



DEPARTMENT OF VETERANS AFFAIRS
Chairman, Board of Veterans' Appeals
Washington DC 20420

February 26, 1996

The Honorable Jesse Brown
Secretary of Veterans Affairs
Washington, DC 20420

Dear Mr. Secretary

I respectfully present for your submission to Congress the Report of the Chairman, Board of Veterans' Appeals, for fiscal year 1995. Parts I and II of this report are intended to provide an overview of the Board and its activities during fiscal year (FY) 1995 and the projected activities of the Board for FY 1996, as is mandated by 38 U.S.C. § 7101(d)(1). The specific information required by 38 U.S.C. § 7101(d)(2) and (3) is contained in Part III of this report.

Fiscal year 1995, like the previous two fiscal years, was one of tremendous change at the Board. I believe the combined effects of this past year's legislative actions and the initiatives that we have instituted will result in a more timely system while continuing to deliver a high quality product.

I thank you and Deputy Secretary Gober for your leadership, commitment, and invaluable assistance as the Board continues to strive for excellence, improved timeliness, and increased customer satisfaction in this era of unrelenting change in the veterans' claims adjudication environment.

I hope that the enclosed report provides you, the Congress, and the veterans that we serve with a comprehensive picture of the Board, its mission, and its activities.

Very respectfully,

A handwritten signature in black ink, appearing to read "Charles Cragin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles Cragin

Enclosure

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PART I

THE BOARD OF VETERANS' APPEALS

The Board of Veterans' Appeals (BVA or Board) is the component of the Department of Veterans Affairs (VA) that is responsible for entering the final decision on behalf of the Secretary in each of the many thousands of claims for entitlement to veterans' benefits that are presented annually for appellate review. The Board's mission, as set forth in 38 U.S.C. § 7101(a), is "to conduct hearings and dispose of appeals properly before the Board in a timely manner" and to issue quality decisions in compliance with the requirements of the law, including the precedential decisions of the United States Court of Veterans Appeals. The Board renders final decisions on all appeals for entitlement to veterans' benefits, including claims for entitlement to service connection, increased disability ratings, total disability ratings, pensions, insurance benefits, educational benefits, home loan guarantees, vocational rehabilitation, dependency and indemnity compensation, and many more. About 90 percent of the claims before the Board involve medical subject matter. In addition, pursuant to 38 U.S.C. § 5904, the Board is responsible for deciding matters concerning fees charged by attorneys and agents for representation of veterans before the Department.

HISTORICAL OVERVIEW

1933 to 1988 (Before Judicial Review)

By Executive Order 6090, effective March 31, 1933, Veterans Regulation No. 2, Part II, President Franklin D. Roosevelt established the Veterans Administration as the organization responsible for administering all veterans' programs and benefits. The previous patchwork system of appellate adjudication of claims for veterans' benefits was eliminated and all questions of entitlement to benefits were subject to a single appeal to the Administrator of Veterans' Affairs. On July 28, 1933, President Roosevelt created the Board of Veterans' Appeals by Executive Order 6230, Veterans Regulation No. 2(a). The Board was delegated the authority to render the final decision on appeal for the Administrator and, organizationally, was directly responsible to the Administrator. The Board was charged "to provide every possible assistance" to claimants and to take final action that would "be fair to the veteran as well as the Government." Initially, the Board was composed of a Chairman, Vice Chairman, and no more than 15 associate members. In the 1930s, the Board established procedures, guidelines, and precedents, many of which eventually were codified as regulations.

In the 1940s, procedures were established for affording appellants hearings, including recorded hearings conducted in the field by traveling Board members. The Board's workload was greatly increased in the aftermath of World War II. For example, in 1949 the Board rendered almost 70,000 decisions. These decisions generally were simple, short, and concise.

The 1950s were characterized by the implementation of organizational and operational programs to achieve more efficient case management.

During the 1960s, the Board was enlarged to 14 sections of three members and the scope of the travel Board hearing program also was expanded. The Board's role in the promulgation of claims adjudication policy was terminated because it was felt that this was inconsistent with the Board's primary function as an independent, quasi-judicial agency within VA. Appellate policy also was significantly altered with the enactment of Public Law No. 87-666, effective January 1, 1963, which required the agency of original jurisdiction to furnish an appellant a "Statement of the Case," a document containing a detailed recitation of the evidence, applicable laws and regulations, and explanation of the rationale underlying the denial of the claim. Also in 1963, the Board was granted statutory authority to obtain an advisory opinion from one or more medical experts who are independent of VA in cases involving complex or controversial medical issues. The Board's Rules of Practice were extensively revised and were first published in the Code of Federal Regulations in 1964. Currently, the Board's Appeals Regulations and Rules of Practice are contained in Parts 19 and 20, respectively, of title 38 of the Code of Federal Regulations.

The 1970s were characterized by a significant increase in the number of appeals as part of the aftermath of the Vietnam War. In 1977, the number of new appeals exceeded 60,000. In 1982, 68,000 new appeals were filed. The average appellate processing time, measured from the date of filing of the notice of disagreement until the date of issuance of a final BVA decision, increased significantly. At the end of fiscal year (FY) 1982, the average appellate processing time was 483 days, up from 443 days the preceding year. To help with the increased workload, the President approved an increase in the number of Board members to form 19 three-member sections in 1984. The maximum number of authorized Board members subsequently was increased to 67 and 21 sections were formed. This remained the authorized strength level until 1994, when the limit on the number of Board members was removed. The number of appeals initiated remained in the 60,000s until FY 1989 when a peak of 74,291 was reached. This figure returned to the 60,000s in the early 1990s. Appeals carried through to completion and certified to the Board for review decreased somewhat in the early 1990s, going from almost 44,000 in FY 1990 to just over 38,000 in FY 1993.

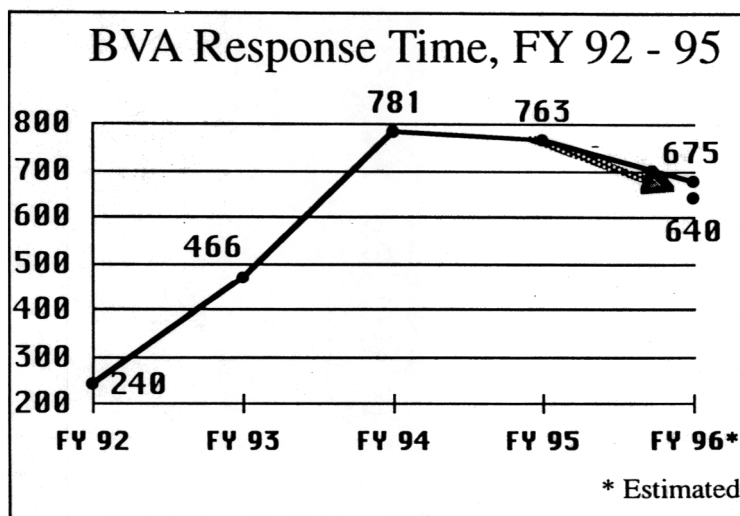
1988 to 1995 (Since Judicial Review)

The passage of the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100-687 (Nov. 18, 1988), which established the U.S. Court of Veterans Appeals (the Court), was the most revolutionary change in the adjudication system since the inception of the Board in 1933. Decisions by the Court have had a profound impact as the Board actively seeks ways to adapt to new interpretations of veterans' law and designs and implements new procedures required to meet the continually evolving requirements of the law. Few, if any, decisions of the Court have resulted in an improvement in decision productivity or timeliness in the VA adjudication system. However, judicial review has resulted in more consistent and detailed decisions.

Response time and decision productivity have been degraded by the impact of changes in the law, as interpreted by the Court. Compliance with the law necessitates achieving and maintaining standards of decision quality at a level not contemplated prior to the enactment of the Act. As a result, BVA decisions are now longer and more complex than they were prior to judicial review. Factors affecting the timeliness of appellate processing include the evidentiary development required by the Department's "duty to assist" claimants; compliance with the directives of the Court in an ever-growing number of important decisions; the procurement of a greater number of medical opinions and extensive medical research by the Board and its staff; a large volume of requests for formal hearings before the Board, as well as a significant amount of time involved in travel for hearings at VA regional offices; the strict requirements imposed by more formal Rules of Practice; the added responsibilities of attorney fee agreement processing and review; the readjudication of cases remanded by the Court to the Board and those returned from VA regional offices to the Board following completion of development requested by the Board on remand.

While much of the Board's degraded timeliness can be directly or indirectly attributed to the effects of the oversight of BVA brought about by the VJRA, two Court decisions issued shortly after the close of FY 1995 appear to indicate a change of position by the Court regarding its oversight authority. In *Cleary v. Brown*, No. 91-2006 (U.S. Vet.App. Oct. 5, 1995), the Court concluded that it does not have authority to retain general and continuing jurisdiction over a decision remanded to the Board for a new adjudication, noting that "[n]owhere has Congress given this Court either the authority or the responsibility to supervise or oversee the ongoing adjudication process which results in a BVA decision." Similarly, in a single-judge nonprecedential decision, *Morris v. Brown*, No. 95-941 (U.S. Vet. Oct. 26, 1995), the Court observed that "there is a heavy workload at the BVA," and that "[i]t would be most unwise and injudicious for this Court to intervene and purport to establish priorities and micromanage the caseload of the BVA."

As the graph to the right shows, BVA's response time increased from 139 days at the end of FY 1991 to 466 days at the end of FY 1993 and to 781 days at the end of FY 1994. By the end of FY 1995, response time decreased to 763 days. The Board's original response time estimate of 640 days for FY 1996 has been revised to 675 days as a result of work days lost due to the government shutdowns in November 1995 and January 1996.



Response time is defined as the number of days it would take BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one year time frame.



The Board now schedules personal hearings to be held at a time proximate to when that appeal will be reviewed and decided.

In FY 1995, there were 66,104 notices of disagreement filed. This represented a 7 percent increase over the 61,813 filed in FY 1994. However, 39,990 appeals were actually filed in FY 1995. These were cases certified in the field as being ready for BVA review, plus those cases returned to BVA for review subsequent to remand development.

The VJRA made a hearing before a “traveling section of the Board,” or “travel Board” hearing, a matter of statutory right. This led to a sixfold increase in demand for such hearings. In FY 1994, the increase in BVA response time resulted in an unacceptably long period between the time when a hearing was held and the time when the Board actively reviewed the associated case. Personal hearings were temporarily suspended in May 1994 to reduce the long delay between the hearing and the time the appeal was reached and considered on the Board's docket. Hearings were resumed on a limited basis in January 1995. The hearing-to-review lag time had often rendered information provided during the hearings outdated and of limited usefulness by the time the Board began its review. The personal hearings conducted during FY 1995 were held at a time proximate to when the Board began its active review of a case in order to maximize the timeliness of the information obtained during the proceeding.

The VJRA removed an historic \$10 limitation on the fees that may be charged by attorneys-at-law and claims agents who represent VA claimants. The Act gave the Board original jurisdiction to review agreements for the payment of such fees. The private bar has yet to show significant interest in the practice of veterans' law.

