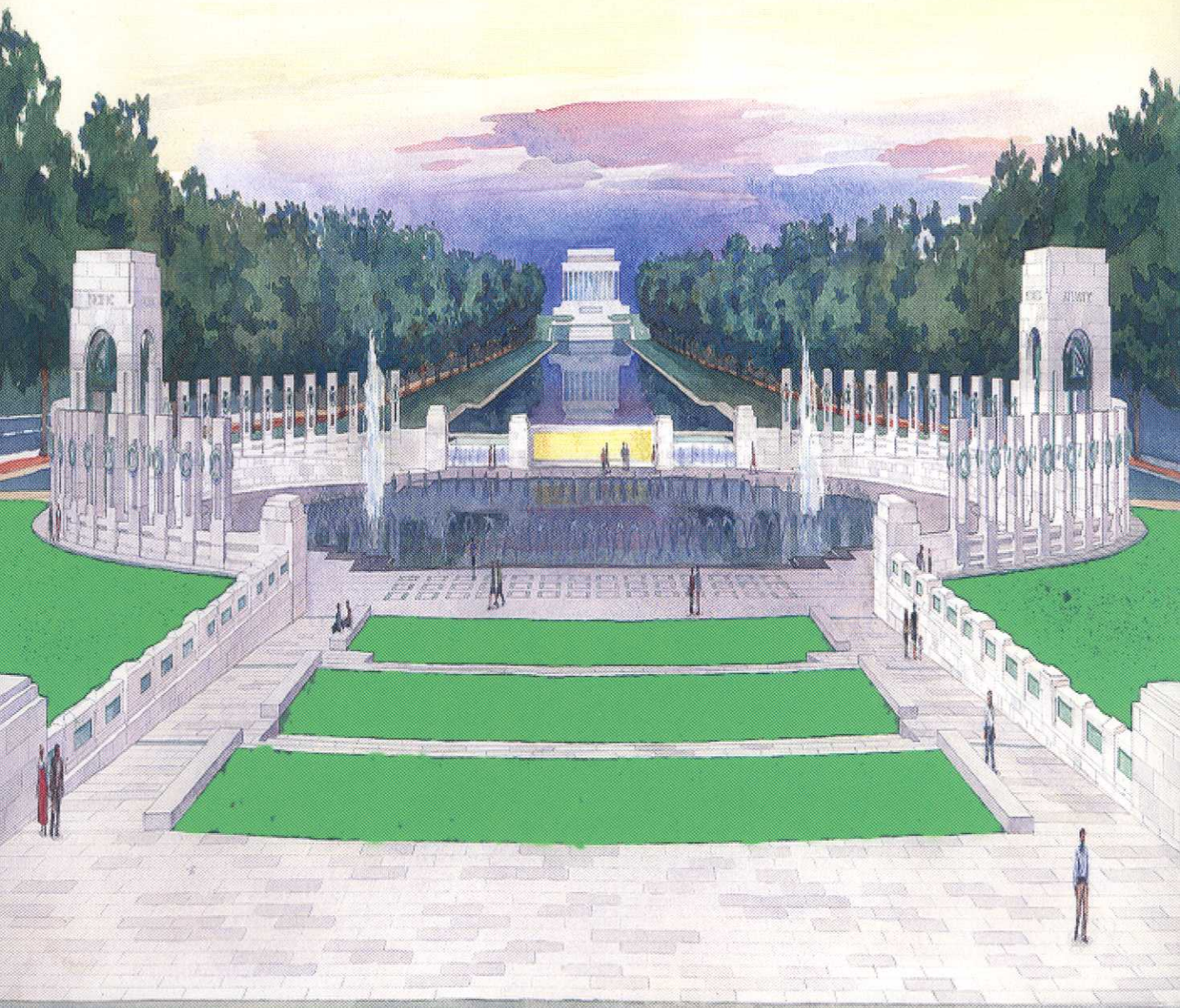


# REPORT OF THE CHAIRMAN

## Board of Veterans' Appeals

### Fiscal Year 2001



Department of  
Veterans Affairs





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

February 11, 2002

The Honorable Anthony J. Principi  
Secretary of Veterans Affairs  
Washington, DC 20420

Dear Mr. Secretary:

I respectfully present the Fiscal Year 2001 Report of the Chairman, Board of Veterans' Appeals, for your submission to Congress. Parts I and II of this report provide an overview of the Board and its activities during fiscal year 2001 and the projected activities of the Board for fiscal year 2002, as is mandated by 38 U.S.C. §7101(d)(1). Additional specific information required by 38 U.S.C. §7101(d)(2) and (3) is contained in Part III of this report.

A noteworthy change, the Veterans Claims Assistance Act, signed into law on November 9, 2000, had a profound effect on both the numbers of cases received by the Board from regional offices as well as those received from the U. S. Court of Appeals for Veterans Claims. As the enclosed report demonstrates, the number of cases received from the field declined dramatically which, in turn, had a direct effect on the number of decisions produced by the Board. Concurrently, remands from the Court of Appeals for Veterans Claims tripled due to the change in the law.

In the face of these challenges, each member of the Board of Veterans' Appeals Team contributed to the successes and accomplishments in fostering a commitment to our veterans and to the "One VA" concept begun over the last three years. Working with the Veterans Benefits Administration and the Veterans Health Administration in fiscal year 2001, the Board continued to reach beyond regional offices and medical centers to places where veterans live and work. The Board's videoconference capability was greatly expanded during FY 2001. It attained new heights both in quality educational seminars with individual adjudicatory persons and in direct contact with veterans in appellate hearings.

I am confident that the challenges presented in FY 2001 and the concomitant responses by the Board will provide you, the Department, and the Congress with teamwork results for our colleagues within the VA and for our veterans and their families.

Respectfully,

A handwritten signature in dark ink that reads "E. D. Clark". The signature is written in a cursive, slightly slanted style.

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.....	10
CURRENT ORGANIZATION OF THE BOARD.....	11
ORGANIZATIONAL DIAGRAM.....	12
ADMINISTRATIVE ACTIVITIES.....	14
PRODUCTIVITY AND TIMELINESS.....	19
ACCESS AND OUTREACH.....	20
LEGISLATION.....	21
SELECTION OF BOARD MEMBERS.....	22
MEMBERS OF THE BOARD OF VETERANS' APPEALS.....	23
MEDICAL ISSUES.....	24
ATTORNEY AND AGENT FEE AGREEMENTS.....	25
REPRESENTATION BEFORE THE BOARD.....	26
LIAISON ACTIVITIES.....	27
QUALITY.....	27
PROFESSIONAL TRAINING.....	28
RESEARCH MATERIALS.....	31

### PART II. FY 1999 STATISTICAL DATA

TABLES AND GRAPHS.....	35
------------------------	----

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

I. 38 U.S.C. § 7101(c)(2).....	41
II. 38 U.S.C. § 7101(d)(2).....	41
III. 38 U.S.C. § 7101(d)(3).....	44
ESTIMATES OF FUTURE TIMELINESS AND PRODUCTIVITY.....	45

## **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 making 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 Appeals for Veterans Claims. 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 (SOC)," 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 were 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, mainly due to the 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 (NOD)” 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 by Congressional legislation.

With few exceptions, the number of appeals initiated each year has remained in the 60,000s from the late 1970s through FY 2000. However, as discussed in this report, BVA’s response time and decisional productivity, for a number of reasons, have undergone dramatic changes since the introduction of judicial review.

## **SINCE JUDICIAL REVIEW—1988 THROUGH 2001**

### *General Impact of Veterans’ Judicial Review Act (VJRA)*

The passage of the Veterans’ Judicial Review Act (VJRA), Pub. L. No. 100-687 (Nov. 18, 1988), which established the U.S. Court of Appeals for Veterans Claims (hereinafter “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 requiring the Board to adapt to new interpretations of veterans’ law and to establish procedures to meet the continually evolving requirements of the law. As observed by the Court, “the evolution of VA benefits law since the creation of [the] Court ... has often resulted in new, different, or more stringent requirements for adjudication.” *Stillwell v. Brown*, 6 Vet. App. 291, 303 (1994).

