



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

December 19, 1996

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

Dear Mr. Secretary:

I respectfully present the Board of Veterans' Appeals Fiscal Year 1996 Report of the Chairman for your submission to Congress. Parts I, II, and III of this report are intended to provide a description of the Board and its activities during Fiscal Year 1996 and the projected activities of the Board for Fiscal Year 1997, 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 IV of this report.

Fiscal Year 1996 was a year of remarkable accomplishment for the Board of Veterans' Appeals. The Board's realignment, together with single Board member decision-making authority and the other legislative accomplishments of recent years, resulted in a more vibrant and productive organization. The significant improvement in productivity and timeliness we realized this past year would not have been possible without your and Deputy Secretary Gober's continued leadership and support.

I hope the enclosed report provides you, the Congress, and the veterans we serve with a comprehensive picture of the Board's mission, activities, and dedication to putting veterans first.

Very respectfully,

A handwritten signature in cursive script, appearing to read "Cragin", with a long horizontal flourish extending to the right.

Charles L. 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. BVA'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**

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.

*1933 to 1988  
Before  
Judicial  
Review*

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.

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.

As Judge Steinberg recently observed " . . . [T]he evolution of VA benefits law since the creation of this Court . . . has often resulted in new, different, or more stringent

*1988 to 1996  
Since Judicial  
Review*



requirements for adjudication.” *Locher v. Brown*, No. 94-1097 (U.S. Vet. App. Nov. 26, 1996) (citing *Stillwell v. Brown*, 6 Vet.App. 291, 303 (1994)).

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:

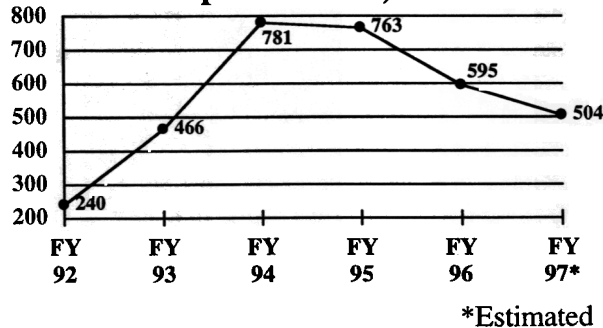
- o evidentiary development required by the Department’s “duty to assist” claimants;
- o compliance with the directives of the Court in an ever-growing number of important decisions;
- o procurement of a large number of medical opinions and extensive medical research by the Board and its staff;
- o large 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;
- o strict requirements imposed by more formal Rules of Practice;
- o added responsibilities of attorney fee agreement processing and review;
- o readjudication of cases remanded by the Court to the Board;
- o readjudication of cases returned from VA regional offices to the Board following completion of development requested by the Board on remand.

*Timeliness  
Factors*

Two Court decisions issued early in FY 1996 indicated a possible 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.App. 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 240 days at the end of FY 1992 to 781 days at the end of FY 1994. By the end of FY 1996, response time decreased to 595 days. The Board estimates that it will reduce response time to 504 days by the end of FY 1997.

**BVA Response Time, FY 92 - 96**



*Response time is the number of days required for BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one year time frame.*

*Increased  
Demand  
for Hearings*

In FY 1996, there were 74,757 notices of disagreement filed. This represented a 13 percent increase over the 66,104 filed in FY 1995. However, 35,121 appeals were actually filed in FY 1996. These were cases 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 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. By FY 1994, the increase in BVA response time had 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, which often rendered information provided during the hearings outdated and of limited usefulness by the time the Board began its review. Travel hearings proved to be a double-edged sword: Appellants benefited from the convenience and cost savings from hearings held closer to their homes, but the increased amount of time Board members spent traveling to and from hearings reduced the amount of time available to them to decide cases.

The “Board of Veterans’ Appeals Administrative Procedures Improvement Act of 1994,” Pub. L. No. 103-271, specifically authorized the Board to conduct hearings by videoconference. BVA began conducting videoconferenced hearings in FY 1995 and will expand their use in FY 1997. The Board’s plans for expanding the use of videoconferencing to conduct personal hearings and as a training and information exchange vehicle are discussed in more detail on pages 11 and 12.

The VJRA removed a historic \$10 limitation on the fees that may be charged by attorneys-at-law and claims agents who represent VA claimants and gave the Board original jurisdiction to review agreements for the payment of such fees. The private bar has not shown significant interest in the practice of veterans’ law, representing only 3.4 percent of appellants whose appeals were decided by the Board in FY 1996 and 3.1 percent in FY 1995.

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 sometimes requires the Board to stop the flow of cases, identify cases affected by a Court decision, and readjudicate them.



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

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.

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 has been 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 as 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 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 19 - 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."

*FY 1994  
Reforms*

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.

*Select  
Panel*

Many of the initiatives implemented during FY 1994 and FY 1995 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; elimination of pay disparity and term appointments; improved attorney training; technological improvements such as on-line research tools and document imaging; and videoconferenced hearings.

## **HISTORICAL ORGANIZATION OF THE BOARD**

*Statutory  
Charter*

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



*Each year since 1994, the Board has honored veterans of different wars on the covers of its Fiscal Year Report of the Chairman.*

*This cover, honoring America's World War II veterans, was one of many tributes to WW II veterans BVA conducted as an official 50th Anniversary of WW II Commemorative Organization.*

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 18.)

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 in November 1994 by the “Veterans’ Benefits Improvements Act of 1994,” Pub. L. No. 103-446. 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 who 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.

*Presidential  
Approval*

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. A separate administrative support operation provided clerical and other administrative assistance services to the Board sections.

*Panel  
Decisions*

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 operations. 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.

## **ORGANIZATIONAL REALIGNMENT OF THE BOARD**

The single member decision-making authority granted by Pub. L. No. 103-271 eliminated the statutory requirement for configuring the Board in “sections.” The new, less restrictive decision-making environment afforded BVA the opportunity to develop a platform for management based on the post-VJRA realities of the Board’s mission.

*Single  
Member  
Decisions*



**TEAM I**

After considering various possible organizational structures, including that of retaining the Board section arrangement, the Board embarked on an organizational realignment that afforded the best prospects for improving overall productivity and decision timeliness.

The Board's realignment created an atmosphere in which Board members, staff counsel, and administrative support personnel could interface directly and regularly, thereby establishing a greater sense of teamwork. The new structure allowed sufficient latitude for different,

even competing, managerial styles to be used by similarly staffed teams and reduced 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 its FTE limit. It also reduced the supervisor to staff ratio and increased individual responsibility and accountability. The realignment was completed at the end of FY 1995, and its beneficial effects began to be felt from the very beginning of FY 1996. However, government shutdowns and inclement weather in the Washington, DC, area masked realignment's immediate positive effects.

*A New Platform for Management*

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 60 to 70 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 the way in which Board members, attorneys, and administrative personnel are configured into work units.

*Decision Teams*



**TEAM IV**

Virtually all aspects of the processing of appeals occur 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 BVA's 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. 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.

BVA's administrative personnel facilitate the efficient processing of appeals by performing such essential tasks as case management and tracking, docket control, scheduling of hearings, correspondence preparation and dispatching, secretarial and transcription services. They also conduct critical liaison activities with veterans, veterans' service organizations (VSO), 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.



**TEAM III**

Within each decision team, DVCs 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.

A key element of BVA's current organizational structure is the alignment 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. This geographic linkage has engendered a heightened level of continuity and familiarity between the operating units of BVA and the Veterans Benefits Administration and has resulted in better communication and case control.

*Geographic Alignment*

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



**TEAM II**

*Decision Preparation*

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 assists 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.

### ADMINISTRATIVE INITIATIVES

On June 25, 1996, the Board established a Veterans Information Office (VIO) at its Transcription Division in Wilkes-Barre, Pennsylvania, to answer general questions about the Board's processes and procedures and to provide current appeal status information to appellants and other inquirers. In addition, the VIO allows appellants to report address changes or, when necessary, obtain a referral for more substantive or specialized services. Establishment of the VIO did not require the hiring of any additional personnel, as the unit has been staffed by employees of the Board's already existing transcription division, who serve in the VIO for two or three month periods before returning to their traditional duties.

*Veterans  
Information  
Office*



*The cover of the Fiscal Year 1995 Report of the Chairman honored veterans of the Korean War.*

*This cover featured a portion of the reflecting wall of the Korean War Memorial in Washington, DC, which was dedicated on July 27, 1995.*





*Efficient handling of appeal folders - including receipt, distribution to service organization representatives, staff counsel and Board members, and the copying and delivery of decisions - is essential to the Board's operation.*

challenges resulting from judicial review and to improve its service to veterans and their families. In recent years, 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 Washington, DC, employees 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 1996, the Board introduced an expanded training program for administrative personnel and developed a procedural reference manual to guide new employees, to improve consistency of administrative processing practices, and to enable employees to keep abreast of procedural changes required by Court decisions, BVA's organizational realignment, and the Board's vastly improved productivity.

