



ARMED SERVICES BOARD OF CONTRACT APPEALS

SKYLINE 6
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

November 1, 2022

MEMORANDUM FOR:

UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)
ASSISTANT SECRETARY OF THE ARMY (ACQUISITION, LOGISTICS, & TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT & ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE (SPACE ACQUISITION & INTEGRATION)
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF THE DEFENSE LOGISTICS AGENCY

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board
of Contract Appeals for the Fiscal Year Ending September 30, 2022

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised May 23, 2019. The statistics reflect the adjudication of appeals, petitions for contracting officer final decisions, applications for fees and costs under the Equal Access to Justice Act, and other matters of the Army, Navy, Air Force, Corps of Engineers, Defense Logistics Agency, Defense Contract Management Agency, other Defense agencies, Central Intelligence Agency, National Aeronautics and Space Administration, and the Washington Metropolitan Area Transit Authority.

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

A. Cases Docketed and Reinstated During FY2022 400

1. Source of Cases Docketed FYs 2018-2022

	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>	<u>FY22</u>
Army	75	65	81	62	48
Navy	93	90	115	49	114
Air Force	61	43	49	37	43
Corps of Eng.	127	90	164	166	113
DCMA	68	50	50	30	29
DLA	21	19	20	13	21
Other Agencies	20	27	8	16	12
Reinstated	<u>25</u>	<u>34</u>	<u>10</u>	<u>27</u>	<u>20¹</u>
TOTAL	490	418	497	400	400

¹ During FY22 this category consisted of 8 Requests for Reconsideration, 6 Board Reinstatements and 6 Remands.

1. Source of Cases Pending October 1, 2022

Army	137
Navy	214
Air Force	79
Corps of Eng.	329
DCMA	103
DLA	66
Other Agencies	<u>29</u>
TOTAL	957

2. Status of Cases Pending October 1, 2022

Awaiting Complaint	44
Awaiting Answer	54
Awaiting Election	147
Discovery	206
Hearing Set	155
Awaiting Transcript/Briefs	50
Suspended	163
Ready to Write	75
ADR Track	<u>63</u>
TOTAL	957

D. Motions Pending October 1, 2022

Dismiss for Failure to Prosecute	3
Dismiss for Failure to State a Claim	4
Dismiss for Lack of Jurisdiction	101
Dismiss – Other	101
Dismiss Under Board Rule 18	0
Dismiss – Settled/Withdrawn	5
Reconsideration	4
Summary Judgment	252
To Strike	79
Other	<u>299</u>
TOTAL	848

E. Board Decisions Appealed to the U.S. Court of Appeals for the Federal Circuit (CAFC)

In FY 2022, the U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 10 appeals from Board decisions and had 29 appeals pending at the close of the fiscal year. During the fiscal year, the CAFC disposed of 17 appeals involving ASBCA decisions, 12 of which were affirmed, 2 dismissed, and 1 of which was reversed and remanded.

F. Alternative Dispute Resolution (ADR) During FY2022

125 cases (including 1 off-docket matter) were voluntarily diverted from the regular trial docket to the Board's ADR program. 6 of these cases were settled, with the assistance of the mediator judge, without requiring formal mediation sessions. 9 were withdrawn. The remaining 110 were addressed in 30 ADR sessions, totaling 62 days. 105 of these cases were successfully resolved, 3 were unsuccessful, leaving 2 pending at the close of the fiscal year. An additional 48 cases are pending ADR sessions in FY 2023.



JOHN J. THRASHER
Chairman