Approved Stephen R. Cloud
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

The meeting was called to order by Representative Stephen R. Cloud at
Chairperson

9:06 a.m./~~p.m.~~ on Tuesday, January 29, 1985 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research Dept.
Julian Efird - Legislative Research Dept.
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Leo Hafner - Legislative Division of Post Audit
Trudy Racine - Legislative Division of Post Audit

The meeting of the House Governmental Organization Committee was called to order at 9:06 a.m. by Representative Stephen R. Cloud, Chairman. Minutes of the January 25 and 28 meetings were distributed. The chairman introduced Leo Hafner, Legislative Post Audit, who was present to give the post audit review entitled, "Unemployment Compensation: Reviewing Protested Claims". (See Attachment A)

Mr. Hafner began by saying that the audit was conducted at the request of the House Governmental Organization Committee as part of its review of the Department of Human Resources. The audit addressed four main questions: Are unemployment benefits being granted only to those who should qualify; Are unemployment benefits being accurately charged to the appropriate accounts in accordance with the law; Do employers fail to protest unemployment claims because they have found the process to be too costly or too time consuming; and, Are state agencies failing to protest unemployment claims submitted by former employees when such claims should be protested.

In reply to benefits being granted only to those who should quality, it was found that the Department does not indiscriminately grant benefits to all who apply. Mr. Hafner cited statistics to back this up, but he also stated that considerable interpretation and judgment are often involved in making these determinations. With regard to unemployment benefits being accurately charged to appropriate accounts, Mr. Hafner said that most cases were charged to the appropriate accounts, however, some cases were found in which the general pool was charged when the individual employer's account should have been charged. In replying to the question, do employers fail to protest claims because of cost or time factors, Mr. Hafner stated that it was found that employers generally protest unemployment claims. However, if overruled on their protest, they would hesitate to take the time or pay the cost of an appeal. The final question of state agencies failing to protest unemployment claims submitted by former employees showed that 26% of the claims filed by former employees of 21 state agencies were not responded to in any way. Mr. Hafner directed the committee's attention to pages 23 and 24 which contained several improvements that might be made in each of these situations.

After discussion by several members of the committee regarding Dr. Harder's letter of April 6, 1984, it was suggested that Dr. Harder, who is the Secretary of Administration, be invited to appear before the committee to inform the members of the current status of the Department's responses to unemployment claims. The 'voluntary quits' bill was discussed. This bill will be introduced today in the House Labor and Industry Committee. The chairman thanked Mr. Hafner for the audit report.

Ms. Racine, Legislative Post Audit, began her report entitled, "Examining Selected Areas of the Veterans' Commission's Operations". (See Attachment B) She answered questions from the committee and referred to Attachment I of the report which was a letter from Stan Teasley, Executive Director, Kansas Veterans' Commission, refusing her request for a breakdown of Kansas Veterans' Commission employees receiving compensation from Veterans organizations.

The chairman thanked Ms. Racine for her audit report and, after reviewing the committee's agenda for the rest of the week, adjourned the meeting at 9:59 a.m.

SRC

GUEST LIST

COMMITTEE: GOVERNMENTAL ORGANIZATION DATE: 1-29-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Leo Hafner	1510 Lane #24C	Post Audit
KEN Young	826 Randolph, Top.	The American Legion
Chuck Yunker	5918 NW Glenwood Dr Top.	The American Legion
Trex Mellinger	1265 Indian Trail Ct. Topeka	Veterans of Foreign Wars
JOHN A. Hill	TOPEKA, KS	DISABLED AMERICAN VETS.
STAN TEASLEY	512 W 6th Topeka	Kansas Vet. Comm.
Randell Scott	R#1 Ozawkie	Ks. Vet. Comm.
Lon Wolgast	Topeka	D H R
Paul Bicknell	Topeka	D H R
A. J. KOTICH	TOPEKA,	DNR
BILL CLAWSON	401 TOPEKA AVE	DHR

1-29-85

PERFORMANCE AUDIT REPORT

Unemployment Compensation: Reviewing Protested Claims

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
March 1984

1-29-85
ATTACHMENT A

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about $3 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

As a guide to all their work, the auditors use the audit standards set forth by the U.S. General Accounting Office and endorsed by the American Institute of Certified Public Accountants. These standards were also adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or committees should make their requests for performance audits through the Chairman or any other member of the Committee.

LEGISLATIVE POST AUDIT COMMITTEE

Senator Paul Hess, Chairman
Senator Neil H. Arasmith
Senator Ross O. Doyen
Senator Tom Rehorn
Senator Joe Warren

Representative Robert H. Miller, Vice-Chairman
Representative William W. Bunten
Representative Joseph Hoagland
Representative Ruth Luzzati
Representative Bill Wisdom

LEGISLATIVE DIVISION OF POST AUDIT

Suite 301, Mills Building
Topeka, Kansas 66612
(913) 296-3792

PERFORMANCE AUDIT REPORT

Unemployment Compensation: Reviewing Protested Claims

OBTAINING AUDIT INFORMATION

This audit was conducted by Leo Hafner, senior auditor, and by Marilyn Allen, Curt Winegarner, and Roy Fitzpatrick, auditors. Additional assistance in field work was provided by Tom Vittitow and Cynthia Lash, two other auditors on the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Hafner at the Division's offices.

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UNEMPLOYMENT COMPENSATION: REVIEWING PROTESTED CLAIMS

Summary of Legislative Post Audit's Findings

Are unemployment benefits being granted only to those who should qualify? The auditors' review showed that the Department does not indiscriminately grant benefits to all who apply. In 48 of 100 cases the auditors reviewed in detail, the person filing the claim was disqualified from the first 10 weeks of benefits that fully qualified persons would receive. However, considerable interpretation and judgment are often involved in making determinations about claims. The Department has developed guidelines for use in gathering information and making determinations on claims. Such guidelines can help reduce the amount of judgment but will not eliminate it. The auditors found several cases in which decisions made by the Department were inconsistent or open to question.

Are unemployment benefits being accurately charged to the appropriate accounts in accordance with the law? Under the current system, benefits that cannot be charged against a specific employer's account are charged to a general pool. The auditors reviewed 100 cases in detail to determine if the proper account was charged, and if it was charged for the proper amount. In most cases, the charges and amounts were correct. However, the auditors did find some cases in which the general pool was charged when it appeared an individual employer's account should have been charged instead. Granting benefits in this way may tend to discourage appeals that might otherwise be made.

Do employers fail to protest unemployment claims because they have found the process to be too costly or too time consuming? A survey of 200 employers showed that employers say they generally protest unemployment claims. About 90 percent of those responding to the survey indicated that they would always protest a questionable claim. Fewer employers--about two-thirds of those responding--said that they would appeal the decision if overruled on their protest. Some of the primary reasons given for not appealing a decision on a claim were: "It is difficult for an employer to win an appeal," "Appeals are too costly," "Appeals are too time consuming," and "I wasn't aware I could appeal."

Are State agencies failing to protest unemployment claims submitted by former employees when such claims should be protested? In reviewing 275 unemployment claims filed by former employees of 21 State agencies, the auditors found that about 26 percent of the claims were not responded to in any way. A closer look at 33 claims that were not responded to showed that 12 of those claims should have been protested. Claimants in seven of those 12 cases were paid $6,300 in benefits they apparently were not entitled to receive. One major reason for not responding to unemployment claims appears to be a lack of understanding about when a response is warranted.

Conclusions and recommendations. To lessen complaints about decisions, the Department needs guidelines that are flexible but are also as unambiguous as possible. It also needs complete and accurate information from both the claimant and the employee. The audit suggests several improvements that might be made (see pages 23-24).

UNEMPLOYMENT COMPENSATION: REVIEWING PROTESTED CLAIMS

This performance audit was requested by the House Governmental Organization Committee as part of its review of the Department of Human Resources under the Kansas Sunset Law. At its meeting on January 17, 1984, the Legislative Post Audit Committee directed its staff to conduct the audit. The audit addressed four main questions:

--Are unemployment benefits being granted only to those who should qualify?

--Are unemployment benefits being accurately charged to the appropriate accounts in accordance with the law?

--Do employers fail to protest unemployment claims because they have found the process to be too costly or too time consuming?

--Are State agencies failing to protest unemployment claims submitted by former employees when such claims should be protested?

The auditors' work centered on two samples of unemployment claims submitted during the first five months of 1983. The first sample was a selection of 100 claims that had been protested by the employers. These cases were reviewed to determine if the decision to grant or deny benefits appeared to be in accordance with the law, if the benefit amounts were properly calculated, and if the benefits paid were properly charged, either against specific employers or against the general pool of unemployment funds contributed by all employers.

The second sample contained 275 claims for unemployment benefits for which an agency of the State of Kansas was the last employer of the claimant. These claims were reviewed to determine if the State agencies were submitting proper documentation of the conditions under which the employee terminated, so that the Department of Human Resources could make a proper determination of benefits.

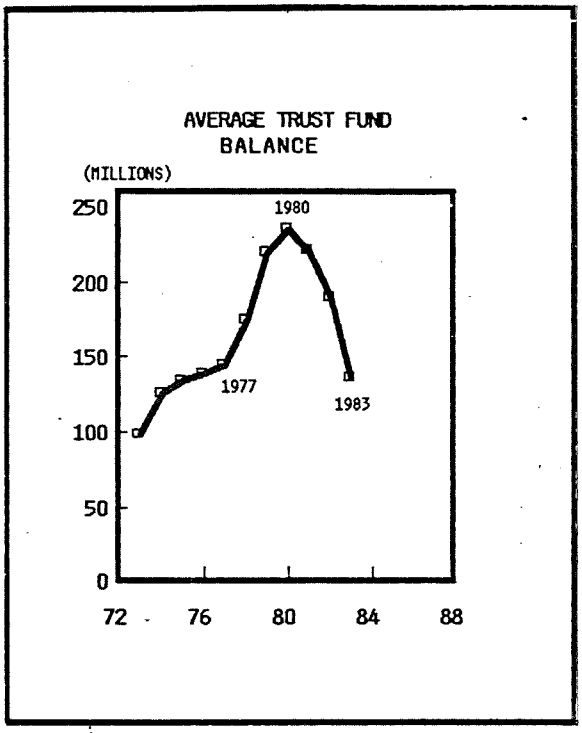
The auditors also developed a questionnaire and sent it to 200 employers across the State to determine their attitudes about protesting unemployment claims. In addition, the auditors reviewed several cases which were the subject of employer complaints during testimony given before legislative committees studying unemployment compensation.

The Unemployment Compensation Program

The unemployment compensation program is based on the idea of setting aside funds during periods of employment in order to provide benefits to workers during periods of unemployment. As a result of this concept, the

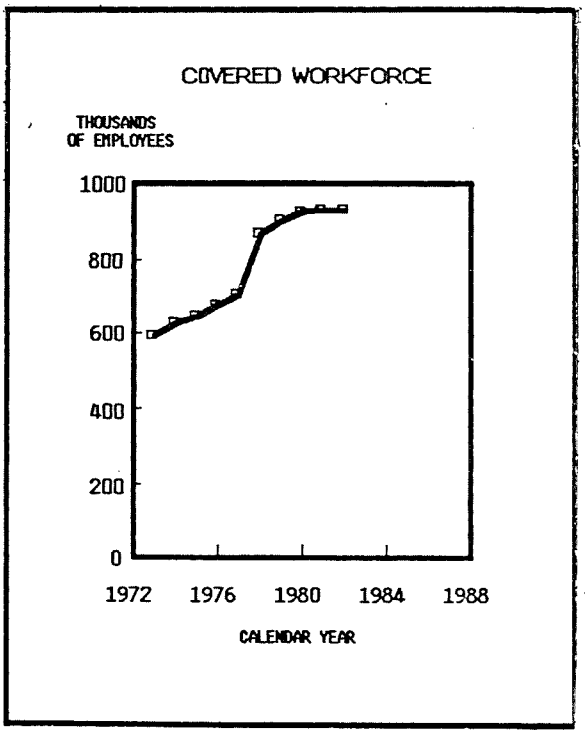
money available to pay unemployment claims will fluctuate over time, increasing during periods of relatively stable or increasing employment, and decreasing during periods of unemployment. The average annual balance in the Employment Security Trust Fund during the last ten years is shown in the graph below.

As shown in the graph, the average balance in the Fund increased every year from 1972 to 1980, when it peaked at just over $234 million. Since 1980, the average Fund balance has declined dramatically to about $136 million in calendar year 1983.

