



# REPORT OF THE CHAIRMAN



**BOARD OF VETERANS' APPEALS  
FISCAL YEAR 2005**



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

January 31, 2006

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

Dear Mr. Secretary:

I am pleased to present the Fiscal Year 2005 Report of the Chairman, Board of Veterans' Appeals (Board or BVA), for inclusion in your submission to Congress. Information on the activities of the Board during Fiscal Year 2005 and the projected activities of the Board for Fiscal Years 2006 and 2007, as required by 38 U.S.C. § 7101(d)(1), are provided in Parts I and II.

Fiscal Year 2005 saw the Board increase productivity, despite decreased resources. The Board conducted a record number of personal hearings and also focused on training and succession planning.

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

I believe the enclosed report will provide you, the Congress, and the veterans we serve with an accurate and meaningful perspective on the Board's activities during Fiscal Year 2005.

Very respectfully,

A handwritten signature in black ink, appearing to read "James P. Terry".

James P. Terry  
Chairman

Enclosure

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## INTRODUCTION

The law requires that the Chairman of the Board of Veterans' Appeals (Board or BVA) report the activities of the Board at the conclusion of each fiscal year. This report includes two parts. Part I provides a discussion of BVA activities during Fiscal Year 2005 and projected activities for Fiscal Years 2006 and 2007. Part II provides statistical information related to our activities during Fiscal Year 2005 and projected activities for Fiscal Years 2006 and 2007.

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

The Board's mission, as set forth in 38 U.S.C. § 7101(a), is "to conduct hearings and dispose of appeals properly before the Board in a timely manner." The Board's goal is to issue quality decisions in compliance with the requirements of the law, including the precedential decisions of the United States Court of Appeals for Veterans Claims (CAVC) and other federal courts.



Board Members/Veterans Law Judges

## PART I

# ACTIVITIES OF THE BOARD OF VETERANS' APPEALS FISCAL YEAR 2005

In Fiscal Year 2005, the Board focused on conducting hearings and issuing decisions in a timely manner for our Nation's veterans and their families. With a business-plan strength of 56 Veterans Law Judges (VLJs), the Board conducted 8,576 hearings and issued 34,175 decisions with a cycle time of 104 days. Cycle time measures the time from the date an appeal is physically received at the Board until a decision is dispatched, excluding the time the case is with a service organization representative.

In Fiscal Year 2005, the Board continued to implement its succession plan. Five new VLJs were appointed to the Board through a competitive selection process to replace departing VLJs. Four of the new VLJs came from the Board's staff of eight Senior Counsel, which in turn resulted in the competitive selection of four new Senior Counsel.

On July 14, 2005, the United States Senate Committee on Veterans Affairs held a confirmation hearing for James P. Terry, who was nominated by the President of the United States to a six-year term appointment as Chairman of the Board. On July 31, 2005, the United States Senate confirmed the nomination. The Board enthusiastically welcomed Chairman Terry and immediately pledged its support for his efforts to improve decision output and quality.



The Honorable R. James Nicholson swears in James P. Terry as Chairman

## CHALLENGES

Despite efforts to issue more decisions, the Board continues to receive more appeals than it is deciding. Case receipts for Fiscal Year 2005 were 41,816, and the number of cases pending before the Board at the end of Fiscal Year 2005 was 37,539. The Board's most significant challenge for the future is eliminating the growing backlog with available resources.

As the backlog grew during Fiscal Year 2005, the Board aggressively focused on methods to increase decision output. These methods included efforts to eliminate avoidable remands, voluntary attorney overtime, production incentives for attorneys, and training VLJs and attorneys to write clear, concise, coherent, and correct decisions. However, case receipts continued to eclipse output. The number of appeals received in Fiscal Year 2005 (41,816) was greater than those received in Fiscal Year 2004 (39,956). In Fiscal Year 2006, the Board projects that case receipts will increase further, to approximately 43,000 appeals.

In addition to the increase in case receipts, the 8,576 hearings conducted by the Board in Fiscal Year 2005 is a dramatic increase from the 7,259 conducted in Fiscal Year 2004, and the 6,046 conducted in Fiscal Year 2003. The Board completed this record-setting number of hearings without an increase in the number of VLJs. If the number of hearings conducted continues to increase by approximately 20% each fiscal year, the Board will face a significant challenge to issue decisions and conduct hearings in a timely manner.

## THE BOARD'S PRIMARY OBJECTIVES FOR FISCAL YEARS 2006 AND 2007

### 1. Eliminate Avoidable Remands

Veterans want timely and correct decisions on claims for benefits. The record must contain all evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development is necessary. However, remands from the Board to the Agency of Original Jurisdiction (AOJ) significantly increase the time it takes for a veteran to receive a final decision. A remand adds about a year to the appellate process. Furthermore, about 75% of cases remanded by the Board are subsequently returned to the Board, which increases the Board's workload and degrades timeliness. Eliminating avoidable remands is a goal that will provide better service to veterans and their families and, ultimately, help diminish the growing backlog.

The Board and the Veterans Benefits Administration (VBA) began developing an action plan to reduce the number of avoidable Board remands beginning in late Fiscal Year 2004. The following initiatives were part of the action plan:

- Data Collection:** First, the Board and VBA agreed upon a reliable process for capturing information prospectively on reasons for remand, and conducted a retrospective analysis of a sufficiently representative sample of Board remands to catalog the various reasons for remand.
- Training:** Another initiative encompassed training both regional office (RO) personnel and the Board's judges and staff attorneys on topics such as obtaining Social Security Administration records, the Veterans Claims Assistance Act of 2000 (VCAA) notice requirements, and medical examinations and opinions. BVA and VBA held joint training sessions, including a nationally broadcast video, on avoidable remands and evidence

development. The Board also held training sessions for its VLJs and staff counsel on a variety of medical and legal subjects, aspects of remand avoidance, and on how to draft clear and concise remand orders. The Board will continue to work with VBA and the Veterans Health Administration (VHA) on the Compensation and Pension Examination Project (CPEP), to improve the quality of VA compensation examinations so that remands to obtain examinations can be reduced.