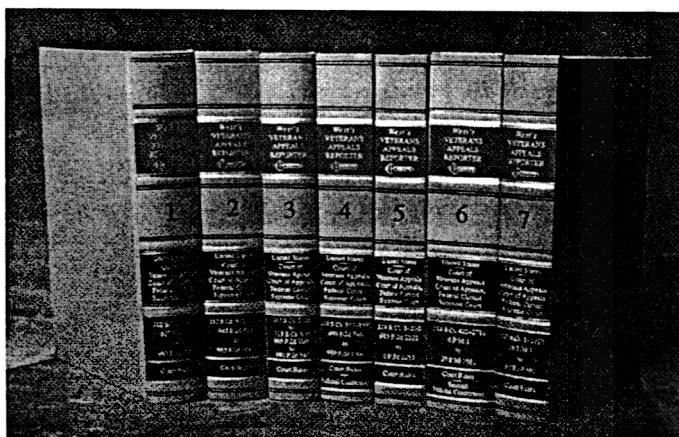
Many Court decisions have had a significant impact on the VA adjudication process. Since 1991, Court decisions have been binding on VA as of the date they are issued. This often requires the Board to stop the flow of cases, identify cases affected by a Court decision, and readjudicate them. The Court has ruled that the Board must consider every *potentially* applicable regulation in its decision, regardless of whether it was raised by the appellant or considered in the field. In *Robinette v. Brown*, 8 Vet.App. 69 (1995), the Court held that

even in circumstances where a claim is not well-grounded and, hence, VA's "duty to assist" under 38 U.S.C. § 5107(a) does not apply, VA is required by 38 U.S.C. § 5103(a) to notify the claimant, in certain circumstances, of the evidence necessary to complete an incomplete application for benefits.

On reconsideration of prior BVA decisions, the Board must entirely readjudicate the case on a *de novo* basis, as if the prior decision had never been entered, an action that expands both the complexity of decision-making and the workload of the Board. Further, in *Hermann v. Brown*, 8 Vet.App. 60 (1995), and *Frisca v. Brown*, 8 Vet.App. 90 (1995), the Court held that prior to filing a petition for a writ of mandamus (seeking to compel certain action by the Board), a petitioner must file a motion for reconsideration of a Board decision, even though a remand is in the nature of a preliminary order and does not constitute a final decision of the Board (38 C.F.R. § 20.1100), and the Board does not, for the most part, grant reconsideration of non-final decisions (38 C.F.R. §§ 20.1000-.1001).

Many decisions are returned to the Board for readjudication by the Court as a result of binding decisions issued by the Court subsequent to the Board's original decision. Similarly, the Board's own remand rate is about twice that experienced before judicial review began. Chief among the Board's reasons for remanding cases are the need for more recent medical examinations, the need to obtain appellants' private medical records, and the need for additional due process development, such the holding of a requested hearing or the *de novo* consideration by regional office personnel of additional issues identified as having potential applicability, as previously discussed. Other cases must be remanded because of Court decisions issued between the time a VA field adjudication is made and the time it comes before the Board on appeal. Readjudication of decisions remanded by the Court to the Board and those returned from the regional offices after the Board has remanded them results in a vastly increased workload for the Board and a longer wait for appellants to obtain resolution of their cases.

The Court's ruling that Board decisions include statutorily required supporting "reasons or bases" also has had a profound impact on the way the Board adjudicates cases, not only by making Board decisions longer and more complex, but by imposing a more adversarial tone to Board decisions, in contrast to the past. For example, the Board is now required to make a candid assessment of the credibility of lay testimony and can no longer decide cases on the basis of the medical expertise of its members, relying instead solely on the evidence of record. The Court has raised serious questions about the fairness and impartiality of the



The body of veterans' common law developed in the six years since judicial review began now fills seven bound volumes.

Board's procedures for utilizing medical adviser opinions from physicians employed by the Board. The role of BVA's physicians is discussed in detail on pages 18 - 20 of this report. Still other Court decisions require the Board to be more technical and "legalistic" in its decision writing.

In the early years of its existence, the Court expanded the reach of its jurisdiction, holding that the Board is required to adjudicate contentions that it has committed "clear and unmistakable error" in rendering previous decisions that have since become final, and holding that the Court had jurisdiction to review the Chairman's denials of motions for reconsideration. However, the U.S. Court of Appeals for the Federal Circuit reversed the Court, deciding that the clear and unmistakable error review authority in 38 C.F.R. § 3.105(a) relates only to review of agency of original jurisdiction decisions and not those of the Board. The Court of Appeals later found that the Court had no jurisdiction over "acts or decisions of the Chairman absent some underlying final decision by the board."

Since July 1994, the Board has been authorized to issue decisions made by individual Board members, rather than by panels of three members, a procedure that has significantly enhanced productivity. Also in FY 1994, the Board implemented revised docketing procedures, permitting the assignment of docket numbers as soon as a "substantive appeal" (VA Form 9) is filed, rather than when an appeal folder is received at the Board. This procedure eliminates the disadvantage previously experienced by appellants who requested travel Board hearings, whose folders remained at VA regional offices and whose appeals, therefore, were not docketed until after the hearing was held.

Many of the initiatives implemented during FY 1995 and the preceding year had been recommended by the Select Panel on Productivity Improvement for the Board of Veterans' Appeals in FY 1994. Some of the Panel's recommendations involved, in whole or in part, elements of the Department other than the Board and some required statutory and regulatory action before they could be implemented. Specific Panel recommendations under the cognizance of the Board that have been fully or partially implemented are discussed within appropriate sections of this report, including: revised timeliness measurement standards; pay disparity and term appointments; attorney training; technological improvements such as on-line research tools and document imaging; and video-conferenced hearings.



The Board provides each appellant a pamphlet detailing BVA's customer service standards.

1995: INNOVATION AND REALIGNMENT

The statutory authority for organization of the Board is contained in chapter 71 of title 38 of the United States Code. The Board's activities are directed by a Chairman, who is "directly responsible to the Secretary," as provided by 38 U.S.C. § 7101(a). The Chairman is appointed by the President of the United States with the advice and consent of the Senate and serves for a term of six years. Pursuant to 38 U.S.C. § 7101(a), the Board is authorized to consist of a Chairman, a Vice Chairman, and an unlimited number of Board members. The Board is also authorized by § 7101(a) to have "sufficient" professional, administrative, clerical, and stenographic personnel as are necessary to accomplish its mission. (BVA's organization chart is shown on page 16.)

All members of the Board, except the Chairman, are appointed by the Secretary, with approval of the President, based upon the recommendations of the Chairman. The fixed terms of office for Board members that were prescribed by the VJRA in 1988 were eliminated by the "Veterans' Benefits Improvements Act of 1994," discussed on pages 12 -13. This legislation also restored the historic comparability between Board member pay and that of Administrative Law Judges. Board members are the only federal employees at this level that require Presidential approval for appointment. The Chairman serves at the Assistant Secretary (PAS IV) level, and the Vice Chairman and Senior Deputy Vice Chairman are members of the Senior Executive Service.

For administrative purposes, BVA has been organized into Professional and Administrative Services. The Professional Service consists of Board members, staff counsel who support the Board members, staff medical advisers, and the Chairman's staff. Since the enactment of Pub. L. No. 103-271, which was signed into law on July 1, 1994, most decisions of the Board are reviewed and decided by individual Board members. Prior to Pub. L. No. 103-271, the law required that three member panels review and decide each appeal. To support the three-member panel requirement, the Board was divided into 21 decision-making units (Board sections), each generally composed of three attorney Board members, one of whom was designated Chief and bore the supervisory responsibility for the section. A professional staff of eight or nine staff counsel, attorneys graded from GS-9 through GS-14, were assigned to each Board section. This organizational structure underwent significant dramatic alteration in FY 1995, designed to provide a new platform for management that was not bridled by a statutorily imposed structure. Implementation of this new Board structure began at the close of FY 1995.

Organizational Realignment of the Board

The organizational structure of the Board underwent relatively few major changes for more than a decade prior to FY 1995. Although the control division concept introduced in the BVA Administrative Service a few years earlier could be considered a major change for that component of the BVA operation, that change remained restricted to the Administrative Service. BVA continued to be divided into its two principal components, the Professional and Administrative Services. Functional responsibilities and authorities remained basically

unchanged from those in effect in the 1980s and earlier, and the organizational structure reflected the prevailing management philosophies of that era. The "Board section" arrangement also reflected the legal requirement that decisions be issued by panels, usually consisting of three members. BVA remained a highly centralized organization with relatively little delegated authority other than the authority of Board members to decide appeals.

The single member decision-making authority granted by Pub. L. No. 103-271 eliminated the statutory requirement for configuration of the Board in "sections." The Board was then afforded the opportunity to consider alternative organizational arrangements that might function more productively in the new, less restrictive decision-making environment. For the first time, BVA was allowed to develop a platform for management based on the post VJRA realities of the Board's mission. After considering various possible organizational structures, including that of retaining the Board section arrangement, the Board embarked on a realignment that it believes affords the best prospects for improving overall productivity and decision timeliness.

Among the key considerations in adopting the organizational plan described below were: creating an atmosphere in which Board members, staff counsel, and administrative support personnel could interface directly and regularly, thereby establishing a greater sense of teamwork; allowing sufficient latitude for different, even competing, managerial styles to be used by similarly staffed teams; reducing administrative overhead by reducing the number of identical administrative positions required to support the former 21 Board sections, thereby allowing the Board to hire additional attorneys without exceeding BVA's FTE limit; reducing the supervisor to staff ratio; and increasing individual responsibility and accountability.



The Chairman (seated, third from left), Vice Chairman (seated, center), and Senior Deputy Vice Chairman (seated, third from right) along with the four Deputy Vice Chairmen (seated), the Chief Counsel and Chief Board Members head the realigned Board.

Decision Teams

At the heart of the realigned Board are four “decision teams.” These teams form the true line component of the Board, containing the Board members and staff counsel who review and decide appeals. Each decision team is organized alike from a staffing perspective. The target staffing level for each of the decision teams is one Deputy Vice Chairman (DVC) at an AL2 level, 15 Board members, and approximately 57 attorneys and 18 administrative personnel. Each decision team operates as a semi-autonomous entity with considerable latitude regarding internal operating procedures, such as case assignment practices, and how Board members, attorneys, and administrative personnel are configured into work units.

Virtually all aspects of the processing of appeals occurs within the confines of the decision teams. Administrative personnel assigned to each of the four decision teams are essentially those that comprised four of the five former control divisions, plus two to four additional administrative FTE. Although these administrative personnel continue to be assigned to the Administrative Service for performance evaluation purposes, they receive day-to-day operational guidance from their decision team DVC. Certain mail, file, hearing, and transcription services continue to be provided by a common, centralized administrative unit; most other BVA actions (including docketing, hearing scheduling, correspondence preparation and dispatching) take place within the administrative cadre of each decision team. Quality Review is performed within the decision teams.

