



Report of the Chairman



**Board of Veterans' Appeals
Fiscal Year 2004**



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

February 1, 2005

The Honorable R. James Nicholson
Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420

Dear Mr. Secretary:

I am pleased to present the Fiscal Year 2004 Report of the Chairman, Board of Veterans' Appeals, for inclusion in your submission to Congress. Information on the activities of the Board during fiscal year 2004 and the projected activities of the Board for fiscal year 2005, as required by 38 U.S.C. §7101(d)(1), are provided in Parts I and II.

Fiscal year 2004 saw the Board increase productivity, despite decreased resources. The Board also conducted a record number of personal hearings and focused on training and succession planning.

Although veterans benefits law continued to change, the employees of the Board never lost sight of our goal to produce timely, quality decisions for the veterans we serve. Nor did they lose sight of our obligation to treat veterans and their families with care and compassion.

I believe the enclosed report will provide you, the Congress, and the veterans we serve with an accurate and meaningful perspective on the Board's activities of fiscal year 2004.

Very respectfully,

A handwritten signature in cursive script that reads "Ron Garvin".

Ron Garvin
Acting Chairman

Enclosure

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Introduction

The law requires that the Chairman of the Board of Veterans' Appeals (BVA or Board) report the activities of the Board at the conclusion of each fiscal year. This report includes two parts. Part I provides a discussion of BVA activities during fiscal year 2004. Part II provides statistical information related to our activities during fiscal year 2004 and projected activities for 2005.

The Board makes final decisions on behalf of the Secretary on appeals from decisions of local Department of Veterans Affairs (VA) offices. The Board reviews all appeals for entitlement to veterans' benefits, including claims for service connection, increased disability ratings, total disability ratings, pension, insurance benefits, educational benefits, home loan guaranties, vocational rehabilitation, dependency and indemnity compensation, and health care delivery.

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." The Board's goal is to issue quality decisions in compliance with the requirements of the law, including the precedential decisions of the United States Court of Appeals for Veterans Claims.



Board Members/Veterans Law Judges

PART I

Activities of The Board of Veterans' Appeals

Fiscal Year 2004

In Fiscal Year (FY) 2004, the Board issued 38,371 decisions, and conducted 7,259 hearings. In addition to meeting the goals of conducting hearings and issuing timely, quality decisions to the veterans we serve, the Board implemented its business plan and succession planning initiatives. During FY 2004, several new Veterans Law Judges, Senior Counsel, and top-level managers, including a new Director and Deputy Director of Management and Administration, were appointed through a competitive selection process. The Board focused on training the many new employees that were hired in FY 2004, including thirty-nine new attorneys. They represent 17% of the Board's total attorney staff, and hopefully the future leaders of the Board.

Shortly after the close of FY 2004, the Board bade a fond farewell to the Honorable E. Dane Clark, Chairman of the Board of Veterans' Appeals, following the completion of his six-year appointment. Chairman Clark's leadership and commitment to the mission of the Board will be greatly missed.

Termination of Board Development

In February 2002, the Board established the Evidence Development Unit (EDU). The EDU developed evidence necessary for a final decision or correction of a procedural error. This reduced the number of Board remands to the VA Regional Offices (ROs), which are part of the Veterans Benefits Administration (VBA), from a historic average of approximately 45% to less than 15% within a matter of months. On May 1, 2003, however, the United States Court of Appeals for the Federal Circuit held that the Board could not (except in certain statutorily authorized exceptions) decide appeals in those cases in which it had developed evidence. The Board ceased directing development and resumed issuing remand decisions in those cases that required additional development prior to appellate review. The Board also began remanding the 9,000 appeals that were in some stage of development by the Board, and which could not be fully granted. That process was completed during the first quarter of FY 2004.

Veterans Claims Assistance Act

The Veterans Claims Assistance Act of 2000 (VCAA), among other things, heightens VA's duty to assist and duty to notify claimants of the type of evidence needed to substantiate their claim. Compliance with the VCAA and its implementing regulations, as well as the precedential court decisions interpreting this law, has had a significant effect on claims processing throughout VA. At the Board, the impact was monumental. A large number of cases were remanded to the Board from the United States Court of Appeals for Veterans Claims and also from the Board to the ROs. In FY 2004, the Board's remand rate was 56.8%, which meant that many appellants did not receive a final decision until years after an initial claim for benefits was filed.

On June 24, 2004, the United States Court of Appeals for Veterans Claims issued a decision in the case of *Pelegri v. Principi*. The decision held that a VCAA notice letter must be provided to a claimant prior to an initial adverse adjudication and that VA's regulations required VA to notify a claimant (1) of the information and evidence not of record that is necessary to substantiate the claim, (2) which of that information and evidence VA will seek to obtain, and (3) which of it the claimant must provide, and (4) to provide any evidence in the claimant's possession that pertains to the claim. Following this decision, the Board attempted to avoid

remands, when possible, by conducting an analysis to determine if a deficiency in the notice provided to the claimant was prejudicial. If prejudice was not found, many Board judges issued final decisions, however, if the deficiency was prejudicial, the judges were required to remand the case to the RO to cure the defect in notice.

