ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE SIX
5109 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3208

31 October 1990

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 1990

This report is furnished pursuant to paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, 1 July 1979. The statistics hereinafter set forth reflect the hearing, consideration, and determination of appeals originating in the Army, Navy, Air Force, Defense Logistics Agency (DLA), and other defense agencies. Also included are appeals of various executive agencies.

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

A.	Appeals docketed during FY 1990 (Including 140 reinstatements)	2218
B.	Appeals disposed of during FY 1990	2077
C.	Number of Appeals Pending 1 October 1978	1163
	Number of Appeals Pending 1 October 1979	1221
	Number of Appeals Pending 1 October 1980	1259
	Number of Appeals Pending 1 October 1981	1301
	Number of Appeals Pending 1 October 1982	1594
	Number of Appeals Pending 1 October 1983	1695
	Number of Appeals Pending 1 October 1984	1729
	Number of Appeals Pending 1 October 1985	2074
	Number of Appeals Pending 1 October 1986	2096
	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
	Net Increase in Docket, FY 1990	141

D. Source of Appeals Docketed During FY 1990

Army	671
Navy	591
Air Force	540
DLA	153
Other	123
Reinstated	140
TOTAL	2218

E. Status of Appeals Pending End of FY 1990:

Complaint Due	321
Answer Due	379
Discovery	1003
To Be Set	48
Hearing Set	215
Transcript & Briefs Due	125
Suspense	78
Ready to Write	293
TOTAL	2462
Rule 12	197

F. Summary since 1 May 1949 (date of creation of ASBCA from predecessor boards):

Docketed	41,708
Reinstated	1,259
	42,967
Disposed of	40,505
TOTAL	2,462

Despite a record number of new appeals which at times pushed the number of pending appeals on the docket to over 2,660, relatively speaking, the Board's docket is in good shape.

At the end of the fiscal year, more than 40 percent of the appeals on the Board's docket were less than 1 year old. Again, less than 10 percent of the appeals were over 3 years old and less than 3 percent of the appeals have been on the docket continuously for over 3 years. Most of these latter appeals have been delayed in processing because they originated in or were related to matters before other fora. Of the 2,462 appeals on the docket at the conclusion of FY90, 6 were court remands and 28 were reinstated under the Equal Access to Justice Act.

On the personnel side, the Board is concerned regarding the possibility of cutbacks due to budgetary restraints. In a report on this subject, the ASBCA created a historical workload chart and compared it to a graph reflecting procurement spending. From this information, one can quickly deduce the existence of an inverse ratio. As the procurement spending decreased between FY84 and FY90, the number of appeals for each year, almost on a straight line, has increased dramatically. The Board concluded its report stating in part:

> While the Board recognizes the general need to reduce the force structure during periods of austerity in the Defense procurement budget, our appeal workload depends on events entirely out of our control and is not related to the actual levels of spending. The historical track record demonstrates that a decreasing Defense budget does not decrease the Board's workload. To the contrary, the Board is tightening its belt in an attempt to handle its seemingly ever increasing workload without the need to request additional manpower.

On 1 May 1990, the ASBCA celebrated its 41st birthday. Who in 1949 would have thought that the Board would be faced with an explosion of contracting officer's decisions and deciding appeals involving hundreds of millions of dollars or holding hearings lasting months? As we move forward in the 1990's, it is the ASBCA's goal to continue its fine tradition of rendering fair and impartial decisions. The process can always be improved, and we believe, hopefully, with the cooperation of both parties, and a more active role of the judges, the average pace of the proceedings will continue to accelerate.

Paul Williams

PAUL WILLIAMS
Chairman

Appeals Disposed of During FY's 1985-89

1. Origin of Appeals:	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
Air Force	507	376	436	484	494
Army	623	719	811	749	714
DLA	165	134	210	186	141
Navy	549	481	628	645	580
Other Agencies	71	59	48	44	110
Admin. Disposals	23	32	36	44	38
2. Hearings and Days of Hearing:					
Hearings:					
In Washington, D.C.	74	52	91	74	109
Outside Washington, D.C.	239	190	200	250	234
Percentage outside Washington, D.C.	76%	79%	69%	77%	68%
Days of Hearing:					
In Washington, D.C.	206	137	297	233	389
Outside Washington, D.C.	687	470	458	564	712
Percentage outside Washington, D.C.	77%	77%	61%	71%	65%
3. Pre-Hearing Discovery (appeals in which ruling sought)	418	812	1139	1246	1214
4. Pre-Hearing Conferences	298	231	329	391	365
5. Rule 12 Proceedings	354	396	318	396	315

	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
6. Record only Dispositions	296	322	340	337	297
7. Disposition:					
Dismissed	1420	1329	1628	1552	1532
Denied	286	242	280	331	254
Sustained	232	230	261	269	291
8. Days from date of docketing to date of decision:					
All appeals:					
Average	440	348	439	442	459
Median	273	196	261	260	258
Rule 12 appeals:					
Average	142	144	156	140	149
Median	134	133	141	126	147
9. Days from date appeal ready for decision to date decided:					
All appeals:					
Average	49	38	43	59	71
Median	7	5	6	6	7