**--Concise Explanations in Remands:** The Board will provide a concise explanation of the reasons for remand in individual decisions in order to reduce ambiguity and to improve field processing. Better understanding of and compliance with remand directives will decrease the risk of a second remand in a particular case and may help avoid future remands because of the same deficiency.

In addition to the joint initiative with VBA, the Board explored other courses of action to eliminate avoidable remands.

**--Prejudicial Error Analysis:** One reason for the high remand rate in Fiscal Year 2004 was the VCAA, which among other things, heightened VA's duty to assist and duty to notify claimants of the type of evidence needed to substantiate their claims.

On June 24, 2004, the CAVC issued *Pelegriani v. Principi*, 18 Vet. App. 112 (2004). That decision held that a VCAA notice letter must be provided to a claimant prior to an initial adverse adjudication. The decision further held that under the governing laws and regulations VA is required to notify a claimant (1) of the information and evidence not of record that is necessary to substantiate the claim, (2) which portion of that information and evidence VA will seek to obtain, (3) which portion of it the claimant must provide, and (4) that the claimant should submit any evidence in his or her possession that pertains to the claim.

Following *Pelegriani*, the Board attempted to avoid remands, when possible, by conducting an analysis to determine if any notice deficiency provided to the claimant was prejudicial. If prejudice was not found, most Board judges issued final decisions. If the deficiency was prejudicial, judges were required to remand the case to the RO to cure the defect.

**--Waiver of AOJ Review:** The 38.6% remand rate in Fiscal Year 2005 is expected to trend downward due, in part, to implementation of a regulatory amendment that allows the Board to request a waiver of AOJ review of new evidence. Before February 22, 2002, if the Board accepted any evidence not previously considered by the AOJ, the Board was required to refer such evidence to the AOJ for review and preparation of a Supplemental Statement of the Case, unless the appellant or representative waived, in writing, initial AOJ consideration of the evidence, or the Board could fully grant the benefit(s) sought on appeal. 38 C.F.R. § 20.1304(c)(2001).

Effective February 22, 2002, amendments were made to the Board's Appeals Regulations and Rules of Practice. These amendments allowed the Board to consider additional evidence without referring the evidence to the AOJ for initial consideration and without obtaining the appellant's waiver. However, in *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003), the United States Court of Appeals for the Federal Circuit invalidated that portion of the Board's regulations that allowed the Board to consider additional evidence without remanding the case to the AOJ for initial consideration and without obtaining the appellant's waiver.

Following this decision, the Board amended its regulations to add a substantially similar version of the prior 38 C.F.R. § 20.1304(c). *See* 69 Fed. Reg. 53,807 (Sep. 3, 2004). By soliciting waivers in those cases where an appellant or representative submits evidence without a waiver, the Board may avoid unnecessary remands.

As a result of the above efforts, the Board's remand rate decreased from 56.8% in Fiscal Year 2004 to 38.6% for Fiscal Year 2005. We expect further improvement once the Board begins reaching cases on its docket that have been subject to VBA's efforts to reduce avoidable remands.

## 2. Eliminate the Backlog

The Board will focus on eliminating the backlog, within existing resources, by concentrating on the following:

- Eliminating avoidable remands:*** The ongoing reduction in remands in Fiscal Year 2005 and expected reduction in Fiscal Year 2006 will help reduce backlog growth. Fewer remands mean fewer appeals pending before the Board and, thus, a reduced backlog. At the end of Fiscal Year 2004, there were 31,645 Board remands pending at VBA. By the end of Fiscal Year 2005, that number had decreased to 25,656. Additional efforts to eliminate avoidable remands should reduce the number of Board remands in the field even further.
- Strengthening BVA's intra-agency partnerships:*** Joint training efforts with VBA, the Office of the General Counsel (OGC), and VHA will improve case development, decision quality and reduce remands. In addition, the Board meets with representatives from VHA, VBA and OGC on a monthly basis to discuss areas of mutual concern.
- Writing clear, concise, coherent, and correct decisions:*** The Board is training VLJs and attorneys to write clear, concise, coherent, and correct decisions. In the long term, it is expected that this initiative will enable VLJs and attorneys to produce more and better Board decisions.
- Utilizing employee incentive, mentoring and training programs:*** A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality.
- Making use of overtime:*** The Board will use overtime within existing resources to enhance output.
- Increasing our use of paralegals:*** The Board will use paralegals for non-decisional support activities to free up the legal staff to decide appeals. For example, in Fiscal Year 2006, the Board will transfer the responsibility of drafting a certified list of the relevant evidence considered by the Board in cases appealed to the CAVC from the staff counsel to paralegals. In Fiscal Year 2005, the Board provided 2,744 certified lists to VA's OGC. By transferring this responsibility to paralegals, the number of draft decisions produced by counsel will increase in Fiscal Year 2006.



*--Providing improved on-line legal research tools and analytical frameworks:*  
To aid timely and correct decision production.

*--VLJs will draft decisions:* In addition to reviewing decisions drafted by staff counsel, as time permits.

These measures will work to reduce the backlog and to shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision.

### 3. Improve Quality

The Board's 89% accuracy rate in Fiscal Year 2005 trailed the 93% goal. The accuracy rate takes into account those substantive deficiencies that would be expected to result in a reversal or a remand by the CAVC. Deficiencies in quality that are identified during the Board's quality review process are addressed through follow-up training for the VLJs and attorneys.

