ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE 6
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9 November 2004

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board of Contract Appeals for the Fiscal Year Ending 30 September 2004

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised 1 July 1979. The statistics reflect the adjudication of appeals of the Army, Navy, Air Force, Defense Logistics Agency, Defense Contract Management Agency, and other defense agencies. Also included are appeals of various executive agencies which have been adjudicated under inter-agency arrangements, as provided in 41 U.S.C. § 607(c).

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

A.	Appeals docketed during FY 2004 (includes 45 reinstatements)	461
B.	Appeals disposed of during FY 2004	481
C.	Number of Appeals Pending 1 October 1987	2503
	Number of Appeals Pending 1 October 1988	2355
	Number of Appeals Pending 1 October 1989	2321
	Number of Appeals Pending 1 October 1990	2462
	Number of Appeals Pending 1 October 1991	2367
	Number of Appeals Pending 1 October 1992	2198
	Number of Appeals Pending 1 October 1993	2027
	Number of Appeals Pending 1 October 1994	1977
	Number of Appeals Pending 1 October 1995	1822
	Number of Appeals Pending 1 October 1996	1543
	Number of Appeals Pending 1 October 1997	1325
	Number of Appeals Pending 1 October 1998	1266
	Number of Appeals Pending 1 October 1999	1223
	Number of Appeals Pending 1 October 2000	1088
	Number of Appeals Pending 1 October 2001	906
	Number of Appeals Pending 1 October 2002	782
	Number of Appeals Pending 1 October 2003	672
	Number of Appeals Pending 1 October 2004	652
	Net Decrease in Docket, FY 2004	20

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D. Source of Appeals Docketed FYs 2000-2004

	FY 00	FY 01	FY 02	FY 03	FY 04
Air Force	88	101	67	42	49
Army	108	113	83	70	77
Corps of Eng	177	113	96	129	123
Navy	153	96	98	82	69
DLA & DCMA	89	41	39	44	71
Other Agencies	54	21	25	21	27
Reinstated	53	54	27	41	45
TOTAL	722	539	435	429	461

E. Status of Appeals Pending End of FY 2004 (includes 15 Rule 12 appeals)

Complaint Due	72
Answer Due	82
Discovery	220
To Be Set	53
Hearing Set	60
Transcript & Briefs Due	25
Suspense	49
Ready to Write	91
TOTAL	652

F. Appeals Disposed of During FYs 2000-2004

		FY 00	FY 01	FY 02	FY 03	FY 04
1.	Origin of Appeals:					
	Air Force	163	140	121	78	59
	Army	166	161	76	106	92
	Corps of Eng	161	140	108	94	145
	Navy	188	165	177	127	98
	DLA & DCMA	88	72	39	92	63
	Other Agencies	81	39	34	36	23
	Admin. Disposal	10	4	4	6	1
	TOTAL	857	721	559	539	481
2.	Rule 12 Proceedings	62	68	52	26	47
3.	Record only Dispositions	152	124	110	141	107
4.	Disposition:					
	Dismissed	590	450	354	357	322
	Denied	81	114	75	65	49
	Sustained	186	157	130	117	110
	TOTAL	857	721	559	539	481

Of the Board's 652 active appeals, the Air Force has 59 (9.0%), the Army has 115 (17.6%), the Corps of Engineers has 205 (31.4%), the Navy has 159 (24.4%), DLA and DCMA have 69 (10.6%), and the remaining 45 appeals (6.9%) are from other sources. At the conclusion of FY 2004, 7 of the appeals were court remands, 28 were applications under the Equal Access to Justice Act, 5 were motions for reconsideration, and 15 were being processed under Board Rule 12 (8 expedited and 7 accelerated).

During FY 2004, 17 appeals of ASBCA decisions were docketed at the U.S. Court of Appeals for the Federal Circuit and 16 appeals were pending at the end of the year. One appeal involving an ASBCA decision in a maritime matter was affirmed by a Federal District Court. The Board did not receive any requests from District Courts for an advisory opinion under the Cochran Amendment (41 U.S.C. § 609(f)).

During FY 2004, parties requested the Board's ADR services 39 times, covering 40 appeals and 20 undocketed disputes. This compares to 42 requests received in FY 2003. Of the 39 requests, 9 were for binding ADR, while the remaining 30 requests were for non-binding ADR. Two requests for ADR were withdrawn: one request was for non-binding ADR of 2 pending appeals; the other request was for binding ADR of 1 pending appeal. Of the remaining 37 requests, 8 requests were for binding ADR and covered 10 appeals. The remaining 29 requests for non-binding ADR covered 47 matters (27 appeals and the 20 undocketed disputes). Twelve of the requests received during the year were pending at the close of the fiscal year: 3 requests for binding ADR, covering 5 appeals; and 9 requests for non-binding ADR, covering 14 matters. Of the 33 matters subject to non-binding procedures initiated and concluded during the year, 31 were successfully resolved.

MARK N. STEMPLER
Acting Chairman