

MEMORANDUM

TO: Sixty-eighth Legislative Assembly
State of North Dakota
House Appropriations Committee
Human Resources Division

FROM: Timothy J. Dawson, Director
Office of Administrative Hearings

RE: OAH 2023-2025 Operating Budget Request
House Bill No. 1017

DATE: January 20, 2023

There have been many changes in recent history at the Office of Administrative Hearings ("OAH"), especially during this and the last biennium. What has stayed the same is our mission to conduct orderly, fair, and impartial hearings and to issue prompt, reasoned recommended or final decisions. If a person receives a benefit or license from the state, the person is entitled to a hearing under the Due Process Clause of the Constitution. There is procedural due process and substantive due process.

We provide substantive due process by deciding justly with well-reasoned decisions based on the law. We also provide real and perceived procedural due process,

Timothy J. Dawson DIRECTOR

2911 North 14th Street - Suite 303 | Bismarck, North Dakota 58503

PHONE 701-328-3200 | FAX 701-328-3254 | oah@nd.gov | nd.gov/oah

we hear the “other side” and are independent from the governmental entity that provides the benefit or license. If the governmental entity that provides the benefit or license were to make the determination, there is the perception of bias.

There have been many changes in the staff in the last few years. The present permanent administrative law judges (“ALJs”) are Jessica Binder, Hope Hogan, and me. I began as director in December 2015, when the previous director of OAH, Wade C. Mann, resigned. He was followed closely in early 2016 by Rosey Sand. Both went into private practice. Jeanne Steiner started about a year before me and resigned in September 2018 for a position in Arizona. Jeanne McLean, who started in March 2016, retired in March 2021. Hope Hogan started in November 2018. Jessica Binder started in July 2021.

OAH has five permanent FTEs - three ALJs and two support staff – and seven part-time, contract ALJs. (See attached organizational chart, Attachment “A.”) OAH's contract ALJs conduct primarily Workforce Safety and Insurance (“WSI”) hearings. Of the contract ALJs, four are in Fargo, two in Bismarck, and one in Dickinson.

OAH's three full-time permanent ALJs conduct a mixture of different agency hearings but, primarily, DHHS, PSC, WSI, Human Resource Management Services state employee grievance hearings, and occupational licensing hearings. One permanent ALJ

has almost a full workload of WSI hearings. The other two full-time ALJs conduct the other hearings that are not WSI hearings. The bulk of these hearings are DHS hearings. OAH will go forward into the 2023-2025 biennium with the same structure. However, workload considerations and the need for the replacement of contract ALJs may require new contract ALJs at some time in the future. Another option would be for OAH to employ more full-time, permanent ALJs. Currently, we do not have that authority.

OAH conducts hearings for state and local agencies and entities that are required to use OAH (see N.D.C.C. §§ 54-57-03(1), 40-51.2-12, 40-47-01.1, and 15.1-15-08); for state agencies that voluntarily use OAH, *e.g.*, the PSC, the Insurance Department, the Industrial Commission, the Department of Transportation for dealer licensing hearings, Student Loans of North Dakota for student loan hearings, colleges and universities for personnel hearings and Title IX hearings, and occasionally Job Service North Dakota for conflict unemployment compensation hearings; and for local entities such as cities or counties that voluntarily use OAH to conduct such hearings as employee discipline, tobacco sales enforcement, or public nuisance abatement hearings.

Over the years, OAH has conducted hearings for over 100 different state and local government agencies or entities. Some agencies make many requests for hearing each year, while others have made only a few requests for hearing since OAH was established. The table below shows the number of requests by year.

<u>Year</u>	<u>Hearing Requests</u>
2015	671
2016	717
2017	663
2018	646
2019	482
2020	432
2021	364
2022	404

In calendar year 2021, 23 different agencies or entities made 364 requests for hearing. In calendar year 2022, 27 different agencies or entities made 404 requests for hearing. In those two years, we had 768 requested hearings from 39 different agencies or entities. (See Attachment “B.”) This is comparable to the previous two years in which we had 914 requested hearings from 37 different agencies or entities.