Within each decision team, DVC’s have the authority to assign Board members and attorneys (as well as administrative personnel) into whatever decision-making configurations they feel produce the best, measurable results. Each DVC is assisted in the supervision of the professional staff by two Chief Board members.

Delegated authority, outcome accountability, and competition are the driving forces for the decision teams. While the DVCs have considerable authority and latitude in how their decision teams are structured and how they operate, certain parameters, obviously, form the framework within which they do so. Decision teams must abide by all laws and regulations, and by certain policies and procedures issued by the Board.

Geographic Alignment

A key element of the BVA realignment is the structuring of the decision teams’ workload along geographical lines. Each decision team is aligned with specific VA regional offices and is responsible for deciding appeals originating from those offices. However, those cases that had been remanded to regional offices prior to the realignment are assigned, upon their return from remand development, to the Board member who signed the remand decision, regardless of the geographic origin of the appeal. In time, this geographic linkage will engender a heightened level of continuity and familiarity between the operating units of BVA and the Veterans Benefits Administration and will provide for better communication and case control.

Decision Preparation

The basic procedures involved in the preparation of a draft decision for Board member review and many of the routine tasks involved in the processing of an appeal by the Board are the same under BVA's realigned configuration as they were prior to realignment. DVCs are responsible for the management of their decision teams' caseload and procedures for the assignment of individual appeals to staff counsel for the preparation of written tentative decisions. Counsel typically prepare draft decisions on individual computer work stations and submit the completed tentative decisions to Board members within their decision team for review. Alternatively, counsel dictate draft decisions that are transcribed before being submitted for a Board member's review. Board members typically will review the record and revise the submission or return it to counsel for revision. When a decision that is acceptable to the Board member is finalized and signed by the member, the decision undergoes a quality review within the decision team and is then dispatched by its administrative personnel.

A staff of medical advisers assist Board members by conducting medical research and training staff counsel on medical issues. In addition, medical evaluations of a case may be obtained from the VA Under Secretary for Health, the Armed Forces Institute of Pathology, or an independent medical expert who is usually a member of the faculty of a leading medical school.

The administrative personnel within each decision team support the teams by facilitating the efficient processing of appeals. This support includes case management and tracking, docket control, scheduling of hearings, secretarial and transcription services, as well as liaison activities with veterans, veterans' service organizations, Members of Congress and their staffs, and other interested parties. The Board's transcription unit, located in Wilkes-Barre, Pennsylvania, electronically transmits draft decisions, hearing transcripts, and other documents to the Board's offices in Washington, DC.

Administrative Initiatives

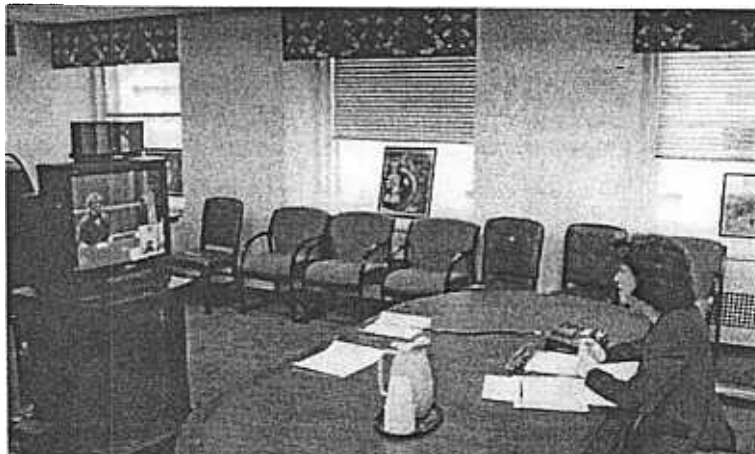
The Board's administrative structure was revamped as part of the organizational realignment discussed above. This realignment required the existing five administrative control divisions to be reduced to four, with each of the four new administrative units becoming an integral part of a decision team. Previously, each control division handled administrative matters, including case docketing movement and storage, associated correspondence, and the dispatch of cases for several Board sections, but was not under the operational control or direction of those sections. The new arrangement has allowed the Board to combine redundant administrative positions and eliminate others, thereby providing the opportunity to hire additional attorneys without exceeding the limit on the total number of Board employees.

The Board has introduced numerous administrative initiatives to meet the challenges resulting from judicial review and to improve the service it provides to veterans and their

families. These initiatives have included the complete revision of decision analysis and format (1991); the use of single Board member hearings as opposed to panel hearings (1992); the introduction of a “trailing” hearing docket (1993); improvements in direct responses to customers and responses to Congressional and other inquiries (1993); the consolidation of all BVA employees in the Washington, DC, area in one building (1993); reduction of the time-consuming restatement of the history of each case contained in the “Introduction” section of Board decisions (1994); and the implementation of revised docketing procedures, permitting the placement of cases on the Board’s docket as soon as a “substantive appeal” (VA Form 9) is filed, rather than when an appeal folder is received at the Board (1994).

In 1995, the Board continued the administrative modernization and streamlining of the past few years. A number of administrative initiatives begun in FY 1994 were also completed during FY 1995, including:

- o Approximately 6,000 claims folders were received at the Board during the final quarter of FY 1995. Receipt of claims folders by the Board, other than cases previously remanded by the Board to regional offices for additional action and readjudication, had been held in abeyance since February 1994, an action that provided regional offices access to veterans’ records to act on new claims while appeals of earlier decisions awaited Board review.
- o Personal hearings, which had been suspended since May 1, 1994, were resumed on a limited basis in January 1995 at the Board’s Washington, DC, office. In March 1995, routine hearing scheduling was resumed. Hearings held at VAROs resumed in July. Scheduling procedures for personal hearings held at either the Board’s offices in Washington, DC, and at regional offices were revised so that Board hearings are now held nearer to the time when the associated appeal is decided.
- o In July 1995, BVA began a pilot project with the VA Regional Office in St. Petersburg, Florida, to test the use of video-conferencing to conduct personal hearings. Through the use of this interactive video technology, Board members can conduct hearings from Washington, DC, while appellants and their representatives present their cases from their local regional offices. Video-conferencing affords veterans the opportunity to have



The Board is exploring video-conferencing as a means to offer appellants another personal hearing option.

hearings held before Board members without incurring the expense of traveling to Washington, D.C., and — especially for those in more remote areas — without having to wait for “travel Board” hearings that might be held only once or twice each year in their areas due to cost and time constraints. Video-conferencing conserves the productive capability of the Board member conducting the hearings by reducing travel time — the Board member will be able to move down the hall, literally, instead of traveling across the country to conduct a hearing. Authorization for the Board to conduct video-conferenced hearings was specifically authorized by the "Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994," Pub. L. No. 103-271. Forty-one video-conferenced hearings were conducted during FY 1995.

Several important initiatives were undertaken in FY 1995 to improve communication between the Board and appellants. These initiatives include notifying appellants in writing when their appeals are docketed; providing accurate timeliness estimates to appellants; providing appellants with information on what kind of service to expect; providing a “user friendly” explanation of the appeal system; establishing an appeal status inquiry telephone line; and conducting training on how to deliver outstanding customer service. These customer service initiatives are discussed in detail on pages 25 - 26.

Continuing measures include the prompt dissemination of Court decisions throughout the Board and the provision of guidance in response to individual Court decisions; an increase in the attorney staff that prepares draft decisions; the continuation of a formal, comprehensive training program for staff counsel, discussed on pages 22 - 23; and the inclusion of staff physicians in reviewing requests for independent medical opinions for accuracy and completeness.

Legislative Initiatives

The legislative movement of FY 1994 continued in FY 1995, as the President signed legislation that fundamentally changed the way the Board does business and helps ensure that the Board is able to retain the best and brightest of its members. The Board continues to examine the effect of the Court’s decisions and the need to suggest legislative changes that will make the appellate process more responsive and friendly to veterans and their families.

Enacted Legislation

A significant legislative milestone during FY 1995 was the enactment of Pub. L. No. 103-446, the “Veterans’ Benefits Improvements Act of 1994,” in November 1994. This law, actively supported by the Board and the Department, contains a number of measures affecting the Board and incorporates several of the recommendations of FY 1994’s Select Panel on Productivity Improvement.

Title II of Pub. L. No. 103-446 restored the practice of pay equity between Board members and federal Administrative Law Judges (ALJ), ended fixed terms of office for Board members, and instituted performance standards for members. Until 1990, both ALJs and Board members were paid at the same level. Beginning in 1991, ALJ pay was increased by about 20 percent. In addition, since passage of the VJRA in 1988, Board members had been subject to terms of nine years, while ALJs were not. The net result was a loss of the most experienced Board members to the ALJ ranks — more than 15 percent during the period from July 1993 through July 1994 alone. Title II sets Board member pay at the same level as ALJs and eliminates terms. At the same time, the bill requires “recertification” of Board members at least once every three years under performance standards developed by the Chairman with the approval of the Secretary. Title II also permits the Chairman to continue to serve after the expiration of his appointment — with the approval of the Secretary and within certain time limitations — until a successor is appointed.

Pub. L. No. 103-446, title III, in pertinent part, permits the Board to “screen” appeals to determine the adequacy of the record for decision-making purposes or to remand the case immediately for additional development. Provisions of title III also require the Secretary to provide expeditious treatment by the Board of any case remanded by the Court of Veterans Appeals.

Finally, title IV of the new law established the “Veterans’ Claims Adjudication Commission,” designed to examine and make recommendations concerning the entire claims-processing system, including the Board. The Commission, composed of nine members, only one of whom is a VA employee, issued a preliminary report in February 1996, and is scheduled to issue its final report in May 1996.

In October 1995, the Department provided two legislative initiatives to Congress to deal with the effects on Board procedures of decisions by the Court of Veterans Appeals.

Board Initiative: Providing Copies of Decisions to Claimants and Representatives

The Board prepared and dispatched 28,195 decisions in FY 1995. In more than 85 percent of those cases, claimants were represented by one of the various veterans’ service organizations (VSO), many of whom are provided office space by the Department, both in regional offices and at the Board’s office in Washington, DC. Over the years, the Board developed efficient, cost-effective methods of notifying both claimants and their representatives of decisions on appeal. For example,

- o Decisions were and are mailed directly to claimants and to representatives whose offices are not located at VA facilities.
- o In the cases of representatives who are located at regional offices, the Board would deliver decisions to a VA contractor who “bundled” mail for the 58 regional offices and then delivered that mail to the U.S. Postal Service one or more times per week.

Upon delivery to the appropriate regional office, that office's internal mail distribution system would deliver a copy of the decision to the representative.

- o In the cases of representatives who are located at the Board's Washington office, copies of decisions were hand-delivered by the Board's internal mail distribution service, using a VA contractor.

