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

31 October 1992

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 1992

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, 1 July 1979. The statistics reflect the adjudication of appeals of the Army, Navy, Air Force, Defense Logistics Agency (DLA), 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 activities of the Board during the report period and the current reserve of pending matters:

A.	Appeals docketed during FY 1992 (Includes 161 reinstatements)	1712
B.	Appeals disposed of during FY 1992	1881
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
	Number of Appeals Pending 1 October 1991	2367
	Number of Appeals Pending 1 October 1992	2198
	Net Decrease in Docket, FY 1992	169

D. Source of Appeals Docketed FY's 1988-92

	FY 88	FY 89	FY 90	FY 91	FY 92
Air Force	397	424	540	508	355
Army	707	761	671	579	599
Navy	630	568	591	476	414
DLA	153	142	153	197	116
Other	47	65	123	122	67
Reinstated	87	158	140	139	161
TOTAL	2021	2118	2218	2021	1712

E. Status of Appeals Pending End of FY 1992:

Complaint Due	352
Answer Due	300
Discovery	927
To Be Set	57
Hearing Set	176
Transcript & Briefs Due	106
Suspense	20
Ready to Write	260
TOTAL	2198
Rule 12	108

F. Appeals Disposed of During FY's 1988-92

1. Origin of Appeals:	FY 88	FY 89	FY 90	FY 91	FY 92
Air Force	436	484	494	565	477
Army	811	749	714	662	636
Navy	628	645	580	603	472
DLA	210	186	141	149	170
Other Agencies	48	44	110	87	97
Admin. Disposals	36	44	38	50	29
2. Rule 12 Proceedings	318	396	315	341	276
3. Record only Dispositions	340	337	297	364	350
4. Disposition:					
Dismissed	1628	1552	1532	1537	1257
Denied	280	331	254	279	283
Sustained	261	269	291	300	341
TOTAL	2169	2152	2077	2116	1881

	FY 88	FY 89	FY 90	FY 91	FY 92
5. Days from date of docketing to date of decision:					
All appeals:					
Average	439	442	459	455	510
Median	261	260	258	262	346
Rule 12 appeals:					
Average	156	140	149	160	165
Median	141	126	147	161	152

In FY 92, the number of appeals docketed declined for the second consecutive year. The number of Rule 12 elections for FY 92 also declined slightly. This may reflect the lack of change in the dollar thresholds for electing accelerated or expedited proceedings since passage of the Contract Disputes Act in 1978.

The Board, in FY 92, continued to expend a significant amount of its resources on questions relating to who is a proper party to sign the Contract Disputes Act certification for claims in excess of $50,000. Fortunately, the number of motions to dismiss based on who signed the certification continued to decline, particularly in the latter half of the fiscal year.

Of the Board's 2198 active appeals, the Department of the Army has 768 (34.9%), the Department of the Navy has 606 (27.6%), the Department of the Air Force has 535 (24.3%), the Defense Logistics Agency has 200 (9.1%), and 89 appeals (4.1%) are from other miscellaneous sources. At the conclusion of FY 92, 3 of the pending appeals were court remands, 11 were applications under the Equal Access to Justice Act, 69 were motions for reconsideration, and 108 were being processed under Rule 12, as expedited or accelerated appeals.

At the close of FY 92, 36 ASBCA decisions were under review by the U.S. Court of Appeals for the Federal Circuit. The number of ASBCA decisions under review is abnormally high because of the number of appeals involving certification issues, which have not been processed as expeditiously as is the norm by the U.S. Court of Appeals for the Federal Circuit. Of the 36 appeals, only 2 were filed by the United States.

During FY 92, Judge Karl Vasiloff and Judge Robert Gomez retired from the Board. Their services will be missed and their distinguished contributions to the Board will be remembered. FY 92 may also reflect a transition year for the Board. Historically, the only legal staff at the Board, other than the Chief Counsel, Recorder, and, since FY 88, four law clerks, has been four military officers titled Commissioners. Not only have our limited non-legal civilian staff positions been reduced, but because of the shrinking size of the Army JAG Corps, the Commissioners' program may be in the process of being phased out of existence. The Board's limited staff resources and the length of time consumed in filling vacant judge positions have adversely impacted productivity of the Board.

Paul Williams

PAUL WILLIAMS
Chairman