The Board continued testing the use of videoconferencing to conduct personal hearings and examined the effectiveness of this technology as a vehicle for conducting training and information exchanges between BVA and VA regional offices. 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. Videoconferencing affords veterans the opportunity to have hearings held before Board members without incurring the expense of traveling to Washington, DC, 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. Videoconferencing conserves the productive capability of the Board

By shifting a large volume of the information functions to the VIO — functions that were previously performed by BVA's administrative support personnel in Washington, DC — the Board has been able to minimize the need for additional administrative employees to support its expanding staff of attorneys.

The Board continues to introduce administrative initiatives to meet the

*Videoconferenced  
Personal  
Hearings*

member conducting the hearings by reducing travel time — the Board member is able to move down the hall, literally, instead of traveling across the country to conduct a hearing. Forty-eight videoconferenced hearings were conducted during FY 1996.

In addition to reinforcing the validity and practicability of conducting hearings by videoconference during Fiscal Year 1996, the Board demonstrated the tremendous potential of this medium as an effective training vehicle. Throughout the year, Board members in Washington, DC, and adjudicators at the VA regional office in Des Moines, IA, discussed recently decided cases, explained rationales for decisions, and discussed the impact of recent Court opinions.

*Videoconferenced  
Training*

Videoconferenced training provides a real-time alternative to the more typical classroom training environment, allowing “face to face” information exchanges without the cost or, more importantly, the time required to travel from geographically distant locations. The potential for videoconferencing as a training tool that was demonstrated during FY 1996 is such that the Board plans to install videoconferencing equipment in up to 12 additional regional offices during FY 1997. In addition to the convenience and benefit to appellants afforded by videoconferenced hearings, it is reasonable to expect an appreciable reduction in BVA remands as a direct result of the videoconferenced training that will be held.

The Board expanded its efforts to provide information to appellants about BVA and the service they can expect to receive from the Board. During FY 1996, the Board established a series of World Wide Web (WWW) pages that provide appellants and other “visitors” the ability to obtain answers to many questions about the appeal process. This on-line version of BVA's pamphlet, “Understanding the Appeal Process,” links plain language answers to numerous commonly asked questions. These WWW pages, like the pamphlet from which they were derived, were updated in April 1996 to reflect suggestions submitted by BVA customers on how this product might be improved. “Understanding the Appeal Process” is available on the WWW at the following Universal Resource Locators (URL):

*World  
Wide  
Web*

*<http://www.va.gov/appeals/index.htm>*

Board decisions issued in calendar years 1994 and 1995 have also been made available in searchable text format through VA's Web pages. The URLs for these decisions are:

<u>Year</u>	<u>URL</u>
1994	<i><a href="http://www.va.gov/vetapp/vetindex.htm">http://www.va.gov/vetapp/vetindex.htm</a></i>
1995	<i><a href="http://www.va.gov/vetapp95/vetindex.htm">http://www.va.gov/vetapp95/vetindex.htm</a></i>

Since March 1996, the Board has provided a mechanism for WWW visitors to submit questions directly to the Board by electronic mail (e-mail). Nearly 100 e-mail inquiries were received and answered in FY 1996 in the approximately six months this service was available. Based on its increasing rate of use, the Board anticipates that 300 or more e-mail inquiries may be received from its WWW pages in FY 1997.

Previous customer service initiatives included 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; and establishing an appeal status inquiry telephone line.

## **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. In FY 1996, the Board completed the notification of 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 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. In addition, in FY 1996, the remaining original and restored files in almost all cases that were held as evidence in the criminal cases against these two attorneys were reintegrated into the system and adjudicated.

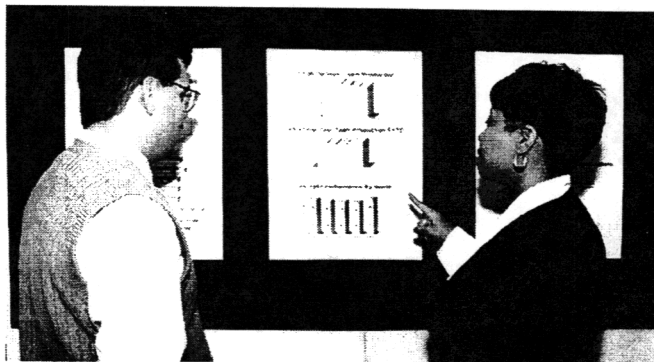
Corrective actions available to appellants include the submission of additional or duplicate evidence, as well as comments or arguments, and, if a final decision was made on an incomplete or altered record, filing a motion for reconsideration. Cases involving file tampering will be handled in an expedited 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.

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 63 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.

## LEGISLATIVE INITIATIVES

Representation for many appellants is provided by one of the various veterans' service organizations, 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,



*Individual decision team and Board-wide performance statistics are posted throughout BVA's work area, allowing employees to evaluate the Board's progress toward meeting its productivity goals.*

- 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 the VA mailroom, which "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.

*Providing Copies  
of Decisions to  
Claimants and  
Representatives*

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 created 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 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 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. At the Department's request, Senator Alan K. Simpson, Chairman of the Senate Committee on Veterans' Affairs, introduced the proposal as part of S. 1751. Following hearings, the substance of the measure was incorporated into § 508 of the “Veterans' Benefits Improvements Act of 1996,” Pub. L. No. 104-275, 110 Stat. 3322 (Oct. 9, 1996).

*In addition to having an extensive knowledge of veterans' law, Board members and staff counsel must also develop expertise in medical and other subject areas. A wide variety of computerized research materials assists decision preparation.*



## *Organizational Representation*

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 veterans service organization 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*, 8 Vet.App. 410 (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.

In October 1995, the Department submitted to the Congress, legislation designed to eliminate any confusion about the right of a claimant to appoint a veterans' service organization as representative. The proposed legislation authorized 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 appointment of the entire organization. Claimants would, however, retain the right to specify that only a specific, named individual be recognized as representative.

In May 1996, at the Department's request, Senator Alan K. Simpson, Chairman of the Senate Committee on Veterans' Affairs, introduced the proposal as part of S. 1751. Following hearings, the substance of the measure was incorporated into § 509 of the "Veterans' Benefits Improvements Act of 1996," Pub. L. No. 104-275, 110 Stat. 3322 (Oct. 9, 1996).

## **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. The selection process for the limited number of Board member openings is extremely competitive — candidates must be completely familiar with the ever growing body of applicable statutory, regulatory, and judicial authority and must acquire a solid background in numerous subject areas, including medical matters, 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. 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.

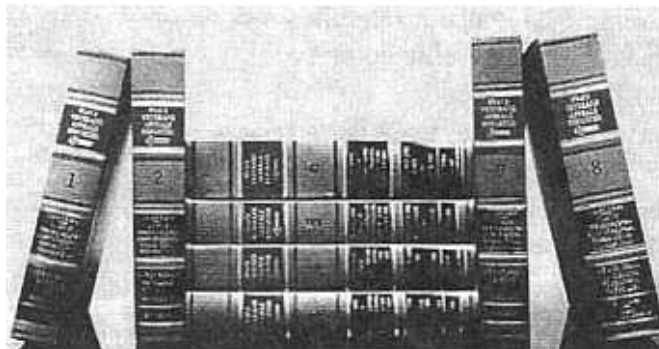
## MEMBERS OF THE BOARD OF VETERANS' APPEALS

At the close of FY 1996, the following 55 individuals, 30 of whom are veterans, were serving as members of the Board of Veterans' Appeals. At the close of FY 1996, no Board member appointments were awaiting Presidential approval. There are no physicians serving as Board members.

