



DEPARTMENT OF VETERANS AFFAIRS  
Chairman, Board of Veterans' Appeals  
Washington DC 20420  
December 30, 1998

The Honorable Togo West  
The Secretary of Veterans Affairs  
Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, DC 20420

Dear Mr. Secretary:

I respectfully present the fiscal year 1998 Report of the Chairman, Board of Veterans' Appeals, for inclusion in your fiscal year 2000 budget submission to Congress. Parts I and II of this report describe the Board's activities during fiscal year 1998 and projected activities for fiscal year 1999, as required by 38 U.S.C. § 7101(d)(1). Part III contains the information required by 38 U.S.C. § 7101(d)(2) and (3).

As this report demonstrates, the Board sustained the productivity and efficiency gains it has made in recent years and significantly improved its decision-making timeliness during fiscal year 1998. I am confident that the strengthened cooperation between the Board, the Veterans Health Administration, and the Veterans Benefits Administration that was demonstrated during fiscal year 1998, together with the Board's establishment of a more exacting quality review process and other initiatives discussed in this report, will result in further improvements in fiscal year 1999.

Very respectfully,

A handwritten signature in cursive script that reads "E. D. Clark".

E. D. Clark

Enclosure

## TABLE OF CONTENTS

### PART I. THE BOARD OF VETERANS' APPEALS

HISTORICAL OVERVIEW .....	1
SINCE JUDICIAL REVIEW .....	3
HISTORICAL ORGANIZATION OF THE BOARD.....	8
CURRENT ORGANIZATION OF THE BOARD.....	9
ORGANIZATIONAL DIAGRAM.....	10
ADMINISTRATIVE ACTIVITIES.....	13
ACCESS AND OUTREACH.....	18
LEGISLATION.....	18
MEMBERS OF THE BOARD OF VETERANS' APPEALS.....	20
SELECTION OF BOARD MEMBERS.....	21
MEDICAL ISSUES.....	21
ATTORNEY AND AGENT FEE AGREEMENTS.....	23
REPRESENTATION BEFORE THE BOARD.....	24
LIAISON ACTIVITIES.....	24
QUALITY.....	25
PROFESSIONAL TRAINING.....	26
RESEARCH MATERIALS.....	27
EPILOGUE.....	29

### PART II. FY 1998 STATISTICAL DATA

TABLES AND GRAPHS.....	31
------------------------	----

### PART III. ADDITIONAL INFORMATION PROVIDED PURSUANT TO STATUTORY REQUIREMENTS

I. 38 U.S.C. § 7101(c)(2).....	37
II. 38 U.S.C. § 7101(d)(2).....	37
III. 38 U.S.C. § 7101(d)(3).....	40
ESTIMATES OF FUTURE TIMELINESS AND PRODUCTIVITY.....	41

## **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.

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. 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 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 a 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 and 1980s were characterized by a significant increase in the number of appeals, due in large part to appeals filed by veterans 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.

With few exceptions, the number of appeals initiated each year has remained in the 60,000s from the late 1970s through FY 1998. However, as discussed in this report, BVA's response time and decisional productivity have undergone dramatic changes in the 1990s.

### **SINCE JUDICIAL REVIEW 1988 THROUGH 1998**

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 Department's benefit claim adjudication system since the inception of the Board in 1933. Decisions by the Court have had a profound effect on the Department's entire adjudication system, frequently forcing the Board to adapt to new interpretations of veterans' law and to establish new procedures 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 observed by Judge Steinberg, ". . . [T]he evolution of VA benefits law since the creation of this Court . . . has often resulted in new, different, or more stringent requirements for adjudication." *Locher v. Brown*, 9 Vet. App. 535 (1996) (citing *Stillwell v. Brown*, 6 Vet. App. 291, 303 (1994)).



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





Changes in the law caused by the decisions of the Court, and the resulting need to make changes in historical VA practices, have challenged the Board's ability to maintain acceptable levels of response time and decision productivity. Compliance with these changes in the law has required the Board to achieve and maintain standards of decision quality at a level higher than that contemplated prior to the enactment of the Judicial Review Act. As a result, Board decisions have become longer and more complex than they were prior to judicial review.

Additional factors that accompanied or followed the introduction of judicial review have had a significant effect on the timeliness of appellate processing throughout the VA claims adjudication system, including:

increased remands from the Board to the regional offices in order to satisfy the Department's "duty to assist" claimants in developing their claims for VA benefits;

the need to comply with the directives of the Court in a number of important decisions;

the need for preparation and procurement of a large number of medical opinions from sources outside of the Board, as well as time spent by the Board and its staff conducting medical research through the use of relevant medical textbooks and treatises;

-  an increased volume of requests for formal hearings before the Board in Washington, D.C., as well as for hearings before the Board held in the field, and the concomitant increase in travel time for Board Members;
-  the added responsibility of attorney fee agreement processing and review;
-  the need for readjudication of cases remanded by the Court to the Board; and
-  the readjudication of cases returned from VA regional offices to the Board following prior Court and Board remands.

In FY 1998, there were 65,373 notices of disagreement filed, a slight decrease from the 66,566 that were filed in FY 1997. The total number of cases appealed in FY 1998 was 71,885. This number includes cases added to the Board's docket during the fiscal year, as well as case folders that were physically received at the Board, including original receipts, cases remanded to the Board by the Court, and appeals returned to the Board after remand development by regional offices.

Prior to FY 1992, BVA response time – 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 – rarely exceeded 150 days. However, as the impact of Court decisions began to take effect, BVA's response time climbed steadily from 139 days in FY 1991 to a peak of 781 days at the end of FY 1994. By the end of FY 1998, BVA's response time was reduced to less than 200 days for the first time in seven years.

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 for them to decide cases.

To better accommodate the growing volume of requests for travel Board hearings without incurring a commensurate increase in Board members' travel time, BVA sought approval to employ emerging video technology to conduct this form of hearing. As a result, authority to conduct videoconferenced hearings was authorized by the “Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994,” Pub. L. No. 103-271. BVA began conducting videoconferenced hearings in FY 1995 and has steadily expanded their use each year since then, conducting 1,151 videoconferenced hearings in FY 1998. Videoconferencing is discussed in more detail on pages 14 through 16.



*During FY 1998, Board members conducted nearly 5,000 personal hearings held at VA field offices, at the Board's offices in Washington, DC, and by video-conference. Most appellants designate an appeals representative to assist them with the preparation and presentation of their cases before the Board.*

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 yet shown significant interest in the practice of veterans' law, representing only 4.2 percent of appellants whose appeals were decided by the Board in FY 1998 and 3.2 percent the previous year.

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 Court has ruled that the Board must consider every potentially applicable regulation in its decisions, 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 that or another court subsequent to the Board's original decision on appeal. A recent significant example is the decision of the United States Court of Appeals for the Federal Circuit in *Hodge v. West*, No. 98-7017 (Fed. Cir. Sept. 16, 1998). In that decision, the Federal Circuit overruled the legal test adopted by the Court of Veterans Appeals in *Colvin v. Derwinski*, 1 Vet.App. 171 (1991), for purposes of determining whether "new and material" evidence has been submitted to reopen a previously and finally denied claim. Subsequent to *Hodge*, the Court of Veterans Appeals has remanded to the Board for readjudication, in accordance with the standard enunciated in *Hodge* and in 38 C.F.R. § 3.156(a), almost every case coming before the Court on appeal involving this issue.

Similarly, the Board's own remand rate has been about twice that experienced before judicial review began. Among the Board's reasons for remanding cases are the need for specific medical information, 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. In addition, in light of the Court's recent decision in *Stegall v. West*, 11 Vet.App. 268 (June 26, 1998), it is likely that additional remands from the Court to the Board, and from the Board to the regional offices, will be required in those cases where either the Board or a regional office fails to comply fully with the terms of a prior remand order issued by the Court or by the Board, respectively. As stated by the Court in *Stegall*, in regard to the Department's failure to comply with the terms of a 1995 Board remand order in that case:

The protracted circumstances of this case and others which have come all too frequently before this Court demonstrate the compelling need to hold, as we do, that a remand by this Court or the Board confers on the veteran or other claimant, as a matter of law, the right to compliance with the remand orders. We hold further that a remand by this Court or the Board imposes upon the Secretary of Veterans Affairs a concomitant duty to ensure compliance with the terms of the remand, either personally or as [] "the head of the Department." 38 U.S.C. § 303. It matters not that the agencies of original jurisdiction as well as those agencies of the VA responsible for evaluations, examinations, and medical opinions are not under the Board as part of a vertical chain of command which would subject them to the direct mandates of the Board. It is the Secretary who is responsible for the "proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department." 38 U.S.C. § 303. Moreover, the Secretary is by statute both the one to whom a veteran may appeal an initial denial as a matter of right (38 U.S.C. § 7104(a)), and a party, represented by the General Counsel, to every appeal before this Court (38 U.S.C. § 7263(a)). Finally, we hold also that where, as here, the remand orders of the Board or this Court are not complied with, the Board itself errs in failing to insure compliance. While it is true that where an appellant has not been harmed by an error in a Board determination, the error is not prejudicial (*see* 38 U.S.C. § 7261(b) ("Court shall take due account of the rule of prejudicial error")[]), the Court cannot say, based on the record before it, that the appellant here has not been harmed. The Court takes this opportunity to remind the Secretary that the holdings of this decision are precedent to be followed in all cases presently in remand status.