Elimination of Avoidable Remands

Beginning in late FY 2004, in an effort to lower the remand rate, the Board and VBA began developing an action plan to reduce the number of avoidable remands from the Board to the ROs. We agreed upon a reliable process for capturing information prospectively on reasons for remand and conducted a retrospective analysis of a sufficiently representative sample of Board remands to catalog reasons for remand. The initiative encompasses training both RO personnel and the Veterans Law Judges and staff attorneys on topics such as Social Security Administration records, VCAA notice requirements, and medical examinations and opinions. In addition, the Board is committed to providing a concise explanation of the reasons for remanding an appeal in individual decisions in order to reduce ambiguity and improve field processing. Better understanding of and compliance with remand directives will decrease the risk of a second remand in a particular case and may avoid future remands because of the same deficiency.

Assistance to VBA Regional Offices

The Board continued its efforts to help ROs reduce their backlog of cases on appeal through the travel board program.

For most travel boards, an attorney travels with a Veterans Law Judge to assist him or her in reviewing the claims files prior to the hearings on the appeals. An average of more than 40 hearings are scheduled each week with hearings beginning on the first day of the week. By mid-week, the cases scheduled for hearings have been briefed, and the attorneys assist the RO for the remainder of the visit.

In FY 2004, 99 attorneys provided assistance to 50 ROs. The attorneys prepared 153 Statements of the Case/Supplemental Statements of the Case (SOCs/SSOCs), drafted 35 development memoranda, drafted 13 memoranda recommending grants and conducted training for adjudication personnel at 40 of the 50 ROs visited. Additionally, the attorneys, on request, provided non-binding legal advice to adjudicators in 176 cases that were informally reviewed.

Transcription Backlog

The Board conducted a record-setting 7,259 hearings in FY 2004. Due to the increased workload, the Board's transcription unit developed a backlog of 2,700 cases awaiting transcription by January 2004. Factors that contributed to the backlog were the increased number of hearings held, the number of transcriptionists lost to retirement, and use of transcriptionists to answer telephone inquiries at the Veterans Information Office. To help alleviate the backlog, the Board entered into contracts with three private transcription groups. With the assistance of the contractors and the use of overtime at the Board's transcription unit, the backlog of hearing transcripts stood at less than 500 cases by the end of FY 2004. The Board's goal is to maintain a working inventory of 500 cases, which represents a one-month turnaround for transcription. In order to meet that goal in the future, the Board is exploring the use of voice recognition software, stenographers, and evolving technologies such as real-time transcription.

Planning for the future

Veterans Law Judges and Senior Counsel -- During FY 2004, five new Veterans Law Judges were appointed to the Board, and five Senior Counsel were selected through a competitive selection process. With the exception of one

Veterans Law Judge, all of the new Judges and Senior Counsel were selected from within the Board, and three of the new judges were promoted from within the Senior Counsel ranks. The business plan contemplates that the Senior Counsel positions function as training grounds for future Veterans Law Judges. The creation, in FY 2003, of two Senior Counsel positions on every team – who perform as Acting Veterans Law Judges, Team Leaders, and attorneys as needed – provides the necessary flexibility to get the work done despite short-term personnel shortages. Moreover, Senior Counsel mentor and evaluate newly hired attorneys and more experienced attorneys in need of special attention and assistance. The creation of the Senior Counsel position has allowed the Board's current leaders to train and mentor future leaders, and has provided significant advancement opportunities for the 250 staff attorneys at the Board.

The Board reached a business plan strength of 56 Veterans Law Judges; however, increasing workloads will require additional resources in the future to avoid backlogs and prevent delays in appellate processing.

Management and Administration -- The Board welcomed a new Director and Deputy Director, who were selected, following a rigorous screening and interview process, from among several well-qualified candidates. They brought immediate improvement to the Board's Management and Administration areas through strong leadership and organizational skills.

Women's Leadership Initiative -- An important FY 2004 milestone was the creation of the Women's Leadership Initiative. This initiative provides opportunities for all Board employees, as well as employees of other VA organizations, to improve their leadership skills through training, mentoring, and networking. Events included presentations by Senior Executive Service members, networking workshops, a quarterly newsletter, and a luncheon that included several distinguished guests that addressed the art of leadership.