Changes in the law resulting from the Court’s decisions, and the consequential 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 Court decisions and other legislative and





*By the end of fiscal year 2001, the body of veteran's common law, developed since judicial review began, filled fourteen bound volumes.*

regulatory changes in the law has required the Board to achieve and maintain standards of decision quality at a level well beyond anything contemplated prior to the advent of judicial review. Judicial review has resulted in more consistent and detailed decisions being issued by the Board. These decisions require a significantly greater amount of time to prepare which impacts on the Board's overall timeliness and productivity. Board decisions, for example, must include detailed "reasons or bases" in support of the decision reached, including candid assessments of the credibility of lay and medical evidence.

Because of the need for more detailed decisions, the advent of judicial review has had a dramatic impact on the Board's productivity and the timeliness of decision making. Some of the reasons for this impact include:

- the greatly increased number of cases remanded by the Board to the VA regional offices to satisfy the Department's duties to assist, to notify claimants in developing their claims for VA benefits, and to satisfy new procedural "fair process" requirements created by the Court;
- the need to comply with the directives contained in Court precedent decisions, which now comprise more than 14 volumes of West's Veterans Appeals Reporter;

- the need to consider every potentially applicable law or regulation, regardless of whether such law or regulation was raised by the appellant or considered in the field;
- the need for the procurement of a large number of medical opinions from sources outside of the Board, and the time spent conducting medical research through relevant medical textbooks and treatises;
- a large volume of requests for formal hearings before the Board in Washington, D.C., and for hearings before the Board held in the field, with 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.

Prior to Fiscal Year (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, the Board’s response time climbed steadily from 139 days in FY 1991 to a peak of 781 days in FY 1994. By the end of FY 1998, the Board’s response time was reduced to less than 200 days for the first time in seven years. In FY 2001, the response time was only 90 days (This dramatic decrease was due, in large part, to the impact of the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096 (Nov. 9, 2000), and the consequent drastic decrease in the number of cases certified and forwarded by the VA regional offices to the Board for decision following the enactment of that legislation).

### *Changes in the Law*

As previously indicated, many Court decisions (as well as legislative and regulatory changes) 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 appeals affected by a Court decision or other change in the law, and readjudicate and/or remand the cases for further development or other required action. As held by the Court in *Karnas v. Derwinski*, 1 Vet. App. 308, 313 (1991), if a law or regulation changes after a claim has been filed or reopened, but before the administrative or judicial appeal process has been concluded, the version most favorable to the appellant must be applied unless Congress has provided otherwise or has permitted the Secretary of Veterans Affairs to do otherwise and the Secretary has so done.

As a result of *Karnas*, many decisions are returned to the Board for readjudication from the Court, even in the absence of factual or legal error in the Board's decision. Remands are based on the promulgation of legislative or regulatory changes, or issuance of new court precedent, subsequent to the date of the Board's original decision on appeal. Similarly, many VA regional office decisions that were rendered prior to the occurrence of a change in the law must be remanded by the Board to the Agency of Original Jurisdiction (AOJ) to cure defects caused by the law change. The enactment of VCAA on November 9, 2000, is a noteworthy example of a change in the law that resulted in the remand of numerous cases by the Court to the Board, and the Board to the AOJ.

#### *Veterans Claims Assistance Act of 2000 (VCAA)—Court Remands*

The number of remands issued by the Court of Appeals for Veterans Claims dramatically increased following the passage of the Veterans Claims Assistance Act of 2000 on November 9, 2000. Indeed, the number of cases remanded to the Board following the enactment of the VCAA was unprecedented. From October 1, 2000, to September 30, 2001, the Court remanded 2,910 cases to the Board. For comparison, the Court only remanded 1,060 cases during the same period one year earlier. This represents a nearly three-fold increase in cases remanded to the Board from FY 2000 to FY 2001.

The dramatic increase in remands was driven by the passage of the VCAA, and the Court's determination that all provisions of the VCAA are potentially applicable to claims pending on the date of the VCAA's enactment. *Holliday v. Principi*, 14 Vet. App. 280, 286 (Feb. 22, 2001), *Secretary's motion for panel reconsideration denied*, 14 Vet. App. 327 (Apr. 27, 2001) (per curiam), *Secretary's motion for a full Court decision denied*, 15 Vet. App. 21 (May 24, 2001) (per curiam) (en banc).

*Holliday* further held that the question of the applicability or inapplicability of the VCAA to a particular case generally must be decided in the first instance by the Board, not by the Court. *Holliday*, 14 Vet. App. at 286-90. The Court determined that this conclusion follows from the Court's limited scope of review authority with respect to Board decisions. The Court is prohibited from making *de novo* findings of fact. This conclusion follows from several Federal Circuit decisions, *see, e.g., Hensley v. West*, 212 F.3d 1255 (Fed. Cir. 2000); *Nolen v. Gober*, 222 F.3d 1356 (Fed. Cir. 2000); and *Winters v. Gober*, 219 F.3d 1375 (Fed. Cir. 2000), which on their face, and as applied by the Court of Appeals for Veterans Claims, have essentially written the harmless error standard of review out of the Court's statutory scope of review authority set forth in 38 U.S.C. § 7261(b).

While the Court subsequently limited its holding in *Holliday* to some extent by stating that a remand to the Board is not required when the VCAA is inapplicable as a matter of law, or where the question presented on appeal is one limited to statutory interpretation, it still remanded the vast majority of appealed Board decisions issued prior to November 9, 2000. *See Dela Cruz v. Principi*, 15 Vet. App. 143 (Aug. 21, 2001); *Livesay v. Principi*, 15 Vet. App. 165 (Aug. 30, 2001) (en banc). The Court said in *Livesay*, while "[t]he VCAA is a reason to remand many, many claims," it is not an excuse for the Court to remand all claims, and the Court may decide that the VCAA could not affect a pending matter. *Livesay*, 15 Vet. App. at 178.

#### Veterans Claims Assistance Act of 2000 (VCAA)—Board Remands

In contrast to the Court, the Board made every attempt to avoid remanding every appeal decided by agencies of original jurisdiction (AOJs) prior to November 9, 2000. Unlike the Court, which essentially remanded 100% of all cases appealed from the Board during FY 2001, the Board's remand rate to the AOJs during this same period of time only climbed from a low of approximately 30% to a high of 50%. During FY 2001, the Board conducted periodic training with the Board members and staff counsel on the subject of not reflexively remanding every case to the AOJs due to the passage of the VCAA.

While the Court's remand rate to the Board was at a record level during FY 2001, for all of the reasons discussed above, the Court's remand rate to the Board following the enactment of the VJRA has remained at a relatively high percentage of the Board decisions that are actually appealed to the Court each year. Similarly, and for reasons directly related to all of the changes brought



about by judicial review, the Board's remand rate to the regional offices has been significantly higher since the enactment of the VJRA. Among the Board's reasons for remanding cases to the regional offices are the need to obtain both VA and private medical records, to conduct a new or additional VA compensation and pension medical examinations, and to complete additional due process development. Development may include holding a requested hearing or initial consideration by the regional office of new or inextricably intertwined issues and potentially applicable laws and regulations.

### *Impact of Increased Court and Board Remands*

Readjudication of decisions remanded from the Court to the Board, and those returned by the regional offices to the Board following a prior Board remand, has resulted in an increased workload for the regional offices, as well as a longer wait for appellants in obtaining final resolution of their cases. Additional remands from the Court to the Board, and from the Board to the regional offices, are required when either the Board or a regional office fails to fully comply with the terms of a prior remand order issued by the Court or the Board. *Stegall v. West*, 11 Vet. App. 268, 271 (1998), held: "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 ... [and] 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. [Further,] ... where ... the remand orders of the Board or this Court are not complied with, the Board itself errs in failing to insure compliance."

