



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

December 30, 1997

The Honorable Hershel Gober  
Acting Secretary of Veterans Affairs  
Washington, DC 20420

Dear Mr. Secretary:

I respectfully present the Fiscal Year 1997 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 1997 and the projected activities of the Board for fiscal year 1998, 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.

As the enclosed report demonstrates, the Board made significant improvement in its productivity, timeliness, and efficiency during fiscal year 1997. We at the Board, and the veterans we serve, owe a large debt of gratitude to you for your continued leadership, commitment, and invaluable assistance to the Board. Without your support, the Board's recent improvements and encouraging prospects for additional gains in the future would not have been possible.

I hope that the enclosed report provides you, the Congress, and our Nation's veterans a clear and comprehensive picture of the Board's mission, activities, and unwavering dedication to putting veterans first.

Very respectfully,

A handwritten signature in black ink, appearing to read "Roger K. Bauer". Below the signature, the name "Roger K. Bauer" is printed in a smaller, standard font.

Roger K. Bauer

Enclosure

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## **PART I**

### **THE BOARD OF VETERANS' APPEALS**

The Board of Veterans' Appeals (BVA or Board) is the component of the Department of Veterans Affairs (VA) that is responsible for entering the final decision on behalf of the Secretary in each of the many thousands of claims for entitlement to veterans' benefits that are presented annually for appellate review. BVA's mission, as set forth in 38 U.S.C. § 7101(a), is "to conduct hearings and dispose of appeals properly before the Board in a timely manner" and to issue quality decisions in compliance with the requirements of the law, including the precedential decisions of the United States Court of Veterans Appeals. The Board renders final decisions on all appeals for entitlement to veterans' benefits, including claims for entitlement to service connection, increased disability ratings, total disability ratings, pensions, insurance benefits, educational benefits, home loan guarantees, vocational rehabilitation, dependency and indemnity compensation, and many more. About 90 percent of the claims before the Board involve medical subject matter. In addition, pursuant to 38 U.S.C. § 5904, the Board is responsible for deciding matters concerning fees charged by attorneys and agents for representation of veterans before the Department.

### **HISTORICAL OVERVIEW**

By Executive Order 6090, effective March 31, 1933, Veterans Regulation No. 2, Part II, President Franklin D. Roosevelt established the Veterans Administration as the organization responsible for administering all veterans' programs and benefits. The previous patchwork system of appellate adjudication of claims for veterans' benefits was eliminated and all questions of entitlement to benefits were subject to a single appeal to the Administrator of Veterans' Affairs. On July 28, 1933, President Roosevelt created the Board of Veterans' Appeals by Executive Order 6230, Veterans Regulation No. 2(a). The Board was delegated the authority to render the final decision on appeal for the Administrator and, organizationally, was directly responsible to the Administrator. The Board was charged "to provide every possible assistance" to claimants and to take final action that would "be fair to the veteran as well as the Government." Initially, the Board was composed of a Chairman, Vice Chairman, and no more than 15 associate members. In the 1930s, the Board established procedures, guidelines, and precedents, many of which eventually were codified as regulations.



In the 1940s, procedures were established for affording appellants hearings, including recorded hearings conducted in the field by traveling Board members. The Board's workload was greatly increased in the aftermath of World War II. For example, in 1949 the Board rendered almost 70,000 decisions. These decisions generally were simple, short, and concise. The 1950s were characterized by the implementation of organizational and operational programs to achieve more efficient case management.

During the 1960s, the Board was enlarged to 14 sections of three members and the scope of the travel Board hearing program also was expanded. The Board's role in the promulgation of claims adjudication policy was terminated because it was felt that this was inconsistent with the Board's primary function as an independent, quasi-judicial agency within VA. Appellate policy also was significantly altered with the enactment of Public Law No. 87-666, effective January 1, 1963, which required the agency of original jurisdiction to furnish an appellant a "Statement of the Case," a document containing a detailed recitation of the evidence, applicable laws and regulations, and explanation of the rationale underlying the denial of the claim.

Also in 1963, the Board was granted statutory authority to obtain an advisory opinion from one or more medical experts who are independent of VA in cases involving complex or controversial medical issues. The Board's Rules of Practice were extensively revised and were first published in the Code of Federal Regulations in 1964. Currently, the Board's Appeals Regulations and Rules of Practice are contained in Parts 19 and 20, respectively, of title 38 of the Code of Federal Regulations.

The 1970s were characterized by a significant increase in the number of appeals as part of the aftermath of the Vietnam War. In 1977, the number of new appeals exceeded 60,000. In 1982, 68,000 new appeals were filed. The average appellate processing time, measured from the date of filing of the notice of disagreement until the date of issuance of a final BVA decision, increased significantly. At the end of fiscal year (FY) 1982, the average appellate processing time was 483 days, up from 443 days the preceding year. To help with the increased workload, the President approved an increase in the number of Board members to form 19 three-member sections in 1984. The maximum number of authorized Board members subsequently was increased to 67 and 21 sections were formed. This remained the authorized strength level until 1994, when the limit on the number of Board members was removed.

The number of appeals initiated remained in the 60,000s until FY 1989, when a peak of 74,291 was reached. This figure returned to the 60,000s in the early 1990s. Appeals carried through to completion and certified to the Board for review decreased somewhat in the early 1990s, going from almost 44,000 in FY 1990 and 1991, to an average of 37,390 per year from FY 1992 to 1996. In FY 1997, this number fell to 22,884.

