



State of Delaware

Department of Labor

20th Annual Report

on the

Status of Workers' Compensation

Case Management

2017 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 2017, two issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. The Workers' Compensation Fee Schedule implemented effective January 31, 2017 contains a uniform 13.5% reduction in medical fees. 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. The implementation of this Fee Schedule completed the third and final phase of the three Fee Schedule reductions required by statute. The purpose of this last reduction is 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 2017, the number of pending petitions at the end of the year significantly decreased from the number pending at end of 2016. The agency saw only 29 appeals to Superior Court. In addition, in January 2017 OWC completed a large scale update to its SCARS case management system. This update provided staff with a system that is much more user friendly and allows OWC to make adjustments to parts of the system that previously required work by an outside vendor. OWC is continuing to look at additional ways of streamlining processes.

Year in Review 2017

The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its ninth anniversary on May 23, 2017. 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 2017, the WCOP and its subcommittees met 7 times in total. The Panel met 3 times and its subcommittees met 4 times.

The OWC medical component supports the operations of the HCPS. In 2017, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. Increased volume in 2017 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.

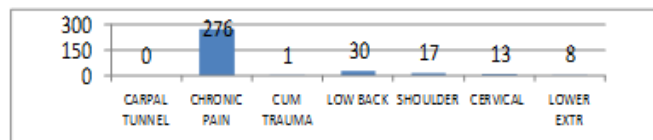
Utilization review (UR) provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within a 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 2016, OWC received 372 requests for utilization review. In 2017, OWC received 321 requests for utilization review, which constituted a 13.7% decrease.

Chronic pain treatment, particularly pain medication, continued in 2017 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)
2017 UR Practice Guidelines
through 12/31/17**

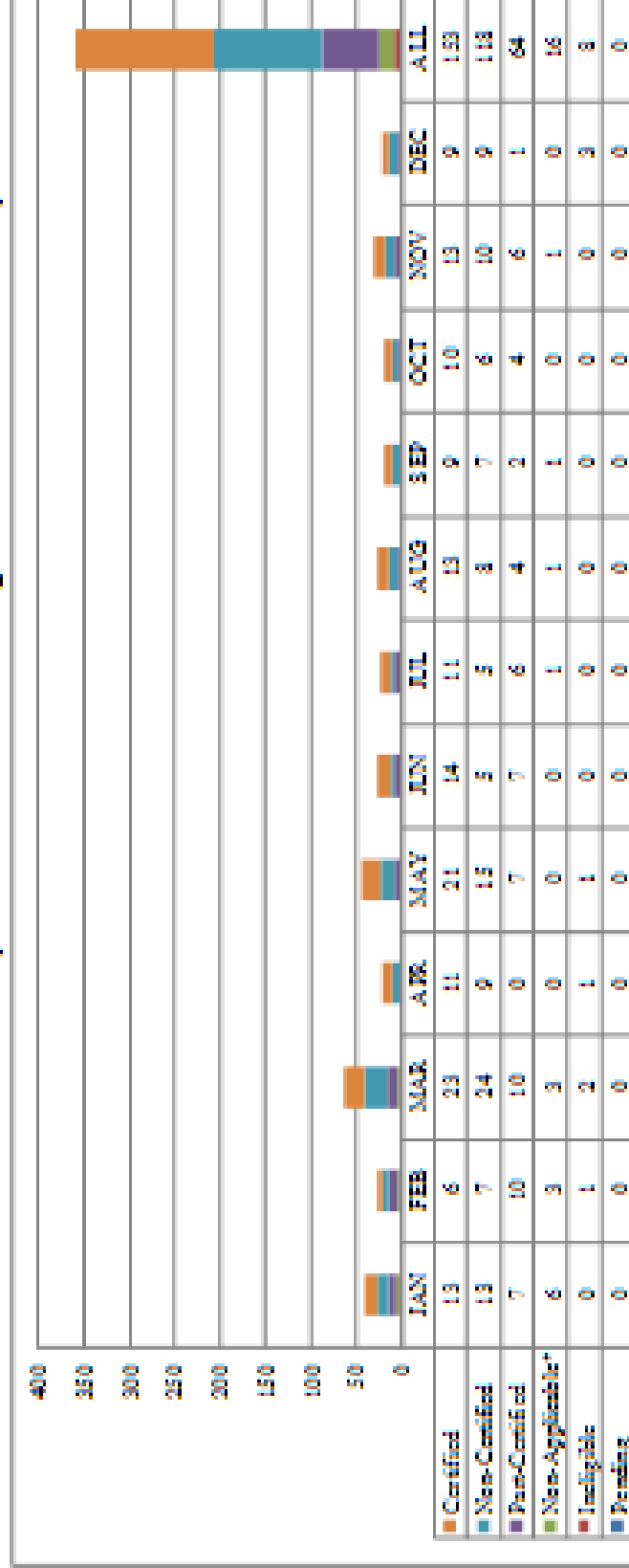
UR statistics are compiled on a one-month lag based on date of receipt.