In *Trammell v. Brown*, 6 Vet.App. 181 (1994), the Court ruled that 38 U.S.C. § 7104(e) requires the Board to mail its decisions *directly* to the representative, and that a process which routed that decision to a regional office for distribution — even when the representative was physically located at the regional office — was not acceptable. In *Davis v. Brown*, 7 Vet.App. 298 (1995), the Court interpreted the words “the Board shall promptly mail” in section 7104(e) to mean that the Board decision “must be correctly addressed, stamped with proper postage, and delivered directly by the [Board] into the custody of the U.S. Postal Service.” While both of these decisions are reasonable interpretations of the statute, this approach creates problems with logistical solutions the Board developed over the years to deal with notification of parties and their representatives. In addition to adding postage cost and considerable administrative burden, this process has delayed delivery of decisions to many representatives, especially in the case of representatives located, quite literally, within 100 feet of the BVA office sending the decision.

The Department has submitted proposed legislation that would permit the Board to “send” its decisions to claimants and their representatives by any means reasonably calculated to provide a copy of the decision within the same time frame that a copy of the decision sent by first-class mail would be expected to reach them.

Board Initiative: Representation by Organizations

Recent Court rulings have called into question the Department's long-standing practice of permitting veterans' service *organizations* (as opposed to individual service officers) to function as claimants' representatives. This practice has permitted veterans and their families to rely on numerous highly-trained, accredited representatives at all levels of the claims process — from County Veterans Service Officers, through representatives at regional offices and hospitals, to VSO staff co-located with the Board of Veterans' Appeals — and in all regions of the country simply by designating an accredited service organization as their representative. However, in *Leo v. Brown*, No. 94-38 (Vet.App. June 16, 1995), the Court ruled that, where the veteran had listed “The American Legion, Greenville County Veterans Affairs Office” as his representative, mailing a copy of the Board's decision to the national office of The American Legion did not satisfy the requirement to mail a copy of its decision to the appellant's representative. The *Leo* decision was reissued by the Court in November 1995 (*Leo v. Brown*, No. 93-844 (Vet.App. Nov. 27, 1995)).

In October 1995, the Department submitted to the Congress, legislation which would eliminate any confusion as to the right of a claimant to appoint a veterans' service *organization* as representative. The proposed legislation would authorize the Secretary to treat a power

of attorney naming an organization, a specific office of an organization, or a recognized representative of an organization as an appointment of the entire organization. Claimants would, however, retain the right to specify that only a specific, named individual be recognized as representative.

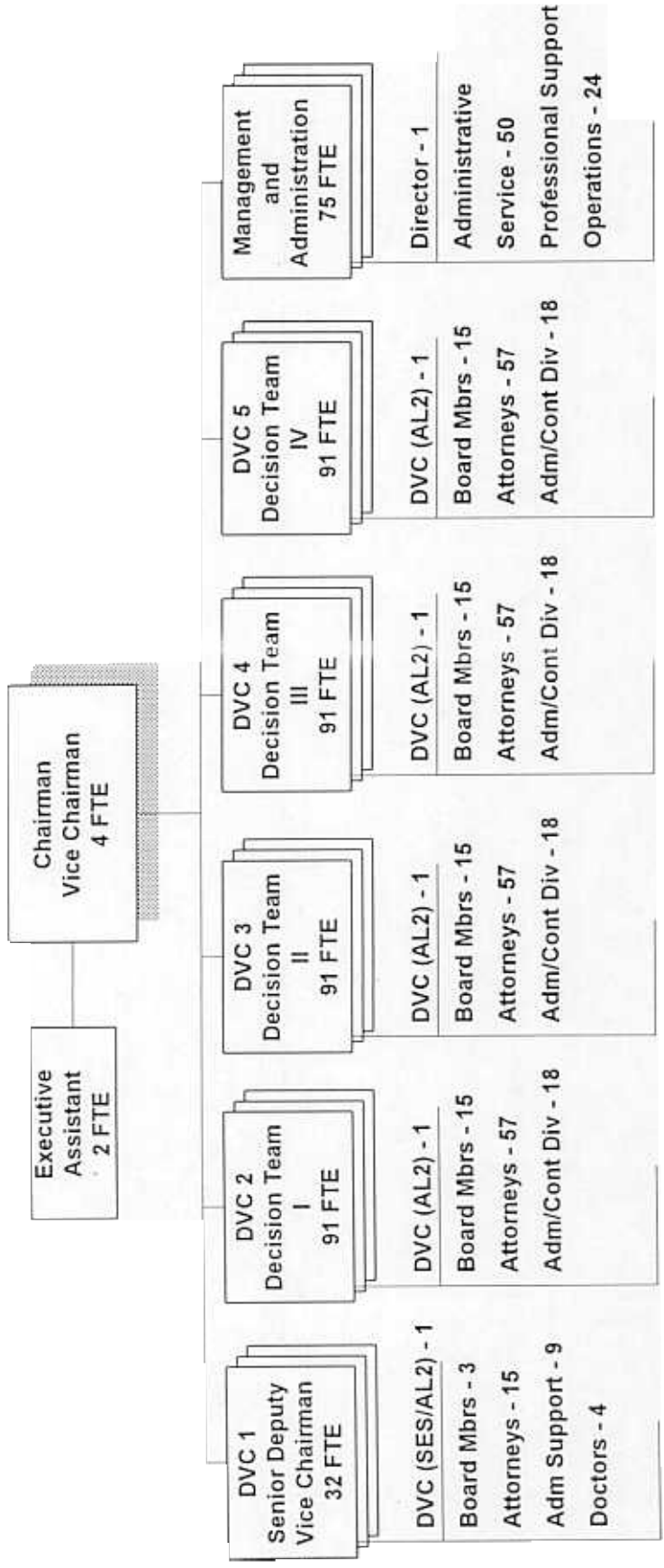
Claims File Security

In FY 1993, Board members detected unusual patterns of decision recommendations prepared by two staff attorneys. In each of these apparently unrelated cases, the attorneys in question recommended that an unusually high percentage of appeals be remanded to VA regional offices to obtain essential documents. The reviewing Board members suspected that the two attorneys, Lawrence Gottfried and Jill Rygwalski, were altering documents in or removing records from appellants' files, thus necessitating the return of the appellants' claims folders to VA regional offices for further development.

Investigations undertaken by the VA Office of Inspector General, at BVA's request, revealed evidence that the two suspect attorneys had tampered with documents from some claims files assigned to them for review. Based on evidence uncovered in the course of the investigations, the U.S. Attorney's Office for the District of Columbia pursued criminal charges against both attorneys. In January 1995, attorney Lawrence Gottfried was sentenced to 15 months imprisonment and ordered to pay \$39,931 in restitution to the Board, based on his guilty plea to a felony charge of unlawful concealment, removal, and mutilation of government records. Gottfried appealed the sentence. However, in June 1995, the Court of Appeals for the District of Columbia upheld the sentence in a precedential decision. Subsequently, in September 1995, attorney Jill Rygwalski was sentenced to a prison term of 15 months and ordered to pay restitution in the amount of \$22,461, following her guilty plea to the same offense. Both attorneys are barred from future employment with the Federal government and both face disbarment proceedings in the jurisdictions in which they are licensed to practice law.

After discovering the tampering, the Board initiated a systematic review of the approximately 2,200 decisions handled by the two attorneys since 1988, to identify those in which tampering may have occurred. During the course of FY 1995, the Board has notified almost all appellants whose cases were handled by the two attorneys and informed them of the results of the review. In all cases, whether the Board's review revealed evidence of tampering or not, appellants and their representatives are being afforded the opportunity to personally review their records and, if they suspect tampering, to provide information about missing or altered documents or take other appropriate action.

Corrective actions available to appellants include the submission of additional or duplicate evidence, as well as comments or arguments, and, if a final decision was made on an incomplete or altered record, filing a motion for reconsideration. Cases involving file tampering will be handled in an expedited manner and will be subject to the same standard of review as applied to cases involving the destruction of official records that occurred in the 1973 fire at the National Personnel Records Center in St. Louis, Missouri.



MEMBERS OF THE BOARD OF VETERANS' APPEALS



New Board members were sworn-in by Secretary Jesse Brown on December 12, 1995. Members of the Board of Veterans' Appeals are the only federal government employees at the Administrative Law level that require Presidential approval.

At the close of FY 1995, the following 58 individuals, 32 of whom are veterans, were serving as members of the Board of Veterans' Appeals. No Board member appointments are awaiting Presidential approval. There are no physicians serving as Board members.

AGUAYO-PERELES, JOAQUIN
(DEPUTY VICE CHAIRMAN)
ANDREWS, KENNETH R., JR.
ANTHONY, JAMES R.
BAUER, ROGER K.
(VICE CHAIRMAN)
BLASINGAME, JACK W.
BRAEUER, WAYNE M.
BROWN, DEREK R.
CALLAWAY, BETTINA S.
CHEEK, MICHAEL D.
COHN, STEVEN L.
COPELAND, BARBARA B.
CRAGIN, CHARLES L.
(CHAIRMAN)
DANNAHER, THOMAS J.
DAY, JONATHAN E.
DONSBACH, JAN
DURKIN, SHANE A.
FLOWERS, FRANK J.
FRANK, RICHARD B.
GALLAGHER, MARY
GICK, GARY L.
GOUGH, JEROME F.
HOGEBOOM, CHARLES E.
(DEPUTY VICE CHAIRMAN)
HYMAN, BRUCE E.
JORDAN, VICKY L.
KANNEE, BRUCE N.
KELLER, STEVEN L.
KRENZER, EILEEN M.
LYON, MICHAEL D.
MARTIN, JEFFREY J.

MOEHLMANN, HOLLY E.
MONROE, JACQUELINE E.
O'NEILL, EUGENE A.
ORMOND, JOHN E.
PELLETIER, RENEE M.
PHILIPP, ROBERT D.
PHILLIPS, NANCY I.
POWELL, URSULA R.
REDDY, WILLIAM J.
RICE, WARREN W., JR.
ROBIN, NANCY R.
(DEPUTY VICE CHAIRMAN)
RUSSELL, CRAIG P.
SABULSKY, MARY M.
(DEPUTY VICE CHAIRMAN)
SCHULE, JOHN J.
SCHWARTZ, HOWARD N.
SENYK, GEORGE R.
SHARP, JANE E.
SHERMAN, IRIS S.
SHUFELT, GORDON H.
SPICKLER, DAVID C.
STANDEFER, RICHARD B.
(SENIOR DEPUTY VICE
CHAIRMAN)
SULLIVAN, LAWRENCE M.
SULLIVAN, ROBERT E.
SYMANSKI, CHARLES W.
TOBIAS, CONSTANCE B.
TOBIN, LEO W., III
TUTERA, ALBERT D.
WARNER, SAMUEL W.
WILKINS, STEPHEN L.

While the Board has no indication that any other employees tampered with official records, the damage done by these two attorneys was considerable. In most instances, the tampering resulted in further delay in an already too lengthy appeal process. The short-term effect on the Board has been substantial in terms of time and costs expended to investigate and correct this matter and in terms of the perceived loss of integrity of the Board's appellate procedures. Long-term effects are still not known. However, the more precise monitoring of appellate records made possible by the FY 1995 upgrade of the Board's computerized case tracking system, along with the possible future implementation of document imaging technology, should reduce or eliminate the likelihood of any recurrence of this problem.