## SINCE JUDICIAL REVIEW 1988 THROUGH 1997

The passage of the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100-687 (Nov. 18, 1988), which established the U.S. Court of Veterans Appeals (the Court), was the most revolutionary change in the adjudication system since the inception of the Board in 1933. Decisions by the Court have had a profound impact as the Board actively seeks ways to adapt to new interpretations of veterans' law and designs and implements new procedures required to meet the continually evolving requirements of the law. Few, if any, decisions of the Court have resulted in an improvement in decision productivity or timeliness in the VA adjudication system. However, judicial review has resulted in more consistent and detailed decisions.

As Judge Steinberg observed "... [T]he evolution of VA benefits law since the creation of this Court . . . has often resulted in new, different, or more stringent requirements for adjudication." *Locher v. Brown*, No. 94-1097 (U.S. Vet. App. Nov. 26, 1996) (citing *Stillwell v. Brown*, 6 Vet. App. 291, 303 (1994)).

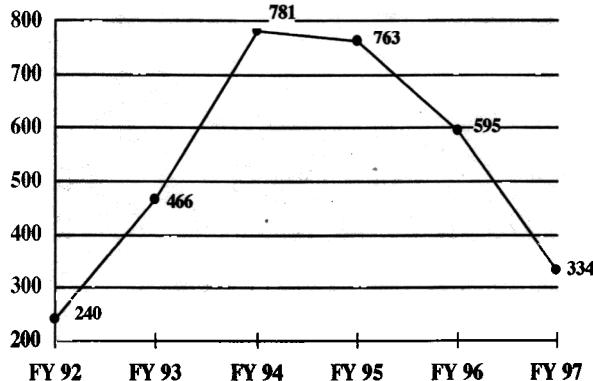
Response time and decision productivity were degraded by the impact of changes in the law, as interpreted by the Court. Compliance with the law necessitated achieving and maintaining standards of decision quality at a level not contemplated prior to the enactment of the Act. As a result, BVA decisions have become longer and more complex than they were prior to judicial review. Factors affecting the timeliness of appellate processing include:

- ◆ evidentiary development required by the Department's "duty to assist" claimants;
- ◆ compliance with the directives of the Court in an ever-growing number of important decisions;
- ◆ procurement of a large number of medical opinions and extensive medical research by the Board and its staff;
- ◆ large volume of requests for formal hearings before the Board, as well as a significant amount of time involved in travel for hearings at VA regional offices;
- ◆ strict requirements imposed by more formal Rules of Practice;
- ◆ added responsibilities of attorney fee agreement processing and review;
- ◆ readjudication of cases remanded by the Court to the Board;
- ◆ readjudication of cases returned from VA regional offices to the Board following completion of development requested by the Board on remand.

Two Court decisions issued early in FY 1996 indicated a possible change of position by the Court regarding its oversight authority. In *Cleary v. Brown*, No. 91-2006 (U.S. Vet. App. Oct. 5, 1995), the Court concluded that it does not have authority to retain general and continuing jurisdiction over a decision remanded to the Board for a new adjudication, noting that "[n]owhere has Congress given this



## BVA Response Time, FY 92 - 97



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

The total number of cases appeals in FY 1997 was 72,500. This number includes cases added to the Board's docket during the fiscal year, as well as case folders that were physically received at the Board, including original receipts, cases remanded to the Board by the Court, and appeals returned to the Board after remand development by regional offices.

As the graph above shows, BVA's response time increased from 240 days at the end of FY 1992 to 781 days at the end of FY 1994. The Board has improved its response time in each of the three years since then. By the end of FY 1997, BVA's response time was 334 days.

The VJRA made a hearing before a "traveling section of the Board," or "travel Board" hearing, a matter of statutory right. This led to a sixfold increase in demand for such hearings. By FY 1994, the increase in BVA response time had resulted in an unacceptably long period between the time when a hearing was held and the time when the Board actively reviewed the associated case, which often rendered information provided during the hearings outdated and of limited usefulness by the time the Board began its review. Travel hearings proved to be a double-edged sword: Appellants benefited from the convenience and cost savings from hearings held closer to their homes, but the increased amount of time Board members spent traveling to and from hearings reduced the amount of time available to them to decide cases.

The "Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994," Pub. L. No. 103-271, specifically authorized the Board to conduct hearings using electronic media. BVA began conducting videoconferenced hearings in FY 1995 and expanded their use in FY 1996 and 1997. Videoconferencing is discussed in more detail on page 11.

Court either the authority or the responsibility to supervise or oversee the ongoing adjudication process which results in a BVA decision." Similarly, in a single-judge nonprecedential decision, *Morris v. Brown*, No. 95-941 (U.S. Vet. App. Oct. 26, 1995), the Court observed that "there is a heavy workload at the BVA," and that "[i]t would be most unwise and injudicious for this Court to intervene and purport to establish priorities and micromanage the caseload of the BVA."

In FY 1997, there were 66,566 notices of disagreement filed. This represented a decrease of 11 percent over the 74,757 filed in FY 1996, but more closely approximates the number typically filed annually in recent

The VJRA removed a historic \$10 limitation on the fees that may be charged by attorneys-at-law and claims agents who represent VA claimants, and gave the Board original jurisdiction to review agreements for the payment of such fees. The private bar has not shown significant interest in the practice of veterans' law, representing only 3.2 percent of appellants whose appeals were decided by the Board in FY 1997 and 3.4 percent the previous year.