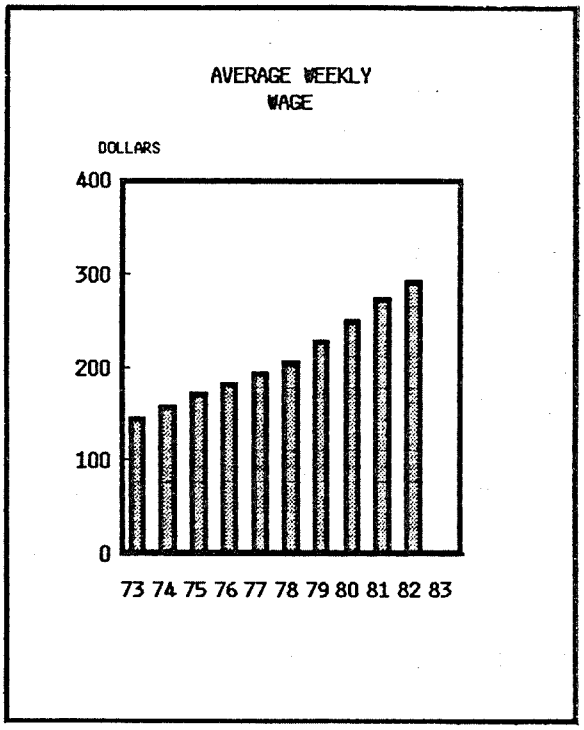


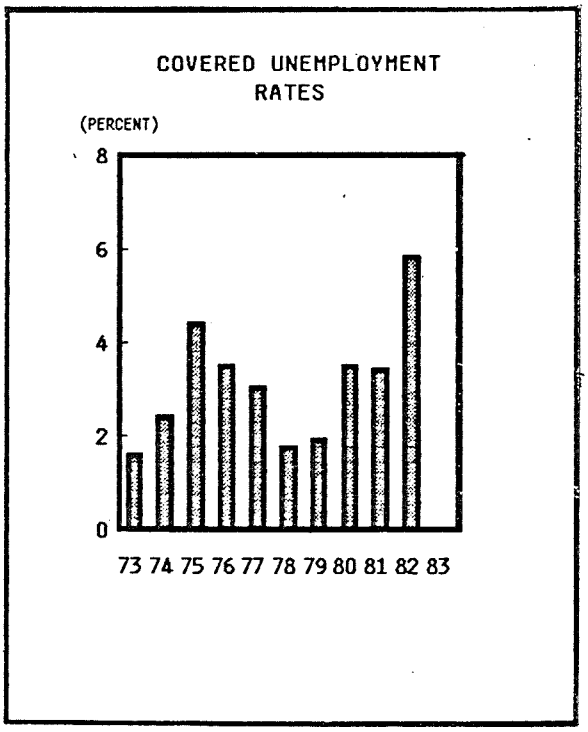
Two primary factors affect the balance in the Fund: the number of workers covered under the program and the amount of the wages they earn. Each of these factors can have either a positive or a negative impact on the Fund balance, depending on the economic conditions at the time. For instance, during periods of high or increasing employment, both workers and wages will have a positive influence on the fund balance because the employer contributions to the Fund are based on a portion of gross payroll. A larger covered workforce provides a larger payroll base and increases contributions to the Fund.

This positive impact can be seen during the period 1977 to 1980 when unemployment was relatively low, and the Fund balance increased rather sharply. One of the main reasons for this dramatic increase was the enactment of Public Law 94-566 which extended coverage to most state and local government workers and to many workers performing agricultural labor or domestic services. The chart at the right shows the average size of the workforce covered by unemployment over the last ten years. As shown in the graph, the covered workforce remained relatively stable around an average of about 650,000 workers during the period 1973 to 1977.



After the enactment of Public Law 94-566, the covered workforce jumped to a new level in 1978 and has remained relatively stable around an average of about 908,000 workers during the last five years of the period. This was an addition of around 250,000 workers to the covered workforce.

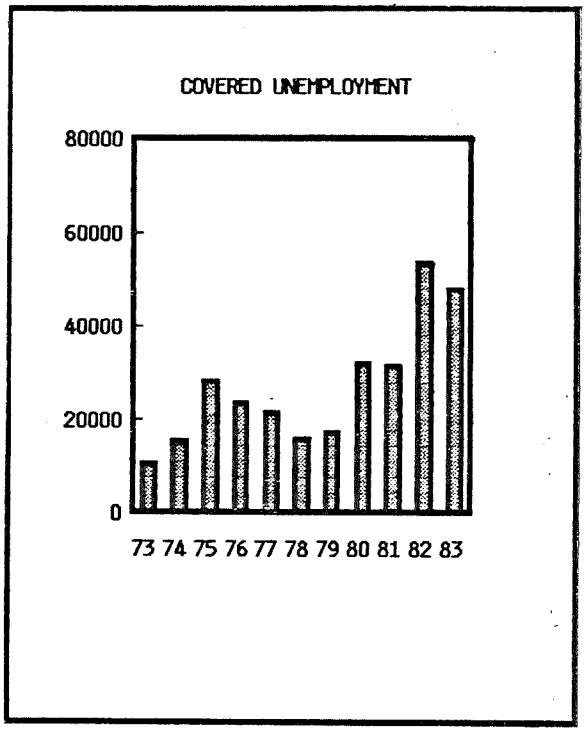


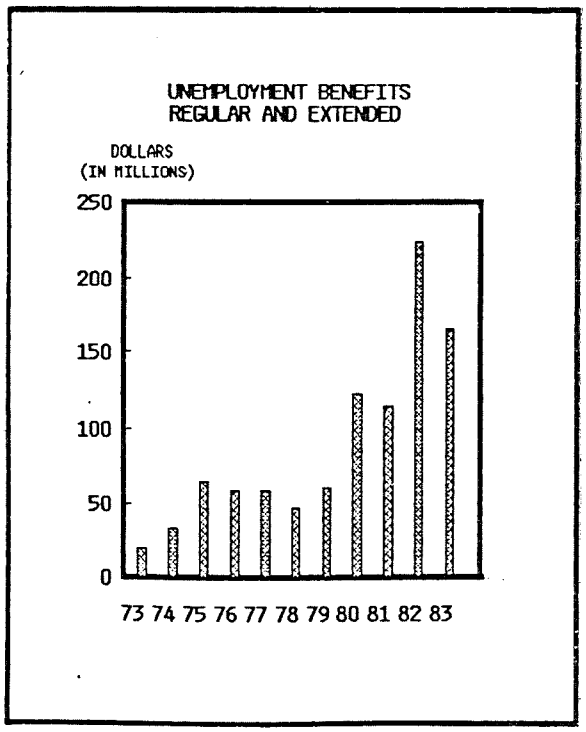


Another factor which had a positive impact on the Fund until 1980 was an increasing average weekly wage as shown in the top graph on the left. From 1973 to 1982, the average weekly wage more than doubled from about $143 a week to $291 a week. This rise in wages increased contributions to the program. With more workers covered by the program and with a relatively low burden of unemployment to draw down the fund balance, the money in the Employment Security Trust Fund increased significantly in 1978, 1979, and 1980.

In 1980, unemployment in the State began to rise, and the same factors that were responsible for building up the Fund balance from 1978 to 1980 helped to draw down the reserves during the period from 1980 to 1983. The increase in the covered workforce that took place in 1978 created a larger group of people who were potentially eligible for unemployment benefits. Likewise, the increase in the average weekly wage raised the potential benefits that each person claiming unemployment would receive. The result is that when unemployment increased, larger numbers of people were claiming benefits, and the amounts they received were larger than ever before. This result can be seen in the remaining graphs. The first of these graphs shows the covered unemployment rate since 1973. The second graph shows the number of covered unemployed workers for the same period, and the third graph shows unemployment benefits paid during the period. It is interesting to note that the covered unemployment rate, as shown in graph num-

ber one, was the same in 1976 and in 1980, yet the number of covered unemployed workers as shown in graph number two was significantly higher in 1980. This demonstrates the impact of the increase in coverage that occurred in 1978. A review of all three graphs shows relative consistency between unemployment and the level of benefits paid out. The high level of benefits paid from 1980 to 1983 shows why the balance in the Fund dropped dramatically in those years.





In recent years, demands on the Employment Security Trust Fund have been great, and the Legislature has looked at a number of ways to maintain the solvency of the fund. Employers' contribution rates have gone up, and surcharges have been placed on those rates to bring more money into the fund.

In response to this, a number of employers have questioned why their contribution rates have gone up dramatically, when they have experienced no claims against their accounts by former employees. This audit was designed to examine the charging of claims to employer accounts to ensure that only eligible claims are being charged, and that they are being charged to the proper employer when the law calls for such a charge.

Before presenting the findings regarding determination of eligibility and the charging of claims, however, it may be helpful to explain some of the mechanics of the unemployment system, and which aspects of that system fell within the auditors' review.

The following explanation attempts to give a general understanding of the system. It provides an overview of general concepts only and does not provide every detail that is found in the statutes.

Determining the Extent of a Claimant's Eligibility

Under the law, claimants who are fully eligible for unemployment compensation can receive up to 26 weeks of benefits. These benefits begin with the second week of unemployment after a claim is filed; under the law, fully eligible claimants must wait a week before benefits begin.

The law contains a number of provisions under which a claimant can be disqualified for benefits. Many of these deal with such matters as being available for work and actively searching for a job. These were outside the scope of this audit. The only disqualifications considered in this report are those that relate to an employee's leaving his or her most recent position. In some instances, such as being fired for gross misconduct or quitting voluntarily for domestic reasons, the claimant is completely ineligible for benefits. In others, such as being fired for a breach of duty or quitting voluntarily without good cause, the claimant is disqualified from receiving the first ten weeks of benefits he or she would receive if fully qualified. This disqualification limits the claimant to a maximum of 16 weeks of regular benefits.

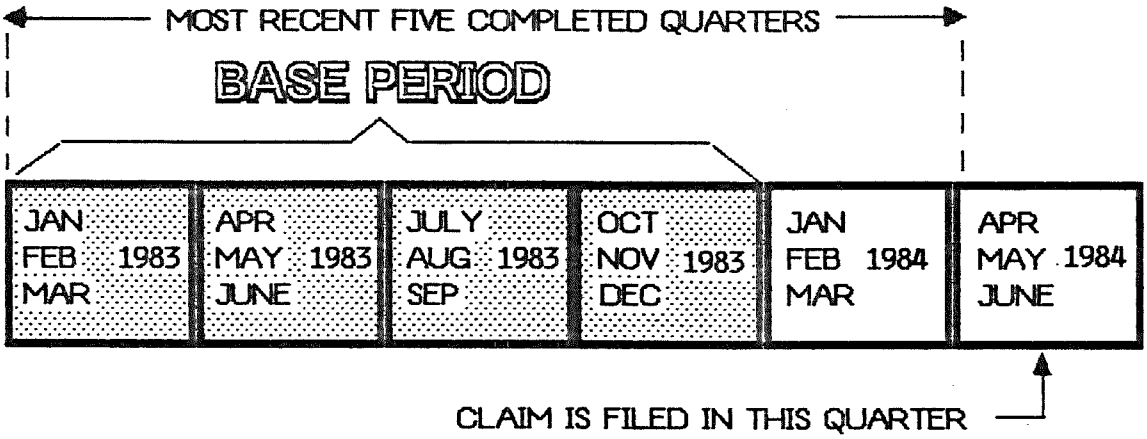
When a person files for unemployment, the Department of Human Resources mails a notice to the person's last employer. This notice informs the employer that a claim has been made and provides the following information:

--The claimant's name and social security number.
--The last date the claimant worked for the employer.
--The potential amount of benefits that can be charged if the claimant is paid benefits.
--The reason the claimant states for leaving employment.

This notice provides an opportunity for the employer to respond within 16 days to protest or clarify the information contained on the notice. The employer's response is then used to determine the extent of the claimant's eligibility. If no response is received, the Department proceeds on the basis of information supplied by the claimant.

Charging Unemployment Benefits to Employers

Any employer who employed a claimant during the claimant's "base period" is potentially liable for any benefits paid to that claimant. A claimant's base period is defined as the "first four of the last five completed calendar quarters immediately preceeding the first day of the claimant's benefit year." The chart on the next page helps to illustrate this concept. In this illustration any employer that employed the claimant during the period shown under the shaded area is potentially liable to be charged for benefits. Some claimants may have only one base-period employer, while others may have many. When several base-period employers are involved, each employer is liable for a portion of total benefits based on the portion of the total base-period wages he paid to the claimant. For example, if there are two base-period employers with one paying two-thirds of the wages the claimant received during the base-period and the other paying one-third of those wages, the employer who paid two-thirds of the wages would be potentially liable for two-thirds of the benefits paid.