Although this incident is perhaps the most troubling aberration in the Board's 62 year history, it must be remembered that it was the expertise of Board members that resulted in these crimes being discovered and the perpetrators brought to justice.

SELECTION OF BOARD MEMBERS

Although it is not required by law, all members of the Board are attorneys. Since 1994, no physicians have served as members of the Board. Board members are selected through a highly competitive process -- each must be completely familiar with the ever growing body of applicable statutory, regulatory, and judicial authority and must acquire a solid background in numerous areas of subject matter expertise, including medical, necessary to adjudicate the wide variety of claims within the Board's jurisdiction. With very few exceptions, Board members have been selected from the ranks of staff counsel to the Board, because the particular expertise necessary to adjudicate appeals for veterans' benefits in an expeditious manner is most commonly found in this group. Staff counsel generally require from 7 to 10 years of experience before they are considered qualified for consideration as a Board member. The selection process for the limited number of Board member openings is extremely competitive: Only individuals who have the requisite level of expertise to provide the efficient, high-quality service that veterans and their dependents deserve are selected. As selection of Board members is based solely on merit, the political affiliation, if any, of the candidates is never a factor for consideration.

THE EVOLVING ROLE OF THE BVA PHYSICIAN

The Court has issued a number of opinions that have altered the manner in which BVA physicians are employed in the decision-making process by eliminating their traditional role as adjudicators. In the cases of *Gilbert v. Derwinski*, *Colvin v. Derwinski*, and *Hatlestad v. Derwinski*, the Court held, in essence, that the Board could no longer base its decisions on its own medical expertise, including that of physicians then serving as Board members. In *Colvin*, the Court held that the Board must consider only independent medical evidence to support its findings rather than provide its own medical judgment as a Board opinion. After *Colvin*, the Board utilized BVA physicians as medical advisers, in which capacity they provided expert medical opinions "on the record" in appeals in which such guidance was

required. However, in *Austin v. Brown* the Court raised serious questions concerning the fairness and impartiality of the Board's procedures for utilizing Board medical advisers' opinions. Since announcement of *Austin*, the Board has not utilized opinions from its medical advisers in adjudicating appeals.

In August 1995, the Court issued an opinion that further defined the status of BVA medical advisers' opinions in the claims adjudication process. In *Williams v. Brown*, the Court held that, before any use is made of the BVA medical adviser's opinion on remand, the Board must answer the series of questions posed by the Court in *Austin*. As a practical matter, these questions pose a complex procedural hurdle which, absent a change in the law, make it unlikely that the Board will utilize the opinions of BVA medical advisers in adjudicating appeals in the future.

The absence of medical members within BVA decision teams has significantly increased the amount of time staff attorneys must spend conducting medical research. Staff attorneys must be able to recognize when the need for an expert medical opinion is warranted to fully develop a record. Board members must analyze medical evidence with increased frequency and sophistication and provide a thorough explanation of all medical principles upon which their decisions rely, with discussion of and citation to independent authority, such as medical treatises, texts, journals, and epidemiological studies. The resources of the Board's Research Center have been greatly expanded to help meet this need.

The Board increasingly has been required to obtain additional medical information and/or expert opinion on the record from sources within and outside the Department. The Board continues to seek advisory medical opinions from the Armed Forces Institute of Pathology and from independent medical experts who usually serve on the faculties of leading medical schools. In FY 1995, the Board requested 379 opinions from independent medical experts under 38 U.S.C. § 7109. The Board also continues to seek advisory medical opinions from VA sources, including the Under Secretary for Health. In addition, the Board and the Veterans Health Administration (VHA) have entered into an agreement whereby BVA may obtain advisory medical opinion services from VHA and physicians who conduct compensation and pension physical examinations. From January through September 1995, the Board requested approximately 146 such opinions from VHA.

As a result of these changes, the Board now utilizes its remaining (three full-time and two part-time) physician staff in other capacities. BVA staff physicians actively



Formal training is provided to staff counsel on a variety of topics throughout the year.

provide informal advice of a general and educational nature to staff counsel and Board members. They each conduct two medical lectures per month, covering topics such as examination and laboratory results, scans and other diagnostic procedures, orthopedic examinations, and basic examination procedures. BVA physicians also review the Board's requests for VHA and outside medical advisory opinions to ensure accuracy in the way in which the evidence is reported and the questions are framed.

REVIEW OF ATTORNEYS' AND AGENTS' FEE AGREEMENTS

The VJRA required attorneys and agents to file with BVA their fee agreements for services in connection with a proceeding for veterans' benefits before VA. It also gave BVA the authority to review fee agreements on its own motion or upon motion of a party to the agreement.

In FY 1995, the Board received nearly 250 fee agreements for filing. Most of the perceived problems concerning fee agreements were handled by correspondence. The Board issued seven motions for review of fee agreements for insufficiency in FY 1995. At the end of the fiscal year, four motions were pending. In two instances, the Board issued a decision that the attorney could not charge a fee. One motion was deferred.

Almost all of the Board's decisions concerning fee agreements involve agreements referred by VA regional offices for a determination of whether an attorney is eligible for payment directly by VA under 38 U.S.C. § 5904(d). In FY 1995, eighty-three cases were referred for such decisions. Eighty-one such cases were completed during the fiscal year: 46 ordered payment to the attorney, 31 held that the attorney could not be paid, two were returned to the regional office, one was withdrawn by the parties and one was dismissed.

REPRESENTATION BEFORE THE BOARD

In FY 1995, 87.3 percent of appellants were represented by one of the accredited service organizations, 3.2 percent were represented by an attorney or agent, and 9.5 percent were not represented. In FY 1994, 87.0 percent were represented by an accredited service organization, 4.0 percent were represented by an attorney or agent, and 9.0 percent were not represented. (See table on page 30, Part II.)

LIAISON ACTIVITIES

Congressional Liaison Activities

Throughout the year, the Chairman made presentations to members and staffs of the Committees on Veterans' Affairs of the Senate and House of Representatives and of the Subcommittee on VA, HUD, and Independent Agencies of the House and Senate Committees

on Appropriations concerning the backlog of appeals and the Board's initiatives to increase productivity and improve decision timeliness. One of the key elements of these presentations was the Board's realignment into "decision teams" to take advantage of the Board's legislative proposal from last year which permitted decisions by single Board members, Pub. L. No. 103-271.

On several occasions during the year, the Chairman testified before the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs of the House Committee on Veterans' Affairs; the Senate Committee on Veterans' Affairs; and the Subcommittees on VA, HUD, and Independent Agencies of the Committees on Appropriations of the Senate and House of Representatives, both on the Board's budget needs for FY 1996 and the Board's legislative proposals.

Liaison with Government Study Groups

The Chairman provided an in-depth briefing on the appeal process to the Veterans' Claims Adjudication Commission, discussed on page 13 of this report. The Board also provided the Commission with statistical and historical information. The Commission will issue a preliminary report in February 1996, and is scheduled to issue its final report in May 1996.

In September 1995, the U.S. General Accounting Office (GAO) issued a report on veterans' benefits which concluded that more effective interaction was needed between different elements within VA in order to address the backlog of appeals awaiting BVA's review. The GAO report recommended that the department "designate an official to direct efforts to identify and resolve intra-agency impediments to efficient processing" of appeals. BVA provided the GAO with statistical and anecdotal information during the course of its examination.

Liaison with Veterans' Service Organizations

Veterans' service organizations provided representation for 87.3 percent of those filing appeals with the Board in FY 1995, slightly above the 87.1 percent representation rate of the past four years. VSOs are vital to the Board's operation and provide an invaluable service to appellants.

Throughout the year, the Chairman made presentations to representatives of numerous veterans' service organizations, both at the Board's offices and at various conventions and training conferences. The Chairman addressed or participated in 14 conventions and seminars held by VSOs (both national and state) across the country, including the National Association of State Directors of Veterans Affairs annual and mid-Winter conferences, the Disabled American Veterans national convention, and the American Ex-Prisoners of War national convention. In addition, the Chairman served as the senior Department official at numerous patriotic ceremonies and observances.

Correspondence

The Board responds directly to requests for information and assistance from veterans, their representatives, and Members of Congress and their staffs. Most of these requests are handled by the Office of the Chairman and the decision team administrative units, known as the Administrative Service prior to the organizational realignment late in FY 1995. The Chairman also responded to correspondence from numerous claimants and other interested parties addressed to the President, the Secretary, and other government officials and provided written responses to 3,887 Congressional inquiries in FY 1995, a decrease of more than one-third the number of inquiries received in FY 1994. Anecdotal evidence suggests that this decrease is a result of two of the Board's FY 1995 customer service initiatives, specifically, the practices of informing appellants in writing how long a wait they can expect before the Board issues its decision in their cases and of providing them the pamphlet, "Understanding the Appeal Process," which answers many of the most frequently asked questions about the Board's operation and procedures.

PROFESSIONAL TRAINING

The Board continued to expand its training program during fiscal year 1995, focusing particular emphasis on attorney staff and Board members. Under the direction of the Vice Chairman, a committee of key personnel was formed to act as a "Board of Regents" in developing a program using a university model. Its Charter was set as follows:

Development of a well trained and highly motivated professional service is central to increasing productivity. The purpose of the Board of Veterans' Appeals' Training Committee is to establish new procedures and refine existing methods for providing initial and continuing legal, medical, management, and other education and training for Board members and staff counsel. Improved education and training of the Board's judicial and attorney staff will better enable the BVA to accomplish its mission to enter timely, consistent, and high quality appellate decisions on behalf of the Secretary.



New staff counsel are provided intensive training in the complexities and scope of veterans' law.

FY 1995 was a year of tremendous growth for BVA's professional staff, as the Board hired 67 new staff counsel. However, given the complexity of today's veterans' law environment, new Board counsel require intensive training before they can become fully contributing team members.

Newly hired attorneys begin their participation in the professional training program on their first day of orientation at the Board. The program, developed in cooperation with the employees' labor union, includes intensive instruction in a variety of functional areas, including appeals development and adjudication, veterans' law, the hearing process, medical issues, and computer word-processing techniques. The curriculum includes mentor assistance, the use of a uniform training guide, legal and medical lectures, and training in the use of on-line reference resources, discussed in the following section.

The training program provides for professional growth and skill development throughout the course of an attorney's career with the Board. A nonlinear progression through a wide variety of class offerings is taken so that attorneys, together with their supervisors, can evaluate individual educational needs and, based on those evaluations, participate in classes addressing those areas determined to be most beneficial to each employee. Although much of the training is provided by Board staff members, additional resources are used to augment the curriculum, as appropriate. Through the program, the Board seeks to instill in each employee a customer service outlook and awareness.