Many Court decisions have had a significant impact on the VA adjudication process. Since 1991, Court decisions have been binding on VA as of the date they are issued. This sometimes requires the Board to stop the flow of cases, identify cases affected by a Court decision, and readjudicate them.

The Court has ruled that the Board must consider every *potentially* applicable regulation in its decisions, regardless of whether it was raised by the appellant or considered in the field. In *Robinette v. Brown*, 8 Vet. App. 69 (1995), the Court held that even in circumstances where a claim is not well-grounded and, hence, VA's "duty to assist" under 38 U.S.C. § 5107(a) does not apply, VA is required by 38 U.S.C. § 5103(a) to notify the claimant, in certain circumstances, of the evidence necessary to complete an incomplete application for benefits.

Many decisions are returned to the Board for readjudication by the Court as a result of binding decisions issued by the Court subsequent to the Board's original decision. Similarly, the Board's own remand rate has been about twice that experienced before judicial review began. Among the Board's reasons for remanding cases are the need for specific medical information, the need to obtain appellants' private medical records, and the need for additional due process development, such as the holding of a requested hearing or the *de novo* consideration by regional office personnel of additional issues identified as having potential applicability, as previously discussed. Other cases must be remanded because of Court decisions issued between the time a VA field adjudication is made and the time it comes before the Board on appeal. Readjudication of decisions remanded by the Court to the Board and those returned from the regional offices after the Board has remanded them results in a vastly increased workload for the Board and a longer wait for appellants to obtain resolution of their cases.

Numerous other Court rulings also profoundly affected the way the Board adjudicates cases. Board decisions must include supporting "reasons or bases," making Board decisions longer and more complex. Board decisions must now include candid assessments of the credibility of lay testimony, giving Board decisions a more adversarial tone than in the past. The Board can no longer decide cases on the basis of the medical expertise of its members and changed the Board's procedures for utilizing medical adviser opinions from physicians employed by the Board. The role of BVA's physicians is discussed in detail on page 13 of this report. Still other Court decisions resulted in Board decisions that are more technical and "legalistic" than they were prior to judicial review.

Since July 1994, the Board has been authorized to issue decisions made by individual Board members, rather than by panels of three members, a procedure that has significantly enhanced productivity. Also in FY 1994, the Board implemented revised docketing procedures, permitting the assignment of docket numbers as soon as a "substantive appeal" (VA Form 9) is filed, rather



than when an appeal folder is received at the Board. This change eliminated the disadvantage previously experienced by appellants who requested travel Board hearings, whose folders remained at VA regional offices and whose appeals, therefore, were not docketed until after the hearing was held. The Board's docketing procedures were improved further during FY 1997 as a result of advances in the joint effort by BVA and the Veterans Benefits Administration (VBA) to develop a single computerized system for docketing, tracking, and managing appeals. This effort is discussed in more detail on page 10.

## HISTORICAL ORGANIZATION OF THE BOARD

The statutory authority for organization of the Board is contained in chapter 71 of title 38 of the United States Code. The Board's activities are directed by a Chairman, who is "directly responsible to the Secretary," as provided by 38 U.S.C. § 7101(a). The Chairman is appointed by the President of the United States with the advice and consent of the Senate and serves for a term of six years. Pursuant to 38 U.S.C. § 7101(a), the Board is authorized to consist of a Chairman, a Vice Chairman, and an unlimited number 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 8.)

All members of the Board, except the Chairman, are appointed by the Secretary, with approval of the President, based upon the recommendations of the Chairman. The fixed terms of office for Board members that were prescribed by the VJRA in 1988 were eliminated in November 1994 by the "Veterans' Benefits Improvements Act of 1994," Pub. L. No. 103-446. This legislation also restored the historic comparability between Board member pay and that of Administrative Law Judges. Board members are the only federal employees at this level who require Presidential approval for appointment. The Chairman serves at the Assistant Secretary (PAS IV) level, and the Vice Chairman and Senior Deputy Vice Chairman are members of the Senior Executive Service.

Since the enactment of Pub. L. No. 103-271, which was signed into law on July 1, 1994, most decisions of the Board are reviewed and decided by individual Board members. Prior to Pub. L. No. 103-271, the law required that three member panels review and decide each appeal. To support the three-member panel requirement, the Board was divided into 21 decision-making units (Board sections), each generally composed of three attorney Board members, one of whom was designated Chief and bore the supervisory responsibility for the section. Eight or nine staff counsel, attorneys graded from GS-9 through GS-14, were assigned to each Board section. A separate administrative support operation provided clerical and other administrative assistance services to the Board sections.

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

remained basically unchanged from those in effect in the 1980s and earlier, and the organizational structure reflected the prevailing management philosophies of the era. The “Board section” arrangement also reflected the legal requirement that decisions be issued by panels, usually consisting of three members. BVA remained a highly centralized organization with relatively little delegated authority other than the authority of Board members to decide appeals.

## CURRENT ORGANIZATION OF THE BOARD

The single member decision-making authority granted by Pub. L. No. 103-271 eliminated the statutory requirement for configuring the Board in “sections.” The new, less restrictive decision-making environment provided BVA the opportunity to develop a more efficient management structure — one that afforded the best prospects for improving overall productivity and decision timeliness.

