

VA



U.S. Department
of Veterans Affairs

Board of Veterans' Appeals Annual Report



Fiscal Year 2016



Department of Veterans Affairs

Board of Veterans' Appeals

**Annual Report
Fiscal Year 2016**

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Board Senior Leadership

(as of the end of FY 2016)

Chairman

Executive in Charge: Carol A. DiBattiste

Vice Chairman

Carol A. DiBattiste

Principal Deputy Vice Chairman

David C. Spickler

Deputy Vice Chairmen

Cheryl L. Mason

Kimberly E. Osborne

Director, Office of Management, Planning and Analysis

John Z. Jones (Acting)

Chief Counsel for Operations

Donnie R. Hachey

Chief Counsel for Policy

James D. Ridgway

Chief Veterans Law Judges

Keith Allen

John Jones

Theresa M. Catino

James March

Cherry O. Crawford

Robert C. Scharnberger (Acting)

Linda Anne Howell

Claudia Trueba

Veterans Law Judges¹

Karen J. Alibrando	Kathleen Gallagher	Nathan Kroes	James Reinhart
Marjorie A. Auer	M. Caryn Graham	Michael S. Lane	Steven D. Reiss
Kathy A. Banfield	Jonathan Hager	Mary Ellen Larkin	Tara Reynolds
Matthew Blackwelder	Milo H. Hawley	Eric S. Leboff	Harvey P. Roberts
Wayne M. Braeuer	Stacey Heneks	Michael D. Lyon	Howard N. Schwartz
Derek R. Brown	Brad Hennings	Andrew MacKenzie	Anthony Scire
Bethany L. Buck	Michael A. Herman	Anthony Mainelli	Holly L. Seesel
Sonnet Bush	Mark D. Hindin	Michael D. Martin	George R. Senyk
Vito A. Clementi	Marti N. Hyland	Joy A. McDonald	Deborah W. Singleton
Barbara B. Copeland	Anne E. Jaeger	Kerri M. Millikan	Tanya Smith
John J. Crowley	Michelle Kane	Jacqueline E. Monroe	Paul Sorisio
Thomas J. Dannaher	Susan L. Kennedy	Victoria Moshiaswili	Gayle E. Strommen
Paula M. DiLorenzo	Ryan T. Kessel	Michael A. Pappas	Matthew Tenner
Nathanial Doan	Michael E. Kilcoyne	Kalpana M. Parakkal	David L. Wight
Shane A. Durkin	Jonathan B. Kramer	Jeffrey D. Parker	Jessica Zissimos
Rebecca Feinberg	Simone Krembs	Ursula R. Powell	

¹Pursuant to 38 CFR § 19.2(b), a member of the Board may also be known as a Veterans Law Judge.

INTRODUCTION

The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA or Department) responsible for making final decisions on behalf of the Secretary for claims for Veterans' benefits that are presented to the Board for appellate review. The Board's mission is to conduct hearings and issue timely decisions for Veterans and other Appellants in compliance with the requirements of law. *See* 38 United States Code (U.S.C.) § 7101(a). The Board's jurisdiction extends to all questions in a matter involving a decision by the Secretary under a law that affects a provision of benefits by the Secretary to Veterans, their dependents, or their Survivors. 38 U.S.C. §§ 511(a); 7104(a). Final decisions on such appeals are made by the Board based on the entire record in the proceeding and upon consideration of all evidence and applicable provisions of law and regulation. 38 U.S.C. § 7104(a).

In addition to fulfilling its statutory mission, the Board's vision is to be the best in customer service for our Nation's Veterans and a great place to work. The Board is also committed to VA's Core Values: Integrity, Commitment, Advocacy, Respect, and Excellence (ICARE). After the end of each FY, the Chairman is required to prepare a report on the activities of the Board during that FY and the projected activities of the Board for the current and subsequent FYs. 38 U.S.C. § 7101(d)(1). This Annual Report includes two parts:

Part I provides a discussion of Board activities during FY 2016 and projected activities for FYs 2017 and 2018; Part II provides statistical information related to the Board's activities during FY 2016 and projected activities for FYs 2017 and 2018.

The appeals process in VA is a complex, non-linear process, which is set in law and is unique from other appeals processes across Federal and judicial systems. A feature of the current VA appeals process is a continuous open record that allows a Veteran, Survivor, or other Appellant to submit new evidence and/or make new arguments at any point from the beginning to the end of the appeals process. Additionally, the duty to assist throughout the appeals process requires VA to develop further evidence on the Veteran's behalf and pursue new arguments and theories of entitlement. Each time new arguments are presented and evidence is added / obtained, VA generally must issue another decision considering that evidence, which protracts the timeline for appellate resolution.

The appeals process consists of multiple steps, most of which occur at the Agency of Original Jurisdiction (AOJ), which includes the Veterans Benefits Administration (VBA), Veterans Health Administration (VHA), the National Cemetery Administration (NCA), and the Office of General Counsel (OGC). While the vast majority (96 percent) of appeals considered by the Board involve claims for disability compensation, the Board also reviews appeals involving other types of Veterans benefits, to include insurance benefits, educational benefits, home loan guaranties, vocational rehabilitation, dependency and indemnity compensation, health care delivery, burial benefits, pension benefits, and fiduciary matters. If an appeal is not resolved at the AOJ level to the Veteran's (or Appellant's) satisfaction, he or she may formally continue that appeal to the Board for a *de novo* review (*i.e.*, new look) and the issuance of a decision on behalf of the Secretary.



U.S. Department of Veterans Affairs
Fiscal Year 2016
Veterans Law Judges

PART I

ACTIVITIES OF THE BOARD OF VETERANS' APPEALS FY 2016

The Board was established in 1933 and operates by authority of, and functions pursuant to, Chapter 71 of title 38, U.S.C. The Board consists of a Chairman, a Vice Chairman, and such number of members as may be found necessary to conduct hearings and dispose of appeals properly before the Board in a timely manner. 38 U.S.C. § 7101(a). “Members of the Board,” also known as “Veterans Law Judges,” are supported by a large staff of attorneys and administrative personnel. 38 Code of Federal Regulations (CFR) § 19.2(b).

In FY 2016, the Board’s organizational structure consisted of four main components: the Office of the Chairman; the Appellate Group; the Office of Management, Planning and Analysis (MPA); and the Office of Veterans Law Judges (OVLJ). The Office of the Chairman consists of a Chairman (EX) and a Vice Chairman (Senior Executive Service (SES)/VLJ). The Chairman is appointed by the President, by and with the advice and consent of the Senate, for a term of 6 years, and is directly responsible to the Secretary. The Vice Chairman is a Member of the Board who is designated by the Secretary.

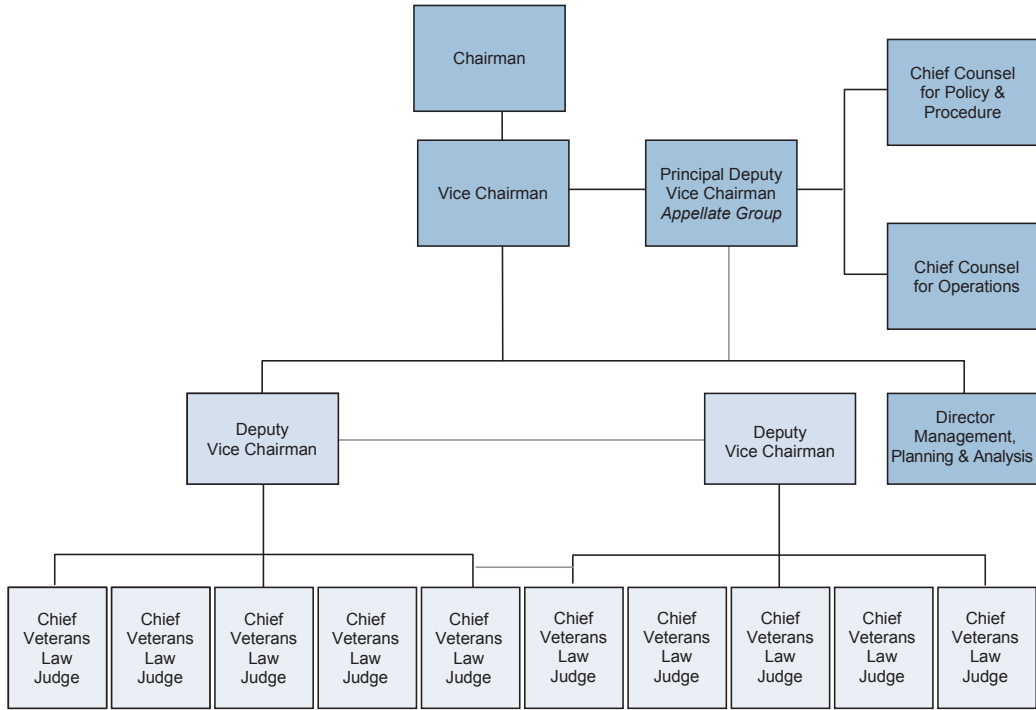
The Board’s Appellate Group consisted of a Principal Deputy Vice Chairman (SES/VLJ), a Chief Counsel for Operations (Senior Level (SL)/VLJ), and a Chief Counsel for Policy and Procedure (SL/VLJ). The Appellate Group provided legal advice and policy guidance to the Board and other VA business lines, and included the following offices: Litigation Support, Quality Review (QR), the Office of Learning and Knowledge Management (OLKM), Labor and Employee Relations, Human Resources, Regulations Office, Research Center, and a Medical Advisor.

MPA was the administrative directorate of the Board, consisting of the Director (SES), the Deputy Director, the Financial Management Division, and the Administrative Support Division, which included the Hearing Branch, and the OVLJ Support Division.