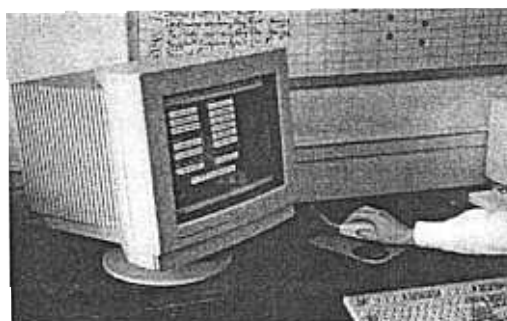
The Board's centralized Research Center contains reference materials most frequently used by Board attorneys, including videotapes of topical lectures and traditional library materials, such as current legal and medical texts. Legislative and regulatory histories are also available. The Research Center is used in conjunction with the extensive General Counsel and Veterans Health Administration libraries. Other departmental and governmental resources are available as well, including those of the Veterans Benefits Administration's Adjudication Academy, the Office of Personnel Management schools and the National Judicial College.

Board employees are encouraged to broaden their personal and professional perspectives through participation in *Leadership VA (LVA)*, an intense leadership training experience that also affords them the opportunity to gain insight into the myriad of internal and external forces affecting the department.

AUTOMATION INITIATIVES

On-Line Research Tools

The Board's comprehensive program of automation placed a personal computer on the desktop of every staff counsel, Board member, and member of the professional and administrative staff by the end of 1994. A variety of applications and productivity aids are now available for all BVA staff. The Board has also added a significant number of automated reference materials ("research



On-line research tools facilitate legal research and assist in decision preparation.

tools”) to its computer network. During FY 1995, in an effort to streamline access to these automated resources, the Board’s Management Information Service (MIS) grouped these on-line research tools under a single computer screen icon. This material is accessible through a series of Windows format screens, making it easier and quicker for staff counsel to conduct sophisticated legal and medical research at their desks by simply clicking on a series of on-screen “buttons.” Training has been provided to familiarize staff counsel and Board members with the resources available, the steps necessary to access the desired information, and formulation of search “queries.”

The Board’s on-line research tools fall into three broad categories: indexes, text files, and miscellaneous. *Indexes* are used to ascertain the availability and location of information on different subjects. The VADEX (VA Index), for example, is analogous to a card catalogue and contains references to VA-generated documents that are relevant to the mission of the Board. Indexes of VA Office of the General Counsel opinions and Chairman’s numbered memoranda are also available.

The Index of Veterans’ Benefits Law (Annotated), which was created to facilitate legal research and assist with the preparation of Board decisions, includes annotated references to precedent decisions and opinions of the U.S. Court of Veterans Appeals, U.S. Court of Appeals for the Federal Circuit, U.S. Supreme Court, and VA’s Office of the General Counsel. It is available not only to Board employees and veterans’ service organization representatives connected through the Board’s computer network, but has also been distributed by the Veterans Benefits Administration’s Compensation and Pension Service to adjudicators in all 58 VA regional offices. This asset allows staff counsel, Board members, and others to keep abreast of the burgeoning and dynamic body of veterans’ benefits law.

Text Files containing the text of documents are a useful source of both primary information and blocks of text that can easily be transferred into draft decisions. Text files include: slip opinions of the U.S. Court of Veterans Appeals (1990 to the present); BVA decisions since 1992; precedent opinions of VA’s Office of the General Counsel since 1993; Chairman’s numbered memoranda since 1991; Title 38 of the Code of Federal Regulations (updated monthly); the *Physicians’ Desk Reference* containing pharmaceutical product descriptions and information about drug interactions and side effects; and the *Merck Manual*, a quick reference manual for most common diseases. Also included in the text files are several VBA Administrative items, including VBA Directives and VBA Training Guides and Manuals.

Miscellaneous research tools and training materials are prepared and updated by BVA personnel. Research tools included in this category are: “headnotes,” summaries of selected opinions of the U.S. Court of Veterans Appeals; information concerning military awards and decorations; discussion of attorneys’ and agents’ fees under 38 U.S.C. § 5904; and medical abbreviations. Training materials include the BVA training guide and information on hearing loss disability, tinnitus, and neurology.

All Board decisions issued in calendar years 1992 through 1994 have been compiled on a single CD-ROM (Compact Disc - Read Only Memory). The entire text of all decisions issued in those years, along with an index to those decisions, is included on the CD-ROM. This product allows researchers to search all 1992, 1993, and 1994 decisions, separately or simultaneously, for specific topics and to display or print the text of decisions matching the search criteria. This capability represents an enormous potential reduction of research time for attorneys preparing decision recommendations, appeal representatives, and others interested in the appeal process. Texts of some decisions issued in 1995 are also available on-line. Additionally, the text for 1994 Board decisions is available on the Internet through VA's World-Wide Web Homepage:

<http://www.va.gov/vetapp/vetindex.htm>

A major upgrade and revision to the Veterans Appeals Control and Locator System (VACOLS) -- BVA's core data base system providing case tracking, statistical reporting, and management information system support -- was completed in August 1995. VACOLS, which was first installed at the Board in 1981, was converted from a WANG proprietary computer system architecture to the more accessible Windows format. VACOLS II, as the new system is called, was the first complete overhaul of the system since 1988. The graphical attributes of Windows provide a more user-friendly environment for data entry and retrieval and on-screen buttons and drop down menus speed data entry by reducing the number of keystrokes necessary for routine operations. System memory was also expanded to handle the large number of active appeals and to accommodate the Board's need to maintain extensive appeal history archives. The greater flexibility and faster reporting of the new system better positions the Board to add new features and more sophisticated applications to enhance individual and organizational productivity for the next several years.

CUSTOMER SERVICE

The Board continued its active participation in the Department's effort to improve the quality of service to customers. Following up on the publication of customer service standards at the close of FY 1994, the Board now notifies appellants by letter when their appeals are docketed. This letter, written in clear, non-technical language provides appellants with an estimate of how long it is likely to take before their cases will be reviewed and decided. The Board also informs appellants when certain significant developments occur in the processing of their appeals, such as a request for an independent medical opinion.



The easy to read pamphlet, "Understanding the Appeal Process," is provided to all appellants and to veterans' service organizations.

Another major customer service improvement begun in FY 1995 was the publication and distribution of a 40-page pamphlet that explains the claims appeal process in detailed, yet easy to understand language. In addition to describing the steps involved in the filing and processing of an appeal, the pamphlet provides suggestions on things appellants can do to avoid delays and to make their appeal as complete as possible. It also provides an explanation of additional appellant rights and a phone number, established in FY 1995 exclusively for this purpose, that appellants can call to learn the current status of their appeals.

Both the "Customer Service Standards" and "Understanding the Appeal Process" pamphlets are mailed to appellants within 30 days of the docketing of their appeals. The latter has also been distributed to all VA regional offices and medical centers, VSO headquarters, and has been made available to state and local veterans departments.

While difficult to state with absolute certainty, these customer service improvements likely contributed to the 34 percent decrease in appellant inquiries submitted to the Board by Congressional offices in FY 1995, compared with the previous year.

Viewing appellants as customers and serving them with courtesy, respect, understanding, and professionalism 100 percent of the time has been continuously emphasized throughout all facets of the Board's operations. This standard has been adopted, not just as the norm, but as the *only* acceptable way to do business. Secretary Brown presented Certificates of Appreciation to four Board employees during FY 1995 for providing outstanding customer service.

Several factors, including the transition to the Board's current case management and tracking computer system, VACOLS II, resulted in the postponement until FY 1996 of BVA's second customer satisfaction survey, originally planned for FY 1995. A potentially serendipitous result of this delay may be the opportunity to survey more recent appellants, those who filed appeals since the introduction of the Board's various customer service initiatives. This should afford the opportunity to assess, from the appellants' viewpoint, the impact of those initiatives, and to obtain insights into additional improvements needed.

WORLD WAR II 50th ANNIVERSARY COMMEMORATIONS

The Board continued its active participation in the United States 50th Anniversary of World War II Commemoration Program. The Board was designated as an official World War II Commemorative Organization in 1994 in recognition of BVA's program honoring and thanking America's World War II veterans and its efforts to increase Board employees' understanding of the sacrifices and accomplishments of those veterans. Eighteen Board employees volunteered their time to plan and conduct the commemorative activities.

In October 1994, on behalf of all BVA employees, the Chairman placed a wreath at the Tomb of the Unknowns at Arlington National Cemetery in honor of the more than 400,000 Americans who died in service during World War II. The United States Army and Army

World War II veterans were saluted during the Annual BVA Dinner Dance in October. World War II Honorable Service Lapel Pins, known to WW II veterans as “the Ruptured Duck,” were presented to World War II veterans attending the event, including several Board employees.

In November 1994, BVA employees visited World War II and other veterans at the VAMC Nursing Center in Washington, DC. The employees presented “We Care Packages” to dozens of nursing home residents to personally thank WW II veterans for their service and to put the commemorative program’s motto, “A Grateful Nation Remembers,” into action.

Throughout the entire year, “This Week in World War II” bulletins were displayed on each floor of the Board’s Washington, DC, offices. The display provided a week-by-week chronicle of the campaigns, battles, and home front activities of the war and maintained a continuous awareness of the magnitude and intensity of America’s involvement in the war and the debt of gratitude owed to America’s World War II veterans.



"This Week in World War II" bulletins helped maintain Board employees' awareness of the contributions and sacrifices of America's World War II veterans.

PART II

FY 1995 STATISTICAL DATA

During FY 1995 BVA produced a total of 28,195 decisions. This represents a 27.9 percent increase over FY 1994, when 22,045 appellate decisions were produced. The increase is primarily a result of a legislative change in the latter part of FY 1994 that authorized decisions to be made by individual Board members rather than by three-member panels. Numerous administrative changes in FY 1995 also contributed to increased BVA productivity. A breakdown of the disposition of the Board's decisions by category of appeal is provided below.

