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

31 October 1991

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 31 September 1991

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 1991 (Includes 139 reinstatements)	2021
B.	Appeals disposed of during FY 1991	2116
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
	Net Decrease in Docket, FY 1991	95

D. Source of Appeals Docketed FY's 1987-91

	FY 87	FY 88	FY 89	FY 90	FY 91
Air Force	462	397	424	540	508
Army	786	707	761	671	579
Navy	627	630	568	591	476
DLA	144	153	142	153	197
Other	50	47	65	123	122
Reinstated	139	87	158	140	139
TOTAL	2208	2021	2118	2218	2021

E. Status of Appeals Pending End of FY 1991:

Complaint Due	348
Answer Due	270
Discovery	995
To Be Set	53
Hearing Set	202
Transcript & Briefs Due	155
Suspense	31
Ready to Write	313
TOTAL	2367
Rule 12	137

F. Appeals Disposed of During FY's 1987-91

1. Origin of Appeals:	FY 87	FY 88	FY 89	FY 90	FY 91
Air Force	376	436	484	494	565
Army	719	811	749	714	662
DLA	134	210	186	141	149
Navy	481	628	645	580	603
Other Agencies	59	48	44	110	87
Admin. Disposals	32	36	44	38	50
2. Rule 12 Proceedings	396	318	396	315	341
3. Record only Dispositions	322	340	337	297	364
4. Disposition:					
Dismissed	1329	1628	1552	1532	1537
Denied	242	280	331	254	279
Sustained	230	261	269	291	300

	FY 87	FY 88	FY 89	FY 90	FY 91
5. Days from date of docketing to date of decision:					
All appeals:					
Average	348	439	442	459	455
Median	196	261	260	258	262
Rule 12 appeals:					
Average	144	156	140	149	160
Median	133	141	126	147	161

In FY 91, for only the second time since FY 83, the number of appeals decreased from the prior year. While the 2021 appeals docketed in FY 91 is approximately 9 percent fewer than docketed in FY 90, it is still the third highest number of appeals ever docketed at the ASBCA.

The 2116 appeals disposed of during FY 91 reflects a 2 percent increase over the number of appeals disposed of during FY 90. The number of disposed appeals does not include the tremendous number of orders and non-dispositive decisions issued regarding certification issues. It has been informally estimated that one out of every three appeals involving contractor claims in excess of $50,000 required active Board participation on certification issues. With the arrival of the last quarter of the fiscal year, it appears that the certification frenzy may have peaked, since there was a noticeable reduction in the number of government motions to dismiss based on inadequate certification.

More than half of the appeals pending at the end of FY 91 have been on the Board's docket for less than one year. Approximately 10 percent of the pending appeals were originally docketed at the Board more than 3 years prior to the close of FY 91. A significant number of these older appeals are reinstatements (motions for reconsideration, redocketings subsequent to the parties' failure to negotiate a settlement, and applications under the Equal Access to Justice Act) or appeals in which the parties have mutually engaged in lengthy discovery practice.

As other fora have discovered, the most effective tool in processing cases expeditiously is the early setting of firm dates for hearings or for closing the record. The Board intends to increase its focus on setting early, firm dates. While the Board will continue to seek the cooperation of the parties in establishing reasonable schedules, the Board also intends to unilaterally establish schedules where the parties fail to respond to requests for proposed schedule dates. Unlike wine, appeals do not get better with age.

Of the 2367 active appeals, the Department of the Army has 772 (32.6%), the Department of the Navy has 647 (27.3%), the Department of the Air Force has 583 (24.6%), the Defense Logistics Agency has 247 (10.5%), and 118 (5%) are from miscellaneous sources. At the conclusion of FY 91, 3 of the pending appeals were court remands, 27 were applications under the Equal Access to Justice Act, 13 were motions for reconsideration, and 137 were being processed under Rule 12, as expedited or accelerated appeals.

At the close of FY 91, approximately two dozen appeals were under review by an appellate court. Two of these appeals involve maritime contracts and are on a U.S. District Court docket. One appeal, a non-Contract Disputes Act case, is pending before the Claims Court. The remainder are at the Court of Appeals for the Federal Circuit. As of 1 October 1991, the contractor was the moving party in all appeals from Board decisions.

Paul Williams

PAUL WILLIAMS
Chairman