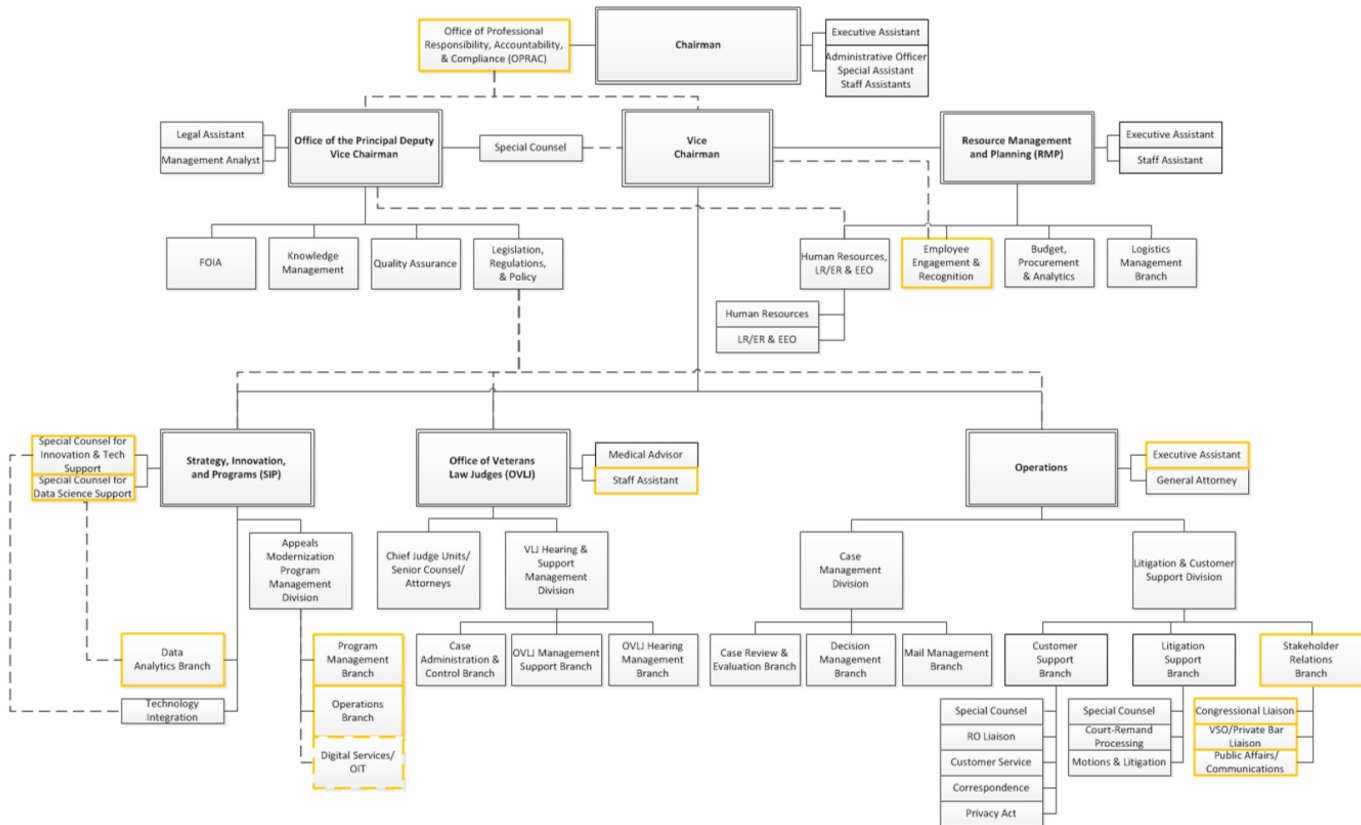
The OVLJ consisted of two Deputy Vice Chairmen (DVC) (SES/VLJ), up to 10 Chief VLJs, up to 78 VLJs, and approximately 450 attorneys who prepare tentative written decisions for review and signature by a VLJ. VLJs are appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman. 38 U.S.C. § 7101A(a)(1).

In August 2016, the Board leadership, after careful analysis and full evaluation, proposed to realign the Board’s organizational structure to enhance the Board’s ability to more efficiently and effectively meet its mission. After approval of the realignment, the Board’s organizational structure in FY 2017 consists of 6 main components: the Office of the Chairman; the Office of the Principal Deputy Vice Chairman; the Office of Veterans Law Judges; the Office of Resource, Management and Planning (RMP); Operations; and the Office of Strategy, Innovations and Programs (SIP).

Board Structure in FY 2016



Board Structure in FY 2017



Successes

FY 2016 was a year of many successes for the Board. In addition to continuing to provide outstanding service to Veterans by issuing high quality decisions and conducting hearings of appeals before the Board, the Board also continued to seek and implement innovative ways to improve business processes through technological advancements and other efficiencies. Among those was the collaboration with Veterans Service Organizations (VSO) and other internal and external stakeholders during an Appeals Summit resulting in a legislative proposal setting forth a new appeals framework. The new appeals framework legislative proposal was subsequently introduced in Congress. Additionally, the Board is committed to modernizing appeals processing technology to optimize efficiency to best serve Veterans and their families and to ensure the seamless transfer of appeals between jurisdictions by leveraging industry best practices and Human Centered Design principles. To this end, the Board is fortunate to have the United States Digital Service (USDS or Digital Service) leading the technical approach to this effort. Working components delivered by Digital Service in FY 2016 included Caseflow Certification, which was deployed to all Regional Offices (ROs). Digital Service also accomplished the development of Caseflow in a cloud hosting environment and launched eFolder Express. Lastly, the Board developed a vision statement, strategic plan, and a robust list of priorities to address in the coming FYs.

Service to Veterans

In FY 2016, the Board issued 52,011 decisions for Veterans and their families. Additionally, the Board's VLJs personally interacted with Veterans and Appellants by holding 13,535 hearings, either conducted face-to-face at a VA facility, in-person at the Board's location in Washington, DC (known as "Central Office" hearings), or through video teleconference (VTC) between the Board and a VA facility. Most VLJs traveled to at least two ROs to conduct one week of hearings at each site (known as "Travel Board" hearings), in addition to holding a large number of VTC hearings and Central Office hearings.

For those appeals that were decided by the Board in FY 2016, on average, Veterans waited at least 6 years from the filing of the Notice of Disagreement until the Board decision was issued that year. The Board's cycle time, which measures the average time from the date an appeal is certified (VA Form 8) to the Board until a decision is dispatched (excluding the time the case is with a VSO representative for review and preparation of written argument) was 253 days in FY 2016. The Board's total time, which measures the average time from the date an appeal is certified (VA Form 8) to the Board until a decision is dispatched including the time the case is with a VSO representative for review and preparation of written argument, was 374 days in FY 2016.

The Board received 86,836 appeals in FY 2016. Based on trends in case receipts developed jointly by the Board and VA's Office of Management (OM), the Board anticipates receiving 92,868 appeals in FY 2017, which includes original appeals from VBA; returned remands from VBA's Appeals Management Office (AMO); appeals from other elements of VA, including VHA, OGC, and NCA; and cases returned by the Court of Appeals for Veterans Claims (CAVC). This is consistent with the historical rate of appeals received by the Board as a percentage of the claims decided by VBA.

In addition to dispatching 52,011 decisions in FY 2016, the Board's administrative support staff reviewed and processed 66,069 pieces of mail. Additionally, the administrative staff, including the Board's Call Center in Wilkes-Barre, Pennsylvania, answered 93,770 inquiries from Veterans or their representatives by phone, email, or written correspondence. The Board's Correspondence Unit issued written responses to 1,303 Congressional inquiries and provided 1,706 written status updates to Veterans and Appellants concerning their appeals. Furthermore, the Board requested 83 independent medical examination opinions and 1,165 VHA medical opinions on Appellants' cases.

Hearings

The Board held 13,535 total hearings, which represented a 6 percent increase in the number of hearings held compared to FY 2015. The Board held 61 percent of hearings by VTC. The Board continued to encourage more widespread use of VTC hearings to reach Veterans and other Appellants at ROs.

Technology

The Board continues to leverage technology where possible in order to gain efficiencies in appeals processing. In FY 2016, the Board's investment in "Appeals Modernization" through a people, process, and technology strategic approach continued. Specific to technology, the Board teamed with the USDS to begin incremental replacement of the Veterans Appeals Control and Locator System (VACOLS), the Department's system of record for appeals, with the development of the Caseflow System. The USDS pairs the country's top technology talent with the best public servants to improve the usefulness and reliability of the country's most important digital services. The USDS is designing and building the Caseflow system in close cooperation with Board subject matter experts. Also, in FY 2016, USDS began work on additional technological advancements such as Decision Builder and eFolder Express.

The Board has increased its engagement with the Veterans Benefits Management System (VBMS). The long-term goal is increased integration between VBMS and Caseflow, improving data exposure between the two systems.

The Board also continued to maintain its presence on eBenefits – a joint venture between VA and the Department of Defense - which provides Veterans the opportunity to check the status of their claims and appeals securely online or from their mobile device.

Hiring

The Board was able to hire staff to continue supporting its mission to serve more Veterans and their families. Specifically, in order to both maintain staffing levels and increase capacity where possible, the Board hired 72 staff (which included new hires and backfills for attrition). In FY 2016, 14 new VLJs were sworn in. Additionally, the Board continues to recruit and hire, attorney and administrative staff. The Board also developed a program designed to recruit recent law school graduates and alumni.

Training

In FY 2016, the Board continued to focus on methods to increase the quality of the decisions rendered while maintaining a high level of decision output. OLKM created targeted training for all employees based, in part, on trends gleaned from the Board's quality review process, as well as outcomes in cases heard before CAVC and the United States Court of Appeals for the Federal Circuit (Federal Circuit). Specifically, OLKM coordinated comprehensive training for Board counsel and VLJs, including courses on topics such as: traumatic brain injury, inferred special monthly compensation, and incompetency and the VA fiduciary program. OLKM partnered with QR and also created and presented training targeted at reducing the number of cases remanded by CAVC by focusing on how to properly apply precedential case law that most frequently serves as a basis for remand, referred

to as the Quarterly Case Law Review. Additionally, the Board continued to offer medical disability training for its legal staff to address the increasing complexity of disability compensation appeals. The Board conducted refresher training for all staff regarding VBMS and VA's electronic claims processing system. In addition, OLKM ensured that Board staff completed all VA-required on-line training courses (such as privacy and security awareness, etc.), which are designed to support a strong management workforce.

FY 2016 also marked the implementation of a new approach to training large groups of new attorneys, referred to as "Bootcamp." Bootcamp consists of a four week intensive classroom lecture and activity series, providing new attorneys with training on how claims move through the appeals process at the Board, how to successfully navigate VBMS, how to structure draft decisions for VLJs, how to use Microsoft Vizio to track issues as they move through the VA system, and the basics of Veterans Law.

Quality

In FY 2016, the Board continued to challenge employees to maintain high levels of quality, and, through these efforts, achieved an accuracy rating of 93 percent in the decisions issued. The Board's accuracy rate (*i.e.*, the Board's deficiency-free rate) quantifies substantive factual and legal deficiencies in all decisions, whether an allowance, a remand, or a denial. To determine its accuracy rate, the Board used a weighted formula that was created in collaboration with the Government Accountability Office (GAO) in 2002 and 2005. Specifically, 5 percent (1 out of 20) of all original appeals and 10 percent (1 out of 10) of all cases returning from remand by the CAVC were selected at random by VACOLS for an accuracy review by the Board's Quality Review Staff. Any quality deficiencies identified during the quality review process were addressed through appropriate follow-up training for VLJs and attorneys.

Efficiencies

The Board continued to leverage opportunities to implement changes to enhance efficiencies in its operations in order to provide better service to Veterans. The Board actively pursued several business process improvements aimed at streamlining the complex appeals adjudication process in order to improve service to Veterans and their families. Such initiatives included: engaging internal and external stakeholders in streamlining the appeals adjudication process; maximizing available hearing resources for Veterans; clarifying internal procedures to optimize efficient caseflow; and leveraging technology to better modernize appeals processing.