In addition to *Hodge* and *Stegall*, other Court rulings also have affected the way in which the Board adjudicates cases, making BVA's decisions more lengthy, complex, and formal than they were in the past. For example, Board decisions now include detailed supporting "reasons or bases" as well as candid assessments of the credibility of lay testimony.

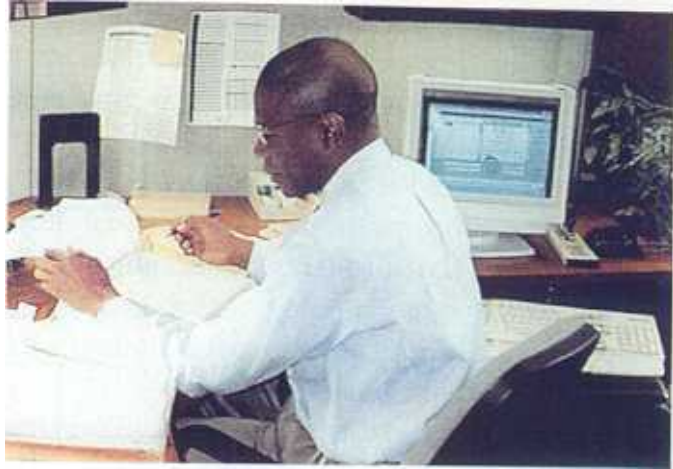
Since July 1994, the Board has been authorized to issue decisions made by individual Board members, rather than by panels of three members, a procedure that has significantly enhanced productivity. Also in FY 1994, the Board implemented revised docketing procedures, permitting the assignment of docket numbers as soon as a "substantive appeal" (VA Form 9) is filed, rather than when an appeal folder is received at the Board. This change eliminated 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. The Board's docketing procedures were improved further during FY 1997 and FY 1998 as a result of a joint effort by BVA and the Veterans Benefits Administration (VBA) to adopt a single computerized system for the docketing, tracking, and managing of appeals. This effort is discussed in more detail on page 14.

## **HISTORICAL ORGANIZATION OF THE BOARD**

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 a six year term at the Assistant Secretary level. Pursuant to 38 U.S.C. § 7101(a), the Board is authorized to consist of a Chairman, a Vice Chairman, and an unlimited number of Board members. The Board is also authorized by § 7101(a) to have "sufficient" professional, administrative, clerical, and stenographic personnel as are necessary to accomplish its mission. (BVA's organization chart is shown on page 10.)

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 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.

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. 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.



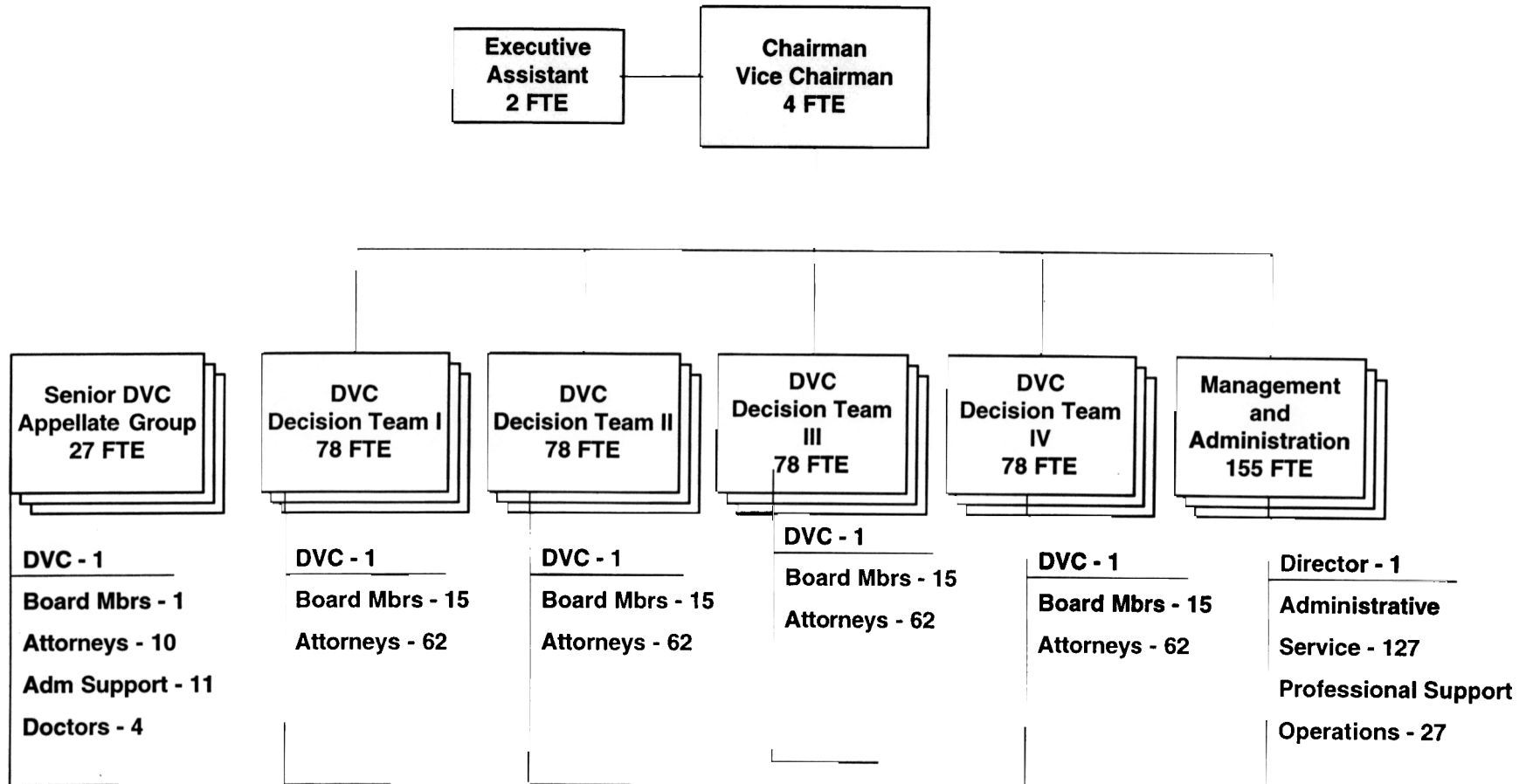
*Attorneys skilled in veterans' law carefully consider appellants' records and prepare draft decisions for review and approval by Board members.*

The organizational structure of the Board underwent relatively few major changes for more than a decade prior to FY 1995. BVA was divided into two principal components: the Professional, and the 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 the 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.

## **CURRENT ORGANIZATION 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 provided BVA the opportunity to develop a more efficient management structure — one that afforded the best prospects for improving overall productivity and decision timeliness.

# Board of Veterans' Appeals



Near the end of FY 1995, the Board installed an organizational alignment that 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 organizational structure reduced administrative overhead and allowed sufficient latitude for different, even competing, managerial styles to be used by similarly staffed teams. By reducing the number of identical administrative positions required to support the former 21 Board sections and reducing the supervisor-to-staff ratio, the Board was able to hire and place additional attorneys in decision production positions without exceeding its FTE limit. At the heart of the realigned Board were four “decision teams.”

The four decision team arrangement continues to form the true line component of the Board. Each team contains the staff counsel and Board members who review and decide appeals. From a staffing perspective, each decision team is organized alike. The target staffing level for each of the decision teams is one Deputy Vice Chairman (DVC) at an AL2 level, 15 Board members (two of whom are designated as Chief members), approximately 60 to 70 attorneys, and 18 administrative personnel who, although under the operational direction of the Board’s Administrative Service, provide direct support to the decision teams. Each decision team operates as a semiautonomous 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.

Virtually all aspects of the processing of appeals occur within the teams, where increased individual responsibility and accountability are basic tenets. Although BVA’s administrative personnel are assigned to the Administrative Service, they are organized into four discrete units, each of which is aligned with a specific decision team to provide all required case tracking, associated correspondence, and other administrative case handling support. This arrangement made possible a reduction in the number of required administrative positions and a commensurate increase in the number and relative proportion of attorney positions, compared with the Board’s pre-decision team structure.