The employer is said to be potentially liable because there are circumstances under which an employer can request that his account not be charged for the benefits paid to a claimant. K.S.A. 1983 Supp. 44-710(c) states that a base-period employer will not be charged for benefits paid to the claimant if it is found that the claimant's most recent employment with that employer ended as a result of one of the following:

--discharge for breach of duty connected with the claimant's work
--discharge for gross misconduct connected with the claimant's work
--voluntary leaving without good cause attributable to the employment

There is one exception to this rule. This exception involves a group of employers defined as "reimbursing" employers. Under the law, a reimbursing base-period employer such as the State of Kansas is not allowed to request a non-charge for any of these reasons. The example outlined in the chart on the next page can help to illustrate how this system of charging works. In this example there are four base-period employers who each paid an equal amount of wages to the claimant during the base-period. Therefore, each is potentially liable for an equal share of the benefits paid. Employer number one laid off the employee and is thus responsible for a share of benefits. This employer's account will be charged. Employer number two is a reimbursing employer. Therefore, he has no basis for requesting that his account not be charged even though the employee was fired for breach of duty. As a result, a charge is made against this employer. Employers number three and four both terminated the claimant's employment under one of the conditions described in K.S.A. 44-710(c). Therefore, each of the employers is not charged for any benefits paid. In cases where an employer is not charged for benefits, the benefits are charged against the general pool of unemployment funds and thereby allocated to all employers.

When a person files for unemployment, the Department of Human Resources notifies each base-period employer. This notice informs the employer that a claim has been made and that the employer is potentially liable for charges. This notice provides an opportunity for each base-period employer to contest his or her inclusion as an employer to be charged.

BENEFIT CHARGES TO EMPLOYER ACCOUNTS

	EMPLOYER #1	EMPLOYER #2	EMPLOYER #3	EMPLOYER #4
TYPE OF EMPLOYER	CONTRIBUTING	REIMBURSING	CONTRIBUTING	CONTRIBUTING
BASE-PERIOD WAGES PAID	$5,000	$5,000	$5,000	$5,000
TERMINATION CONDITIONS	LAID OFF	FIRED, BREACH	FIRED, BREACH	QUIT W/O CAUSE
DECISION	CHARGED	CHARGED	NOT CHARGED	NOT CHARGED

It should be noted that although each base-period employer has an opportunity to request that his or her account not be charged, only the last employer has the right or opportunity to raise the issue of disqualification. An employer's direct participation in paying benefits depends on the circumstances of the claimant's leaving the job with that particular employer, but a claimant's last job is the only one that affects disqualification.

Making Decisions and Handling Appeals Within the Department of Human Resources

There are several levels within the Department of Human Resources that are responsible for making determinations or handling appeals. The first of these levels is the claims examiner. The claims examiner is responsible for gathering the necessary information to make the initial decision to grant or deny benefits and to charge or not to charge a base-period employer. Any claimant or employer who is dissatisfied with a claims examiner's decision has the right to appeal the decision within 16 days.

A decision appealed from the claims examiner level is reconsidered by a referee. The referees are employees who are attorneys or who have special legal training. If a claimant or employer has appealed the case to a referee and is still dissatisfied, an appeal to the Employment Security Board of Review can be made.

The Board is comprised of three members. One member of the Board is a representative of employees, one member is a representative of employers, and one member is a representative for the general public. The members representing employees and employers are both appointed by the Governor. The member representing the general public is appointed by the two other members of the Board. Any decisions appealed beyond the Board of Review are handled by the courts.

Are Unemployment Benefits Being Granted Only to Those Who Qualify?

One concern expressed by legislators in requesting this audit was that persons might be receiving unemployment benefits even though they clearly should be disqualified. This concern had been raised in part because of complaints from employers that former employees had been granted unemployment benefits even though the employer protested the claim and presented evidence to demonstrate that the employees should be disqualified.

To review this matter, the auditors selected a random sample of 100 claims that involved an employer's protest or that required a determination on a separation issue. This was done as a way of focusing on cases in which disqualification had been raised as an issue. These 100 claims were all filed between January 1 and May 31, 1983. The auditors made a thorough review of each file to determine whether the decisions appeared to be in accordance with the law. In brief, their review showed the following:

1. In 48 of the 100 cases, the person filing the claim was disqualified from the first ten weeks of benefits he or she would receive if fully qualified. Thus, in about half of the cases either the claimant was disqualified on the initial facts of the case, or the employer's protest was upheld.
2. Most of the cases, regardless of the outcome, were not appealed past the claims examiner's decision. Of the 100 cases, 27 were appealed to a referee, and 10 of those 27 were subsequently appealed to the Board of Review.
3. On the surface, several of the decisions in these 100 cases appeared to be inconsistent with the law or with each other. Upon investigating these decisions further, the auditors found that most of the apparent inconsistencies were explainable and were compatible with the tests of law that officials had to apply. Decisions in a few of the cases, however, still appeared to be questionable.

The auditors' findings do not indicate that there is a pattern of granting all claims regardless of whether persons were qualified or not. Nevertheless, after reviewing these cases in detail, the auditors can readily understand how such impressions can be created. The laws that govern the determination of benefits must often be interpreted with a great deal of judgment. Circumstances that differ only slightly in two cases can result in opposite decisions, and it is easy to see how charges of inconsistency and error can result. The following sections describe this situation in more detail.

Considerable Interpretation and Judgment Are Involved in Making Determinations About Claims

The Employment Security Law leaves a considerable degree of flexibility in making determinations about claims. This flexibility is apparently intended to take into account the wide variation in circumstances under which people may become unemployed. However, it also introduces a considerable degree of interpretation and judgment.

An example of this interpretation and judgment is the determination of an employee's leaving for "good cause." Under the law, a person who quits work with good cause is not disqualified from receiving benefits, while a person who quits without good cause will forego the first ten weeks of benefits he or she would receive if fully qualified. The law states that good cause is the following:

> if: 1) After pursuing all reasonable alternatives, the circumstances were of such urgent, compelling or necessitous nature as to provide the individual with no alternative but to leave the work voluntarily; or 2) the reasons for the separation were of such a nature that a reasonable and prudent individual would separate from the employment under the same circumstances.

This definition of good cause still leaves a number of determinations to be made, and it calls for a great deal of judgment in weighing the facts of a particular case. It is possible that two persons looking at the same set of circumstances could make different judgments as to whether a person had quit for good cause. It is also possible that two claims examiners could arrive at different decisions of the same case as well. Examples that will follow later in this report illustrate the degree of interpretation that often may be involved.

The Department's Procedures Reduce the Amount of Judgment Required but Cannot Eliminate It

The auditors reviewed appropriate sections of the Kansas Administrative Regulations to determine if the regulations provided additional guidance or clarification regarding decisions on unemployment claims. They found that the regulations provide little guidance.

To help guide claims examiners and referees in gathering information and making decisions, the Department compiles reference manuals. Claims examiners, for example, refer to manual sections that cover general subject areas such as being able and available for work or being terminated for misconduct. In the section on misconduct, a series of cards outlines general behavior that might be considered misconduct. Another series of cards outlines the general types of information the claims taker should obtain to make a decision about a given type of misconduct. A third series of cards list some specific questions to be asked. Claims examiners are made aware of court interpretations that may affect their decisions. They are also periodically trained in fact-finding and writing determinations. The manual for referees is also extensive and includes information about court cases, legal interpretations, and the like.

In the short period of time available for this audit, the auditors were unable to determine whether cases were always decided on the basis of the procedures and standards given in the manual. Even if cases are decided in this manner, however, the results can appear to be inconsistent. An example is whether someone should receive unemployment if he or she quits a job to move with a spouse to another city. The answer varies with the particular circumstances of the situation. The examiner's procedures in such a case include determining whether the move was necessary (whether, for example, the spouse had a job in the new location) and determining whether the person claiming benefits is actively in the labor market in the new location. Someone

whose spouse was transferred to a new city and who was actively looking for a job there would probably be judged as qualified; someone who relocated with a spouse when neither had jobs and the move was just for personal preferences would probably not be judged as qualified. To someone not familiar with the circumstances of their cases, the decision to approve one and not the other would appear inconsistent.

Inconsistent Decisions on Awarding Claims to Persons Who Relocated

Case Number One: An employee resigned her job in May, 1983 to move to another city because she was to be married two weeks later. The claimant's fiance was employed in the new city. The claimant applied for unemployment compensation four days after she moved, listing contacts she had made in seeking employment in the new city. The employer contested the claim on the grounds that the claimant had left voluntarily. The claims examiner found that the claimant "left employment to move to another locality. The move was a preference rather than of a compelling nature." She was disqualified for a total of 11 weeks and her benefit entitlement was reduced by $1,400. The claimant did not appeal.

Case Number Two: An employee resigned her job in mid-May, 1983 to move to another city because she was to be married two weeks later. The claimant's fiance was employed in the new city. The claimant applied for unemployment compensation a few days after she moved, indicating that she was actively seeking employment. The employer contested the claim on the grounds that the claimant had left voluntarily. The claims examiner found that the claimant "left work for personal reasons. The reasons given do not show good cause." She was disqualified for 11 weeks and her benefit entitlement was reduced by $1,620. The claimant appealed this decision. The referee handling the appeal found that "claimant's reasons for leaving employment were of such nature that a reasonable and prudent individual would leave work for the same reason." The referee concluded that the claimant left work voluntarily with good personal cause not attributable to the employment and restored the reduced benefit amount.

Decisions in Some Cases The Auditors Reviewed Were Inconsistent or Open to Question

In their review of cases, the auditors did not find any examples in which benefits were granted to claimants in clear violation the law. It cannot be concluded that such situations never occur, but due to the judgement involved in making decisions under the law, such cases would be difficult to document. The auditors did, however, find several cases in which the grounds for granting benefits appeared to be weak, or cases in which decisions were inconsistent with each other. These cases are described in turn below.

Inconsistent decisions on cases of quitting to get married. Several of the considerations that come into play when considering unemployment claims involving relocation wre discussed on the previous page. Two cases in the auditors' sample involved persons who quit their jobs to move to another city and marry. These cases are summarized in the box on the left. In the first case, the claim was disallowed. In the second case, the claim was awarded when the person appealed the examiner's decision. The only major difference between the two cases appears to be that one was appealed and the other was not.

Questionable decision on a case involving termination. This case is

summarized in the box on this page. In this case, both the claimant and the employer indicated that the claimant had been fired. The Department's decision on the basis of those statements was to deny benefits. Upon appeal, however, the ref eree decided that the employee quit with good personal cause not attributable to her employment. The auditors would take issue with this decision. The situation the claimant faced was certainly a bad one, but the situation does not change the fact that the employer, not the claimant, took the action to end the claimant's employment, and the claimant had apparently taken no steps to inform her employer she was leaving.

Cases involving determinations about gross misconduct. Under the law, persons are not eligible for benefits at all--even after the first eleven weeks--if they are fired for gross misconduct. In cases involving two employees at Larned and Topeka State Hospitals, claims examiners ruled that alleged sexual episodes involving patients at the hospitals constituted breach of duty--a less serious charge than gross misconduct, and one that results in disqualification for only eleven weeks. In another case, a claims examiner ruled that an employee's action in obtaining an unlisted number and making harassing phone calls constituted gross misconduct. Without taking anything away from the seriousness of the third case, the auditors question whether the fired employees' actions in the first two cases were any less serious.

Questionable Decision on a Case Involving Termination

When this claimant filed an unemployment claim, she stated that she had been fired from her last job. The company returned the employer notice to the Department with this statement: "Claimant was terminated for being absent four consecutive work days without reporting in any way. This is a company rule violation." The claims examiner ruled that the claimant was discharged for a breach of duty and was therefore disqualified for benefits for eleven weeks.

The claimant appealed the decision to a referee. She testified that she had just gone through a divorce, that she feared bodily injury from her ex-husband, and that the court awarded custody of her two children to the husband--a ruling she did not agree with. As a result, she had taken her children to another state to avoid the custody order.

The referee ruled that the claimant left work voluntarily due to an extreme personal situation, and that any reasonable person would have left as she did. The full benefits were reinstated. The employer's account was not charged.

Decisions on Other Cases Referred to the Auditors Apparently Are Consistent with Legal and Administrative Interpretations of the Law

As part of their review, the auditors examined a number of cases referred to them by legislators. These cases had been called to legislators' attention as examples of decisions that seemed incorrect or inconsistent. The auditors reviewed as many of these cases as possible to determine whether the decisions were in keeping with the law.

In some cases, there did not appear to be reason for the complaint lodged by the employer. In other cases, the auditors tend to agree with the employer's complaint. However, in these cases the law either specifically permits the

action that was taken, or there was not sufficient evidence without first-hand knowledge of the case to say that the Department's decision was absolutely wrong. Two examples may help to explain the difficulty the auditors encountered in this area.