In FY 2016, the Board continued to implement various technological and process improvements to meet the anticipated rise in the incoming workload, particularly in light of the transition to a fully paperless appeals system. To this end, the Board is leading "Appeals Modernization" to better serve Veterans and their families and provide timely and quality appeals decisions. As a part of this broad effort, information technology funds have been used to develop robust paperless functionality in the VA appeals process. This is part of the Board's multi-pronged approach to leverage technology, people, and process improvements, and long-needed legislative reform, to most effectively serve Veterans and their families in the processing of appeals. Initial key appeals-specific functionalities in the paperless environment will focus on seamless integration of systems, and key accountability and workability features. Caseflow Certification was completed in FY 2016, which enables the Board to ensure the accuracy of appeals arriving electronically from the ROs.

Employee Engagement

The Board continued to make strides in improving its organizational culture and climate through several initiatives in FY 2016. Specifically, the Board continued its ICARE Recognition Program, which was first deployed at the end of FY 2014. This Program provides a forum for peer-to-peer recognition of accomplishments, achievements, and behaviors that reflect VA's Core ICARE Values. Through this forum, a number of Board employees were nominated by their peers and recognized in Board-wide newsletters for demonstrating one of these Core Values.

Additionally, in FY 2016, the Board continued issuing a special edition newsletter titled "Hear Ye, Hear Ye!" that provides follow up to all staff regarding ideas, questions, and concerns raised via the Board's Suggestion Boxes. With the support of management, this staff-led initiative informs all Board employees of those suggestions that were put to action (You've Been Served), are under review (What's On the Docket), and cannot be acted upon for various reasons (We Are Estopped). Also, in FY 2016, the Board established an Innovative Ideas Team that receives, reviews, develops, approves, and communicates ideas submitted by all Board employees resulting in an improved employee experience. The Team's mission is to foster and facilitate an organizational culture that values Board employee innovation and input in workplace processes, with the goal of making VA an employer of choice and providing outstanding service to our Nation's Veterans. The Team consists of volunteers from all Board staff sections. The Team's overarching task is to shepherd ideas for improvement submitted by Board staff such that actionable ideas are implemented and measurable improvements result.

Further, in FY 2016, the Board's staff-led Survey Results Task Force (Task Force), which was originally formed in FY 2015, met to discuss and analyze the Board's survey results (including the VA All Employee Survey (AES), the American Federation of Government Employees Local 17 survey, and the Federal Employee Viewpoint Survey). The Task Force continued to meet to form recommendations to present to senior leadership with the goal of improving organizational climate.

The Task Force, which met on a weekly basis throughout the year, presented a number of proposed action plans for improving the organizational climate at the Board to the senior leadership team. The ideas centered around connecting people to each other and the mission and recognizing and rewarding model employee behavior, and model supervisory behavior. The 13 Task Force proposals included conducting exit interviews to gain insight into areas prime for organizational improvement; provide all supervisors and VLJs with a recognition tool kit; create a fact sheet highlighting the perks of government employment; share staff biographies for more tenured employees in the BVA News; promote submission of feel-good stories and out-of-office accomplishments for inclusion in the BVA News; include information on veteran volunteer events in the BVA News; Suggestion Box prompts to obtain focused input from employees; create and implement new attorney Quality Decision Writing Award Program; make 360-degree reviews and emotional intelligence testing available for all managers/supervisors and VLJs; promote shared best practices within workgroups (*i.e.*, Chief VLJs, Branch Chiefs, VLJs, Senior Counsel) as part of continuation of Leaders Developing Leaders; provide all managers with training on best practices for conducting performance appraisals; and provide Career Advancement Training to all GS-14s. The Task Force is continuing to work with the senior leadership team to ensure that all proposals are implemented. These measures will continue to be tracked in future years and help to improve the organizational climate at the Board.

The Task Force also continued to review the progress made with regard to improving communication throughout the organization. Board leadership continues to actively encourage and support the work of this group, as well as other focus groups.

With regard to the FY 2016 AES, the Board had another high participation rate of 81.3 percent of its approximately 670 person staff (year-end on-board). The Board looks forward to analyzing these results and using them at all levels to continue improving workplace culture.

MyVA Initiatives

In the Fall of 2014, Secretary McDonald announced the transformational movement, MyVA, with an emphasis on executing and cascading the principles embedded in the Department's 2014-2020 Strategic Plan throughout the organization. The movement toward MyVA has cultivated a high performing organization required to serve Veterans. In support of VA's vision to provide a seamless, unified Veteran experience across the entire organization, focus is centered on five priorities: improving the Veteran experience, improving the employee experience, achieving support services excellence, establishing a culture of continuous performance improvement, and enhancing strategic partnerships.

The Board continued existing programs as well as new initiatives that improved the Board's relationships with Veterans. For example, the Board sought to improve the Veteran experience in a Veteran satisfaction survey that measures the customer experience with the Board's Call Center, hearings with VLJs, and the overall appeals process. The Board implemented a number of employee and leadership driven initiatives to improve the employee experience through various forms of feedback opportunities, mentoring programs, and career development opportunities. The Board continued to promote performance enhancement via recognition programs, and various types of training programs for all employees. The Board partnered with the MyVA Shared Services Team on enterprise improvements, such as integrating the Board's Call Center with existing call centers, and with the USDS Team to assist in the Appeals Modernization Initiative. Lastly, the Board developed internal and external strategic partnerships to engage on improving the Veteran experience through internal efficiencies and exploring potential legislative changes in the appeals process. Another one of the MyVA priorities is to improve the employee experience. A resulting step from the work being accomplished on this priority is a cascading, Department-wide leadership course called "Leaders Developing Leaders" – or LDL for short. With the help of some of the foremost thinkers in the fields of leadership, change management and action learning, VA is transforming its identity to become a high-performance organization with employees that serve Veterans and their families with excellence.

Legislative Proposals

The Board's leaders continue to promote legislative proposals aimed at implementing systemic changes to increase efficiency in the appeals process in a way that is both fair and beneficial to Veterans, thereby improving the Veteran experience with this process.

The Board's top legislative priority in FY 2016 was Appeals Modernization, a comprehensive legislative package aimed at streamlining the appeals process at all levels to provide Veterans with a clearer, faster appellate experience.

Appeals Modernization was developed in response to VA's recognition that the current appeals process is broken—the legal framework is complex, inefficient, ineffective, and confusing. Veterans

have no defined endpoint to their appeals, and the continuous evidence gathering and re-adjudication of the same matters mean that Veterans wait much too long for final resolution of their appeals.

To address these failures in the appeals process, since early 2016 VA has had numerous constructive dialogue sessions with VSOs, Congressional staff, state and local government officials, and other stakeholders to discuss the challenges and opportunities for developing a new appeals process. Throughout these meetings, VA and other stakeholders worked diligently to draft a framework that will transform the appeals process into a simpler system that provides timely, transparent, and fair resolutions for Veterans, while meeting the needs of their advocates, outside stakeholders, and VA.

The essential feature of this new design is to step away from an appellate structure that tries to do many unrelated things inside a single process and replace it with three differentiated “lanes,” giving Veterans clear options after they receive an initial decision on a claim. One lane would be for review of the same evidence by a higher-level claims adjudicator in the AOJ; one lane would be for submitting new and relevant evidence with a supplemental claim to the AOJ; and one lane would be the appeals lane for seeking review by a Veterans Law Judge at the Board. In this last lane, intermediate steps, such as the Statement of the Case and Substantive Appeal, would be eliminated. As they do today, Veterans would be able to elect to have a hearing before a VLJ. However, hearing and non-hearing options at the Board would be handled on separate dockets so these distinctly different types of work can be better managed. As a result, the AOJ, such as VBA, would be the claims adjudication agency, and the Board would be the appeals agency. This disentanglement of process is enabled by one crucial innovation: in order to make sure that no lane becomes a trap for any Veteran who misunderstands the process or experiences changed circumstances, a Veteran who is not fully satisfied with the result of any lane would have one year to seek further review while preserving an effective date for benefits based upon the original filing date of the claim. For example, a Veteran could go straight from an initial AOJ decision on a claim to an appeal to the Board. If the Board decision was not favorable, but it helped the Veteran understand what evidence was needed to support the claim, then the Veteran would have 1 year to submit new and relevant evidence to the AOJ in a supplemental claim without fearing an effective-date penalty for choosing to go to the Board first.

The Board strongly supports the Appeals Modernization legislative proposal and looks forward to implementing a streamlined, understandable process that provides multiple options for review of claims decisions to more efficiently and effectively serve Veterans.

Coordination with Administrations and Other Staff Offices

During the past year, the Board continued to actively partner with VA stakeholders across the corporate enterprise, including VBA, VHA, OGC, NCA, the Office of Information & Technology (OI&T), OM, Human Resources & Administration (HR&A), and other staff offices in order to better serve Veterans and their families. In particular, the Board continued its efforts to conduct as many hearings as possible within full-time equivalent (FTE) employee levels in order to reduce the number of cases on appeal awaiting Board hearings. To this end, in FY 2016, the Board continued to work closely with VBA leadership to track the Travel Board and VTC hearing utilization rates in an effort to ensure that each hearing docket was fully maximized to serve as many Veterans and other Appellants as possible.

Additionally, as noted above, in FY 2016, the Board continued to lead “Appeals Modernization,” working closely with appeals representatives from VBA, VHA, OGC, NCA, and OI&T. By focusing on VA appeals processing throughout the entire Department, Appeals Modernization leverages

technology, people, and process improvements, and long-needed legislative reform to most effectively serve Veterans and their families in the processing of appeals. As part of this effort, the Board, in partnership with VA's Chief Technology Officer, leveraged a Presidential Innovation Fellow and the USDS Team, and led the technical approach of the Appeals Modernization effort. USDS is working to build the Federal government's capacity to deliver world-class services to the American people. The USDS Team that has been assigned to VA consists of seasoned engineers, designers, and product managers from some of the best-known companies in the private sector.

The Board also continued to work with VHA to improve training for clinicians on the information required to provide legally adequate medical opinions for compensation adjudications.

During FY 2016, the Board continued to send counsel on Travel Board trips to provide VBA adjudicators with a training presentation that was jointly prepared by the Board and VBA. This presentation targets current changes in the law and seeks to ensure that full development of an appeal is completed by VBA prior to that appeal reaching the Board.

The Board also played an integral role in many intra-Departmental working groups during FY 2016. Consistent with the Department's move to paperless claims and appeals processing, and in an effort to increase efficiency of mail processing, the Board worked with VBA's Office of Business Process Integration to transition to centralized mail. The Board also coordinated with VBA's Enterprise Veteran Self Service Office to ensure that Veterans receive accurate, meaningful information through eBenefits concerning the status of appeals pending within the Department.

