

# **State of Colorado**

## **Office of the State Auditor**

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Office of Administrative Courts  
Department of Personnel & Administration  
Performance Audit

**September 2008**



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September 8, 2008

To the Members of the  
Legislative Audit Committee, State of Colorado:

We respectfully submit our report on the Performance Audit of the Office of Administrative Courts, Department of Personnel & Administration. This report was prepared on behalf of the Colorado Office of the State Auditor by Sjoberg Evashenk Consulting, Inc., and includes our findings, recommendations and responses from the Office of Administrative Courts.

This performance audit was conducted pursuant to Section 8-47-101(3)(d)(II), C.R.S. of the Workers' Compensation Act of Colorado, that requires the State Auditor to conduct a performance review of the Administrative Law Judges (ALJs) who hear workers' compensation cases in the Office of Administrative Courts. Audit work was performed from April through July 2008 and focused on OAC activities occurring since issuance of the prior performance audit in November 2004. This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marianne P. Evashenk", is written over the typed name.

MARIANNE P. EVASHENK  
President

THE EQUATION FOR EXCELLENCE

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## Table of Contents

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Report Summary .....	ii
Recommendation Locator .....	v
Overview of the Office of Administrative Courts .....	1
Chapter I: Case Management and Administration.....	5
Case Timeliness .....	5
Appeals.....	11
Workload and Resource Allocation.....	14
Information Management .....	18
Chapter II: Customer Service and Public Perception.....	22
Public Perception .....	22
Customer Support and Assistance .....	25
Appendix A: Status of Prior Recommendations.....	29

## **Report Summary**

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### **Authority, Purpose and Scope**

This performance audit was conducted pursuant to Section 8-47-101(3)(d)(II), C.R.S. of the Workers' Compensation Act of Colorado, which requires the Colorado Office of the State Auditor to conduct a performance review of the Administrative Law Judges (ALJs) who hear workers' compensation cases in the Office of Administrative Courts (OAC) within the Colorado Department of Personnel & Administration. The Office of the State Auditor contracted with Sjoberg Evashenk Consulting, Inc. to conduct the audit.

The audit scope included a review of the performance and activities of, and records maintained by, the OAC as they pertain to Articles 40 and 47 of the Workers' Compensation Act. Audit work was performed from April through July 2008 and focused on OAC activities occurring since the prior performance audit was issued in November 2004. The audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

The objectives of the audit were to assess the timeliness of the workers' compensation hearing process, the number and impact of decisions that were reversed or remanded, the allocation of ALJ workload, the public perception of the OAC's performance with respect to matters arising under the Workers' Compensation Act, and the functionality of OAC's case management system to improve case processing and management oversight.

We wish to acknowledge the assistance and cooperation extended by management and staff at the OAC and the Department of Personnel & Administration.

### **Overview**

The OAC provides an administrative law adjudication system that is offered as an expedited alternative to the judicial courts. The OAC's 18 ALJs are assigned to one of three units based on the type of case: the Workers' Compensation Unit hears workers' compensation-related matters; the General Services Unit hears all other case types; and the Alternate Dispute Resolution Unit assists parties in resolving disputes through mediation and handles procedural hearings and processes motions for all case types. The OAC's workers' compensation workload ranged between approximately 56 percent and 59 percent of the OAC's total workload, as measured by billable hours, during Fiscal Years 2004 through 2008. In Fiscal Year 2008, the OAC had revenue of approximately \$4.1 million and an appropriation of 39.0 full-time equivalent (FTE) staff. During the same fiscal year, ALJs conducted 2,269 workers' compensation hearings.

### **Summary of Audit Findings**

The OAC has improved in several areas since the State Auditor's performance audit in 2004. Timeliness of scheduling hearings has improved, public satisfaction with the OAC's services has increased, and affirmation rates on appealed cases have increased.

However, the OAC could do more to enhance effectiveness and efficiency, to assure compliance with statutory mandates, and to improve management oversight of case processing and workload distribution. Additionally, customer service could be enhanced by making information and assistance more accessible to the public.

## **Case Management and Administration**

**The OAC is meeting some but not all statutory time frames.** Timeliness for case processing is a critical factor in determining the OAC's success, as delays adversely affect litigants needing timely resolution of disputes. We found improvements since 2004 in the OAC's timeliness in scheduling hearings, with 692 of 712 (or 97 percent) of regular hearings falling within the 180-day prescribed time frame. However, the OAC could do more to improve timeliness in closing out hearings and issuing orders. Cases requiring continuances were extended to an average of 71 days, while 25 percent of the orders issued exceeded statutory time frames from the final submission of evidence and arguments to the issuance of the order (30 calendar days prior to May 30, 2007, and 15 working days after May 30). Several factors contribute to delayed timeliness including limitations in courtroom space, restricted docket days resulting from ALJ flextime schedules, the underutilization of summary orders in lieu of full orders, and insufficient management oversight of mandated time frames.

**Processing of some appeals results in unnecessary delays.** Since 2004, there has been a decline in the number of ALJ decisions that have been appealed, as well as an overall increase in the affirmation rate of OAC decisions during Calendar Year 2007. At the same time, the OAC did not always ensure the timely processing of appeals. A sample of 30 appealed cases revealed that the OAC did not obtain complete briefings from responding parties for 9 of the 30 cases (or 30 percent) within the time parameters established in statute (20 days).

**The allocation of workload and resources should be better managed.** The OAC's workers' compensation workload declined significantly between Fiscal Years 2004 and 2008—cases docketed fell nearly 44 percent from 10,839 to 6,076; hearings held decreased about 39 percent from 3,698 to 2,269; and orders issued declined 20 percent from 8,957 to 7,159. At the same time, the number of ALJs devoted to workers' compensation cases and the amount of billable hours charged to these cases dropped only slightly, from 18,465 billable hours and 11.9 FTEs devoted in Fiscal Year 2004 to 16,486 billable hours and 10.9 FTEs in Fiscal Year 2008. According to OAC management, increased complexity requires more time to process cases, resulting in the relatively consistent staffing levels despite docketing fewer cases, holding fewer hearings, and issuing fewer orders. However, the OAC does not have data to demonstrate this complexity.

**The OAC does not have valuable information necessary to report on critical elements of its operations.** Accurate, useful, and timely information is necessary for management to identify potential inefficiencies in its operations, and to determine overall success or the degree to which it achieves statutory timeliness mandates. The OAC created manual and automated systems to record case information, but it has not created a

system—manual or automated—to produce the information it needs to identify problems or optimize performance on an OAC-wide basis.

## **Customer Service and Public Perception**

**The OAC’s method of gauging public perception could be enhanced.** For a dispute resolution organization such as the OAC, public trust and confidence in its processes is imperative. Public perception provides a critical indicator of success, and the OAC should be commended for its efforts to gauge public satisfaction through annual surveys. Its methodology for conducting the survey, however, could be improved to enhance its usefulness by broadening the scope of the survey and improving the method of selecting survey participants.

**Information and assistance is not sufficiently accessible, especially to those who are least familiar with the hearing process.** Easily understandable and accessible public information on the workers’ compensation hearing process is necessary to ensure the OAC meets its mission. Despite overall improvement in public perception since 2004, our 2008 customer service survey showed that *pro se*, or non-represented parties found the process to be difficult and were less satisfied than other parties. One reason for this is that the OAC has not developed a single, well-organized, and coherent source of workers’ compensation-related information for use by the public.

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**RECOMMENDATION LOCATOR**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
1.	10	Continue improving the timeliness of case management by evaluating options for improving docket availability, working with parties in advance of hearings, tracking and monitoring case timeliness, encouraging increased use of summary orders, and revising internal policies.	Office of Administrative Courts	Agree	June 2009 through July 2010
2.	13	Ensure timelier processing of cases under appeal by adopting guidelines for the granting of extensions, and developing an appeals monitoring and reporting process for managerial review.	Office of Administrative Courts	Agree	December 2008 through June 2009
3.	17	Improve existing methods for determining and assigning workload by investigating the cause for declines in cases docketed, hearings held, and orders issued; determining the effects of various factors on the workload of ALJs; adopting a standard workload measure and a case assignment methodology that addresses differences in cases and using the methodology to monitor workload and address changes; and making budget requests and resource allocations and reallocations consistent with the standard workload measure and case assignment methodology.	Office of Administrative Courts	Partially Agree	June 2009

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**RECOMMENDATION LOCATOR**

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<b>Rec. No.</b>	<b>Page No.</b>	<b>Recommendation Summary</b>	<b>Agency Addressed</b>	<b>Agency Response</b>	<b>Implementation Date</b>
4.	21	Improve the availability and use of information to more effectively monitor and manage operations by identifying the data needs of the OAC and key stakeholders, analyzing the cost-benefit of systems required to meet these needs, and ensure the involvement of key stakeholders and quality assurance personnel.	Office of Administrative Courts	Agree	July 2010
5.	25	Improve existing methods of assessing public perception by broadening the scope of OAC surveys, making the selection of survey participants more representative, initiating surveys within a shorter time frame, and reporting survey results to the public.	Office of Administrative Courts	Agree	June 2009
6.	27	Make information and assistance more accessible to litigants by improving the accessibility and usefulness of the information and by determining the most effective manner in which to provide support and assistance to <i>pro se</i> , or non-represented, parties.	Office of Administrative Courts	Agree	June 2009

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## **Overview of the Office of Administrative Courts**

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The resolution of disputes through an administrative hearing process rather than through litigation in civil courts is used extensively for matters involving government agencies at both the federal and state levels. The disputes handled through the administrative hearing process are those related to government agencies' rules and regulations, including the rules and regulations that govern eligibility determinations for public benefits. The Colorado Office of Administrative Courts (OAC), formerly the Division of Administrative Hearings, was statutorily created in 1976 to provide an accessible, independent, and cost-effective administrative law adjudication system in Colorado. With regard to disputes about workers' compensation benefits, statute [Section 8-43-201, C.R.S.] states that the director and the Administrative Law Judges (ALJ) employed by the OAC shall have original jurisdiction to hear and decide all matters arising under the Workers' Compensation Act of Colorado. Additionally, the Workers' Compensation Act [Section 8-47-101(3)(d)(II), C.R.S.] requires the Office of the State Auditor to conduct a performance review of the ALJs who hear workers' compensation cases.