Attachment “C” shows the number of hearings held for calendar years 2021 and 2022. This shows about 65 percent of the hearing requests went to hearing in those two years. In the previous two years 69 percent of the hearing requests went to hearing. Historically, between 45 percent and 55 percent of hearing requests have gone to hearing. In short, the number of hearing requests peaked in 2016 near the height of the

oil boom and has plateaued at approximately 400. An increase in DHHS hearing requests is expected as waivers instituted by the federal government due to COVID-19 expire and more recipients are denied benefits.

Attachment "D" shows 387 prehearing conferences held for calendar years 2021 and 2022, down from 457 for calendar years 2019 and 2020. Prehearing conferences are usually held for the more complex hearings. As a percentage of hearings requested, the percentage of prehearing conferences is stable at about 50 percent.

In short, over time the complexity of hearings is stable, the number of hearings requesting is stabilizing to a normal level, and more requests for hearing are going to hearing.

For the first 18 months of this biennium (July 1, 2021, through December 31, 2022), 33 different agencies or entities have made 576 requests for hearing. (See Attachment "E.") As you can see from the attachments, the bulk of requests for hearing this biennium have come from two agencies, DHS and WSI, which is typical for most biennia. Another increasingly frequent OAH user in the last few years is the PSC. OAH has also started conducting Title IX hearings for the University of North Dakota.

BUDGET

- The OAH budget was done with little or no change from last biennium. OAH reduced its budget professional services budget to allow for anticipated office space rent and information technology increases.
- The OAH budget is two lines; one for salaries and benefits for the 5 FTEs and one for operating. Of the operating line, 79 percent is to pay contract ALJs for work completed, 6.6 percent for IT, 5.7 percent for office space.
- The OAH budget is funded completely through special funds and with no federal funds.
- OAH received \$20,000 of American Rescue Plan Act of 2021 funds in one-time funding for the 2021-23 biennium from the 2021 Legislative Assembly for a web-based document management system. To date, \$2,800 has been spent updating our current case management system, a portion of which allows remote timekeeping entry by contract administrative law judges instead of entry by OAH permanent staff. Additionally, solutions for on-line document submission by parties to the hearings are being reviewed. There are other states in the process of implementing the same or similar systems and waiting for that implementation may provide meaningful information for OAH in implementing our system. Funds obligated by OAH for the system may or may not be made by June 30, 2023, and OAH requests until December 31, 2024, to obligate the funds to give OAH time to properly evaluate potential systems.

- OAH charges a fee for service. The rate of \$195 per hour has been in place since July 1, 2021. The rate will stay in place until July 1, 2023. At that time, the rate may be raised \$20 per hour.
- OAH has a continuing appropriation under North Dakota Century Code Section 54-57-07.

ACCOMPLISHMENTS AND CHALLENGES

In the 2019 session, House Bill No. 1064 was enacted into law and codified in N.D.C.C. § 54-57-09. This section provides:

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.

3. The office of administrative hearings and workforce safety and insurance shall report statistical information regarding results under the case processing standards and policies to the legislative management and the state advisory council each quarter. The reports must include the information required under subsection 1.

Appendix "F" shows how OAH responded to this challenge. We have reduced the average number of days from 290 to between 158 and 185 for the rolling six-month average in each of the last six months. This is a reduction of at least 105 days or about 36 percent and is below the goal of under 215 days.

With CARES Act money our hearing rooms have been equipped with the technology required to conduct video conferences for hearings. We can conduct touchless hearings that are in-person using the same technology. As challenges, there are the typical training and technical issues surrounding any technology project. There is the challenge that some people participating in administrative hearings are not technology savvy and do not have access to the proper technology equipment and services. In addition, the challenge with the new technology is deciding which hearings should be in-person and which hearings can be by video.

