



**ARMED SERVICES BOARD OF CONTRACT APPEALS**  
SKYLINE 6, ROOM 703  
5109 LEESBURG PIKE  
FALLS CHURCH, VA 22041-3208  
13 October 2016

MEMORANDUM FOR: SECRETARY OF DEFENSE  
SECRETARY OF THE ARMY  
SECRETARY OF THE NAVY  
SECRETARY OF THE AIR FORCE  
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 30 September 2016

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised 14 May 2007. The statistics reflect the adjudication of appeals 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. Appeals Docketed During FY 2016	644
B. Appeals Disposed During FY 2016	654
C. Appeals Pending	
Number of Appeals Pending 1 October 2011	566
Number of Appeals Pending 1 October 2012	680
Number of Appeals Pending 1 October 2013	893
Number of Appeals Pending 1 October 2014	1,066
Number of Appeals Pending 1 October 2015	1,087
Number of Appeals Pending 1 October 2016	1,077
Net Decrease in Docket, FY 2016	10

D. Source of Appeals Docketed FYs 2012-2016

	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>
Army	124	159	167	143	92
Navy	72	76	84	82	74
Air Force	92	34	57	48	40
Corps of Eng.	147	185	163	158	205
DLA & DCMA	91	115	187	195	160
Other Agencies	17	18	19	17	10
Reinstated	<u>28</u>	<u>85</u>	<u>31</u>	<u>25</u>	<u>63</u>
TOTAL	571	672	708	668	644

E. Appeals Disposed During FYs 2012-2016

	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>
1. Origin of Appeals					
Army	123	143	167	193	148
Navy	68	42	62	81	72
Air Force	53	57	44	76	49
Corps of Eng.	115	114	139	128	230
DLA & DCMA	83	84	107	151	132
Other Agencies	<u>15</u>	<u>19</u>	<u>16</u>	<u>18</u>	<u>23</u>
TOTAL	457	459	535	647	654
2. Rule 12 Proceedings					
	51	27	33	41	31
3. Disposition					
Sustained	41	80	60	64	76
Denied	45	60	49	57	57
Dismissed	<u>371</u>	<u>319</u>	<u>426</u>	<u>526</u>	<u>521</u>
TOTAL	457	459	535	647	654

F. Status of Appeals Pending 1 October 2016

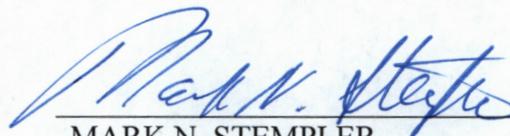
Complaint Due	125
Answer Due	80
Discovery	154
To Be Set For Hearing	76
Hearing Set	234
Transcript & Briefs Due	51
Suspense	313
Ready to Write	<u>44</u>
TOTAL	1,077

Of the Board's 1,077 active appeals, the Army has 204 (18.9%), the Navy has 127 (11.8%), the Air Force has 70 (6.5%), the Corps of Engineers has 353 (32.8%), DLA and DCMA have 311 (28.97%), and the remaining 12 appeals (1.1%) are from other sources.

During FY 2016, there were 31 elections to have appeals processed under Board Rule 12 (11 expedited and 20 accelerated), 8 applications under the Equal Access to Justice Act, 18 motions for reconsideration, and 28 court remands. At the conclusion of FY 2016, there were 8 appeals being processed under Board Rule 12 (3 expedited and 5 accelerated), 7 applications under the Equal Access to Justice Act, 2 motions for reconsideration, and 28 court remands pending.

In FY 2016, the Board disposed of 133 appeals on the merits. Of those dispositions, 57.1% of the decisions found merit in whole or in part. The Board dismissed 521 appeals. In the majority of cases, a dismissal reflects that the parties have reached a settlement. The U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 18 appeals from Board decisions, and 9 appeals, of which 2 were docketed in FY 2015, were pending at the close of the fiscal year. During the fiscal year, the CAFC disposed of 19 appeals involving ASBCA decisions, of which 7 were affirmed, 11 were dismissed, and 1 was affirmed-in-part, reversed-in-part, vacated-in-part in FY 2015 and remanded to the Board in FY 2016. Another appeal was remanded to the Board in FY 2016 for the limited purpose of determining the real party in interest.

During FY 2016, the parties requested the Board's ADR services 41 times, covering 88 appeals and 4 undocketed disputes. Thirty-five requests were for nonbinding ADR and 6 requests, covering 7 matters, were for binding ADR. Fifteen of the requests received during the year were pending at the close of the fiscal year. Of the 42 requests concluded during the year, not limited to FY16 requests, 3 requests, covering 3 matters, were for binding ADR; 34 nonbinding requests, covering 67 matters, including 3 undocketed disputes, were successfully concluded; 3 nonbinding requests, covering 9 matters, were unsuccessful; and 2 nonbinding requests, covering 2 matters, were withdrawn.



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MARK N. STEMPLER  
Acting Chairman  
Armed Services Board  
of Contract Appeals