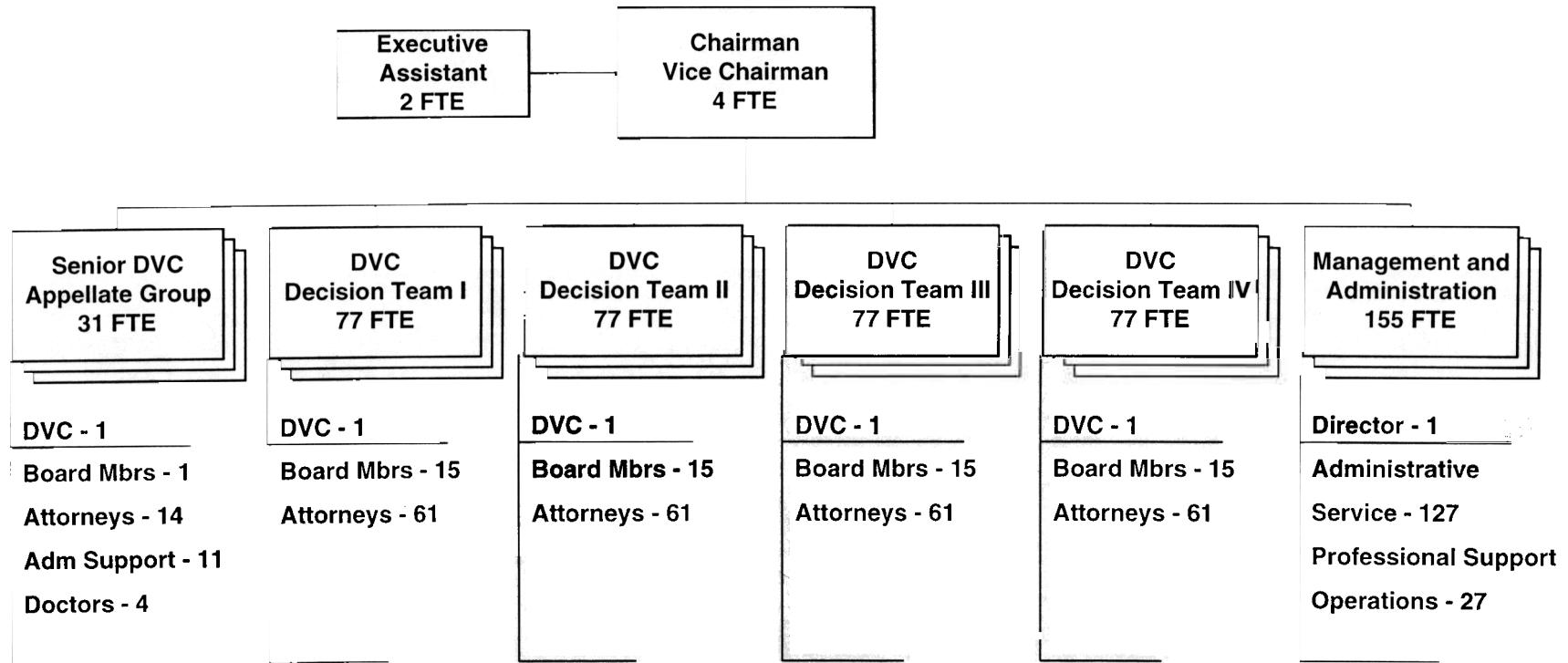
Toward the end of FY 1995, the Board installed an organizational alignment that created an atmosphere in which Board members, staff counsel, and administrative support personnel could interface directly and regularly, thereby establishing a greater sense of teamwork. The realignment reduced administrative overhead and allowed sufficient latitude for different, even competing, managerial styles to be used by similarly staffed teams. By reducing the number of identical administrative positions required to support the former 21 Board sections and reducing the supervisor to staff ratio, the Board was able to hire and place additional attorneys in decision production positions without exceeding its FTE limit.

At the heart of the realigned Board are four “decision teams.” These teams form the true line component of the Board, containing the staff counsel and Board members who review and decide appeals. From a staffing perspective, each decision team is organized alike. The target staffing level for each of the decision teams is one Deputy Vice Chairman (DVC) at an AL2 level, 15 Board members (two of whom are designated as Chief members), approximately 60 to 70 attorneys, and 18 administrative personnel who, although under the operational direction of the Board’s Administrative Service, provide direct support to the decision teams. Each decision team operates as a semiautonomous entity with considerable latitude regarding internal operating procedures, such as case assignment practices and the way in which Board members, attorneys, and administrative personnel are configured into work units.

Virtually all aspects of the processing of appeals occur within the decision 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. The new arrangement has allowed the Board to reduce the number of required administrative positions and increase the number and relative proportion of attorney positions, compared with the pre-decision team structure.

# BOARD OF VETERANS' APPEALS

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BVA's administrative personnel ensure the efficient processing of appeals by performing the essential functions of case management and tracking, docket control, scheduling of hearings, correspondence preparation and dispatching, secretarial, and transcription services. They also conduct critical liaison activities with veterans, veterans' service organizations (VSO), Members of Congress and their staffs, and other interested parties. The Board's transcription unit, located in Wilkes-Barre, Pennsylvania, transcribes and electronically transmits to the Board's offices in Washington, DC, transcripts of personal hearing proceedings and other dictated work products. The unit also maintains a Veterans Information Office to answer general questions about the Board's processes and procedures and to provide current appeal status information to appellants and other inquirers.