The 89% accuracy rate for Fiscal Year 2005 reflects the complexity involved in drafting more final decisions, which address the merits of a claim, as opposed to remands for further development. In Fiscal Year 2005, 61.4% of the Board's decisions were final decisions as compared to 43.2% in Fiscal Year 2004. The Board expects the accuracy rate to improve in Fiscal Year 2006 by way of continued training.

### 4. Succession Planning

In Fiscal Year 2005, five new Veterans Law Judges were appointed to the Board, and four new Senior Counsel were selected through a competitive selection process. The new VLJs and Senior Counsel were selected from within the Board, and four of the new VLJs were promoted from the Senior Counsel ranks.

The Board's business plan contemplates that Senior Counsel positions function as training grounds for future VLJs. Moreover, the creation, in Fiscal Year 2003, of two Senior Counsel positions on every team provides the necessary flexibility to maintain productivity despite short-term personnel shortages. Senior Counsel perform as Acting Veterans Law Judges, Team Leaders, and attorneys drafting decisions. In addition, Senior Counsel mentor and evaluate newly hired attorneys and supervise more experienced attorneys in need of special attention or assistance. The creation of the Senior Counsel positions has allowed the Board's current leaders to train and mentor future leaders, and provided significant advancement opportunities for Board staff attorneys.

The Board also has a rigorous recruitment program and recruits some of the best and the brightest attorneys and administrative personnel available. The Board attracts high caliber personnel because it is an employer of choice, and the mission to serve veterans is one that is particularly attractive to those seeking a career in public service.

## FISCAL YEAR 2005 HIGHLIGHTS

On May 5, 2005, the Acting Chairman, Ron Garvin, testified before the Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans Affairs, in an oversight hearing to review the operations at the Board and VBA's Appeals Management Center.

The Acting Chairman also testified at a hearing of the Senate Committee on Veterans' Affairs on May 26, 2005. The issues centered on the current state of the VA claims adjudication and appeals process, specifically focusing on measures that VA is taking to provide timely and accurate decisions, challenges that VA faces in striving to meet that objective, and measures that could be undertaken to address those challenges.

### **ASSISTANCE TO VBA REGIONAL OFFICES**

The Board continued to help the ROs reduce their backlog of cases on appeal through the Travel Board program. For most Travel Boards, an attorney travels with a Veterans Law Judge to an RO to assist in preparing for scheduled hearings. An average of more than 40 hearings are scheduled each week. By mid-week, the cases have been briefed, and the attorneys assist the RO for the remainder of the visit.

In Fiscal Year 2005, 119 attorneys provided assistance to 57 ROs. The attorneys assisted in the preparation of 73 Statements of the Case/Supplemental Statements of the Case, drafted 15 memoranda recommending grants, and conducted training for adjudication personnel at 48 of the ROs visited. Additionally, the attorneys, on request, provided non-binding legal advice to adjudicators in 487 cases that were informally reviewed.

### **HEARING TRANSCRIPTS**

During Fiscal Year 2005, the Board entered into contracts with four private transcription groups to provide transcripts of Board hearings. Together, the Board's transcription unit and the contractors produced 8,290 transcripts, and the Board ended the fiscal year with fewer transcripts pending than its goal. The goal is a working inventory of 500 cases, which represents a one-month turnaround for transcription. In order to meet this goal in the future, the Board is exploring the use of alternative technologies, including voice recognition software, stenographers, and real-time transcription.

### **VETERANS SERVICE ORGANIZATION (VSO) FORUMS**

The Chairman invites the VSOs and attorneys who represent appellants before the Board to VSO Forums on a quarterly basis. These meetings address questions that are raised by representatives and also facilitate the exchange of ideas and information. The Board also updates the representatives on the Board's activities and addresses any other matters of interest in the open forum.

### **VOLUNTEER ACTIVITIES**

The Board serves veterans and their families in many ways. The Board's volunteer activities include:

- Educational Exhibits:** A Board attorney creates and maintains Veterans Educational Exhibit cases on five floors of the Lafayette Building.
- Collection of Comfort Items:** The Board collects items, such as toiletries and phone cards, throughout the year and delivers them quarterly to the VA Medical Center and the U.S. Armed Forces Retirement Home.

- ***Items for Homeless Veterans:*** Additional comfort items such as socks, scarves and gloves are collected in conjunction with Veterans Day and delivered to the local VA Medical Center for distribution to homeless veterans.
- ***Posters:*** An attorney with the Board distributes U.S. Department of Defense and VA POW/MIA Day and Veterans Day posters to veterans, particularly to former POWs.
- ***Toys for Tots:*** During the holiday season, the Board collects Toys for Tots for the U.S. Marine Corps Reserve.
- ***Calendars:*** The Board collects and delivers almost 2,000 calendars on an annual basis to veterans at the U.S. Armed Forces Retirement Home in Washington, D.C.
- ***Valentines for Veterans:*** In 2005, the Board collected almost 7,000 valentines from many organizations and individuals around the country and distributed them to the residents of the U.S. Armed Forces Retirement Home in Washington, D.C.
- ***Hurricane Katrina:*** In September 2005, the Board initiated a special collection of comfort items for the veterans relocated to the U.S. Armed Forces Retirement Home in Washington, D.C., as a result of Hurricane Katrina.

## ***PLANNING FOR THE FUTURE***

- ***Women's Leadership Initiative:*** The Women's Leadership Initiative provides opportunities for all Board employees, as well as employees of other VA organizations, to improve their leadership skills through training, mentoring, and networking. Events during Fiscal Year 2005 included presentations by Senior Executive Service members, workshops on interviewing and networking, and a luncheon where several distinguished guests addressed the art of leadership.
- ***Facility Move:*** In Fiscal Year 2005, the Board met regularly with representatives from the General Services Administration, VA's Office of Administration, and others to prepare for a facility move that was scheduled to take place in Fiscal Year 2007. The Board worked hard to ensure that the needs of the Board, our Veterans Service Organization partners, veterans and other appellants who visit the Board's facilities would be met. The Board's current location, the Lafayette Building at 811 Vermont Avenue, NW, was scheduled for a complete renovation starting in Fiscal Year 2007. Although recent information reveals that the building renovation and facility move will not take place as planned, the Board continues to work closely with VA's Office of Administration to consider available options.