In one case, the employer was upset because the claimant retired early, at age 62, and was collecting social security. Apparently this claimant learned that he could work on a part-time basis without receiving a reduction in his social security benefit. He was actively seeking part-time employment. During the period that he was not employed and seeking employment he became eligible for unemployment benefits. The employer was notified that a claim was filed, but the employer's account was not charged for those benefits. The auditors could not question this decision because the law provides that if an claimant's retirement pay is less than his or her weekly benefit amount, then he is eligible to receive benefits. The benefits will be reduced by the amount of the retirement pay.

In another case, the claimant lied on his employment application by stating that his brother, who already was employed by the company, was not his brother but his cousin. After learning of the correct relationship, the employer terminated the claimant for the falsification stating that company policy did not allow the hiring of immediate family members. The claims examiner ruled that the claimant was discharged, but not for a breach of duty. Therefore, benefits were granted and the employer's account was charged. The auditors may tend to agree that truthfulness on an employment application is a duty reasonably owed to the employer. However, the courts have apparently ruled that the employer must show: (1) a material duty owed by the claimant to the employer under the contract of employment, (2) a substantial breach of that duty, (3) a breach which is a willful disregard of that duty, and (4) evidence of a disregard of the employer's interests--that is a tendency to injure the employer.

Apparently in this case the referee found that the misstatement was not a material misstatement and that the employer was unable to prove damage sustained as a result. The Board of Review affirmed this decision. Given these criteria, the auditors are unable to call the decision contrary to law.

Are Benefits Being Accurately Charged to the Appropriate Account?

Another legislative concern expressed when this audit was requested is that employers have complained that their contribution rates have risen even though few former employees, if any, have filed for benefits. Under the State's unemployment compensation system, claims that cannot be charged to a specific employer's account are charged to the general pool of unemployment funds contributed by all employers. Concern has been raised that the Department may be approving claims that employers have protested and charging them against the general pool to minimize employer objections.

The auditors' review in this area included two main activities. First, the general trend in charges and non-charges to employer accounts was reviewed to determine if the portion of benefits that were not charged to a specific employer was increasing. Second, the auditors focused on the 100 protested cases in their sample to determine if any cases appeared to be charged to the

general pool of unemployment funds when they should have been charged to a base-period employer. In brief, their review disclosed the following:

1. In total dollars, the amounts not charged to a specific employer have increased from about $32.6 million in fiscal year 1980 to about $39.5 million in fiscal year 1983. However, in relation to the total funds to be allocated, the amount charged to the general pool has decreased from about 39 percent in fiscal year 1980 to about 19 percent in fiscal year 1983.

2. There are some cases in which a claimant is granted benefits and the specific employer is not charged. There were 14 such cases within the auditors' sample. After reviewing the case documentation on all of these cases, the auditors found grounds to question the decisions in four.

The auditors' findings do not indicate that there is a large-scale trend toward shifting claims from employer-specific accounts to the general pool of funds. However, the law does allow such shifts to take place, and such shifts do offer the opportunity to placate all parties involved in a contested claim, at least temporarily. Not charging a claim to a specific employer's account also takes away the incentive to appeal a claim that is judged in the employee's favor. The following sections discuss the issue in more detail.

The Percentage of Total Charges That Are Not Assessed Against a Specific Employer Appear to Have Decreased in Recent Years

Over the past four fiscal years, the dollar amount of claims allocated to the general pool of unemployment funds has increased. However, charges to specific employers have increased as well. As a result, the dollar amount charged to the pool now represents a smaller percentage of the total amount distributed than it did four years ago. The table below shows the distribution of charges between employer-specific and general accounts for fiscal years 1980 through 1983. As the table shows, total charges to be allocated rose from nearly $84 million in fiscal year 1980 to $208 million in fiscal year 1983.

Charges that were not allocated to a particular employer rose from $32.7 million in fiscal year 1980 to $39.5 million in fiscal year 1983. In fiscal year 1980, these charges represented 38.9 percent of all charges; in fiscal year 1983, this percentage had fallen to 18.9 percent.

Fiscal Year	Total Charges	Charges Against Specific Employer Accounts	Percentage	Charges Allocated to All Employers	Percentage
1980	$ 83,997,032	$ 51,310,673	61.1%	$32,686,359	38.9%
1981	123,151,200	77,155,986	62.7	45,995,214	37.3
1982	136,110,808	96,115,396	70.6	39,995,412	29.4
1983	208,302,596	168,763,421	81.1	39,539,175	18.9

These figures were supplied by the Department of Human Resources. Time did not permit testing their accuracy.

In Some Instances, The Current System May Remove the Incentive for Employers and Claimants to Appeal Decisions

Decisions by a claims examiner can be appealed to a referee, and beyond that, to the Board of Review or the District Court. However, in some instances the current law may take away an employer's or a claimant's incentive to appeal a decision that he or she believes to be incorrect. This occurs when an employee is judged to have quit voluntarily with good cause not attributable to the employment (for example, relocating with a spouse or facing a difficult domestic situation).

When this judgment is made, the employee is eligible for a maximum of 26 weeks of benefits, but the employer is not charged. Instead, the benefits are charged to the general pool. When this occurs, there is little incentive for the employer to appeal the decision. The effect of this policy is that questionable judgments may be allowed to stand unchallenged. The benefits paid in such cases are then allocated to all employers and cause contribution rates to increase even for those who have had no claims.

Within the auditors' sample of 100 cases, there were 14 in which claimants were granted full benefits but employers were not charged. None of these decisions could clearly be called contrary to the law, and a number of them appeared in all respects to be correct. However, within the group of 14, the auditors found four which they believe could--and perhaps should--be interpreted differently.

Only one of these four cases involves a situation in which the employee might be disqualified. This case is the one presented in the profile on page 11. In it, what appeared to be a relatively clear case of being fired for breach of duty was ruled to be quitting voluntarily for good cause.

In the three other cases, the issue was not whether the claimant was qualified, but only whether the specific employer's account or the general pool should be charged. All four involved interpretations of an unpaid leave of absence, such as maternity leave. Laws and regulations provide little guidance in making such interpretations. The box on the next page contains a summary of one of these three cases.

Some Cases the Auditors Reviewed Contained Errors in Charging Benefits to Employer Accounts

In their sample of cases, the auditors found several cases in which charges had been incorrectly assessed. In one case, the charge for benefits was correct prior to a referee's decision not to charge the employer. This decision occured after the Notice of Benefit Charges had been mailed. According to Department officials, the employer would have been issued an amended notice with the charge deleted if the charge had been called to the Department's attention. However, because the employer did not complain about the erroneous charge,

no correction was made. The Department indicated that it has a process for making a reversing entry to delete the charge from the employer's account when such decisions are reversed. In this case, however, the change was apparently overlooked and the reversing entry was not made.

In two other cases, the employers were not charged for benefits that they would normally be liable for. There was no documentation in the files to indicate a basis for not charging them. In yet another case, the decision indicated that the employer's account should not be charged. As a result, no charges were posted to the account. However, the decision not to charge the employer appears to be in error based on the reason given on the employer notice. In this case the employer should have been charged.

Benefits Charged to the General Pool Instead of a Specific Employer's Account

A claimant was injured on the job and according to statements by both the claimant and employer was placed on a leave of absence. When the claimant's physician certified him to return to work, he was told by the employer that no work was available.

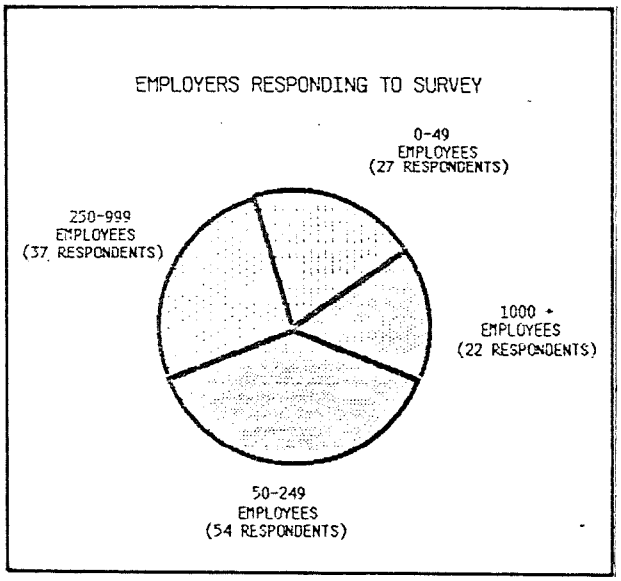
When the employee filed for unemployment, the claims examiner determined that he was eligible because of a lay-off and that the employer would be charged. (Normally, an employer is charged for benefits in a lay-off situation.) However, when the employer appealed, the referee determined that when the claimant went on leave of absence, it constituted a voluntary separation from employment for good cause not attributable to the employment. In such cases, the general pool is charged rather than a specific employer's account.

The auditors tend to agree with the determination made by the original claims examiner. Because there was an official leave of absence, there did not appear to be intent on the part of either party to terminate the employment when the leave began.

Do Employers Fail to Protest Unemployment Claims Because They Consider the Process Too Costly or Time Consuming?

To answer this question, the auditors mailed a questionnaire to a sample of 200 employers across the State. The questionnaire was designed to determine each employer's awareness of the processes for protesting and appealing unemployment claims, and the extent to which those processes are used. Of the employers surveyed, 140, or 70 percent, filled out the questionnaires and returned them to the auditors. The chart on the next page shows the relative proportion of responses received from employers in each of four size groups.

As the chart shows, the largest number of responses were from employers with 50-249 employees. These employers accounted for 38.6 percent of those responding. The second largest category was employers with 250-990 employees (26.4 percent) followed by those with under 50 employees (19.3 percent) and those with over 1,000 employees (15.7 percent). The responding employers included 41 manufacturing companies, 35 sales organizations, 30 service organizations, 7 construction or construction-related companies, 7 non-profit organizations, and 20 in various other categories.



Most Employers Say They Systematically Review All Unemployment Claims and Protest All Claims They Think Should Not Be Granted

The first question asked of employers was, "Do you systematically review the information provided on the unemployment claim notices you receive from the Department of Human Resources?" In 89.9 percent of the cases they indicated that they always verified the information. Another 6.5 percent indicated they frequently verified the information, and only 3.6 percent of the employers indicated that they never or only infrequently verified the information on the claim.

Those responding "never" or "infrequently" were asked to indicate a reason why they did not verify the accuracy of the claim information. Of the five respondents who indicated that they infrequently or never reviewed the claims information, one said it was because researching the claims was too costly and time consuming, two indicated that their contribution rate was already at the maximum level and that protesting claims would have no effect, one believed that protests were not likely to be decided in his favor, and one said it was because a service company performed this task on his behalf.

Those surveyed were next asked to indicate whether or not they would protest an unemployment claim if the information submitted on the claim notice contradicted their records. They were also asked whether or not they received a notice of the decision resulting from their protest. Nearly 90 percent of those responding indicated that they would always protest a claim if they felt the claim was inaccurate or should not be paid. Another 8.6 percent indicated they would frequently protest such a claim, while 1.4 percent indicated that they would never or infrequently do so. The vast majority (about 97.8 percent) indicated that they were notified of the decision made on a protest, while only 2.2 percent indicated that they received no notice.

More Than Two-Thirds of the Employers Indicated They Frequently Appeal Decisions

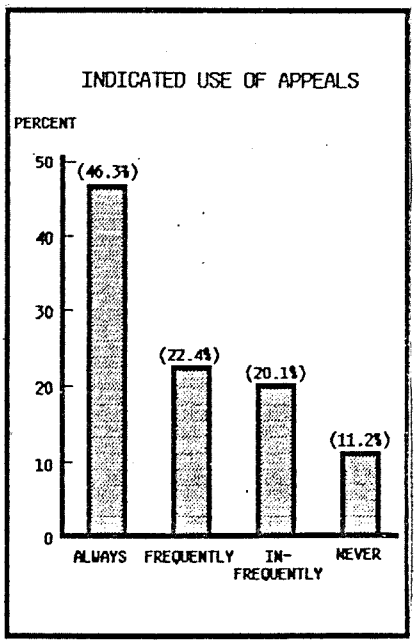
The final series of questions addressed the appeals process. Those surveyed were asked the following:

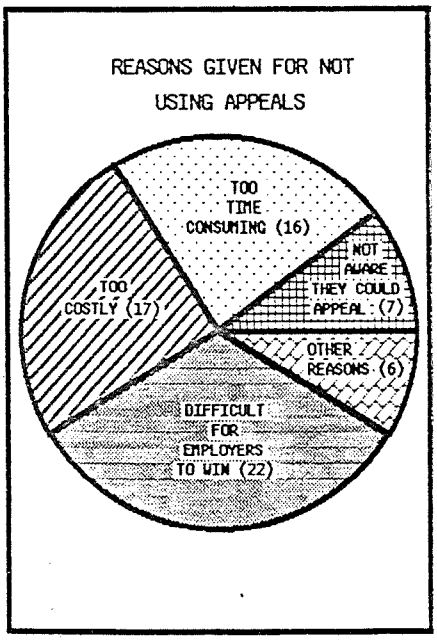
--Are you aware you can appeal a decision on an unemployment claim?
--How frequently do you exercise your right to appeal?
--If you rarely or never appeal a case, why not?
--What is the highest level of appeal you would normally consider using?