Within each decision team, managers have the authority to assign Board members, attorneys, and administrative personnel into whatever decision-making configurations they feel produce the best results. Each DVC is assisted in the supervision of the professional staff by two Chief Board members.

Delegated authority, outcome accountability, and competition are the driving forces for the decision teams. While the DVCs have considerable authority and latitude in how their decision teams are structured and how they operate, certain parameters, obviously, form the framework within which they do so. Decision teams must abide by all laws and regulations, and by certain policies and procedures issued by the Board.

A key element of BVA's current organizational structure is the alignment of the decision teams' workload along geographical lines. Each decision team is aligned with specific VA regional offices and is responsible for deciding appeals originating from those offices. However, those cases that had been remanded to regional offices prior to the realignment are assigned, upon their return from remand development, to the Board member who signed the remand decision, regardless of the geographic origin of the appeal. This geographic linkage has engendered a heightened level of continuity and familiarity between the operating units of BVA and the Veterans Benefits Administration, and has resulted in better communication and case control. Efforts to improve direct communication between Board members and adjudicators in the field is discussed on page 11.

The basic procedures involved in the preparation of a draft decision for Board member review and many of the routine tasks involved in the processing of an appeal by the Board are the same under BVA's current configuration as they were prior to realignment. DVCs are responsible for the management of their decision teams' caseload and procedures for the assignment of individual appeals to staff counsel for the preparation of written tentative decisions. Counsel typically prepare draft decisions on individual computer work stations and submit the 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 and undergoes a quality review within the decision team. To ensure quality and consistency throughout the Board, a sampling of decisions also undergoes an additional review by a Chief member of a decision team other than the team that prepared the decision.

**ADMINISTRATIVE  
ACTIVITIES**

A staff of medical advisers assists Board members by conducting medical research and by training staff counsel on medical issues. In addition, medical evaluations of a case may be obtained from an independent medical expert, such as a member of the faculty of a leading medical school.

## **ADMINISTRATIVE ACTIVITIES**

In recent years, the Board has introduced numerous administrative initiatives to meet the challenges resulting from judicial review and to improve its service to veterans and their families. These initiatives have included the complete revision of decision analysis and format (1991); the use of single Board member hearings as opposed to panel hearings (1992); the introduction of a "trailing" hearing docket (1993); improvements in direct responses to customers and responses to Congressional and other inquiries (1993); the consolidation of all Washington, DC, employees in one building (1993); reduction of the time-consuming restatement of the history of each case contained in the "Introduction" section of Board decisions (1994); and the implementation of revised docketing procedures, permitting the placement of cases on the Board's docket as soon as a "substantive appeal" (VA Form 9) is filed, rather than when an appeal folder is received at the Board (1994). In 1997, the Board revised VA Form 9, "Appeal to the Board of Veterans' Appeals," to make the form easier for users to understand. This revision, which considered comments from veterans' service organizations and agencies within VA before finalization, will be available for use in 1998.

Until recently, VBA and BVA used completely independent computer systems to track appeals, VBA using the Appeals Tracking System (ATS) and BVA using the Veterans's Appeals Control and Locator System (VACOLS). Working together, VBA and the Board made substantial progress during FY 1997 in the development and deployment of a unified information system for tracking, processing, and otherwise managing appeals in all of their phases and locations throughout the VA system.



*Paralegal specialists, legal clerks, and other Administrative Service employees perform vital roles in the processing of appeals at the Board, including docketing and the tracking and handling of case folders. They also prepared written responses to more than 2,600 Congressional inquiries and responded to innumerable written and telephonic requests for information and assistance from appellants during FY 1997.*

Since the installation of the basic program at regional offices early in FY 1997, two successive releases during the year provided additional functionality to the application. Regional office personnel can now directly enter appeals on the Board's docket, obtain lists of cases requested by the Board, query the appeal data base regarding the status of cases, update the system when an action on an appeal has been completed, and generate various management reports. As a direct result of this initiative, both of VA's adjudicative operational elements have begun to realize the following benefits:

- ◆ Improved accuracy and timeliness of Departmental reports and appeal status determinations;
- ◆ Reduced exchanges of appeals-related paper between VBA and BVA;
- ◆ Reduced administrative overhead and operating costs associated with appeals for both VBA and BVA;
- ◆ Improved appeals-related workload management and planning information.

The Board expanded its use of videoconferencing to conduct personal hearings and to conduct training and information exchanges between BVA and VA regional offices during FY 1997. Through the use of this interactive video technology, Board members conduct hearings from Washington, DC, while appellants and their representatives present their cases from their local regional offices. Videoconferencing affords veterans the opportunity to have hearings held before Board members without incurring the expense of traveling to Washington, DC, and, especially for those in more remote areas, without having to wait for "travel Board" hearings that — due to cost and time constraints — might be held only once or twice each year in their areas. Videoconferencing has proven to be a very effective way to conserve the productive capability of Board members by reducing travel time. With videoconferencing, Board members are able to move down the hall, literally, instead of traveling across the country to conduct hearings. The 233 videoconferenced hearings conducted during FY 1997 was an increase of nearly five times the 48 videoconferenced hearings held the previous year. The Board expects to conduct 1,000 of these hearings during FY 1998.