### *Other Changes Related to the VJRA*

Subsequent to and as a result of the VJRA, a number of other changes have been made in the way that the Board schedules and conducts hearings, and docket and decides appeals. The VJRA made a hearing before a "traveling section of the Board," or "Travel Board" hearing, a matter of statutory right. This change in the law led to a sixfold increase in the demand for such hearings, but at a cost to both the appellants and the Board. While appellants benefited from the convenience and reduced costs associated with having a hearing conducted closer to their homes, the increased time Board members were required to spend traveling reduced the amount of time available for them to decide cases. This contributed to increased delays in receiving Board decisions.

To accommodate the growing volume of Travel Board hearing requests and at the same time reduce the amount of Board member travel time, the Board sought legislative approval to employ emerging video technology to conduct videoconference hearings. This authority was granted by the “Board of Veterans’ Appeals Administrative Procedures Improvement Act of 1994,” Pub. L. No. 103-271. The Board began conducting videoconference hearings in FY 1995 and has steadily expanded their use, conducting over 1,000 videoconference hearings in FY 1998, 1,385 in FY 2000, and over 1,300 in FY 2001.

Since July 1994, the Board has been authorized to issue decisions made by individual Board members, rather than by panels of three members. 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, and whose cases were not docketed until after the hearing was held due to the need to retain the claims folder at the VA regional office to schedule and conduct the requested hearing. As a result of a joint effort by BVA and the Veterans Benefits Administration (VBA) during FY 1997 and FY 1998, a single computerized system for the docketing, tracking, and managing of appeals was adopted. The Board’s docketing procedures further improved during FY 1999 when legislation was enacted which requires that all Travel Board hearings be conducted in docket order sequence.



*During FY 2001, the Board conducted over 5,560 hearings at VA field facilities , the Board’s Washington, DC, offices, and by Videoconference.*



## 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 to serve a six-year term at the Assistant Secretary level. Pursuant to 38 U.S.C. § 7101(a), the Board is authorized 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 12.)

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 made by individual Board members. Prior to Pub. L. No. 103-271, the law required that three-member panels decide each appeal. To support the three-member panel requirement, the Board was divided into 21 decision-making units (Board sections), each 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.

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 Administrative Services. Functional responsibilities and authorities remained basically unchanged from those in effect in the 1980s and earlier. The organizational structure reflected the prevailing management philosophies of the era. The "Board section" arrangement reflected

the legal requirement that panels, usually consisting of three members, issue decisions. 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.

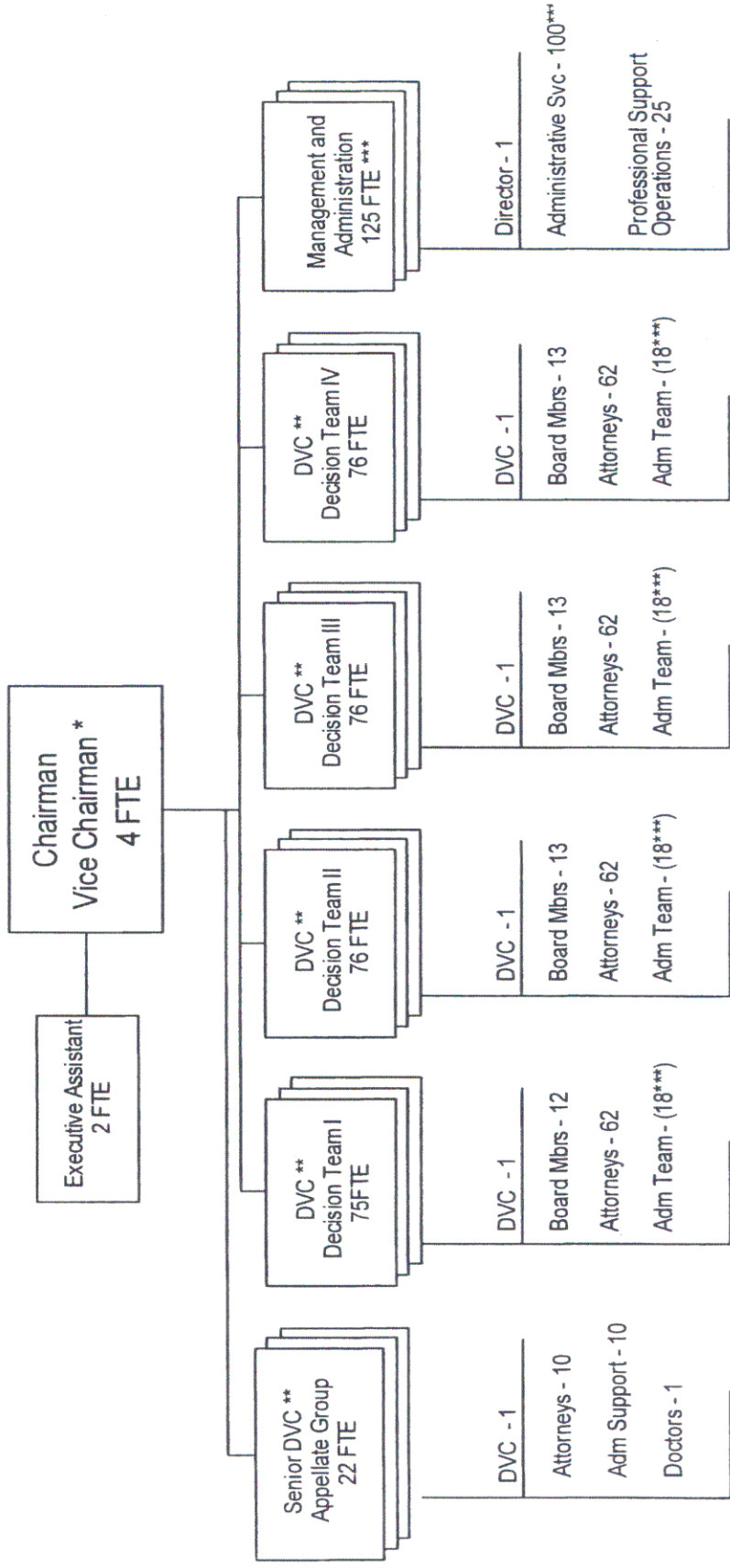
Near the end of FY 1995, the Board installed an organizational alignment that created an atmosphere in which Board members, staff counsel, and administrative support personnel could interface directly and regularly, thereby establishing a greater sense of teamwork. The new organizational structure reduced administrative overhead and allowed sufficient latitude for different 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 as the organizational structure of the Board. Each team contains 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, 14 Board members (two of whom are designated as Chief members), approximately 60 to 65 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.



# The Board of Veterans' Appeals

## Organizational Structure



Virtually all aspects of the processing of appeals occurs 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 (VIO) 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. Two Chief Board members assist each DVC in the supervision of the professional staff.

Delegated authority and outcome accountability 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 pages 27 and 28, 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 involving Travel Board hearings



are assigned to the Board member who conducted the hearing 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 VBA's senior adjudicatory staff and rating board specialists, and has resulted in better communication and case control. Efforts to improve direct communication between Board members and adjudicators in the field are discussed on pages 17 and 18.

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 processing 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. Counsels typically prepare draft decisions on individual computer workstations 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, it undergoes a final quality review, and is mailed to the appellant. A copy of the decision is also mailed to an appellant's representative if one has been designated.

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 pages 24 and 25.