*Individual UR requests may involve multiple Practice Guidelines.

OWC Health Care Payment System (HCPS) 2017 Utilization Review Program*

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

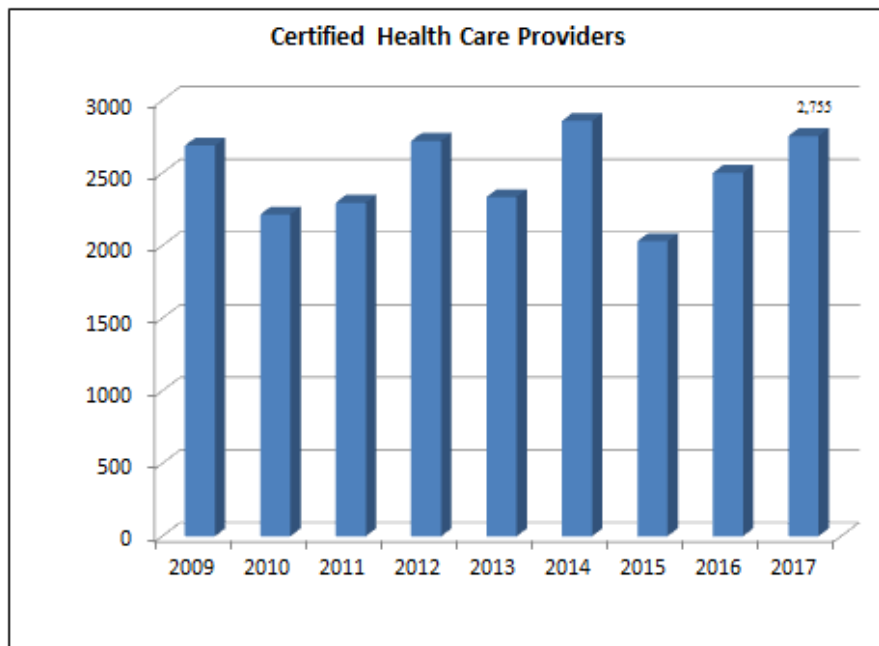


*The "Notice of Non-Applicability for Utilization Review" went into effect on 8/1/12, for instances when the injury does fall under one of the 7 Practice Guidelines, but the treatment to be reviewed is not addressed within those Guidelines. This determination is made by the UR contractor.

UR Requests	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Total - month	29	21	64	20	41	26	19	24	21	19	29	19
Total - YTD	29	60	104	124	165	190	206	233	254	273	302	321
Total - Since 6/23/03	3071	3092	3148	3188	3207	3232	3261	3276	3298	3316	3344	3383

In an effort to further utilize available technology the OWC Utilization Review program now has the capability of receiving electronically the requests for utilization review. The review requests continue to be sent to all of our UR contractors via secure email instead of certified mail. All of these processes allow the contractor to receive the UR request in a shorter period of time and OWC has been able 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 2,502 in 2016 to 2,755 in 2017. This represents a 10% increase. Biennial compliance with the statutorily mandated continuing education course was the most common reason providers lost their certification. The anchor date for completion of the course will remain the provider's professional license renewal date. 2017 marked the fourth full year of this change, which helps providers' better track the recertification deadline.