Videoconferencing has also been employed regularly as a vehicle for improving direct communications between Board members and regional office adjudication personnel. It has demonstrated great potential as a practical way to conduct training and information exchanges between BVA and the field. Although it is too soon to quantify results realized as a direct result of this use of videoconferencing, anecdotal feedback regarding these sessions has been overwhelmingly positive. This type of regularly occurring training and two-way communication provides a real-time alternative to the more typical classroom training environment, allowing "face to face" information exchanges without the cost or, more importantly, the time required for travel to and from geographically distant locations. Videoconferencing equipment was installed in 13 locations during FY 1997, bringing the total number of remote hearing sites to 15 by the end of the fiscal year. Five more sites will be equipped in FY 1998, along with a third videoconferencing hearing room at the Board.



## ACCESS AND OUTREACH

The Board maintains a series of World Wide Web (WWW) pages that provide appellants and other "visitors" the ability to obtain answers to many questions about the appeal process. This on-line version of BVA's pamphlet, "Understanding the Appeal Process," links plain language answers to numerous commonly asked questions. These WWW pages are accessed from the following WWW Universal Resource Locator (URL):

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

Board decisions issued in calendar years 1994 and 1995 are also available in searchable text format through VA's Web pages. Although technical difficulties prevented the Board from placing its FY 1996 decisions on the Web prior to the end of the fiscal year, they are available on a CD-ROM, discussed on page 20, that is available for purchase by the public. The Board expects to make both its FY 1996 and 1997 decisions available through its Web pages early in calendar year 1998. 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>

As a service to veterans and the general public, an electronic mail (e-mail) link to the Board that can be accessed from the Department's Web pages was established in FY 1996. In FY 1997, nearly 300 e-mail inquiries were received and answered by the Board. This was more than twice the number of e-mail inquiries received the previous year.

## LEGISLATIVE INITIATIVES

During FY 1997, the Board drafted legislation which would provide that field hearings be scheduled in the order in which the appeal was filed — what the Board refers to as "docket order" — instead of the order in which requests for such hearings are received. The purpose of this proposal is to reduce delays in the issuance of Board decisions caused by late requests for field hearings.

The Board is required to provide the opportunity for a hearing before making its decision. Hearings are conducted by Board members at the Board's offices in Washington, D.C., or at VA field facilities. The latter hearings are informally referred to as "travel Board hearings."



Under current law, Board hearings held at VA field facilities are scheduled in the order in which requests for hearings within a field facility's area are received by VA. This procedure can conflict with the statutory requirement that the Board consider appeals in docket order. In other words, the fact that an appellant has an "early" field hearing does not necessarily have an effect on when the Board will consider the substantive appeal. At the same

time, because of limited Board resources, field hearings may be held at some stations only once a year. Accordingly, the decision in the case of an appellant high on the "docket order" may be delayed if the appellant requests a field hearing close to the time when the Board is ready to review that appellant's appeal.



The proposed legislation, forwarded to the Speaker of the House of Representatives and the President of the Senate in August 1997, but not introduced as of the end of FY 1997, would make the priorities for field hearings and appellate consideration the same: docket order.

### **SELECTION OF BOARD MEMBERS**

Although it is not required by law, all members of the Board are attorneys. Since 1994, no physicians have served as members of the Board. The selection process for the limited number of Board member openings is extremely competitive — candidates must be completely familiar with the ever growing body of applicable statutory, regulatory, and judicial authority and must acquire a solid background in numerous subject areas, including medical matters, necessary to adjudicate the wide variety of claims within the Board's jurisdiction. With very few exceptions, Board members have been selected to the Board from the ranks of staff counsel, because the particular expertise necessary to adjudicate appeals for veterans' benefits in an expeditious manner is most commonly found in this group. Staff counsel generally require from 7 to 10 years of experience before they are considered qualified for consideration as a Board member. Only individuals who have the requisite level of expertise to provide the efficient, high-quality service that veterans and their dependents deserve are selected. As selection of Board members is based solely on merit, the political affiliation, if any, of the candidates is never a factor for consideration.

### **THE ROLE OF THE BVA PHYSICIAN**

The Court has issued a number of opinions that have altered the manner in which BVA physicians are employed in the decision-making process by eliminating their traditional role as adjudicators. In the cases of *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990), *Colvin v. Derwinski*, 1 Vet. App. 171 (1991), and *Hallestad v. Derwinski*, 3 Vet. App. 213 (1992), the Court held, in essence, that the Board could no longer base its decisions on its own medical expertise, including that of physicians then serving as Board members. In *Colvin*, the Court held that the Board must consider only independent medical evidence to support its findings rather than provide its own medical judgment as a Board opinion. After *Colvin*, the Board utilized BVA physicians as medical advisers, in which capacity they provided expert medical opinions "on the record" in appeals in which such guidance was required. However, in *Austin v. Brown*, 6 Vet. App. 547 (1994), the Court raised serious questions concerning the fairness and impartiality of the Board's procedures for utilizing Board medical advisers' opinions. Since announcement of *Austin*, the Board has not utilized opinions from its medical advisers in adjudicating appeals.



In August 1995, the Court issued an opinion that further defined the status of BVA medical advisers' opinions in the claims adjudication process. In *Williams v. Brown*, 8 Vet. App. 133 (1995), the Court held that, before any use is made of the BVA medical adviser's opinion on remand, the Board must answer the series of questions posed by the Court in *Austin*. A similar result was reached in *Perry v. Brown*, 9 Vet. App. 2 (1996). As a practical matter, these questions pose a complex procedural hurdle which, absent a change in the law, make it unlikely that the Board will return to its former practice of utilizing the opinions of BVA medical advisers in adjudicating future appeals.

