Decision Writing Tips

You will find below an article by Angela Bullard based on her presentation in June 2006 at the annual conference of the U.S. National Association of Unemployment Insurance Appellate Boards (NAUIAB). The EI appeals directorate is the only regular non U.S. participant at this event. Boards of Referees may be interested in the guidance offered. Ms Bullard is an Administrative Law Judge for the California Unemployment Insurance Appeals Board. She also served as NAUIAB president in 2003/2004.

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DECISION DEMOLITION

Deconstructing decisions that are structurally unsound and/or architecturally ugly

By Angela Bullard, California

Good decision writers only develop over time with considerable practice. I am not sure I, or anyone, should attempt to teach decision writing at a NAUIAB conference workshop or in a *Navigator* article. However, when pressed (and rather firmly, I might add!), I agreed to share some thoughts on the subject in both forums. Our positions provide us ample opportunity to practice our writing skills. Unfortunately, the high production nature of our business seldom affords us adequate time to hone them. Despite the fact that decisions are our most tangible and enduring creation, they are often relegated to the status of an inconvenient afterthought. In an environment where lower authority authors write in haste and higher authority authors rewrite in less than leisure, how can we construct a work product which is more than merely passable? We can demolish the “dirty dozen” design flaws that render our decisions structurally unsound and/or architecturally ugly.

Structurally Unsound

1. Incomplete, excessive and/or incorrect facts.

Facts form the foundation of a good decision. Findings should contain only those facts necessary to resolve the legal issue(s) at hand. Decision writers must

carefully listen to, interpret, and correctly represent the evidence they adopt as fact to accomplish this goal.

2. Recitation of testimony, or other equivocations.

Decision writers must make findings about what happened contemporaneous with the events at the workplace, rather than summarizing what happened during the hearing. Don't frame findings of fact with words like "testified", "contends" or "alleged". Eliminate equivocation; pick a side (preferably the correct one).

3. Incomplete, excessive and/or incorrect law.

If facts are the foundation of a good decision, the law is its cornerstone. Select the *best* law from the *right* law for your case, and cite only what is necessary to resolve the issue(s). Remember, if you cite it, you must reason it!

4. Faulty or nonexistent logical reasoning.

This may be the most neglected portion of a UI appeals decision. Logical reasoning is what holds a good decision together, like mortar and nails. It is the intersection of the facts and the law. A barebones "affirmed" or "reversed" not only would be insufficient by USDOL standards, it would be unfair to the parties. Logical reasoning tells the parties how and why the cited law applies to findings of fact and justifies the ultimate decision. The most common flaw in reasoning involves merely repeating facts, rather than making a genuine explanation indicative of careful thought and scrutiny.

5. Ignoring credibility.

Appeals officers resolve a tremendous percentage of UI appeals cases based on credibility assessments. An appeals officer who ignores credibility leaves one party feeling at best that they were not heard, and at worst that they were disbelieved for no apparent reason. The appeals officer who ignores credibility also leaves the decision vulnerable to attack on appeal. Higher authorities and courts are generally reluctant to disturb the appeals officer's credibility assessments unless they can find no basis for them. Setting forth rejected contentions in the decision reasoning, paired with a legal basis for the credibility assessment, makes for the most solid work product.

6. Incorrect outcome: inadvertently or deliberately.

Appeals officers may reach an incorrect outcome inadvertently if they aren't attentive to any of the five aforementioned design flaws. And while it should go without saying, I'll say it anyway. An appeals officer may not always like the outcome of a case, but he/she is obliged to write the decision in accordance with the facts and law. An appeals officer who finds him/herself torturing facts and/or

law to reach a particular outcome needs to step back from the decision to make sure it is the correct one.

Architecturally Ugly

1. Poor organization.

When it comes to findings of fact, the chronological approach stands the test of time (pun intended). Overall, decisions should be organized in such a way that the reader anticipates the outcome. Save the fancy surprise ending for your great American novel!

2. Passive voice.

Passive voice exists when the subject of a sentence is being acted upon, rather than taking action. For example: “The claimant was given a written warning by his supervisor” Compare that to the active version: “The claimant’s supervisor gave him a written warning”. Passive voice is often signalled by overuse of some form of the verb “to be” (**was** given). Active voice is always preferable to passive voice; it results in clearer meaning and easier reading. When a writer uses passive voice, it should be a deliberate choice for a good reason. Equivocation is not a good reason.

3. Run-on sentences (punctuation).

The most underused punctuation mark in appeals decisions is the period. Break complex sentences into smaller bites for ease of reading and better understanding. When more complex sentences are unavoidable, make good use of the comma, semicolon and colon.

4. Double negatives.

Double negatives are confusing to readers. They are also another form of equivocation. Why do we say a claimant is not “disqualified”, when saying the claimant is “qualified” is so much easier to write and to understand? You know, someone has to take those phone calls from claimants asking, “So do I get money or not?”

5. Unclear language (legalese and big words).

Just this week a typist consulted me to figure out what word the judge was trying to dictate in his decision. She had already consulted several other individuals and had come up with an impressive list of possibilities. None of them was correct, because the judge was using the Latin “de minimus” If the typist can’t understand

it spoken, the parties won't understand it written. Why not just say "The claimant's delay in filing his appeal was minimal"?

6. Typos.

Two words: spell check!
In my humble opinion, eliminating these "dirty dozen" decision design flaws can help any appeals officer build decisions which are more structurally sound and architecturally appealing.

(Please note: Any design flaws in this article constitute an intentional exercise of artistic license. There is no need to point out said flaws to the author or others.)