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

1 October 1998

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 1998

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 (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 reporting period and the current reserve of pending matters:

A.	Appeals docketed during FY 1998 (includes 58 reinstatements)	796
B.	Appeals disposed of during FY 1998	855
C.	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
	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
	Net Decrease in Docket, FY 1998	59

D. Source of Appeals Docketed FYs 1994-98

	FY 94	FY 95	FY 96	FY 97	FY 98
Air Force	311	251	169	140	147
Army	472	405	268	183	148
Corps of Eng	*	*	*	101	104
Navy	358	292	229	224	171
DLA	124	101	108	109	93
NASA	3	15	24	14	7
Other	133	149	211	64	68
Reinstated	132	110	96	88	58
TOTAL	1533	1323	1105	923	796

E. Status of Appeals Pending End of FY 1998 (includes 33 Rule 12s):

Complaint Due	127
Answer Due	110
Discovery	622
To Be Set	39
Hearing Set	134
Transcript & Briefs Due	83
Suspense	14
Ready to Write	137
TOTAL	1266

F. Appeals Disposed of During FYs 1994-98

1. Origin of Appeals:	FY 94	FY 95	FY 96	FY 97	FY 98
Air Force	359	287	305	177	131
Army	450	551	429	277	160
Corps of Eng	*	*	*	111	110
Navy	487	357	349	375	254
DLA	182	97	126	106	131
NASA	9	8	11	22	19
Other Agencies	73	164	126	57	41
Admin. Disposals	23	14	28	16	9
2. Rule 12 Proceedings	238	180	147	173	137
3. Record only Dispositions	203	182	280	165	120
4. Disposition:					
Dismissed	1150	1083	969	823	583
Denied	225	227	216	175	118
Sustained	208	168	199	143	154
TOTAL	1583	1478	1384	1141	855

*Corps of Engineers appeals prior to FY 97 were included in the Army appeals

Of the Board's 1,266 active appeals, the Army has 238 (18.8%), the Corps of Engineers has 163 (12.9%), the Navy has 335 (26.5%), the Air Force has 247 (19.5%), the DLA has 134 (10.6%), NASA has 15 (1.2%), and the remaining 134 appeals (10.6%) are from other sources. At the conclusion of FY 98, 3 of the appeals were court remands, 18 were applications under the Equal Access to Justice Act, 7 were motions for reconsideration, and 33 were being processed under Board Rule 12 (8 expedited and 25 accelerated).

At the close of FY 98, the U.S. Court of Appeals for the Federal Circuit had 29 cases on its docket relating to ASBCA decisions. The Board is not aware of any appeals pending before District Courts relating to ASBCA decisions. No requests have been received from District Courts for an advisory opinion under the Cochran Amendment (see Federal Acquisition Streamlining Act of 1994 (P.L. 103-355, Section 2354)).

During the fiscal year, the parties requested the Board's ADR services 63 times, covering 81 appeals and 9 pre-appeal disputes. The cases varied in amount from several thousand dollars to hundreds of millions of dollars. Of the 62 requests, 25 were for binding ADR, while the remaining 37 requests were for non-binding ADR. During FY98, all but one of the ADR procedures involving the ASBCA resulted in a resolution of the matter.

The Board continues to struggle with the high-grade freeze and has not been able to hire a replacement judge since the spring of 1993.

Paul Williams

PAUL WILLIAMS
Chairman