

Approved April 11, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m. ~~7:30~~ on March 31, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present: Mary Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Tim Chambers, Reno County Attorney
Nick Tomasic, Wyandotte County District Attorney
Representative Ed Bideau
Larry Wolgast, Department of Human Resources
John Rathmel, Director of Workers' Compensation
Marjorie Van Buren, Office of the Judicial Administrator

House Bill 2010 - Criminal procedure, considerations in setting bond.
Re Proposal No. 25.

Jim Clark, Kansas County and District Attorneys Association, appeared in support of the bill. He testified a substantial revision of the Federal bail laws has resulted from the passage of the Bail Reform Act. Authority has now been given to the courts to make release decisions giving appropriate consideration to the danger a person may pose to others if released. It is not allowed in Kansas to consider danger to community. The state courts handle the most serious violent dangerous type of crimes. A copy of his handout is attached (See Attachment I).

Tim Chambers, Reno County Attorney, testified a standard question a judge asks when a person is brought before him, have you been convicted of a crime before? If he replies, yes, the results are in the person's favor. It is easier to get bond now when you have committed a crime. He asked the committee to consider just cause when the person appears in court and more importantly to consider seriousness of the crime.

Nick Tomasic, Wyandotte County District Attorney, stated he concurred with the remarks made by Mr. Chambers. There is a terrific problem with the bail system. It depends on the judge whether they get higher or lower bond. He pointed out burglaries are committed when people are in the house and that is dangerous. It is important to consider dangerous to the community and someone has to get that information to the judge. Another concern is the bail bondsman system. Mr. Tomasic testified bondsmen are on retainment with certain lawyers. They will post the person's bond on practically nothing with a promise. It is important to have a background check on the person, and that information given to the judge before the bond is set. A committee member inquired, a bondsman on retainers? Mr. Tomasic replied, certain bondsmen work with certain lawyers and certain thieves work with

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m. ~~xxx~~ on March 31, 1986

House Bill 2010 continued

certain bail bondsmen. The committee member inquired, isn't this an ethical question on the part of the lawyers? Mr. Tomasic replied, I think so. You have to prove it. Another committee member inquired, you can also consider dangerous to the community? Mr. Tomasic replied, we hope to have someone designated to have the responsibility to make phone calls and double check. Another committee member inquired will you be in trouble for having held him too long? Mr. Tomasic replied, no problem holding him to end of first working day.

Jim Clark was recognized, and he stated Clark Owens wished him to point out in Sedgwick County they have the most criminal cases. They are not concerned about dangerous cases, they are concerned with the professional thief or burglar who is getting out on a low bond.

Representative Ed Bideau explained this bill is the result of an interim study of pretrial release and bonding. He said there are two types of situations; the market clerk's situation, and the more violent criminal against innocent people such as a rape case. He said if the person has a good appearance record it makes no difference how dangerous he is. The State of Nebraska, Florida and the Federal System have made changes that are reflected in this bill. He then explained the intent of the bill.

House Bill 2684 - Municipal courts; release of persons unable to make bond.

The chairman explained the bill. Committee discussion was held.

Senate Bill 748 - Workers' compensation, administrative law judges.

Larry Wolgast, Department of Human Resources, testified the burgeoning increase of litigation related activity reasonably forewarns of increase activity at the initial litigation state now and in the near future. If additional help is not approved, the pressure can only create a further reduction in timeliness of the services provided. The fiscal note is \$250,000; \$80,000 per administrative judge. They find they are becoming increasingly further behind. They have requested this in the budget. Copies of his handout is attached (See Attachments II).

John Rathmel, Director of Workers' Compensation, was recognized to respond to questions. He explained the decline in the chart was at the time when there were fewer jobs and fewer people working. A committee member inquired, do you think this is a means of getting some more money after they run out on unemployment benefits? Mr. Rathmel replied, don't know. A committee member inquired is it possible insurance carriers are denying more claims? He replied, that could be a factor that is involved. The committee stated, due to critical situation insurance companies find themselves in I would think we would want to settle these cases. Mr. Rathmel replied, we are fighting over cases now we weren't fighting for before.

House Bill 2831 - Amount of court costs paid from forfeited appearance bond.

Marjorie Van Buren, Office of the Judicial Administrator, said they had asked for both of these bills. She explained House Bill 2831 is not needed now because the same provisions are in Senate Bill 595, and that bill is now on general orders in the House. If the senate bill goes through, this house bill would be a duplication.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 31, 1986

House Bill 2830 - Docket fee for appeals judgment in limited actions.