Veterans Service Organization Forums and Training

The Board continued its outreach to VSOs by providing training at annual conferences. In addition, the Board increased its meetings and outreach to VSOs and attorneys who represent Appellants before the Board by holding VSO Forums. These meetings are held periodically throughout the year to collaborate and update VSOs on activities and resolve matters of interest. The meetings address appeals issues raised by representatives and also facilitate the exchange of ideas and information. VSOs are also invited to participate in any in-house training that is provided to Board staff.

Volunteer Activities

The Board proudly supports Veterans and their families. In FY 2016, the Board continued to facilitate the collection and donation of comfort items for distribution to Veterans at the Washington, DC, VA Medical Center (VAMC), the Fisher House, and the United States Armed Forces Retirement Home (USAFRH). Staff members also participated in the Toys for Tots campaign organized by the United States Marine Corps Reserve, and collected calendars and valentines for Veterans to distribute at the USAFRH. The Board's Leadership Initiative (LI) organized groups of Board employees and family members to welcome WWII and Korean War Veterans to Washington, DC, arriving at Reagan National Airport as part of the Honor Flight Network, a 501(c)(3) organization that transports Veterans, free of charge, to our Nation's capital to visit those memorials dedicated to honoring their service and sacrifices. Members of LI also volunteered at the USAFRH's Spring Fling to assist with activities organized for Veterans and their families. Numerous Board employees participated in the Winterhaven Homeless Veterans Stand Down; the Veterans Day Ceremony at Arlington National Cemetery; and other outreach events at the VAMC in Washington, DC. The Board also actively participated in the Combined Federal Campaign and the Feds Feed Families food drive.

Significant Judicial Precedent and Its Effect on the Board

Throughout FY 2016, the CAVC and the Federal Circuit issued many significant decisions that impacted the way VA adjudicates appeals, including the following:

- ▶ ***Correia v. McDonald*, 28 Vet. App. 158 (2016):** This case provides a precedential interpretation of the final sentence of 38 C.F.R. § 4.59, which reads: “The joints involved should be tested for pain on both active and passive motion, in weight-bearing and nonweight-bearing and, if possible, with the range of the opposite undamaged joint.” Specifically, the CAVC held that the final sentence of § 4.59 creates a requirement that certain range of motion testing be conducted whenever possible in cases of joint disabilities. The CAVC also stated that to be adequate, a VA examination of the joints must, wherever possible, include the results of the range of motion testing described in the final sentence of § 4.59.

The CAVC provided two qualifications to this requirement. First, this holding requires the range of motion testing listed in the final sentence of § 4.59 in every case in which those tests *can* be conducted. The CAVC specifically found that it was not competent to determine whether upper extremities are or can be weight-bearing, though it did find that knees were “undoubtedly weight-bearing.” In a later footnote, the CAVC left it to medical professionals to determine whether the listed range of motion testing can be performed on the joints at issue in a particular case. Second, range of motion testing of the opposite joint does not apply for joints that do not have an opposite or whose opposite is also damaged. While the CAVC did not define “damaged” for these purposes, it noted that both of the appellant’s knees were “damaged.” The record showed that the appellant had knee diagnoses that included both traumatic arthritis and degenerative joint disease.

This case is significant because the holding establishes additional requirements that must be met prior to finding that a VA examination is adequate. Any of the above areas of testing can be omitted *if* the medical professional conducting the examination states that it is not possible to perform the testing, and clearly explains why. Otherwise, VA musculoskeletal examinations that do not contain the necessary active motion, passive motion, weight-bearing information, and nonweight-bearing information are likely to be inadequate under *Correia* and may require remand for a new examination.

- ▶ ***Johnson v. McDonald*, 27 Vet. App. 497 (2016):** In this case, the Board denied a rating in excess of 10 percent for a skin condition under 38 C.F.R. § 4.118, Diagnostic Code 7806. The Board found that the appellant did not meet the criteria for a higher rating, in part, because treatment for his skin disorder had not included systemic therapy for a duration of 6 weeks or more during any 12 month period. While the appellant had used topical corticosteroids constantly for 12 months, the Board did not find this treatment to be systemic therapy.

The question on appeal to the CAVC, was whether the criteria for a 60 percent rating under Diagnostic Code 7806, which requires “constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs,” is inclusive of topical corticosteroids. The Secretary argued that topical corticosteroid therapy is appropriately addressed under the criteria for a noncompensable rating in Diagnostic Code 7806, which applies when “no more than topical therapy [is] required.”

The CAVC determined that the language of Diagnostic Code 7806 is unambiguous: “the diagnostic code explicitly mentions corticosteroids as an example of ‘systemic therapy’

and does not further distinguish between different types of corticosteroid application.” The language in the criteria for a 60 percent rating provides that corticosteroids constitute systemic therapy without any limitation as to application, and the Board improperly added criteria not included in the rating schedule when it required systemic therapy to be more than topical. The CAVC found that the “topical therapy” identified in the noncompensable rating criteria necessarily referred to “non-corticosteroid” topical treatment. As such, the CAVC reversed the Board’s holding, and found that the appellant’s therapy was systemic.

This case is significant because any appellant using topical corticosteroids constantly or near-constantly to treat a service-connected skin disorder may now be entitled to the substantially higher 60 percent rating. Notably, this decision has resulted in a proposed regulation change that, *inter alia*, clarifies that systemic therapy is treatment administered through any route other than the skin (such as orally, intranasally, or via injection) and topical therapy is treatment administered through the skin. Further, the CAVC has granted a motion to stay the precedential effect of this case (except as to claimants that qualify for expedited proceedings) pending the Secretary’s appeal to the Federal Circuit.

- ▶ ***Gagne v. McDonald*, 27 Vet. App. 397 (2015):** In this matter, the Board determined that VA had satisfied the duty to assist despite declining to submit requests to verify the appellant’s alleged PTSD stressors, where the appellant failed to provide a 60-day time window for the occurrence of the stressor so that VA could submit the request to the United States Army Joint Services Records Research Center (JSRRC). The appellant argued that, in light of the information in his service record and the nature of the incident to be researched (the death of a service member between August 1967 and August 1968), he presented sufficient information for VA to submit a verification request to the JSRRC. He also argued that despite his inability to narrow the timeframe of the alleged stressor to a specific 60 day window, it was reasonable that VA should submit multiple requests sufficient to cover the entire time period identified.

The CAVC ruled that the Board should have ordered additional development to ensure that the duty to assist was satisfied, and that the appellant had provided sufficient information to locate records. The statutory duty to assist “requires that VA ‘continue’ to try to obtain records in the possession of a government agency until such a search becomes futile.”

38 U.S.C. § 5103A(c)(2). Under 38 C.F.R. § 3.159(c)(2) “the Secretary must make as many research record requests as are necessary and that a search for records is ‘futile’ only when it becomes clear the record does not exist or is not in the possession of the custodian.” As such, VA was at least obligated to submit multiple requests to the JSRRC covering the relevant time window in 60-day increments, unless such searches are “futile” or “‘fishing expeditions’ over an indefinite period of time.”

This case is significant because VA’s duty to assist is not bound by the JSRRC’s 60-day requirement, and the fact that multiple record searches may burden JSRRC employees does not make those efforts futile. Based on the facts of this case, it is not unreasonable to require VA to submit multiple 60-day inquiries to the JSRRC sufficient to address the entire 13-month period of time identified by an appellant. As a result of this case, VBA now handles searches of periods greater than 60 days by submitting sequential requests until the entire relevant period is covered. These sequential requests require additional time for development.

- ▶ ***Yancy v. McDonald*, 27 Vet. App. 484 (2016):** The CAVC vacated and remanded an August 2014 Board decision that, in pertinent part, denied entitlement to an increased rating in excess of 30 percent for bilateral pes planus, and denied entitlement to separate initial compensable ratings under two other foot DCs. In doing so, the CAVC addressed interplay of the first two elements set forth in *Thun v. Peake*, 22 Vet. App. 111 (2008); and, the application of the combined effects analysis set forth in *Johnson v. McDonald*, 762 F.3d 1362 (Fed. Cir. 2014).

The CAVC explained the effect of *Johnson* and its application to the analysis set forth in *Thun*. The CAVC found that *Johnson* does not change the longstanding principle that the issue of whether referral for extraschedular consideration is warranted must be argued by the appellant or reasonably raised by the record. The CAVC pointed to the language in *Johnson*: “referral for extra-schedular evaluation *may* be based on the collective impact of [a] veteran’s disabilities.” *Johnson*, 762 F.3d at 1365 (emphasis added). Therefore, the CAVC held that the Board is required to address whether referral for extraschedular consideration is warranted for an appellant’s disabilities on a collective basis only when that issue is argued by the appellant or reasonably raised by the record through evidence of the collective impact of the appellant’s service-connected disabilities. *See, e.g., Thun*, 22 Vet. App. at 115; *Robinson v. Peake*, 21 Vet. App. 545, 552 (2008). The CAVC further determined that nothing in *Johnson* changes the Board’s obligation to conduct the *Thun* three-part analysis.

This case is significant because the CAVC determined that *Johnson* does not alter the Board’s jurisdiction over individual schedular or extraschedular ratings. Although the Board must consider any combined effects resulting from all of an appellant’s service-connected disabilities insofar as they impact the disability picture of those disabilities in appellate status, it lacks jurisdiction to consider whether referral is warranted solely for any disability or combination of disabilities that is not in appellate status, just as it lacks jurisdiction to examine the proper schedular rating for a disability not on appeal.

- ▶ ***Robinson v. McDonald*, 28 Vet. App. 178 (2016):** By statute, review in the CAVC “shall be on the record of proceedings before the Secretary and the Board.” 38 U.S.C. § 7252(b). As the custodian of the records of appellants’ claims, the Secretary has been charged with the duty of assembling the record before the agency (RBA) and serving a copy on the appellant. In this particular case, as the appellant’s original paper claims file had been scanned into an electronic database prior to the Board’s decision, the Secretary assembled an RBA from the appellant’s electronic file. On appeal, the appellant contended that some pages of the pre-scan record were missing from the RBA, and demanded the opportunity to review the paper documents.

During the appeal, the Secretary explained that while some of the original paper source materials may still exist, those records do not constitute the claims file and are now considered duplicates or non-records. It was noted that the scanning of the paper documents for conversion into the electronic claims folder was completed by a third-party vendor utilizing quality control processes such that, on average, the likelihood of a paper document being accurately reproduced meets or exceeds 99 percent. Further, as a result of the quality control processes utilized by contract scanning vendors, the paper documents pertaining to the appellant were separated, digitized, sorted separately, and slated for destruction pursuant to VA’s internal procedures.