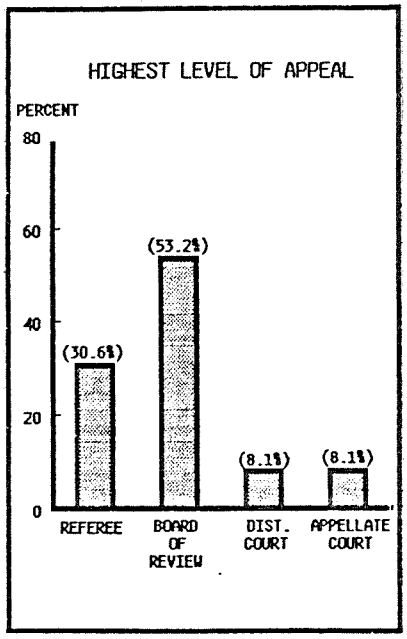
More than 91 percent of those answering indicated that they were aware they could appeal a decision on an unemployment case. A variety of answers were received regarding the use of the appeals process, as summarized in the charts below.

As shown in the charts, 46.3 percent of the employers responding indicated they would always appeal if they felt the determination made on their first protest was wrong, 22.4 percent of those responding said they would frequently appeal in such a case, and 31.3 percent said they would infrequently or never appeal. Those responding "never" or "infrequently" were asked to choose one or more of five possible reasons to explain why they did not make appeals. Of the 45 employers responding, 22 chose the statement "It is very difficult for an employer to win an appeal" as one of their reasons for not making appeals. Seventeen of those responding chose "appeals are too costly," and 16 chose "appeals are too time consuming." Seven said they were not aware they could make an appeal, and six indicated other reasons such as, being discouraged by previous experiences, or trusting the judgement of the claims examiners at the Department of Human Resources.

When asked to indicate the highest level of appeal they would normally consider using, all of the 124 employers who responded to this question indicated they would consider going at least to the referee level. Responses were more varied beyond that level; 30.6 percent of the respondents said they would go no higher than the referee, and 53.2 percent said they would go no higher than the Board of Review. Of the remaining 16.2 percent who indicated they would take their appeal into the court system, 8.1 percent would go no further than the district court, while another 8.1 percent indicated they would go to the appellate level if necessary.







Some Employers Offered Additional Comments Criticizing the System

In addition to responding to the questions on the survey document, several employers offered further comments about the unemployment program. Most of these comments expressed some complaint about the appeal system, particularly about the fairness and consistency of the decisions rendered. Several of these comments indicated that the procedures and rules of the appeal process are capricious and arbitrary, or that it is impossible for an employer to win an appeal. Other comments mentioned more specific objections about the appeal process. For example, several statements suggested that the referees are either unaware of court precedents, or fail to take them into consideration when making their determinations. Some employers expressed opinions such as: "the claimant and the employer are at the mercy of the individual referee", or "the decisions are entirely too subjective." One employer said he did not dispute that the 20 referees are reasonable persons, but added that the referee system offered "reasonableness without consistent direction."

In summary, it appears from the survey results that there is widespread and consistent use of the protest and appeal system. A large majority of the employers surveyed normally verify the information on claim notices they receive and make the appropriate protest when necessary. Although some employers are discouraged from making appeals by complaints about the time and expense involved, or the lack of fairness and consistency in the decisions rendered, most employers continue to make appeals frequently or all the time. Most express a willingness to take their appeals as high as a board of review. These findings indicate that, in general, most Kansas employers do not fail to protest unemployment claims. While there are complaints about the time, expense, and fairness of the system, these do not appear to inhibit the majority of employers from using the system on a consistent basis.

Are State Agencies Failing to Protest Unemployment Claims Submitted by Former Employees When Such Claims Should Be Protested?

To answer this question, the auditors obtained a listing of all unemployment claims submitted during the period January 1, through May 31, 1983, in which a State agency was named as the last employer. The list included 479 claims against 49 different agencies. The auditors limited their review to 21 of those agencies that had more than five claims during the period. At these agencies the auditors reviewed the unemployment case files for 275 claims. For a sample of those cases that were not protested, the auditors examined the claimant's personnel file at the agency that was the last employer to determine if the claim should have been protested.

The auditors found that some agencies appear to be consistently returning unemployment claim notices, while others have returned less than 20 percent of the notices they receive. Although many cases checked by the auditors did not appear to warrant a protest, approximately one-third of those traced to agency records should have been protested. In some cases the failure to protest claims appeared to stem from a misunderstanding about when a protest was needed. In

other cases it appeared to result from a poor system of follow-up on the claims. The sections that follow discuss these findings in greater detail.

The reason State agencies need to protest unemployment claims when they believe that a claimant should be disqualified is that such a protest, if successful, can have a substantial impact on the financial burden for unemployment borne by the State and by other employers. A successfully protested claim may result in a claimant receiving a ten-week reduction in benefits. If that claimant would have otherwise drawn the maximum weekly benefit amount of $163, such a reduction results in a cost savings of $1,630. As a result, it does not take many cases to add up to substantial savings in unemployment costs.

State Agencies Are Not Always Returning Reimbursing Employer Notices

The auditors reviewed claimant files at the Department of Human Resources for 275 claims in which a State agency was the last employer. This review was made to determine if the agencies were returning the reimbursing employer notices to the Department of Human Resources with documentation of the reasons that an employee quit or was discharged. A summary of this review for the 21 agencies involved is shown in the table on the next page.

As shown in the table, the agencies did not return employer notices to the Department of Human Resources in 71, or about 26 percent, of the cases the auditors reviewed. Some agencies appeared to consistently return the notices, while others did not. Eight agencies returned less than 50 percent of the notices they received. Those agencies were:

The Department of Social and Rehabilitation Services
Winfield State Hospital
Kansas Neurological Institute
Emporia State University
Grain Inspection Department
Department of Administration
Pittsburg State University
Topeka State Hospital

It is important to emphasize that the information shown in the table on the next page does not necessarily represent neglect on the part of the agencies involved. It shows only the number of cases where there was a potential for a protest of an unemployment claim, and none was made. To establish if these cases should have indeed been protested, the auditors had to do additional work as described in the next section.

Benefits Were Granted in Some Cases Due to an Agency's Failure to Respond to an Employer Notice

To determine if there were cases where an agency did not return an employer notice when it should have, it was necessary for the auditors to go to the agencies and review personnel files to understand the circumstances surrounding each claimant's termination from employment. This testwork was

AGENCY	Total Claims Filed (Jan. 1 to May 31, 1983)	Total Claims Reviewed by the Auditors (a)	Number of Claim Notices Not Returned
University of Kansas	91	20	2
Department of Social & Rehabilitation Services	59	20	11
Department of Human Resources	42	20	0
Kansas State University	34	19(b)	6
Department of Transportation	21	20	0
Kansas State Penitentiary	20	20	1
Wichita State University	18	18	0
Winfield State Hospital	17	17	15
Larned State Hospital	16	16	0
Osawatomie State Hospital	16	16	0
Department of Revenue	14	14	0
Unified Judicial Department	12	12	1
Kansas Neurological Institute	10	10	7
Emporia State University	8	8	7
Grain Inspection Department	8	7(b)	6
Hays State University	7	7	0
Department of Administration	7	7	4
Kansas State Industrial Reformatory	7	7	1
Adjutant General	6	6	1
Pittsburg State University	6	6	5
Topeka State Hospital	6	5(b)	4
Total	425	275	71

(a) The auditors reviewed all claims filed against an agency up to a maximum of 20 per agency.

(b) One case file from each of these agencies was out on appeal and was unavailable for review.

done for all cases in the sample where an agency located in the Topeka area did not respond to an employer notice. There were seven such agencies and 33 such claims. The results of this testwork are shown in the table on the next page. As the table shows, out of 33 cases in which the employer notice was not returned by an agency to the Department of Human Resources, 12 or just over one-third of those notices warranted some type of response. In seven of these cases, claimants received benefits they apparently were not entitled to. These excess benefits totalled $6,344.

Agency	Claims Not Responded to	Claims that Needed a Response
Topeka State Hospital	3	2
Grain Inspection Department	6	0
Adjutant General	1	0
Unified Judicial Department	1	0
Department of Administration	4	4
Department of SRS	11	1
Kansas Neurological Institute	7	5
Total	33	12

A major reason for failure to respond appears to be confusion about the system. During the auditors' review, the employees at several agencies indicated that they considered a response unnecessary if they agreed with the reason for separation shown on the employer notice. For instance, if the notification said the reason for separation was "fired" and the agency agreed, no response would be made.

The interpretation at the agencies is not correct. The reasons that it is important to return the notice with comprehensive and clear documentation of the reasons for the claimant's termination are as follows:

--In a discharge (firing) situation, the burden of proof is on the employer to show a clear breach of duty or gross misconduct. In the absence of such proof, the Department of Human Resources will consider the discharge to be for a reason other than breach of duty and will clear the claimant for benefits.

--In a voluntary quit situation (a situation in which the employee left on his or her own), the burden of proof is on the claimant to show good cause. In the absence of documentation from the agency to the contrary, the Department will decide the case entirely on evidence submitted by the claimant. Without an agency rebuttal, it may be possible for a claimant to make it look like a "quit for good cause" and thus receive benefits, when in fact the situation was a voluntary quit without good cause which should require a forfeiture of the first 10 weeks of benefits.

Therefore, it is very important to return the reimbursing employer notice with adequate and clear documentation in all cases except lack-of-work situations.

All five claims at Kansas Neurological Institute that the auditors concluded should have been protested fell into these categories. Four of the cases involved firings. In these cases the agency had more than adequate documenta tion to show that the employees concerned were fired for habitual infractions of rules and after repeated warnings and official reprimands. Yet none of these claims were protested so none of the claimants were disqualified as they should have been.

The fifth case at Kansas Neurological Institute was a voluntary quit. Again, the agency did not return the notice because the notice indicated that the claimant "quit," and the agency agreed with this reason. However, in the absence of a response from the agency, a claimant may be able to establish incorrectly that the quitting was for good cause and thereby avoid a disqualification. In this particular case, the claimant was disqualified.

The two claims at the Topeka State Hospital that the auditors concluded should have been protested were also voluntary resignations. In these cases they should have been protested as quitting without good cause. One claimant was disqualified, but the other received full benefits.

Another reason for failure to respond appears to be poor coordination within an agency. The cases in which the Department of Administration and the Department of Social and Rehabilitation Services failed to respond appeared to be due to poor coordination within the agencies. In the case involving the Department of Social and Rehabilitation Services, there was poor communication between the central personnel office and the field office that had employed the claimant. Lacking information about the separation circumstances, the central office forwarded the notice to the field office, which failed to respond because it was unfamiliar with the procedure.

The Department of Administration had two cases in which the claimant was disqualified based on the claimant's stated voluntary resignation, so the lack of a response did not result in the improper payment of benefits. In the two other cases, however, payments did occur. In one, the claimant stated he was laid off but actually was fired for absenteeism. Since no response was made, the claimant was given full benefits when he should have been disqualified. The last case was a claimant who was fired for cause, but again was not disqualified because no protest was made. The auditors were told that prior to February of 1983, the Department did not have a personnel office as such. It was indicated that prior to that time, unemployment notices were generally received by the unit that processed the Department's payroll. This unit filed the notices and after a period of time threw them away. Very few if any notices were said to have been responded to properly. It was indicated that this unit was never instructed in the process and did not normally have the necessary information to respond. Department officials said that since that time, the Department has established a process to deal with unemployment claims.

There are claims in other agencies that perhaps should have been protested as well. Due to the limited time available to complete this audit, the auditors were unable to travel to agencies outside the Topeka area to review personnel files. However, several agencies such as Winfield State Hospital, Emporia State University, and Pittsburg State University failed to return over 80 percent of the employer notices they received. It appears that there is additional potential for finding claims that should have been protested within this group.

In summary, it appears that some State agencies are not doing a very good job of returning unemployment notices to the Department of Human Resources with proper documentation about the reasons for an employee's termination from employment. In several cases this lack of action appeared to result from

an uncertainty about when a response should be made. In other cases the lack of proper responses appeared to be the result of a lack of adequate follow-up systems within the agencies themselves.

