



ARMED SERVICES BOARD OF CONTRACT APPEALS

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

20 October 2015

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 2015

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 2015	668
B. Appeals Disposed During FY 2015	647
C. Appeals Pending	
Number of Appeals Pending 1 October 2010	573
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
Net Increase in Docket, FY 2015	21

D. Source of Appeals Docketed FYs 2011-2015

	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>
Army	126	124	159	167	143
Navy	38	72	76	84	82
Air Force	45	92	34	57	48
Corps of Eng.	95	147	185	163	158
DLA & DCMA	94	91	115	187	195
Other Agencies	10	17	18	19	17
Reinstated	<u>24</u>	<u>28</u>	<u>85</u>	<u>31</u>	<u>25</u>
TOTAL	432	571	672	708	668

E. Appeals Disposed During FYs 2011-2015

	<u>FY 11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>
1. Origin of Appeals					
Army	115	123	143	167	193
Navy	62	68	42	62	81
Air Force	78	53	57	44	76
Corps of Eng.	112	115	114	139	128
DLA & DCMA	63	83	84	107	151
Other Agencies	<u>9</u>	<u>15</u>	<u>19</u>	<u>16</u>	<u>18</u>
TOTAL	439	457	459	535	647
2. Rule 12 Proceedings	29	51	27	33	41
3. Disposition					
Sustained	43	41	80	60	64
Denied	38	45	60	49	57
Dismissed	<u>358</u>	<u>371</u>	<u>319</u>	<u>426</u>	<u>526</u>
TOTAL	439	457	459	535	647

F. Status of Appeals Pending 1 October 2015

Complaint Due	125
Answer Due	81
Discovery	242
To Be Set	46
Hearing Set	187
Transcript & Briefs Due	54
Suspense	299
Ready to Write	<u>53</u>
TOTAL	1,087

Of the Board's 1,087 active appeals, the Army has 225 (20.7%), the Navy has 125 (11.5%), the Air Force has 75 (6.9%), the Corps of Engineers has 361 (33.2%), DLA and DCMA have 279 (25.7%), and the remaining 22 appeals (2.0%) are from other sources.

During FY 2015, there were 41 elections to have appeals processed under Board Rule 12 (28 expedited and 13 accelerated), 8 applications under the Equal Access to Justice Act, 13 motions for reconsideration, and no court remands. At the conclusion of FY 2015, there were 9 appeals being processed under Board Rule 12 (5 expedited and 4 accelerated), 5 applications under the Equal Access to Justice Act, 3 motions for reconsideration, and no court remands pending.

In FY 2015, the Board disposed of 121 appeals on the merits. Of those dispositions, 52.9% of the decisions found merit in whole or in part. The Board dismissed 526 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 10 appeals from Board decisions, and 7 appeals, all docketed in FY 2014, were pending at the close of the fiscal year. During the fiscal year, the CAFC disposed of 12 appeals involving ASBCA decisions, 9 of which were affirmed, 2 were dismissed, and 1 was affirmed-in-part, reversed-in-part, vacated-in-part, and is expected to be remanded to the Board in FY 2016. The CAFC entered a final judgment dismissing a challenge by the dissatisfied party under the Wunderlich Act of two ASBCA decisions issued after proceedings were remanded to the Board during FY 2014.

During FY 2015, parties requested the Board's ADR services 37 times, covering 55 appeals and 4 undocketed disputes. Thirty-three requests were for nonbinding ADR and 4 requests, covering 4 matters, were for binding ADR. Fifteen of the requests received during the year were pending at the close of the fiscal year. Of the 33 requests concluded during the year, not limited to FY 2015 requests, 2 requests, covering 2 matters were for binding ADR, successful by nature. Two ADR requests, covering 4 matters, were unsuccessful, and 29 requests covering 51 matters, including 1 undocketed dispute, were successfully concluded.


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