BVA’s administrative personnel perform the essential functions of 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, transcribes and electronically transmits to the Board’s offices in Washington, DC, transcripts of personal hearing proceedings and other dictated work products. The unit also maintains a Veterans Information Office to answer general questions about the Board’s processes and procedures and to provide current appeal status information to appellants and other inquirers.

Within each decision team, managers have the authority to assign Board members, attorneys, and administrative personnel into whatever decision-making configurations they feel produce the best 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 centralized quality review process, discussed on page 25, insures consistent adherence to Board-wide criteria in six areas deemed essential to quality decisions.

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, cases 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. Efforts to improve direct communication between Board members and adjudicators in the field is discussed on pages 15 and 16.

The Board's 1995 realignment did not change the basic procedures involved in the preparation of a draft decision for Board member review or most of the routine tasks involved in the processing of an appeal. DVCs are responsible for the management of their decision teams' caseload and for procedures for the assignment of individual appeals to staff counsel for the preparation of written tentative decisions. Counsel typically prepare draft decisions on individual computer work stations and submit completed tentative decisions to Board members within their decision team for review. Board members review the record and, when necessary, revise the submission or return it to counsel for revision. When a decision is acceptable to the Board member, it is signed by the member, undergoes a final quality review, and is mailed to the appellant. A copy of the decision is mailed to an appellant's representative if one has been designated.

A staff of medical advisers assists Board members by conducting medical research and by providing training to staff counsel on medical issues. In addition, the Board sometimes seeks advisory medical opinions from a number of different sources, including

the Under Secretary for Health, before rendering decisions in cases involving complex or unusual medical issues. These advisory medical opinions are discussed in detail on page 23.

## **ADMINISTRATIVE ACTIVITIES**

Throughout the 1990s, the Board has introduced numerous administrative initiatives to meet the challenges presented by judicial review and to improve its service to veterans and their families. Among the initiatives undertaken prior to FY 1998 were:

- complete revision of decision analysis and format
- use of single Board member hearings as opposed to panel hearings
- 1993 introduction of a “trailing” hearing docket
- improvements in direct responses to customers and responses to Congressional and other inquiries
- consolidation of all Washington, DC, employees in one building
- 1994 reduction of the time-consuming restatement of the history of each case contained in the “Introduction” section of Board decisions
- 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
- 1995 introduction of videoconferencing for the conduct of personal hearings
- numerous customer service initiatives, including publication of a plain language pamphlet entitled, “Understanding the Appeal Process”
- made BVA decisions and, “Understanding the Appeal Process,” available to the public on the World Wide Web
- 1997 adopted a single appeals tracking system for use by BVA and the Veterans Benefits Administration

In 1998, the Board introduced a revised VA Form 9, “Appeal to the Board of Veterans’ Appeals.” This form, the filing of which causes an appeal to be entered on the Board’s docket and which appellants use to provide information essential to the processing of their appeals, is now much simpler for appellants to understand than the previous version.

Significant enhancements were made during FY 1998 to the Veterans' Appeals Control and Locator System (VACOLS), which was developed jointly by the Board and VBA and first adopted as the Department's appeals tracking system in FY 1997. This unified tracking system provides important Department-wide benefits, including:

Improved accuracy and timeliness of Departmental reports and appeal status determinations;

Reduced exchanges of appeals-related paper between VBA and BVA;

Reduced administrative overhead and operating costs associated with appeals for both VBA and BVA;

Improved appeals-related workload management and planning information.

The functional enhancements made to VACOLS during FY 1998 allow VBA personnel to add appeals to BVA's docket, close out appeals resolved in the field, indicate appellants' requests for BVA hearings, indicate when cases have been developed enough to permit the holding of BVA hearings, and view or download Board decisions and other documents attached to VACOLS records. The capability to view or download decisions and other VACOLS attachments has also been provided to the office of the Secretary, VA Congressional Liaison offices, and the Office of General Counsel. Additionally, veterans' service organization representatives connected to BVA's computer network have been provided a version of VACOLS that meets their representational needs.



As previously mentioned, the Board conducted its first videoconferenced hearing in FY 1995. Every year since then, BVA has expanded its use of video technology, for both its personal hearing application and its use as a medium for the conduct of training and information exchanges between BVA and VA regional offices. A significant milestone was

*VACOLS, the Veterans' Appeals Control and Locator System, provides essential case management and tracking information to users throughout the Department's appeals adjudication system. VACOLS also provides up-to-date case status information to VSO representatives and other VA offices.*



reached in September 1998, with the signing of a Memorandum of Understanding (MOU) between the Board and the Veterans Benefit Administration that articulated the commitment of both organizations to employing videoconferencing technology to improve service delivery and communications by, among other things:

Establishing a nationwide video teleconferencing network to support the facilitation of appellant hearings and communication between the Board and VBA field adjudication staff, as well as communication between VBA field offices;

Developing joint equipment procurement and installation plans;

Maximizing system utilization through cooperative scheduling and equipment compatibility;

Ensuring that the usage of videoconferencing systems is an integral part of organizational long-term planning.

During FY 1998, videoconferencing equipment was installed at five regional offices, bringing to 20 the total number of offices with which these hearings can routinely be held. A third videoconferencing hearing room was also installed at the Board during FY 1998. BVA conducted 1,151 videoconferenced hearings during FY 1998, a four-fold increase over the 233 videoconferenced hearings held the previous year, and expects to conduct at least 1,200 of these hearings during FY 1999.

Through the use of interactive video technology, Board members 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 – due to cost and time constraints – might be held only once or twice each year in their areas. Videoconferencing has also proven to be a very effective way to conserve the productive capability of Board members by reducing their travel time. With videoconferencing, Board members are able to move down the hall, literally, instead of traveling across the country to conduct hearings.

Videoconferencing is employed regularly as a vehicle for improving direct communications between Board members and regional office adjudication personnel. It has demonstrated great potential as a practical way to conduct training and information



*Videoconferenced hearings save time and expense for appellants and reduce travel time for Board members. The Board and the Veterans Benefits Administration also use videoconferencing as an effective way to conduct training and information exchanges.*

exchanges between BVA and the field on topics such as remand reasons, VA's "duty to assist" requirements, determining secondary service connection, and evaluating the adequacy of medical examinations for claim adjudication purposes, among others. Anecdotal feedback regarding these sessions has been overwhelmingly positive. This type of regularly occurring training and two-way communication 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 for travel to and from geographically distant locations.

BVA's effective use of videoconferencing technology was acknowledged during FY 1998 by the General Services Administration, which presented Achievement Awards to four Board employees for their "outstanding achievement implementing cost effective use of video teleconferencing to conduct nationwide long distance appellate hearings and training for the Board of Veterans' Appeals."

The success of the Department's efforts to improve the timeliness and efficiency of appeals processing was demonstrated in June 1998, with the end of the appeals "case callup" procedure. Under the callup arrangement, which had been in effect since February 1994 as a result of the then growing backlog of appeals awaiting review by the Board, claims folders for docketed appeals were retained by field offices until BVA requested their transfer to the Board. Retaining claims folders at VA field offices afforded appellants access to their files during the long waiting period that existed between the time their appeals were certified in the field as ready for BVA's review and the time the Board could actually review them. The improvements in productivity and timeliness of the

past several years markedly reduced the appeals backlog and rendered the callup procedure unnecessary. The number of cases awaiting review by the Board has been reduced from more than 60,000 at the end of FY 1996 to 21,013 at the end of FY 1998.

Also in FY 1998, the Board began an Activity Based Costing (ABC) analysis, which involves the development a business model capable of identifying the precise cost of each of BVA's work process components. This model will enable BVA to conduct actual and hypothetical trend analyses, as well as produce meaningful reports on the cost of specific work activities. In addition to improving the Board's ability to fulfill its own management information needs, this continuing ABC analysis will help the Board comply with requirements of the Chief Financial Officer Act, Government Performance and Results Act, Government Management Results Act, National Performance Review, and the Federal Accounting Standards Advisory Board.

Although it became effective shortly after the close of FY 1998, the adoption by the Board and VBA of a system-wide appeals timeliness measure warrants discussion in this year's report, as the measure represents an important new yardstick for evaluating the timeliness of appeals processing. This new measure, called "appeals resolution time," is defined as the average length of time it takes the Department to process an appeal from the date a claimant files a Notice of Disagreement (NOD) until a case is resolved, including resolution at a regional office or by issuance of a final, non-remand, decision by the Board.