The CAVC found that VA had to provide access to the original paper records that were part of the record of proceedings before the agency. Under the CAVC’s Rule 10 (governing the RBA), the Secretary is required to provide an appellant inspection access to the “original

material” before VA; the CAVC held that the plain meaning of that term encompassed the original paper records that had not been destroyed. The CAVC acknowledged the Federal Records Act (FRA) (44 U.S.C. Ch. 33), which includes a provision that certain digital records have the same effect as the original paper, but ultimately found that VA had not shown how this provision was triggered by its digitization process, without reaching any conclusions as to whether VA practices comported with the FRA. This case is significant because, with respect to claims that were processed with a paper claims file, it may require VA to maintain the paper file after all of the documents contained in the file have been uploaded into the electronic database VA uses for processing claims.

The Board’s Strategic Plan and Priorities for FYs 2017 and 2018

In late FY 2016, the Board developed a strategic plan to facilitate achieving its mission and vision. This strategic plan is anchored by four pillars: legislation, people, process, and technology.

As mentioned previously, the Board proposed to realign its organizational structure late in FY 2016. This organizational realignment was vetted and developed by the entire Board executive team, with facilitation by the Veterans Engineering Resource Center (VERC), and was approved by VA’s Deputy Secretary. This realignment better positions the Board to accomplish its mission and achieve its priorities, particularly as the Board continues to work diligently to modernize the VA appeals process through legislation, people, process, and technology. The realignment also combines the administrative staff with the attorney/Veterans Law Judge (VLJ) staff for increased teamwork and efficiency and created a new Strategy, Innovations and Programs section.

The Board is prepared to meet the challenge of transforming into a 21st century organization that will increase the number of Veterans served, increase efficiency in the appeals system, and leverage intra-Departmental partnerships to improve both the Veteran experience and the employee experience. These priorities will be achieved through the coordinated efforts of all employees, each of whom is expected to maintain VA’s Core ICARE Values in all actions. The Board will utilize a multi-pronged approach to most effectively serve Veterans and their families in the processing of appeals.

1. Increase the Number of Veterans Served and Optimize Accuracy

In the coming year, the Board will continue to focus on maximizing the number of Veterans and family members served through issuance of appeals dispositions by using a multi-pronged strategic approach. Specifically, the Board will leverage existing resources by concentrating on the following:

- ▶ **Internal training:** Increased training efforts in the new FY will provide the Board’s VLJs and attorneys with the latest information on a variety of legal and medical topics.
- ▶ **Targeted intra-Departmental training:** In FY 2017, the Board will continue coordinating with VBA on joint training efforts. In FY 2017, the Board plans to continue to provide jointly approved training to RO staff on topics of interest identified by the Board’s Office of Learning and Knowledge Management (now referred to as Office of Knowledge Management (KM)) and Office of Quality Review (now referred to as the Office of Quality Assurance (QA)), and by VBA. The Board will also continue to work closely with VBA to assist with the shared goal of resolving appeals at the earliest stages of the appeals process, including the period of time when an appeal is still pending at VBA. Additionally, KM, QA staff of the Board, and the Quality Review staff of VBA will continue to work together to identify trends and target training to common issues, and will continue to assist VHA with

training efforts focused on training clinicians who provide examinations in conjunction with compensation claims on the legal requirements of such exams. These efforts will help ensure that claims are developed properly at the local level in the first instance, ultimately decreasing wait times for final decisions.

The Board will also continue to closely track the reasons for remand in those cases that must be remanded to the Appeals Management Office (AMO)/AOJ for further development, and make that data available to all VA components in the adjudication system for management and training purposes. In addition, the Board's leadership and the KM and QA offices will continue to engage in extensive liaison efforts with VBA's AMO in FY 2017. Additionally, the QA has developed an innovative and data-centric approach to improving quality and predictability of appellate decisions. This new process allows the office to educate stakeholders about concerns facing the Board, while also making internal suggestions to improve quality and accountability.

- ▶ **Utilizing a robust Flexiplace/Telework Program for employees:** Since 2005, the Board has served as a telecommuting model for other offices within the Department with its "Flexiplace/Telework" Program. This Program enables the Board to attract and retain attorneys as an employer of choice. In connection with this Program, the Board has successfully implemented a number of data security safeguards, such as encryption software for Board laptops used by Flexiplace Program participants. Each Flexiplace/Telework participant agrees to abide by the rules of the Program, which include strict safeguards to protect sensitive data. In FY 2016, the Board expanded Program eligibility to include Veterans Law Judges, additional attorney staff and administrative professional staff. Participation has expanded by 46 percent from 2015 levels, with over 350 (approximately 51 percent) of the Board's employees teleworking in some capacity at the end of FY 2016. The Board intends to further expand the use of telework in FY 2017.
- ▶ **Strengthening partnerships across the VA enterprise:** As in previous years, the Board will continue to meet with representatives from VBA, VHA, OGC, and VSOs on a frequent basis to discuss ways to improve the quality of services provided to Veterans. For example, the Board, partnering with the VSOs, piloted the Pre Hearing Conference Program to 12 ROs at the start of FY 2017. The Board will continue to contribute to these partnerships and play an active role in the VA community.

All these measures combined will work to increase the Board's decision output and improve accuracy, and will sustain fruitful, collaborative partnerships across the VA enterprise to better serve Veterans and their families.

2. Employee Engagement

In FY 2016, the Board continued to focus on improving organizational climate and morale through grass roots initiatives such as the Survey Results Task Force and other focus groups. The Board will continue to build on these efforts and looks to expand on new ideas in the upcoming FYs, such as the Employee Engagement Council, Team Building and Individual Skills Training, Mentoring Program, and the Board's Recognition Program.

3. Advocate for Legislative Initiatives

As discussed above, in FY 2017 the Board will continue to coordinate with VA and outside partners to support the Secretary's submission of legislation aimed at improved timeliness and efficiency of VA's adjudication of appeals, both at the local and Board levels. The Appeals Modernization legislation discussed above has been proposed with an 18-month delayed effective date for purposes of implementing the law. Therefore, if the legislation is enacted in the coming year, the Board will be focused throughout FY 2017 and FY 2018 on working with internal and external stakeholders to ensure the effective implementation of this new legal framework. Specifically, an 18 month implementation period is needed in order to draft and publish regulations, update forms and decision notice letters, develop and issue guidance documents, update information technology systems, implement an outreach and communications plan, and train staff.

4. Appeals Modernization

FY 2016 continued the transition to paperless appeals processing at the Board. The Board received a high percentage of paperless appeals over the course of the year, with paperless appeals constituting 95 percent of its active workload at the end of the FY. The Paperless Appeals Office, established in February 2014, continued to have a prominent role in training, troubleshooting, and addressing intra-Departmental issues arising from the shift to a paperless appeals workload. In FY 2017 the Paperless Appeals Office began a transformation into an Appeals Modernization Program Management Office (PMO) to team with USDS in the development of the Caseflow System.

In order to achieve and effectively manage the new technology and processes of appeals modernization, the Board created the Office of Strategy, Innovation and Programs to use data analytics to understand what is happening with the business today, strategy sessions to assess future actions, and managing the projects that get the Board from its current state to a future state. Initially, that includes improvements such as Decision Builder, eFolder Express, and replacing VACOLS with Caseflow, etc.

Additionally, as noted above, the Board is continuing to pursue enterprise-wide "Appeals Modernization" to better serve Veterans and their families and provide timely and quality appeals decisions. As a part of Appeals Modernization, information technology funds have been used to develop and optimize paperless functionality in VA appeals processing and we will continue to request appropriate funding in 2018. This effort is part of the Board's multi-pronged approach to leverage technology, people, and process improvements to most effectively process appeals. With FY 2016 IT funding, the Department began a multi-phase process of enhancing appeals functionality in the paperless environment. These enhancements are necessary to keep pace with the transformation of benefits processing that has occurred on the front end (*i.e.*, claims) of the VA benefits system. Initial key appeals-specific functionalities in the paperless environment will focus on seamless integration of systems, and key accountability and workability features. This investment will best position the Department, from a technological standpoint, to address the VA appeals inventory, which as of January 31, 2017, stands at over 469,000.

Workforce Planning

As noted above, the Board successfully hired and on-boarded approximately 72 new FTE in FY 2016, the majority of which were attorneys. The Board remains able to attract high-caliber attorneys and administrative personnel because the mission to serve Veterans is one that is particularly desirable to those seeking a career in public service.

The Board is dedicated to achieving the goal of making VA an employer of choice for its employees. To this end, in the fourth quarter of FY 2016 and into FY 2017, the Board undertook an aggressive campaign to transform the Board's culture to a culture of dignity, transparency, respect, trust, fairness, inclusion, teamwork, accountability, engagement, innovation, and strong leadership. In FY 2016, the Board initially established an Attorney Recruitment Program that focuses on law schools that have Veterans Legal Assistance Clinics or Student Veteran Organizations designed to increase interest in post degree employment at the Board from law students with experience in Veterans law. In FY 2017, the Board created a comprehensive Recognition Program that recognizes the accomplishments, achievements, and behaviors of employees that reflect VA's Core Values of Integrity Commitment, Advocacy, Respect, and Excellence.

Additionally, the Board has established itself as a workplace where diversity and inclusion are valued, and employees are motivated to contribute the full extent of their knowledge, skills, and experience to the benefit of our organization. Moreover, in matters of recruitment and retention, the Board continues to maintain an avenue for all employees regarding issues of diversity and inclusion that illuminates the goals in place for sustaining a diverse workforce. Further, the Board has a Diversity Council that fosters a diverse workforce and cultivates an inclusive workplace for all employees, to ensure a welcoming work environment, broaden the Board's perspective, and deliver the best services to our Nation's Veterans, their families, and beneficiaries.

Finally, in FY 2016, the Board continued to offer its internal leadership program known as the "Shadow Program," which aims to develop the leadership skills of junior attorneys and administrative staff by providing a more global view of the Board and its role within the Department. A week-long session was offered to staff that were selected to participate, and each selectee gained exposure to the daily management and operations of the Board. All components of the Board were involved in the Program. The Board plans to continue to offer this development opportunity to all Board staff in FY 2017. Further, in FY 2017, the Board created short-term internal employee rotations to functional areas to provide employees with career development and broad exposure to all areas of the Board. These rotations are designed to provide a more in depth understanding of the day-to-day tasks of specific offices within the Board and provide hands-on experience. The Board also continues to send high performing attorneys, VLJs, and administrative professionals to leadership seminars and programs, such as Leadership VA, and programs offered through the Office of Personnel Management's Federal Executive Institute and its Management Development Centers. These robust training courses are an integral part of the Board's commitment to developing its future leaders.

PART II

STATISTICAL DATA

Fiscal Year 2016 Information

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

38 U.S.C. § 7101(d)(2)(A)

Number of cases formally appealed to the Board (Substantive Appeal (VA Form 9) filed), but not yet certified and docketed at the Board):	64,501
Number of appeals certified to the Board during FY 2016:	86,836*

38 U.S.C. § 7101(d)(2)(B)

Cases pending (certified) before the Board at the start of FY 2016:	81,022*
Cases pending (certified) before the Board at the end of FY 2016:	115,847*

* Includes certified appeals pending in the field awaiting hearings, as well as cases docketed and actually pending at Board. Beginning in FY 2015, the Board reported case receipts beginning with certification (Form 8) in the field. In prior years, case receipts only included physical receipt of cases at the Board. Case receipts include original appeals, remands, non-VBA receipts, and cases returned by the CAVC.