Conclusions and Recommendations

This audit was not a thorough review of the entire unemployment compensation program. It covered only the four specific questions listed at the start of the report, and it was conducted in a relatively short period of time. Even with this relatively brief exposure, however, the auditors do think that some general conclusions can be drawn and some recommendations made. These are offered in the event that the Legislature thinks improvements in the program are needed.

One important element in making determinations about eligibility is flexible but unambiguous guidelines. The current unemployment compensation program contains a considerable degree of flexibility in making determinations about claims, but it also calls for a considerable degree of interpretation and judgment. This flexibility has advantages in that it takes individual circumstances into account in deciding claims. However, with the considerable degree of interpretation and judgment, the system is more open to abuse and any abuse becomes difficult if not impossible to document.

If the Legislature thinks the current system has too much flexibility, it can consider making changes in several ways:

1. It could amend the law to more clearly define terms and situations that now call for considerable judgment on the part of claims examiners and referees. Examples of possible changes include more specific definitions of what constitutes separation from employment and more specific distinctions between quitting and being discharged.

2. It could direct the Department of Human Resources to develop more rigid and specific guidelines for deciding claims and to incorporate them into administrative regulations.

A second important element in making determinations about eligibility is complete and accurate information on which to base decisions. In this regard, the auditors observed that some cases contained relatively sparse information supplied by employers. In many cases, this may occur because employers are not aware of what constitutes clear and sufficient information to prove their point. An action that could be taken is providing a better explanation to employers, perhaps on a sheet accompanying the notice of a claim. The auditors found two areas in which more information might help the system work more effectively and might lessen criticism by employers:

1. More information about the consequences of not returning claim notices. For example, an employer who receives a notice giving "quit" as the employee's reason for leaving might decide not to return the form because he or she assumed that such an admission alone would disqualify the employee. This is not necessarily so.

2. More information about the kind of explanation and documentation the Department should receive to consider an employer's side of the case. Determining if a person is qualified for benefits rests in part on the quality and thoroughness of information presented. Employers who do not document their story or who do not explain it fully will operate at a disadvantage. Employers need to know what constitutes clear and sufficient documentation to prove their point.

A final area in which action could be taken relates to improving the performance of State agencies in returning notices of unemployment claims. Here, some centralized action appears necessary. The auditors would suggest that the Department of Administration issue instructions to all State agencies indicating when a response to an unemployment notice is warranted and explaining what constitutes clear and sufficient documentation to prove the agency's position on an unemployment claim.

APPENDIX A

Agency Response

John Carlin , Governor

Jerry Shelor , Secretary

DEPARTMENT OF HUMAN RESOURCES

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March 16, 1984

Mr. Meredith Williams
Legislative Post Auditor
Legislative Division of Post Audit
Mills Building
Topeka, KS 66612

Dear Mr. Williams:

Thank you for the opportunity to review the findings of a performance audit report entitled: "Unemployment Compensation: Reviewing Protested Claims." I welcome your scrutiny and the opportunity to work closely with the Post Audit Committee to help resolve any and all issues that exist. It is in that spirit that my staff and I have given your draft report considerable attention and have taken the liberty to give constructive criticism which I hope will be the foundation for a more detailed analysis when time constraints are not so great.

My responses fall into three categories: Technical legal errors, conclusions and recommendations.

Comments Regarding Legal or Technical Errors:

1. Page 5, Second Paragraph -- The report states that the claimant is disqualified from receiving the first ten (10) weeks of benefits. In fact the claimant is disqualified for the waiting week plus ten (10) weeks of benefits, for a total disqualification of eleven (11) weeks. Furthermore, the claimant's total monetary eligibility for benefits is reduced by an amount equaling ten (10) times the claimant's weekly benefit amount.

2. Page 5, Last Paragraph -- Claimants may have several base-period employers. We have seen cases in which the claimant worked for as many as twelve (12) employers in the base period; the sentence stating "others may have three or four" should, therefore, be modified. In the same paragraph, the last sentence should have the word "paid" as the last word in the sentence.

3. Page 7, First Paragraph -- The term "eligibility" is being used interchangeably with the term "disqualification" erroneously. The last employer may raise the issue of disqualification in regard to the separation of the employer/employee relationship or in the case of a job refusal. The term "eligible" deals with all other issues such as whether claimant is able to or available for work, unemployed or making a reasonable effort to find work. The sentences should read: ". . . employer has the right or opportunity to raise the issue of disqualification." and ". . . last job is the only one that affects disqualification." This erroneous usage continues throughout the report.

4. Page 9, First Paragraph -- Based on the discussion of items one and two above, the sentences should read: ". . . without good cause is not disqualified from receiving benefits, . . ." and ". . . cause will be disqualified for eleven (11) sequential weeks and the total benefit amount will be reduced by an amount equal to ten (10) times the weekly benefit amount."

5. Page 9, Second Complete Paragraph, Last Sentence -- In this case, breach of duty has been confused with the definition of gross misconduct by insertion of the word wanton. The last sentence should, therefore, be modified.

6. Page 14, Second Paragraph, First Sentence -- A claimant is entitled to a maximum of twenty-six (26) weeks of benefits, depending on earnings during the base period. The sentence should be modified accordingly.

7. Page 14, Last Paragraph -- The last paragraph indicates that a benefit charge was made and the employer was notified through a Notice of Benefit Charge. A subsequent referee's decision reversed the charge. The contention is that no correction was made; this is not the case. When a referee's decision is rendered reversing a charge determination, the fact is clearly stated in the decision document. If a charge was already been posted, a reversing entry is made within the computer data base thus deleting the charge. The employer's experience rating account is corrected and, in most cases, the rate notice for the following year would not reflect the charge. If, however, the appeal is decided after the rate computation date, the correction will not be reflected until the following year.

8. Page 15, First Paragraph, Last Sentence -- This sentence is in error in that it recommends an action currently in effect. Each referee's decision is reviewed to determine clearance or denial of benefits, charge or non-charge, or if an overpayment is to be established.

9. There is some question regarding the validity of the study design. On page 11, it is indicated that employer complaints to legislators were used as part of the study sample. In Kansas, we have over 50,000 covered employees. During calendar year 1983, 79,000 nonmonetary determinations were issued. In all cases, an issue existed regarding a payment decision. Furthermore, an adversarial relationship may have existed in that either a claimant could be disqualified, an employer may have had his experience rating account charged, or some combination thereof. As a result there were "winners" or "losers". The "losers" in an adversarial relationship have

every right to contact their legislator. In fact, communication is encouraged in that it provides us with yet another quality assurance measure. However, to include specific negative input as part of a study design may significantly skew study findings or conclusions.

Comments Regarding Report Content:

1. During the period from which the sample was drawn (January 1 - May 31, 1983), a total of 36,737 nonmonetary determinations and 7,226 appeal decisions were issued. The auditors used a sample of 100 cases. There is some question in my mind whether conclusions reached from this small sample will be representative of conclusions for the total population.

2. Where example cases are mentioned, no citation is given so it is impossible for my staff to analyze or explain how the examiner or referee arrived at the decision. Without adequate facts, my staff cannot make any conclusions as to the accuracy of any case. This serves to illustrate the complexity of issues before the examiner and the referee.

3. The conclusions on nonmonetary determinations reached by the auditors are based on the same set of facts available to a claims examiner. Examiners, through training and experience, routinely make thousands of payment decisions. The total budgeted time for each decision made is slightly more than 30 minutes, including fact-finding and decision making. Referees make decisions based on evidence in the record, sworn testimony at the hearing and documentation presented as evidence during the hearing. This process is budgeted at somewhat more than three hours to hold the hearing, review the evidence, dictate the decision and type it. More importantly, it must be noted that the referee has several advantages: personal access to the witnesses, testimony under oath, confrontation of witnesses, etc., which generate more evidence which is apt to be more competent. It is not accurate to suggest that differing decisions evince subjectivity or a different interpretation.

4. While I am not questioning the professional competence of the auditors in drawing conclusions from the facts, I am concerned that the conclusions are reached without benefit of specialized training and, in the case of appeal decisions, without benefit of the full record, i.e., a transcript of the hearing. The referee, Board of Review and the courts are required by law to have the full record to rule on each appeal.

5. The general thrust of the report is that there is a great deal of subjectivity in making unemployment insurance decisions. It further asserts that this subjectivity leads to payment and charge errors. But "flexibility" does not necessarily imply "subjectivity," as suggested in your conclusions. The thousands of possible fact situations generated in the workplace, mandate application of general principles. The vast majority of cases are decided consistently according to those principles. The report seems to concentrate on those very few "close cases" upon which reasonable minds can differ. Neither does flexibility in decision-making compel the inevitability of ambiguity or abuse. The multi-level appeal process is specifically designed to filter out those factors. "Abuse of discretion" is a statutory ground for reversal.

The Supreme Court of the United States has decreed that UI benefits may not be denied without "due process of law". One cornerstone of "due process" is a review in each case by an impartial adjudicator at a hearing where all the elements of "due process" are accorded. One element is that the adjudicator (in Kansas, the appeals referee) be unconstrained by any policy consideration other than the facts and the law. This is, in effect, "flexibility" mandated by the Constitution of the United States. And, of course, this emphasizes the different roles of the referee and the examiner, who is not allowed to conduct a "due process" inquiry as emphasized in paragraph number 3 above.

6. "The reasonable and prudent individual" test in the definition of "good cause" (page 9) is not a subjective test. All areas of the law, including the English Common law, recognize that an objective decision can be made about the actions of "the reasonable man" apart from the prejudice and subjectivity of the adjudicator.

7. On number 2 of page 13, there is no statement as to why the auditors question the four cases, so we may not analyze or validate.

8. The case described on page 11 (in box) and mentioned on page 14, was determined by the auditor to be conflicting and incorrect. Employers commonly classify all employees who quit without notice as "discharged", after a fixed number of consecutive days of absence (usually three) without calling by phone. This claimant knew she had been "fired" according to company policy, so that is what she told the interviewer. Furthermore, the employer also responded according to policy, i.e., "discharge". With no controversy or evidence to the contrary, the examiner found the separation to be a discharge. Upon receiving the determination, the claimant appealed. At the hearing, additional evidence established that she quit, as defined by the UI law. It is important to note that based on available facts at the time of rendering the decision, each decision was correct. The "clear case" described in the fourth paragraph of page 14 is, therefore, an inaccurate conclusion by the auditor.

9. Regarding the sample case in the box on page 15: It is impossible to analyze this case without reviewing the actual testimony. The specific job duties, the specific injuries, the claimant's willingness to return to work, the physicians' statements (both claimant's and employer's), the employer's policy toward limited duty assignments, the nature of the accident, the probability that other workers would be similarly injured, the degree of claimant's fault and the safety-level of the work assignment are a few of the variables which must be considered in the disqualifiation and chargeability decisions.

10. The auditor's conclusion on page 15 that smaller firms are more responsive than larger ones is not borne out by the facts. Larger firms can afford to, and typically do, have staff members, fully conversant with the law, who monitor the initial responses and attend appeal hearings regularly. Many also hire consulting firms specializing in UI law. By contrast, managers of smaller firms are typically less well-informed as to the law, and not willing to take time from regular duties to respond in a meaningful way to inquiries, even though they may have more personal knowledge about the facts of the discharge or quit.

11. In paragraph one on page 18, it is stated that "some employers expressed opinion. . ." A statement of how many express each opinion would be more informative and helpful in our analysis.

12. On page 13, the report suggests there is an "opportunity to placate all parties. . ." This situation is limited to a very small number of cases where the evidence proves that the claimant has "good cause" for quitting the employment with the further question of whether the cause is "attributable to the employment." In most cases, attributability (discrimination, unsafe conditions, harrassment, etc.) or non-attributability (non-job related injury and illness, a better job, spousal transfer, pregnancy, etc.) is clear. The remaining few cases are decided according to the rules of statutory construction and reason as to where the objective fault lies. There is no evidence to suggest abuse in this area by either the examiners or the referees.

13. Comments regarding UI cost containment for the State of Kansas should be more appropriately addressed to the State Department of Administration. It is their ultimate responsibility to make cost containment decisions and recommendations. The Department of Human Resources is bound to provide only that information to the State of Kansas as an employer that would be provided any other employer. To do otherwise would violate the doctrine of fair and impartial application of the law by this Agency.

Comments Regarding Conclusions and Recommendations:

I hope that my comments provide you with some idea of the complexity of the issues confronting examiners and referees. Each case possesses a unique set of facts. As I have indicated, a change of only one material fact can reverse the outcome of a decision.

Flexibility in making decisions under the law is, therefore, mandatory to insure equity and impartiality. To attempt to codify all fact situations and to incorporate them into the law would yield a massive legal volume. Furthermore it would not eliminate judgmental errors in "close calls". Therefore, I feel that implementation of recommendation 1 on page 23 would be ill-advised.