## BOARD MEMBERS

**James P. Terry, Chairman**

**Ron H. Garvin, Vice Chairman**

**Steven L. Keller, Senior Deputy Vice Chairman**

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

Steven L. Cohn, Chief Member  
Robert E. Sullivan, Chief Member

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

Mark W. Greenstreet, Chief Member  
Constance B. Tobias, Chief Member

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

David C. Spickler, Chief Member  
Lawrence M. Sullivan, Chief Member

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

Wayne M. Braeuer, Chief Member  
Holly E. Moehlmann, Chief Member

### VETERANS LAW JUDGES

Keith W. Allen	Kathleen K. Gallagher	Andrew J. Mullen
Marjorie A. Auer	Mary Gallagher	John E. Ormond
Kathy A. Banfield	Gary L. Gick	Alan S. Peevy
Barry F. Bohan	Mark F. Halsey	Renee M. Pelletier
Derek R. Brown	Mark D. Hindin	Ursula R. Powell
Anna M. Bryant	Vicky L. Jordan	Warren W. Rice
Vito A. Clementi	Michelle L. Kane	Harvey P. Roberts
Barbara B. Copeland	Susan L. Kennedy	Howard N. Schwartz
John J. Crowley	Michael E. Kilcoyne	George R. Senyk
Thomas J. Dannaher	Michael D. Lyon	Gordon H. Shufelt
Jonathan E. Day	James L. March	Deborah W. Singleton
Paula M. DiLorenzo	Jeffrey J. Martin	Charles W. Symanski
Shane A. Durkin	Cheryl L. Mason	Stephen L. Wilkins
Frank J. Flowers	Joy A. McDonald	Richard F. Williams
	Jacqueline E. Monroe	

## PART II

### STATISTICAL DATA

### FISCAL YEAR (FY) 2005 INFORMATION

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

#### 38 U.S.C. § 7101(d)(2)(A)

Number of cases physically received at the Board during FY 2005: **41,816**

Number of cases added to docket by filing appeal during FY 2005: **47,136**

#### 38 U.S.C. § 7101(d)(2)(B)

Cases pending before the Board at the start of FY 2005: **28,815\***

Cases pending before the Board at the end of FY 2005: **37,539\***

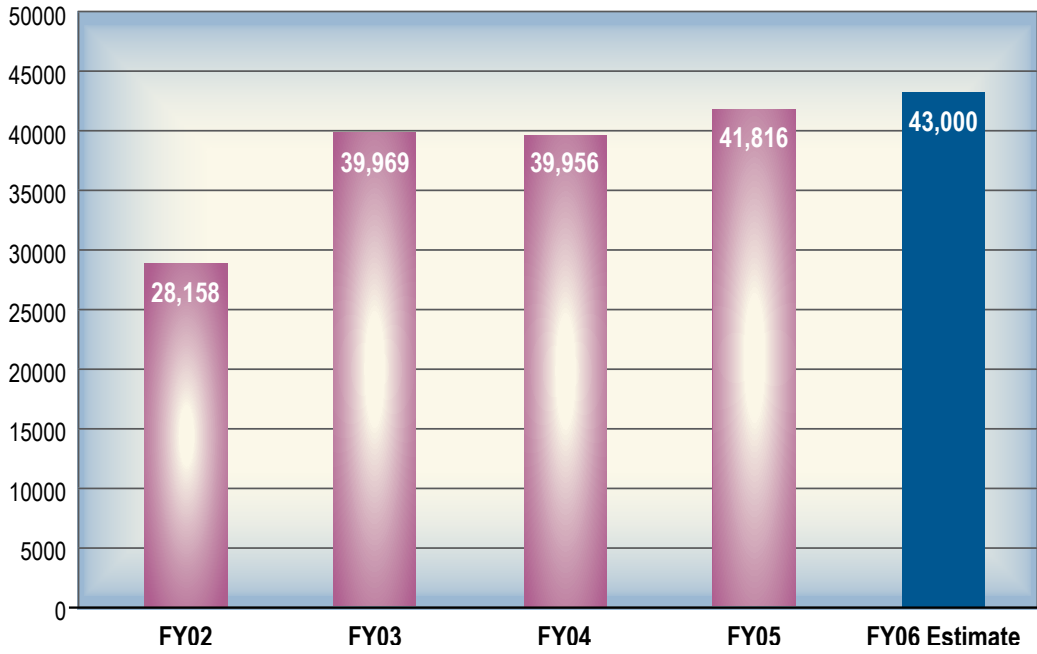
\*Includes certified appeals pending in the field awaiting hearings, as well as cases pending at BVA.