Category	Total	Allowed	Remanded	Denied	Other
Disability compensation	23,566	4,759	11,323	5,116	2,368
Disability pension	1,268	162	750	289	67
Medical	360	58	149	107	46
Insurance	36	2	8	25	
Death	1,444	159	560	384	
Training	201	7	83	103	8
Waivers	573	114	296	141	22
Loan guaranty	295	89	101	97	8
Reconsiderations	134	61	49	18	6
Character of discharge	47	7	11	26	3
Miscellaneous	271	73	72	101	25
Totals	28,195	5,491	13,402	6,407	

<u>Appellate Processing Categories</u>	FY 1994 (days)	FY 1995 (days)
Notice of Disagreement to Statement of the Case	70	65
Statement of the Case to Substantive Appeal	59	62
Substantive Appeal to the BVA	244	252
Processing Time through the BVA	359	507
Average Remand Time Factor	107	92
Total Processing Time All Categories	839	978

BOARD OF VETERANS' APPEALS
OVERALL REPRESENTATION
FY 1995

Representation =====	Total Decisions		Allowed		Remanded		Denied		Other	
	No.	%	No.	%	No.	%	No.	%	No.	%
=====	=====	=====	=====	=====	=====	=====	=====	=====	=====	=====
The American Legion	5,366	19.0%	1,008	18.8%	2,506	46.7%	1,260	23.5%	592	11.0%
AMVETS	1,209	4.3%	224	18.5%	636	52.6%	217	17.9%	132	10.9%
American Red Cross	186	0.7%	35	18.8%	86	46.2%	49	26.3%	16	8.6%
Disabled American Veterans	10,619	37.7%	2,120	20.0%	5,174	48.7%	2,331	22.0%	994	9.4%
Jewish War Veterans	39	0.1%	9	23.1%	18	46.2%	6	15.4%	6	15.4%
Military Order of the Purple Heart	369	1.3%	76	20.6%	185	50.1%	71	19.2%	37	10.0%
Paralyzed Veterans of America	942	3.3%	202	21.4%	520	55.2%	139	14.8%	81	8.6%
Veterans of Foreign Wars	2,927	10.4%	549	18.8%	1,371	46.8%	687	23.5%	320	10.9%
Vietnam Veterans of America	52	0.2%	21	40.4%	23	44.2%	3	5.8%	5	9.6%
State Service Organizations	2,597	9.2%	465	17.9%	1,238	47.7%	603	23.2%	291	11.2%
Attorneys	873	3.1%	214	24.5%	444	50.9%	161	18.4%	54	6.2%
Agents	23	0.1%	2	8.7%	16	69.6%	3	13.0%	2	8.7%
Other Representation	328	1.2%	65	19.8%	146	44.5%	78	23.8%	39	11.9%
No Representation	2,665	9.5%	501	18.8%	039	39.0%	799	30.0%	326	12.2%
TOTALS	28,195	100.0%	5,491	19.5%	13,402	47.5%	6,407	22.7%	2,895	10.3%

BVA Decisions

FY	Decisions	Allowed	Remanded	Denied	Other
1993	26,400	16.9%	44.0%	36.9%	2.2%
1994	22,045	17.5%	48.3%	28.1%	6.1%
1995	28,195	19.5%	47.5%	22.7%	10.3%

BVA Operating Statistics

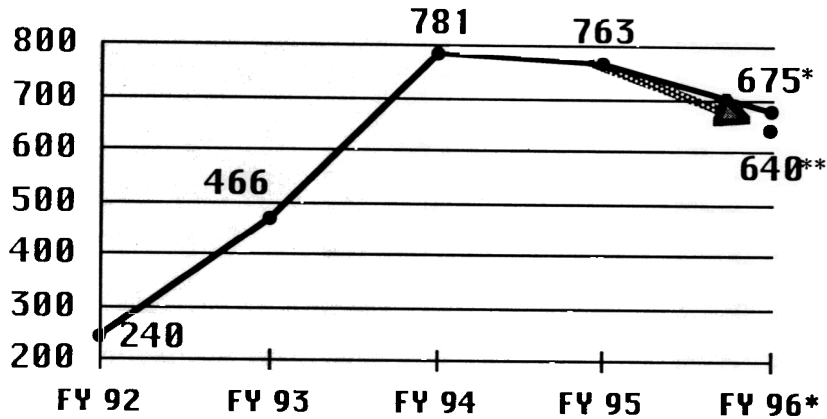
	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>	<u>Estimated FY 1996*</u>
Decisions	26,400	22,045	28,195	32,250 (35,200)
Appeals Received	38,147	35,465	39,990	38,000 (38,000)
Appeals Pending	33,728	47,148 ¹	58,943 ¹	64,743 ¹ (61,743)
Response Time	466	781	763	675 (640)
FTE	441	442	433	477 (477)
Decisions per FTE	59.9	49.9	65.1	67.6 (73.8)
Cost per Decision	\$1,046	\$1,127	\$1,030	\$939 (\$939)
Hearings - VACO	1,172	689 ²	154 ²	500 (500)
Hearings - Field	3,533	1,996 ²	553 ²	2,450 (2,450)
Hearings - Video	0	0	0	40 (40)

¹ Pending figures for FY 1994, FY 1995, and FY 1996 include appeals pending in the field but certified as ready for Board review.

² Hearings were suspended for part of FY 1994 and FY 1995 in order to allow hearings to be conducted at a time proximate to when an appeal was actually considered by the Board.

* Estimate reduced as a result of lost work days resulting from government shutdowns in November 1995 and January 1996. Original estimates are indicated within parentheses.

BVA Response Time, FY 92

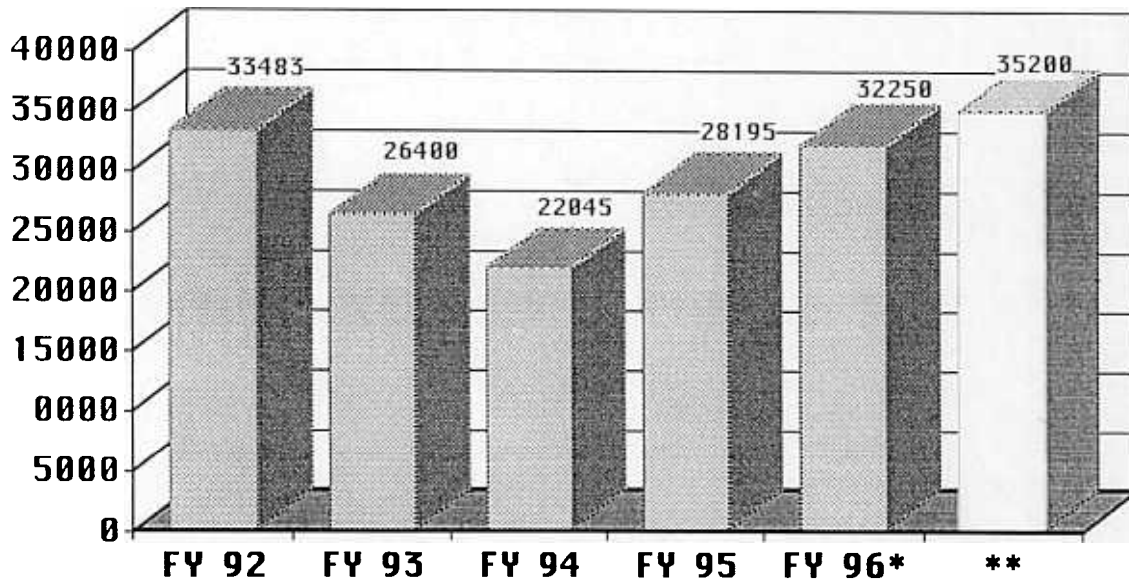


* Estimated

** Pre-shutdown estimate

Response time is defined as the number of days it would take BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one-year time frame.