Training -- The Board executed a number of training initiatives with VA partners during FY 2004. In September 2004, the Board hosted an adjudication academy evolution at VBA's training facility in Baltimore, Maryland. Thirty-eight attorneys and six paralegals from the Board, as well as one attorney from the Office of the General Counsel, attended the program. The agenda included tours of the Baltimore RO and the VA Medical Center, presentations by The American Legion, staff from the Baltimore RO, VBA's Compensation and Pension Service, the Appeals Management Center, the Office of the General Counsel, and the United States Armed Services Center for Unit Records Research. The Board also assisted with several nationwide satellite broadcasts that included personnel from VBA, the Veterans Health Administration, and the Office of the General Counsel. In addition, the Board worked with the Steering Committee for VA Learning University to develop and implement the Department's Education and Training Plan.

Facility Move -- The Board began planning for a facility move which is scheduled to take place in FY 2007. The Board is meeting on a regular basis with representatives from the General Services Administration, VA's Office of Administration, and others to ensure that the needs of the Board, our Veterans Service Organization partners, veterans and other appellants who visit our facilities will be met. The Board's current location, the Lafayette Building at 811 Vermont Avenue, NW, is scheduled for a complete renovation starting in FY 2007. The Board, however, is not slated to move back to the Lafayette Building.

Voice Recognition Software Program -- In an effort to increase efficiency, the Board selected a trial group of attorneys to participate in a pilot voice recognition software program. Training for the voice recognition software pilot took place in late 2003, and the attorneys began using the software to draft decisions. The feedback thus far has been favorable, however, the Board has not been able to quantify whether the pilot program resulted in increased efficiency.

BOARD MEMBERS

Eligah Dane Clark, Chairman (term expired October 21, 2004)

Ron H. Garvin, Vice Chairman

Steven L. Keller, Senior Deputy Vice Chairman

Charles E. Hogeboom, Deputy Vice Chairman, Decision Team 1

Steven L. Cohn, Chief Member

Robert E. Sullivan, Chief Member

Joaquin Aguayo-Pereles, Deputy Vice Chairman, Decision Team 2

Mark W. Greenstreet, Chief Member

Constance B. Tobias, Chief Member

Nancy R. Robin, Deputy Vice Chairman, Decision Team 3

David C. Spickler, Chief Member

Lawrence M. Sullivan, Chief Member

Mary M. Sabulsky, Deputy Vice Chairman, Decision Team 4

Wayne M. Braeuer, Chief Member

Holly E. Moehlmann, Chief Member

VETERANS LAW JUDGES

Keith W. Allen

Marjorie A. Auer

Kathy A. Banfield

Barry F. Bohan

Ronald R. Bosch

Derek R. Brown

Anna M. Bryant

Bettina S. Callaway

Barbara B. Copeland

Jeanne M. Daley

Thomas J. Dannaher

Jonathan E. Day

Paula M. Dilorenzo

Shane A. Durkin

Frank J. Flowers

Mary Gallagher

Gary Gick

Mark F. Halsey

Mark D. Hindin

Vicky L. Jordan

Susan L. Kennedy

Michael E. Kilcoyne

Michael D. Lyon

James L. March

Jeffrey J. Martin

Cheryl L. Mason

Joy A. McDonald

Jacqueline Monroe

Andrew J. Mullen

John E. Ormond

Alan S. Peevy

Renee M. Pelletier

Ursula R. Powell

Robert P. Regan

Warren W. Rice

Craig P. Russell

Howard N. Schwartz

George R. Senyk

Gordon H. Shufelt

Deborah W. Singleton

Charles W. Symanski

Leo W. Tobin

Stephen L. Wilkins

Richard F. Williams

PART II Statistical Data

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

38 U.S.C. §7101 (d)(2)(A)

Number of cases physically received at the Board during 2004: **39,956**
 Number of cases added to docket by filing appeal during 2004: **49,638**

38 U.S.C. §7101 (d)(2)(B)

Cases pending before the Board at the start of fiscal year 2004: **27,230***
 Cases pending before the Board at the end of fiscal year 2004: **28,815***