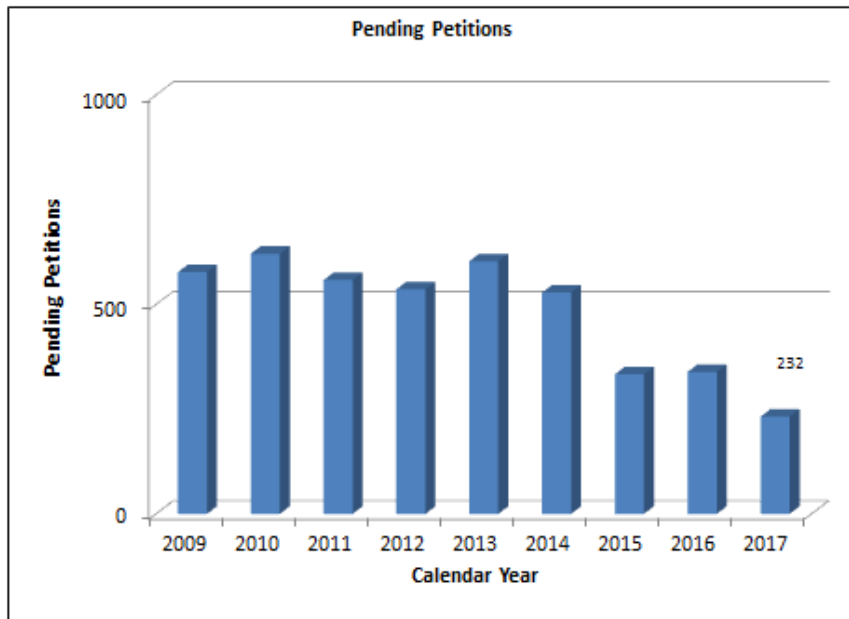
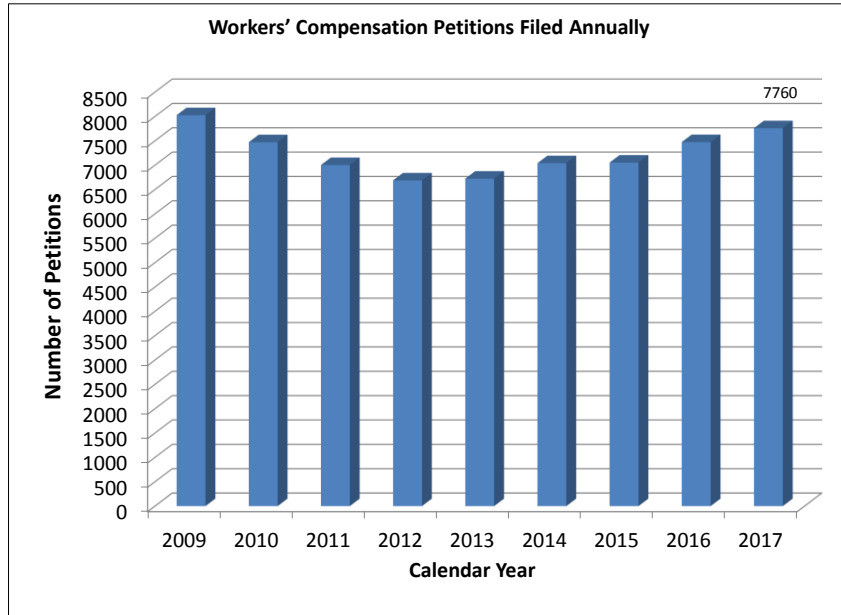
In 2012, OWC finalized an agreement with the Department of Health and Social Services, Division of Child Support Enforcement to share data on claimants collecting workers' compensation benefits who may be subject to wage attachment for child support. OWC continues to participate in this agreement.

In 2017, approximately 2,102 stakeholders participated in OWC's ListServ, which represents a 4% increase over the 2,026 subscribers at the end of 2016. 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:

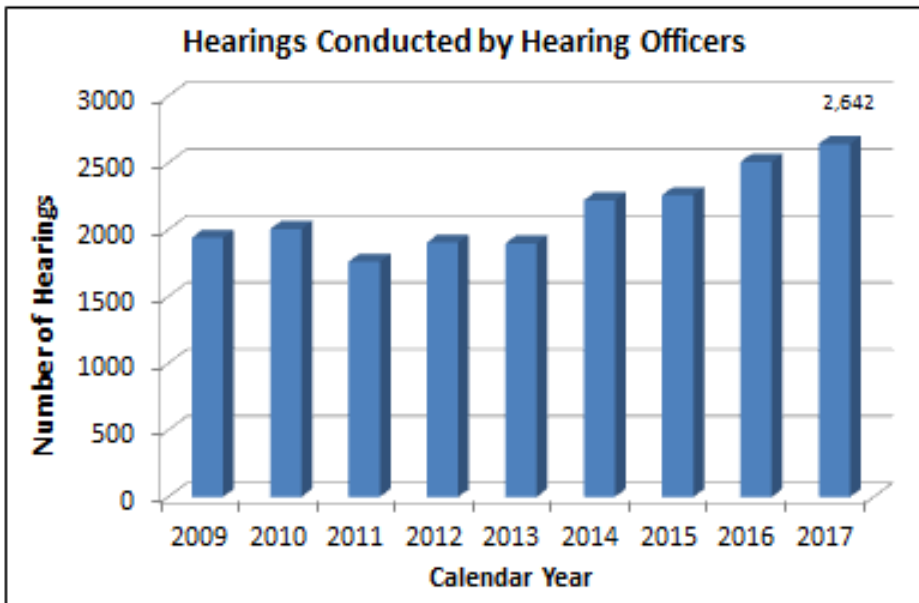
<http://dia.delawareworks.com/workers-comp/>

During 2017, a total of 7,760 petitions were filed continuing the upward trend in filings for the fifth year in a row. Despite this increase, the Office of Workers' Compensation successfully maintained its "no backlog" status. A backlog is defined as more than four months' worth of petitions.



The workers' compensation specialists assisted 3,239 callers. Other than injured workers, the additional contacts included attorneys, insurance carriers and employers. The agency received 17,366 electronic requests for assistance this year, as compared to 19,659 in 2016 and 18,104 in 2015. This high level of electronic requests illustrates the public's preference for online information and electronic communication.

Hearing officers conducted hearings in 2,642 cases which would have otherwise been heard by the Industrial Accident Board (IAB).



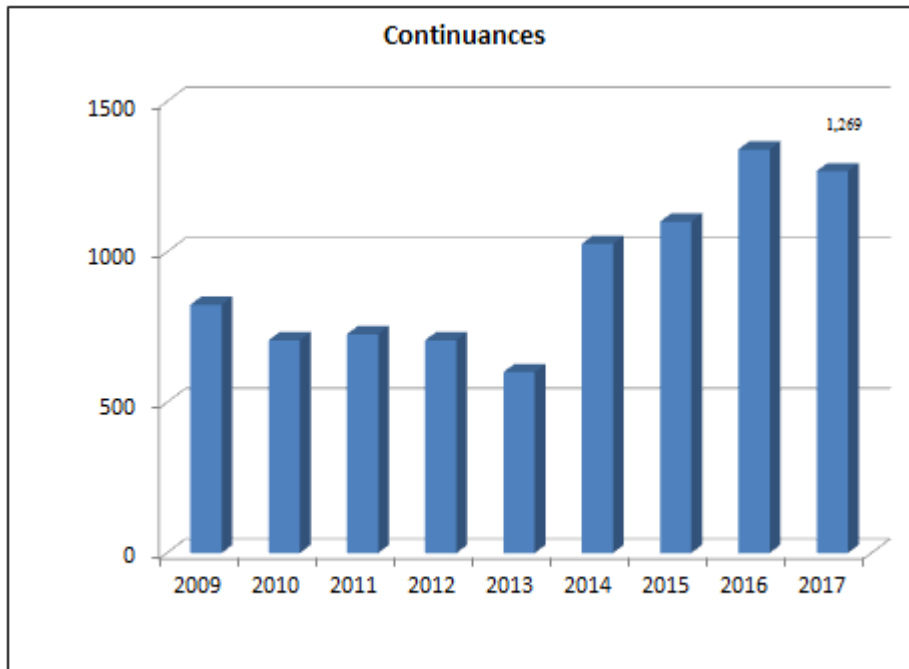
Petitions Heard by the Board/Hearing Officers

As seen in the chart on page 6, the number of petitions filed annually increased by approximately 300 in calendar year 2017, as compared to 2016. The number of petitions heard by the Industrial Accident Board or by Hearing Officers showed a slight decrease of 75 as shown on the graph below.