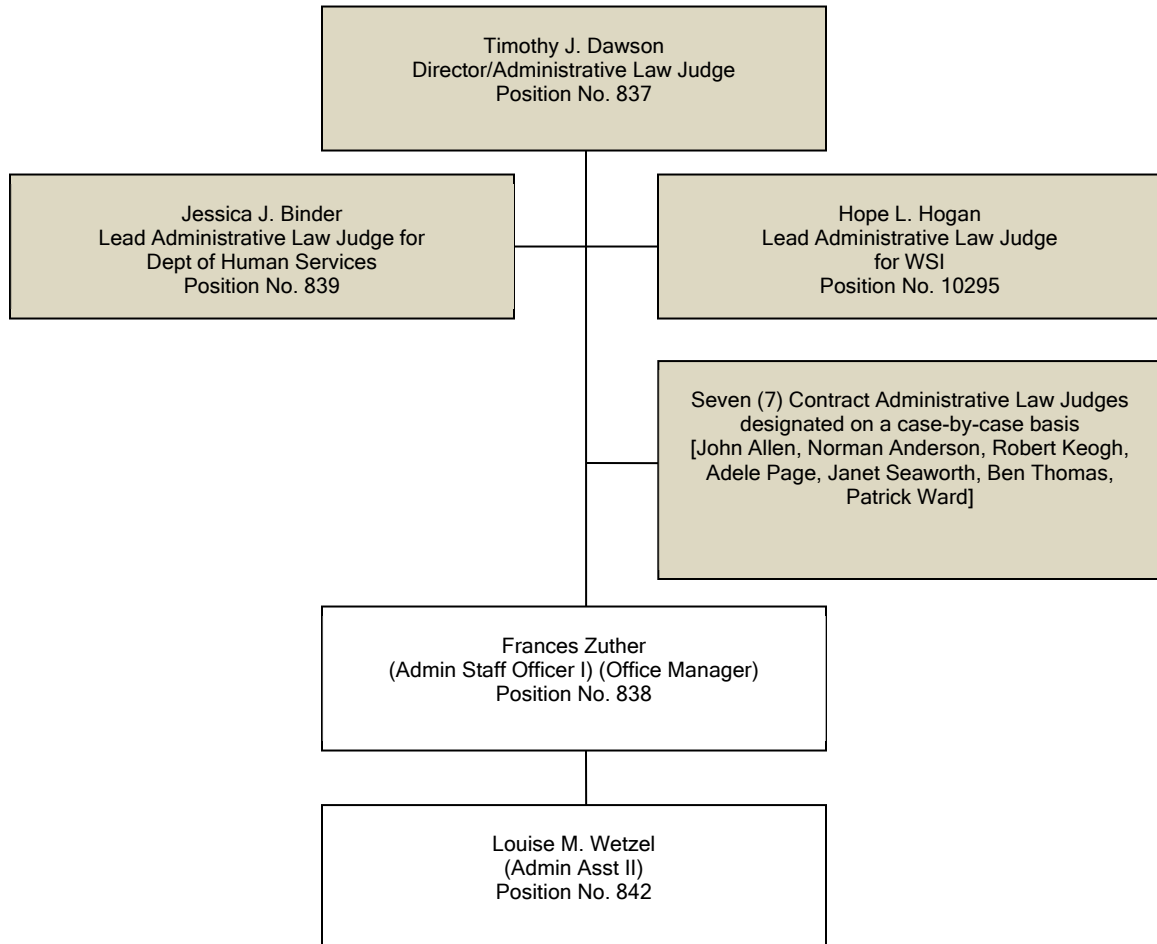
Some hearings contain issues related to credibility and these hearings are better in-person. It is easier to judge demeanor and credibility in-person. We sometimes are the first time anyone in government has heard the concerns of the person wanting the hearing. In some hearings, having an ALJ who takes a concern seriously enough to show up in-person reflects well on the accessibility of government, and this value exceeds the increase cost and inconvenience to the ALJ and involved agency. In addition to issues of credibility, we may continue to conduct in-person hearings when the interests at stake are important: the right to maintain a professional licensure or parental rights.