Timeliness measures historically used by BVA typically account only for that time from the filing of a Substantive Appeal (VA Form 9) until the issuance of a decision by the Board. Appeals resolution time takes into account cases resolved in the field at the NOD, Statement of the Case, or VA Form 9 stages through withdrawal, dismissal, award of benefits or abandonment, as well as cases resolved by final, merits (i.e., non-remand) decisions issued by the Board and cases resolved in the field while in remand status. Actions taken on cases subsequent to a remand to the Department by the Court of Veterans Appeals are not included, as a significant portion of the history of such cases is spent outside the Department's jurisdiction.

Appeals resolution time will provide appellants, elected officials, Departmental leadership, BVA and VBA management, and other interested parties a comprehensive and meaningful indication of the average length of time to complete the entire appeal process, rather than just that portion of the process performed within specific organizational boundaries. Additional refinements in FY 1999 will allow VACOLS to serve as the sole source of data used to calculate appeals resolution time. The Board and VBA have established an appeals resolution time goal of 365 calendar days by the end of FY 2004.

## ACCESS AND OUTREACH

The Board maintains 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 are accessed from the following WWW Universal Resource Locator (URL):

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

Board decisions issued in calendar years 1994 through 1997 are also available in searchable text format through VA’s Web pages.

Board decisions for fiscal years 1996 and 1997 are available on a CD-ROM (Compact Disc - Read Only Memory), also discussed on page 29, which is available for purchase by the public. The Board expects to make its 1998 decisions available through the World Wide Web early in calendar year 1999. The URLs for BVA’s decisions are:

<u>Year</u>	<u>URL</u>
1994	<a href="http://www.va.gov/vetapp/vetindex.htm">http://www.va.gov/vetapp/vetindex.htm</a>
1995	<a href="http://www.va.gov/vetapp95/vetindex.htm">http://www.va.gov/vetapp95/vetindex.htm</a>
1996	<a href="http://www.va.gov/vetapp96/vetindex.htm">http://www.va.gov/vetapp96/vetindex.htm</a>
1997	<a href="http://www.va.gov/vetapp97/vetindex.htm">http://www.va.gov/vetapp97/vetindex.htm</a>

As a service to veterans and the general public, an electronic mail (e-mail) link to the Board, which can be accessed from a number of the Department’s Web pages was established in FY 1996. In FY 1998, more than 400 e-mail inquiries were received and answered by the Board. The number of e-mail inquiries received by the Board has increased each year since the link was established.

## LEGISLATION

Public Law 105-111, enacted on November 21, 1997, provides VA benefit claimants and appellants the right to request a review of prior VA claim and appellate decisions based on an allegation of clear and unmistakable error (CUE) on the part of the



*BVA decisions issued in calendar years 1994 through 1997 are available on the World Wide Web. A series of questions and answers about the appeal process is also available on the web.*

Department. This new legislation has added an additional decision-making function to the Board's mission, as claims of clear and unmistakable error are matters of original jurisdiction for BVA, rather than appeals of determinations made elsewhere within the Department.

In anticipation of the promulgation of Departmental regulations governing the adjudication of CUE claims, the Board, near the end of FY 1998, requested that VA field offices transfer the claims folders of appellants who filed such claims to the Board. By so acting, the Board positioned itself to proceed on these claims as expeditiously as possible upon publication of the final Departmental regulations.

On November 11, 1998, the President signed Public Law 105-368, the "Veterans' Benefits Enhancement Act of 1998." Although enacted early in FY 1999, the Act contains a number of provisions drafted by the Board during FY 1997 and FY 1998:

To recognize the changed nature of the Board from a medical/legal tribunal to a strictly legal one, the new law requires that Board members be attorneys;

To clarify a technical error in a prior law, the new law provides that Board members who are not "recertified" to serve as members have the right to revert to the position of Board attorney;

To reduce delays in the issuance of Board decisions caused by late requests for field hearings, the new law requires that field hearings be scheduled in the order in which the appeal was filed - what the Board refers to as "docket order" - instead of the order in which requests for such hearings are received;

To ensure an appellant's right to a hearing without prejudicing the rights of other appellants to a speedy decision, the new law permits the Board to postpone a decision on a case to afford an appellant a hearing without violating the "docket order" rule;

To establish one set of reasonable rules, the new law establishes the same criteria for advancement on the field hearing docket and the decisional docket.

## MEMBERS OF THE BOARD OF VETERANS' APPEALS

At the close of FY 1998, the following 61 individuals, 27 of whom are veterans, were serving as members of the Board of Veterans' Appeals. At the close of FY 1998, no Board member appointments were awaiting Presidential approval. There are no physicians serving as Board members.

AGUAYO-PERELES, JOAQUIN  
(DEPUTY VICE CHAIRMAN)  
BLASINGAME, JACK W.  
BOHAN, BARRY F.  
BOSCH, RONALD R.  
BRAEUER, WAYNE M.  
BROWN, DEREK R.  
BRYANT, ANNA M.  
CALLAWAY, BETTINA S.  
CHEEK, MICHAEL D.  
COHN, STEVEN L.  
COPELAND, BARBARA B.  
DANNAHER, THOMAS J.  
DAY, JONATHAN E.  
DURKIN, SHANE A.  
FLOWERS, FRANK J.  
FRANK, RICHARD B.  
GALLAGHER, MARY  
GICK, GARY L.  
GOUGH, JEROME F.  
GREENSTREET, MARK W.  
HALSEY, MARK F.  
HINDIN, MARK D.  
HOGEBOOM, CHARLES E.  
(DEPUTY VICE CHAIRMAN)  
HYMAN, BRUCE E.  
JORDAN, VICKY L.  
KANNEE, BRUCE N.  
KELLER, STEVEN L.  
KENNEDY, SUSAN L.  
KRENZER, EILEEN M.  
LYON, MICHAEL D.  
MARTIN, JEFFREY J.

MOEHLMANN, HOLLY E.  
MONROE, JACQUELINE E.  
MULLEN, ANDREW J.  
ORMOND, JOHN E.  
PEEVY, ALAN S.  
PELLETIER, RENEE M.  
PHILIPP, ROBERT D.  
PHILLIPS, NANCY I.  
POWELL, URSULA R.  
REGAN, ROBERT P.  
RICE, WARREN W., JR.  
ROBERTS, JO S.  
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.  
SINGLETON, DEBORAH W.  
SPICKLER, DAVID C.  
STANDEFER, RICHARD B.  
(ACTING CHAIRMAN)  
SULLIVAN, LAWRENCE M.  
SULLIVAN, ROBERT E.  
SYMANSKI, CHARLES W.  
TOBIAS, CONSTANCE B.  
TOBIN, LEO W., III  
WILKINS, STEPHEN L.  
WILLIAMS, RICHARD F.

\* Eligah Dane Clark was confirmed as Chairman of the Board of Veterans' Appeals by the U. S. Senate on October 21, 1998, following his nomination by the President. On December 1, 1998, Mr. Clark was sworn-in and assumed the duties of Chairman. At that time, Richard B. Standefer resumed his position as Vice Chairman.

## SELECTION OF BOARD MEMBERS

As previously noted, Pub. L. 105-368, signed into law by the President on November 11, 1998, requires that Board members be attorneys. As a practical matter, no non-attorneys have served as members of the Board since 1994. The appointment of physicians as members of the Board that was practiced prior to 1994 is discussed in the next section of this report.

The selection process for the limited number of Board member positions 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 to the Board from the ranks of staff counsel, 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 demonstrated the requisite level of knowledge and 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.

## MEDICAL ISSUES

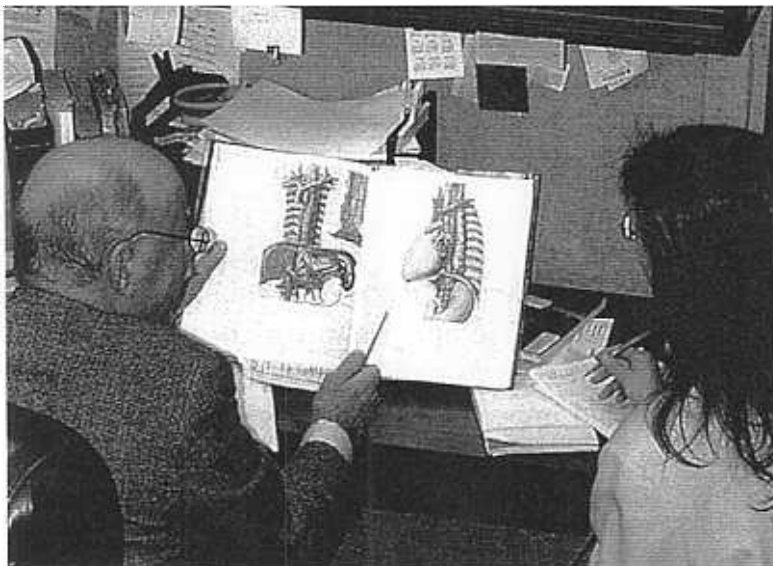
The Court has issued a number of opinions that have altered the manner in which BVA physicians are employed in the decision-making process by eliminating their former role as adjudicators. In the cases of *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990), *Colvin v. Derwinski*, 1 Vet. App. 171 (1991), and *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 utilizing the opinions of the Board's medical advisers. Since the announcement of *Austin*, the Board has not utilized opinions from its own 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). Consequently, absent a change in the law, it is not likely that the Board will return to the practice of utilizing the opinions of BVA medical advisers in adjudicating appeals.