## **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:

1991 complete revision of decision analysis and format

1992 use of single Board member hearings as opposed to three-member panel hearings

1993 introduction of a "trailing" hearing docket

- 1993 improvements in direct responses to customers and responses to Congressional and other inquiries
- 1993 consolidation of all Washington, DC, Board 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
- 1994 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 videoconference technology for the conducting of personal hearings and senior level seminars between the Board members and regional office adjudicatory personnel
- 1995 numerous customer service initiatives, including publication of a plain language pamphlet entitled, “Understanding the Appeal Process”
- 1996 made BVA decisions and, “Understanding the Appeal Process,” available to the public on the World Wide Web
- 1997 adopted single appeals tracking system for use by BVA and the Veterans Benefits Administration
- 1998 introduced a revised VA Form 9, “Appeal to the Board of Veterans’ Appeals”
- 1999 discontinued requirement for the submission of the monthly regional office report VA Form 4999 (requests for BVA Travel Board hearings) – this information can now be accessed as a VACOLS report both by BVA and individual regional office personnel
- enhanced VACOLS capability to track all Travel Board and Videoconference hearing requests both at the Board and at individual regional offices and access this information as a VACOLS report
- 2000 enhanced the Board’s website and updated the pamphlet “Understanding the Appeals Process”



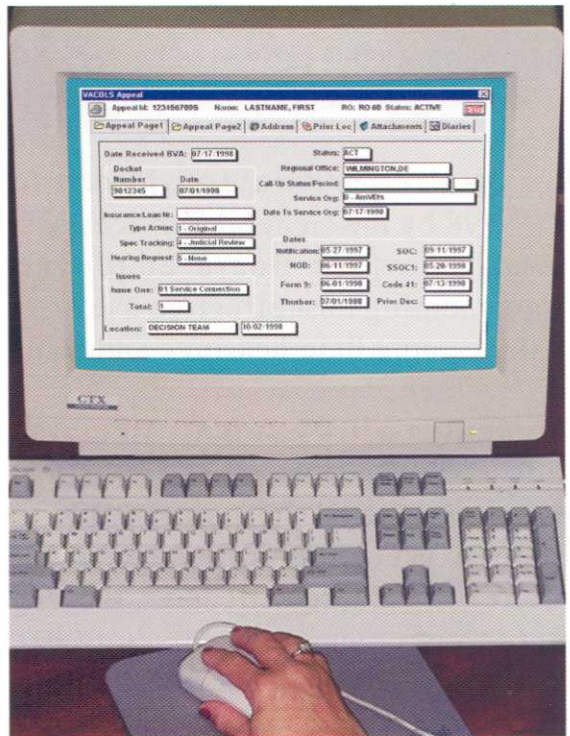
2001 relocated two administrative teams within the Decision Teams for improved control and efficiency

During FY 2000, MIS coordinated a release of a fourth updated version of the Veterans' Appeals Control and Locator System (VACOLS) to allow greater access and added capability for data entry and data sharing for adjudicatory personnel in regional offices. VACOLS was developed jointly by the Board and VBA. It was adopted as the Department's first appeals tracking system in FY 1997. This unified tracking system provides important Department-wide benefits, including:

- ◆ Improved accuracy and timeliness of Departmental reports and appeals status determinations;
- ◆ Significantly 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.

Through VACOLS, VBA personnel can add appeals to BVA's docket, close out appeals resolved in the field, enter appellants' requests for BVA hearings, enter 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. In FY 1999, the Board enhanced VACOLS by extending RO capabilities (e.g. permitting more RO inquiries and annotations) to include CUE queries, address updates, videoconference hearing annotations, NOD, and issue tracking, adding issues on remand, and print capability. VSO representatives working at regional offices now have the ability to connect to the BVA computer network. In FY 2001, additional enhancements to VACOLS further assisted regional office personnel to access, input, and retrieve information regarding reactivated appeal diary entry, notices of death, dispatching an appeal, active Court remands status, monthly summary of cases certified to the Board, and the addition of specific reasons for a grant in the field after a denial of benefits by the agency of original jurisdiction.

As previously mentioned, the Board conducted its first videoconference hearing in FY 1995. Every year since then, the Board has expanded its use of video technology for personal hearings and for conducting seminars and information exchanges between BVA and VA regional offices. A significant milestone was reached in September 1998, with the signing of a Memorandum of Understanding (MOU) between the Board and the Veterans Benefit Administration (VBA) that articulated the commitment of both organizations to employ videoconference technology to improve service delivery and communications by, among other things:



- ❑ Establishing a nationwide videoconference network to support the facilitation of appellate hearings, communication between the Board and VBA field adjudication staff, and communication between VBA field offices and field facilities for long distance learning projects or Decision Review Officer (DRO) hearings;
- ❑ Developing joint equipment procurement and installation plans;
- ❑ Maximizing system utilization through cooperative scheduling and equipment compatibility;
- ❑ Ensuring that the usage of videoconference systems is an integral part of organizational long-term planning.

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. Videoconference affords veterans the opportunity to have hearings before Board members without incurring additional long periods of time away from their workplace or the expense of traveling to Washington, DC. This convenience aids those in more remote areas as they no longer have to wait for “Travel Board” hearings that – due to cost and



time constraints – might be held only once or twice each year. Videoconference methodology has proven to be very effective to conserve the productive capability of Board members by reducing their travel time.

BVA's effective use of videoconference 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 videoconference to conduct nationwide long distance appellate hearings and seminars for the Board of Veterans' Appeals."

Under a BVA/VBA Memorandum of Understanding, the number of videoconference sites has grown to 69. Some are located at VHA clinics. The Board conducted more than 1,300 videoconference hearings in FY 2001. The Board expects to hold as many as 1,500 hearings in FY 2002. In the very near future, the Board will have the capability to access two different sites in a multipoint connectivity mode to better serve our appellants and colleagues in regional offices. This capability also assists Veteran Service Organization representatives who otherwise would have to travel to remote sites to assist veterans wishing to partake of an appellate hearing.

Videoconference seminars are employed regularly as a vehicle for improving direct communications between Board members and regional office adjudication personnel. This methodology has been used to conduct seminar exchanges between BVA and VBA field office adjudication staff on a variety of topics. Anecdotal feedback regarding these sessions has been overwhelmingly positive. The two-way communication provides a real-time alternative to the more typical classroom environment, allowing "face to face" information exchanges without the cost or,



more importantly, the time required for travel to and from geographically distant locations. The educational value of these seminars is best seen in the consistent drop in the remand rate at those offices that regularly take advantage of these training sessions.

## **PRODUCTIVITY AND TIMELINESS**

During FY 2001, the Board and VBA continued to refine the system-wide appeals timeliness measure, adopted in FY 1998, which represents an important yardstick for evaluating the timeliness of appeals processing. This 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 Appeals for Veterans Claims are not included, as a significant portion of the history of such cases is spent outside the Department’s jurisdiction and control.

Appeals resolution time in a “One VA” concept provides appellants, members of Congress, government officials, VA management, and other interested parties a comprehensive, 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. Ongoing refinements during FY 2000, 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/vbs/bva>

Board decisions issued in calendar years 1994, through 2001, are also available in searchable text format through VA’s Web pages. 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>
1998	<a href="http://www.va.gov/vetapp98/vetindex.htm">http://www.va.gov/vetapp98/vetindex.htm</a>
1999	<a href="http://www.va.gov/vetapp99/vetindex.htm">http://www.va.gov/vetapp99/vetindex.htm</a>
2000	<a href="http://www.va.gov/vetapp00/vetindex.htm">http://www.va.gov/vetapp00/vetindex.htm</a>
2001	<a href="http://www.va.gov/vetapp01/vetindex.htm">http://www.va.gov/vetapp01/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. During FY 2000, the Board answered in excess of 1,050 e-mail inquiries and responded to over 2,670 inquiries in FY 2001. In addition to the normal requests for information concerning the status of an appeal at the Board, inquiries to the Board’s e-mail link request information on a wide range of issues covering topics concerning insurance coverage, health coverage, death benefits, and veteran and dependent status after active duty periods. These issues are forwarded directly to the Departmental element that can best respond to the particular request.

## LEGISLATION

The legislation with the greatest effect on the Board in FY 2001, was the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475 (Nov. 9, 2000). Congress intended this bill to reverse a July 1999 decision by the Court of Appeals for Veterans Claims which held that, unless a veteran submitted a “well-grounded” claim, VA had no duty to assist in development of the claim. (*Morton v. West*, 12 Vet. App. 477 (1999), *remanded sub nom. Morton v. Gober*, 243 F.3d 557 (Fed. Cir. 2000), *opinion withdrawn and appeal dismissed*, 14 Vet. App. 174 (2000)).

