self-Insurance

The Office of Workers' Compensation is continuing its review of the workers' compensation self-insurance program in its entirety. When an employer is self-insured, the employer takes on the liability of paying any costs associated with a workers' compensation injury suffered by one of its employees instead of those costs being handled through an insurance carrier. OWC's immediate concern is to address the resulting situation for workers' compensation claimants when a self-insured employer files for bankruptcy. Even though self-insured employers are

required to post a surety bond, OWC is finding that the bond amount is insufficient to cover the payment of all workers' compensation claims remaining after the company files for bankruptcy. This includes both payment for medical expenses as well as any indemnity benefits payable to the injured worker.

Another concern is how our statutes do not specify how the bond amount is to be calculated for self-insured employers. OWC is looking at having some consideration of the size of the company and the nature of the company's work. A third area to be addressed is how the current statutes do not adequately address the manner in which claims are to be paid from the bond proceeds when a self-insured employer does file for bankruptcy. OWC would also like to address the lack of requirements for an employer to be granted self-insured status as well as the lack of a periodic review of an employer's self-insured status and whether that status or bond amount continues to be appropriate for the employer.