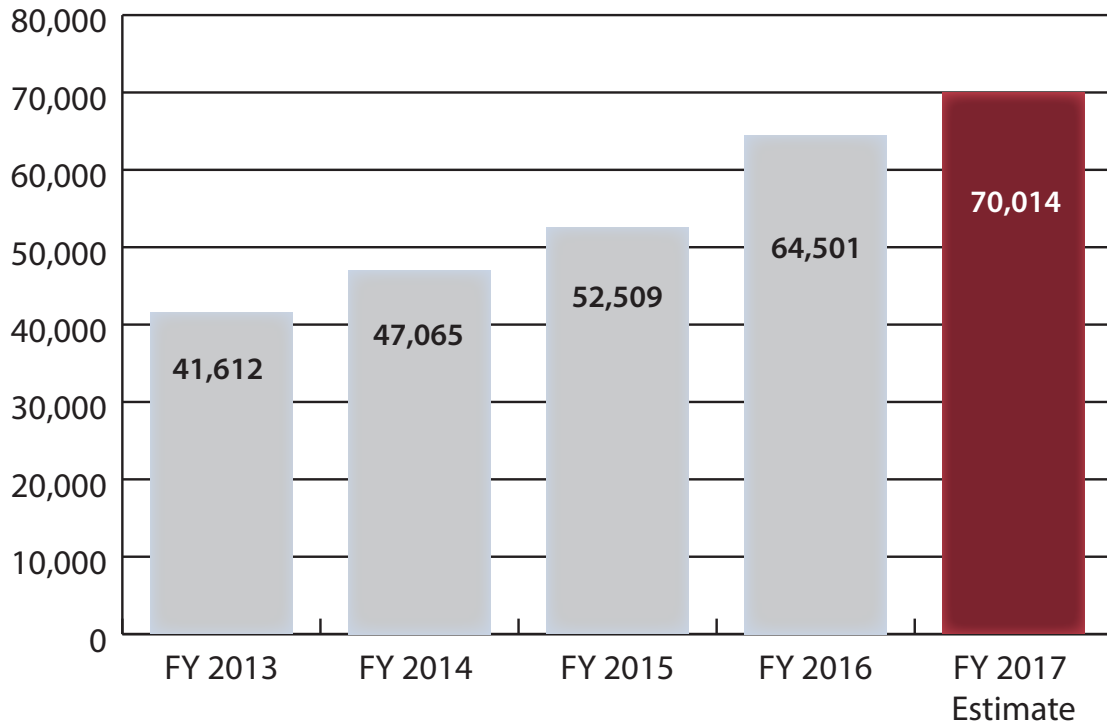
38 U.S.C. § 7101(d)(2)(C)

Number of Substantive Appeals (VA Form 9) filed at the AOJ and cases received at the Board during each of the 36 months preceding FY 2016.

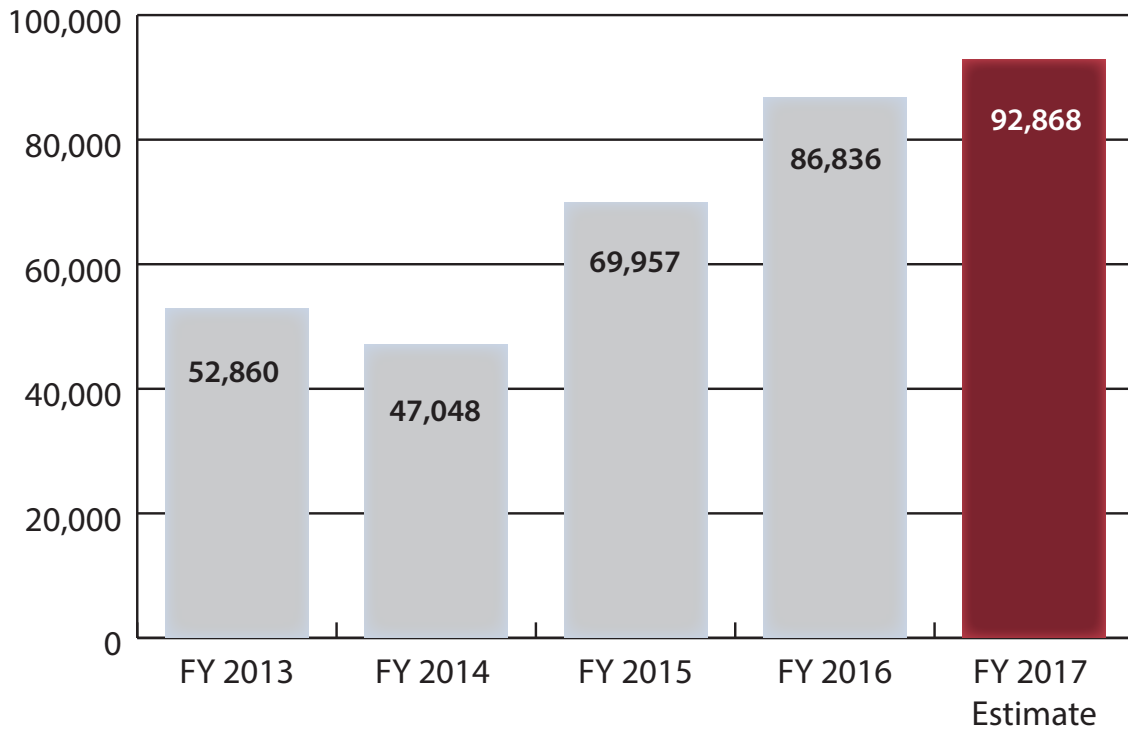
Substantive Appeals (VA Form 9) Filed					Cases Received at the Board*			
Month	FY 2013	FY 2014	FY 2015	FY 2016	FY 2013	FY 2014	FY 2015	FY 2016
October	3,900	3,133	4,724	4,195	4,864	3,234	8,089	5,606
November	3,057	3,109	3,564	4,097	4,922	3,544	4,365	5,220
December	3,053	3,257	4,327	4,749	3,454	3,787	4,577	6,214
January	3,730	3,909	4,271	4,198	4,386	3,230	4,971	5,499
February	3,340	3,861	3,262	4,574	4,467	3,011	4,914	6,653
March	3,254	4,217	4,455	5,900	4,975	3,926	6,376	8,047
April	3,588	4,796	4,674	5,893	5,256	3,934	5,960	7,642
May	4,030	4,688	4,622	5,753	4,667	4,265	5,396	8,338
June	3,072	4,618	4,893	6,348	4,309	4,250	6,595	8,205
July	3,611	4,135	4,749	5,945	4,183	3,943	5,823	7,119
August	3,478	3,539	4,389	6,606	3,907	4,658	6,527	8,911
September	3,499	3,803	4,579	6,243	3,470	5,266	6,364	9,382
FY Total	41,612	47,065	52,509	64,501	52,860	47,048	69,957	86,836

* Case receipts include original appeals, remands, non-VBA receipts, and cases returned by the CAVC. Beginning in FY 2015, the Board reported case receipts beginning with certification (Form 8) in the field. In prior years, case receipts only included physical receipt of cases at the Board.

Substantive Appeals Filed at AOJ (VA Form 9) FY 2013 - FY 2017



Cases Received at Board* FY 2013 - FY 2017



* Case receipts include original appeals, remands, non-VBA receipts, and cases returned by the CAVC. Beginning in FY 2015, the Board reported case receipts beginning with certification (Form 8) in the field. In prior years, case receipts only included physical receipt of cases at the Board.

38 U.S.C. § 7101(d)(2)(D)

For appeals decided in FY 2016, the average length of time between the filing of an appeal (*i.e.*, Substantive Appeal (VA Form 9)) at the AOJ and the Board’s disposition of the appeal was 1,785 days. As reflected in the chart below, the average time between the time that an appeal was actually received and docketed at the Board to disposition was 248 days. The chart also provides the average processing time between other distinct steps within the multi-step appeals process that take place at the AOJ or VBA level.

Time Interval	Responsible Party	Average Elapsed Processing Time	
Notice of Disagreement Receipt to Statement of the Case*	VBA	480 days	} AOJ
Statement of the Case Issuance to Substantive Appeal (VA Form 9) Receipt*	Appellant	38 days	
Substantive Appeal Receipt to Certification of Appeal*	VBA	644 days	
Certification of Appeal to Board Receipt of Certified Appeal*	Board	288 days	} Board
Receipt of Certified Appeal to Issuance of Board Decision	Board	248 days	
Average Remand Time Factor	VBA	422 days	} AOJ

* These numbers include Original appeals only.

38 U.S.C. § 7101(d)(2)(E)

The number of members of the Board at the end of FY 2016: **72** members

The number of professional, administrative, clerical and other personnel employed by the Board at the end of FY 2016: **584** employees
(*not including 72 members above*)

38 U.S.C. § 7101(d)(2)(F)

Number of acting members of the Board during FY 2016: **0**

Number of cases in which acting members participated**:
0

38 U.S.C. § 7101(c)(2)

Number of acting members of the Board in terms of full-time equivalent employees: **0**

** For this report, the number of cases in which acting members participated is defined as the number of dispositions issued by the designated acting members for FY 2016.

Projections for Fiscal Years 2017 and 2018

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

38 U.S.C. § 7101(d)(3)(A)

Estimated number of cases that will be appealed to Board

Fiscal Year 2017:	VA Form 9s filed at the AOJ:	70,014
	Cases certified to the Board:	92,868
Fiscal Year 2018:	VA Form 9s filed at the AOJ:	70,014
	Cases certified to the Board:	93,352

Note: Appeal receipts are contingent upon the rate of certification and transfer of cases by VBA and other AOJs to the Board. Cases certified include new/original appeals and returned remands from VBA and all other AOJs, and remands from the CAVC.

38 U.S.C. § 7101(d)(3)(B)

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

The indicator used by the Board to forecast its future timeliness of service delivery is the Board's "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, the Board response time projects the average time that will be required to render decisions on that group of pending appeals. For response time computation, the term "appeals pending before the Board" includes appeals at the Board and those that have been certified for Board review.