CONCLUSION

OAH continues to perform a vital task for state and local agencies, boards, commissions, and other governmental entities, both for mandatory and voluntary users of OAH's services, holding a wide variety of types of administrative hearings for these users. Having a separate entity such as OAH for conducting administrative hearings allows for the fair and impartial conduct of these hearings for state and local government and for the citizens of North Dakota. OAH's current structure will allow us to continue to meet the administrative hearing requirements of all users who depend on OAH to conduct their hearings.

OFFICE OF ADMINISTRATIVE HEARINGS
ORGANIZATIONAL CHART

January 1, 2023



Hearing Request Comparison

Requests Received Between 01-01-2021 and 12-31-2022

Office of Administrative Hearings

Agency	2021		2022		Total	
1 Beach Public School District No. 3	0	0.00%	1	0.25%	1	0.13%
2 Belcourt Public School District	0	0.00%	1	0.25%	1	0.13%
3 Cosmetology, Board of	0	0.00%	1	0.25%	1	0.13%
4 DHS, Human Services, Department of	164	45.05%	211	52.23%	375	48.83%
5 Dickinson State University	0	0.00%	1	0.25%	1	0.13%
6 Education Standards & Practices Board	0	0.00%	1	0.25%	1	0.13%
7 Fargo Public School	0	0.00%	1	0.25%	1	0.13%
8 Game and Fish Department	1	0.27%	1	0.25%	2	0.26%
9 Health, Department of	2	0.55%	1	0.25%	3	0.39%
10 Horace, City of	1	0.27%	0	0.00%	1	0.13%
11 Human Resource Management Services	0	0.00%	5	1.24%	5	0.65%
12 IC, Insurance Commissioner	1	0.27%	1	0.25%	2	0.26%
13 Industrial Commission	4	1.10%	5	1.24%	9	1.17%
14 Job Service North Dakota	0	0.00%	1	0.25%	1	0.13%
15 Labor, Dept. of	1	0.27%	4	0.99%	5	0.65%
16 Lake Region State College	1	0.27%	0	0.00%	1	0.13%
17 Maddock School District	1	0.27%	0	0.00%	1	0.13%
18 Mandaree Public School District #36	1	0.27%	0	0.00%	1	0.13%
19 Massage, North Dakota Board of	0	0.00%	1	0.25%	1	0.13%
20 Milnor Public School District	1	0.27%	0	0.00%	1	0.13%
21 Minot State University	0	0.00%	1	0.25%	1	0.13%
22 Munich Public School District	0	0.00%	1	0.25%	1	0.13%
23 New Town Public School District	0	0.00%	1	0.25%	1	0.13%
24 Nursing, State Board of	1	0.27%	0	0.00%	1	0.13%
25 Pingree-Buchanan Public School	0	0.00%	1	0.25%	1	0.13%
26 Professional Engineers & Land Surveyors Board	1	0.27%	0	0.00%	1	0.13%
27 PSC, Public Service Commission	11	3.02%	12	2.97%	23	2.99%
28 Public Employees Retirement Board	1	0.27%	0	0.00%	1	0.13%
29 Public Instruction, Department of	4	1.10%	6	1.49%	10	1.30%
30 Real Estate Appraiser Qualifications and Ethics, Board o	2	0.55%	0	0.00%	2	0.26%
31 Securities Department	0	0.00%	1	0.25%	1	0.13%
32 UND, University of North Dakota	9	2.47%	5	1.24%	14	1.82%
33 Valley City State University	1	0.27%	0	0.00%	1	0.13%
34 VP, City of Minot	1	0.27%	0	0.00%	1	0.13%

Hearing Request Comparison

Requests Received Between 01-01-2021 and 12-31-2022

Office of Administrative Hearings

<i>Agency</i>	<i>2021</i>		<i>2022</i>		<i>Total</i>	
35 VP, First District Health	1	0.27%	0	0.00%	1	0.13%
36 Washburn Public School District #4	0	0.00%	1	0.25%	1	0.13%
37 Water Commission, State/State Engineer	1	0.27%	1	0.25%	2	0.26%
38 Williston Public School District #1	0	0.00%	1	0.25%	1	0.13%
39 Workforce Safety & Insurance	153	42.03%	137	33.91%	290	37.76%
	364		404		768	