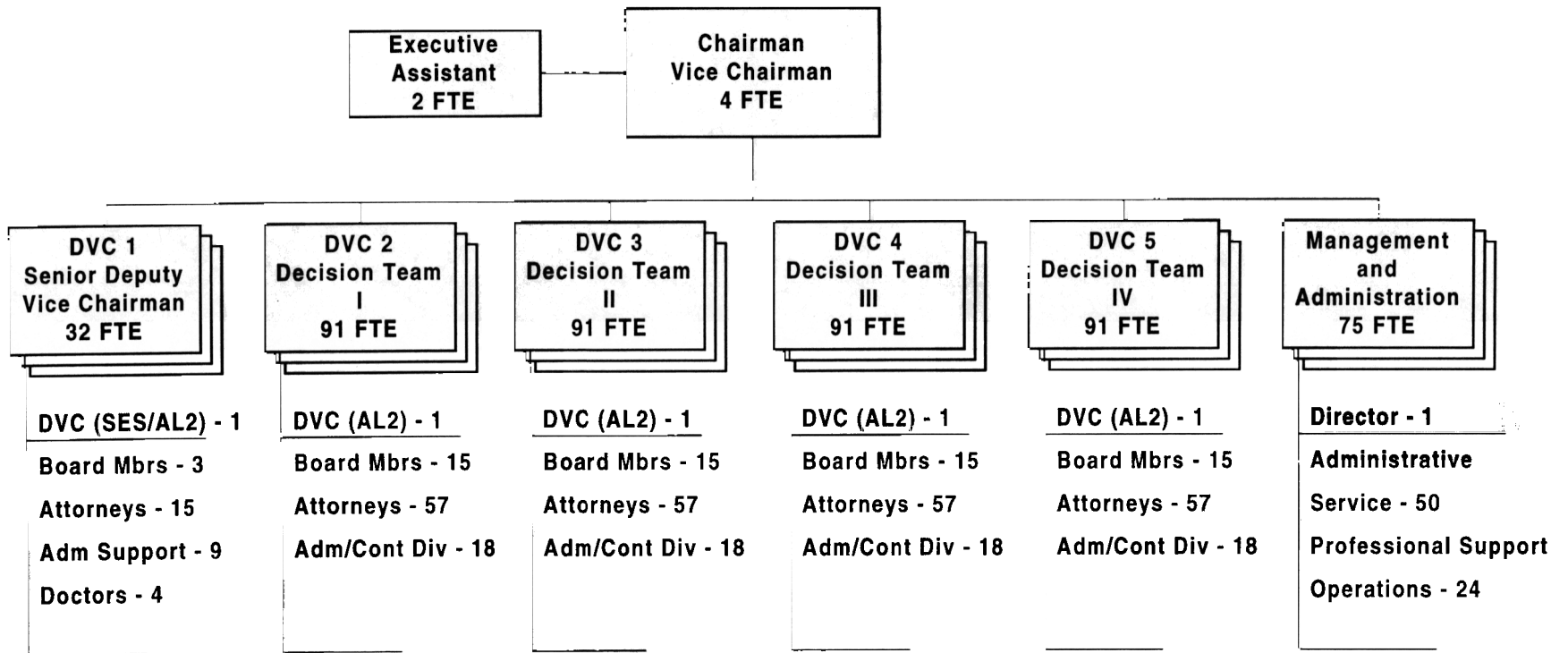
AGUAYO-PERELES, JOAQUIN  
(DEPUTY VICE CHAIRMAN)  
ANDREWS, KENNETH R., JR.  
ANTHONY, JAMES R.  
BAUER, ROGER K.  
(VICE CHAIRMAN)  
BLASINGAME, JACK W.  
BRAEUER, WAYNE M.  
BROWN, DEREK R.  
CALLAWAY, BETTINA S.  
CHEEK, MICHAEL D.  
COHN, STEVEN L.  
COPELAND, BARBARA B.  
CRAGIN, CHARLES L.  
(CHAIRMAN)  
DANNAHER, THOMAS J.  
DAY, JONATHAN E.  
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)  
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.  
WILKINS, STEPHEN L.

*The body of veterans' common law developed since judicial review began now fills eight bound volumes.*



# Board of Veterans' Appeals





## 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*, 1 Vet.App. 49 (1990), *Colvin v. Derwinski*, 1 Vet.App. 171 (1991), and *Hatlestad v. Derwinski*, 3 Vet.App. 213 (1992), 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*, 6 Vet.App. 547 (1994), 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*, 8 Vet.App. 133 (1995), 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*. A similar result was reached in *Perry v. Brown*, 9 Vet.App. 2 (1996). 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 return to its former practice of utilizing the opinions of BVA medical advisers in adjudicating future appeals.

*Medical  
Opinions  
and Research*

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 1996, the Board requested 91 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. In 1996, the Board requested approximately 143 such opinions from VHA. Also in 1996, the Board requested 9 opinions from the Armed Forces Institute of Pathology.

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

### **ATTORNEY AND AGENT 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 1996, the Board received nearly 370 fee agreements for filing and review, an increase of 48% over FY 1995. Most problems concerning fee agreements were handled, as in the past, through correspondence with attorneys. Under the authority of 38 C.F.R. § 20.609(i), the Board issued three motions for Board review of fee agreements, and three were filed by attorneys. At the end of the fiscal year, six motions were pending. In four cases, the Board issued decisions that the attorney could not charge a fee. Two motions were 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 1996, fifty-five cases were referred for such decisions. Fifty-seven such cases were completed during the fiscal year: 39 ordered payment to the attorney, and 18 held that the attorney could not be paid.

### **REPRESENTATION BEFORE THE BOARD**

In FY 1996, 84.6 percent of appellants were represented by one of the accredited service organizations, 3.5 percent were represented by an attorney or agent, and 11.9 percent were not represented. In FY 1995, 87.3 percent were represented by an accredited service organization, 3.2 percent were represented by an attorney or agent, and 9.5 percent were not represented. (See table on page 42, Part III.)

## 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 reduction in response time due in part to the Board's realignment into "decision teams."

*Congressional  
Liaison  
Activities*

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 1997 and the Board's legislative proposals.

The Chairman provided an in-depth briefing on the appeal process to the National Association of Public Administrators (NAPA), which is conducting a review of the entire VA claims and appeal adjudication process. The Board also provided NAPA with statistical and historical information. The group is scheduled to issue its report in FY 1997.

*Government  
Studies  
Liaison*

The Veterans' Claims Adjudication Commission, which has also been examining the entire claims processing system, including the Board, was originally scheduled to issue its final report in May 1996, but had its charter extended and had not issued its report as of the end of FY 1996.



*The Honorable G. V. "Sonny" Montgomery, former Chairman of the House Veterans Affairs Committee, visited Board employees and received a certificate from the Chairman in appreciation of his nearly 30 years of service in the House of Representatives and his dedication to serving veterans.*

*Veterans’  
Service  
Organization  
Liaison*

Veterans’ service organizations are vital to the Board’s operation and provide an invaluable service to appellants. However, the Board’s vast improvement in productivity over the last two fiscal years — a 54 percent increase in decisions issued in FY 1996, compared with FY 1994 — resulted in a perplexing and as yet not fully resolved dilemma.

*Case Flow  
Constriction*

Part of the service organization representation activities is the preparation of advocacy briefs, which is performed prior to the Board’s review. These representative briefs become part of an appellant’s record and are considered by the Board when reviewing appeals. Unfortunately, advocacy brief production by some VSOs has not kept pace with the Board’s increased decision production rate. While most service organizations have made significant progress toward attaining an adequate level of brief production, and some have exceeded that required to maintain parity with the Board, the failure of others to meet this challenge began to adversely impact BVA’s productivity during the final quarter of FY 1996. Unless the service organizations, especially those providing the majority of representational services, respond with adequate resources to address this situation, the Board could fall short of its FY 1997 productivity goals. However, the Board is confident that all service organizations will eventually dedicate the resources necessary to increase their brief production to requisite levels.

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 more than a dozen 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, and the Disabled American Veterans national convention.

The Chairman served as the senior Department official at numerous patriotic ceremonies and observances and addressed numerous other interested groups, including the American Bar Association Veterans Benefits Committee and the Fourth Judicial Conference of the United States Court of Veterans Appeals. The complete text of the Chairman’s remarks to the Court’s judicial conference is contained in Part II of this report.

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.

*Correspondence*

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 2,575 Congressional inquiries in FY 1996. FY 1996 was the second consecutive year in which the number of such inquiries decreased by more than one-third the number of inquiries received during the previous year. 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.

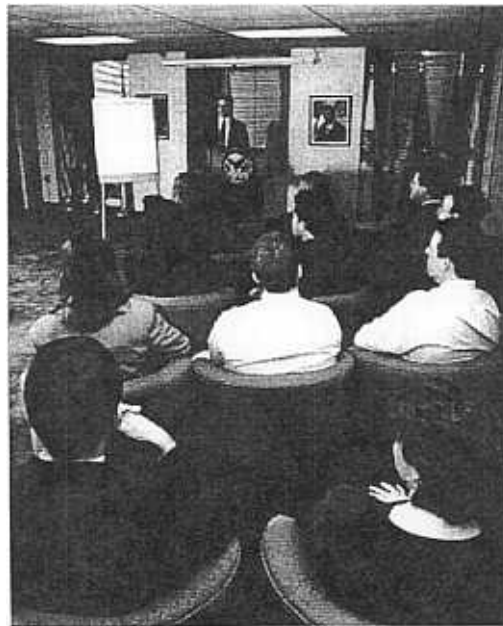
## PROFESSIONAL TRAINING

The Board continued its intensive training program for attorney staff and Board members during FY 1996. Under the direction of the Vice Chairman, a committee of key personnel acting as a "Board of Regents" developed and implemented a training 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.

BVA's professional staff continued to grow at a tremendous rate. In FY 1996 alone, the Board realized a net increase of 65 staff counsel. Sixty-seven new staff counsel were hired during the previous fiscal year. It should be noted, however, that because of the complexity of today's veterans' law environment, these new counsel require intensive training before they can become fully contributing decision 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' bargaining unit, 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



*Expanding  
Staff of  
Board  
Attorneys*

*Employees receive extensive training throughout the year on a wide range of subjects, including legal, medical, and administrative topics.*

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. Maintaining a customer service outlook and awareness are key elements of the training program.

### *Intradepartmental Training*

To broaden their understanding of the veterans' benefit claim process, more than 40 BVA attorneys attended a two-day seminar at the Veterans Benefits Administration's Adjudication Academy in Baltimore, MD, in July 1996. Developing a familiarity with and understanding of regional office claims adjudication processes by Board counsel directly supports the Department's "one VA" efforts.