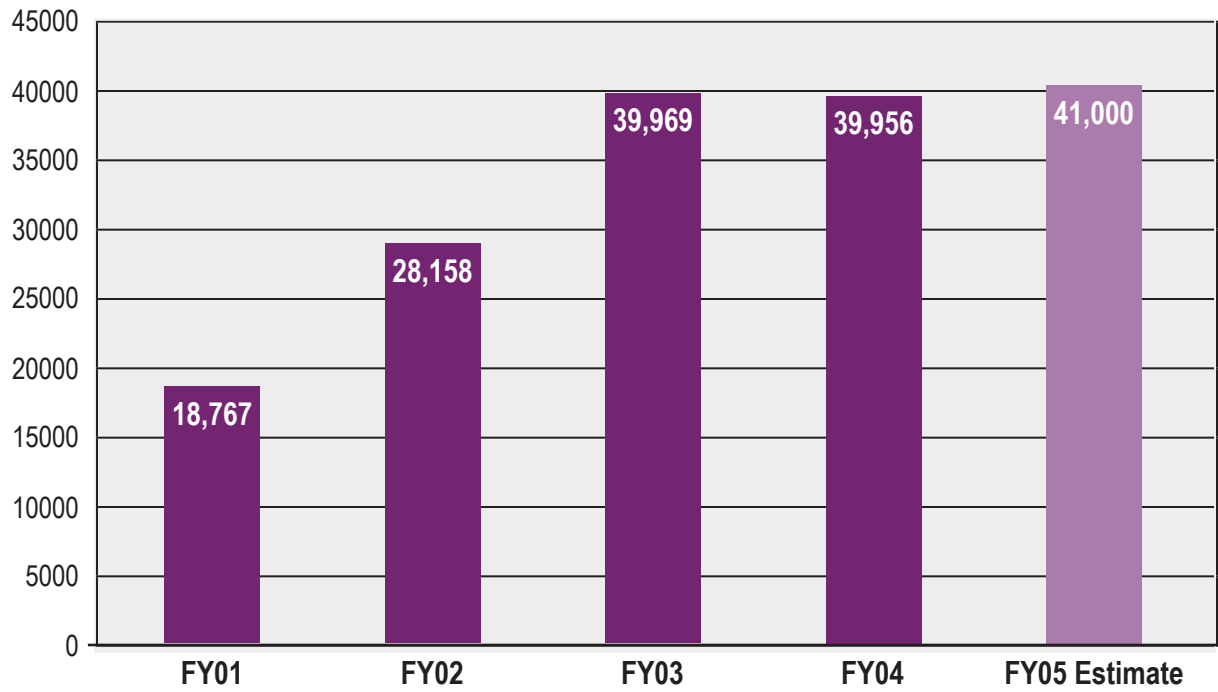
*Includes certified appeals pending in the field awaiting hearings, as well as cases pending at BVA.

38 U.S.C. §7101 (d)(2)(C)

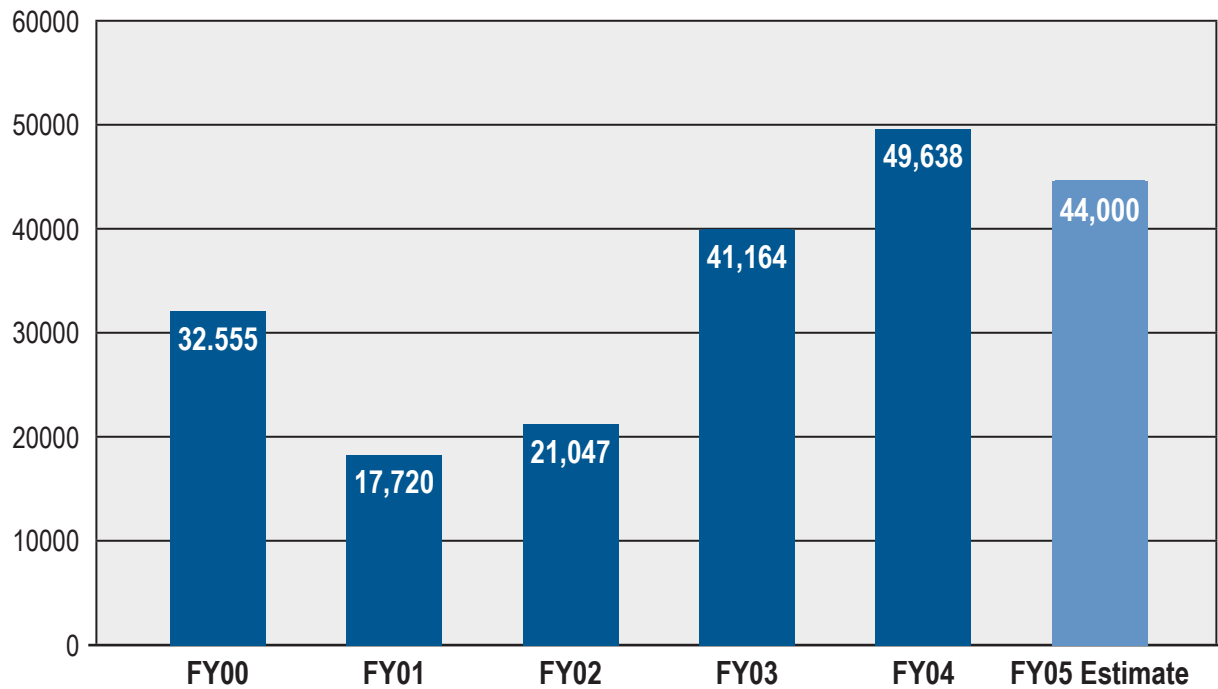
Number of cases that were filed during each of the 36 months preceding fiscal year 2004:

Month	Cases Received at BVA				New Appeals (VA Form 9) Filed			
	FY01	FY02	FY03	FY04	FY01	FY02	FY03	FY04
October	2,622	1,392	4,024	1,572	2,287	1,236	3,040	3,855
November	1,629	688	2,726	1,152	2,095	1,275	2,720	2,932
December	1,570	1,620	3,037	1,583	1,635	1,821	2,634	3,341
January	1,780	1,620	4,294	2,616	1,727	2,026	3,185	3,632
February	1,396	1,867	4,008	3,519	1,481	2,132	2,906	4,380
March	1,155	3,040	4,325	3,996	1,486	2,181	3,605	5,291
April	1,315	1,930	3,676	2,975	1,264	2,474	3,717	4,920
May	1,827	3,544	2,175	4,856	1,328	2,348	3,675	4,397
June	971	2,643	3,728	4,359	1,167	2,514	3,797	4,881
July	1,737	3,620	2,956	5,371	1,168	1,102	3,719	4,264
August	1,669	3,441	2,103	4,637	1,139	993	3,661	3,909
September	1,096	2,753	2,917	3,320	943	945	4,505	3,836
FY Total	18,767	28,158	39,969	39,956	17,720	21,047	41,164	49,638

Cases Received at BVA FY 01 - FY 04



New Appeals (VA Form 9) Filed FY 00 - FY 04



38 U.S.C. §7101 (d)(2)(D)

The average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year:

Time Interval	Responsible Party	Average Elapsed Processing Time
Notice of Disagreement Receipt to Statement of the Case	Field Station	165 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	48 days
Substantive Appeal Receipt To Certification of Appeal to BVA	Field Station	521 days
Receipt of Certified Appeal To Issuance of BVA Decision	BVA	203 days
Average Remand Time Factor	Field Station	74 days

38 U.S.C. §7101 (d)(2)(E)

The number of members of the Board at the end of FY 2004: 56 members

The Number of Professional, Administrative, Clerical, Stenographic, and Other Personnel employed by the Board at the end of FY 2004: **392 employees not including 56 members above**

38 U.S.C. §7101 (d)(2)(F)

Number of acting members of the Board during FY 2004: **43**

Number of cases in which such members participated: **2,282**

38 U.S.C. §7101 (c)(2)(F)

Number of acting members of the Board in terms of full-time employee equivalents: **3.9**

Projections for Fiscal Year 2005 and 2006

The following information is required by 38 U.S.C. §7101 (d)(3):

38 U.S.C. §7101 (d)(3)(A)

Estimated number of cases that will be appealed to BVA:

Fiscal Year 2005:	Cases received at BVA:	41,000
	Cases added to BVA Docket:	44,000
Fiscal Year 2006:	Cases received at BVA:	41,000
	Cases added to BVA Docket:	44,000

38 U.S.C. §7101 (d)(3)(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):

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 group of pending appeals. For response time computation, the term “appeals pending before the Board” includes appeals at the Board and those that have been certified for BVA review but are held in the field pending BVA Travel Board or video conference hearings.

BVA response time is computed by first determining the Board’s average daily appeals processing rate for the previous year. The number of appeals pending before the Board is then divided by the average daily appeals processing rate. BVA estimated response time for fiscal year 2005 is computed as follows:

Estimated 33,136 decisions in fiscal year 2005 divided by 365 days equals 90.78 decisions per day.

36,679 Appeals Pending before the BVA (end of FY 2005) divided by 90.78 Decisions per Day equals 404 Days Response Time on Appeals (end of FY 2005).

BVA Response Time Projections

Based upon existing and projected levels of resources, the estimate of BVA response time is 404 days for fiscal year 2005. This response time projection is contingent upon BVA’s original appeal receipts estimates for fiscal year 2005 shown above.