Hearings Held

Hearings Held Between 01-01-2021 and 12-31-2022

Office of Administrative Hearings

Agency	2021		2022		Total	
1 Addiction Counseling Examiners, Board of	1	0.4%	0	0.0%	1	0.2%
2 Belcourt Public School District	0	0.0%	1	0.4%	1	0.2%
3 DHS, Human Services, Department of	111	43.9%	142	58.2%	253	50.9%
4 Dickinson State University	0	0.0%	1	0.4%	1	0.2%
5 Education Standards & Practices Board	0	0.0%	1	0.4%	1	0.2%
6 Fargo Public School	0	0.0%	1	0.4%	1	0.2%
7 Game and Fish Department	1	0.4%	1	0.4%	2	0.4%
8 Health, Department of	1	0.4%	0	0.0%	1	0.2%
9 IC, Insurance Commissioner	1	0.4%	0	0.0%	1	0.2%
10 Industrial Commission	0	0.0%	1	0.4%	1	0.2%
11 Labor, Dept. of	1	0.4%	0	0.0%	1	0.2%
12 Physical Therapy, North Dakota Board of	2	0.8%	0	0.0%	2	0.4%
13 Pingree-Buchanan Public School	0	0.0%	1	0.4%	1	0.2%
14 PSC, Public Service Commission	12	4.7%	8	3.3%	20	4.0%
15 Public Instruction, Department of	4	1.6%	1	0.4%	5	1.0%
16 Real Estate Appraiser Qualifications and Ethics, B	0	0.0%	2	0.8%	2	0.4%
17 UND, University of North Dakota	3	1.2%	2	0.8%	5	1.0%
18 VP, City of Minot	1	0.4%	0	0.0%	1	0.2%
19 VP, First District Health	1	0.4%	0	0.0%	1	0.2%
20 Workforce Safety & Insurance	114	45.1%	82	33.6%	196	39.4%
	253		244		497	

Prehearing Conferences Held

Prehearing Conferences Held Between 01-01-2021 and 12-31-2022

Office of Administrative Hearings

<i>Agency</i>	<i>2021</i>		<i>2022</i>		<i>Total</i>	
1 Addiction Counseling Examiners, Board of	1	0.5%	0	0.0%	1	0.3%
2 Beach Public School District No. 3	0	0.0%	1	0.5%	1	0.3%
3 Belcourt Public School District	0	0.0%	1	0.5%	1	0.3%
4 Cosmetology, Board of	0	0.0%	1	0.5%	1	0.3%
5 DHS, Human Services, Department of	51	25.5%	50	26.7%	101	26.1%
6 Dickinson State University	0	0.0%	2	1.1%	2	0.5%
7 Education Standards & Practices Board	0	0.0%	1	0.5%	1	0.3%
8 Fargo Public School	0	0.0%	2	1.1%	2	0.5%
9 Health, Department of	1	0.5%	1	0.5%	2	0.5%
10 Horace, City of	1	0.5%	0	0.0%	1	0.3%
11 Human Resource Management Services	0	0.0%	3	1.6%	3	0.8%
12 IC, Insurance Commissioner	1	0.5%	1	0.5%	2	0.5%
13 Industrial Commission	4	2.0%	5	2.7%	9	2.3%
14 Job Service North Dakota	0	0.0%	1	0.5%	1	0.3%
15 Labor, Dept. of	3	1.5%	3	1.6%	6	1.6%
16 Maddock School District	1	0.5%	0	0.0%	1	0.3%
17 Massage, North Dakota Board of	0	0.0%	1	0.5%	1	0.3%
18 Minot State University	0	0.0%	2	1.1%	2	0.5%
19 Munich Public School District	0	0.0%	1	0.5%	1	0.3%
20 New Town Public School District	0	0.0%	1	0.5%	1	0.3%
21 Nursing, State Board of	1	0.5%	2	1.1%	3	0.8%
22 Pingree-Buchanan Public School	0	0.0%	1	0.5%	1	0.3%
23 Professional Engineers & Land Surveyors Board	0	0.0%	1	0.5%	1	0.3%
24 PSC, Public Service Commission	1	0.5%	1	0.5%	2	0.5%
25 Public Employees Retirement Board	1	0.5%	0	0.0%	1	0.3%
26 Public Instruction, Department of	9	4.5%	3	1.6%	12	3.1%
27 Real Estate Appraiser Qualifications and Ethics, Board o	2	1.0%	0	0.0%	2	0.5%
28 Securities Department	0	0.0%	2	1.1%	2	0.5%
29 UND, University of North Dakota	7	3.5%	5	2.7%	12	3.1%
30 VP, City of Minot	1	0.5%	0	0.0%	1	0.3%
31 VP, First District Health	2	1.0%	0	0.0%	2	0.5%
32 Water Commission, State/State Engineer	2	1.0%	1	0.5%	3	0.8%
33 Workforce Safety & Insurance	111	55.5%	94	50.3%	205	53.0%
	200		187		387	