Another "one VA" effort took place in September 1996, when 48 Board members and staff counsel traveled to numerous VA regional offices around the country. These visits afforded an opportunity for BVA staff members to provide instructional assistance and training to adjudication personnel, to answer questions about specific issues, and to explain the impact of various Court opinions on BVA remands and decisions. The goal of these sessions was to help reduce the number of appeals remanded to regional offices by the Board for additional development and for Board members and counsel to gain greater insight into adjudication operations at the regional offices.

### *Cooperative Efforts*

During FY 1996, the Board and VA's Office of the General Counsel (OGC) established an exchange program that allows the detailing of attorneys between Board staff counsel and the OGC staff group that represents the Secretary before the Court of Veterans



*BVA attorneys attended a two-day seminar at the Veterans Benefits Administration's Adjudication Academy in Baltimore, MD, during FY 1996. Numerous training facilities and opportunities, both internal and external to VA, are employed to provide a broad range of training to Board employees.*

Appeals. This cross-training presents an opportunity for attorneys from both organizations to broaden their individual career experiences and to further VA's efforts to improve intradepartmental cooperation.

Additional intradepartmental programs in which BVA participates include:

- o VBA/Compensation and Pension (C&P) Service "hot line" conference calls with all VBA adjudication officers to discuss, among other topics, appellate and/or Court related issues;
- o Development of an interactive C&P examiners' training film on CD-ROM, which is being produced by VBA and VHA;
- o Automated Medical Information Exchange system conference calls involving VBA and VHA;
- o C&P examination task force.

*External  
Training  
Opportunities*

Highly motivated Board employees who have demonstrated the potential to assume positions of greater responsibility are afforded the opportunity to broaden their personal and professional perspectives through participation in *Leadership VA (LVA)*. LVA is an intensive leadership training experience that also provides participants the opportunity to gain insight into the myriad of internal and external forces affecting the department.

## **RESEARCH MATERIALS**

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 research 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.

*On-Line  
Research  
Tools*

The Board's commitment to automating as many of its processes as practicable has resulted in a personal computer being provided to every staff counsel, Board member, and member of the professional and administrative staff. A variety of applications and productivity aids are available for all BVA staff and VSO appeals representatives connected to the Board's computer network, as are a significant number of automated reference materials ("research tools"). This material is accessible through a computer selection menu that facilitates conducting sophisticated legal and medical research from an individual's workstation. 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.” Anecdotal reports from new staff counsel indicates that the volume and sophistication of electronic research and reference materials readily available to BVA staff counsel and Board members far exceeds that which is normally found in the private law sector.

### *Indexes*

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*

*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.



*BVA’s staff counsel and Board members have access to an extensive array of computerized research materials. The Board’s Research Library also contains a large selection of legal and medical texts.*



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.

*Other  
Research  
Materials*

In February 1994, traditional indexing was discontinued in favor of making the highly searchable CD-ROM (Compact Disc - Read Only Memory) available to the public. All Board decisions issued in calendar years 1992 through 1995 are available for purchase from the Government Printing Office on two CD-ROMs. The text of decisions issued in 1992, 1993, and 1994 (Stock No. 051-000-00207-5) are contained on one CD-ROM and the text of 1993, 1994, and 1995 decisions (Stock No. 051-000-00210-5) on another.

Included on each of BVA’s decision CD-ROMs is an index to decisions issued between 1992 and February of 1994 and a vocabulary list that facilitates searches for specific topics. Users can then display and print their search results. This capability represents an enormous potential reduction of research time for attorneys preparing decision recommendations, appeal representatives preparing advocacy briefs, and others interested in the appeal process. Additionally, as discussed on page 12, all Board decisions issued in calendar years 1994 and 1995 are available in searchable text format on the Internet through VA’s World-Wide Web pages.

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 late in FY 1995. The greater flexibility and faster reporting of the new system allows the Board to add new features and more sophisticated applications to enhance individual and organizational productivity.

Historically, VBA and BVA have used completely independent computer systems to track appeals, VBA using the Appeals Tracking System (ATS) and BVA using VACOLS. Working together during FY 1996, VBA and the Board took a major step toward consolidating the two systems. The Chairman and the Under Secretary for Benefits have signed a Memorandum of Understanding to establish a unified information system for tracking, processing, and otherwise managing appeals in all of their phases and locations throughout the VA system.

*Unified  
Appeals  
Tracking  
System*

VACOLS, modified to accommodate VBA requirements, will serve as the core for this single appeals tracking and reporting system, which will eliminate redundant procedures, provide immediate availability of precise appeal status information by all

adjudication personnel regardless of case folder location, increase case folder accountability, and improve workload management. New computer applications designed for this purpose were field tested by regional office personnel in St. Petersburg, Baltimore, Milwaukee, Oakland, and Winston-Salem during the latter part of FY 1996, and will be installed at all regional offices early in FY 1997.

This joint venture allows regional office personnel to obtain lists of cases called up for review by BVA, query and update the appeal data base regarding the status of those call-up cases, and directly update the system when an action on an appeal has been completed. This cooperative initiative will benefit veterans and their families by providing increased efficiency within the Department's adjudication system and improved responsiveness to their needs.

## CUSTOMER SERVICE

The Board continued its active participation in the Department's effort to improve the quality of service to customers. In addition to the many initiatives aimed at improving timeliness discussed throughout this report, the Board has made great strides in improving the quality and frequency of its communication with appellants. The Board notifies appellants by letter when their appeals are docketed. This letter, written in clear, nontechnical language provides appellants with an estimate of how long it is likely to take before their cases will be reviewed and decided. Included with this letter are two pamphlets, one describing BVA's customer service standards and commitment to improving its service to appellants, the other, "Understanding the Appeal Process," is discussed in the following paragraph. 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.



*Deputy Secretary Hershel Gober presents the Scissors Award to BVA's Decision Team II for its performance during the first six months of FY 1996.*

The publication and distribution of "Understanding the Appeal Process," which explains the claims appeal process in detailed, yet easy to understand language, has proven to be one of the most useful customer service improvements initiated to date. 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 appellate rights and a phone number, established 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 publication 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. Both of these items are also available on the World Wide Web, as discussed on page 12.

While difficult to state with absolute certainty, these customer service improvements likely contributed to the 56 percent decrease in appellant inquiries submitted to the Board by Congressional offices in FY 1996, compared with FY 1994, prior to their introduction.

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 of doing business.

The Board conducted its second customer satisfaction survey during FY 1996. Those surveyed included appellants whose appeals have not yet been decided, those whose appeals were allowed, and those whose appeals were denied. Although responses tended to be more favorable overall among those whose appeals had not yet been decided or had been allowed, dissatisfaction with the length of the process was fairly universal. One encouraging outcome of the survey was that more than 4 out of 5 respondents from all categories indicated that the Board had provided a complete and understandable explanation of the appeal process.

## **SCISSORS AWARDS**

In recognition of BVA's dramatic improvement in productivity during FY 1996, Deputy Secretary Hershel Gober presented two "Scissors Awards" for the Board's efforts to "reinvent government and improve customer service by cutting red tape and creating an organization that works better and costs less."



*Decision Team I earned a Scissors Award by becoming the Board's top decision producing team during BVA's first year of operation under its realigned organizational structure. Team I issued more than 8,900 decisions, leading all teams in FY 1996.*

In April, 1996, Decision Team II was presented a Scissors Award for leading BVA's decision teams in productivity during the first six months of FY 1996 by issuing 3,957 decisions — more than 500 over the decision production goal established for each of the Board's four teams. Fewer than 100 decisions separated the top two teams and only a 10 percent difference in decisions issued separated the first and last place teams over the six month period considered for this award.

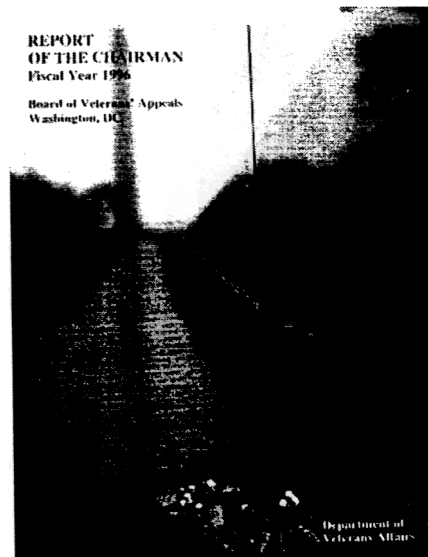
Decision Team I earned its Scissors Award for being the top decision producing team for all of FY 1996. Team I issued 8,917 decisions for the year, exceeding the individual team goal of 8,063 by more than ten percent. The four decision teams were so close in performance that only a 2.5 percent difference in productivity separated the four decision teams.

While all BVA employees can feel justifiably proud of their remarkable accomplishments during FY 1996, the real “winners” are the Board's customers — veterans and their families. By increasing productivity and reducing response time, BVA's employees are improving the service they provide to appellants, which is what “Putting Veterans First” is all about.