Number of Decisions, FY 92

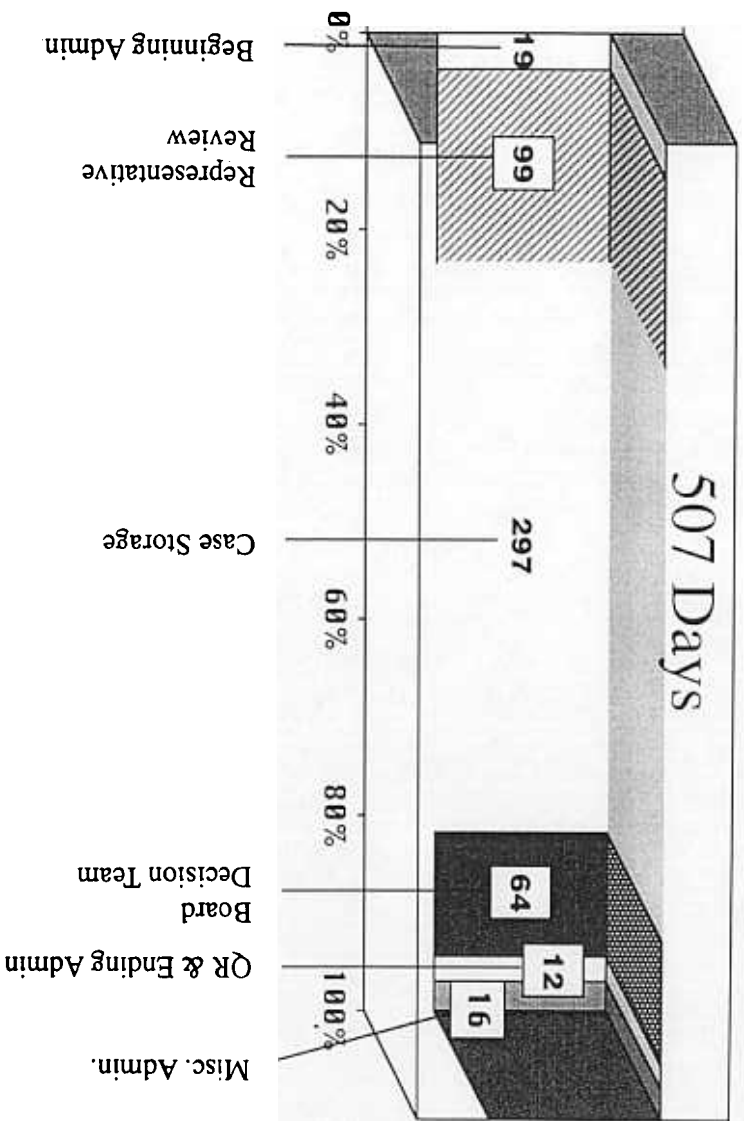


* Estimated

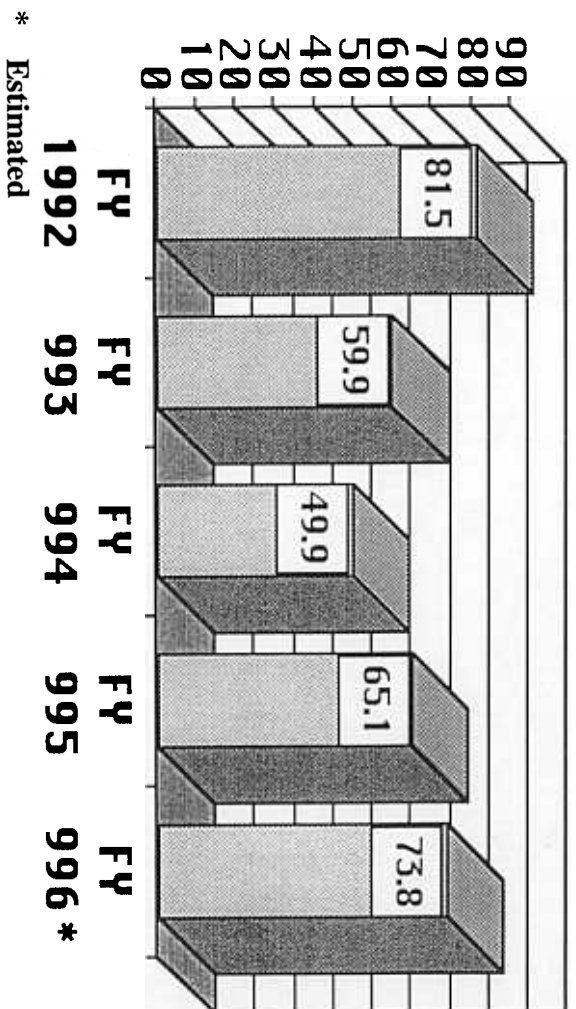
** Pre-shutdown estimate

Estimated Processing Time Breakdown

Average Processing Time for Appeals Decided in Fiscal Year 1995

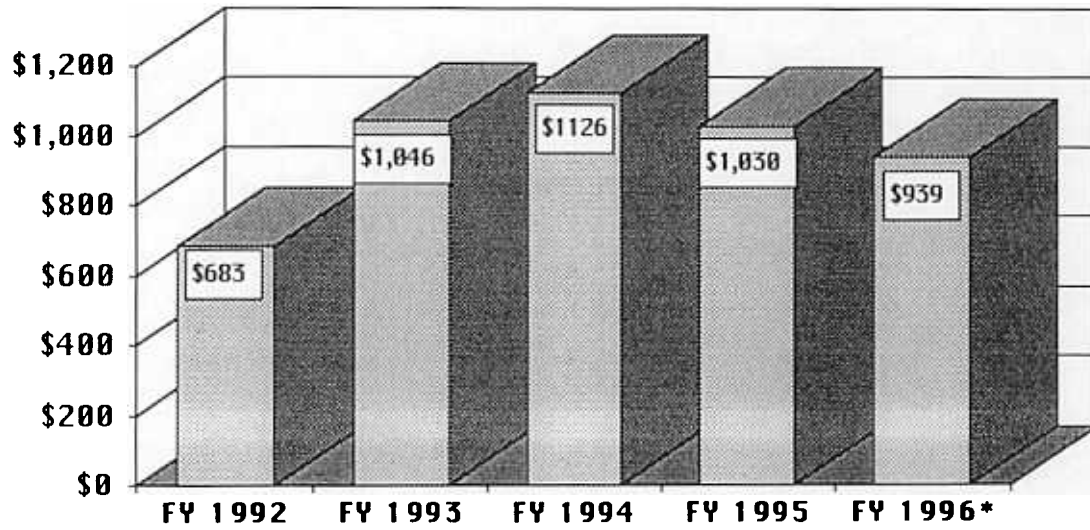


Decisions Per FTE, FY 92 - 95



* Estimated

Cost Per Decision, FY 92 - 95



* Estimated

PART III

ADDITIONAL INFORMATION PROVIDED PURSUANT TO STATUTORY REQUIREMENTS

I. 38 U.S.C. § 7101(d)(2)

In February 1994, in response to the growing backlog of appeals and resulting growth of case folders stored at BVA awaiting review, the Department modified the practice of shipping folders to the Board as soon as cases were certified in the field as being ready for BVA review. At the initiation of the Board and the Veterans Benefits Administration, VA instituted the practice of adding appeals to BVA's docket upon receipt of Substantive Appeals (VA Form 9) by the Board, while retaining associated case folders at regional offices until a time proximate to when the Board would begin its active review of the cases. This "advance docketing" system allows appellants access to their case folders for the filing of new claims or other actions not under the Board's purview, while ensuring timely placement on the Board's docket.

The following estimates of new Notices of Disagreements received in the field are provided to BVA by the Veterans Benefit Administration. Many of the cases for which a Notice of Disagreement is filed are resolved at the regional offices and, therefore, never reach the Board.

Estimated Number of New Notices of Disagreement Received in the Field

<u>Month</u>	<u>FY 95</u>	<u>FY 94</u>	<u>FY 93</u>
October	5,073	4,673	5,386
November	5,461	5,098	5,416
December	4,766	5,167	5,421
January	5,158	5,065	4,567
February	4,969	4,754	4,557
March	6,419	6,113	6,457
April	5,639	4,670	5,715
May	5,182	5,229	5,573
June	5,954	4,703	5,635
July	5,382	4,484	5,305
August	6,329	6,291	6,109
September	<u>5,772</u>	<u>5,566</u>	<u>5,535</u>
FY Total	66,104	61,813	65,676

Prior to the procedural change described on the preceding page, the number of case folders physically received at the Board approximated the number of appeals filed during any given time frame, as the folders were transferred to the Board upon their certification as being ready for BVA's review. Since February 1994, the number of folders received at the Board no longer corresponds with the number of appeals filed. Rather, the number of appeals filed is indicated by the number of appeals certified in the field as being ready for BVA review, plus those cases returned to BVA for review subsequent to remand development.

The "Cases Filed" table, below, is a hybrid resulting from the procedural change just described, which occurred in February 1994, at about the midpoint of the 36 month report period. For all of FY 1993 and for October through January of FY 1994, the figures indicate the number of case folders physically received at the Board. From February of FY 1994 through the end of FY 1995, the figures indicate those appeals certified as ready for BVA review, but whose case folders were retained in the field, plus those case folders that were physically received at the Board, most of which were appeals returned to the Board following remand development. The number of Substantive Appeals (VA Form 9) received by the Board in FY 1995 is also shown. Many appeals for which a VA Form 9 is received at the Board are resolved in the field, and therefore withdrawn, without reaching BVA.

The following information is required by 38 U.S.C. § 7101(d)(2):

Number of cases appealed to BVA during FY 1995: 39,990

Number of cases pending before BVA at the start of FY 1995: 47,148

Number of cases pending before BVA at the end of FY 1995: 58,943

Number of cases filed during each of the 36 months preceding FY 1996:

<u>Month</u>	<u>Cases Filed</u>			<u>Substantive Appeals (VA Form 9)</u>
	<u>FY 95</u>	<u>FY 94</u>	<u>FY 93</u>	<u>Received at BVA</u>
	<u>FY 95</u>	<u>FY 94</u>	<u>FY 93</u>	<u>FY 95</u>
October	2,301	2,457	3,360	6,219
November	3,302	3,114	2,951	4,118
December	2,446	3,010	2,956	3,088
January	2,861	2,393	2,720	2,653
February	3,445	1,960	3,074	2,973
March	4,605	5,629	3,766	3,092
April	3,027	3,365	2,927	2,896
May	3,958	1,933	2,766	3,191
June	3,660	2,305	3,090	3,229
July	3,523	3,143	3,064	2,794
August	3,229	3,125	3,882	3,122
September	<u>3,633</u>	<u>3,031</u>	<u>3,591</u>	<u>3,205</u>
FY Total	39,990	35,465	38,147	40,580

(D) Average length of time a case was before the BVA between the time of the filing of an appeal and the disposition during the preceding fiscal year:

<u>Time Interval</u>	<u>Responsible Party</u>	<u>Average Elapsed Processing Time</u>
Notice of Disagreement Receipt to Statement of the Case Issuance	Field Station	65 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	62 days
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	252 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	507 days
Average Remand Time Factor	Field Station	92 days
(E) Number of members of the Board at the end of FY 1995:		58 members
Number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 1995:		455 employees
TOTAL:		433.2 FTE
(F) Number of acting members of the Board during FY 1995:		2
Number of cases in which each such member participated:		2 cases

II. 38 U.S.C. § 7101(d)(3)

The following projections pertaining to the current fiscal year and the next fiscal year are required by 38 U.S.C. § 7101(d)(3):

(A) Estimated number of cases that will be appealed to the BVA:

Fiscal year 1996:	38,000
Fiscal year 1997:	38,000

(B) Evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by 38 U.S.C. § 7101(a):

(1) Background on BVA Timeliness Projections. The indicator used by the BVA to forecast its future timeliness of service delivery is BVA “response time” on appeals. By

taking into account the Board's most recent appeals processing rate and the number of appeals that are currently pending before the Board, BVA response time projects the average time that will be required to render decisions on that same group of pending appeals. For response time computation purposes, the term "appeals pending before the Board" includes appeals that have been certified for BVA review but are being held in the field pending BVA action. BVA response time is computed by first determining the BVA's average daily appeals processing rate for a recent given time period. This is determined by dividing the number of appeals decided by the calendar day time period over which those appeals were dispatched. BVA response time is then computed by dividing the number of appeals pending before the Board by the average daily appeals processing rate. As an example, BVA response time for FY 1996 is computed as follows:

Estimated 35,200 Decisions in FY 1996 ÷ 365 Days = 96.44 Decisions per Day

61,743 Appeals Pending before the BVA (end of FY 1996) ÷ 96.44 Decisions per Day = 640 Day Response Time on Appeals

(2) Response Time Projections: Based upon existing and projected levels of resources, the estimate of BVA response time, as given in the Board's budget submission for FY 1997, was originally 640 days for FY 1996 and 519 days for FY 1997. BVA's current estimate of response time, revised as a result of the government shutdowns in November 1995 and January 1996, is 675 days for FY 1996. These response time projections are contingent upon BVA's original appeal receipts estimates for FY 1996 and FY 1997 shown in paragraph II(A), above.

ESTIMATES OF FUTURE TIMELINESS AND PRODUCTIVITY

The Board anticipates that the precedent decisions of the United States Court of Veterans Appeals will continue to impose additional requirements for case analysis and development. Because decisions of the Court are effective immediately upon issuance, precedential decisions may require that the Board re-adjudicate a large number of cases already adjudicated, but not yet dispatched from the Board. Compared to FY 1995, when personal hearings were suspended for the first quarter of the year and held only on a limited basis from January through July, the amount of time Board members spend deliberating cases will, necessarily, be reduced as a result of holding personal hearings throughout the entirety of FY 1995.

Estimates of the Board's future timeliness and productivity can only approximate the impact of the fact that the Board's rate of remanding cases to the regional offices steadily increased from the latter part of FY 1991 through FY 1994. The remand rate in FY 1995 was 47.5 percent. The majority of these cases will eventually be returned to the Board for adjudication, but the Board cannot anticipate when the requested development will be completed. The estimates also do not include the additional cases returned annually to the Board by the Court of Veterans Appeals for readjudication.

It is anticipated that these trends of the past fiscal year will continue: (1) the directives of the Court will continue to require the Board to expend additional time, effort, and resources in producing appellate decisions; (2) the holding of personal hearings throughout the year will diminish the time that Board members may dedicate to case deliberation; (3) the Board will continue to stay the adjudication of certain classes of cases pending resolution of appeals from decisions of the Court of Veterans Appeals; (4) the Board will continue to remand a large proportion of cases to the VA regional offices for further development; and, (5) the Board will continue to receive cases remanded for readjudication from the Court of Veterans Appeals. These trends will likely continue to slow decision production, but it is unclear to what degree. In addition, unanticipated factors may arise to affect decision production.

Single Board member decision authority and other administrative and legislative initiatives had a positive effect on BVA decision productivity and average response time in FY 1995. While it is anticipated that the organizational realignment of the Board in late FY 1995 will further those gains, factors such as those discussed in the preceding paragraph could lessen the 10 to 25 percent improvement the realignment should otherwise allow. It is unlikely, however, that the average response time realized prior to judicial review will be regained.