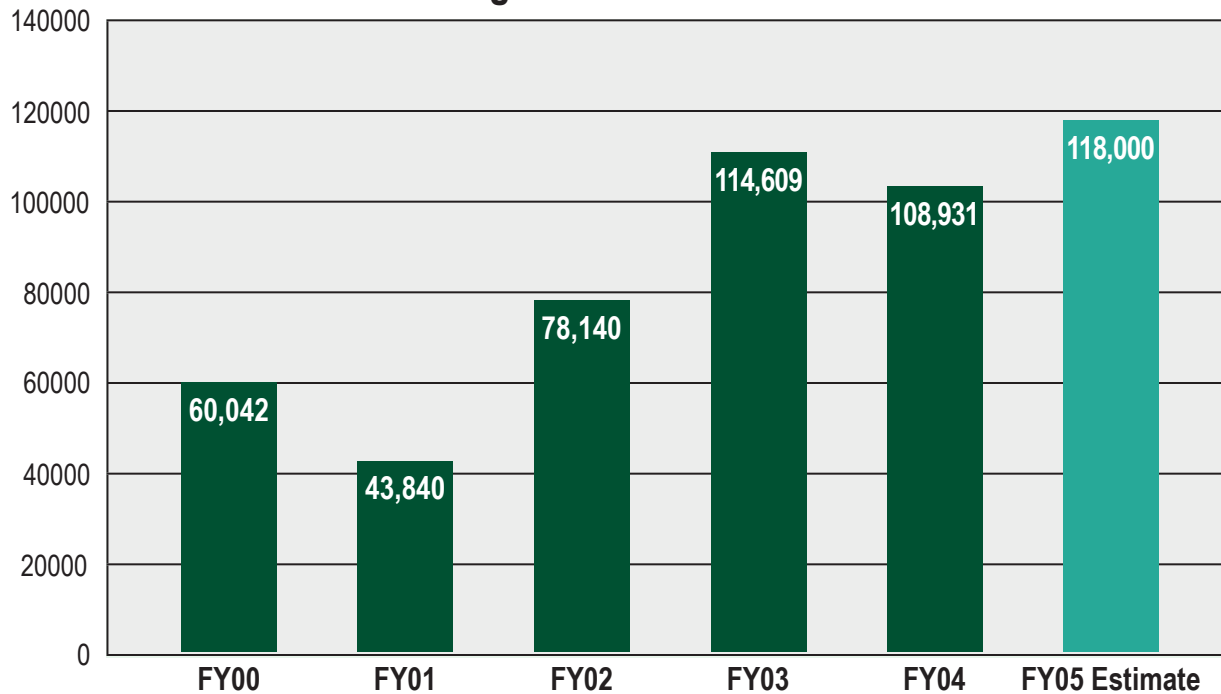
Additional Information

Potential BVA Workload

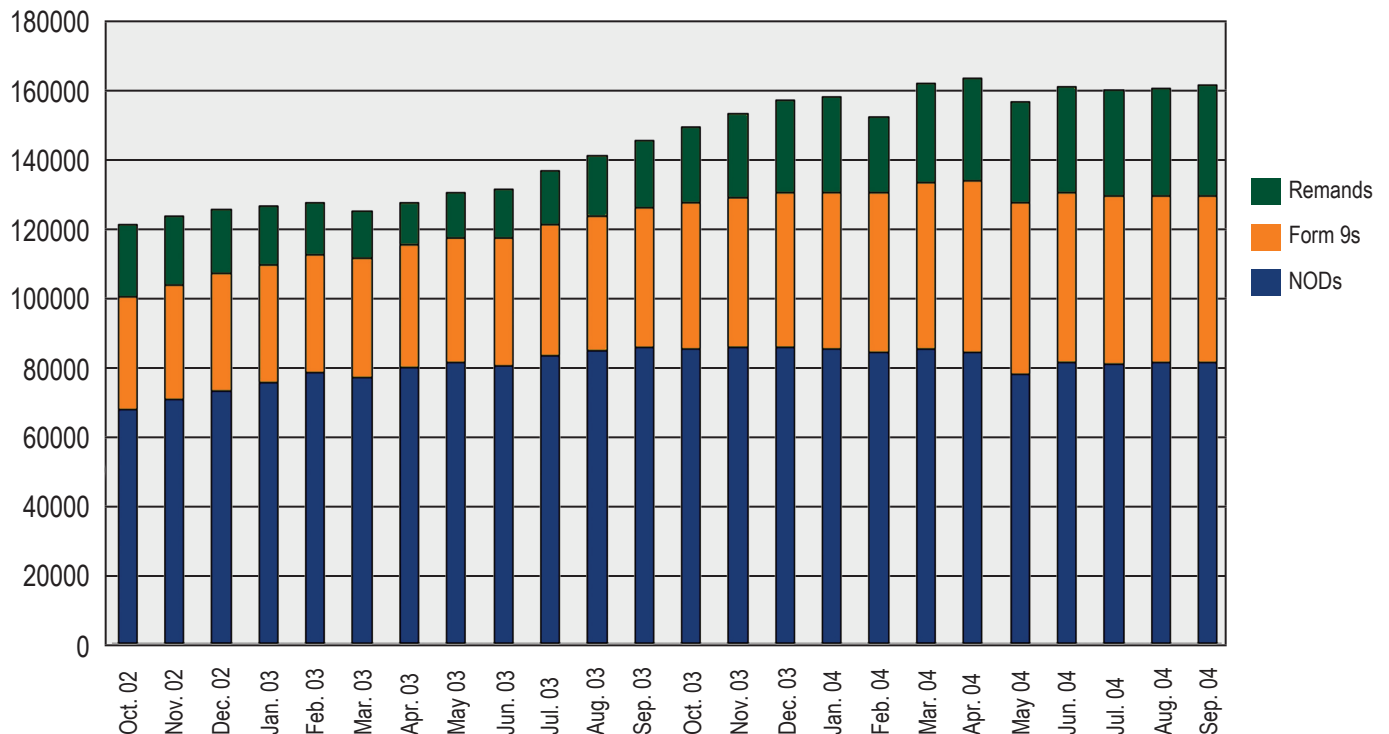
The following chart and graphs show the number of new notices of disagreement received by the regional offices. This information is retrieved directly from the information contained in the Veterans Appeals Control and Locator System (VACOLS) at the end of the fiscal year. Up to 50 percent of the cases in which a notice of disagreement is filed are resolved at the regional offices and never reach the Board.