The OAC, located within the Department of Personnel & Administration, includes a staff of ALJs. These ALJs preside over hearings similar to court trials, including testimony by witnesses and the submission of documents, all of which are governed by rules of procedure. By statute [Section 24-30-1003(2), C.R.S.] ALJs must meet the same qualifications as district court judges in Colorado. The OAC adjudicates hearings for more than 50 state agencies, counties, boards, and other entities, including the Departments of Health Care Policy and Financing, Human Services, Regulatory Agencies, and the Division of Workers' Compensation (DOWC)—located within the Department of Labor and Employment—the OAC's largest client.

### **Organizational Structure**

The OAC is organized into three administrative units: Workers' Compensation, General Services, and Alternate Dispute Resolution. The Workers' Compensation Unit conducts hearings of workers' compensation disputes involving, for example, issues of compensability for injuries that occurred on the job. The General Services Unit hears all other types of cases, including those involving disputes over public assistance benefits and state licensing activities. ALJs assigned to these units generally work only on the cases specific to their units although some ALJs hear cases originating in both units. Workers' compensation hearings constitute the majority of the OAC's billable hours—annually ranging between approximately 56 percent and 59 percent of total billable hours between Fiscal Years 2004 and 2008. ALJs assigned to the Alternate Dispute Resolution Unit assist parties in resolving disputes through mediation, handle procedural hearings, and process motions for all case types. The OAC also employs administrative staff who handle docketing, customer service, and other administrative functions. To provide access statewide, the OAC established three regional hearing offices in Denver, Grand Junction, and Colorado Springs. Each office oversees one or more regional courts. The OAC employs 18 ALJs—15 ALJs are located in the Denver office, 2 in Colorado Springs, and 1 in Grand Junction.

## Fiscal Overview

For Fiscal Year 2008, the OAC had revenue of approximately \$4.1 million and an appropriation of 39.0 full-time equivalent (FTE) staff. The following table shows the OAC's revenue, expenditures, and FTE for Fiscal Years 2004 through 2008.

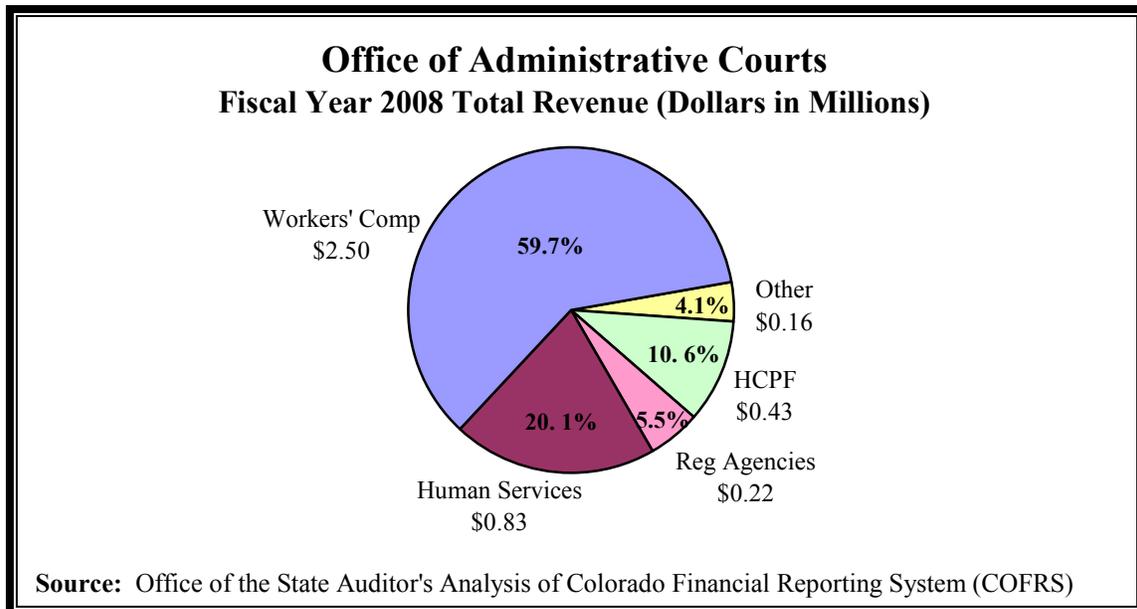
**Table A: OAC Revenue, Expenditures, and FTE, Fiscal Years 2004-2008**

<b>Office of Administrative Courts Revenue, Expenditures, and Appropriated FTE Fiscal Years 2004 Through 2008 (Dollars in Millions)</b>					
	2004	2005	2006	2007	2008
<b>Revenue</b>	\$3.7	\$3.5	\$3.8	\$4.0	\$4.1
<b>Expenditures</b>	\$3.4	\$3.8	\$3.7	\$4.0	\$4.0
<b>Appropriated FTE</b>	39.3	39.0	39.0	39.0	39.0

**Source:** Office of the State Auditor's Analysis of Colorado Financial Reporting System (COFRS) data and Fiscal Years 2004 through 2008 Long Appropriation Bills.

The OAC receives its revenue from the agencies for which it provides hearings. As the following chart indicates, about 60 percent of the OAC's Fiscal Year 2008 revenue of \$4.1 million was from the Division of Workers' Compensation (DOWC).

**Figure A: OAC Revenue Sources, Fiscal Year 2008**



## **Hearing Process**

Colorado’s workers’ compensation laws provide for certain benefits to be paid by employers to workers who are injured on the job. Disputes may arise as to whether an injury is compensable, the amount of compensation, the type of disability, or other workers’ compensation-related issues. When a party wishes to take legal action to resolve a workers’ compensation dispute, they must file an application with the OAC for a hearing before an ALJ. A hearing will be held before the ALJ and the ALJ will issue an order setting forth his or her decision. Parties may either represent themselves in this process (referred to as *pro se*) or they may obtain legal representation.

Workers’ compensation hearings can be one of two types: merit or procedural. Merit hearings are hearings in which witnesses are sworn in and testimony is taken. At the conclusion of the merit hearing, the ALJ issues a final order that is intended to resolve a substantive issue. Merit hearings require an application for hearing by one of the parties. By contrast, procedural hearings are hearings for matters in which no witnesses are sworn and no testimony is taken. These are usually brief and include matters such as motions to continue the merit hearing at a later date. Procedural hearings result in one or more procedural decisions and do not require a separate hearing application.

Orders issued as a result of a hearing can also be one of two types: summary or full. A full order contains specific findings of fact, determinations of credibility and/or persuasiveness, conclusions of law, and the judge’s order granting or denying benefits. A full order is very specific and lengthier than a summary order. A summary order is meant to be shorter and less specific than a full order. It does not necessarily contain findings of fact, omits conclusions of law, and is essentially a statement of the ALJ’s order granting or denying benefits. A party dissatisfied with an ALJ’s summary order may request a full order. A party then dissatisfied with an ALJ’s full order can file a Petition to Review (PTR), at which point the ALJ must issue a “supplemental order” revising or clarifying the original order, or must forward the case to an appellate body within the Department of Labor and Employment known as the Industrial Claim Appeals Panel (ICAP).

## **Audit Scope and Methodology**

The Colorado State Auditor is required to conduct this audit under Section 8-47-101(3)(d)(II), C.R.S. of the Workers’ Compensation Act. Sjoberg Evashenk Consulting, Inc. was engaged to perform this audit under contract with the Office of the State Auditor. According to statute, the review should include the following issues:

- Time elapsed from the date of hearing until decisions are rendered by the ALJs;
- Time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the ALJs;
- Number of decisions that are reversed upon appeal to the ICAP and to the Court of Appeals respectively;
- Workload or number of cases assigned to each ALJ; and

- Public perception of the quality of the performance of the Office of Administrative Courts with respect to matters arising under the Workers' Compensation Act of Colorado.

This audit focused on the OAC's activities since the prior performance audit was completed in November 2004. The audit scope included a review of the timeliness of hearings, the distribution and management of workload, and the frequency that ALJ decisions are reversed on appeal. We evaluated the public's perception of OAC's quality of performance as well as the effectiveness of the customer service OAC provides. Finally, we determined the efficiency of OAC's data systems and reviewed the implementation of prior audit recommendations.

As part of the audit work, we reviewed relevant statutes, rules, policies, procedures, prior audit reports, and other documentation related to the OAC's responsibilities; interviewed ALJs, staff, and management from the OAC, DOWC, and ICAP; evaluated the processes, procedures, and practices employed by the OAC; obtained and analyzed workers' compensation hearing data from the OAC's information system and from the DOWC's information system and compared results to statutory requirements. We also assessed public perception of OAC services by analyzing results from the OAC's annual public perception surveys from 2004 through 2007, and conducted an independent supplemental telephone survey of parties appearing before ALJs between January and March 2008. We compared the results of our analyses against those reported in the 2004 performance audit to identify trends, patterns, and changes, and to determine whether improvements have been made. Fieldwork was conducted from April through July 2008. This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

Our review of the implementation status of recommendations contained in the prior 2004 audit is set forth in Appendix A.

