



ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE 6
5109 LEESBURG PIKE
FALLS CHURCH VA 22041-3208

October 27, 2020

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
DIRECTOR OF THE DEFENSE LOGISTICS AGENCY

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board
of Contract Appeals for the Fiscal Year Ending September 30, 2020

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, applications for fees and costs under the Equal Access to Justice Act, and other matters 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 Washing 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 FY2020 497

1. Source of Cases Docketed FYs 2016-2020

	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
Army	92	138	75	65	81
Navy	74	77	93	90	115
Air Force	40	48	61	43	49
Corps of Eng.	205	161	127	90	164
DCMA	129	71	68	50	50
DLA	31	21	21	19	20
Other Agencies	10	8	20	27	8
Reinstated	<u>63</u>	<u>47</u>	<u>25</u>	<u>34</u>	<u>10¹</u>
TOTAL	644	571	490	418	497

¹ During FY20 this category consisted of 7 Requests for Reconsideration and 3 Board Reinstatements.

B Cases Disposed During FY2020

363

1. Source of Cases Disposed During FYs 2016-2020

	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
Army	148	191	95	104	63
Navy	72	58	108	80	95
Air Force	49	54	53	52	47
Corps of Eng.	230	202	172	159	82
DCMA	102	132	96	56	45
DLA	30	34	25	32	18
Other Agencies	<u>23</u>	<u>7</u>	<u>10</u>	<u>23</u>	<u>13</u>
TOTAL	654	678	559	506	363

2. Rule 12 Proceedings² 31 64 20 32 19

3. Disposition of Disposed Cases

Sustained	76	80	96	73	65
Denied	57	59	43	81	58
Dismissed	<u>521</u>	<u>539</u>	<u>420</u>	<u>352</u>	<u>240</u>
TOTAL	654	678	559	506	363

In FY2020, the Board disposed of 123 cases on the merits. Of those dispositions, 52.8% decisions found merit in whole or in part. The Board dismissed 240 cases. In the majority of cases, a dismissal reflects that the parties have reached settlement.

4. During FY2020, the Board held 15 hearings for a total of 32 days.

C. Cases Pending FYs 2016-2020

Number of Cases Pending October 2016	1,077
Number of Cases Pending October 2017	970
Number of Cases Pending October 2018	901
Number of Cases Pending October 2019	813
Number of Cases Pending October 2020	947
Net Increase in Docket, FY2020	134

1. Source of Cases Pending October 1, 2020

Army	148	(15.6%)
Navy	181	(19.1%)
Air Force	69	(7.3%)
Corps of Eng.	298	(31.5%)

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.

DCMA	148	(15.6%)
DLA	71	(7.5%)
Other Agencies	<u>32</u>	<u>(3.4%)</u>
TOTAL	947	

2. Status of Cases Pending October 1, 2020

Awaiting Complaint	70
Awaiting Answer	81
Awaiting Election	109
Discovery	237
Hearing Set	122
Awaiting Transcript/Briefs	35
Suspended	187
Ready to Write	71
ADR Track	<u>35</u>
TOTAL	947

D. Motions Pending October 1, 2020

Dismiss for Failure to Prosecute	3
Dismiss for Failure to State a Claim	18
Dismiss for Lack of Jurisdiction	48
Dismiss – Other	19
Dismiss Under Board Rule 18	0
Dismiss – Settled/Withdrawn	20
Reconsideration	18
Summary Judgment	177
To Strike	30
Other	<u>520</u>
TOTAL	853

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

In FY 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 8 appeals from Board decisions and had 13 appeals pending at the close of the fiscal year. During the fiscal year, the CAFC disposed of 16 appeals involving ASBCA decisions, 13 of which were affirmed, 1 of which was reversed and remanded, and 2 of which were dismissed.

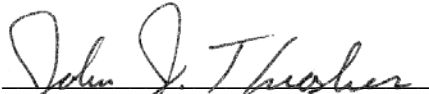
F. Alternative Dispute Resolution (ADR) During FY2020

32 cases (including 3 off-docket matters) were voluntarily diverted from the regular trial docket to the Board's ADR program. 4 of these cases were settled, with the assistance of the mediator judge, without requiring formal mediation sessions. The remaining 28 were addressed in 15 ADR sessions, totaling 30 days. 21 of these cases were successfully resolved, 5 were unsuccessful, leaving 2 pending at the close of the fiscal year. An additional 25 cases are pending ADR sessions in FY 2021.

G. Closing Remarks:

Due to the COVID-19 pandemic, all of the Board's employees began working remotely on March 12th and most employees continue working remotely to date. In spite of the challenges presented by the pandemic, the Board has continued to carry out its mission almost seamlessly. This is possible primarily due to two factors. First, the Board had previously contracted for an electronic case management system to replace our antiquated existing system and to expand our capability to work entirely electronically within the office. Shortly before the shutdown occurred, the Board was testing and implementing this new software product. We dramatically accelerated our transition to the new software with the onset of the shutdown and, fortunately, the software was robust enough to provide us with the tools to fully manage the Board's case docket electronically. Second, and more importantly, our employees adapted quickly to the new software and the remote working environment. This required a strong team effort and everyone stepped up, working diligently to make this successful.

The only areas of the Board's workload that have declined during the past several months are hearings and ADRs. Although we developed a capability to conduct these proceedings remotely, litigants have continued to push them forward into the future, presumably in the hope the proceedings could soon be conducted in person. However, since the pandemic has persisted, we are beginning to receive requests for, and have begun conducting, remote hearings and ADRs. Given the number of proceedings we have already rescheduled to 2021, I expect a significant upward trend in our hearings and ADR workload during this next fiscal year.



JOHN J. THRASHER
Chairman