Continuances

In 2017, a total of 1,269 continuances were granted, which represents a 9% decrease from the 1,341 continuances granted in 2016. This great majority of continuances continue to be 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)	954
A justifiable substitution of counsel for a party	3
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	66
• Records unavailable for review by parties prior to hearing	38
• Unforeseen circumstances	74
• Inadequate notice	6
• Case bumped	56

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 2017. 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	165	84
Brady	143	67
Daniello	168	96
Dantzler	139	83
Doto *	70	37
Hare	148	74
Hartranft	145	80
Mauil	146	72
Mitchell	173	99
Murowany **	67	32
Wilson ***	143	67

* Retired effective 5/31/17

** Term Began 6/28/17

*** Term Began 1/25/17

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	75
Brady	35
Daniello	72
Dantzler	62
Doto	31
Hare	60
Hartranft	65
Mauil	66
Mitchell	79
Murowany	31
Wilson	56

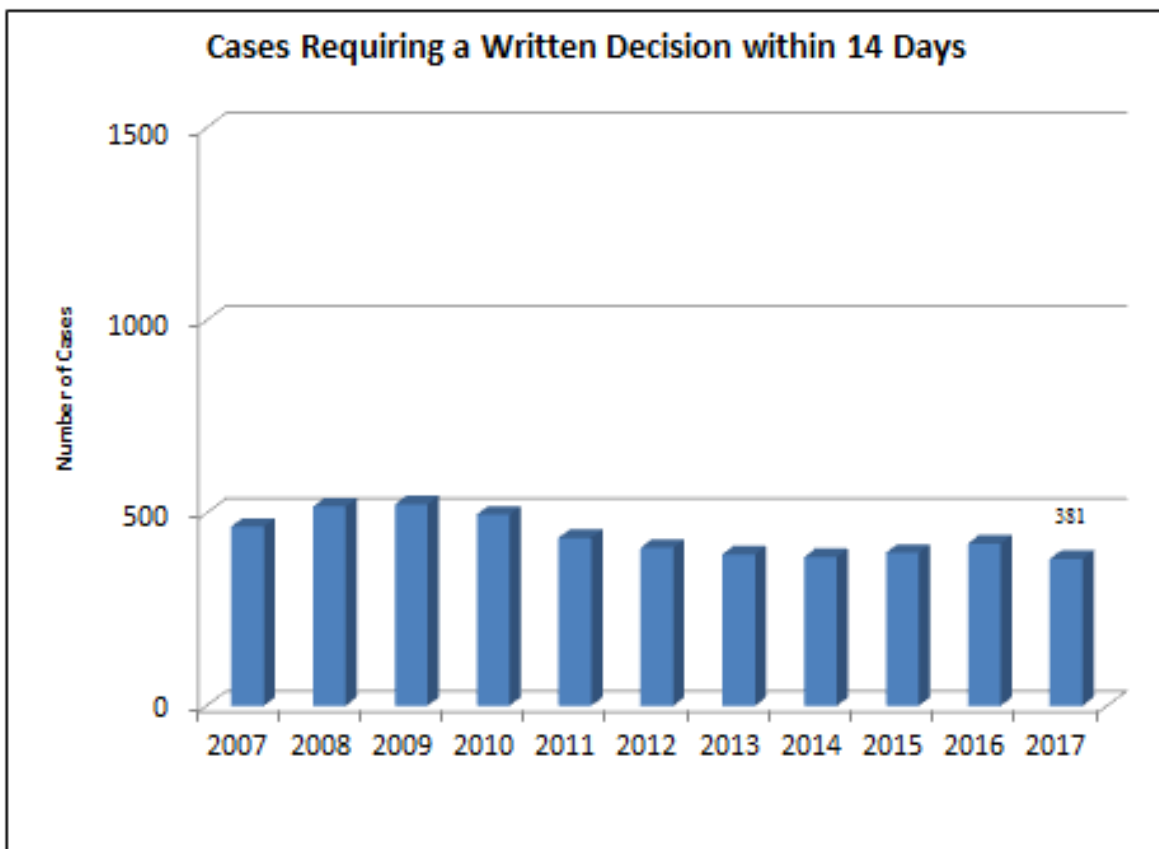
Caseload of Individual Hearing Officers

Hearing Officer	Number of Decisions, Orders and Rearguments Written
E. Boyle *	59
J. Bucklin	56
S. Mack	44
D. Massaro	50
J. Pezzner	60
J. Schneikart	46
H. Williams	65
K. Wilson *	48
C. Baum, Chief	61
Total	489

* In addition, in 2017, E. Boyle and K. Wilson each did a workers' compensation mediation pursuant to DEL.CODE ANN. Tit. 19, §2348A.