## **Chapter I—Case Management and Administration**

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### **Background**

Inherent in the Office of Administrative Court's (OAC) mission is the need for its Administrative Law Judges (ALJ) to produce quality decisions in a timely fashion. Specific statutory time frames for case processing underscore the parties' expectations for a relatively quick hearing and appellate process. Further, the disposition of those appeals also provides an indicator of the quality of decisions rendered by ALJs. To ensure timeliness and quality, the OAC must ensure that its caseload is properly allocated among its ALJs and that an appropriate level of staff resources is applied to the caseload. To achieve what is needed in terms of timeliness, quality, and workload allocation, the OAC must have ready access to the information required to make good management decisions.

In this chapter, we discuss the effectiveness of the OAC's case management, appeals processing, resource allocation, and information management practices. Overall, we found the OAC has made some improvements in its case processing since the State Auditor's 2004 performance audit. However, we also identified areas for further improvement to ensure the efficient management of cases and appeals, allocation of resources, and management of information. We discuss these issues in the remainder of this chapter.

### **Case Timeliness**

The General Assembly has mandated a series of time frames for processing workers' compensation cases through different stages of the administrative hearing process. These mandates do not include an overall maximum time within which all cases must be initiated and concluded. Nonetheless, taken collectively, they clearly reflect the General Assembly's intent that cases progress at a pace that ultimately results in reasonably timely administrative law decisions.

By statute, workers' compensation cases can move through the hearing process according to a series of either standard or expedited time lines. Most cases follow the standard processing time lines. According to statute [Section 8-43-203(1)(a), C.R.S.], if a denial of liability by the insurance carrier or employer results in undue financial hardship, parties may apply for an expedited hearing. The purpose of the expedited process is to ensure that litigants who are unable to afford medical treatment for their injuries receive quicker resolution of their workers' compensation claims than is allowable under the standard time lines. The General Assembly also mandated time frames for processing expedited cases to reflect its intent that these cases progress through the hearing process more rapidly than standard cases.

### **Phase One – Application to Hearing**

The General Assembly established time frames for processing workers' compensation hearings from the point of application to the commencement of the hearing. These statutory time frames were revised during the 2007 Legislative Session through Senate

Bill 07-258, and allow for a variety of extensions, or rescheduling of hearings, when the parties agree to them or when specific circumstances arise. In general, the new statutory time frames are less stringent than the time frames in place during the 2004 performance audit. For standard case processing, statute [Section 8-43-209, C.R.S.] now allows for 180 days (six months) from the time a party applies for a hearing to the time the hearing is held, although current statute also allows for additional extensions for exceptional circumstances and at the discretion of the ALJ. This compares with the 160-day maximum (just over five months) time frame permitted under prior statute, in which there were no provisions for additional extensions. We reviewed the timeliness of case processing for the 712 standard merit cases completed during Calendar Year 2007 and found that timeliness from application to hearing has improved since the State Auditor's 2004 performance audit. Specifically, during 2007 the average number of days from application to hearing was 111. In the 2004 audit, the average number of days from application to hearing was 132. Overall, during 2007, 97 percent of cases (692 of 712) were processed within the 180-day time frame.

We also reviewed case processing from application to hearing for expedited cases—an area that was not reviewed in the 2004 audit. We identified delays in the OAC's processing of expedited cases. Specifically, during Calendar Year 2007, 40 of the 65 hearings (approximately 62 percent) were not set within the 40-day statutory time frame. Although the OAC's difficulty in meeting the 40-day statutory deadlines for setting hearings highlights an area for improvement, it is important to note that cases following the expedited time lines are still decided more quickly than are standard cases. During Calendar Year 2007, the average number of days from application to hearing for expedited cases was 81 days, or 30 fewer days than the 111-day average for standard cases as noted above.

According to the OAC, there are two reasons for not meeting the 40-day time frame for setting expedited hearing dates. First, the OAC reports that open docket dates are limited and often not available for scheduling hearings within 40 days of the application. Second, the OAC indicates that for the majority of expedited hearings, it receives motions to extend the initial hearing date and, consequently, less than one-half of the hearings go forward as originally scheduled. The OAC asserts that requests for extensions indicate that parties need or want additional time to prepare for their cases.

Finally, we found that, for both standard and expedited cases, the OAC is not applying consistent criteria when granting extensions during the application to hearing phase. Specifically, Senate Bill 07-258 gives flexibility in granting extensions by allowing for a possible second 60-day extension or subsequent 20-day extensions. However, ALJs differ in their interpretations of these statutory requirements. We also found that the OAC has not updated its policies or provided interpretive guidance regarding extensions since Senate Bill 07-258 was enacted.

## **Phase Two – Completing the Hearing**

Most (698 of 777 cases, or 90 percent) of the workers' compensation cases completed during 2007 required only one hearing, on one day. However, statute [Section 8-43-209(1), C.R.S.] requires that once a hearing commences and needs to be continued, the continued hearing must occur within 30 days of the initial hearing unless the parties agree to a longer continuance or one party can show good cause for a further delay. In establishing continued hearing dates, ALJs must strike a balance between statutory mandates for timeliness and the need to account for the conflicting availability of the attorneys and witnesses on both sides. For the 79 cases completed during 2007 that required continuances, we found that, on average, the hearing phase extended to 71 days. Technically, because of the statutory allowances for multiple continuances, these cases may not be in violation of statute. However, for parties requiring expeditious resolution of disputes, continuances that extend beyond two months exceeds reasonable expectations of timely administrative law decisions.

The OAC does not currently track the reasons for delays in continuances as part of an overall assessment of timeliness. According to the OAC, cases requiring continuances are typically more complex and thus, require more hearing time than the standard two-hour scheduling time block. Additionally, the OAC reports that it can be difficult to accommodate the scheduling needs of witnesses, attorneys, and the parties to the case. In Denver, where most hearings are held, cases are scheduled for two-hour periods except on Mondays and Fridays when half- and full-day hearing schedules are also available. When complex workers' compensation cases are continued, the parties frequently need these lengthier hearing times to complete their cases. According to the OAC, there are a limited number of half- and full-day hearing schedules available within the 30-day period, and multiple continuances are sometimes required, extending the overall number of days required to complete the hearing phase.

## **Phase Three – Issuing the Order**

As of May 30, 2007, statute [Section 8-43-215(1), C.R.S.] required the OAC to issue orders within 15 working days of the conclusion of the hearing; prior to this, statute required orders to be issued within 30 days after the conclusion of the hearing. However, statute does not specifically define the point at which a hearing is concluded. To evaluate the timeliness of OAC orders, we used two possible definitions for "conclusion of the hearing:" (1) time elapsed from the date of final oral arguments to the issuance of the order and (2) time elapsed from the date the ALJ receives all post-hearing submissions to the issuance of an order ("close of hearing"). There is an informal, undocumented policy at the OAC to require post-hearing submissions within 15 calendar days of the final hearing date. These post-hearing submissions can include legal briefs, proposed orders, and position statements submitted after final oral arguments. Under the first interpretation, the current statutory time frame permitted from the final hearing and oral arguments until issuance of the order is up to 15 working days; under the second interpretation, the current statutory time frame permitted from the "close of hearing" to the issuance of the order is 15 calendar days for the ALJ to receive the post-hearing submissions plus 15 working days to issue the order. According to the OAC, its informal

policy is to use the second definition—the date all post-hearing submissions have been received by the ALJ to the issuance of the order—to determine the “conclusion of the hearing.”

We reviewed the time frame from concluding the hearing to issuing the order for all 777 cases completed during 2007 against both of the interpretations listed above. To assess compliance, we used the time frame applicable at the time of the hearing (30 calendar days prior to May 30, 2007, and 15 working days after May 30). We found that for the more stringent time frame (the date of final oral arguments in a hearing to the issuance of the order), 49 percent (381 of 777 cases) met the time frame. When we evaluated timeliness against the less stringent time frame (the date all post-hearing submissions were received by the ALJ until issuance of the order), we found that 75 percent (582 of 777 cases) met the time frame. As noted, Senate Bill 07-258 shortened the statutory time frame for issuing the order from 30 calendar days to 15 working days of the conclusion of the hearing. Using the time frame that existed before Senate Bill 07-258, the OAC is less timely than it was in 2004. Specifically, when applying the more generous interpretation of “conclusion of hearing,” 95 percent met the time frame in 2004 while only 84 percent met the time frame in 2007.

## **Improvements**

As discussed previously, the OAC has improved the timeliness of the application to hearing phase since the 2004 performance audit. However, there are additional steps the OAC can take to further ensure the timely progress and resolution of workers’ compensation cases, particularly for expedited hearings, complex cases, and orders. In general, these improvements are either of a logistical or procedural nature, as described below.

**Logistical improvements.** The OAC needs to improve the availability of courtroom space, hearing times, and ALJs to better accommodate scheduling for expedited hearings and continuances. With respect to expedited hearings, the OAC should identify additional courtroom space and consider alternatives, such as virtual hearings, to make additional hearing locations available within the 40-day setting date required by statute. Other governmental agencies, such as the U.S. Social Security Administration, use video hearing technology to expand the availability of docket schedules and thus, reduce backlog and case completion time. If the OAC determines that it cannot make sufficient options available to conduct expedited hearings within the 40-day setting period, the OAC should evaluate whether the 40-day limit is reasonable and work with the General Assembly to consider statutory change.

With respect to continuances, the OAC should schedule additional times for half- and full-day hearings, or consider adjusting the flextime schedules for ALJs. Currently, 8 of 11 ALJs (about 73 percent) have work hours that allow a Monday or Friday off either every week or every other week. This limits the number of ALJs available to conduct half- or full-day hearings on Mondays or Fridays. Furthermore, data analysis revealed that cases with continuances are delayed longer when heard by ALJs on flextime schedules. The OAC should consider requiring ALJs on flextime schedules to distribute

their days off to other weekdays or, alternatively, add additional half- and full-day hearing schedules in the middle of the week so that more half-and full-day schedule periods are available for complex cases requiring continuances.