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, discussed on pages 27 through 29, have been greatly expanded to help meet this need.

As a result of the changes discussed above, the Board now utilizes its remaining physician staff (two full-time and two part-time physicians) 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 several medical lectures per month, covering topics such as basic examination procedures, orthopedic examinations, scans and other diagnostic procedures, and understanding examination and laboratory results. BVA physicians also review the Board's requests for medical advisory opinions from

sources outside BVA to ensure accuracy in the way in which the evidence is reported and the questions are framed.



*BVA's physicians provide valuable advice and training to counsel and Board members on a wide range of medical topics.*



Because BVA cannot base its decisions on its own medical expertise, in recent years the Board has increasingly relied on opinions provided by independent medical experts to resolve specific medical questions and to establish the possibility or likelihood of cause and effect contentions raised in appeals. Typically, opinions have been sought from faculty members of leading medical schools or from Veterans Health Administration (VHA) physicians. Many appeals have been remanded to VA regional offices to obtain medical examinations in addition to these advisory opinions.

Advisory opinions obtained from VHA physicians have typically been provided in a much more timely manner than those obtained from non-VA physicians and generally have been well-reasoned, succinctly stated, and fully responsive to the questions asked by the Board. Additionally, the thoroughness and specificity of many VHA advisory opinions have provided sufficient information to allow BVA to issue final decisions without the need to remand cases to regional offices to obtain new medical examinations. In cases where a medical opinion is likely to provide persuasive argument concerning critical medical issues, it is likely that increased utilization of VHA advisory opinions will result in a significant reduction in the number of remand decisions that would be issued in the absence of such opinions.

The Board requested 81 opinions from non-VA medical experts under 38 U.S.C. § 7109 in FY 1998, compared with 113 opinions the previous year. In addition, the Board requested 264 advisory opinions from medical experts from the Veterans Health Administration (VHA) in FY 1998, compared with 160 in FY 1997.

### **ATTORNEY AND AGENT FEE AGREEMENTS**

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

In FY 1998, the Board received 794 fee agreements for filing and review, an increase of 16 percent over FY 1997, and 114 percent over FY 1996. As shown in the accompanying graph, the number of fee agreements received by the Board has more than tripled since 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 14 motions for Board review of fee agreements. Additionally, one such motion was filed by an attorney. At the end of the fiscal year, six motions were pending. In FY 1998, the Board issued 15

decisions on such motions. The Board ruled that the attorney could not charge a fee in nine cases, it ruled that the attorney could charge a fee in three cases, and it withdrew the motion in the other three cases.

Most 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). Eighty-three such cases were referred for such decisions in FY 1998, with 78 cases completed during the fiscal year. Of those completed, 54 ordered payment to the attorney, 23 held that the attorney could not be paid, and one was dismissed.

In December 1997, VA published in the Federal Register a notice of proposed rulemaking that would end the practice of paying attorney fees out of past-due benefits. At the end of FY 1998, that proposed rulemaking was still pending.

## **REPRESENTATION BEFORE THE BOARD**

Veterans' service organizations are vital to the Board's operation and provide an invaluable service to appellants. One of a service organization's representation activities is the preparation of advocacy briefs, which occurs prior to the Board's review of a case. These representative briefs become part of an appellant's record and are considered by the Board when reviewing appeals. In FY 1998, 85.1 percent of appellants were represented by one of the accredited service organizations (86.2 percent in FY 1997), 4.3 percent were represented by an attorney or agent (3.3 percent in FY 1997), and 10.6 percent were not represented (10.5 percent in FY 1997). (See table on page 32, Part II.)

## **LIAISON ACTIVITIES**

Throughout the year, the Acting 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. These presentations concerned the Board's efforts to improve decisional quality and reduce the number of appeals remanded to VA Regional Offices for development of the record, while maintaining the improvements in productivity and decision timeliness the Board has made in recent years. The Acting Chairman also testified at an oversight hearing before the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs of the House Committee on Veterans' Affairs.

During FY 1998, the Acting Chairman addressed or participated in more than half a dozen conventions and seminars held by veterans' service organizations, both national and state, including the national conventions of The American Legion and Disabled American Veterans, and the annual and mid-winter conferences of the National Association of State Directors of Veterans Affairs.

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 decision team administrative personnel. The Acting Chairman also responded to correspondence from numerous appellants and other interested parties addressed to the President, the Secretary, and other government officials, and provided written responses to 2,466 Congressional inquiries in FY 1998.

## **QUALITY**

Prior to FY 1998, BVA's quality review process was structured in a manner that did not lend itself to quantifiable measurement and repeatable comparisons over time. During FY 1998, the Board established a more systematic and objective approach to quality assessment. On a daily basis, Board members and senior counsel evaluate and "score" a statistically valid sampling of completed BVA decisions that have not yet been released from the Board, as well as all decisions brought to the Board's attention through motions for reconsideration or remands from the Court of Veterans Appeals. Sampled decisions are reviewed and assessed with respect to quality using six discrete criteria:

**Issues - identify and address all issues, either expressed or inferred;**

**Evidence - account for all evidence, both in favor of or against the claim;**

**Laws and Regulations - cite and set forth all applicable laws and regulations;**

**Reasons and Bases - coordinate the facts of the case with the law, and clearly explain how the decision was reached;**

**Due Process - address all technical aspects of due process;**

**Format - meet basic format requirements, such as grammar, spelling, decision structure, and statutory requirements.**

These assessments allow the Board to objectively evaluate the quality of its decisions and provide meaningful training for BVA counsel in specific areas where a need for improvement is demonstrated.

## **PROFESSIONAL TRAINING**

Under the direction of the Vice Chairman, a committee of key personnel again oversaw the Board's intensive training program for attorney staff and Board members during FY 1998. The committee's charter is 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.

The complexity of today's veterans' law requires intensive training of new counsel before they can become fully contributing decision team members. Newly hired attorneys begin their participation in BVA's professional training program on their first day of orientation at the Board. The program, developed in cooperation with the employees' bargaining unit, includes instruction in a variety of functional areas, including appeals development and adjudication, veterans' law, the hearing process, medical issues, and computer word-processing and legal research techniques. The curriculum includes mentor assistance, the use of a uniform training guide, legal and medical lectures, and training in the use of on-line reference resources, such as those discussed in the next section.

The Board's training program provides for professional growth and skill development throughout the course of an attorney's career with BVA. A nonlinear progression through a wide variety of subject areas is taken so that attorneys, together with their supervisors, can determine what topic or type of training would be most beneficial at any given time in an employee's development. Although much of the instruction is provided by Board staff members, outside training resources are also used to augment the curriculum. For example, to increase their understanding of the claim and appeal development activities performed by regional office and Veterans Health Administration personnel, BVA attorneys participate in off-site training and seminars, including programs held at the Veterans Benefits Administration's Training Academy in Baltimore, MD.

By coordinating its decisional quality review and counsel training programs, the Board is able to offer training in those topics or processes where and when it is needed most. This direct linkage between BVA's flexible training schedule and the Board's quality review program, in which completed decisions undergo objective evaluations with respect to quality in six different areas on a daily basis, ensures that the instruction presented to BVA's attorneys is both meaningful and timely.

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.

To provide its leadership with the requisite tools and skills to succeed, the Board's senior managers attend a variety of training and managerial development seminars appropriate for their grade and management levels. In this manner, the Board is investing in its future to ensure its leadership is equipped with the best, most current approaches to motivating employees and maintaining the highest possible levels of productivity and quality.

## **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 VBA Training Academy, the Office of Personnel Management schools, and the National Judicial College. The Internet and the Department's Intranet, both of which were made available to BVA employees during FY 1998, permit access to a vast array of useful reference material.

The Board's commitment to automating as many of its processes as practicable is evidenced by BVA's sophisticated computer network and the installation of a personal computer at every employee's workstation. A variety of applications and productivity aids are available for all BVA staff and VSO appeals representatives connected to the BVA network, including a significant number of automated reference materials ("research tools"). This material is accessible through a computer selection menu that facilitates

conducting legal and medical research from an individual's workstation. Training has been provided to familiarize network users with the resources available, the steps necessary to access the desired information, and formulation of search "queries."