Tuesday, January 3, 2023

Total Requests Received by Agency

Files Received Between 07-01-2021 and 12-31-2022

Office of Administrative Hearings

Agency	# of Files Received	
Beach Public School District No. 3	1	0.17%
Belcourt Public School District	1	0.17%
Cosmetology, Board of	1	0.17%
DHS, Human Services, Department of	285	49.48%
Dickinson State University	1	0.17%
Education Standards & Practices Board	1	0.17%
Fargo Public School	1	0.17%
Game and Fish Department	2	0.35%
Health, Department of	1	0.17%
Horace, City of	1	0.17%
Human Resource Management Services	5	0.87%
IC, Insurance Commissioner	2	0.35%
Industrial Commission	8	1.39%
Job Service North Dakota	1	0.17%
Labor, Dept. of	4	0.69%
Lake Region State College	1	0.17%
Mandaree Public School District #36	1	0.17%
Massage, North Dakota Board of	1	0.17%
Milnor Public School District	1	0.17%
Minot State University	1	0.17%
Munich Public School District	1	0.17%
New Town Public School District	1	0.17%
Nursing, State Board of	1	0.17%
Pingree-Buchanan Public School	1	0.17%
Professional Engineers & Land Surveyors Board	1	0.17%
PSC, Public Service Commission	18	3.13%
Public Instruction, Department of	8	1.39%
Securities Department	1	0.17%
UND, University of North Dakota	13	2.26%
Washburn Public School District #4	1	0.17%
Water Commission, State/State Engineer	2	0.35%
Williston Public School District #1	1	0.17%
Workforce Safety & Insurance	207	35.94%
Grand Total:	576	