#### 38 U.S.C. § 7101(d)(2)(C)

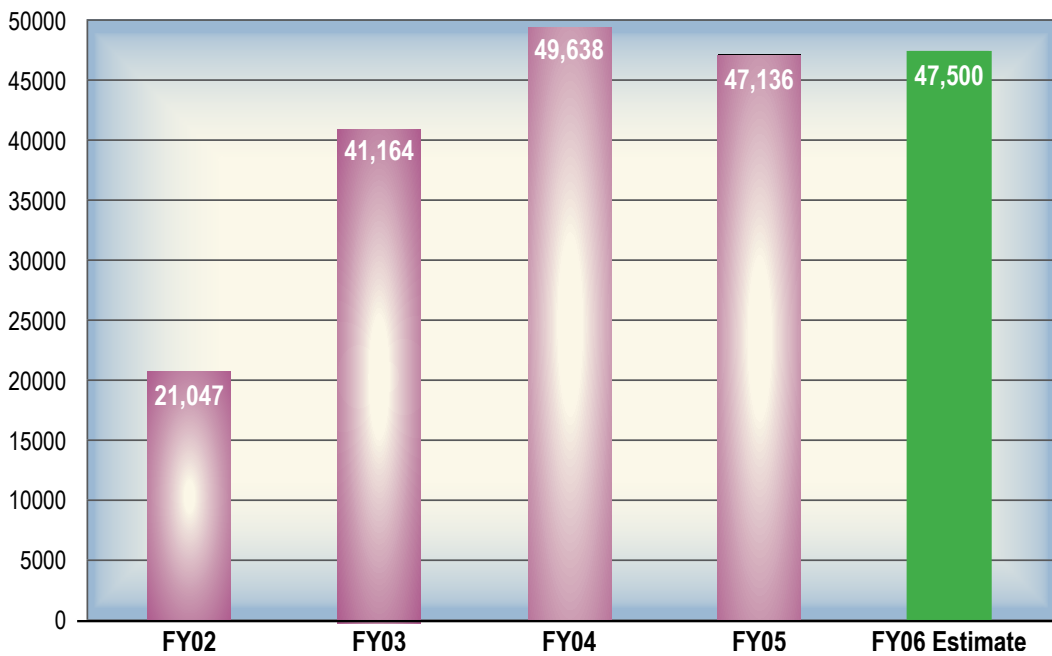
Number of cases received at BVA and new appeals filed during each of the 36 months preceding Fiscal Year 2005.

Month	Cases Received at BVA				New Appeals (VA Form 9) Filed			
	FY02	FY03	FY04	FY05	FY02	FY03	FY04	FY05
<b>October</b>	1,392	4,024	1,572	2,664	1,236	3,040	3,855	3,566
<b>November</b>	688	2,726	1,152	2,171	1,275	2,720	2,932	3,708
<b>December</b>	1,620	3,037	1,583	3,264	1,821	2,634	3,341	3,695
<b>January</b>	1,620	4,294	2,616	3,202	2,026	3,185	3,632	3,543
<b>February</b>	1,867	4,008	3,519	3,562	2,132	2,906	4,380	3,786
<b>March</b>	3,040	4,325	3,996	4,124	2,181	3,605	5,291	4,552
<b>April</b>	1,930	3,676	2,975	3,055	2,474	3,717	4,920	3,461
<b>May</b>	3,544	2,175	4,856	3,104	2,348	3,675	4,397	4,331
<b>June</b>	2,643	3,728	4,359	4,730	2,514	3,797	4,881	4,334
<b>July</b>	3,620	2,956	5,371	4,655	1,102	3,719	4,264	3,445
<b>August</b>	3,441	2,103	4,637	3,890	993	3,661	3,909	4,378
<b>September</b>	2,753	2,917	3,320	3,395	945	4,505	3,836	4,337
<b>FY Total</b>	<b>28,158</b>	<b>39,969</b>	<b>39,956</b>	<b>41,816</b>	<b>21,047</b>	<b>41,164</b>	<b>49,638</b>	<b>47,136</b>

### CASES RECEIVED AT BVA FY 02 - FY 05



### NEW APPEALS (VA FORM 9) FILED FY 02 - FY 05



**38 U.S.C. § 7101(d)(2)(D)**

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

<b>Time Interval</b>	<b>Responsible Party</b>	<b>Average Elapsed Processing Time</b>
Notice of Disagreement Receipt to Statement of the Case	Field Station	187 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	47 days
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	590 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	160 days
Average Remand Time Factor	Field Station	190 days

**38 U.S.C. § 7101(d)(2)(E)**

The number of members of the Board at the end of FY 2005: **56 members**

The number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 2005: **374 employees not including 56 members above.**

**38 U.S.C. § 7101(d)(2)(F)**

Number of acting members of the Board during FY 2005: **66**

Number of cases in which such members participated: **3,486**

**38 U.S.C. § 7101(c)(2)**

Number of acting members of the Board in terms of full-time employee equivalents: **5.3**

## PROJECTIONS FOR FISCAL YEARS 2006 AND 2007

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

### **38 U.S.C. § 7101(d)(3)(A)**

Estimated number of cases that will be appealed to BVA:

Fiscal Year 2006:	Cases received at BVA:	43,000
	Cases added to BVA Docket:	47,500
Fiscal Year 2007:	Cases received at BVA:	43,000
	Cases added to BVA Docket:	48,000

### **38 U.S.C. § 7101(d)(3)(B)**

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

### ***BACKGROUND ON BVA TIMELINESS PROJECTIONS***

The indicator used by the BVA to forecast its future timeliness of service delivery is BVA “response time” on appeals. By taking into account the Board’s most recent appeals processing rate and the number of appeals that are currently pending before the Board, BVA response time projects the average time that will be required to render decisions on that group of pending appeals. For response time computation, the term “appeals pending before the Board” includes appeals at the Board and those that have been certified for BVA review but are held in the field pending BVA Travel Board or video conference hearings.

### ***HISTORICAL METHODOLOGY***

Historically, BVA computes response time by first determining the Board’s average daily appeals processing rate for the previous year. The number of appeals pending before the Board was then divided by the average daily appeals processing rate. BVA estimated response time for Fiscal Year 2006 under this methodology would be computed as follows:

Estimated 35,000 decisions in Fiscal Year 2006 divided by 365 days equals 95.89 decisions per day.

44,456 Estimated Appeals Pending before the BVA (end of FY 2006) divided by 95.89 Decisions per day equals 464 Days Response Time on Appeals (end of FY 2006).