The absence of medical members within BVA decision teams has significantly increased the amount of time staff attorneys must spend conducting medical research. Staff attorneys must be able to recognize when the need for an expert medical opinion is warranted to fully develop a record. Board members must analyze medical evidence with increased frequency and sophistication and provide a thorough explanation of all medical principles upon which their decisions rely, with discussion of and citation to independent authority, such as medical treatises, texts, journals, and epidemiological studies. The resources of the Board's Research Center, discussed on pages 18, have been greatly expanded to help meet this need.

The Board is frequently required to obtain medical information and/or expert opinion on the record from independent medical experts who usually serve on the faculties of leading medical schools. In FY 1997, the Board requested 113 opinions from independent medical experts under 38 U.S.C. § 7109.

As a result of these changes, the Board now utilizes its remaining (two full-time and three part-time) physician staff in other capacities. BVA staff physicians actively provide informal advice of a general and educational nature to staff counsel and Board members. They each conduct several medical lectures per month, covering topics such as basic examination procedures, orthopedic examinations, scans and other diagnostic procedures, and understanding examination and laboratory results. BVA physicians also review the Board's requests for VHA and outside medical advisory opinions to ensure accuracy in the way in which the evidence is reported and the questions are framed.

## ATTORNEY AND AGENT FEE AGREEMENTS

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



In FY 1997, the Board received 683 fee agreements for filing and review, an increase of 85 percent over FY 1996, and 173 percent over FY 1995. Most problems concerning fee agreements were handled, as in the past, through correspondence with attorneys. Under the authority of 38 C.F.R. § 20.609(i), the Board issued 13 motions for Board review of fee agreements, and three were filed by attorneys. At the end of the

fiscal year, six motions were pending. In FY 1997, the Board issued 14 decisions on such motions: in 12 cases, the Board ruled that the attorney could not charge a fee; in one case, it ruled that the attorney could charge; and in one case, it dismissed the motion.



Most of the Board's decisions concerning fee agreements involve agreements referred by VA regional offices for a determination of whether an attorney is eligible for payment directly by VA under 38 U.S.C. § 5904(d). In FY 1997, 86 such cases were referred for such decisions. Eighty cases were completed during the fiscal year: 39 ordered payment to the attorney; 40 held that the attorney could not be paid; and one was dismissed.

## **REPRESENTATION BEFORE THE BOARD**

In FY 1997, 86.2 percent of appellants were represented by one of the accredited service organizations, 3.3 percent were represented by an attorney or agent, and 10.5 percent were not represented. In FY 1996, 84.6 percent were represented by an accredited service organization, 3.5 percent were represented by an attorney or agent, and 11.9 percent were not represented. (See table on page 24, Part II.)

## **LIAISON ACTIVITIES**

Throughout the year, the Chairman and Acting Chairman made presentations to members and staffs of the Committees on Veterans' Affairs of the Senate and House of Representatives and of the Subcommittee on VA, HUD, and Independent Agencies of the House and Senate Committees on Appropriations concerning the backlog of appeals and the Board's initiatives to increase productivity and improve decision timeliness.

On several occasions during the year, the Chairman and Acting Chairman testified before the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs of the House Committee on Veterans' Affairs; the Senate Committee on Veterans' Affairs; and the Subcommittees on VA, HUD, and Independent Agencies of the Committees on Appropriations of the Senate and House of Representatives, both on the Board's budget needs for FY 1998 and the Board's legislative proposals.

Two significant reports that examined the Department's entire claims processing system were issued in FY 1997. The Veterans' Claims Adjudication Commission issued its final report in December 1996 and the National Academy of Public Administration (NAPA) issued a report entitled, "Management of Compensation and Pension Benefits Claim Processes for Veterans," in August 1997. The commission's report cited the need for increased intradepartmental coordination in the processing of claims, including appeals, and suggested a number of long-term actions to improve the Department's overall adjudication

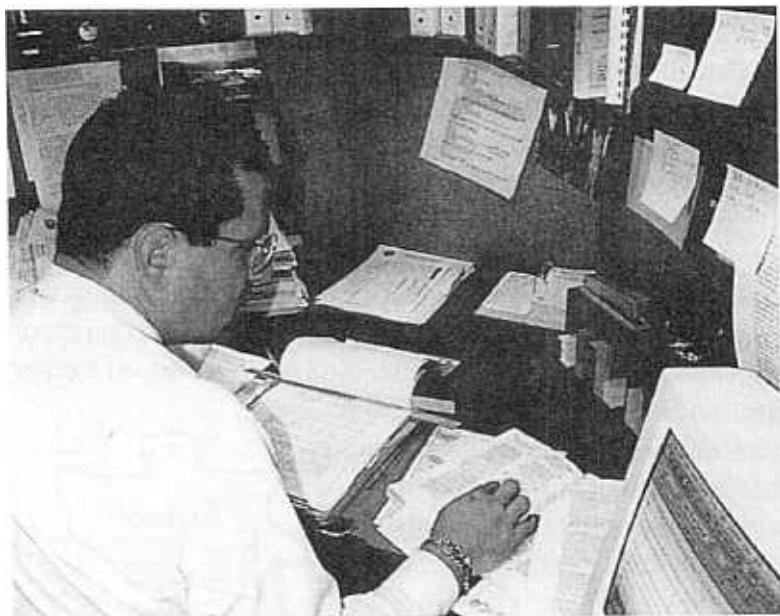


process. NAPA was largely supportive of BVA's efforts over the last several years, stressing the need to build upon the Board's recent success and to establish challenging goals for continued improvement.