The following categories are calculated as follows:

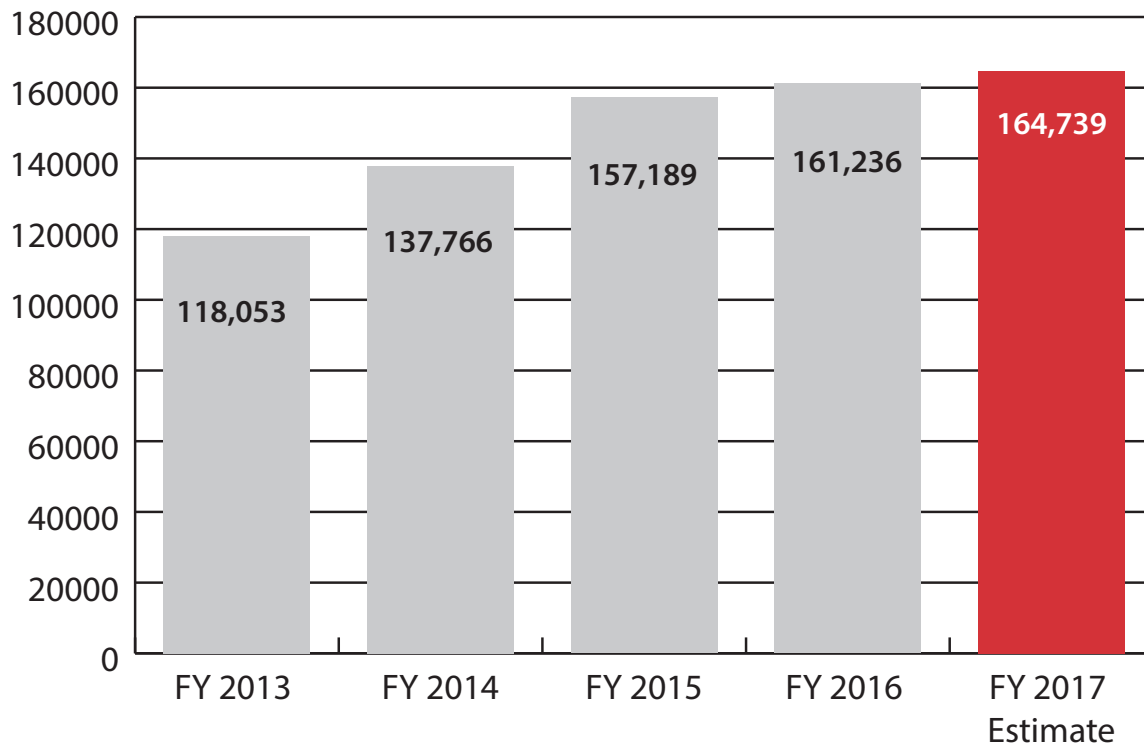
<u>FY 2016 decisions (52,011) (divided by)</u> 251 Work Days	= 207.2 decisions per work day
Cases pending end of FY 2016 (115,847) <u>+ New Cases expected in FY 2017 (92,868)</u>	= 208,715 total workload in FY 2017
<u>Total Workload (208,715) (divided by)</u> Decisions per work day (207.2)	= 1,007 work days
<u>Work Days (1,007) (divided by)</u> 251 work days	= 4.0 years
Work years (4.0) x 12 (months)	= 48 months

ADDITIONAL INFORMATION

Potential Board Workload in VBA

Number of Notices of Disagreement Received in the Field				
Month	FY 2013	FY 2014	FY 2015	FY 2016
October	10,909	12,756	13,023	14,729
November	9,006	10,782	10,182	12,670
December	8,053	10,058	10,763	12,523
January	9,468	11,295	10,939	12,955
February	8,883	10,574	11,122	14,027
March	9,743	12,336	13,709	15,038
April	10,056	12,346	14,064	13,885
May	10,130	12,783	13,872	13,631
June	10,498	13,303	15,318	13,172
July	11,093	12,375	15,328	12,143
August	11,232	10,828	15,023	13,888
September	8,982	8,323	13,837	12,575
FY Total	118,053	137,766	157,189	161,236

Notices of Disagreement Received FY 2013 - FY 2016



**Board of Veterans' Appeals
Board Dispositions by VA Program FY 2016**

APPEAL PROGRAM	ALLOWED		REMANDED		DENIED		OTHER		TOTAL	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Burial Benefits	10	19.61%	13	25.49%	23	45.10%	5	9.80%	51	0.10%
Compensation	16,040	32.28%	23,041	46.37%	8,592	17.29%	2,017	4.06%	49,690	95.54%
Education	77	19.06%	135	33.42%	179	44.31%	13	3.22%	404	0.78%
Insurance	1	14.29%	2	28.57%	4	57.14%	0	0.00%	7	0.01%
Loan Guaranty	4	18.18%	13	59.09%	5	22.73%	0	0.00%	22	0.04%
Medical	100	24.27%	150	36.41%	129	31.31%	33	8.01%	412	0.79%
Pension	89	14.74%	207	34.27%	269	44.54%	39	6.46%	604	1.16%
VR&E	3	5.00%	36	60.00%	19	31.67%	2	3.33%	60	0.12%
Other Programs	7	15.91%	15	34.09%	16	36.36%	6	13.64%	44	0.08%
BVA Original Jurisdiction	11	11.11%	3	3.03%	64	64.65%	21	21.21%	99	0.19%
NCA Burial Benefits	0	0.00%	3	23.08%	10	76.92%	0	0.00%	13	0.02%
Fiduciary	0	0.00%	1	50.00%	1	50.00%	0	0.00%	2	0.00%
Multiple Program Areas	202	33.50%	307	50.91%	73	12.11%	21	3.48%	603	1.16%
Grand Total	16,544	31.81%	23,926	46.50%	9,384	18.04%	2,157	4.15%	52,011	100.00%

**Board of Veterans' Appeals
Board Dispositions by Representation FY 2016**

REPRESENTATION	ALLOWED		REMANDED		DENIED		OTHER		TOTAL	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
American Legion	2,990	29.4%	4,791	47.0%	1,988	19.5%	415	4.1%	10,184	19.6%
AMVETS	78	38.6%	77	38.1%	34	16.8%	13	6.4%	202	0.4%
Disabled American Veterans	4,464	30.5%	6,863	46.9%	2,643	18.1%	660	4.5%	14,630	28.1%
Military Order of the Purple Heart	106	39.6%	119	44.4%	32	11.9%	11	4.1%	268	0.5%
Paralyzed Veterans of America	53	32.7%	58	35.8%	36	22.2%	15	9.3%	162	0.3%
Veterans of Foreign Wars	1,321	32.9%	1,810	45.1%	708	17.6%	173	4.3%	4,012	7.7%
Vietnam Veterans of America	195	31.4%	295	47.5%	92	14.8%	39	6.3%	621	1.2%
State Service Organizations	2,502	30.8%	3,690	45.5%	1,622	20.0%	297	3.7%	8,111	15.6%
Attorney	3,040	40.8%	3,399	45.6%	713	9.6%	299	4.0%	7,451	14.3%
Agent	309	36.1%	397	46.4%	117	13.7%	33	3.9%	856	1.6%
Other	241	30.5%	348	44.0%	164	20.8%	38	4.8%	791	1.5%
Wounded Warrior Project	45	0.0%	74	0.0%	22	0.0%	5	0.0%	146	0.3%
No Representation	1,200	26.2%	2,005	43.8%	1,213	26.5%	159	3.5%	4,577	8.8%
Grand Total	16,544	31.8%	23,926	46.5%	9,384	18.0%	2,157	4.1%	52,011	100.0%

Board Decisions*					
Fiscal Year	Decisions	Allowed	Remanded	Denied	Other
2013	41,910	26.2%	45.6%	24.2%	4.0%
2014	55,532	29.2%	45.5%	21.5%	3.8%
2015	55,713	31.0%	46.4%	19.1%	3.5%
2016	52,011	31.8%	46.0%	18.0%	4.2%

* The historical reporting system for Board decisions with multiple issues identifies the disposition of an appeal based on the following hierarchy: allowance, remand, denial, or other (*i.e.*, dismissals). When there is more than one disposition involved in a multiple issue appeal the “reported disposition” for Board Statistical Reports will be categorized based on the disposition hierarchy noted above.

The revised hierarchy method shown below attempts to be more precise. As discussed above, the Board has historically used a hierarchy to report appeals decided which identified the disposition of an appeal as either an allowance, remand, denial, or “other” (*i.e.*, a dismissal), based on that hierarchy. This historical method of reporting did not capture every appeal containing a remanded issue, because those appeals with one or more allowed issue and one or more remanded issue would be counted as an allowance, rather than a remand. One of the reasons legislative reform of the current VA appeals process is needed is that appeals churn in the system. The open record and ongoing duty to assist means that numerous appeals are remanded from the Board to the AOJ, typically VBA. In FY 2016, the Board dispatched 52,011 appeals. Of those appeals, 8,024 were allowances with no remanded issues, 9,385 were denials, and 2,157 were “other” dispositions, such as dismissals, for a total of 19,566 appeals decided with no remanded issues. There were 32,455 appeals decided with at least one remanded issue (8,524 allowances with at least one remanded issue + 23,932 remands). This number of appeals with at least one remanded issued, divided by the total number of appeals decided, equals a 62 percent remand rate (32,455/52,011).

Decisions - Revised Hierarchy**							
Fiscal Year	Decisions	Allowed	Allowed		Remanded	Denied	Other
			No Remanded Issue	with at Least One Remanded Issue			
2016	52,021	16,548	8,024	8,524	23,931	9,385	2,157
		31.8%	15.2%	16.4%	46.0%	18.0%	4.1%

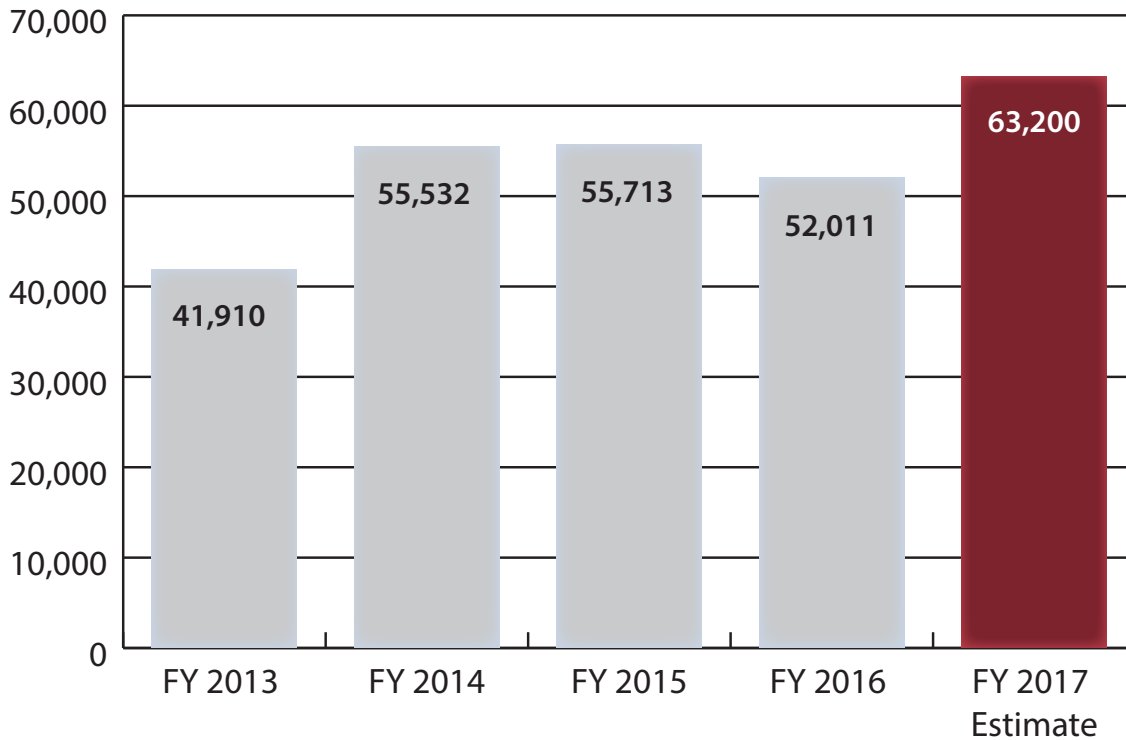
** Data for this chart was pulled from a VACOLS report on 10/18/2016 while the rest of the data was pulled from VACOLS reports on 10/3/2016. VACOLS reports are completed in “real time” and are updated continuously as work process records are updated to reflect current status, reassigned to another employee, cancelled, or completed.