Based upon existing and projected levels of resources, the estimate of BVA response time under this methodology would be 464 days for Fiscal Year 2006. This response



time projection is contingent upon BVA's original appeal receipts estimates for Fiscal Year 2006 shown above.

NOTE: 464 days divided by 365 calendar days = 1.3 years or 15 months.  
or by 260 work days = 1.8 years or 21 months.

### **PROPOSED METHODOLOGY**

In an effort to create more reliable projections of workload and personnel needs, BVA will:

Determine "Decisions per Work Day" by dividing FY 2005's decisions (34,175) by 260 work days, i.e., 131.44 Decisions per Work Day.

Calculate "Total Workload" by adding the number of cases still pending at the end of FY 2005 (37,539) to the number of new cases anticipated in FY 2006 (43,000), i.e., 80,539 Total Workload.

Determine "Response Time in Months and Years" by dividing the Total Workload (80,539) by the Decisions per Work Day (131.44), i.e., 613 Work Days; then, dividing the work days (613) by 260 work days, i.e., 2.4 Years; then, multiplying the years (2.4) by 12 months, i.e., 29 months.

Between FY 2003 and FY 2006, BVA's Total Workload increased by 37.4% (from 58,627 to 80,539) while Board Members/Counsel personnel levels grew by only 13.5% (from 258 to 293). Twenty-nine months more accurately reflect the veteran's wait for BVA's appeal disposition. Based on existing personnel levels and an increase in anticipated new cases in the next decade, Response Time will continue to lengthen and the Board's backlog of cases will continue to grow.

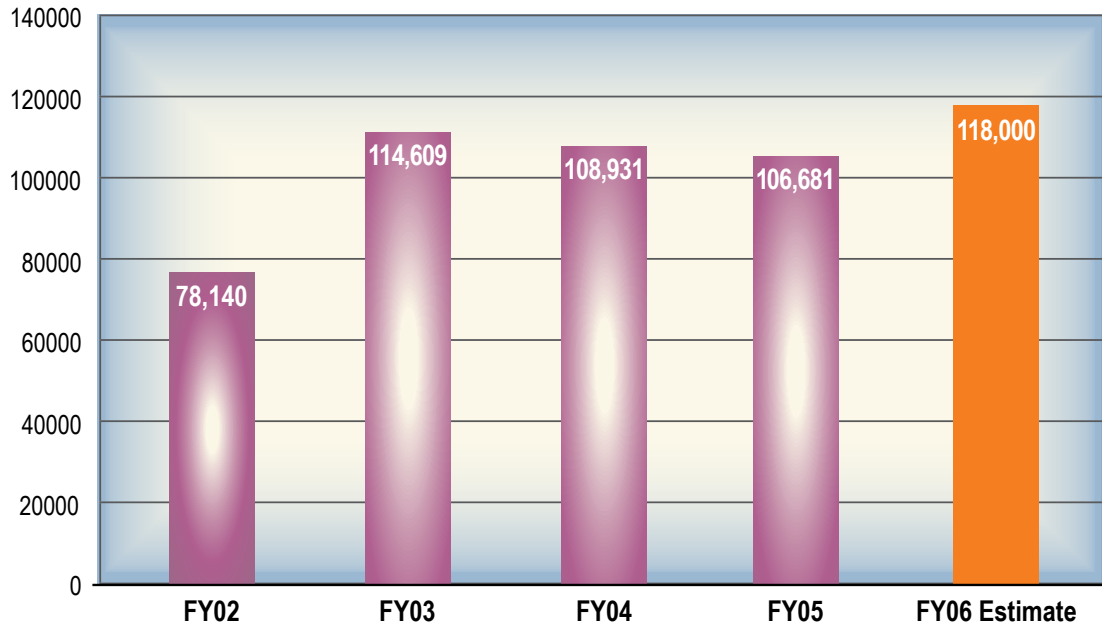
## ADDITIONAL INFORMATION

### POTENTIAL BVA WORKLOAD

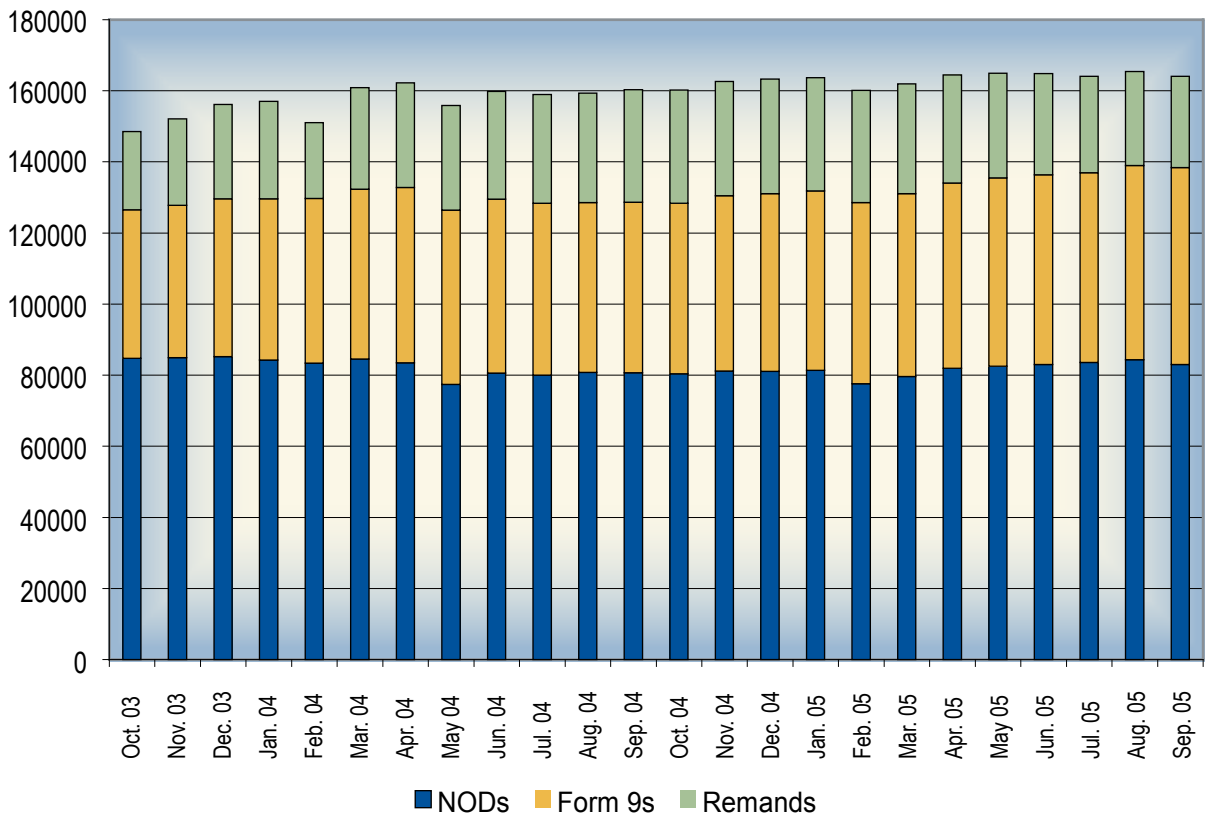
The following graph shows the number of new notices of disagreement received by the regional offices. This information is retrieved directly from the information contained in the Veterans Appeals Control and Locator System (VACOLS) at the end of the fiscal year. Up to 38.9% of the cases over the past four years in which a notice of disagreement is filed are resolved at the regional offices and never become appeals.