The VCAA mandates specific obligations on VA to all claimants and codifies the Department’s obligations to assist a claimant in the development of his or her claim. It applies to all claims that were pending on the date of enactment, November 9, 2000. In addition, section 7(b) of the VCAA provides that claimants whose claims had been finally denied as “not well-grounded” during the period July 14, 1999 to November 9, 2000, could request that their claims be readjudicated under the new standards. Although section 7(b)(4) of the VCAA specifically did not obligate VA to locate and readjudicate such claims, shortly after the bill was signed, the Veterans Benefits Administration announced that it would voluntarily locate and readjudicate approximately 100,000 claims that were issued in this time frame and denied as “not well grounded.” The additional obligations imposed on VA by the new law and the readjudication of these claims contributed substantially to the workload of the regional offices.

Since the enactment of the VCAA, the Board’s receipts from the regional offices of original appeals and processed remands dropped dramatically. During FY 2000, the Board received 31,660 original appeals and remands; during FY 2001, that number dropped to 18,578.

At the same time, the Court of Appeals for Veterans Claims remanded virtually all pending appeals so the Board could consider them under the new statute. The Board did not follow the Court’s lead. Instead, the Board attempted to determine whether there had in fact been compliance with the VCAA, even though the new law was not in force at the time of the regional office decision. As a result, the Board’s remand rate to the regional offices increased from 30% in FY 2000 to 50% in FY 2001.



In April 2001, the Secretary directed the General Counsel to draft regulations that would permit the Board to develop evidence itself to eliminate the requirement that cases be remanded for AOJ development of evidence. The regulations were published in the Federal Register on August 6<sup>th</sup>, 66 FR 40942 (2001). In preparation for this new authority, the Board has worked closely with the Veterans Benefits Administration and the Veterans Health Administration to develop training, information technology support, and other procedures to accomplish this new mission.

Because of the decrease in receipts from the regional offices, the Board was able, in the latter part of FY 2001, to provide Board counsel to various regional offices to assist in reviewing cases on appeal and prepare Statements of the Case or Supplemental Statements of the Case as required. The initiative was intended to help reduce the backlog of appeals at the VBA level. The huge, and growing backlog was due, at least in part, from the effects of the VCAA.

## **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. Physicians, as members of the Board, is discussed in the next section of this report.

The selection process for Board member positions is extremely competitive — candidates must be completely familiar with the ever growing body of applicable statutory, regulatory, and judicial authority. They must have a solid background in numerous subject areas including medical matters that are 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. They have the expertise necessary to adjudicate appeals for veterans' benefits in an expeditious manner. Staff counsel generally require from 7 to 10 years of experience before they are considered qualified for consideration to become 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. Selection of Board members is based solely on merit. The political affiliation, if any, of the candidates is never a factor for consideration.

## MEMBERS OF THE BOARD OF VETERANS' APPEALS

At the close of FY 2001, the following 58 individuals, 27 of whom are veterans, were serving as members of the Board of Veterans' Appeals. At the close of FY 2001, no Board member appointments were awaiting Presidential approval.

AGUAYO-PERELES, JOAQUIN  
(DEPUTY VICE CHAIRMAN)

BOHAN, BARRY F.

BOSCH, RONALD R.

BRAEUER, WAYNE M.

BROWN, DEREK R.

BRYANT, ANNA M.

CALLAWAY, BETTINA S.

CLARK, ELIGAH D.

(CHAIRMAN)

COHN, STEVEN L.

COPELAND, BARBARA B.

DANNAHER, THOMAS J.

DAY, JONATHON E.

DURKIN, SHANE E.

FLOWERS, FRANK J.

FRANK, RICHARD B.

GALLAGHER, MARY

GARVIN, RON

(VICE CHAIRMAN)

GICK, GARY L.

GOUGH, JEROME F.

GREENSTREET, MARK W.

HALSEY, MARK F.

HINDIN, MARK D.

HOGEBOOM, CHARLES E.

(DEPUTY VICE CHAIRMAN)

HYMAN, BRUCE N.

JORDAN, VICKY L.

KANNEE, BRUCE N.

KELLER, STEVEN L.

(SENIOR DEPUTY VICE  
CHAIRMAN)

KENNEDY, SUSAN L.

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.

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.

SULLIVAN, LAWRENCE M.

SULLIVAN, ROBERT E.

SYMANSKI, CHARLES W.

TOBIAS, CONSTANCE B.

TOBIN, LEO W., III

WILKINS, STEPHEN L.

WILLIAMS, RICHARD F.





*Each Deputy Vice Chairman spends many hours reviewing, planning, and allocating the Decision Team's workload.*

## MEDICAL ISSUES

The Court has issued a number of opinions over the years that have altered the manner in which BVA physicians are employed in the decision-making process. The Court eliminated their 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. The Board could not provide its own medical judgment as a Board opinion. After *Colvin*, the Board utilized BVA physicians as medical advisers. In that capacity they provided expert medical opinions “on the record” in appeals in which such guidance was required. Then, 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 *Austin*, the Board has not utilized opinions from its own medical advisers to adjudicate 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. The resources of the Board's Research Center, discussed on pages 31 through 33, have been greatly expanded to help meet this need.

Because BVA could no longer base its decisions on its own medical expertise, 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. 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.

In FY 2001, the Board requested 129 opinions from non-VA medical experts under 38 U.S.C. § 7109 compared with 79 opinions the previous year. In FY 2001, the Board requested 215 advisory opinions from medical experts from the Veterans Health Administration (VHA) compared with 266 in FY 2000.

## **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.

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. The resources of the Board's Research Center, discussed on pages 31 through 33, have been greatly expanded to help meet this need.

Because BVA could no longer base its decisions on its own medical expertise, 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. 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.

In FY 2001, the Board requested 129 opinions from non-VA medical experts under 38 U.S.C. § 7109 compared with 79 opinions the previous year. In FY 2001, the Board requested 215 advisory opinions from medical experts from the Veterans Health Administration (VHA) compared with 266 in FY 2000.

## **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 2001, the Board received 1,230 fee agreements for filing and review, three percent less than in FY 2000, but 40 percent more than in FY 1999. 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 12 motions for Board review of fee agreements in FY 2000, while one was filed by an attorney. At the end of the fiscal year, one motion was pending. In FY 2001, the Board completed action on 11 motions. The Board ruled that the attorney could not charge a fee in eight cases; it ruled that the attorney could charge a fee in one case; and two motions were withdrawn.

In the past, most of the Board's decisions concerning fee agreements involved 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). However, on August 14, 2000, the U.S. Court of Appeals for Veterans Claims held that VA's regional offices, not the Board, should make such decisions in the first instance. *Scates v. Gober*, 14 Vet. App. 62 (2000) (en banc). Accordingly, as of August 14, 2000, the Board ceased making original decisions in these cases. During FY 2001, the Board dismissed 27 cases that had previously been referred to the Board by the regional offices for decisions on whether to pay an attorney fee from past-due benefits, and vacated four Board decisions previously made on that issue.

## **REPRESENTATION BEFORE THE BOARD**

Veterans Service Organizations (VSOs) are vital to the Board's operation and provide an invaluable service to appellants. One of 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 2001, 81.8 percent of appellants were represented by one of the accredited veteran service organizations (82.7 percent in FY 2000), 8.5 percent were represented by an attorney or agent (8.4 percent in FY 2000), and 9.7 percent were not represented (8.9 percent in FY 2000). (See table on page 36, Part II.)



## LIAISON ACTIVITIES

During fiscal year 2001, the Chairman made presentations to members and staffs of the Committees on Veterans' Affairs of the Senate and House of Representatives and of the Subcommittee on VA, HUD, and Independent Agencies of the House and Senate Committees on Appropriations. Topics included an overview of the Board's future objectives, to include improvements in Board productivity and timeliness, validation of the Board's FY 2001 budget.