Issues Decided*

Fiscal Year	Issues Decided	Allowed		Denied	Remanded	Other
		Not New & Material	New & Material			
2016	146,128	19,961	4,840	34,162	77,871	9,294
		14%	3%	23%	53%	6%

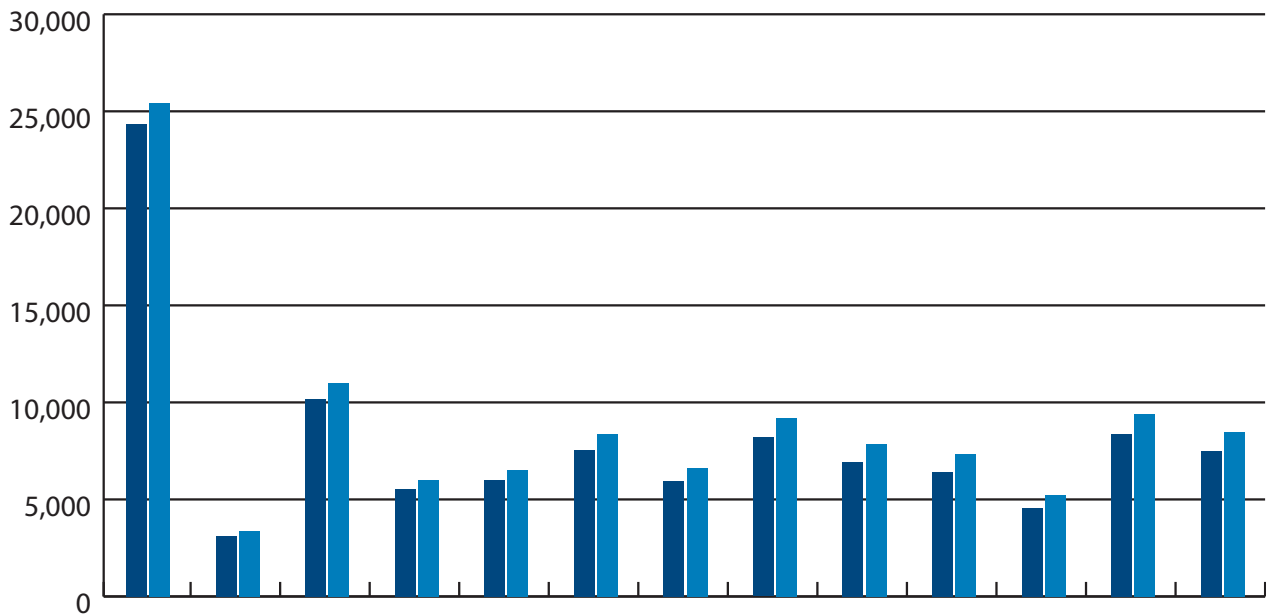
* Data for this chart was pulled from a VACOLS report on 10/18/2016, while the rest of the data was pulled from VACOLS reports on 9/30/2016 and 10/3/2016. VACOLS reports are completed in "real time" and are updated continuously as work process records are updated to reflect current status, reassigned to another employee, cancelled, or completed.

Board Decisions FY 2013 - FY 2016



Combined Degree of Disability for Existing Benefits*

Veterans/appellants may receive disability compensation ratings ranging from noncompensable (0 percent) to 100 percent. This information reflects, at the end of FY 2016, the combined disability rating for the appellants with appeals pending. As of September 30, 2016, the Board's inventory contained 104,632 total distinct Appellants and 114,791 appeals. **Note:** This inventory of appeals only counts certified appeals in advanced status, Board active appeals, and remands returned not activated and does not include action types such as motions for reconsideration, vacates, or Board CUE motions. Below is a breakdown of these two figures by combined degree of disability.



	No CDD Record	0	10	20	30	40	50	60	70	80	90	100	IU
Distinct Appellants	24,356	3,116	10,195	5,514	5,984	7,552	5,937	8,193	6,944	6,420	4,539	8,366	7,516
Appeal Count	25,416	3,376	11,004	5,988	6,540	8,389	6,613	9,208	7,841	7,326	5,206	9,403	8,481
Percent of Total Appeal Count	22%	3%	10%	5%	6%	7%	6%	8%	7%	6%	5%	8%	7%

* Board of Veterans' Appeals pending inventory as of September 30, 2016. Inventory includes appeals that are: certified in advance status; activated at the Board; remands returned to the Board.

Board Operating Statistics

	FY 2013	FY 2014	FY 2015	FY 2016
Decisions	41,910	55,532	55,713	52,011
Appealed but not yet Certified or Docketed	41,612	47,065	52,509	64,501
Received at Board/Certified to the Board*	52,860	47,048	69,957	86,836
Cases Pending**	60,365	66,778	81,022	115,847
Hearings:				
VACO	436	529	563	753
Video	5,778	5,881	7,609	8,236
Field	5,217	4,469	4,566	4,546
Total	11,431	10,879	12,738	13,535
Decisions per FTE	78.8	88.1	86.3	78.8
Board FTE	532	631	645	660
Board Cycle Time***	135	202	295	253
Cost per Case	\$1,848	\$1,607	\$1,851	\$2,117

* Case receipts include original appeals, remands, CAVC, and non-VBA receipts. Beginning in FY 2015, the Board reported case receipts beginning with certification (Form 8) in the field. In prior years, case receipts only included physical receipt of cases at the Board.

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

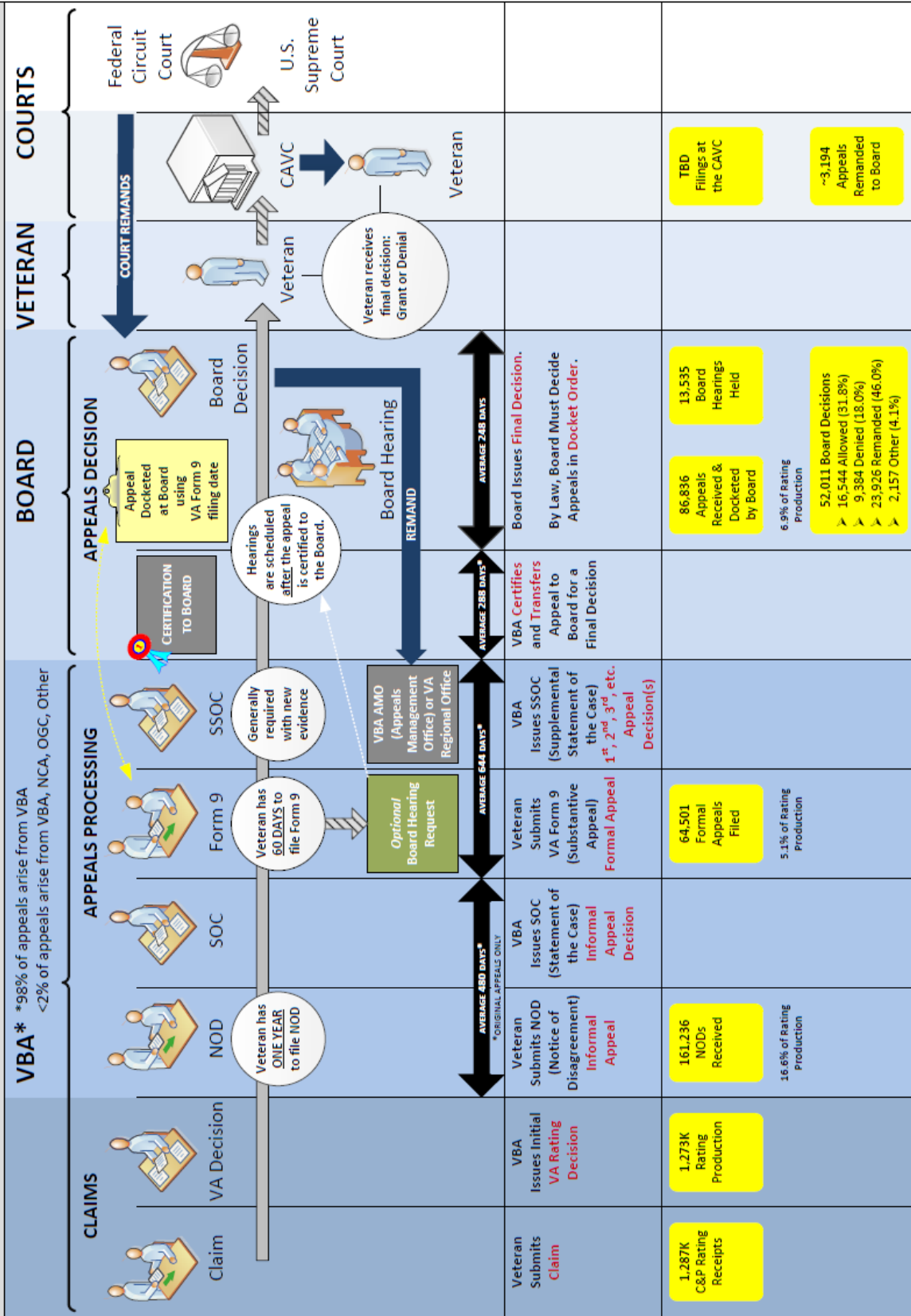
*** Beginning in FY 2015, the Board reported Board Cycle Time beginning with certification (Form 8) in the field, excluding VSO time. In prior years, Cycle Time only included time beginning with physical case receipt.

12-22-16

Board of Veterans' Appeals (Board)

Life Cycle of a VA Appeal

FY 2016



U.S. Department of Veterans Affairs
Board of Veterans' Appeals
Report of the Chairman
Fiscal Year 2016