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*The cover of this year's Report of the Chairman honors veterans of the Vietnam War.*



*This photograph of the Vietnam Memorial at dawn, with the Washington Monument reflected in the background, was taken by Michael Moore.*

*Additional photographs within this report were taken by VA photographers Robert P. Turtill, Michael Moore, and Emerson Sanders.*

**PART II**

**REMARKS OF THE CHAIRMAN  
AT THE FOURTH JUDICIAL CONFERENCE  
OF THE  
UNITED STATES COURT OF VETERANS APPEALS**

**SEPTEMBER 1996**

The Chairman was invited by the Court to address the Fourth Judicial Conference of the United States Court of Veterans Appeals on September 17, 1996. The Chairman provided a historical overview of significant challenges faced by the Board of Veterans' Appeals since the advent of judicial review and discussed how the Board has met those challenges. The full text of the Chairman's address is presented below, with section headings added to facilitate review.

**INTRODUCTION**

As I approach the end of my six year term as the first Presidentially appointed, Senatorially confirmed, Chairman of the Board of Veterans' Appeals, I am grateful for this opportunity to reflect on where we have been and where we may be going as an institution.

**HISTORICAL OVERVIEW**

The Board of Veterans' Appeals has undergone more significant changes in roughly the past six years than in its entire history. The Veterans' Judicial Review Act (VJRA) and other significant legislative changes, the advent of judicial review of VA benefits decisions and the evolving "veterans common law" of precedent decisions of the U.S. Court of Veterans Appeals and other Federal Courts, have drastically changed the way the VA does business.

The changes have been sudden, radical, and frequently erratic. The challenges wrought by these changes have been monumental. I am pleased to report that the Board of Veterans' Appeals is meeting these challenges. While we are not there yet, we have come a long way in accomplishing our mission of producing consistent high quality decisions in a timely manner. I am proud of my continuing association with the approximately 500 individuals who collectively enable the Board to put veterans first. I am proud of the vitality and resiliency of this organization and its people.

*The  
New  
Court*

When I first arrived at the Board in October 1990 as a consultant to the Secretary, the impact of the decisions of the newly created Court of Veterans Appeals was just beginning to be felt. Moreover, given the rapid evolution of “veterans common law” during the early years of the Court, it was very difficult for our Board members and counsel to know what was expected of them.

Throughout its history, the Board functioned as a panel of experts, applying its own legal and medical expertise to fairly and expeditiously decide appeals. Each section of the Board included a medical member — a physician — whose medical judgment often controlled the outcome of an appeal. As we now know, the Court’s decisions rather quickly changed this method of appeals adjudication. While some may have foreseen such change as inevitable, many in VA and in Congress did not.

As you can imagine — and, as some of you can remember — the fundamental changes in the way the Board did business had the effect of dislocating many of our personnel, both intellectually and physically, particularly the physician Board members who were not reappointed to the Board after their initial terms expired.

*A Changing  
Legal  
Landscape*

The expanded “reason or bases” requirement of the VJRA, the expanded “duty to assist” as defined by the Court, expanded due process requirements and constantly evolving case law resulted in the need for more formal, complex and lengthier Board decisions. The Board’s challenge was to gradually rebuild and revitalize itself as an organization. We immediately began a continuing process of critical reexamination of how to best accomplish our mission in this new and ever-changing legal landscape.

Leadership roles were re-evaluated and a new management team was established, dedicated to insuring that the organization successfully adapted to the new environment. Measures were instituted to improve internal communication and consistency among the Board sections, to consolidate the Board in a single location, and to establish an ongoing dialogue with other VA components and veterans’ representatives.

In 1991, the Board’s decision analysis and format were completely revised, bringing it into accord with the evolving requirements of the law. Procedures were established to ensure the rapid analysis, dissemination, and discussion of Court decisions within the Board. We formed a group responsible for case tracking and liaison activities with the Court and with VA’s Office of General Counsel. The Board’s quality review operations were redefined to better ensure that the mandates of the Court were being carried out.

*Individual  
Accountability*

Individual accountability was also ensured by the introduction of revised performance standards and appraisal procedures for staff counsel in 1994 and, following the enactment of enabling legislation in November 1994, for Board members. The first performance evaluations of Board members were completed in March 1996. A variety of other innovations were instituted to streamline the Board’s operations and its procedures, including the promulgation of revised Rules of Practice and Appellate regulations and a revised and more equitable method of docketing appeals to the Board.

## INNOVATIVE INITIATIVES

In 1991, the Board had no program in place for customer outreach or procedures to ensure that veterans, their representatives, and members of Congress received timely information on the status of appeals and responses to correspondence and other inquiries. As a result of our customer satisfaction survey and focus groups, we developed the first Board publication explaining in understandable language how the appellate process works. Now in its second edition, the publication has been widely acclaimed.

In addition, in 1992, for the first time, procedures were changed so that BVA hearings are conducted by a single Board member — not a panel. Subsequently, the “trailing docket” method of scheduling hearings was introduced. These innovations enabled us to hold a greater number of hearings with virtually the same resources.

*Trailing  
Docket*

One of the most promising innovations in the area of hearings has been the use of “videoconferenced hearings.” Legislation enacted in 1994 expressly authorized the Board to conduct hearings by picture and voice transmission and, in 1995, the Board began conducting its first videoconferenced hearings on a trial basis at two locations. As this technology becomes more widely available, the Board will be able to provide greater accessibility to hearings for appellants with a smaller expenditure of resources. “Videoconferencing” is just one facet of the technological revolution that has changed the Board in the past few years.

*Video  
Conferencing*

In 1993 and 1994, the Board introduced modern Automated Data Processing equipment and training for all professional and administrative employees. At this time, every Board employee has a networked desktop computer workstation. We have also developed a host of on-line research tools and other aids to assist in the production of decisions, by which Board members or attorneys can access information without leaving their desks. Our employees can communicate and transmit documents internally and within the Department by electronic mail. Regulations, synopses of Court decisions, and other guidance to all our attorneys are all disseminated simultaneously and instantly via electronic mail. These innovations have significantly improved our quality and productivity.

*Office  
Automation*

In 1994 and 1995, a substantially enhanced computerized case tracking system and enhanced on-line resources were introduced. We are currently developing the next generation of this system. At the same time, the Board has been exploring systems that permit integrated data entry and tracking between the VA regional offices and the Board on appeals cases. The prototype of such a system was introduced on an experimental basis in July of this year, and we expect this system to be operational nationwide at all VA regional offices by the beginning of Fiscal Year 1997.

I am extremely excited and gratified with the progress the Board has made in the area of technological advancement. I routinely meet with groups of the new attorneys — and we have many — that have come to the Board. These folks are, for the most part,

children of the electronic age. They have had extensive computer experience in college, law school, and in their former legal employment in the private sector, or elsewhere in government. They share my excitement and, while I realize the information is anecdotal, they report that the availability of computer access and on-line resources at the Board far outstrips that which they have encountered elsewhere.

## **PRODUCTIVITY AND TIMELINESS**

Productivity, and its counterpart, timeliness, have been a continuing concern at the Board. The time it takes on the average for an appellant to receive a decision in an appeal is directly proportional to the Board's decisional output. The law expressly requires that the Board consider and dispose of appeals properly before it in a timely manner. One of the unexpected effects of judicial review — at least unexpected at the time the VJRA was conceived and enacted — was that it would take longer — much, much longer — to produce a BVA decision of the requisite formality, complexity and thoroughness to meet the exacting scrutiny of the Court.

For example, in Fiscal Year (FY) 1990, before the impact of the Court had really begun to be felt, the Board issued 46,556 decisions. This declined slightly in FY 1991 to 45,308 decisions, but the real impact of the Court was yet to come.

In FY 1992, decisional output dropped to 33,483. The Board's nadir in productivity was reached in FY 1994, in which only 22,045 decisions were produced. During this time, the number of appeals that we received remained constant, at about 39,000 per year. As our backlog increased, the Board's average response time, our principal measure of timeliness, increased from 152 days in FY 1990 to 781 days in FY 1994.

*The  
Decline*

This deterioration of timeliness and productivity was heightened by the loss of some of our most experienced decision makers to Administrative Law Judge positions, particularly with the Social Security Administration, largely due to disparities in pay and terms of office. In 1994, remedial legislation was enacted that restored pay comparability and eliminated terms for Board members. Since that time, attrition to the ALJ program has been nearly eliminated.

Attrition, of course, only exacerbated the Board's timeliness and productivity problems; it was not their underlying cause. The truth of the matter is that, without a significant increase in resources, increased response time is the inevitable cost of meeting the added requirements of the law — of providing the necessary platform to permit judicial review.

Time was necessary for the Board to relearn its job — to provide reasons or bases for every material finding and conclusion, for weighing and discussing every item of evidence



in the record, for obtaining on the record the expertise that it could no longer provide on its own, and to keep current with the Court's continually evolving, and sometimes erratically shifting, case law.

In terms of decision quality, our Board members and attorney staff have successfully adapted to the new legal environment and, by any fair and objective standard of review, issue decisions which are just, well reasoned and fully comport with the requirements of law. We have moved from the historical "panel of experts" model, in which the Board members' judgment was sometimes substituted for the evidence of record, into a nonadversarial judicial model, in which BVA decisions are based exclusively on the rule of law as applied to the record.