Marjorie Van Buren explained this bill would specify a docket fee for appeals in limited actions cases.

Hearings on the bills were concluded.

House Bill 2831 - Amount of court costs paid from forfeited appearance bond.

Senator Steineger moved to report the bill favorably. Senator Hoferer seconded the motion. Senator Parrish explained a proposal concerning parking on the state office ground be an infraction rather than a misdemeanor. Following committee discussion, the motion carried to report the bill favorably.

House Bill 2830 - Docket fee for appeals judgment in limited actions.

Senator Steineger moved to report the bill favorably. Senator Hoferer seconded the motion, and the motion carried.

House Bill 2010 - Criminal procedure, considerations in setting bond.
Re Proposal No. 25.

Senator Steineger moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

The chairman announced House Bill 2822 is scheduled for next Wednesday.

The meeting adjourned.

Copy of guest list is attached (See Attachment III).

3-31-86
J. Clark

THE BAIL REFORM ACT

A. Release or Detention of a Defendant Pending Trial

A substantial revision of the Federal bail laws has resulted from the passage of the Act. Authority has now been given to the courts to make release decisions giving appropriate consideration to the danger a person may pose to others if released. The adoption of the changes marks a significant departure from the basic philosophy of prior bail legislation which was that the sole purpose of bail laws should be to assure the appearance of the defendant at judicial proceedings.

Judicial officers' authority to order the release or detention of persons charged in a capital case has been expanded. Prior law provided that only a judge of a court having original jurisdiction over the case could set release conditions. This requirement is eliminated so that a magistrate or--in theory at least--a State judge can now set release conditions in a capital case.

Previously in noncapital cases a person could be released pretrial under those minimal conditions reasonably required to assure his presence at trial. Danger to the community and the protection of society were not to be considered as release factors under the law. Such a view failed to recognize the problem of crimes committed by those on pretrial release. Special difficulties were presented in denying release to those defendants who posed an especially grave risk to the safety of the community. The new Act permits an assessment of the defendant's dangerousness in the pretrial stage.

Under the new Act, courts are authorized to conduct hearings focusing on the issue of a defendant's dangerousness. Pretrial release may be denied if, after a hearing, the court finds that no conditions would reasonably assure the appearance of a person and safety of any other person or the community. Pretrial detention hearings if requested by the Government must be held in cases involving crimes of violence, or 10-year drug felonies. In addition, a hearing is required if the case involves any felon who has at least two Federal violent crime convictions, crimes punishable by life imprisonment, 10-year drug felonies, or equivalent State convictions.

Persons deemed to be good pretrial release risks still may be released on personal recognizance or unsecured appearance bonds. Contrary to prior law, however, the judicial officer is to consider not only whether these forms of release are adequate to assure the appearance of the defendant but also whether they are appropriate in light of any danger the defendant may pose to others. If a money bond is ordered, inquiry into the source of

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property to be used to secure the bond may be made. In doing so, the court must decline to accept the use of any property that, because of its source, will not reasonably assure the appearance of the person.

Provisions have been enacted with respect to persons who, after a hearing and release pending trial, then commit another crime. Where the judicial officer determines that such a person may flee or pose a danger to another person or to the community, the individual must be detained.

Detention hearings may also be held in situations where there is a serious risk that the person will flee or attempt to obstruct justice.

B. Release or Detention Pending Sentence or Appeal

Also contained in the Act are provisions pertaining to release or detention pending sentence or appeal. Although the pretrial detention provisions of the new Act are those that will receive the greatest attention, the ability to secure the confinement of defendants during the course of their appeals is of equal significance.

The Act creates a presumption against post-conviction release. Thus, a person found guilty of an offense and awaiting sentencing must be detained unless the court finds the defendant is not likely to flee or pose a danger to the community if released.

These same standards are to be applied to a defendant who has appealed. But the court also must find in that circumstance that the appeal is not merely a delaying tactic but instead raises a question likely to result in a reversal or a new trial.

Judicial

The Workmen's Compensation Act, K.S.A. 501 et seq., is a piece of social legislation passed by the state legislature. The purpose of the Act is to provide immediate benefits in the form of salary indemnification, medical treatment and vocational rehabilitation to employees injured in the workplace. The obligation to provide workers' compensation benefits rests with the employer. K.S.A. 44-501. The employer must secure the payment of benefits through some form of insurance. K.S.A. 44-532.