As stated in the report, my staff maintains volumes of precedent and policy materials for the benefit of examiners in making decisions. To attempt to incorporate all these factors into regulation would also be an unwieldy task. Regulations would have to be changed and republished with every precedent and/or legal opinion change.

In regard to the recommendation to include an explanation sheet with each employer notice, I will take this recommendation under advisement. During calendar year 1983, over 170,000 employer notices were mailed. The document is a "ready-mailer" and is used for all types of separations. I will direct my staff to investigate this possibility.

Another possible solution to making employees more knowledgeable of their rights under the law would be to expand our system of employer information meetings. We always hold these meetings at the request of individual city chambers of commerce or other interested groups. If a member or members of the legislature wishes us to conduct such meetings in their locale for the benefit of their constituents, I will be more than happy to arrange the meetings for them. A similar meeting could be set for state personnel offices in an attempt to better facilitate UI claims control.

Again, thank you for the opportunity to respond to your report. I appreciate the concern shown by members of the legislature, the committee and your staff to insure proper administration of the Employment Security Law.

Respectfully,

Jerry Shelor
Secretary of Human Resources

JS:ssg

EXAMINING SELECTED AREAS OF THE VETERANS' COMMISSION'S OPERATIONS
A SUMMARY BY THE LEGISLATIVE DIVISION OF POST AUDIT

This limited-scope performance audit addressed four specific questions relating to veterans' service representatives' job qualifications and training, the requirements for "power of attorney" in obtaining veterans' benefits or Commission services, preferential treatment of some veterans who belong to veterans' organizations represented by Commission staff, and options for improving the efficiency of the Commission's operations. A brief summary of the audit's findings is presented below. Additional information is provided in the accompanying report and attachments.

1. **Job qualifications and training.** Veterans' service representatives hired since the current experience requirements went into effect in 1978 have all met or exceeded those job qualifications. There are no education requirements, but almost all current employees have either taken some college course work or attended trade/technical schools beyond the high school level. The Commission provides no formal training for its service representatives, which may hinder the assistance they can provide to disabled veterans.

2. **Power of attorney requirements.** The federal Veterans' Administration requires claimants for federal veterans' benefits who want to be represented in preparing and filing their claims to assign the power of attorney to an individual or organization. In Kansas, the Veterans' Commission does not allow its employees to formally represent a claimant by accepting the power of attorney on the State's behalf, even though it is authorized to do so. However, all service representatives are accredited by at least one veterans' organization (like the American Legion), so they can represent claimants by accepting power of attorney on behalf of the organization, not the Commission. Veterans' Commission employees can provide general assistance to veterans without obtaining power of attorney.

3. **Preferential treatment.** No evidence was found that veterans' organization members received preferential treatment by service representatives assigned to those particular organizations. However, service representatives are closely linked with the veterans' organizations they represent (sometimes to the point of being mistaken as organization employees), and some Commission employees receive additional compensation from those organizations for duties they perform.

4. **Options for improving efficiency.** Several options merit consideration. These include reallocating staff in the field offices to help equalize workloads and provide more uniform coverage, establishing a WATS Line to provide greater access to veterans' information on a Statewide basis, requiring service representatives assigned to veterans' hospitals to be accredited by multiple organizations, and eliminating the overlap in coverage now provided by representatives in field and hospital facility offices.

1/29/85

Attachment B

EXAMINING SELECTED AREAS OF THE KANSAS VETERANS' COMMISSION'S OPERATIONS

At its March 28, 1983, meeting, the Legislative Post Audit Committee directed the Legislative Division of Post Audit to conduct a limited-scope performance audit of the Department of Human Resources' Veterans' Commission. The purpose of this audit was to answer the following specific questions asked by a Senate Ways and Means subcommittee concerning the Commission's performance: What are the job qualifications of veterans' service representatives and what training are they provided by the Veterans' Commission? What are the requirements for "power of attorney" in obtaining federal veterans' benefits or the services of the Veterans' Commission? Does the Veterans' Commission's practice of allocating staff to various veterans' organizations result in preferential treatment for veterans who are affiliated with those groups? What options may be available for improving the efficiency of the Veterans' Commission's performance? Following a brief description of the Commission's operations, each of these questions is answered below.

Veterans' Commission Operations

The Veterans' Commission provides direct services to veterans and their dependents through a staff of veterans' service representatives. The Commission's primary duties are as follows:

--make information on benefits available to veterans and their dependents, and help eligible claimants obtain their benefits
--coordinate the programs of other agencies that deal with veterans' problems
--provide a central contact between federal and State agencies dealing with veterans
--provide services not available from the federal government
--maintain field services

To carry out these duties, the Commission is authorized 59 full-time equivalent positions, 29 of which are service representatives. It maintains an administrative office in Topeka and 14 field offices across the State. Service representatives located in field offices also schedule itinerant visits to office locations in the county seats in their service areas and personally visit claimants who cannot come to their offices. The Commission also maintains offices in the Veterans' Administration hospital facilities in Topeka, Leavenworth, and Wichita in association with the American Legion, Veterans of Foreign Wars, and Disabled American Veterans. For fiscal year 1982, the Commission estimates it helped complete and file about 12,600 claims for veterans and their dependents, who received about $20 million in benefits. The Commission's total expenditures that year were nearly $1.1 million.

What Are Veterans' Service Representatives' Qualifications And What Training Do They Receive?

The auditors reviewed both the civil-service job specifications for veterans' service representatives and the personnel files of current representatives. It was necessary to contact certain representatives to obtain qualification and training information not available in personnel records. The auditors

also obtained comparative information through a telephone survey of veterans' agencies in adjacent states.

Qualifications of Current Employees

Experience requirements. Veterans' service representatives became classified State employees in 1978. The entry-level experience requirement for the Veterans' Service Representative I position is one year of work involving public contact. The salary range is $14,000-$17,000. A Veterans' Service Representative II applicant must have three years of experience advising veterans of special benefits and services available to them. The salary for this supervisory position ranges from $16,000 to about $21,000. Both positions require an honorable discharge from the United States Armed Forces.

The auditors found that all of the representatives hired since these requirements went into effect in 1978 met or exceeded the State's experience requirement. Many had obtained public contact experience while working in personnel management, retail management, or sales. More than one-third had the following relevant types of experience in interviewing or counseling:

--Five representatives worked at employment centers and helped veterans find employment. One of the five also worked for the Disabled Veterans' Outreach Program.

--Three representatives provided information about benefits to veterans as service officers for other veterans' organizations; two of the three were volunteers.

--Three had specific counseling experience; one was a volunteer veterans' counselor for a veterans' organization.

Of the 27 service representatives now employed by the Commission (there are two vacancies), nine have been there for three years or less, six have been there four to 10 years, six for 11 to 18 years, and the remaining six have been employed for 24 years or longer.

Education requirements. There are no minimum education requirements for veterans' service representatives in Kansas. However, the auditors found that the employees who currently occupy these positions all have at least a high school diploma or the equivalent. Approximately 75 percent had also either attended or graduated from a four-year college when they were hired by the Veterans' Commission, and most of the others had obtained some form of non-college education past the high school level. Their education statistics can be summarized as follows:

--Ten service representatives had 14-19 college credit hours.

--Ten had received college degrees in such fields as business (the most common major), history, and the social sciences. Two of these 10 also had 8-24 post-graduate credit hours.

--Four of the remaining seven representatives had obtained non-college education through such outlets as trade/technical schools and the American Legion Leadership College.

Education/experience requirements in neighboring states. These requirements for comparable positions in three of the four neighboring states are more stringent than those in Kansas. In Oklahoma, Missouri, and Colorado, service officers must have graduated from a four-year college or have equivalent experience (on a year-for-year basis) performing similar duties. Counseling experience is the most commonly valued type of experience; interviewing and social work experience are also acceptable. Veteran status is mandatory for a service officer in three states and is preferred in Colorado.

Training of Service Representatives Provided By the Commission

According to the job description, a veterans' service representative must be knowledgeable about the benefits and services available to veterans and their dependents, the procedures used to obtain these benefits, and some medical terminology used to describe disabilities. These positions also require the ability to prepare and present cases, conduct effective interviews, maintain satisfactory relationships with veterans, veterans' organizations, and government agencies, and prepare reports complete with recommendations. A Veterans' Service Representative II must also be able to supervise and coordinate the work of other employees.

The Kansas Veterans' Commission does not provide formal training for its service representatives. In general, the training they receive must come through actual on-the-job experience. New hires tend to rely on the secretaries in their offices, frequent calls to representatives at the Veterans' Administration Center in Wichita, and occasional contact with Veterans' Commission administrative personnel. They must study applicable laws, regulations, and other written information provided by the Veterans' Administration and the various veterans' organizations on their own. Service officers' conferences sponsored by those organizations and periodic Commission staff meetings (as the budget permits) appear to have facilitated the receipt and dissemination of information among representatives and the veterans they serve.

Training policies in surrounding states. Two of the three states contacted have formal on-the-job training programs. In Oklahoma, new employees spend three to six weeks in the regional office with a claims analyst. They also spend one to two weeks in each of the following ways: in the central administrative office, traveling with a field officer, and in their own offices assisted and observed by a supervisor. Missouri employees receive six months of on-the-job training. The veterans' agencies in both states hold regional or statewide staff meetings at least twice each year. Colorado, like Kansas, places more emphasis on self-training.

What Are the Requirements for "Power of Attorney" in Obtaining Federal Veterans' Benefits or the Services of the Veterans' Commission?

All claims for federal veterans' benefits must be filed with the federal Veterans' Administration. Claims filed by Kansas veterans or their dependents are processed at the Veterans' Administration Center in Wichita. A claim may be filed for federal veterans' benefits in one of three ways, but only the third method involves granting the "power of attorney." First, the individual can complete the necessary paperwork and file a claim directly with the Veterans' Administration in Wichita. Second, the individual may obtain assistance from

the Veterans' Commission in completing the paperwork, provided the claim does not require information from the veteran's confidential records. The Commission's service representatives may then file all claim forms and documents for a claimant directly with the Veterans' Administration.

Third, if a claimant needs access to his medical and service records to help build a complete case, he must appoint a person or organization to represent him in getting access to the needed records. Federal law provides that the Veterans' Administration may recognize representatives of approved organizations in the preparation, presentation, and prosecution of claims for federal veterans' benefits. Altogether, 28 national veterans' service organizations and veterans' agencies in 45 states--including Kansas--are recognized by the Veterans' Administration to present claims.

Filing a Claim Through Power of Attorney in Kansas

To appoint a representative, a claimant must complete and sign a form referred to as power of attorney, indicating the name of the person or organization he has selected to represent him. This form is filed with the Veterans' Administration and the service organization, and authorizes the Veterans' Administration to release that claimant's records and information regarding the status of his claim to the designated organization.

Even though Kansas' Veterans' Commission is recognized by the Veterans' Administration to represent claimants through the power of attorney, the Commission does not allow its staff to accept power of attorney on the State's behalf. In order to perform this task, each representative employed by the Commission is accredited through one or more veterans' organizations. This accreditation allows the service representative to represent a claimant by accepting power of attorney on behalf of that organization, not the Commission. According to the Commission, the major advantages to this arrangement center on the fact that all veterans' organizations maintain offices in Washington, D.C. If a case is appealed to the Board of Veterans' Appeals there, or when new laws or regulations effecting veterans are passed, these organizations have quick access to needed information.

All claims and related paperwork filed for Kansas claimants through a power of attorney are then sent to the designated veterans' organization office in Wichita. The Commission's staff in the offices of the American Legion and the Veterans of Foreign Wars review the claims represented by those organizations. Claims represented by the Disabled American Veterans are reviewed by a staff person of that organization because the Commission has no employees in that office. All claims are then filed with the Veterans' Administration. Claims filed through veterans' organization offices in the veterans' hospitals (rather than field offices) generally follow a similar path.

Does the Veterans' Commission's Practice of Allocating Staff To Various Veterans' Organizations' Offices Result in Preferential Treatment For Veterans Affiliated With Those Groups?

In an effort to identify Commission practices that might result in preferential treatment for members of veterans' organizations, the auditors interviewed Veterans' Commission staff members and Veterans' Administration

staff with whom they are frequently in contact, and contacted officials from seven veterans' organization. The auditors also interviewed Commission service representatives assigned to the American Legion and Veterans of Foreign Wars offices at the Topeka Veterans' Administration Hospital, and gave veterans living in the Hospital an opportunity to comment on the services they receive.