**Procedural improvements.** The OAC also needs to make a number of procedural changes to improve the timeliness of expedited hearings, complex cases, and orders. First, the OAC should consider meeting and working with parties in advance of their hearing dates to determine the complexity of their cases and to make sure parties are prepared. This will help ensure that parties are scheduled for longer hearings when they have complex cases, thus, avoiding a continuance, and that parties will not require an extension because they need more time to prepare their case. The OAC reports that a significant number of parties request extensions at the last minute, resulting in empty hearing schedules that cannot be filled by other parties. Determining, in advance, whether parties do or do not require extensions will help maximize the scheduling of hearings.

Second, the OAC should update its policies to establish consistent criteria for extensions. As discussed previously, Senate Bill 07-258 made changes to the time lines for extensions and the OAC has not updated its written policies to address these changes since the legislation was enacted. Third, the OAC should make more frequent use of summary orders to improve the timeliness of order issuance. Under Senate Bill 07-258, ALJs now have the option to issue summary orders instead of full orders. A full order contains specific findings of fact and conclusions of law. By contrast, a summary order indicates a judge's final determinations and can typically be completed in much less time than a full order. Statute [Section 8-43-215(1), C.R.S.] allows parties to request a full written order if dissatisfied with a summary order. Our audit found that ALJs are not maximizing the use of summary orders to improve the overall timeliness of the administrative hearing process. Specifically, from June to December 2007, ALJs issued full orders instead of summary orders approximately 62 percent of the time. According to some of the ALJs we interviewed, they prefer to issue full orders because if they issue a summary order and a party then requests a full order, they will need to spend additional time to re-familiarize themselves with the case before writing the full order—requiring extra time and work. However, we found that parties appear to be satisfied with summary orders almost two-thirds of the time. In fact, our analysis showed that when ALJs issue summary orders, parties request a full order for only 35 percent of cases.

Finally, the OAC needs to improve tracking and monitoring of ALJs' progress in completing cases and issuing orders within specified time frames. Supervising ALJs currently use hearing and order logs to identify instances in which hearings have been completed, but orders have not been issued. While these logs provide useful information and allow for monthly oversight, they do not provide adequate information to monitor statutory time frames and case processing in the aggregate or evaluate patterns of timeliness for individual ALJs. As a result, the OAC does not have sufficient data to indicate whether specific ALJs are contributing to delays in issuing orders, or whether timely order issuance is a broader problem. Monitoring case time lines is important not only for compliance with statutory requirements, but also for identifying specific types of

problems and evaluating ALJ performance. We discuss issues with information system management in more detail later in this chapter.

The timely completion of the administrative hearing process is central to the OAC's mission. For parties where medical benefits are in dispute, delays can create financial hardship. The OAC needs to continue efforts to improve case processing as suggested by this audit to ensure all parties receive expedient processing of their workers' compensation hearings, as intended by statute.

**Recommendation No. 1:**

The Office of Administrative Courts should continue to improve the timeliness of its case management practices, particularly with respect to expedited hearings, continuances, and orders. This should include:

- a. Evaluating options for improving docket availability, including identifying additional courtroom space, considering virtual hearings, scheduling additional half- and full-day hearings midweek, and adjusting flextime schedules for ALJs;
- b. Meeting and working with parties in advance of expedited and standard hearings to ensure parties are sufficiently prepared and that the scheduled docket time is appropriate for the complexity of the hearing;
- c. Improving mechanisms for tracking and monitoring case timeliness in aggregate and by ALJ. The OAC should use this information to identify ALJs who are not completing cases and issuing orders within statutory time lines and address these issues in performance plans and reviews, taking corrective action as necessary;
- d. Expanding and encouraging the use of summary orders; and
- e. Conducting a thorough review of policies and procedures and updating them to comply with current statutory requirements.

**Office of Administrative Courts' Response:**

1(a) Agree. The OAC has already begun implementing portions of this recommendation and anticipates this recommendation will be implemented by June 30, 2009. The OAC has discussed with the State Personnel Board (SPB) the possibility of utilizing the SPB courtroom on an as needed basis. The OAC and SPB have begun comparing calendars to determine if openings exist. In addition, the OAC has begun discussions with the SPB and the Colorado State Employee Assistance Program (C-SEAP), in the Department of Personnel & Administration, regarding the use of virtual hearing equipment. The OAC is coordinating resources with these other agencies in an attempt to initiate statewide virtual hearings. Finally, the OAC has begun the initial phases of evaluating other scheduling strategies to improve available docket dates.

1(b) Agree. The OAC has already begun implementing portions of this recommendation and anticipates this recommendation will be implemented by June 30, 2009. Currently, the OAC holds a status conference for all dockets occurring in Greeley and Loveland. The OAC is looking to expand this practice to the Pueblo,

Glenwood Springs, Durango, and Alamosa dockets as well. In addition, the OAC is looking at status conferences for a majority of half- and full-day hearings. Significant portions of the workers' compensation cases filed in Denver attend Division of Workers' Compensation (DOWC) prehearing conferences. Consequently, the OAC must coordinate with DOWC to ensure that there is not a duplication of efforts.

1(c) Agree. The OAC anticipates that this recommendation will be implemented by July 1, 2010. The contract with the current case management vendor expires June 30, 2010. The OAC is in the process of assessing its needs for a case management system. As part of this assessment, the OAC is analyzing what data is necessary to collect for the office to function properly. The OAC considers timeliness data to be crucial. Currently, the OAC is utilizing a "judicial decision report" or "JDR" to track the timeliness of the individual judges. The OAC will look to improve upon this current process by investigating the inclusion of this process in the reporting function of the next case management system.

1(d) Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009. Because of judicial independence, the OAC must continue to rely on the individual ALJ's discretion to determine when a full order is more appropriate than a summary order.

1(e) Agree. The OAC has already begun implementing portions of this recommendation and anticipates this recommendation will be implemented by June 30, 2009.

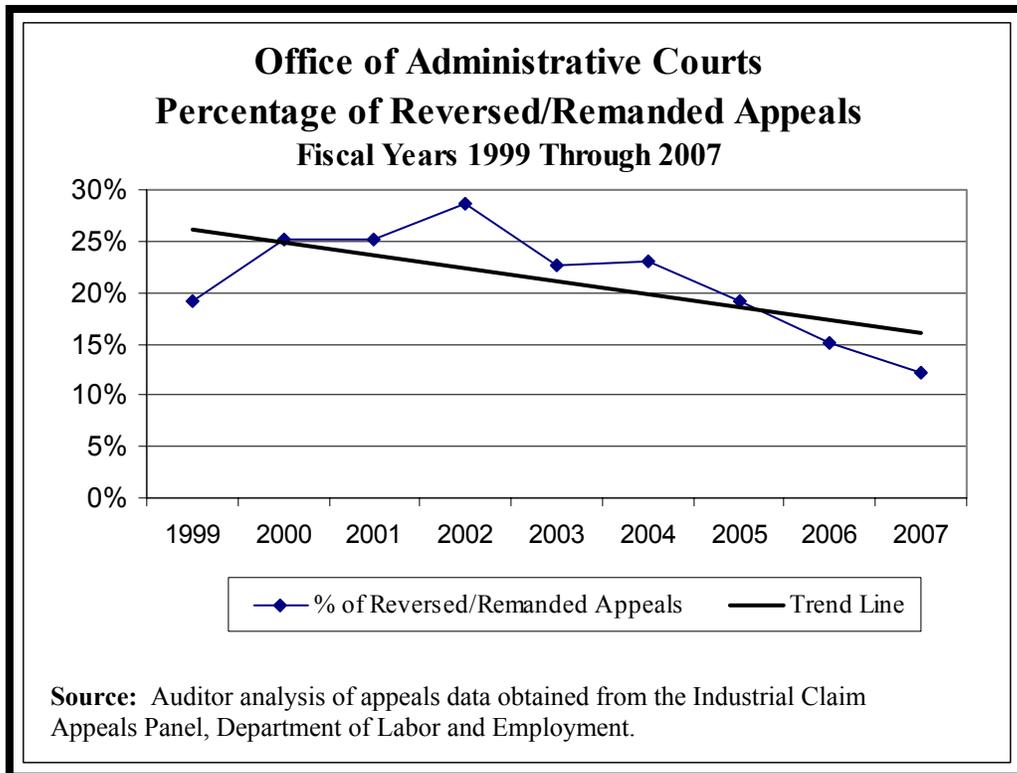
## **Appeals**

Each party to a workers' compensation case has a statutory right [Section 8-43-301, C.R.S.] to appeal an ALJ's order for a merit-based issue to Industrial Claim Appeals Panel (ICAP). If dissatisfied with ICAP's decision, parties may appeal to the Colorado Court of Appeals and ultimately to the Colorado Supreme Court. ICAP has three options with respect to the ALJ orders: it can "affirm" (uphold the original order), "remand" (return the case to the OAC for reconsideration or clarification of facts), or "reverse" (overturn the original decision) the orders. Although the number of appeals may not necessarily be a reflection of the quality of the judicial decision-making process, the number of appeal reversals or remands is a legitimate indicator of the soundness of ALJ decisions. Accordingly, statute [Section 8-47-101(3)(d)(II), C.R.S.] mandates that, as part of this audit, we review the number of decisions that are reversed or remanded upon appeal.

We found that the OAC experienced an overall decline in the number of appeals, reversals, and remands since the 2004 audit. In addition, the affirmation rate of appealed cases has increased. In Fiscal Year 2007, 261 orders issued by the OAC on workers' compensation cases were appealed to ICAP, the Court of Appeals, and/or the Colorado Supreme Court. Also, during this same period, there were 6 orders reversing and 26 orders remanding ALJ decisions. Accordingly, the number of cases reversed or remanded during that year equaled approximately 12 percent of the number of appeals filed during the same year.