Number of New Notices of Disagreement Received in the Field				
Month	FY01	FY02	FY03	FY04
October	5,119	4,768	9,936	9,774
November	4,066	4,468	8,118	8,621
December	3,225	4,534	7,957	6,595
January	3,747	5,564	9,670	7,717
February	3,270	5,629	9,034	8,718
March	3,490	6,707	10,676	11,698
April	3,159	7,321	10,419	9,978
May	3,526	7,683	9,800	8,574
June	3,542	7,197	9,753	9,642
July	3,507	8,162	10,084	9,005
August	4,021	8,556	9,247	9,797
September	3,168	7,551	9,915	8,812
FY Total	43,840	78,140	114,609	108,931

Notices of Disagreement Received FY 00 - FY 04



Potential BVA Workload in VBA



BVA Decisions

During fiscal year 2004, BVA issued 38,371 decisions. This total represents a 22.2 percent increase from fiscal year 2003 when we issued 31,397 decisions. This increase is primarily the result of an increase in the number of appeals received from VBA and an increase in decision team productivity. The following charts are provided to give additional information about the Board's decisions.

**Board of Veterans' Appeals
BVA Dispositions by VA Program
FY 2004**

Appeal Program	Allowed		Remanded		Denied		Other		Total	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Burial Benefits	4	6.9%	23	39.7%	31	53.4%	0	0.0%	58	0.2%
Compensation	6,323	17.6%	20,679	57.6%	8,288	23.1%	637	1.8%	35,927	93.6%
Education	23	7.5%	120	39.2%	160	52.3%	3	1.0%	306	0.8%
Insurance	0	0.0%	11	44.0%	14	56.0%	0	0.0%	25	0.1%
Loan Guaranty	2	7.4%	10	37.0%	14	51.9%	1	3.7	27	0.1%
Medical	11	4.7%	145	61.4%	75	31.8	5	2.1%	236	0.6%
Pension	91	10.8%	335	39.9%	392	46.7%	22	2.6%	840	2.2%
VR & C	1	1.5%	41	63.1%	22	33.8%	1	1.5%	65	0.2%
Other Programs	3	12.0%	12	48.0%	10	40.0%	0	0.0%	25	0.1%
BVA Original Jurisdiction	11	7.4%	2	1.4%	97	65.5%	38	25.7%	148	0.4%
Multiple Program Areas	91	12.7%	419	58.7%	197	27.6%	7	1.0%	714	1.9%
Grand Total	6,560	17.1%	21,797	56.8%	9,300	24.2%	714	1.9%	38,371	100.0%

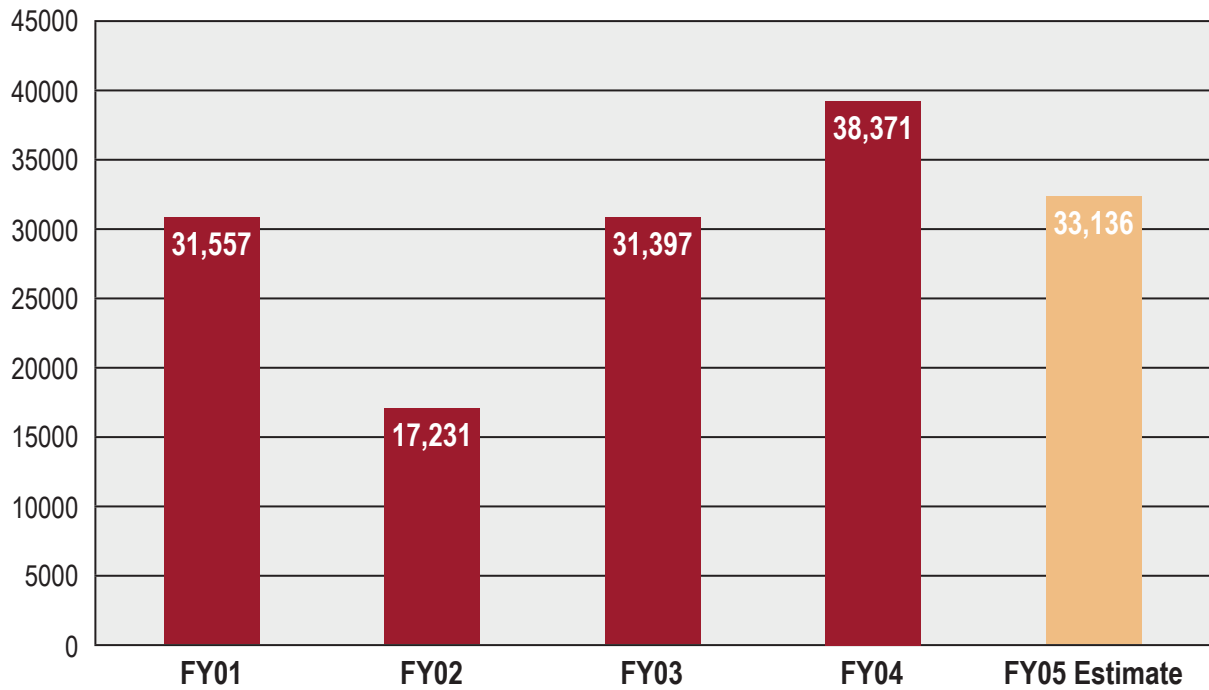
**Board of Veterans' Appeals
BVA Dispositions by Representation
FY 2004**