Number of New Notices of Disagreement Received in the Field				
Month	FY02	FY03	FY04	FY05
October	4,768	9,936	9,774	8,949
November	4,468	8,118	8,621	8,293
December	4,534	7,957	6,595	8,016
January	5,564	9,670	7,717	9,048
February	5,629	9,034	8,718	9,053
March	6,707	10,676	11,698	10,265
April	7,321	10,419	9,978	9,208
May	7,683	9,800	8,574	9,390
June	7,197	9,753	9,642	9,256
July	8,162	10,084	9,005	8,428
August	8,556	9,247	9,797	9,307
September	7,551	9,915	8,812	7,468
<b>FY Total</b>	<b>78,140</b>	<b>114,609</b>	<b>108,931</b>	<b>106,681</b>

**NOTICES OF DISAGREEMENT RECEIVED FY 02 - 05**



**POTENTIAL BVA WORKLOAD IN VBA**



**BVA DECISIONS**

During Fiscal Year 2005, BVA issued 34,175 decisions. Although the total number of decisions was lower than Fiscal Year 2004, the number of substantive cases decided in Fiscal Year 2005 was significantly higher. One reason for the higher output of decisions in Fiscal Year 2004 was the "Termination of Board Development" as reported in the Report of the Chairman Fiscal Year 2003. On May 1, 2003, the United States Court of Appeals for the Federal Circuit (Federal Circuit) issued *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003). In this decision, the Federal Circuit held that the Board could not (except in certain statutorily authorized exceptions) decide appeals on those cases in which it had developed evidence. The impact of this decision on the Board was substantial. The Board ceased directing development and resumed issuing remand decisions in those cases where development had been completed. In June 2003, the Board began remanding the 9,000 appeals that were in some stage of development by the Board, but the benefit sought could not be fully granted. That remand process was completed during Fiscal Year 2004.

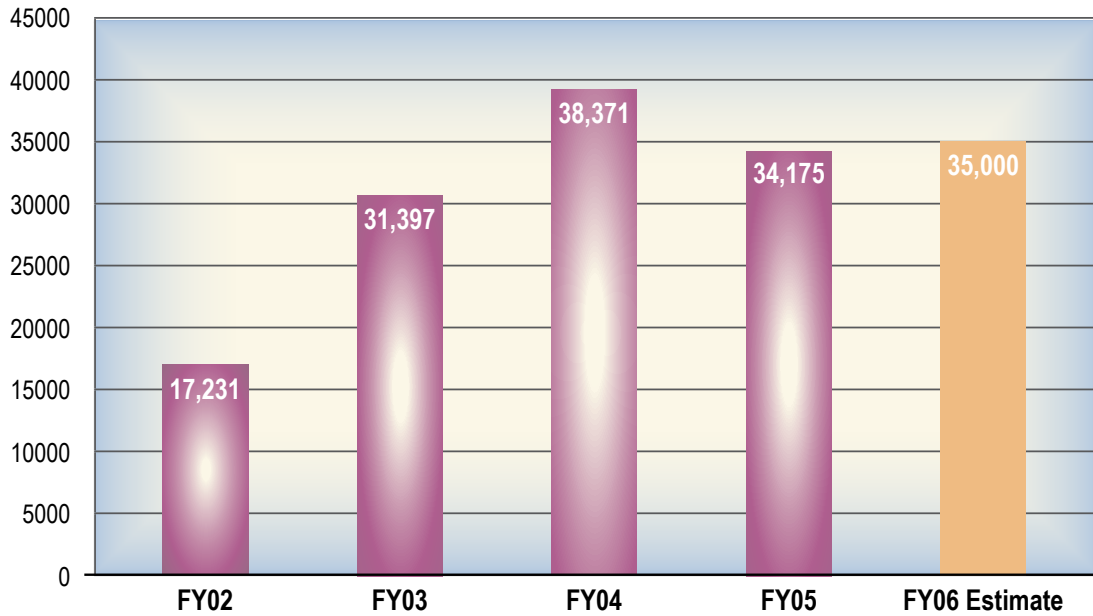
<b>Board of Veterans' Appeals BVA Dispositions by VA Program FY 2005</b>										
<b>Appeal Program</b>	<b>Allowed</b>		<b>Remanded</b>		<b>Denied</b>		<b>Other</b>		<b>Total</b>	
	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>
<b>Burial Benefits</b>	1	2.1%	11	23.4%	33	70.2%	2	4.3%	47	0.1%
<b>Compensation</b>	6,859	21.3%	12,475	38.7%	12,102	37.6%	771	2.4%	32,207	94.2%
<b>Education</b>	14	6.0%	75	32.3%	140	60.3%	3	1.3%	232	0.7%
<b>Insurance</b>	0	0.0%	7	38.9%	10	55.6%	1	5.6%	18	0.1%
<b>Loan Guaranty</b>	1	5.9%	6	35.3%	7	41.2%	3	17.6%	17	0.0%
<b>Medical</b>	44	15.2%	121	41.9%	109	37.7%	15	5.2%	289	0.8%
<b>Pension</b>	68	11.4%	169	28.4%	336	56.4%	23	3.9%	596	1.7%
<b>VR &amp; C</b>	2	3.7%	17	31.5%	30	55.6%	5	9.3%	54	0.2%
<b>Other Programs</b>	6	18.2%	11	33.3%	16	48.5%	0	0.0%	33	0.1%
<b>BVA Original Jurisdiction</b>	8	7.8%	3	2.9%	58	56.3%	34	33.0%	103	0.3%
<b>Multiple Program Areas</b>	93	16.1%	284	49.1%	191	33.0%	11	1.9%	579	1.7%
<b>Grand Total</b>	<b>7,096</b>	<b>20.8%</b>	<b>13,179</b>	<b>38.6%</b>	<b>13,032</b>	<b>38.1%</b>	<b>868</b>	<b>2.5%</b>	<b>34,175</b>	<b>100.0%</b>