OFFICE OF ADMINISTRATIVE HEARINGS

Average Days to ALJ Decision

Decisions Issued from 10/01/2018 - 12/31/2022

	Number of Matters	Request for ALJ to ALJ Decision Issued			Hearing Held to ALJ Decision Issued		
		Average	Median	Range	Average	Median	Range
October 1, 2018 - March 31, 2019	54	290	231	64 - 808	34	28	3 - 156
November 1, 2018 - April 30, 2019	60	278	230	64 - 808	32	29	3 - 156
December 1, 2018 - May 31, 2019	63	263	206	64 - 976	28	26	3 - 105
January 1, 2019 - June 30, 2019	62	259	205	64 - 976	27	25	3 - 105
February 1, 2019 - July 31, 2019	64	244	198	64 - 976	27	25	3 - 105
March 1, 2019 - August 31, 2019	72	246	186	69 - 976	25	25	3 - 99
April 1, 2019 - September 30, 2019	79	229	169	69 - 976	24	24	3 - 99
May 1, 2019 - October 31, 2019	75	215	159	69 - 976	24	24	4 - 99
June 1, 2019 - November 30, 2019	71	214	171	69 - 834	26	25	4 - 99
July 1, 2019 - December 31, 2019	64	196	159	57 - 481	26	26	6 - 99
August 1, 2019 - January 31, 2020	71	197	158	57 - 481	27	25	1 - 99
September 1, 2019 - February 29, 2020	63	187	154	57 - 428	26	24	7 - 93
October 1, 2019 - March 31, 2020	63	184	148	57 - 428	26	24	7 - 93
November 1, 2019 - April 30, 2020	55	176	147	57 - 428	28	24	3 - 93
December 1, 2019 - May 31, 2020	56	168	147	57 - 491	28	24	3 - 89
January 1, 2020 - June 30, 2020	64	165	147	46 - 491	27	23	2 - 89
February 1, 2020 - July 31, 2020	60	159	147	46 - 491	25	23	2 - 83
March 1, 2020 - August 31, 2020	60	157	147	46 - 491	27	25	2 - 83
April 1, 2020 - September 30, 2020	61	164	155	46 - 491	27	23	2 - 83
May 1, 2020 - October 31, 2020	62	165	156	46 - 491	25	22	2 - 81
June 1, 2020 - November 30, 2020	65	164	154	46 - 338	26	24	2 - 63
July 1, 2020 - December 31, 2020	61	170	155	40 - 362	28	27	3 - 63
August 1, 2020 - January 31, 2021	56	167	153	40 - 362	29	27	3 - 63
September 1, 2020 - February 28, 2021	56	171	157	92 - 362	29	27	3 - 63
October 1, 2020 - March 31, 2021	51	173	167	40 - 362	30	27	3 - 63
November 1, 2020 - April 30, 2021	53	171	167	40 - 362	30	27	3 - 63
December 1, 2020 - May 31, 2021	47	174	168	40 - 362	30	28	3 - 98
January 1, 2021 - June 30, 2021	48	172	155	85 - 379	29	28	2 - 98

OFFICE OF ADMINISTRATIVE HEARINGS

Average Days to ALJ Decision

Decisions Issued from 10/01/2018 - 12/31/2022

	Number of Matters	Request for ALJ to ALJ Decision Issued			Hearing Held to ALJ Decision Issued		
		Average	Median	Range	Average	Median	Range
February 1, 2021 - July 31, 2021	47	174	161	74 - 379	28	27	2 - 98
March 1, 2021 - August 31, 2021	48	166	142	38 - 379	28	28	2 - 98
April 1, 2021 - September 30, 2021	50	161	143	38 - 379	25	27	2 - 98
May 1, 2021 - October 31, 2021	50	161	144	38 - 379	24	23	2 - 98
June 1, 2021 - November 30, 2021	49	165	144	74 - 462	21	21	2 - 48
July 1, 2021 - December 31, 2021	48	160	146	67 - 462	22	22	2 - 46
August 1, 2021 - January 31, 2022	50	165	150	67 - 462	25	25	6 - 82
September 1, 2021 - February 28, 2022	52	170	154	67 - 462	26	26	6 - 82
October 1, 2021 - March 31, 2022	46	176	159	67 - 472	27	26	7 - 82
November 1, 2021 - April 30, 2022	47	179	164	67 - 462	31	27	7 - 82
December 1, 2021 - May 31, 2022	49	172	162	67 - 392	32	28	7 - 82
January 1, 2022 - June 30, 2022	44	175	160	82 - 392	32	26	7 - 82
February 1, 2022 - July 31, 2022	43	185	157	82 - 428	29	24	7 - 70
March 1, 2022 - August 31, 2022	37	178	155	82 - 428	27	23	7 - 70
April 1, 2022 - September 30, 2022	39	169	151	82 - 428	27	23	7 - 70
May 1, 2022 - October 31, 2022	38	166	145	80 - 428	25	24	7 - 65
June 1, 2022 - November 30, 2022	35	166	143	59 - 428	26	24	8 - 63
July 1, 2022 - December 31, 2022	35	158	139	59 - 428	27	27	8 - 63

*Includes initial decisions for workers benefits only; does not include reconsiderations, settlements, dismissals, stipulations.
Consolidated files are counted as one unit, not separate units.*