The legislative mandate requires workers' compensation benefits to be paid on a timely basis. The Act is designed to be self-enacting. Medical benefits are to commence immediately upon injury. Temporary salary benefits are to commence with the second week of temporary total disablement. K.S.A. 44-510d.

When the parties cannot agree upon the worker's right to compensation, any of the parties may apply to the Director for determination of the benefits or compensation due or claimed to be due. K.S.A. 44-534a. The legislature requires quick administrative determination of litigated cases. The injured employee must be provided an expeditious hearing. K.S.A. 44-523(a). The Administrative Law Judges must file an order within 5 days of a preliminary hearing. K.S.A. 44-534a(a). Awards must be issued within 30 days of submission of the claim for decision. K.S.A. 44-523. The right to receive permanent disability compensation attaches when the Director issues an order affirming or modifying an Administrative Law Judge's award. K.S.A. 44-556(b).

Administrative Law Judges are the designated hearing officers of the agency and make the first determination of a contested claim. They must gather the evidentiary record which is used at all 5 possible levels of decision and review in a workers' compensation claim. They preside at preliminary hearings, regular hearings, motion hearings and settlement hearings. They represent the first level of decision in a workers' compensation claim.

Based on current claims activity and present Administrative Law Judge and Secretary II staffing, expeditious hearings and timely decisions on awards are not being and cannot be accomplished. Because of the numerous requests, regular hearings in the majority of jurisdictions cannot be set within two months of the request for hearing. Sixty-three percent of the awards issued since June 1, 1985, have not been timely.

Legislative amendment increasing the number of Administrative Law Judges allowed by statute from 7 to 10 must precede any other action (K.S.A. 75-5708(b)) and will be introduced during the session.

Statistics indicate an alarming increase in litigated workers' compensation claims. Applications for hearing, the initial step in a litigated claim, have increased 147% since FY 75 when 5 Administrative Law Judges were allotted to the agency. Applications for preliminary hearings have increased 372% since FY 75. Seven Administrative Law Judges are now attempting to handle, by far, more than double the workload facing the 5 Administrative Law Judges in FY 75. In FY 75, 5 Administrative Law Judges issued 374 awards and 112 preliminary orders in contested cases. In FY 85, 7 Judges issued 650 awards and 811 preliminary orders in contested cases. A sixth Administrative Law Judge was added in June, 1981, and a seventh added in October, 1983.