*Adapting to  
Change*

As we approach some stability in the legal environment and with experience, we have become faster at it and will continue to progress in efficiency. The Board's success in this area is a tribute to the resiliency and skill of its members and staff. It is also a tribute to their integrity, on which the entire adjudication system is founded. While we have had two noteworthy deviations from the path of integrity among our counsel staff in the recent past, we have dealt with this situation forcefully and effectively. Nevertheless, unless and until the Board decides more appeals than it receives, the backlog and its resulting degradation of response time, will persist.

### **A STRATEGY FOR IMPROVEMENT**

The Secretary, Deputy Secretary, and I have met often in order to devise a comprehensive strategy to turn this problem around. It was my pledge that, with the necessary resources and changes in the way we did business, we could make significant inroads into the Board's problems with productivity and timeliness so that, in FY 1997, we would — for the first time in years — decide more appeals than we take in.

Of course, we could not stop the clock, take a time out, and fix things. Our efforts at major restructuring had to occur while we were underway and fully operational. I am proud to tell you that we have reached that goal in FY 1996, despite over a month off work from furloughs and bad weather. Let me tell you how we got there.

We decided that the intertwined problems with timeliness and productivity would be attacked on several fronts. Historically, by law, the organizational and decisional element of the Board was the "section" of three Board members, one of whom was designated as "Chief." This structure was now unnecessary, constrained opportunities for effective management, and was conducive to the development of inconsistency. In 1994, legislation proposed by the Secretary that granted decisional authority to a single Board member was enacted and, as a result of single member decisional authority alone, the Board experienced a 27 percent increase in decisional productivity.

*Single  
Member  
Decisions*

## REALIGNMENT: A NEW PLATFORM FOR MANAGEMENT

*Reduced  
Overhead*

With the removal of the statutory limitations on Board organization, in 1995, it became possible to completely realign the Board to provide a “platform for management” adapted to the single member decision making environment. In this concept, the Board was reduced from twenty-one Sections to four Decision Teams, each integrating line and support functions under the direction of a single manager. This has fostered a greater sense of teamwork, provided sufficient latitude for individual managerial experimentation and innovation, reduced administrative overhead resulting in more personnel involved in decision producing functions, reduced the supervisor to staff ratio and increased individual responsibility and accountability.

Virtually all appeals processing occurs within our four Decision Teams or in our Appellate Group, allowing the Board to operate with fewer “overhead” personnel and managerial staff. The realignment has also enabled us to put more Board member and counsel positions on the “line” generating decisions. Indeed, we have completely reversed the ratio of support to line positions from 60 percent to 40 percent prior to realignment to the current 40 percent support staff to 60 percent on the line. As a result of this change alone, it is estimated that decisional productivity has increased by another 25 percent.

*A Young  
Organization*

I must emphasize that our assets are not measured in numbers alone. They also are measured by the quality of the people that choose the Board as a career and the training and nurturing they receive. Ours is a young organization — almost two-thirds of our current attorney staff of 252 has joined the Board since March 1991, and over half of our 55 Board members were first appointed to the Board during my administration.

These additions to the BVA family bring with them a great breadth of experience and diversity of backgrounds. Ours is an organization of inclusion. We have a mentoring program which — based on the feedback I have received from these new attorneys — is unparalleled in either the public or private sector. Complementing this program is a comprehensive training program for all BVA personnel, from new attorneys through Board members.

Administrative improvements alone can go only so far to improve timeliness. Ultimately, the overall timeliness of the Board is directly proportional to the number of decisions generated, which — in turn — is determined by the number of people generating decisions. In the Board’s case, our backlog resulted because — in the first few critical years of judicial review — insufficient resources were brought to bear to meet the challenge. With the clarity of hindsight, this clearly was a miscalculation.

*Increased  
Assets*

Fortunately, both the Secretary and Congress, supported by the veterans service organizations, have realized that more resources are essential to do what is clearly a bigger job. As a result, the Board’s personnel resources, particularly the allocation of staff counsel devoted to generating tentative decisions for Board member review, have

increased. Our planned staffing level, expressed in terms of full time employee equivalents (FTEE) increased from 406 in FY 1990 to 477 in FY 1996. An additional 50 FTEE, which will be dedicated almost exclusively to attorney positions, is included in the President's budget for FY 1997.

The bill, as passed by the House, included the \$4 million appropriation for these additional positions. In its report, the Senate Committee on Appropriations would specifically rescind that increase. Several Senators are urging that the conferees adopt the House version of the bill.<sup>1</sup>

As Yogi Berra once said, "When you come to a fork in the road, take it!"

The VA appellate adjudication system is now at that juncture. While we have sliced nearly five months off our average response time from that in 1995, it is still not enough. We have done all that we can administratively do to improve timeliness and productivity within the confines of our current resources. The problem is not with the system or with processing time of appeals once they reach the Board for decision, but with the backlog. The existing backlog will significantly decline only if the rather modest allocation of additional resources necessary to increase the number of personnel generating decisions is provided. We will continue to turn out more cases than we take in, but this is not enough. In fact, we will begin to lose the gains we have worked so hard to make.

*Reducing  
the  
Backlog*

With the additional funding requested by the President, we will have enough decision makers to result in significant and permanent decreases in the response time at the Board. Clearly, this will benefit the veterans we all are pledged to serve. I am hopeful that we will learn from past mistakes and will not now take the path of fiscal shortsightedness. These resources — in addition to the Board's realignment, single member decision authority, automation and on-line computer resources, and a comprehensive training program — in combination, have helped to turn the tide.

In FY 1995, the Board's output increased to 28,195. Even with the closures resulting from the government-wide shutdown and bad weather, the Board was projected to decide 32,250 appeals in FY 1996. For the first time, response time has decreased and was projected to reach 675 days in FY 1996. Indeed, we have done better than that. In fact, we are currently ahead of these projections in both decision productivity and in response time. Our current rate of production is such that the Board is deciding more cases than are being added to our docket. We are nibbling into the backlog.

*Steady  
Improvement*

<sup>1</sup> The \$4 million appropriation was approved and included in the final bill, which was enacted into law as Pub.L. No. 104-204 (Sep.26, 1996)

*Intra-  
Departmental  
Cooperation*

Increased decisional productivity and timeliness can only be achieved by a cooperative effort between the BVA and those organizations and individuals who represent appellants before the Board. Such efforts are underway among the several VA components involved in the adjudication process — the Veterans Benefits Administration (VBA), the Veterans Health Administration (VHA), the General Counsel’s Office, and the Board.

For example, the Board and the General Counsel recently established an ongoing exchange program, providing for the detailing of attorneys between the OGC staff group that represents the Secretary before the Court and BVA staff counsel. Such cross training will help advance the synergistic mission, goals, and objectives of both our organizations and provide career development opportunities to our attorney staffs. In this manner we hope to develop a mutual understanding of the common challenges we face and foster a teamwork in order to enhance the Department’s ability to serve veterans.

Numerous ongoing efforts at cross fertilization are also underway between the Board and VBA. In the realigned Board, each of our Decision Teams has a permanent affiliation with designated regional offices, generally on a geographic basis. This has served to open more direct lines of communication between the Board and those individuals that render the decisions that the Board reviews.

Using videoconferencing techniques, the Board has established regular conferences with Veterans Benefits Administration adjudication personnel in the Des Moines, Iowa regional office and Board members and managers in the decision Team affiliated with that region. We are planning to expand this program in the near future to a number of other regional offices throughout the country. In this manner, we expect to achieve better consistency through mutual understanding and, thereby, improve the quality and timeliness of the overall claims adjudication process.

Yesterday, and on September 23rd, a total of forty-eight of our best qualified Board members and staff counsel will spend — or have spent — a day at a regional office. During this visit, the Board member and counsel are allocating their time in a manner that is most helpful to adjudication personnel, such as providing training in certain areas, answering questions about specific claims, or explaining the impact of opinions of the Court on the Board’s remands and decisions.

While there to impart information, the Board member and counsel are also able to obtain and relay information back to their Decision Team that may help the Board to become more effective and efficient in crafting remands of cases to the regional offices. In at least some of these visits, VHA is also participating in a planned discussion of how we can improve the process and minimize the necessity of a remand by the Board for further development or correction of a procedural defect. We believe that this exchange of ideas, identification of common problems, and discussion of practical solutions bring us a little bit closer to our goal of “one VA.”

Another important illustration of the Department's collective efforts to improve the adjudication process is in the area of Compensation and Pension (C&P) examinations. Our data show that in about 70 percent of the cases remanded by the Board to the regional offices, a C&P examination is among the development requested. In order to address the problem of examination adequacy, a number of efforts are underway, including an ongoing focus group involving VHA, VBA and the Board, and a similarly unified approach to the development of training protocols for medical personnel who perform C&P examinations.