During FY 2001, the Chairman addressed or participated in more than ten conventions, seminars, and award ceremonies held by national and state veterans' service organizations, and the active duty forces. National organizations included Disabled American Veterans, The American Legion, and the Paralyzed Veterans of America. State conferences included the Georgia Department of Veterans Affairs, and the National Association of County Veterans Service Officers. The Chairman also had the opportunity to present the principal address at the Memorial Day Ceremony at the New Bern, North Carolina National Cemetery. The Chairman was also a guest speaker at Black History Month school programs in Alabama.

The Board responds directly to requests for information and assistance from veterans, their representatives, and Members of Congress and their staffs. The Deputy Vice Chairman of each Decision Team and their administrative personnel handled most of the 18,043 requests during FY 2001 - a decrease from the 21,292 requests in FY 2000. The 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 1,662 Congressional inquiries in FY 2001, reflecting a decrease from the 2,537 requests in FY 2000.

## QUALITY

During FY 2001, the Board continued to improve the systematic and objective approach to quality assessment that was initially begun in FY 1998. 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 Appeals for Veterans Claims. Sampled decisions are reviewed and assessed with respect to quality using six discrete criteria:

- Ö Issues - identify and address all issues, either expressed or inferred;
- Ö Evidence - account for all evidence, both in favor of or against the claim;
- Ö Laws and Regulations - cite and set forth all applicable laws and regulations;
- Ö Reasons and Bases - coordinate the facts of the case with the law, and clearly explain how the decision was reached;
- Ö Due Process - address all technical aspects of due process;
- Ö 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 oversaw the Board's intensive training program for attorney staff and Board members during FY 2001. 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 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, computer word-processing, and legal research techniques. The curriculum includes mentor assistance, the use of a uniform training guide, legal and medical lectures, training in the use of on-line reference resources, such as those discussed in the next section, a variety of training evolutions presented by other sources.

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. The Board provides each of the four Decision Teams an allowance of \$10,000 for the costs of non-VA training. This covers training for approximately 14 Board members and 60 staff counsel assigned to each Decision Team.

Members of the Decision Teams participated in a myriad of professional developmental areas including the following seminars, workshops, and programs:

- ◇ OPM's Western Management Development Training Center, in Denver Colorado.
- ◇ OPM's Federal Executive Institute, Leadership For A Democratic Society.
- ◇ Cross-training with the VA General Counsel's Professional Group 2 and Professional Group 7.
- ◇ Women's Professional Development Conference and "The Leadership Development Conference for Women."



- ◇ Continuing Legal Education (CLE) courses offered at the Department of Justice National Advocacy Center (NAC) in Columbia, South Carolina.
- ◇ Courses offered by National Seminars Group or Skillpath titled Team Leadership Seminar; Managing Multiple Projects, Objectives, and Deadlines; Business Writing and Grammar Skills; How to Become a Better Communicator; How to Be a Highly Successful Team Leader; Communicating with Tact; Skill Managers and Supervisors; and The Essentials of Communicating with Tact and Finesse.
- ◇ “Growing Leaders for the 21st Century”, co-sponsored by VA Learning University and OPM.

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 numbers of 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. BVA provides quarterly “Grand Rounds” training sessions for all Board members and staff counsel. Grand Rounds are directed at remedying deficiencies noted by the Quality Assurance (QA) reviewers and brought to the Board’s attention by the Board’s legal staff. The training sessions also serve to keep our legal staff abreast of the continuing changes in the law. These “Grand Rounds” training sessions are in addition to Board-wide and Team-level training provided on a variety of legal issues.

Each decision team provides team-level training to address quality and other issues specific to each work group. A tremendous number of issues are covered and training materials are shared at the BVA’s internal web site.

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). In FY 2001, the Board had three senior level attorneys selected for LVA. Leadership VA is an intensive leadership training experience sponsored by VA that provides participants the opportunity to gain insight into the myriad of internal and external forces affecting the Department. Four weeks spaced throughout the year at four different sites encompass this excellent program.

The Board's senior managers attend a variety of training and managerial development seminars appropriate for their grade and management levels to provide its leadership with the requisite tools and skills to succeed. 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.

During FY 2001, forty Board attorneys participated in a one-year Flexiplace Pilot Program. The results of the one-year program are expected to assist the Board in making informed decisions concerning whether to continue, terminate, modify or expand the Flexiplace Pilot Program. The statistical information compiled during the first eight months showed a 29 percent increase in decisional output by Flexiplace participants; however, due to the backlog of claims and appeals pending readjudication at the regional offices, the Board began experiencing a serious case shortage. By the end of FY01, the increase in decisional output by Flexiplace participants was down to 14 percent. Statistical data further disclosed no appreciable difference in the quality of decisions prepared in FY00 versus FY01. The Board concluded that the short-term adverse effects of enactment of the VCAA upon the claims processing/appeals system prevented the Board from confidently drawing conclusions concerning timeliness, quality of work products, productivity, and attorney efficiency. The Flexiplace Pilot Program was extended for an additional six months to further document such statistical data.

## **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, 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 are available to BVA employees, 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. We have achieved 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. The network gives access to a significant number of automated reference materials ("research tools"). This material is accessible through a computer selection menu that facilitates legal and medical research from an individual's workstation. Training is provided to familiarize network users with the resources available, the steps necessary to access the desired information and formulate search "queries."

The Board's computer network research tools include indexes and information collections that are compiled in either databases or word processing files. The research databases 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. It contains references to VA-generated documents that are relevant to the mission of the Board. The CITATOR is an index to the historical texts of VA regulations which are currently maintained in the Research Center on microfiche in chronological order. Indexes of VA Office of the General Counsel opinions, Chairman's numbered memoranda, videotaped training lectures and "headnotes" or summaries of decisions of the United States Court of Appeals for Veterans Claims (CAVC) 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 CAVC, 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. It has also been distributed by the Veterans Benefits Administration's Compensation and Pension Service to adjudicators in all 58 VA regional offices. This asset allows staff counsel, Board members, and others to keep abreast of the burgeoning and dynamic body of veterans' benefits law.

The Board's on-line information collections include: Slip opinions of the CAVC from 1990, to the present; BVA decisions from 1994 to the present; and Title 38 of the Code of Federal Regulations, which is downloaded yearly from the Government Printing Office website. The Physicians' Desk Reference



(pharmaceutical product descriptions and information about drug interactions and side effects), and Stedman's Medical Dictionary are both available to BVA attorneys through a web-based commercial application. A link to the free, on-line edition of the Merck Manual also appears on the Research Tools screen. 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: the Research Center's shelf list, 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. Finally, LexisNexis™ (an on-line, legal research system) is also offered to BVA staff as an additional research source.

From 1994 through 2000, BVA's decisions were made available to the public in redacted form on CD-ROM. Board decisions issued in calendar years 1996, 1997, 1998, and 1999, along with the Veterans Benefit Law Index were available for purchase from the Government Printing Office on CD-ROM. To better insure privacy interests, the Board has discontinued publishing decisions on CD-ROM. Today, the Board makes all final decisions and remands available to the general public through the VA's Web pages. This public access to Board decisions represents a potential reduction of research time for appellants, attorneys representing appellants, appeal representatives preparing advocacy briefs, and others interested in the appeal process.



## PART II

### FY 2001 STATISTICAL DATA

During FY 2001, the Board issued 31,557 decisions. This total represents a 7.2 per cent decrease from FY 2000 (34,028 decisions issued). The decrease in decisions is due to the tremendous impact, across the spectrum, of the Veterans Claims Assistance Act signed into law on November 9, 2000. The chart below reflects the Board's statistics, by category, for FY 2001.