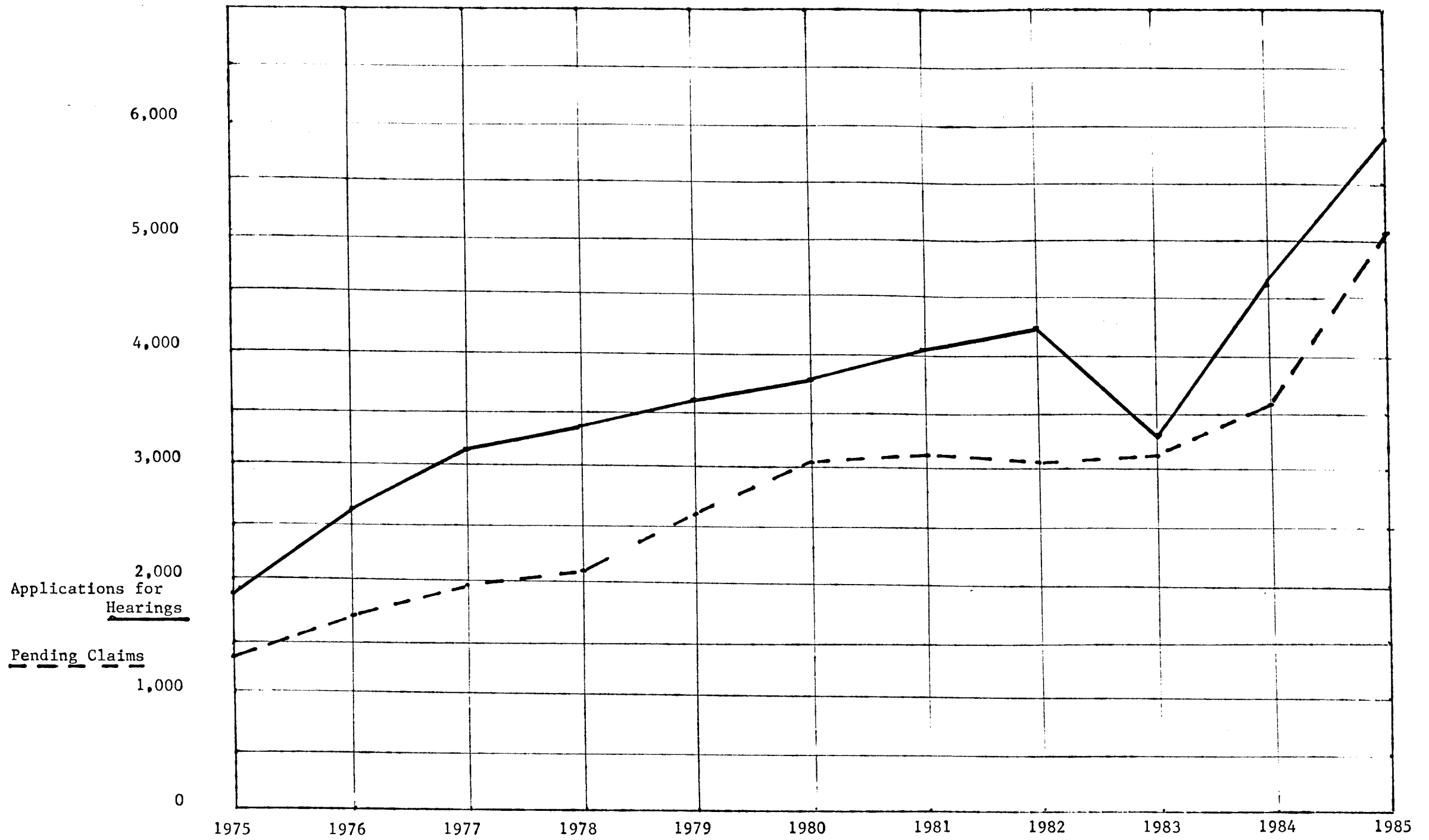
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A foreboding statistic regarding the problems of increased workload and the timely delivery of services currently facing the agency is the pending load of active contested cases. At the commencement of FY 75, the active pending case load was 1,113 claims. At the beginning of FY 86, the active pending case load is 4,567 claims. The case load has steadily increased on a yearly basis. It dramatically increased during FY 85 from 3,569 claims at the beginning of the year to 4,567 claims at the close of the year.

Reasonable projections indicate continued growth in litigation activity. Accidents reported in FY 85 increased 10% over FY 84. Applications for hearing increased 23%. Active cases on hearing dockets increased 28% to a total of 4,567. Claimant Advisory contacts increased 26% to a total of 13,420. Estimates based on year-to-date activity for FY 86 indicates in excess of a 10% growth rate in major areas of activity.

The burgeoning increase of litigation related activity reasonably forewarns of increased activity at the initial litigation stage now and in the near future. A bottle-neck has formed at the Administrative Law Judge level. If nothing is presently done, the pressure will further increase with increased activity. If additional help is not approved, the pressure can only create a further reduction in timeliness of the services provided.

The Division of Workers' Compensation is a fee-funded agency not dependent upon general fund revenues. K.S.A. 74-712. The maximum assessment rate allowed is 3% of the workers' compensation benefits paid the previous year. FY 85's assessment rate was 1.395%. Funding can easily be accomplished in accordance with current law without on general revenue funds.



APPLICATIONS FOR HEARINGS RECEIVED BY THE WORKERS' COMPENSATION DIRECTOR'S OFFICE
FISCAL YEARS 1975 - 1985

<u>Fiscal Year</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>% Increase</u>
Applications for Regular Hearings and fatals (Form E-1 & E-2)	1435	1648	1912	2055	2252	2474	2469	2592	2385	2883	3549	147%
Application for Preliminary Hearings (Form E-3)	224	586	726	858	1017	901	962	952	879	816	1058	372%
Motion to Implead Workers' Compensation Fund	131	397	518	357	320	364	567	682	**	939	969	639%
Application for Review and Modification of Existing Awards	16	44	27	28	30	30	33	31	17	34	62	288%
Miscellaneous Application for Hearing	12	66	81	126	58	26	**	**	**	**	240	
Totals	1806	2675	3183	3298	3619	3769	4031	4257	3281	4672	5878	225%

**Not available