As illustrated in Figure B, the percentage of reversed or remanded appeals has steadily decreased since the 2004 performance audit. Concurrently, the overall affirmation rate of ALJ decisions has been increasing since Fiscal Year 2004, which provides a strong indicator of the soundness of ALJ decisions. The increase in affirmed appeals may be, in part, due to the OAC’s Continuing Legal Education (CLE) program, the implementation of which was recommended by the State Auditor in the 2004 performance audit.

**Figure B: Percentage of Reversed/Remanded Appeals, Fiscal Years 1999-2007**



Although we found that the OAC is doing well in terms of having its decisions upheld on appeal, we also found that the OAC did not always ensure the timely processing of appeals. To appeal an order, a Petition to Review (PTR) is required to be filed by a party within 20 days of the order issue date. According to the OAC, appellants often request transcripts which the OAC provides simultaneously to both parties. After receiving the PTR and providing the requested transcripts, the OAC issues a “Notice and Briefing Schedule,” requesting briefs from both parties. The appellant then has 20 days to file the written brief. Once the OAC receives the appellant’s brief, the respondent has 20 days to file a brief in opposition to the PTR. Within 30 days of receiving the briefs, the ALJ must either issue a “supplemental order,” which can reverse or clarify preceding orders, or submit the case to ICAP. ICAP then has 60 days to issue an order on the appeal that will affirm, remand, or reverse the ALJ’s order.

Minimizing delays in processing appeals is essential to ensuring that parties receive the benefits they are entitled to under state workers’ compensation laws in a timely fashion.

We found the following areas in which the OAC could improve the appeals process, and thereby bring cases to conclusion in a timelier manner.

First, we analyzed a sample of 30 appealed workers' compensation orders to determine the OAC's compliance with statutory requirements. Our analysis revealed that for 9 of the 30 cases (or 30 percent), the OAC did not obtain complete briefs in opposition to the PTR from respondents within the 20-day time parameter established in statute [Section 8-43-301(4), C.R.S.], thus, delaying both the completion of the record and the submittal of the record to ICAP for review. Although these nine cases were granted extensions for the submission of briefs, four cases had briefs that were submitted after 40 days—more than twice the mandated time frame. The OAC regularly allows for the extension of time frames to submit briefs as statute [Section 8-43-207(1)(i), C.R.S.] permits ALJs to grant reasonable extensions of time for taking of any action contained in the Workers' Compensation Act. However, it is the ALJ's discretion to determine what is reasonable since no formal policy exists to guide how extensions should be granted in light of explicit statutory mandates. To ensure the timeliness of appeals, the OAC should adopt internal guidelines that formally clarify statute.

A second area in which the OAC could make improvements is in the monitoring of appeals processing. We found that OAC management does not provide sufficient oversight to ensure compliance with statutory appeals time lines. One reason for this is that the OAC's electronic data system, Legal Files, does not contain sufficient information to monitor and report on appeals and their associated time frames. Although the OAC uses a manual system to track appeal deadlines, this manual system does not allow for management to comprehensively and regularly monitor the status of appeals. This limits management's ability to identify areas that could improve the timeliness of appeals processing, including identifying delays in completing the record for review and in submitting the completed record to ICAP. The OAC should develop a more formal process to monitor appeals including requiring management to review status reports. An adequate tracking system would provide management with the status of appeals on an ongoing or periodic basis, and would provide information such as the number of appeals received and processed, key milestones that have been completed or missed, and information regarding cases that exceed statutory mandates and the reasons for the delays.

**Recommendation No. 2:**

The Office of Administrative Courts should ensure timelier processing of cases under appeal. This should include:

- a. Adopting guidelines to clarify the circumstances under which ALJs may grant extensions, including the acceptable time for an extension; and
- b. Developing an appeals monitoring and reporting process for managerial review, and taking action as appropriate.

### **Office of Administrative Courts' Response:**

2(a) Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009. Because of judicial independence, the OAC must continue to rely on the individual ALJ's discretion to determine if a requested extension is warranted. The OAC will, however, establish guidelines to assist the judges in the performance of their duties.

2(b) Agree. The OAC has already begun implementing portions of this recommendation and anticipates this recommendation will be implemented by December 31, 2008. The OAC is currently processing the appealed cases individually. The OAC tracks these cases through its current case management system. The OAC will develop office protocols to ensure that appeals are monitored and reported in a way that is helpful to management.

### **Workload and Resource Allocation**

Statute [Section 8-47-101(3)(d)(II), C.R.S.] requires the State Auditor to review the workload or number of cases assigned to each ALJ. As part of this review, we assessed the OAC's methods for allocating, assessing, and reporting its workload, and its ability to effectively manage its workload. An equitable and appropriate allocation of workload among ALJs is essential to the OAC's effective operation. Too heavy a workload for ALJs could adversely affect both the timeliness and quality of case dispositions, while too light a workload would reduce efficiencies at the cost of client departments, the public, and other government services. Overall, we found that the OAC lacks an adequate system for assessing its workload and allocating caseload among its ALJs.

The OAC measures its workers' compensation workload in terms of cases docketed, hearings held, and orders issued. We reviewed these workload measures for the five-year period covering Fiscal Years 2004 through 2008 and found that each of the OAC's workload measures declined significantly during this period. Specifically, we found that: (1) cases docketed fell 44 percent from 10,839 in Fiscal Year 2004 to 6,076 in Fiscal Year 2008; (2) hearings held declined nearly 39 percent from 3,698 in Fiscal Year 2004 to 2,269 in Fiscal Year 2008; and (3) orders issued dropped 20 percent from 8,957 in Fiscal Year 2004 to 7,159 in Fiscal Year 2008. At the same time, the number of ALJs devoted to workers' compensation cases and the amount of billable hours charged to these cases dropped only slightly, from 18,465 billable hours and 11.9 FTEs devoted in Fiscal Year 2004 to 16,486 billable hours and 10.9 FTEs in Fiscal Year 2008. Consequently, the workload per ALJ also decreased significantly. Average cases docketed per ALJ declined about 39 percent from 911 to 557. Similarly, average hearings held per ALJ fell 33 percent from 311 to 208, and average orders issued per ALJ decreased nearly 13 percent from 753 to 657. These trends are illustrated in Table B on the following page.

While ALJs are spending more time per case docketed, hearing held, and order issued, the OAC believes that its ability to spend more time on each case may actually have had a positive impact on the quality of the work performed by the OAC. The OAC points to this audit's findings regarding the general timeliness of case disposition, improved public

perception ratings (as discussed in Chapter 2 of this report), and the increased affirmation rate of appealed cases, as evidence of improvements in the quality of its services.

However, insufficient data exists to identify a causal relationship between what appears to be a significantly declining workload and increased timeliness, public perception rates, and affirmation rates.

**Table B: Workers' Compensation Workload, Fiscal Years 2004-2008**

<b>Office of Administrative Courts Workers' Compensation Workload Fiscal Years 2004 Through 2008</b>						
<b>Workload &amp; FTE Indicators</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>Percent Change 2004 to 2008</b>
Cases docketed	10,839	9,752	10,999	6,438	6,076	-43.9%
Hearings held	3,698	3,128	2,931	2,868	2,269	-38.6%
Orders issued	8,957	8,236	7,940	8,321	7,159	-20.0%
Billable Hours	18,465	18,098	18,132	17,426	16,486	-10.7%
Billable Hours per FTE	1,551.7	1,546.8	1,563.1	1,555.9	1,512.5	-2.5%
ALJ FTEs	11.9	11.7	11.6	11.2	10.9	-8.4%
<b>Average Workload per ALJ</b>						
Cases docketed	911	834	948	575	557	-38.9%
Hearings held	311	267	253	256	208	-33.1%
Orders Issued	753	704	684	743	657	-12.7%
<b>Source:</b> Department of Personnel & Administration's Fiscal Year 2008 Strategic Plan and annual ALJ Statewide Supplemental "True-Up" requests for Fiscal Years 2004 through 2008, as well as data extractions and reports from the OAC's Legal Files system.						
<b>Note:</b> The number of FTEs was estimated based on the billable hours reported in the "True-Up" requests plus an estimated 25 percent based on trends in non-billable hours.						

Staff from both the OAC and DOWC offered a variety of reasons for the decline in cases docketed, hearings held, and orders issued. Some of these explanations include fewer workplace accidents, increased clarity in statute and case law, and decisions to transfer portions of the OAC's workers' compensation caseload to the DOWC for resolution. As to why the OAC has dedicated a consistent level of ALJ FTEs to workers' compensation cases since Fiscal Year 2004, the OAC asserts that the workers' compensation cases it heard in Fiscal Year 2008 are more complex than the cases its ALJs handled in Fiscal Year 2004. Therefore, staff reported that cases in 2008 require more ALJ time to process. However, the OAC was not able to provide adequate data to substantiate this assertion.

We also reviewed caseload, as measured by total hearings and direct hours billed, for six non-supervisory ALJs devoted to workers' compensation cases during Calendar Year 2007. As the following table indicates, the number of hearings conducted by six ALJs ranged from 90 to 200 cases, a 122 percent variance. Similarly, the total hours billed per workers' compensation hearing by ALJ ranged from 9.43 hours per hearing to 15.46 hours per hearing, a variance of 63.9 percent.

**Table C: Hearings and Time Billed – 2007**

<b>Office of Administrative Courts Hearings and Time Billed Fiscal Year 2007</b>			
<b>ALJ</b>	<b>Number of Hearings</b>	<b>Time Billed (Hours)</b>	<b>Average Hours Billed per Hearing</b>
<b>A</b>	200	1,885.4	9.43
<b>B</b>	179	1,599.3	8.93
<b>C</b>	136	1,450.8	10.67
<b>D</b>	113	1,746.9	15.46
<b>E</b>	111	1,552.7	13.99
<b>F</b>	90	1,363.2	15.15

**Source:** Data extractions and reports from the OAC's Legal Files system  
**Note:** This table includes ALJs primarily dedicated to workers' compensation cases and excludes Supervising ALJs and other ALJs who were likely to perform some General Services-related work.