Research tools available on the Board's computer network, include indexes and text files that are compiled in either databases or word processing files. The research data bases allow considerably more sophisticated searches than those typically associated with collections of word processing documents. 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, Chairman's numbered memoranda, and videotaped training lectures are also available.

The Index of Veterans' Benefits Law (Annotated) was developed to facilitate legal research and to assist with the preparation of Board decisions. It 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 to Board employees and veterans' service organization representatives connected through the Board's computer network, and has been distributed by the Veterans Benefits Administration's Compensation and Pension Service to adjudicators in all 58 VA regional offices. It is also included on the CD-ROM containing Board decisions issued in calendar years 1996 and 1997, which is available for purchase through the Government Printing Office. This asset allows staff counsel, Board members, and others to keep abreast of the burgeoning and dynamic body of veterans' benefits law.

The Board's *Text Files* contain information and reference language useful in the preparation of draft decisions. Included in these files are: Slip opinions of the U.S. Court of Veterans Appeals from 1990 to the present; BVA decisions since 1993; and

*BVA decisions issued in calendar years 1996 and 1997 are available on CD-ROM. The disk also includes the Veterans Benefits Law Index.*



Title 38 of the Code of Federal Regulations, which is updated monthly. A commercial application that contains the Physicians' Desk Reference (pharmaceutical product descriptions and information about drug interactions and side effects), the Merck Manual, (a quick reference manual for most common diseases), and Stedman's Medical Dictionary is also available to BVA attorneys. Precedent opinions of VA's Office of the General Counsel since 1993 and Chairman's numbered memoranda since 1991 are available in a word processing format. Several VBA resource items, including directives, training guides, and manuals, are also provided in a searchable format.

Still other research tools and training materials prepared and updated by BVA personnel include: "Headnotes," which are summaries of selected opinions of the U.S. Court of Veterans Appeals; information concerning military awards and decorations; a discussion of attorneys' and agents' fees under 38 U.S.C. § 5904; medical abbreviations; and a BVA training guide on hearing loss disability, tinnitus, and neurology.

Since 1994, BVA's decisions have been made available to the public on CD-ROM. Currently, Board decisions issued in calendar years 1996 and 1997, along with the Veterans Benefit Law Index are available for purchase from the Government Printing Office on CD-ROM. Additionally, as discussed on page 18, all Board decisions issued in calendar years 1994 through 1997 are available in searchable text format through the World-Wide Web. This public access to Board decisions represents an enormous potential reduction of research time for appellants, attorneys representing appellants, appeal representatives preparing advocacy briefs, and others interested in the appeal process.

## **EPILOGUE**

The Board of Veterans' Appeals has prepared this report not only to fulfil its statutory reporting requirements, but to provide an overview of the history and operation of the Board from its establishment in 1933 to the present. Particular emphasis has been paid to BVA's activities and achievements during FY 1998. However, this report also serves as a catalogue of the most significant events that have affected the adjudication of veterans' appeals during the ten-year period from November 1988 through the end of FY 1998 – the Board's first full decade of operation since enactment of the Veterans Judicial Review Act on November 18, 1988.

In many ways, judicial review has been a double-edged sword for veterans and their families. The body of veterans' common law that has emerged under judicial review provides appellants with more clearly defined and equitably applied bases for the adjudication of their appeals. Appellants enjoy the right to have their appeals reviewed

by the independent Court of Veterans Appeals. However, appellants must now contend with a much more formal, and much less speedy, legal process than that which previously existed.

The past ten years have brought unprecedented change and unprecedented challenge to the entire veterans benefit adjudication system. Undoubtedly, the second decade under judicial review will likewise be fraught with change and will likewise present new challenges. The Board fully expects to continue to adapt to whatever changes are introduced and to meet whatever challenges are presented as successfully as it has in the past.



## PART II

### FY 1998 STATISTICAL DATA

During FY 1998, BVA issued 38,886 decisions. This total represents a 10.3 percent decrease from FY 1997, when 43,347 decisions were issued. The decrease is primarily a result of (1) a higher percentage of final, non-remand decisions (56.7 percent) than was issued the previous year (53.3 percent), and (2) a heightened emphasis on decisional quality. The disposition of the Board's decisions by category of appeal is provided below.

<b>Category</b>	<b>Total</b>	<b>Allowed</b>	<b>Remanded</b>	<b>Denied</b>	<b>Other</b>
Disability compensation	32,942	6,059	13,811	12,448	624
Disability pension	774	71	399	289	15
Medical	407	39	139	206	23
Insurance	47	3	12	32	0
Death	2,140	156	665	1,288	31
Education	468	27	116	317	8
Waivers	647	104	271	254	18
Loan guaranty	327	46	154	120	7
Reconsiderations	85	29	26	29	1
Character of discharge	83	4	29	50	0
Miscellaneous	966	169	402	335	60
<b>Totals</b>	<b>38,886</b>	<b>6,707</b>	<b>16,024</b>	<b>15,368</b>	<b>787</b>

**BOARD OF VETERANS' APPEALS  
BVA DISPOSITIONS BY REPRESENTATION  
FY 1998**

<b><u>REPRESENTATION</u></b>	<b>Allowed</b>		<b>Remanded</b>		<b>Denied</b>		<b>Other</b>		<b>Total Decisions</b>	
	<b><u>No.</u></b>	<b><u>Percent</u></b>	<b><u>No.</u></b>	<b><u>Percent</u></b>	<b><u>No.</u></b>	<b><u>Percent</u></b>	<b><u>No.</u></b>	<b><u>Percent</u></b>	<b><u>No.</u></b>	<b><u>Percent</u></b>
<b>The American Legion</b>	<b>1,260</b>	<b>16.6%</b>	<b>3,143</b>	<b>41.3%</b>	<b>3,025</b>	<b>39.8%</b>	<b>173</b>	<b>2.3%</b>	<b>7,601</b>	<b>19.5%</b>
<b>AMVETS</b>	<b>308</b>	<b>18.5%</b>	<b>679</b>	<b>40.8%</b>	<b>656</b>	<b>39.4%</b>	<b>22</b>	<b>1.3%</b>	<b>1,665</b>	<b>4.3%</b>
<b>Disabled American Veterans</b>	<b>2,486</b>	<b>18.7%</b>	<b>5,656</b>	<b>42.6%</b>	<b>4,907</b>	<b>36.9%</b>	<b>232</b>	<b>1.7%</b>	<b>13,281</b>	<b>34.2%</b>
<b>Paralyzed Veterans of America</b>	<b>182</b>	<b>19.6%</b>	<b>391</b>	<b>42.0%</b>	<b>327</b>	<b>35.2%</b>	<b>30</b>	<b>3.2%</b>	<b>930</b>	<b>2.4%</b>
<b>Veterans of Foreign Wars</b>	<b>679</b>	<b>17.2%</b>	<b>1,517</b>	<b>38.3%</b>	<b>1,688</b>	<b>42.6%</b>	<b>75</b>	<b>1.9%</b>	<b>3,959</b>	<b>10.2%</b>
<b>American Red Cross</b>	<b>27</b>	<b>18.2%</b>	<b>51</b>	<b>34.5%</b>	<b>66</b>	<b>44.6%</b>	<b>4</b>	<b>2.7%</b>	<b>148</b>	<b>0.4%</b>
<b>Military Order of the Purple Heart</b>	<b>87</b>	<b>18.0%</b>	<b>209</b>	<b>43.2%</b>	<b>178</b>	<b>36.8%</b>	<b>10</b>	<b>2.1%</b>	<b>484</b>	<b>1.2%</b>
<b>Vietnam Veterans of America</b>	<b>50</b>	<b>20.7%</b>	<b>137</b>	<b>56.8%</b>	<b>45</b>	<b>18.7%</b>	<b>9</b>	<b>3.7%</b>	<b>241</b>	<b>0.6%</b>
<b>State Service Organizations</b>	<b>670</b>	<b>15.2%</b>	<b>1,853</b>	<b>42.1%</b>	<b>1,802</b>	<b>41.0%</b>	<b>75</b>	<b>1.7%</b>	<b>4,400</b>	<b>11.3%</b>
<b>Attorneys</b>	<b>279</b>	<b>16.9%</b>	<b>829</b>	<b>50.2%</b>	<b>491</b>	<b>29.7%</b>	<b>52</b>	<b>3.1%</b>	<b>1,651</b>	<b>4.2%</b>
<b>Agents</b>	<b>3</b>	<b>11.1%</b>	<b>13</b>	<b>48.1%</b>	<b>11</b>	<b>40.7%</b>	<b>0</b>	<b>0.0%</b>	<b>27</b>	<b>0.1%</b>
<b>Other Representation</b>	<b>87</b>	<b>22.1%</b>	<b>147</b>	<b>37.3%</b>	<b>151</b>	<b>38.3%</b>	<b>9</b>	<b>2.3%</b>	<b>394</b>	<b>1.0%</b>
<b>No Representation</b>	<b>589</b>	<b>14.3%</b>	<b>1,399</b>	<b>34.1%</b>	<b>2,021</b>	<b>49.2%</b>	<b>96</b>	<b>2.3%</b>	<b>4,105</b>	<b>10.6%</b>
<b>Total</b>	<b>6,707</b>	<b>17.2%</b>	<b>16,024</b>	<b>41.2%</b>	<b>15,368</b>	<b>39.5%</b>	<b>787</b>	<b>2.0%</b>	<b>38,886</b>	<b>100.0%</b>