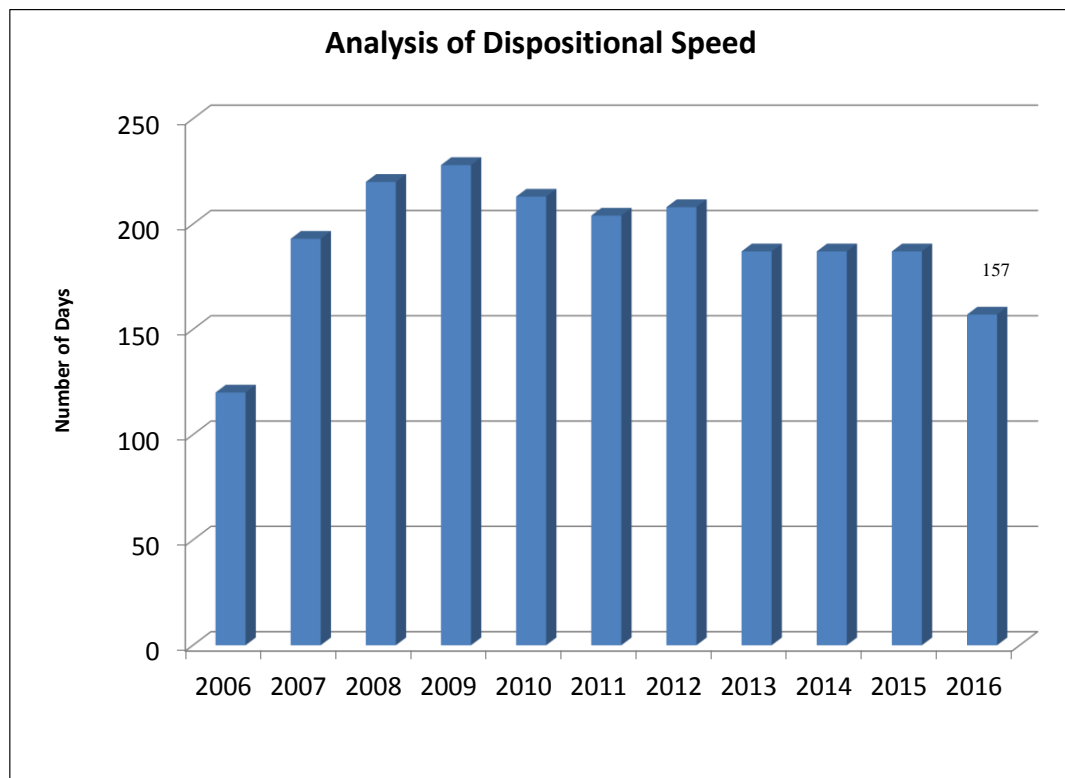
Compliance with Hearing & Decisional Deadlines

In 2017, 381 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 29 appeals in 2017.



Analysis of Dispositional Speed

In 2017, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 197 days. The agency is continuing its efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions.



Summary of Appeals

(Status of appeals taken as of December 31, 2017)

In the last five years, the Board (or Hearing Officers) have rendered 1,931 decisions on the merits. Of those decisions, 186 (approximately 9.6%) were appealed (an average of 37.8 per year). 178 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 0.725% of all decisions rendered in those five years.

Year Appeal Taken In:	2013	2014	2015	2016	2017
Total Number of Decisions:	394	370	393	399	375
Total Number of Appeals:	38	41	37	41	29
Affirmed:	24	18	22	16	1
Reversed and/or Remanded:	4	2	3	3	2
Dismissed/Withdrawn:	10	21	12	22	18
Pending: ¹	0	0	0	0	8

Five-Year Cumulative	
Total Number of Decisions:	1,931
Total Number of Appeals:	186
Affirmed:	81
Reversed and/or Remanded	14
Dismissed/Withdrawn	83
Pending:	8

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 2016, 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 18, 2017, the Insurance Commissioner announced that workers' compensation rates for 2018 would decrease. The decrease is 5.73% for the residual market and 3% for the voluntary market . 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.

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.