To account for the disparity in the number of hearings and the hours billed per hearing among ALJs, the OAC reports that some ALJs hear more complex cases than others. ALJs hearing more complex cases will, accordingly, spend more time on each case than ALJs hearing less complex cases, and thus, are likely to hear fewer cases in total. However, the OAC was unable to provide adequate information explaining the broad 122 percent variation in hearings held by individual ALJs or the nearly 64 percent variation in hours billed to cases, and could not demonstrate the complexity factors that would account for such variations.

Part of the reason the OAC is unable to provide adequate data to explain workload trends is because it lacks a sound method for measuring and assigning workload. While the OAC reports workload in terms of cases docketed, hearings held, and orders issued, its primary mechanism for assigning workload is by assigning an ALJ to work a "docket day." ALJs must then handle as many hearings that occur during the docket days they are assigned. In determining whether to increase or reduce the number of docket days assigned to an ALJ, Supervising ALJs look to basic indicators such as the number of hearings held and the number of orders issued. Such indicators, however, treat all hearings equally, despite their varying degrees of complexity.

## **Improvements**

Improved workload indicators would provide management with additional information that would better enable it to allocate resources, uncover potential inefficiencies, or identify overworked personnel. Without a meaningful method for measuring workload, the OAC's ability to respond to changes in demand in a timely and appropriate manner is diminished. For instance, with adequate workload measures and indicators, the OAC would have the necessary information to determine whether temporarily or permanently reassigning some workers' compensation ALJs to other types of cases would be appropriate. Because the OAC lacks workload indicators that account for the complexity of different case types, it must rely on limited information to make these critical management decisions.

The OAC should identify the reasons for the declines in cases docketed, hearings held, and orders issued, as well as the reasons for discrepancies between cases completed and hours billed among ALJs. The results of this assessment would provide the OAC with information to improve its methodology for measuring workload and allocating resources. One possibility is for the OAC to use existing data in its information system to review the hours billed, by case type, to determine whether case complexity is in fact contributing to the declines and variations we observed. This information could be used to establish productivity standards by case type and allocate workload among ALJs accordingly. This approach to assessing productivity standards is similar to a "weighted caseload" methodology used in other court systems to determine the resources needed to handle a varied and diverse caseload. Under this methodology, different case types are given more or less weight depending on the complexity and number of steps required to resolve the case. Complexity factors the OAC could take into account include the number of issues heard per hearing, the difficulty of the issue or issues heard per hearing, the amount of testimony or evidence submitted for consideration, the number of hearings that required continuances, the number of motions submitted and orders issued per hearing, or whether one of the parties is a *pro se* litigant.

### **Recommendation No. 3:**

The Office of Administrative Courts should provide better assurance that its resources are allocated in a cost-effective manner by improving its method for determining and assigning workload. This should include:

- a. Investigating the cause for declines in cases docketed, hearings held, and orders issued;
- b. Determining the effects of various factors such as case complexity, hearings held per case, and the quantity of testimony or evidence on the workload of ALJs;
- c. Adopting a standard workload measure and case assignment methodology that addresses differences in cases, and using the methodology to monitor workload and address changes; and
- d. Making budget requests and resource allocations and reallocations consistent with the standard workload measurement and case assignment methodology.

### **Office of Administrative Courts' Response:**

3 (a) Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009.

3(b) Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009.

3(c) Partially Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009. While a workload measure and case methodology is an appropriate recommendation, the OAC has concerns about the "standardization" of such a methodology. There are myriad factors that go in to determining which judge will be assigned to hear a particular matter. Moreover, the OAC values the flexibility that it currently has to assign more experienced judges more complex cases. If the OAC standardizes the methodology too much, the efficacy of the OAC could be diminished. The OAC will, however, evaluate various workload distribution methodologies to ascertain if an appropriate system exists.

3(d) Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009.

### **Information Management**

The State Auditor's 2004 performance audit found that the OAC's information system lacked the capabilities needed by both the OAC and DOWC to properly manage hearings and claims. For example, the system was not able to assist the OAC in such functions as managing workload and monitoring the timeliness of hearings and orders. At the time of the 2004 audit, the OAC was in the process of procuring a new data system to replace its legacy system. The 2004 audit reviewed the OAC's plans for the new system and found that the plans appropriately envisioned increases in efficiency and data analysis to include better monitoring of statutory deadlines. The 2004 audit also stressed the importance of the OAC's new system being useful and accessible to DOWC as well as the importance of DOWC's involvement in the design, testing, and implementation of the new system.

In 2004, the OAC issued a Request for Proposal (RFP) to procure a new case management system. According to the RFP, the new system was intended to increase office efficiency, provide additional case information, and interface with DOWC's legacy system. The OAC selected Legal Files Software, Inc. to create the new system. The system was fully implemented in 2006 with an associated cost over the term of the contract through Fiscal Year 2010 of approximately \$272,000 (comprising an original contract cost of over \$187,000 and subsequent annual payments ranging from around \$19,600 to over \$22,700 through Fiscal Year 2010).

During our current audit, we found that the Legal Files system did not meet expectations of the OAC or DOWC. As we discuss throughout this chapter, the OAC still lacks adequate information to provide oversight and assess the timeliness of its core activities, or to better manage and allocate staff resources. Although Legal Files did enhance the OAC's ability to docket, schedule, and calendar events, the system did not fully meet the OAC's management information needs. In addition, the OAC does not do enough to

maximize the usefulness of the system in areas where the system could be helpful. Following are some of the deficiencies we identified during our audit:

- **System deficiencies.** Legal Files does not include certain data fields necessary to facilitate the tracking of essential information such as the setting date or the reasons for continuations. The system also is not structured to facilitate extraction of automated reports on timeliness and other operational areas that would be useful to OAC management. Further, the master calendaring function is not sufficiently comprehensive and therefore limits automated tracking of time frames. Finally, the system requires a significant level of duplicative data entry to populate necessary fields in different screens.
- **Administrative deficiencies.** Where fields do exist in the system, OAC personnel did not always enter critical data such as the close of hearing date or the prevailing party for each issue in an order, nor did management always ensure that staff and ALJs enter all data. While a Legal Files user manual exists for use by OAC staff, the OAC does not have any policies or procedures directing staff to enter all data and to enter data in a timely manner, or require supervisory review of data entry. Also, where useful information is available in the system, OAC management is not actively producing reports or utilizing the information available.
- **Interface deficiencies.** An adequate interface between Legal Files and DOWC's legacy system does not exist, and ongoing connectivity failures further limit DOWC's access to Legal Files.

As a result of these deficiencies, OAC management is left without adequate means to address crucial issues of timeliness of case and appeals processing, as well as workload management. Management also lacks the kind of information it needs to identify and address core operational problems relating to holding hearings, issuing orders, and evaluating the performance of individual ALJs. The lack of adequate data connectivity with the DOWC has hindered the DOWC's ability to serve the public, produce management reports regarding its own operations, and deliver statistical analyses to other key stakeholders. As the 2004 audit emphasized, the DOWC relies on the OAC database to support all of its (DOWC's) operations, including claims oversight, budget submission, and research reports. The public too relies on the DOWC to answer case specific questions, which the DOWC is often unable to answer because of poor linkage with the OAC database. In one of its many roles, the DOWC serves as the State's primary source of information in workers' compensation matters for use by the public, policymakers, healthcare providers, and the insurance industry. Lacking a sufficient interface with Legal Files, the DOWC cannot easily retrieve the data it needs and cannot effectively serve these client groups.

## **Improvements**

The OAC's existing contract with Legal Files will expire at the end of Fiscal Year 2010. Consequently, the OAC will be evaluating its options, which include extending the

current contract, issuing an RFP for a new contract, or some other alternative. Whatever option the OAC pursues, it is imperative that it does not repeat the mistakes of the past.

During the planning stages for Legal Files, the OAC intended to implement a data management system that would improve and enhance its management and reporting efforts. In the end, Legal Files, both in its design and in its implementation, did not meet these expectations. The 2004 audit recommended that as the OAC developed a new system, it should: ensure DOWC's participation in the development and testing of the new system; provide for DOWC's continued access to the system; avoid duplicative data entry between the new system and DOWC's legacy system; train appropriate personnel, including both OAC and DOWC staff on the new system; and ensure that the new system interface with and populate data fields in the legacy system so that DOWC maintained, at a minimum, the same level of information and functionality. These recommendations were not successfully implemented and still require attention.

In some cases, deficiencies in Legal Files are the result of the RFP not explicitly delineating key system requirements. For instance, while stating that the system should include the ability to run management reports such as case status, cost, staff, and productivity reports, the RFP did not explicitly define the kind of timeliness reporting required to manage and oversee compliance with statutory time lines. In other cases, a lack of communication between the DOWC, OAC, and the Legal Files vendor contributed to the absence of a data exchange module.

To address current deficiencies, the OAC must first identify the information needed to adequately measure key operational areas such as timeliness, workload, appeals processing including reversals/remands, and customer service, among others. After it fully assesses its needs, the OAC should devise or procure efficient systems—manual or automated—to capture and provide accurate, timely, and useful information. This key management information will need to be available in an efficient manner to key stakeholders, particularly the DOWC, to facilitate their assessments of operational effectiveness and efficiency.

Prior to the expiration of the Legal Files contract, the OAC will need to assess the costs and benefits of implementing any new case management system or modifying the existing system. This assessment should also include determining the extent to which manual data gathering and analysis techniques best meet the organizational needs of both the OAC and DOWC. Planning for new systems must include working with the Governor's Office of Information Technology (OIT) and ensuring the project is overseen by personnel with appropriate project management and quality assurance expertise.