## BVA Decisions

<b>FY</b>	<b>Decisions</b>	<b>Allowed</b>	<b>Remanded</b>	<b>Denied</b>	<b>Other</b>
<b>1995</b>	<b>28,195</b>	<b>19.5%</b>	<b>47.5%</b>	<b>22.7%</b>	<b>10.3%</b>
<b>1996</b>	<b>33,944</b>	<b>19.9%</b>	<b>43.7%</b>	<b>30.8%</b>	<b>5.7%</b>
<b>1997</b>	<b>43,347</b>	<b>16.7%</b>	<b>45.2%</b>	<b>36.6%</b>	<b>1.5%</b>
<b>1998</b>	<b>38,886</b>	<b>17.2%</b>	<b>41.2%</b>	<b>39.5%</b>	<b>2.0%</b>

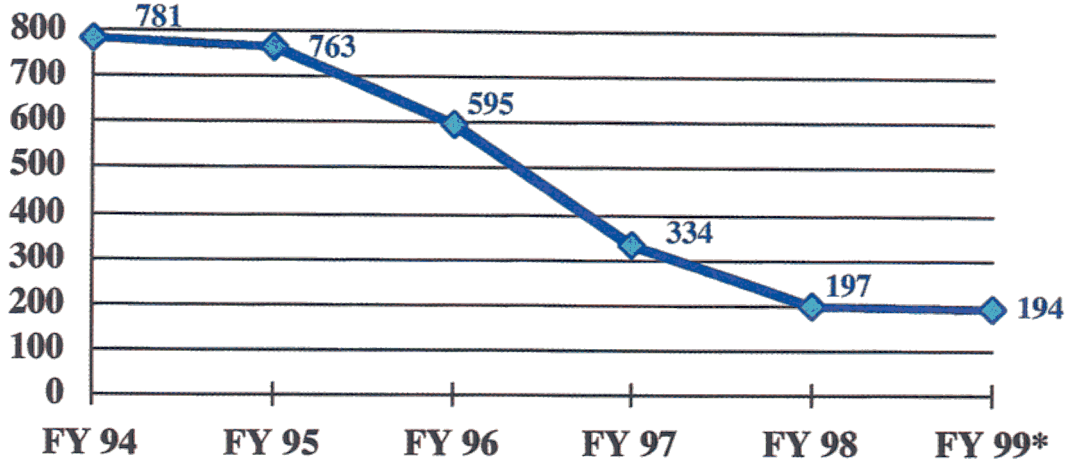
## BVA Operating Statistics

	<u><b>FY 1996</b></u>	<u><b>FY 1997</b></u>	<u><b>FY 1998</b></u>
<b>Decisions</b>	33,944	43,347	38,886
<b>Case Receipts<sup>1</sup></b>			
<b>Added to Docket</b>	38,447	32,916	32,034
<b>Received at BVA</b>	32,405	44,110	39,851
<b>Cases Pending<sup>2</sup></b>	60,120	39,657	21,013
<b>Response Time</b>	595	334	197
<b>FTE</b>	468	492	483
<b>Decisions per FTE</b>	72.5	88.1	80.5
<b>Cost per Case</b>	\$950	\$839	\$965
<b>Hearings - VACO</b>	431	1,297	1,255
<b>Hearings - Field</b>	2,445	4,564	2,469
<b>Hearings - Video</b>	48	233	1,151

<sup>1</sup> Case Receipts: Combined total of (1) new cases added to BVA's docket, which consist of appeals of original or reopened claims; and (2) cases received at BVA, which consist of all cases physically received at the Board, including original appeals received pursuant to case callup procedures, as well as all 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).

<sup>2</sup> Pending figures include certified appeals pending in the field as well as cases pending at the Board.

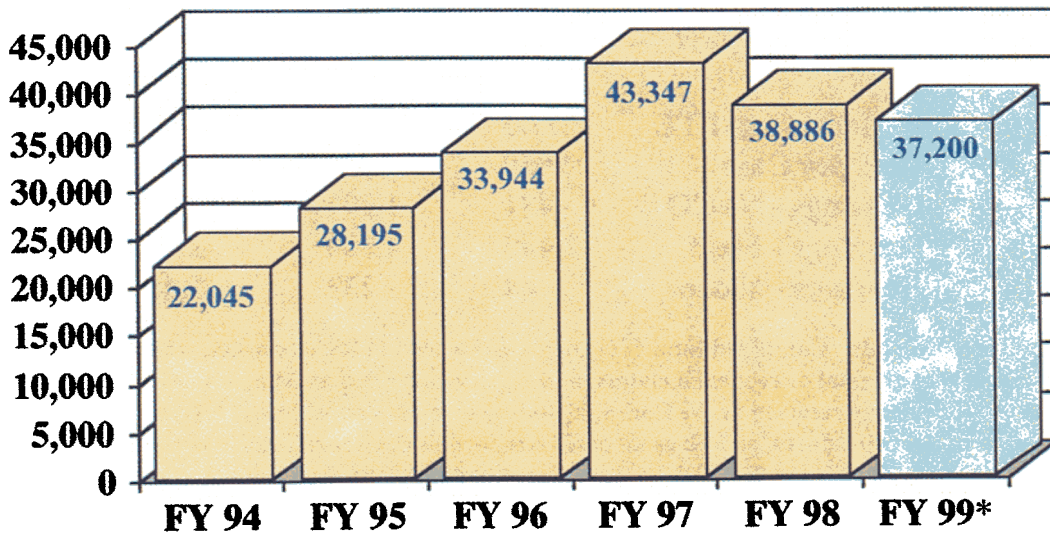
## BVA Response Time, FY 94 -



\* Estimated

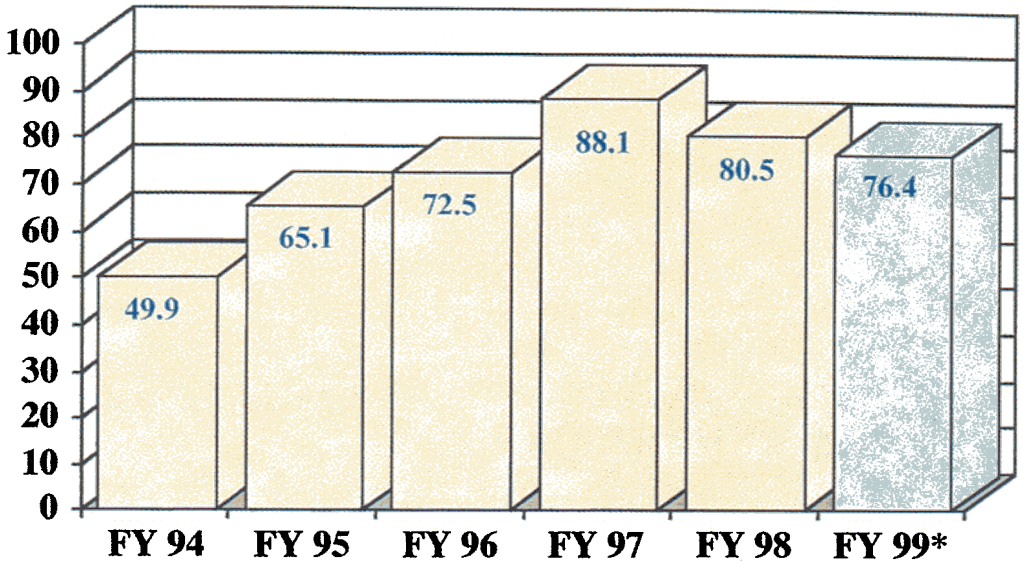
Response time is defined as the number of days it would take BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one-year time frame.