<b>Board of Veterans' Appeals BVA Dispositions by Representation FY 2005</b>										
<b>Representation</b>	<b>Allowed</b>		<b>Remanded</b>		<b>Denied</b>		<b>Other</b>		<b>Total</b>	
	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>	<b>No.</b>	<b>Percent</b>
<b>American Legion</b>	1,336	21.8%	2,438	39.8%	2,207	36.1%	138	2.3%	6,119	17.9%
<b>AMVETS</b>	68	21.3%	114	35.7%	128	40.1%	9	2.8%	319	0.9%
<b>American Red Cross</b>	14	22.6%	22	35.5%	26	41.9%	0	0.0%	62	0.2%
<b>Disabled American Veterans</b>	2,457	22.0%	4,382	39.2%	4,046	36.2%	283	2.5%	11,168	32.7%
<b>Military Order of the Purple Heart</b>	102	22.7%	169	37.6%	174	38.8%	4	0.9%	449	1.3%
<b>Paralyzed Veterans of America</b>	85	24.1%	150	42.6%	99	28.1%	18	5.1%	352	1.0%
<b>Veterans of Foreign Wars</b>	618	20.6%	1,149	38.2%	1,134	37.7%	103	3.4%	3,004	8.8%
<b>Vietnam Veterans of America</b>	134	23.6%	261	45.9%	153	26.9%	21	3.7%	569	1.7%
<b>State Service Organizations</b>	1,038	19.7%	2,016	38.3%	2,093	39.8%	113	2.1%	5,260	15.4%
<b>Attorneys</b>	548	21.3%	1,036	40.3%	902	35.1%	84	3.3%	2,570	7.5%
<b>Agents</b>	9	18.4%	20	40.8%	19	38.8%	1	2.0%	49	0.1%
<b>Other Representation</b>	106	19.6%	212	39.2%	201	37.2%	22	4.1%	541	1.6%
<b>No Representation</b>	581	15.6%	1,210	32.6%	1,850	49.8%	72	1.9%	3,713	10.9%
<b>Grand Total</b>	<b>7,096</b>	<b>20.8%</b>	<b>13,179</b>	<b>38.6%</b>	<b>13,032</b>	<b>38.1%</b>	<b>868</b>	<b>2.5%</b>	<b>34,175</b>	<b>100.0%</b>

<b>BVA Decisions</b>					
<b>Fiscal Year</b>	<b>Decisions</b>	<b>Allowed</b>	<b>Remanded</b>	<b>Denied</b>	<b>Other</b>
2002	17,231	27.7%	19.3%	49.9%	3.1%
2003	31,397	22.1%	42.6%	32.6%	2.7%
2004	38,371	17.1%	56.8%*	24.2%	1.9%
2005	34,175	20.8%	38.6%	38.1%	2.5%

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

### BVA DECISIONS FY 02 - FY 05



### BVA Operating Statistics

	FY02	FY03	FY04	FY05
<b>Decisions</b>	17,231	31,397	38,371	34,175
<b>Case Receipts*</b>				
Added to Docket	21,047	41,164	49,638	47,136
Received at BVA	28,158	39,969	39,956	41,816
<b>Cases Pending**</b>	18,658	27,230	28,815	37,539
<b>Hearings - VACO</b>	470	650	805	738
<b>Video</b>	1,475	1,689	2,108	2,618
<b>Field</b>	2,556	3,707	4,346	5,220
<b>Decision per FTE</b>	38.4	69.9	87.8	79.1
<b>BVA FTE</b>	448	451	440	433
<b>BVA Cycle Time</b>	86	135	98	104
<b>Cost per Case</b>	\$2,702	\$1,493	\$1,302	\$1,453

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

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



**BOARD OF VETERANS' APPEALS**  
**OFFICE OF THE CHAIRMAN**



**DEPARTMENT OF VETERANS AFFAIRS  
BOARD OF VETERANS' APPEALS**

**FISCAL YEAR 2005**