Also of note in this regard, VHA recently has made the performance of high quality C&P examinations one of the performance standards for its top managers — the VISN directors. VHA also is in the process of establishing a high level position — Chief of Forensic Medicine — with responsibility for the coordination and oversight of the C&P examination process.

In this and other forums, I have raised the question of what is the Board's most effective role in the overall schema for the adjudication of veterans benefits. My remarks have encouraged a dialogue on the subject, although the Board has not always been a participant in that dialogue. Clearly, such overarching policy issues are not the Board's to make and must ultimately be determined by the Secretary and by Congress. While the future role of the Board will undoubtedly continue to be scrutinized, it is clear that, as long as there is judicial review of VA benefits entitlement determinations, there must be a Departmental decision which is comprehensive enough to serve as a platform for such review.

*BVA:  
A  
Relevant  
Future*

There must be a final tribunal within the Department which acts as the quality assurance mechanism for the entire adjudication system. In effect, this tribunal is the "court of last resort" for most appellants, as only a small fraction of claimants avail themselves of judicial review. As one commentator recently noted, appellate review boards, such as the Board of Veterans' Appeals,

"are crucial to the overall missions of their respective agencies. The decisions these tribunals issue affect thousands of individuals and often involve considerable sums of money. Of equal importance, these review bodies ensure that judicial standards and agency policy are consistently and uniformly applied. In essence, the appellate review boards are the guardians of the legitimacy of the system." <sup>2</sup>

<sup>2</sup> David G. Hatfield, *Appellate Administrative Tribunals: A Comparative Survey*, The OHA Law Journal, The Office of Hearings and Appeals, Social Security Administration, Vol. 5 No. 1, at 15 (Winter 1995)

While I am receptive to any thoughtful recommendation for improvement, I have not heard any suggestion for systemic change that would, in my opinion, more effectively accomplish this critical role than the Board of Veterans' Appeals.

*Light  
at the  
End of the  
Tunnel*

I believe that, while we still have a way to go, we can now see the light at the end of the tunnel — and, for the first time in many years, the light is not an approaching locomotive. Of course, the Board does not exist in a vacuum, and would be unable to accomplish this critical mission so effectively without the support of others. I wish to thank the Secretary, the Deputy Secretary, the Under Secretaries for Benefits and Health, the General Counsel, the Judges of the Court of Veterans Appeals, and leadership of the veterans service organizations for their help in enabling us to better serve America's veterans.

Finally, and most of all, I wish to thank all the employees of the Board of Veterans' Appeals, whose dedication, skill, hard work, and resiliency have enabled us to meet the challenges of judicial review and to succeed in "putting veterans first."

## PART III

### FY 1996 STATISTICAL DATA

During FY 1996 BVA produced a total of 33,944 decisions, the most decisions issued in any single fiscal year since FY 1991. This represents a 20.4 percent increase over FY 1995, when 28,195 decisions were issued, and a 54.0 percent increase over FY 1994, when 22,045 appellate decisions were produced. The increase is primarily a result of (1) the 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 and (2) the Board's organizational realignment that took effect at the beginning of FY 1996. 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	28,738	6,027	12,834	8,314	1,563
Disability pension	1,080	110	523	412	32
Medical	417	51	134	186	46
Insurance	34	4	1	28	
Death	1,877	171	649	837	220
Training	290	16	99	164	11
Waivers	744	177	341	210	16
Loan guaranty	264	49	119	92	4
Reconsiderations	76	43	20	11	2
Character of discharge	59	12	18	27	2
Miscellaneous	365	94	80	163	28
<b>Totals</b>	<b>33,944</b>	<b>6,754</b>	<b>14,821</b>	<b>10,444</b>	<b>1,925</b>

<u>Appellate Processing Categories</u>	FY 1995 (days)	FY 1996 (days)
Notice of Disagreement to Statement of the Case Issuance	65	76
Statement of the Case Issuance to Substantive Appeal Receipt	62	66
Substantive Appeal Receipt to Certification of Appeal to BVA	252	615
Receipt of Certified Appeal to Issuance of BVA Decision	507	261
Average Remand Time Factor	92	128
<b>Total Processing Time All Categories</b>	<b>978</b>	<b>1,146</b>

**BOARD OF VETERANS' APPEALS  
OVERALL REPRESENTATION  
FY 1996**

Representation	Total Decisions		Allowed		Remanded		Denied		Other	
	No.	%	No.	%	No.	%	No.	%	No.	%
The American Legion	4,592	13.5%	840	18.3%	2,060	44.9%	1,368	29.8%	324	7.1%
AMVETS	1,550	4.6%	329	21.2%	725	46.8%	397	25.6%	99	6.4%
American Red Cross	192	0.6%	39	20.3%	77	40.1%	64	33.3%	12	6.3%
Disabled American Veterans	12,099	35.6%	2,673	22.1%	5,314	43.9%	3,535	29.2%	577	4.8%
Jewish War Veterans	49	0.1%	13	26.5%	21	42.9%	13	26.5%	2	4.1%
Military Order of the Purple Heart	542	1.6%	106	19.6%	269	49.6%	145	26.8%	22	4.1%
Paralyzed Veterans of America	1,281	3.8%	322	25.1%	566	44.2%	324	25.3%	69	5.4%
Veterans of Foreign Wars	3,973	11.7%	775	19.5%	1,705	42.9%	1,279	32.2%	214	5.4%
Vietnam Veterans of America	102	0.3%	33	32.4%	49	48.0%	13	12.7%	7	6.9%
State Service Organizations	3,919	11.5%	717	18.3%	1,703	43.5%	1,252	31.9%	247	6.3%
Attorneys	1,160	3.4%	239	20.6%	548	47.2%	320	27.6%	53	4.6%
Agents	34	0.1%	7	20.6%	15	44.1%	10	29.4%	2	5.9%
Other Representation	418	1.2%	93	22.2%	181	43.3%	123	29.4%	21	5.0%
No Representation	4,033	11.9%	568	14.1%	1,588	39.4%	1,601	39.7%	276	6.8%
<b>TOTALS</b>	<b>33,944</b>	<b>100.0%</b>	<b>6,754</b>	<b>19.9%</b>	<b>14,821</b>	<b>43.7%</b>	<b>10,444</b>	<b>30.8%</b>	<b>1,925</b>	<b>5.7%</b>



## BVA Decisions

	Decisions	Allowed	Remanded	Denied	Other
	26,400	16.9%	44.0%	36.9%	2.2%
	22,045	17.5%	48.3%	28.1%	6.1%
	28,195	19.5%	47.5%	22.7%	10.3%
1996	33,944	19.9%	43.7%	30.8%	5.7%

## BVA Operating Statistics

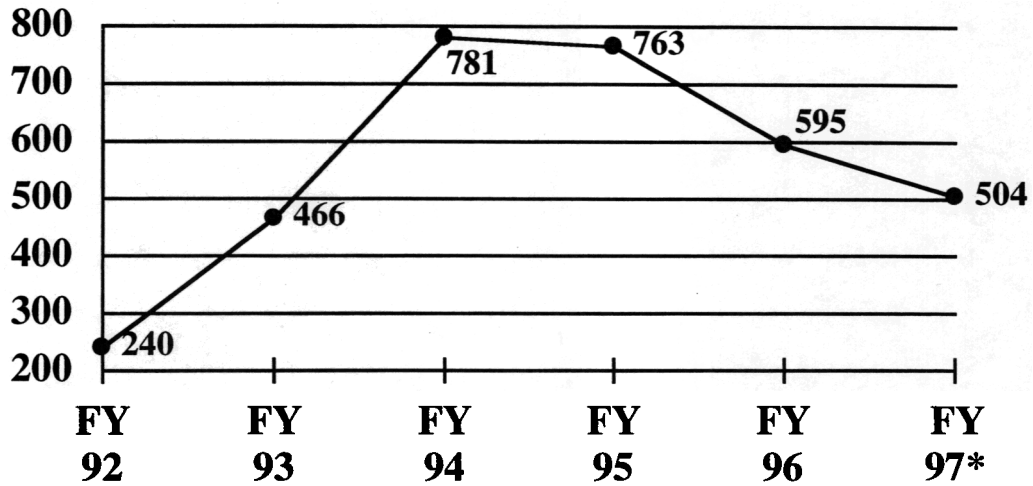
	<u>FY 1994</u>	<u>FY 1995</u>	<u>FY 1996</u>	<u>Estimated FY 1997</u>
Decisions	22,045	28,195	33,944	41,200
Appeals Received	35,465	39,990	35,121	38,000
Appeals Pending <sup>1</sup>	47,148	58,943	60,120	56,920
Response Time	781	763	595	504
FTE	442	433	468	527
Decisions per FTE	49.9	65.1	72.5 <sup>3</sup>	78.2
Cost per Decision	\$1,127	\$1,030	\$942	\$915
Hearings - VACO	689 <sup>2</sup>	154 <sup>2</sup>	431	1300
Hearings - Field	1,996 <sup>2</sup>	553 <sup>2</sup>	2,445	3500
Hearings - Video	0	41	48	800

<sup>1</sup> Pending figures include appeals pending in the field but certified as ready for Board review.

