



ARMED SERVICES BOARD OF CONTRACT APPEALS

SKYLINE 6, ROOM 703
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

October 29, 2019

MEMORANDUM FOR:

UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)
ASSISTANT SECRETARY OF THE ARMY (ACQUISITION, LOGISTICS, & TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT & ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

SUBJECT: REPORT OF TRANSACTIONS AND PROCEEDINGS OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised May 23, 2019. The statistics reflect the adjudication of appeals, petitions for contracting officer final decisions, and applications for fees and costs under the Equal Access to Justice Act of the Army, Navy, Air Force, Corps of Engineers, Defense Logistics Agency, Defense Contract Management Agency, other Defense agencies, Central Intelligence Agency, National Aeronautics and Space Administration, and the Washington Metropolitan Area Transit Authority.

The following statistics cover the activities of the Board during the reporting period and the current reserve of pending matters:

A. Cases Docketed and Reinstated During FY 2019 418

1. Source of Cases Docketed FYs 2015-2019

	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>
Army	143	92	138	75	65
Navy	82	74	77	93	90
Air Force	48	40	48	61	43
Corps of Eng.	158	205	161	127	90
DCMA	149	129	71	68	50
DLA	46	31	21	21	19
Other Agencies	17	10	8	20	27
Reinstated	<u>25</u>	<u>63</u>	<u>47</u>	<u>25</u>	<u>34¹</u>
TOTAL	668	644	571	490	418

¹ During FY19 this category consisted of 1 case remanded from the United States Court of Appeals for the Federal Circuit, 10 applications under the Equal Access to Justice Act, and 23 Requests for Reconsideration.

B. Cases Disposed During FY 2019

506

1. Source of Cases Disposed During FYs 2015-2019

	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>
Army	193	148	191	95	104
Navy	81	72	58	108	80
Air Force	76	49	54	53	52
Corps of Eng.	128	230	202	172	159
DCMA	109	102	132	96	56
DLA	42	30	34	25	32
Other Agencies	<u>18</u>	<u>23</u>	<u>7</u>	<u>10</u>	<u>23</u>
TOTAL	647	654	678	559	506

2. Rule 12 Proceedings² 41 31 64 20 32

3. Disposition of Disposed Cases

Sustained	64	76	80	96	73
Denied	57	57	59	43	81
Dismissed	<u>526</u>	<u>521</u>	<u>539</u>	<u>420</u>	<u>352</u>
TOTAL	647	654	678	559	506

In FY 2019, the Board disposed of 154 cases on the merits. Of those dispositions, 47.7% of the decisions found merit in whole or in part. The Board dismissed 352 cases. In the majority of cases, a dismissal reflects that the parties have reached a settlement.

4. During FY 2019, the Board held 37 hearings for a total of 100 days.

C. Cases Pending FYs 2015-2019

Number of Cases Pending October 1, 2015	1,087
Number of Cases Pending October 1, 2016	1,077
Number of Cases Pending October 1, 2017	970
Number of Cases Pending October 1, 2018	901
Number of Cases Pending October 1, 2019	813
Net Decrease in Docket, FY 2019	88

² Board Rule 12, Small Claim Procedures: Expedited (\$50,000 or less/Small Business \$150,000 or less) 120 days for decision; Accelerated (\$100,000 or less) 180 days for decision.

1. Source of Cases Pending October 1, 2019

Army	132 (16.2%)
Navy	162 (19.9%)
Air Force	68 (8.4%)
Corps of Eng.	215 (26.4%)
DCMA	143 (17.6%)
DLA	63 (7.7%)
Other Agencies	30 (3.7%)

2. Status of Cases Pending October 1, 2019

Complaint Due	67
Answer Due	66
Discovery	183
To Be Set For Hearing	79
Hearing Set	113
Transcript & Briefs Due	60
Suspense	172
Ready to Write	<u>73</u>
TOTAL	813

D. Motions Pending October 1, 2019

Dismiss for Failure to Prosecute	2
Dismiss for Lack of Jurisdiction	40
Dismiss – Other	24
Dismiss Under Board Rule 18	0
Dismiss – Settled/Withdrawn	7
Reconsideration	8
Summary Judgment	92
To Strike	7
Other	<u>850</u>
TOTAL	1030

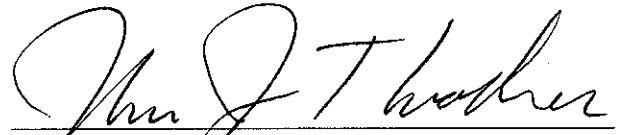
E. Board Decisions Appealed to the U.S. Court of Appeals for the Federal Circuit (CAFC)

In FY 2019, the U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 20 appeals from Board decisions. At the close of the fiscal year, 21 appeals were pending, 6 of which were docketed in FY 2018. During the fiscal year, the CAFC disposed of 10 appeals involving Board decisions, 4 of which were affirmed, 1 of which was reversed and remanded, and 5 of which were dismissed.

F. Alternative Dispute Resolution (ADR) During FY 2019

76 cases (including 2 off-docket matters) were voluntarily diverted from the regular trial docket to the Board's ADR program. 29 of these cases were settled, with the assistance of the

mediator judge, without requiring formal mediation sessions. The remaining 47 were addressed in 22 ADR sessions, totaling 57 days. 39 of these cases were successfully resolved, leaving 8 pending at the close of the fiscal year.



JOHN J. THRASHER
Chairman