Category	Total	Allowed	Remanded	Denied	Other
Burial Benefits	53	5	13	35	0
Compensation	28,698	6,628	14,331	7,274	465
Education	190	17	65	104	4
Insurance	35	2	8	25	0
Loan Guaranty	72	13	23	32	4
Medical	324	33	134	147	10
Pension	1,187	178	438	547	24
VR&C	74	9	35	29	1
Other Programs	21	1	6	9	5
BVA Original Jurisdiction	324	32	8	190	94
Multiple Program Areas	579	105	345	122	7
<b>Totals</b>	<b>31,557</b>	<b>7,023</b>	<b>15,406</b>	<b>8,514</b>	<b>614</b>
<i>Percentage</i>	<i>100</i>	<i>22.3%</i>	<i>48.8%</i>	<i>27.0%</i>	<i>1.9%</i>

# BOARD OF VETERANS' APPEALS

## BVA DISPOSITIONS BY REPRESENTATION

FY 2001

REPRESENTATION	ALLOWED		REMAINED		DENIED		OTHER		TOTAL	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
American Legion	1,515	21.8%	3,474	50.1%	1,828	26.3%	124	1.8%	6,941	22.0%
AMVETS	152	22.4%	297	43.7%	212	31.2%	19	2.8%	680	2.2%
American Red Cross	13	15.3%	46	54.1%	25	29.4%	1	1.2%	85	0.3%
Disabled American Veterans	2,356	24.3%	4,600	47.4%	2,588	26.7%	157	1.6%	9,701	30.7%
Military Order of the Purple Heart	62	23.8%	131	50.4%	63	24.2%	4	1.5%	260	0.8%
Paralyzed Veterans of America	128	24.7%	250	48.3%	117	22.6%	23	4.4%	518	1.6%
Veterans of Foreign Wars	575	21.5%	1,311	49.1%	738	27.7%	45	1.7%	2,669	8.5%
Vietnam Veterans of America	126	30.1%	217	51.8%	65	15.5%	11	2.6%	419	1.3%
State Service Organizations	907	23.1%	1,944	49.5%	1,012	25.8%	66	1.7%	3,929	12.5%
Attorneys	557	21.1%	1,500	56.9%	511	19.4%	68	2.6%	2,636	8.4%
Agents	11	25.6%	20	46.5%	11	25.6%	1	2.3%	43	0.1%
Other Representation	158	25.4%	326	52.5%	125	20.1%	12	1.9%	621	2.0%
No Representation	463	15.2%	1,290	42.2%	1,219	39.9%	83	2.7%	3,055	9.7%
<b>GRAND TOTAL</b>	<b>7,023</b>	<b>22.3%</b>	<b>15,406</b>	<b>48.8%</b>	<b>8,514</b>	<b>27.0%</b>	<b>614</b>	<b>1.9%</b>	<b>31,557</b>	<b>100.0%</b>



# BVA DECISIONS

<u>FY</u>	<u>Decisions</u>	<u>Allowed</u>	<u>Remand</u>	<u>Denied</u>	<u>Other</u>
1997	43,347	16.7%	45.2%	36.6%	1.5%
1998	38,886	17.2%	41.2%	39.5%	2.0%
1999	37,373	22.1%	36.3%	39.8%	1.8%
2000	34,028	26.3%	29.9%	41.4%	2.4%
2001	31,557	22.3%	48.8%	27.0%	1.9%

<sup>1</sup> BVA allowances do not necessarily connote regional office adjudicatory errors since BVA reviews regional office decisions on a “de novo” basis.

<sup>2</sup>A Remand by BVA to a regional office does not necessarily connote a regional office error.

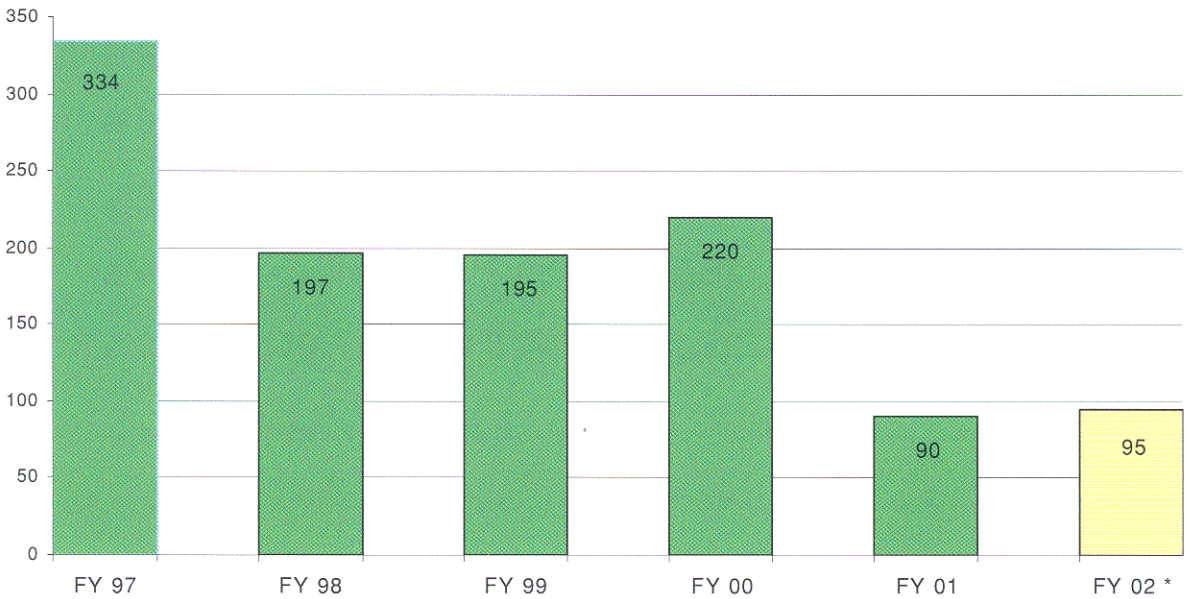
# BVA OPERATING STATISTICS

	<u>FY1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>
Decisions	38,886	37,373	34,028	31,557
Case Receipts				
Added to Docket	32,034	35,722	32,555	17,720
Received at BVA	39,851	39,161	36,500	18,767
Cases Pending	21,013	20,012	20,521	7,731
Response Time	197	195	220	90
FTE	483	478	468	455
Decisions per FTE	80.5	78.2	72.8	69.3
Cost per Case	\$965	\$1,064	\$1,219	\$1,401
Hearings - VACO	1,255	917	599	916
Hearings - Field	2,469	3,512	2,505	3,336
Hearings - Video	1,151	1,282	1,324	1,308

<sup>1</sup> Case Receipts: Combined total of new cases added to BVA’s docket, which consist of appeals of original or reopened claims; and cases received at BVA, which consist of all cases physically received at the Board, including original appeals received, 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.