Whether the OAC determines to implement a new case management system or to improve Legal Files, it should ensure that stakeholder needs are identified and thoroughly considered and that the recommendations regarding the data system made in the 2004 audit report are fully implemented. Finally, once a new or improved system is developed and put into operation, the OAC will need to promulgate and enforce policies and procedures so all staff utilizes the system in a consistent manner that makes full use of all system functionality.

**Recommendation No. 4:**

The Office of Administrative Courts should improve the availability and use of information to more effectively monitor and manage operations. This should include:

- a. Conducting a thorough assessment of its data needs and those of key stakeholders to meet management objectives;
- b. Comprehensively analyzing the costs and benefits of any contemplated system or systems required to meet its needs; and
- c. Following rigorous protocols in the development and implementation of any new system, including the close involvement of key stakeholders and appropriate oversight by project managers and quality assurance personnel.

**Office of Administrative Courts' Response:**

4(a), 4(b), 4(c) Agree. The OAC anticipates that this recommendation will be implemented by July 1, 2010. The contract with the current case management vendor expires June 30, 2010. The OAC is in the process of assessing its needs for a case management system. The OAC is also investigating a possible "enterprise" project in which the Governor's Office of Information Technology (OIT) would develop a case management and e-filing system for OAC. This enterprise system would include the State Personnel Board (SPB) as well. The OAC will include several stakeholders, such as the Department of Workers' Compensation (DOWC), the Department of Regulatory Agencies (DORA), the Office of the Attorney General (OAG) and other client agencies in any discussions concerning the development or improvement of a case management system.

## **Chapter II—Customer Service and Public Perception**

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### **Background**

A fundamental purpose of the OAC is to provide an accessible and cost-effective alternative to litigation in court. Expediency and accessibility, however, should not be limited to parties with legal representation. Citizens who are unlikely to be familiar with the administrative hearing process, but who choose to forego legal representation, should also have reasonable access and opportunity for cost-effective and expeditious outcomes. In addition to conducting administrative law hearings, this requires that the OAC also engage in activities designed to support or assist parties navigating the hearing process. In this chapter, we discuss ways in which the OAC can improve its customer service activities.

### **Public Perception**

The OAC is an alternative to civil litigation for individuals seeking resolution to critical workers' compensation matters. Entrusted with such a mission, the OAC must assure public trust and confidence in its processes. For the parties who come before it, the ultimate measure of the OAC's success is not who wins or loses, but rather whether the parties believe they have been treated fairly and professionally. Thus, public perception provides a critical indicator of success as we discuss in the following sections.

### **The OAC's Annual Survey Results**

In the first quarter of every year since 2004, the OAC conducts an annual customer satisfaction survey soliciting input from parties who have appeared before ALJs during the prior calendar year. According to the survey questionnaire, the survey results are intended to assist the OAC in improving the performance of its judges and staff. Obtaining information from "customers" of the courts about the competence and conduct of judges is a common method for use in reviewing judicial performance in Colorado. As such, the OAC's survey questions focus on factors such as the knowledge, fairness, objectivity, timeliness of orders, and professionalism of the ALJs.

We reviewed the results of the OAC's Calendar Years 2004 through 2007 annual surveys and found that, in every category, survey respondents rated the OAC higher in 2007 than in 2004. Moreover, although survey respondents gave the OAC unsatisfactory ratings in 5 of the 15 categories in 2004, the OAC received satisfactory ratings in every category in 2007.

We commend the OAC for adopting this practice of gauging the public's satisfaction in its performance review process. Soliciting public feedback demonstrates a willingness to acknowledge and address areas for improvement. In addition, the OAC has reduced the original \$15,000 annual cost of the survey to approximately \$5,000 by administering it through the internet rather than by mail.

## Independent Survey Results

Although the OAC's customer satisfaction survey provides useful information, we conducted our own independent survey to obtain additional feedback about the OAC. By statute [Section 8-47-101(3)(d)(II), C.R.S.], one of the topics we are to review as part of this audit is "the public perception of the quality of the performance of the Office of Administrative Courts." Therefore, we conducted a telephone survey of parties who appeared before ALJs during the first quarter of 2008.

Of the 356 workers' compensation cases with hearings held before the OAC from January through March 2008, we received responses related to 263 (approximately 74 percent) of these cases from a total of 119 respondents. The total number of individual respondents to our survey is less than the total number of cases because some of the attorneys we surveyed provided legal services in multiple cases. Specifically, of the 356 cases that comprise the universe of parties in our survey, 193 (about 54 percent) were represented by a small population of 49 attorneys. Of the 119 respondents we surveyed, 47 were claimant attorneys, 55 were responding party attorneys, and 17 were parties acting *pro se*, or without legal representation.

Overall, our survey results were similar to the results of the most recent OAC survey, showing increased public satisfaction with the OAC since 2004. However, our survey questions went beyond individual ALJ and staff performance to include feedback about the general operations and various services of the OAC. In tabulating our results, we used a scale from 1 to 5, with 1 being "very dissatisfied" and 5 being "very satisfied." A rating of 3 to 4 represented "moderately satisfied." Our survey found that the public perception of the OAC is "moderately satisfied" in most categories, with average ratings from all three groups of customers ranging from 3.3 to 4.3.

For example, as shown in Table D, all three categories of customers—claimant attorneys, responding party attorneys, and *pro se* parties—responded mostly positively (averaging from 3.9 to 4.4) when answering questions related to the "knowledge of staff/judges regarding the hearing process." Nonetheless, the survey results also indicated that *pro se* parties consistently responded the least positively to every question. Of particular note, *pro se* parties were least satisfied with the OAC's website; resource materials; the fairness, timeliness and complexity of the hearing process; and with communication with OAC personnel. According to the OAC, one reason for dissatisfaction on the part of *pro se* parties is that these individuals often seek legal advice from OAC staff, which the OAC is precluded from providing. The results of our survey highlight areas for improvement for the OAC, particularly with respect to parties not represented by attorneys. We discuss some possible improvements later in this section.

**Table D: Public Perception Survey Results**

<b>Office of Administrative Courts Public Perception Survey Results<sup>(1)</sup> January Through March 2008</b>			
<b>Question</b>	<b>Claimant Attorney</b>	<b>Responding Party Attorney</b>	<b><i>Pro Se</i><sup>(2)</sup> Claimant</b>
Satisfaction with outcome	3.5	3.5	3.1
Professionalism of staff	4.3	4.2	3.7
Professionalism of judges	4.0	4.1	3.8
Knowledge of staff/judges	4.2	4.4	3.9
Quality of communication with staff or judges	4.1	3.9	3.5
Quality of resource materials available	3.5	3.8	3.1
Ease of navigation of OAC website	3.6	3.6	2.0
Fairness of hearing process	3.3	3.4	3.2
Timeliness in scheduling hearing dates	3.7	4.0	3.0
Timeliness of Judge’s decision(s)	3.9	4.1	3.6
Overall satisfaction with OAC	3.6	3.9	3.3
How well the process worked	3.7	3.8	3.1
<p><b>Source:</b> Independent public perception survey conducted by Sjoberg Evashenk Consulting, Inc. for cases before the OAC during the first quarter (January-March) of Calendar Year 2008.</p> <p><b>Note:</b> (1) The survey used a scale from 1 to 5, with 1 being “very dissatisfied” and 5 being “very satisfied.” A score of 1-2 represents “very dissatisfied,” a score of 2-3 “moderately dissatisfied,” a score of 3-4 “moderately satisfied,” and a score of 4-5 “very satisfied.”</p> <p>(2) <i>Pro se</i> claimants are those that represent themselves without legal counsel.</p>			

**Enhancements to the OAC’s Survey**

In addition to conducting our own independent survey, we reviewed the OAC’s annual customer satisfaction survey and noted several improvements that could be made to enhance its usefulness. First, the OAC’s survey focuses primarily on the performance of ALJs, and less so on the performance of the OAC as a whole. The OAC should expand the survey’s scope to include perceptions of customer satisfaction, timeliness, and accessibility—crucial factors in determining the OAC’s success in achieving its overall mission.

Second, the OAC should adopt a more representative method of selecting survey respondents. According to the OAC, because it selects survey respondents on the basis of cases heard by each ALJ, some attorneys who litigate numerous cases during the course of a year are more likely to receive multiple surveys. By comparison, *pro se* parties, who are more likely to have one case before a single ALJ, are likely to receive only one survey. Consequently, when evaluated OAC-wide, survey results are more heavily weighted toward the perception of a relatively small group of attorneys. Revising the selection methodology would provide a more balanced response base.

The OAC could make further improvements in the timeliness of data gathering. Since 2004, the OAC has conducted the survey beginning in the first quarter of each calendar

year for parties who appeared before ALJs during the preceding calendar year. As the lag in time between the hearing process and the survey increases, the reliability of the survey responses decreases as respondents' memories fade and conditions change. Distributing surveys to more closely align with the parties' experiences with the OAC would improve the reliability of the results.

Finally, the OAC should consider posting the survey results on its website. Posting the results could provide additional insight regarding what can be expected during the hearing process and could also serve to increase public accountability. Currently, the OAC does not report any performance measures on its website, whether they pertain to public perception results, timeliness statistics, workload indicators, reversals or remands resulting from petitions to review, or other performance indicators.

**Recommendation No. 5:**

The Office of Administrative Courts should improve its method of assessing public perception by:

- a. Broadening the scope of the questionnaire to include questions directed to overall OAC performance;
- b. Making the survey selection method more representative of all parties and analyzing the results based on type of respondent and in aggregate;
- c. Initiating surveys within a shorter time frame after the conclusion of cases; and
- d. Reporting survey results to the public.