<sup>2</sup> 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.

<sup>3</sup> Not adjusted to reflect 21 workdays lost during Government shutdown and snow closures. If adjusted, decisions per FTE would have been approximately 80.

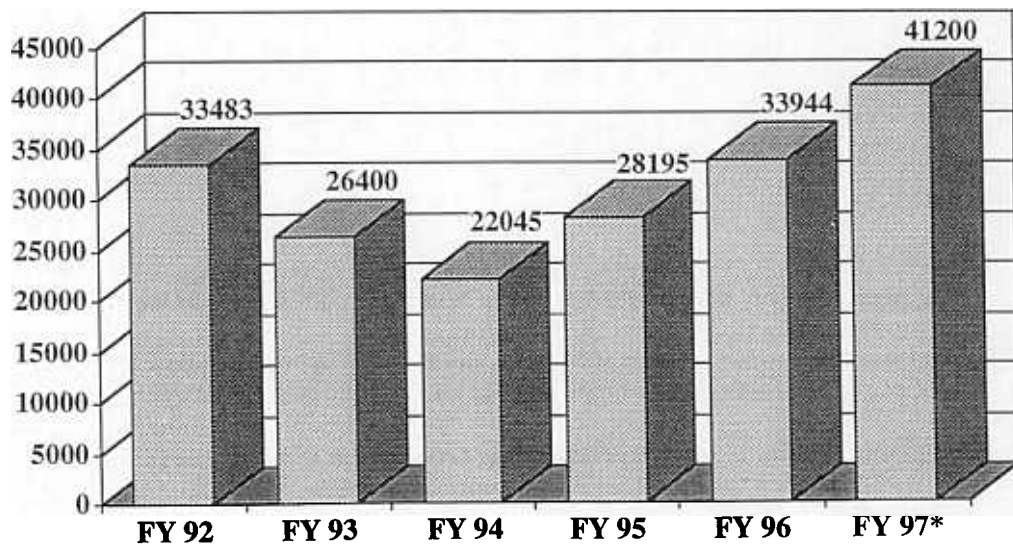
# BVA Response Time, FY 92 - 96



\* Estimated

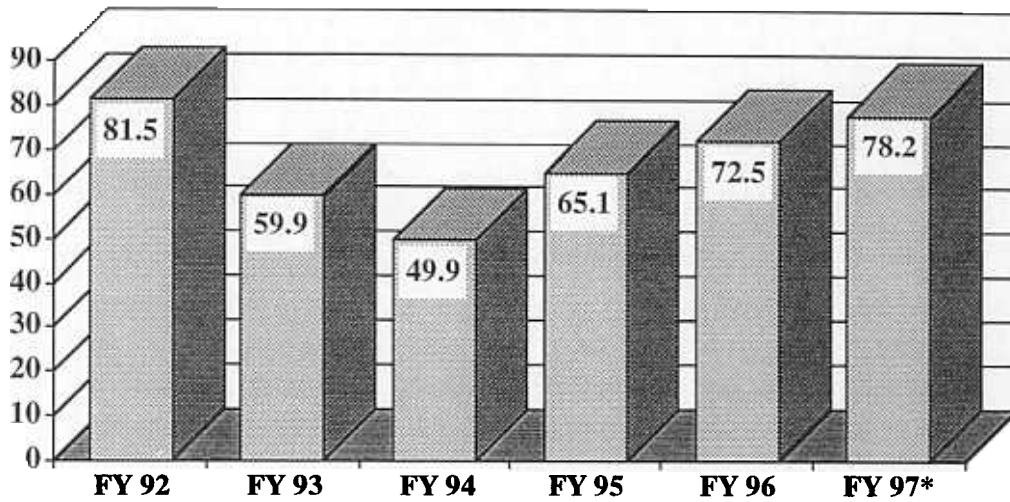
Response time is defined as the number of days it would take BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one-year time frame.

# Number of Decisions, FY 92 - 96



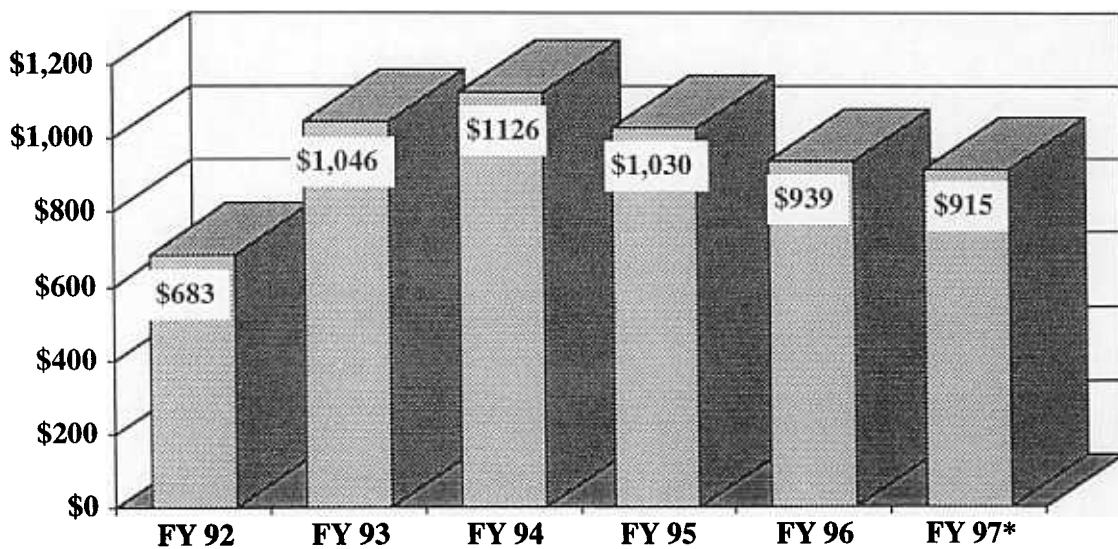
\* Estimated

# Decisions Per FTE, FY 92 - 96



\* Estimated

# Cost Per Decision, FY 92 - 96



\* Estimated

## PART IV

### 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 Disagreement received in the field are provided to BVA by the Veterans Benefits 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 94</u>	<u>FY 95</u>	<u>FY 96</u>
October	4,673	5,073	6,626
November	5,098	5,461	5,001
December	5,167	4,766	3,904
January	5,065	5,158	5,979
February	4,754	4,969	6,310
March	6,113	6,419	7,185
April	4,670	5,639	6,819
May	5,229	5,182	7,164
June	4,703	5,954	6,375
July	4,484	5,382	6,306
August	6,291	6,329	6,864
September	<u>5,566</u>	<u>5,772</u>	<u>6,224</u>
<b>FY Total</b>	<b>61,813</b>	<b>66,104</b>	<b>74,757</b>

Prior to the procedural change described above, 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 described above. 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 1996, 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 1996 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 1996: 35,121

Number of cases pending before BVA at the start of FY 1996: 58,943

Number of cases pending before BVA at the end of FY 1996: 60,120

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 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>Received at BVA</u>
October	2,457	2,301	3,030	3,454
November	3,114	3,302	2,269	2,464
December	3,010	2,446	288*	1,511
January	2,393	2,861	3,445	3,427
February	1,960	3,445	3,928	2,666
March	5,629	4,605	2,984	3,499
April	3,365	3,027	3,155	3,436
May	1,933	3,958	3,238	4,027
June	2,305	3,660	2,688	3,019
July	3,143	3,523	3,385	3,186
August	3,125	3,229	3,671	3,201
September	<u>3,031</u>	<u>3,633</u>	<u>3,040</u>	<u>3,415</u>
<b>FY Total</b>	<b>35,465</b>	<b>39,990</b>	<b>35,121</b>	<b>37,305</b>

\* Reflects impact of Government shutdown

(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	76 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	66 days
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	615 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	261 days
Average Remand Time Factor	Field Station	128 days
Number of members of the Board at the end of FY 1996:		55 members
Number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 1996:		434 employees
TOTAL:		467.8 FTE
(F) Number of acting members of the Board during FY 1996:		31
Number of cases in which such members participated:		2,600 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):

Estimated number of cases that will be appealed to the BVA:  
 Fiscal year 1997: 38,000  
 Fiscal year 1998: 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 1997 is computed as follows:

Estimated 41,200 Decisions in FY 1997 ÷ 365 Days = 112.88 Decisions per Day

56,920 Appeals Pending before the BVA (end of FY 1997) ÷ 112.88 Decisions  
per Day = 504 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 FY1998 budget submission, is 504 days for FY 1997. These response time projections are contingent upon BVA's original appeal receipts estimates for FY 1997 and FY 1998 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.

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 1996 was 43.7 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 Board will continue to stay the adjudication of certain classes of cases pending resolution of appeals from decisions of the Court of Veterans Appeals; (3) the Board will continue to remand a large proportion of cases to the VA regional offices for further development; and, (4) 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 the Board's organizational realignment had a tremendous effect on BVA decision productivity and average response time in FY 1996. While it is anticipated that additional gains will be made in FY 1997, factors such as those discussed in the preceding paragraph could lessen projected improvements.