



ARMED SERVICES BOARD OF CONTRACT APPEALS

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

October 10, 2018

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)
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, 2018

This report is furnished under paragraph 9 of the Charter of the Armed Services Board of Contract Appeals, revised April 9, 2018. 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 and Reinstated During FY 2018	490
B. Appeals Disposed During FY 2018	559
C. Appeals Pending	
Number of Appeals Pending October 1, 2013	893
Number of Appeals Pending October 1, 2014	1,066
Number of Appeals Pending October 1, 2015	1,087
Number of Appeals Pending October 1, 2016	1,077
Number of Appeals Pending October 1, 2017	970
Number of Appeals Pending October 1, 2018	901
Net Decrease in Docket, FY 2018	69

D. Source of Appeals Docketed FYs 2014-2018

	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>	<u>FY18</u>
Army	167	143	92	138	75
Navy	84	82	74	77	93
Air Force	57	48	40	48	61
Corps of Eng.	163	158	205	161	127
DLA & DCMA	187	195	160	92	89
Other Agencies	19	17	10	8	20
Reinstated	<u>31</u>	<u>25</u>	<u>63</u>	<u>47</u>	<u>25</u>
TOTAL	708	668	644	571	490

E. Appeals Disposed During FYs 2014-2018

	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>	<u>FY17</u>	<u>FY18</u>
1. Origin of Appeals					
Army	167	193	148	191	95
Navy	62	81	72	58	108
Air Force	44	76	49	54	53
Corps of Eng.	139	128	230	202	172
DLA & DCMA	107	151	132	166	121
Other Agencies	<u>16</u>	<u>18</u>	<u>23</u>	<u>7</u>	<u>10</u>
TOTAL	535	647	654	678	559
2. Rule 12 Proceedings	33	41	31	64	20
3. Disposition					
Sustained	60	64	76	80	96
Denied	49	57	57	59	43
Dismissed	<u>426</u>	<u>526</u>	<u>521</u>	<u>539</u>	<u>420</u>
TOTAL	535	647	654	678	559

F. Status of Appeals Pending October 1, 2018

Complaint Due	110
Answer Due	57
Discovery	139
To Be Set For Hearing	99
Hearing Set	133
Transcript & Briefs Due	77
Suspense	194
Ready to Write	<u>92</u>
TOTAL	901

Of the Board's 901 active appeals, the Army has 160 (17.7%), the Navy has 151 (16.8%), the Air Force has 74 (8.2%), the Corps of Engineers has 274 (30.4%), DLA and DCMA have 217 (24.1%), and the remaining 25 appeals (2.8%) are from other sources.

During FY 2018, there were 20 elections to have appeals processed under Board Rule 12 (13 expedited and 7 accelerated), 5 applications under the Equal Access to Justice Act, 16 motions for reconsideration, and 0 court remands. At the conclusion of FY 2018, there were 5 appeals being processed under Board Rule 12 (4 expedited and 1 accelerated), 1 application under the Equal Access to Justice Act, 15 motions for reconsideration, and 0 court remands pending.

In FY 2018, the Board disposed of 139 appeals on the merits. Of those dispositions, 69.1% of the decisions found merit in whole or in part. The Board dismissed 420 appeals. In the majority of cases, a dismissal reflects that the parties have reached a settlement. In FY 2018, the U.S. Court of Appeals for the Federal Circuit (CAFC) docketed 9 appeals from Board decisions and 1 petition for writ of mandamus. At the close of the fiscal year 2 appeals were pending, both of which were docketed in FY 2017. During the fiscal year, the CAFC disposed of 4 appeals involving ASBCA decisions, 2 of which were affirmed, 1 of which was affirmed in part, dismissed-in part, and 1 of which was the petition for writ of mandamus, which was denied.

During FY 2018, the parties requested the Board's Alternative Dispute Resolution (ADR) services 24 times, covering 92 appeals. Twenty-one requests were for nonbinding ADR and 3 requests, covering 4 matters, were for binding ADR. Eleven requests received during the year were pending at the close of the fiscal year. Of the 27 requests concluded during the year, not limited to FY 2018 requests, 2 requests covering 4 matters were for binding ADR. Four requests covering 8 matters, were unsuccessful. Twenty-one requests covering 60 matters, including 1 undocketed dispute, were successfully resolved.



JOHN J. THRASHER
Chairman
Armed Services Board
of Contract Appeals