



ARMED SERVICES BOARD OF CONTRACT APPEALS

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Telephone: (703) 681-8501
November 1, 2023

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, TECHNOLOGY & LOGISTICS)
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, 2023

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 FY2023 342

1. Source of Cases Docketed FYs 2019-2023

	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>	<u>FY22</u>	<u>FY23</u>
Army	65	81	62	48	52
Navy	90	115	49	114	49
Air Force	43	49	37	43	42
Corps of Eng.	90	164	166	113	105
DCMA	50	50	30	29	44
DLA	19	20	13	21	17
Other Agencies	27	8	16	12	7
Reinstated	<u>34</u>	<u>10</u>	<u>27</u>	<u>20</u>	<u>26¹</u>
TOTAL	418	497	400	400	342

¹ During FY23 this category consisted of 8 Requests for Reconsideration, 15 Board Reinstatements and 3 Remands.

1. Source of Cases Pending October 1, 2023

Army	146
Navy	145
Air Force	75
Corps of Eng.	304
DCMA	134
DLA	66
Other Agencies	<u>57</u>
TOTAL	927

2. Status of Cases Pending October 1, 2023

Awaiting Complaint	30
Awaiting Answer	27
Awaiting Election	82
Discovery	305
Hearing Set	126
Awaiting Transcript/Briefs	38
Suspended	189
Ready to Write	92
ADR Track	<u>38</u>
TOTAL	927

D. Motions Pending October 1, 2023

Dismiss for Failure to Prosecute	2
Dismiss for Failure to State a Claim	23
Dismiss for Lack of Jurisdiction	23
Dismiss – Multiple Bases	100
Dismiss or Suspend Under Board Rule 18	153
Dismiss – Settled/Withdrawn	4
Reconsideration	11
Summary Judgment ³	554
To Strike	79
Other	<u>129</u>
TOTAL	1,078

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

In FY 2023, the U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 14 cases from 13 Board decisions and had 16 cases pending at the close of the fiscal year. During FY2023, the CAFC disposed of 11 CAFC cases involving 11 ASBCA decisions, 4 of which were affirmed, 3 of which were reversed and remanded, and 4 of which were dismissed.

³ Figure includes motions for partial summary judgment.

F. Alternative Dispute Resolution (ADR) During FY2022

83 cases (including 2 off-docket matters) were voluntarily diverted from the regular trial docket to the Board's ADR program. 2 of these cases were settled, with the assistance of the mediator judge, without requiring formal mediation sessions. 3 were withdrawn. The remaining 78 were addressed in 27 ADR sessions, totaling 49 days. 67 of these cases were successfully resolved, 4 were unsuccessful, leaving 7 pending at the close of the fiscal year. An additional 32 cases are pending ADR sessions in FY 2024.



JOHN J. THRASHER
Chairman