No evidence was found that veterans' organization members received perferential treatment. According to the Commission's service representatives at the Topeka Hospital, fewer than half the veterans served by each representative are members of their respective veterans' organizations. The auditors reviewed 42 individual patient case files and found that only 10 individuals were identified in those files as members of the American Legion. (The service representative assigned to the Veterans of Foreign Wars office does not record past membership in individual case files.)

None of the individuals interviewed by the auditors said they were aware of any incidents of veterans being denied services because they were not members of a veterans' organization represented by Commission staff. Nor were they aware of veterans receiving preferential treatment because they were members of a represented veterans' organization.

Kansas' system of providing services to veterans was generally well regarded by those who were inteviewed. The auditors noted, however, that this system allows several management practices that are unusual in a State agency and can give at least the appearance of preferential treatment. These involve service representatives' close ties to veterans' organizations, both in terms of physical office space and additional compensation they receive from those organizations.

Facility offices are closely identified with veterans' organizations. A casual observer might assume that the Veterans' Commission staff located in Veterans' Administration facilities are employees of the organization or organizations they represent, not a State agency. For instance, the Commission's offices in the Veterans' Administration Hospital in Topeka are listed in the Yellow Pages under the organizations they represent (such as the American Legion or the Veterans of Foreign Wars), and the telephones are answered with the name of those organizations, not the Commission. The Commission's service representatives also wear pins identifying the organization they represent.

Veterans' Administration staff in several locations acknowledged that they did not know, or had not realized for some time, that the service representatives in their facilities were employed by the Veterans' Commission. One chief social worker indicated he thought the service representatives worked for private organizations, and so only referred claims to them if the claimant specifically requested organization representation.

Some Veterans' Commission employees receive additional compensation from veterans' organizations. Both Veterans' Commission staff and representatives of veterans' organizations acknowledge that some Commission employees receive additional compensation from veterans' organizations. Commission employees perform some services for the organizations during the State work

week, such as accepting membership dues and distributing canteen coupons, and also attend veterans' organization activities and perform some services for those organizations on their off-duty hours. Veterans' services representatives also travel to organization activities during both on- and off-duty hours, sometimes with and sometimes without State travel and per diem. According to the Commission, these activities are performed as a service to veterans, and are therefore an acceptable part of their State employment. The auditors asked the Commission's Executive Director to obtain information regarding this compensation from the veterans' organizations. However, these organizations refused to provide it. The letter of response is included as Attachment 1.

Are There Options for Improving The Efficiency of the Veterans' Commission?

The Commission's primary duties are making information on benefits available to veterans and their dependents and helping them file claims for benefits. Preparing these claims generally requires veterans' service representatives to contact claimants either by telephone or in person. During fiscal year 1982, service representatives in the Commission's field offices had a total of 38,245 office contacts and made 8,813 field contacts. Service representatives assigned to veterans' hospitals--who provide information and claims assistance to hospitalized or outpatient veterans and their dependents--reported 57,700 office contacts and 13,886 ward contacts.

To identify potential options for improving service representatives' efficiency in carrying out these duties, the auditors reviewed the Commission's 1982 workload data by area and by office. They also compared this information to the veterans' populations in the areas served by each field office. In addition, the auditors analyzed the workload of staff members working within the same facility (such as the Veterans' Administration Hospital in Topeka), and compared workloads of service representatives in field offices and facilities within the same town. For this comparison, they also reviewed field staff logs and all staff members' vouchers for the month of October 1982.

Based on these reviews and comparisons, several options for improving efficiency appear to merit consideration. These include reallocating field staff to equalize workloads and provide more uniform coverage, providing full-time Statewide access to information on veterans' benefits through a WATS line, requiring service representatives assigned to Veterans' Administration facilities to be accredited by several veterans' organizations, and eliminating overlap in coverage provided by service representatives in field and facility offices in the same town. Each of these options is discussed briefly below.

Reallocating Field Staff To Equalize Workloads And Provide More Uniform Coverage

The auditors found that the average monthly workload (number of office visits, field contacts, and forms completed and filed) varied significantly among the different field offices, even though each of the 14 field offices is staffed with one service representative and one Clerk-Steno II. For example, the field office in Pittsburg had 285 office contacts and completed and filed 281 forms,

compared with only 122 office contacts and 57 forms in the Dodge City field office. Another example: the Lawrence field office made 65 field contacts and filed 196 forms, compared with only four field contacts and 79 forms in the nearby Kansas City field office. (This information is presented by field office in Attachment 2.)

Because veteran populations vary in different parts of the State, a comparison on a workload-per-1,000-veterans basis for each field office does help even out some differences. For example, the Lawrence office serves nearly twice as many veterans as Kansas City, and the workload data per 1,000 veterans for these two offices are much more comparable. However, many differences still remain. With about 61,000 veterans to serve, Commission staff in the Lawrence field office made only 4.6 office and field visits per 1,000 veterans in fiscal year 1982, compared with 35.9 visits per 1,000 veterans in the Colby field office, which serves only about 5,500 veterans. Further, although the veterans' populations served by the Hutchinson and Salina field offices are about the same, the Salina office made 16.5 office and field vists and completed 15 forms per 1,000 veterans, compared with Hutchinson's 10.1 office and field visits and four forms per 1,000 veterans. (This information is listed for all field offices in Attachment 3.)

Although the auditors were not able to fully examine the reasons for such variations, it appears possible that some field offices serving a large number of veterans may not have sufficient staff to maintain more frequent contact. In other offices, the staff may not be working up to their capacity, or they may not serve enough veterans to keep fully occupied. By reallocating staff in the field to equalize workload and provide a more uniform level of coverage, the Commission may be able to eliminate such wide variations and improve staff efficiency.

Establishing a WATS Line to Provide Benefit Information

Field service representatives now travel to the county seats within their service areas to visit claimants who cannot come to the field office. Some of the trips made to provide general benefit or claims information may not be necessary. The Commission could consider establishing a WATS Line in the Topeka office to provide Statewide access to all interested parties about veterans benefits and the requirements for filing a claim. Personnel in this office could prepare a list of people who need to be contacted in person by a service representative. Representatives could then make these trips on an as-needed basis.

Requiring Commission Staff Working at Hospital Facilities To Be Accredited By Several Veterans' Organizations

Each veterans' service representative allocated to the Veterans' Administration Hospital in Topeka, Leavenworth, or Wichita is generally accredited by only one veterans' organization. In the Topeka Veterans' Administration Hospital, for example, two representatives are accredited by the American Legion only, one is accredited only by the Veterans of Foreign Wars, and one only by the Disabled American Veterans. Thus, if a veteran wants a particular organization to represent him--such as the Disabled American Veterans--only the one representative accredited by that organization can provide assistance.

As Attachment 4 shows, three of the service representatives at the Topeka Hospital had an average of 787 office contacts, compared with only 177 office contacts for the representative accredited by the Veterans of Foreign Wars. If all four service representatives were accredited by the three veterans organizations at that hospital facility, they would be able to divide their workload more evenly and cover for each other during vacations or when a vacancy occurs. This practice is followed by Oklahoma and Colorado. Multiple accreditation would also help in identifying veterans' service representatives in Veterans' Administration hospital facilities as staff of the Veterans' Commission.

Eliminating Overlap in Coverage By Commission Staff in Field and Faciality Offices

Veterans' service representatives assigned to field offices in Lawrence, Arkansas City, and Topeka provide services to veterans in Leavenworth, Sedgwick, and Shawnee Counties, respectively, despite the presence of service representatives at veterans' hospital facilities in those locations. According to the Commission's Administrative Officer, this overlap is necessary because the facility representatives' workload is too great to spend time making field contacts as well. However, a review of the field offices' workload data indicates that the additional field contacts in those areas would not appreciably increase facility representatives' workload. Field contacts in these areas could possibly be handled by the facility representatives if their secretaries were trained to complete paperwork while they were in the field, as is the practice in the field offices.

Another example of overlap: conventions and other veterans' organization events are generally attended by veterans' service representatives who represent those specific organizations in the facility offices. However, those activities may be held in locations where field service representatives could attend them at considerably less expense to the agency. A review of travel vouchers for October 1982 showed that the Veterans' Commission could have saved one-third of the amount it spent on travel to organization activities by sending the veterans' service representative whose field office was closest to the location of the activity.

Based on these findings, it appears that having the service representatives assigned to veterans' hospital facilities also serve the county in which their facility is located could result in more efficient use of staff without impairing service. Further, field representatives could cover meetings of veterans organizations that are held in their immediate area. This would reduce the Commission's travel and per-diem costs without diminshing the amount of outreach service provided to veterans' organization members.

KANSAS DEPARTMENT OF
Human Resources
KANSAS VETERANS' COMMISSION

Suite 201, 503 Kansas
Post Office Box 1369
Topeka, KS 66601

(913) 296-3976

13 April 1983

"ATTACHMENT 1"

Trudy Racine
Audit Supervisor
Legislative Post Audit
301 Mills Building
Topeka, KS 66612

Dear Ms. Racine:

Your request for a breakdown of Kansas Veterans Commission employees receiving compensation from Veterans Organizations was forwarded to The American Legion and the Veterans of Foreign Wars.

I have been informed by Mr. Barney Aldridge, Adjutant-Quartermaster, Veterans of Foreign Wars, and Mr. Floyd Rogers, State Adjutant, The American Legion, that it is their opinion this is not an appropriate request from the State of Kansas and therefore, they will not abide with this request. They are of the opinion that this compensation strictly pertains to activities performed by Kansas Veterans Commission employees after hours and on weekends. In addition, they stated that this should not be construed in a fashion whereby one concludes that these organizations have anything to hide. This position is based upon the feeling that it is not appropriate for the State of Kansas to be involved in the affairs of Veterans Organizations.

It appears to me that their denial is a matter of principle and fear of setting an inappropriate precedent.

If this office can be of any further service on this matter or any other matter, do not hesitate calling.

Sincerely,

Stan Teasley

STAN TEASLEY
Executive Director

ST:ejc

ATTACHMENT 2

AVERAGE MONTHLY WORKLOAD BY FIELD OFFICE FISCAL YEAR 1982

Field Office	Average Monthly Workload		Forms Completed & Filed
	Office Visits	Field Contacts	
Arkansas City	265	46	240
Colby	146	52	73
Dodge City	122	48	57
Emporia	183	42	107
Garden City	144	36	143
Hutchinson	111	67	71
Independence	319	83	210
Junction City	274	89	121
Kansas City	154	4	79
Lawrence	218	65	196
Marysville	100	37	121
Pittsburg	285	50	281
Salina	231	46	252
Stockton	80	57	170
Average	188	52	152
Topeka (Central Office)	554	13	1,942

Source: Kansas Veterans' Commission Annual Traffic Report - Fiscal Year 1982.

ATTACHMENT 3

WORKLOAD COMPARED TO VETERAN POPULATION FISCAL YEAR 1982

Regional Office	Veteran Population (a)	Average Monthly Workload Per 100 Veterans	
		Total Contacts Office & Field	Forms Completed & Filed
Arkansas City	67,270	4.6	3.5
Colby	5,510	35.9	13.3
Dodge City	7,430	22.9	7.8
Emporia	10,020	22.5	10.8
Garden City	9,230	19.5	15.4
Hutchinson	17,660	10.1	4.0
Independence	13,270	30.3	15.8
Junction City	15,360	23.6	7.8
Kansas City	27,900	5.7	2.9
Lawrence	61,000	4.6	3.2
Marysville	7,760	17.7	15.6
Pittsburg	12,580	26.6	22.3
Salina	16,830	16.5	15.0
Stockton	10,270	13.3	16.5
Average	20,149	18.1	11.0
Topeka	26,100	21.7	74.4

(a) As of March 31, 1982

Source: Veterans' Administration Office of Consumer and Public Affairs and Kansas Veterans' Commission Annual Traffic Report - Fiscal Year 1982.

ATTACHMENT 4

WORKLOAD IN VETERANS' ADMINISTRATION FACILITIES

Office	Average Monthly Workload				Number of Veterans' Service Representatives	
	Contacts		Forms			
	Office	Field	Completed	Filed	VSR I	VSR II
Topeka						
American Legion	1,705	205	177	29	2	
Veterans of Foreign Wars	177	74	82	18	1	
Disabled American Veterans	657	9	152	0	1	
TOTAL	2,539	288	411	47	4	
Leavenworth						
American Legion	905	301	246	0	1	
Veterans of Foreign Wars	663	259	145	12	1	
TOTAL	1,568	560	391	12	2	
Wichita						
American Legion	370	250	59	827	4	1
Veterans of Foreign Wars	331	60	57	570	2	1
Disabled American Veterans	185	375	317	475	0(a)	-
TOTAL	886	685	433	1,872	6	2

(a) Staff in this office is employed by the Disabled American Veterans.

Source: Kansas Veterans' Commission Monthly Traffic Reports for Fiscal Year 1982.