**Office of Administrative Courts' Response:**

5 (a), 5(b), 5(c), 5(d) Agree. The OAC has already begun implementing portions of this recommendation and anticipates this recommendation will be implemented by June 30, 2009. The Department of Personnel and Administration (DPA) has created a customer service committee that is charged with creating ubiquitous customer service surveys for the divisions within the department. The OAC will work with this committee to ensure that standard core questions are developed for inclusion in a customer service survey.

**Customer Support and Assistance**

The workers' compensation administrative law hearing process was designed to allow parties to successfully resolve disputes in a timely manner without the necessity of legal representation. However, while our survey results highlight the challenges faced by those without legal representation, these challenges are not new. Prior audits of the workers' compensation hearing process have also pointed to similar challenges in the OAC's ability to provide an easily accessible, expeditious, and cost-effective administrative hearing process to *pro se* parties. Our survey revealed two factors that contributed to the low satisfaction levels exhibited by *pro se* parties: the perceived lack of customer support and assistance and the perceived lack of information available to parties least likely to be familiar with the workers' compensation hearing process. The OAC has not made

sufficient progress to address these deficiencies since they were noted in the State Auditor's 2004 performance audit of the workers' compensation hearing process.

Although the majority of parties appearing before ALJs are represented by legal counsel, in Calendar Year 2007, a total of 97 (or 12.5 percent) of the 777 merit cases evaluated in our audit included a self-represented, or *pro se*, party. According to OAC management, as many as 30 percent of claimants begin without legal representation, but either settle their cases or acquire counsel prior to the conclusion of their case.

Our survey of parties who appeared before ALJs to resolve workers' compensation disputes during the first quarter of 2008 revealed a number of areas in which the OAC could improve customer support to provide parties with a more solid foundation upon which to successfully complete the hearing process. For example, respondents to our survey reported that the informational materials provided by the OAC, particularly on its website, are difficult to locate and understand. Also, respondents commented that the OAC is not always sufficiently helpful to parties who are least familiar with the hearing process, but who are in most need of assistance. In particular, customer service shortcomings reported in the OAC's own surveys included long telephone wait times, an inability to reach a live person via telephone or to leave a message, inaccurate information, and misdirected phone calls. Further, our surveys revealed that *pro se* respondents were unsure how to proceed during the hearing process, did not know what to expect, and had to develop an understanding of the process on their own.

Parties who represented themselves before the OAC expressed frustration with the workers' compensation hearing process. Survey respondents used terms such as "not informed," "still puzzled," and described their experiences as a "fight every step of the way." Some respondents indicated that, although they began the hearing process as a *pro se* party, they ultimately chose to hire an attorney. More than half of the *pro se* respondents felt that the OAC did not provide adequate information and, with few exceptions, many found they were ill-prepared for the courtroom experience.

In the 2004 performance audit, the State Auditor recommended that the OAC develop a "facilitator" or ombudsman program to provide additional services to parties most in need of assistance. According to the OAC, the DOWC and OAC worked to put such a program in place, but it was discontinued due to limited demand. During the current audit, we found that the OAC still does not have an adequate mechanism to provide customer support and assistance. While a "facilitator" program may no longer be an optimal solution, we found that the OAC did not have a dedicated customer support/assistance unit, an adequate method of guiding *pro se* parties into the pre-hearing process, or other support and assistance that would lead to improve public satisfaction.

### **Public Information**

Respondents to our survey reported that informational materials provided by the OAC, particularly on its website, are difficult to locate and understand. We found that information needed to successfully navigate through the hearing process is fragmented among various sets of procedural rules, pamphlets, policies/directives, and forms. Many

of these resources can only be located by surfing the OAC's website. However, the website does not contain a complete list of these materials or contain related hyperlinks. As a result, parties must read through everything to identify the specific information they need. We found a number of other deficiencies related to the OAC's website including several inactive links, features that were not viewable on all web browsers, a lack of tools to assist parties in maneuvering through the website, and a "Search" feature that does not display the most relevant information. Also, although the DOWC homepage links to the OAC homepage, it does not provide a link to workers' compensation information that is pertinent to a party's specific case.

To address these deficiencies, the OAC should improve the content and accessibility of information available to the public by developing a central source of workers' compensation-related hearing information on its webpage. The State of Georgia has developed a website that could serve as an example for the OAC. Georgia's administrative hearing website tailors information regarding the complicated workers' compensation hearing processes to the needs of *pro se* parties with the use of multimedia. Georgia offers a 14-minute streaming video featuring an overview of how a *pro se* litigant can effectively self-represent throughout the hearing process. The overview addresses the steps required to set a hearing date, how to prepare for the courtroom experience, how to represent one's self, and how to present evidence to support one's case.

In the 2004 performance audit, the State Auditor recommended that the OAC improve customer service by providing clear and consistent hearing, appeals, pre-hearing, and facilitator information to all litigants. The 2004 audit also recommended that the OAC review its customer service function and develop multiple, accessible resources to improve assistance. Although the OAC has taken steps to enhance customer service since 2004, we continue to believe these recommendations are relevant. At a minimum, the OAC should improve its webpage to include links to critical information (e.g. rules of procedures, OAC policies, pamphlets for *pro se* parties, instructions and forms, etc.) and to clearly delineate the types of information available at each link. Also, the webpage should consolidate, as much as is practical, the multiple sources of rules, policies, and *pro se* party guidelines; provide useful explanations of the information provided; and give hints or tips of where to go if the page does not meet the users' needs. The OAC should work with the DOWC to ensure its website links directly to the workers' compensation-related materials on the OAC website and incorporates some descriptions of the OAC's dispute resolution services. Providing a process guide map, incorporating an improved "Search" function, a glossary or definitions page, and multimedia sources, could provide critical assistance.

**Recommendation No. 6:**

The Office of Administrative Courts should make information and assistance more accessible to litigants by improving the accessibility and usefulness of the information on its website and by determining the most effective manner in which to provide pre-hearing support and assistance to *pro se* parties.

**Office of Administrative Courts' Response:**

Agree. The OAC anticipates that this recommendation will be implemented by June 30, 2009. The OAC previously developed a "Non-Lawyers Guide" to provide to *pro se* individuals as a result of the 2004 audit. The OAC will continue to refine its website by making it easier to navigate and providing even more information to the public. In addition, the OAC will work with DOWC to coordinate efforts in providing assistance to *pro se* litigants.

## Appendix A—Status of the State Auditor’s 2004 Office of Administrative Courts Performance Audit Recommendations, as of August 2008

The OAC has made progress since 2004 by implementing several prior recommendations; several others, however, have yet to be fully implemented, which have in part contributed to several of the issues raised in this report.

Recommendation	Implementation Status
<p>1. Continue to improve the Web-based docketing system; collect and monitor hearing data to determine the causes of untimely hearings by region; and assess the appropriateness of statutory time lines and seek statutory change, if necessary.</p>	<p><b>Partially Implemented</b> – The OAC still does not assess the appropriateness of statutory time lines. The Web-based docketing system no longer poses a problem and the average days from application to hearing has decreased in most locations since 2004. See Recommendation No. 1 of this report.</p>
<p>2. Establish a standard deadline by which attorneys must submit their final documents.</p>	<p><b>Partially Implemented</b> – The OAC established an informal policy of 15 calendar days, but did not formalize it in OAC policies. See Recommendation No. 1(e) of this report.</p>
<p>3. Continue to analyze reversal and remand decisions and use this information to determine trends and improve administrative processes; continue to use reversal and remand data when evaluating ALJ performance; and address common reasons for reversals and remands through staff training.</p>	<p><b>Partially Implemented</b> – The OAC developed a CLE program to serve as a basis for training on reversals/remands; however, despite the fact that all reversals/remands occur primarily on certain types of cases, the OAC has not systematically analyzed trends to address common reasons for reversals and remands. In fact, the OAC does not typically track this information. See Recommendation No. 2 of this report.</p>
<p>4. Provide clear and consistent information to all litigants; review the customer service function and develop multiple assistance resources; determine the types of assistance staff can provide without constituting legal advice; and train and assign staff to serve as facilitators.</p>	<p><b>Partially Implemented</b> – The OAC appears to have increased the amount of information on its website, but the accessibility of this information and assistance remains deficient. See Recommendation No. 6 of this report.</p>

Recommendation	Implementation Status
<p>5. Include a notice in informational materials and on the Division’s website that <i>pro se</i> litigants will be held to the same standards as an attorney and may be at a disadvantage if they choose to litigate without an attorney.</p>	<p><b>Implemented</b> – The OAC website does not specifically state this. Rather, it states that “an attorney may be better able to represent your case.”</p>
<p>6. Include input from the Division of Workers’ Compensation to ensure that the new information system meets the data needs of both divisions, conduct systems-related testing, and provide training to appropriate staff.</p>	<p><b>Partially Implemented</b> – The OAC obtained input from the DOWC in the planning of Legal Files, but it did not ensure that the new information system met the needs of both divisions. See Recommendation No. 4 of this report.</p>
<p>7. Determine the data elements needed to manage workers’ compensation claims, work with the Division of Administrative Hearings to determine the most efficient way to collect these data, and participate in system-related testing and training efforts.</p>	<p><b>Partially Implemented</b> – The OAC gathered some data elements required by both the DOWC and OAC, but not others, and data gathering is not sufficiently efficient due to duplicate entry and problems producing management reports. See Recommendation No. 4 of this report.</p>
<p>8. Improve the review process of travel and motor pool requests; reconcile travel and motor pool documentation to COFRS; and monitor regional travel expenditures to control costs.</p>	<p><b>Implemented</b> – The OAC’s records indicate that it regularly receives, reconciles, and monitors travel/motor pool expenditures.</p>
<p>9. Require the Colorado Springs regional office to mail appellate files to the Industrial Claim Appeals Panel and track file submissions to ensure compliance with the 30-day statutory time limit.</p>	<p><b>Implemented</b> – Colorado Springs submits files to ICAP in a timely manner.</p>

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