



ARMED SERVICES BOARD OF CONTRACT APPEALS

SKYLINE 6, ROOM 703
5109 LEESBURG PIKE
FALLS CHURCH, VA 22041-3208

10 October 2017

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 2017

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 2017	524
B. Appeals Disposed During FY 2017	678
C. Appeals Pending	
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
Number of Appeals Pending 1 October 2017	970
Net Decrease in Docket, FY 2017	107

D. Source of Appeals Docketed FYs 2013-2017

	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>
Army	159	167	143	92	138
Navy	76	84	82	74	77
Air Force	34	57	48	40	48
Corps of Eng.	185	163	158	205	161
DLA & DCMA	115	187	195	160	92
Other Agencies	18	19	17	10	8
Reinstated	<u>85</u>	<u>31</u>	<u>25</u>	<u>63</u>	<u>47</u>
TOTAL	672	708	668	644	571

E. Appeals Disposed During FYs 2013-2017

	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>
1. Origin of Appeals					
Army	143	167	193	148	191
Navy	42	62	81	72	58
Air Force	57	44	76	49	54
Corps of Eng.	114	139	128	230	202
DLA & DCMA	84	107	151	132	166
Other Agencies	<u>19</u>	<u>16</u>	<u>18</u>	<u>23</u>	<u>7</u>
TOTAL	459	535	647	654	678
2. Rule 12 Proceedings	27	33	41	31	64
3. Disposition					
Sustained	80	60	64	76	80
Denied	60	49	57	57	59
Dismissed	<u>319</u>	<u>426</u>	<u>526</u>	<u>521</u>	<u>539</u>
TOTAL	459	535	647	654	678

F. Status of Appeals Pending 1 October 2017

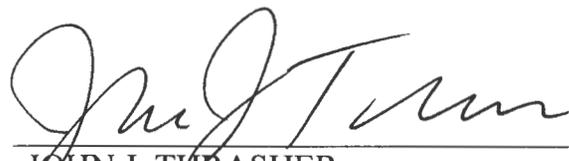
Complaint Due	87
Answer Due	58
Discovery	154
To Be Set For Hearing	74
Hearing Set	214
Transcript & Briefs Due	74
Suspense	253
Ready to Write	<u>56</u>
TOTAL	970

Of the Board's 970 active appeals, the Army has 169 (17.4%), the Navy has 163 (16.8%), the Air Force has 65 (6.7%), the Corps of Engineers has 316 (32.6%), DLA and DCMA have 243 (25.0%), and the remaining 14 appeals (1.4%) are from other sources.

During FY 2017, there were 64 elections to have appeals processed under Board Rule 12 (40 expedited and 24 accelerated), 5 applications under the Equal Access to Justice Act, 21 motions for reconsideration, and 2 court remands. At the conclusion of FY 2017, there were 6 appeals being processed under Board Rule 12 (1 expedited and 5 accelerated), 5 applications under the Equal Access to Justice Act, 13 motions for reconsideration, and 0 court remands pending.

In FY 2017, the Board disposed of 139 appeals on the merits. Of those dispositions, 57.6% of the decisions found merit in whole or in part. The Board dismissed 539 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 8 appeals from Board decisions, and 7 appeals, of which 1 was docketed in FY 2015 and 1 was docketed in FY 2016, were pending at the close of the fiscal year. During the fiscal year, the CAFC disposed of 10 appeals involving ASBCA decisions, of which 5 were affirmed; 2 were dismissed; 1 was affirmed-in part, dismissed-in-part; 1 was affirmed-in-part, vacated-in-part, and remanded; and 1 was reversed in FY 2016 and remanded to the Board in FY 2017.

During FY 2017, the parties requested the Board's ADR services 31 times, covering 90 appeals and 3 undocketed disputes. Twenty-eight requests were for nonbinding ADR and 3 requests, covering 5 matters, were for binding ADR. Fourteen of the requests received during the year were pending at the close of the fiscal year. Of the 32 requests concluded during the year, not limited to FY17 requests, 3 requests, covering 4 matters, were for binding ADR; 21 nonbinding requests, covering 84 matters, including 1 undocketed dispute, were successfully concluded; 6 nonbinding requests, covering 13 matters including one undocketed dispute, were unsuccessful; and 2 nonbinding requests, covering 2 matters including one undocketed dispute, were withdrawn.



JOHN J. THRASHER
Chairman
Armed Services Board
of Contract Appeals