## Number of Decisions, FY 94 -



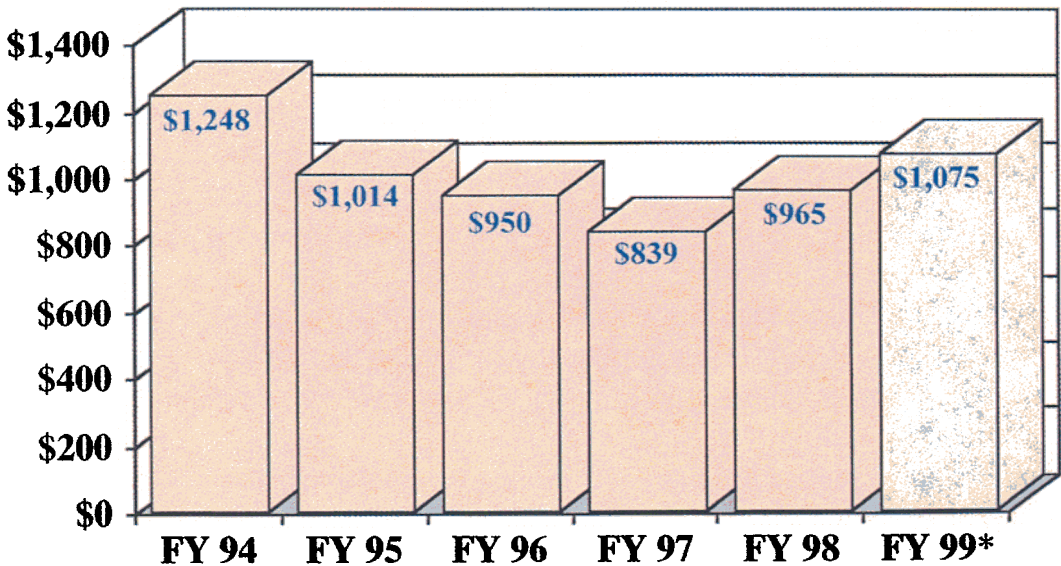
\* Estimated

# Decisions Per FTE, FY 94 - 98



\* Estimated

# Cost Per Decision, FY 94 - 98



\* Estimated

## **PART III**

### **ADDITIONAL INFORMATION PROVIDED PURSUANT TO STATUTORY REQUIREMENTS**

#### **I. 38 U.S.C. § 7101(c)(2)**

The following information is provided in accordance with the requirement of 38 U.S.C. § 7101(c)(2) to report, in terms of full-time employee equivalents (FTE), the number of acting Board members designated under 38 U.S.C. § 7102(c)(1)(A) during the preceding year. Fifty-five attorneys served as acting Board members from time to time during FY 1998 for a total of 6.9 FTE. One physician served as an acting Board member for a total of .004 FTE. Thus, the total FTE of all acting Board members in FY 1997 was 6.9 FTE. The Board uses a system of written designations of acting Board members by the Chairman to ensure adherence to the statutory requirements regarding the use of acting Board members.

#### **II. 38 U.S.C. § 7101(d)(2)**

In February 1994, at the joint initiative 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 is a benefit to appellants because it allows them access to their case folders for the filing of new claims or other actions not under the Board's purview, while ensuring timely placement of their appeals 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 96</u>	<u>FY 97</u>	<u>FY 98</u>
October	6,626	6,213	5,787
November	5,001	5,332	4,737
December	3,904	5,025	4,877
January	5,979	4,978	4,448
February	6,310	5,329	4,801
March	7,185	5,648	5,777
April	6,819	6,087	5,878
May	7,164	5,992	5,464
June	6,375	5,198	6,061
July	6,306	5,574	5,783
August	6,864	5,466	5,928
September	<u>6,224</u>	<u>5,724</u>	<u>5,832</u>
<b>FY Total</b>	<b>74,757</b>	<b>66,566</b>	<b>65,373</b>

Prior to the docketing procedure change described above, the number of cases appealed during any given time frame approximated the number of case folders physically received at the Board, as the folders were transferred to the Board upon their certification as being ready for BVA's review. Since the change, the number of cases appealed during any given time frame necessarily includes the number of appeals (VA Form 9) added to the Board's docket as well as those case folders physically received at the Board.

Cases received at the Board include original appeals forwarded to BVA pursuant to case callup procedures, as well as cases returned to the Board's docket (i.e., cases returned following completion of remand development actions by the originating VA field activity, cases remanded by the U. S. Court of Veterans Appeals, and cases received for reconsideration or vacate actions). Appeals added to the Board's docket consist of new appeals of original or reopened claims. Appellants file new appeals with the VA field offices that adjudicated their original claims, typically a VA regional office. New appeals received in the field are then added to the Board's docket by the receiving VA regional office using the shared information system technology described earlier on page 14.

Many new appeals are resolved in the field without ever reaching BVA, including many that had already been placed on the Board's docket. Those appeals that are not resolved in the field are certified by the regional offices as being ready for the Board's review upon completion of all case development actions, and the associated case folders are physically transferred to the Board.

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

(A) Number of cases appealed to BVA during FY 1998:

Cases received at BVA: 39,851  
 Cases added to BVA Docket: 32,034

(B) Number of cases pending before BVA at the start of FY 1998: 39,657\*

Number of cases pending before BVA at the end of FY 1998: 21,013\*

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

(C) Number of cases filed during each of the 36 months preceding FY 1999:

<u>Month</u>	<b>Cases Received at BVA</b>			<b>New Appeals (VA Form 9) Filed</b>		
	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>
October	2,020	4,184	3,639	3,580	2,862	3,634
November	1,967	3,782	3,215	2,546	3,098	2,176
December	55*	4,029	3,182	1,914	2,812	2,408
January	3,963	3,143	2,502	3,575	2,859	2,332
February	3,427	3,558	2,879	2,615	2,430	2,607
March	2,501	3,639	3,552	3,562	2,846	3,894
April	2,892	3,173	3,726	3,496	2,631	2,558
May	3,194	3,393	2,788	3,947	3,154	2,196
June	2,960	3,778	3,578	3,133	2,618	2,578
July	2,926	4,359	3,675	3,037	2,810	2,540
August	3,676	3,490	3,520	3,594	2,531	2,489
September	2,824	3,582	3,595	3,478	2,265	2,622
<b>FY Total</b>	<b>32,405</b>	<b>44,110</b>	<b>39,851</b>	<b>38,477</b>	<b>32,916</b>	<b>32,034</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	73
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	65
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	612 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	120
Average Remand Time Factor	Field Station	97 days

(E) Number of members of the Board at the end of FY 1998: 61 members  
 Number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 1998: 424 employees

(F) Number of acting members of the Board during FY 1998: 55 acting members  
 Number of cases in which such members participated: 3,260 cases

### III. 38 U.S.C. § 7101(d)(3)

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

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

Fiscal year 1999:	Cases received at BVA:	39,000
	Cases added to BVA Docket:	32,000
Fiscal year 2000:	Cases received at BVA:	39,000
	Cases added to BVA Docket:	33,000

(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 Board’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’s estimated response time for FY 1999 is computed as follows:

Estimated 37,200 Decisions in FY 1999 ÷ 365 Days = 101.92 Decisions per Day

19,813 Appeals Pending before the BVA (end of FY 1999) ÷ 101.92 Decisions per Day = 194 Day Response Time on Appeals (end of FY 1999)

(2) Response Time Projections: Based upon existing and projected levels of resources, the estimate of BVA response time, as given in the Board’s FY 2000 budget submission, is 194 days for FY 1999. These response time projections are contingent upon BVA’s original appeal receipts estimates for FY 1999 and FY 2000 shown in paragraph III(A), above.

## **ESTIMATES OF FUTURE TIMELINESS AND PRODUCTIVITY**

Timeliness and productivity estimates are contained in Parts I and II of this report. However, certain factors could arise to affect those estimates. For example, precedent decisions of the United States Court of Veterans Appeals may 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 readjudicate a large number of cases already adjudicated, but not yet dispatched from the Board.

The Board's estimates of future timeliness and productivity can only approximate the impact of cases remanded to regional offices for additional development. The majority of these cases eventually are returned to the Board for adjudication, but the Board cannot anticipate when the requested development will be completed or how many cases will be returned to the Board. The estimates do not include those cases returned to the Board by the Court of Veterans Appeals for readjudication.

In recent years, the Board's decision productivity and timeliness have been retarded by numerous factors, including: (1) directives of the Court that require additional time, effort, and resources to produce appellate decisions; (2) the necessity to stay the adjudication of certain classes of cases pending resolution of appeals as a result of decisions of the Court of Veterans Appeals; and (3) receipt of cases remanded for readjudication from the Court of Veterans Appeals. It is likely that all or some of these factors will influence the Board's productivity in FY 1999, but it is not possible to quantify their possible effects. Additional unanticipated factors could also arise to affect decision production.