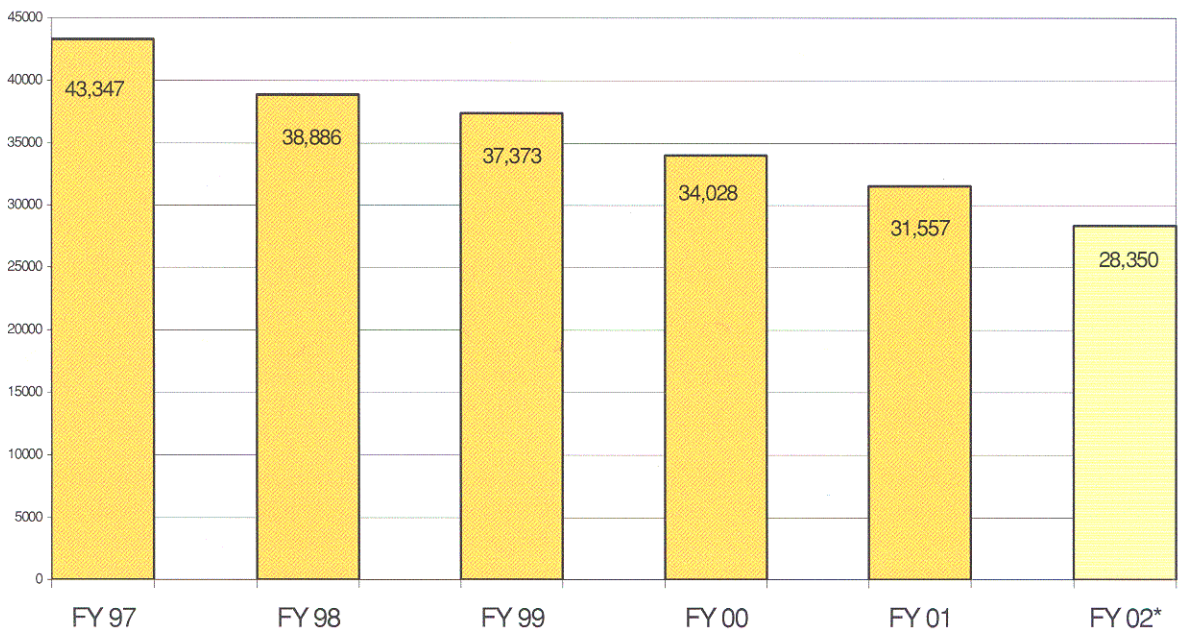
## BVA RESPONSE TIME -- FY 97 - 01



\*FY 01 Estimated

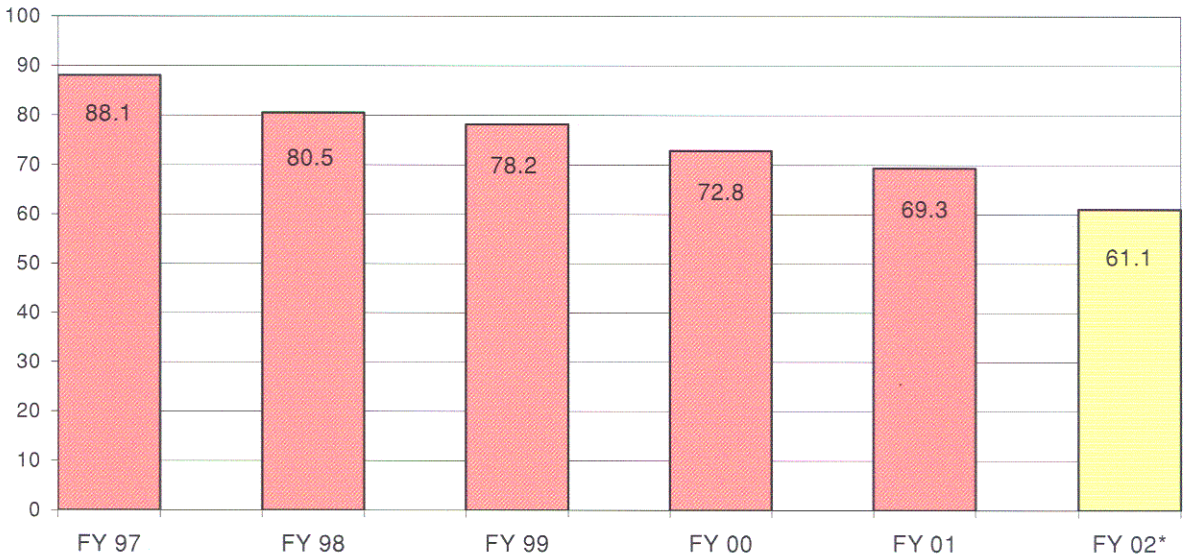
Response time is defined as the number of days it would take BVA to render decisions on all pending appeals at the processing rate of the immediately preceding one-year time frame.

## NUMBER OF DECISIONS -- FY 97 - 01



\*FY 01 Estimated

## DECISIONS PER FTE -- FY 97 - 01



\*FY 01 Estimated

## COST PER DECISION -- FY 97 - 01



\*FY 01 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. Ninety-four attorneys served as acting Board members from time to time during FY 2001 for a total of 5.2 FTE. The Board uses a system of written designations of acting Board members 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 regional office personnel entering appeals directly in VACOLS upon receipt of a Substantive Appeals (VA Form 9). Claims folders are retained at regional offices until a time proximate to when the Board would begin its active review of the case. 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 receipts of new Notices of Disagreement(NOD) received in the regional offices are retrieved directly from the information contained in VACOLS at the end of the fiscal year. Many of the cases for which a NOD is filed are resolved at the regional offices and, as such, never reach the Board.

Estimated Number of New Notices of Disagreement Received in the Field

<u>Month</u>	<u>FY 98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
October	5,787	4,480	4,963	5,119
November	4,737	4,055	4,736	4,066
December	4,877	4,298	4,526	3,225
January	4,448	4,450	4,723	3,747
February	4,801	5,254	5,171	3,270
March	5,777	6,837	5,865	3,490
April	5,878	6,191	4,851	3,159
May	5,464	5,850	5,240	3,526
June	6,061	5,063	5,205	3,542
July	5,783	4,554	5,157	3,507
August	5,928	4,888	5,224	4,021
September	<u>5,832</u>	<u>4,378</u>	<u>4,381</u>	<u>3,168</u>
<b>FY Total</b>	<b>65,373</b>	<b>60,318</b>	<b>60,042</b>	<b>43,840</b>

Prior to the docketing procedure 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 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 for appellate review, 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 United States Court of Appeals for Veterans Claims, 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, VACOLS, described earlier on pages 16 and 17.

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 2001:

Cases received at BVA:	18,767
Cases added to BVA Docket:	17,720

(B) Number of cases pending before BVA at the start of FY 2001:

21,013\*

Number of cases pending before BVA at the end of FY 2001:

7,731\*

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

(C) Number of cases filed during each of the preceeding 36 months:

<u>Month</u>	<b>Cases Received at BVA</b>			<b>New Appeals (VA Form 9) Filed</b>		
	<u>FY 99</u>	<u>FY00</u>	<u>FY01</u>	<u>FY 99</u>	<u>FY00</u>	<u>FY01</u>
October	3,122	2,945	2,622	2,885	2,447	2,287
November	3,312	3,265	1,629	2,853	2,450	2,095
December	3,655	2,839	1,570	3,018	2,446	1,635
January	2,958	2,587	1,780	3,048	2,576	1,727
February	3,201	3,383	1,396	2,876	2,761	1,481
March	3,798	3,501	1,155	3,200	3,266	1,486
April	3,105	2,612	1,315	2,632	2,807	1,264
May	3,354	3,364	1,827	3,721	3,051	1,328
June	3,533	3,265	971	2,883	2,939	1,167
July	2,900	2,675	1,737	2,843	2,489	1,168
August	3,537	3,560	1,669	2,921	2,938	1,139
September	<u>2,686</u>	<u>2,504</u>	<u>1,096</u>	<u>2,848</u>	<u>2,385</u>	<u>943</u>
<b>FY Total</b>	<b>39,161</b>	<b>36,500</b>	<b>18,767</b>	<b>35,722</b>	<b>32,555</b>	<b>17,720</b>



(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	91 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	59 days
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	466 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	182 days
Average Remand Time Factor	Field Station	77 days

(E) Number of members of the Board at the end of FY 2001: 56 members  
 Number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 2001: 456 employees

(F) Number of acting members of the Board during FY 2001: 94  
 Number of cases in which such members participated: 4,256

### 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 2002:	Cases received at BVA:	28,000
	Cases added to BVA Docket:	21,000
Fiscal year 2003:	Cases received at BVA:	31,000
	Cases added to BVA Docket:	24,000

(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 2002 is computed as follows:

Estimated 28,350 Decisions in FY 2002 ÷ 365 Days = 77.67 Decisions per Day

7,381 Appeals Pending before the BVA (end of FY 2002) ÷ 77.67 Decisions per Day = 95 Days Response Time on Appeals (end of FY 2002)

(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 2003 budget submission, is 95 days for FY 2002. These response time projections are contingent upon BVA’s original appeal receipts estimates for FY 2002 and FY 2003 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 Appeals for Veterans Claims 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 Appeals for Veterans Claims for readjudication.

Although the primary impact on the Board's decision productivity in fiscal year 2001 has been the introduction of the Veterans Claims Assistance Act and the resultant decline in cases forwarded to the Board from the regional offices, 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 Appeals for Veterans Claims; and (3) receipt of cases remanded for readjudication from the Court of Appeals for Veterans Claims. It is likely that all or some of these factors will influence the Board's productivity in FY 2002, but it is not possible to quantify their possible effects. Additional unanticipated factors could also arise to affect decision production.

