



ARMED SERVICES BOARD OF CONTRACT APPEALS
SKYLINE 6
5109 LEESBURG PIKE
FALLS CHURCH VA 22041-3208
 29 October 2008

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
 THE SECRETARY OF THE ARMY
 THE SECRETARY OF THE NAVY
 THE SECRETARY OF THE AIR FORCE

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board
 of Contract Appeals for the Fiscal Year Ending 30 September 2008

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, and other defense agencies. Also included are appeals of various agencies which have been adjudicated under inter-agency arrangements.

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 2008	402
B. Appeals Disposed During FY 2008	467
C. Appeals Pending	
Number of Appeals Pending 1 October 2003	672
Number of Appeals Pending 1 October 2004	652
Number of Appeals Pending 1 October 2005	644
Number of Appeals Pending 1 October 2006	552
Number of Appeals Pending 1 October 2007	637
Number of Appeals Pending 1 October 2008	572
Net Decrease in Docket, FY 2008	65

D. Source of Appeals Docketed FYs 2004-2008

	<u>FY 04</u>	<u>FY 05</u>	<u>FY06</u>	<u>FY07</u>	<u>FY08</u>
Army	77	76	92	148	80
Navy	69	70	65	56	73
Air Force	49	72	62	208	36
Corps of Eng.	123	99	115	110	148
DLA & DCMA	71	88	55	53	32
Other Agencies	27	21	29	21	10
Reinstated	<u>45</u>	<u>50</u>	<u>20</u>	<u>28</u>	<u>23</u>
TOTAL	461	476	438	624	402

E. Appeals Disposed During FYs 2004-2008

	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY07</u>	<u>FY08</u>
1. Origin of Appeals					
Army	92	94	88	100	117
Navy	98	114	91	86	59
Air Force	59	59	72	119	123
Corps of Eng.	145	130	146	156	88
DLA & DCMA	63	62	93	54	51
Other Agencies	23	21	35	24	29
Admin. Disposal	<u>1</u>	<u>4</u>	<u>5</u>	<u>0</u>	<u>0</u>
TOTAL	481	484	530	539	467
2. Rule 12 Proceedings	47	41	33	29	15
3. Disposition					
Sustained	110	87	86	96	69
Denied	49	63	51	38	41
Dismissed	<u>322</u>	<u>334</u>	<u>393</u>	<u>405</u>	<u>357</u>
TOTAL	481	484	530	539	467

F. Status of Appeals Pending 1 October 2008

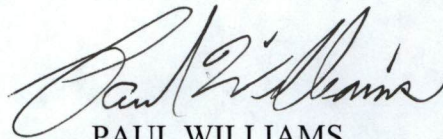
Complaint Due	35
Answer Due	36
Discovery	200
To Be Set	27
Hearing Set	55
Transcript & Briefs Due	37
Suspense	135
Ready to Write	<u>47</u>
TOTAL	572

Of the Board's 572 active appeals, the Army has 134 (23.4%), the Navy has 105 (18.4%), the Air Force has 70 (12.2%), the Corps of Engineers has 184 (32.2%), DLA and DCMA have 56 (9.8%), and the remaining 23 appeals (4.0%) are from other sources. At the conclusion of FY 2008, there were 4 appeals being processed under Board Rule 12 (2 expedited and 2 accelerated), 3 applications under the Equal Access to Justice Act, 3 motions for reconsideration, and 1 court remand.

In FY 2008, the Board disposed of 110 appeals on the merits. Of those dispositions, 62.79% of the decisions found merit in whole or in part. The Board dismissed 357 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 docketed 12 appeals from Board decisions, and 10 appeals were pending at the close of the fiscal year. Of the 12 dispositions by the Court of Appeals for the Federal Circuit involving appeals of ASBCA decisions, 6 were affirmances, 5 were dismissals and 1 was vacated and remanded. The Ninth Circuit Court of Appeals affirmed

a federal district court decision that had affirmed a Board decision. During FY 08, the Board did not receive any requests from District Courts for an advisory opinion under the Cochran Amendment (41 U.S.C. § 609(f)).

During FY 2008, parties requested the Board's ADR services 29 times, covering 57 appeals and 4 undocketed disputes. Of the 29 requests, 2 were for binding ADR covering 5 appeals and 27 requests were for non-binding ADR covering 52 appeals and 4 undocketed disputes. Twelve of the requests received during the year were pending at the close of the fiscal year. Of the 29 requests subject to non-binding procedures concluded during the year, not limited to FY 2008 requests, 3 were withdrawn and 25 were successfully resolved.



PAUL WILLIAMS
Chairman
Armed Services Board
of Contract Appeals