Representation	Allowed		Remanded		Denied		Other		Total	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
American Legion	1,389	17.3%	4609	57.4%	1,917	23.9%	119	1.5%	8,034	20.9%
AMVETS	87	25.1%	184	53.2%	68	19.7%	7	2.0%	346	0.9%
American Red Cross	20	22.5%	43	48.3%	25	28.1%	1	1.1%	89	0.2%
Disabled American Veterans	2,215	19.4%	6745	59.1%	2,267	19.9%	184	1.6%	11,411	29.7%
Military Order of the Purple Heart	83	18.7%	266	60.0%	83	18.7%	11	2.5%	443	1.2%
Paralyzed Veterans of America	91	19.8%	265	57.7%	79	17.2%	24	5.2%	459	1.2%
Veterans of Foreign Wars	516	15.7%	1599	48.7%	1083	33.0%	85	2.6%	3,283	8.6%
Vietnam Veterans of America	68	19.2%	241	67.9%	28	7.9%	18	5.1%	355	0.9%
State Service Organizations	903	16.8%	3031	56.4%	1,354	25.2%	82	1.5%	5,370	14.0%
Attorneys	546	16.6%	2107	64.1%	552	16.8%	84	2.6%	3,289	8.6%
Agents	12	20.0%	31	51.7%	16	26.7%	1	1.7%	60	0.2%
Other Representation	103	16.8%	361	58.9%	135	22.0%	14	2.3%	613	1.6%
No Representation	527	11.4%	2315	50.1%	1693	36.7%	84	1.8%	4,619	12.0%
Grand Total	6,560	17.1%	21,797	56.8%	9,300	24.2%	714	1.9%	38,371	100.0%

BVA Decisions					
Fiscal Year	Decisions	Allowed	Remanded	Denied	Other
2000	34,028	26.3%	29.9%	41.4%	2.4%
2001	31,557	22.3%	48.8%	27.0%	1.9%
2002	17,231	27.7%	19.3%	49.9%	3.1%
2003	31,397	22.1%	42.6%	32.6%	2.7%
2004	38,371	17.1%	56.8%*	24.2%	1.9%

* The 56.8% remand rate for FY 2004 includes former Board development cases converted to remands

BVA Decisions FY 01 - FY 04



BVA Operating Statistics

	FY01	FY02	FY03	FY04
Decisions	31,557	17,231	31,397	38,371
Case Receipts*				
Added to Docket	17,720	21,047	41,164	49,638
Received at BVA	18,767	28,158	39,969	39,956
Cases Pending**	7,731	18,658	27,230	28,815
Hearings - VACO	916	470	650	805
Video	1,308	1,475	1,689	2,108
Field	3,336	2,556	3,707	4,346
Decision per FTE	69.3	38.4	69.9	87.8
BVA FTE	455	448	451	440
BVA Cycle Time	N/A	86	135	98
Cost per Case	\$1,401	\$2,702	\$1,493	\$1,302

* Case Receipts composed of: (1) new cases added to BVA's docket; and (2) cases received at BVA, which consist of all cases physically received at the Board, including original appeals and cases returned to the Board's docket (i.e., cases returned following remand development, cases remanded by the Court, and cases received for consideration or vacate actions).

** Pending figures include certified appeals pending in the field awaiting BVA hearings, as well as cases pending at the Board.





**Department of Veterans Affairs
Board of Veterans Appeals**

Fiscal Year 2004