Veterans' service organizations are vital to the Board's operation and provide an invaluable service to appellants. One of a service organization's representation activities is the preparation of advocacy briefs, which occurs prior to the Board's review of a case. These representative briefs become part of an appellant's record and are considered by the Board when reviewing appeals. BVA's increased decision production of the last two years necessitated a commensurate increase in brief production by VSOs. Most service organizations responded to the challenge by demonstrating significant — in some cases extraordinary — increases in their advocacy brief production rates during FY 1997.

Throughout the year, the Chairman or Acting Chairman addressed or participated in more than half a dozen conventions and seminars held by veterans' service organizations, both national and state, including service officer training seminars sponsored by VFW, the National Association of County Veterans Service Officers, and the national conventions of The American Legion and Disabled American Veterans.

The Board responds directly to requests for information and assistance from veterans, their representatives, and Members of Congress and their staffs. Most of these requests are handled by the Office of the Chairman and decision team administrative personnel. The Chairman and Acting Chairman also responded to correspondence from numerous claimants and other interested parties addressed to the President, the Secretary, and other government officials and provided written responses to 2,682 Congressional inquiries in FY 1997.



*BVA counsel and Board members examine appellants' entire claims folders and use numerous legal and medical references, including many maintained on the Board's own sophisticated computer network, to review and decide appeals.*

## **PROFESSIONAL TRAINING**

The Board continued its intensive training program for attorney staff and Board members during FY 1997. Under the direction of the Vice Chairman, a committee of key personnel acting as a Board of Regents conducted a training program using a university model. Its 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.

BVA's professional staff has grown significantly in recent years. An average of 66 new staff counsel were hired during each of the two fiscal years preceding FY 1997. In FY 1997, the Board realized a net increase of 31 staff counsel. It should be noted that the complexity of today's veterans' law will require intensive training of these new counsel before they can become fully contributing decision team members.

Newly hired attorneys begin their participation in the professional training program on their first day of orientation at the Board. The program, developed in cooperation with the employees' bargaining unit, includes intensive instruction in a variety of functional areas, including appeals development and adjudication, veterans' law, the hearing process, medical issues, and computer word-processing techniques. The curriculum includes mentor assistance, the use of a uniform training guide, legal and medical lectures, and training in the use of on-line reference resources, discussed in the following section.

The training program provides for professional growth and skill development throughout the course of an attorney's career with the Board. A nonlinear progression through a wide variety of class offerings is taken so that attorneys, together with their supervisors, can evaluate individual educational needs and, based on those evaluations, participate in classes addressing those areas determined to be most beneficial to each employee. Although much of the training is provided by Board staff members, additional resources are used to augment the curriculum, as appropriate. In that vein, BVA and the Office of General Counsel instituted a program in which senior level attorneys from each office are selected to prepare and deliver lectures on topics of concern to both offices. By sharing information and the perspectives of each office with the other, veterans are better served and the goal of maintaining a customer service outlook and awareness, a key element of the training program, is furthered.

Early in their careers at the Board, BVA attorneys participate in off-site VA seminars, including programs held at the Veterans Benefits Administration's Adjudication Academy in Baltimore, MD, that broaden their understanding of the veterans' benefit claim process. This effort directly supports the Department's one VA efforts by developing a familiarity with and understanding of regional office claims adjudication processes among BVA staff attorneys as well as an understanding of associated functions performed by Veterans Health Administration personnel.

Additional intradepartmental programs in which BVA participates include:

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

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

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

## **RESEARCH MATERIALS**

The Board's centralized Research Center contains reference materials most frequently used by Board attorneys, including videotapes of topical lectures and traditional library materials, such as current legal and medical texts. Legislative and regulatory histories are also available. The Research Center is used in conjunction with the extensive General Counsel and Veterans Health Administration libraries. Other departmental and governmental research resources are available as well, including those of the Veterans Benefits Administration's Adjudication Academy, the Office of Personnel Management schools and the National Judicial College.



The Board's commitment to automating as many of its processes as practicable is evidenced by BVA's sophisticated computer network and the installation of a personal computer at the workstation of every staff counsel, Board member, and member of the professional and

administrative staff. A variety of applications and productivity aids are available for all BVA staff and VSO appeals representatives connected to the BVA network, including a significant number of automated reference materials (“research tools”). This material is accessible through a computer selection menu that facilitates conducting legal and medical research from an individual’s workstation. Training has been provided to familiarize network users with the resources available, the steps necessary to access the desired information, and formulation of search “queries.” Anecdotal reports from new staff counsel indicates that the volume and sophistication of electronic research and reference materials readily available to BVA staff counsel and Board members far exceeds that which is normally found in the private law sector.

The Board’s on-line research tools include indexes and text files that are compiled in either data bases or word processing files. The data bases used by the Board differ from simple word processing files in that the search engine is considerably more sophisticated. Indexes are used to ascertain the availability and location of information on different subjects. The VADEX (VA Index), for example, is analogous to a card catalogue and contains references to VA-generated documents that are relevant to the mission of the Board. Indexes of VA Office of the General Counsel opinions, Chairman’s numbered memoranda and videotaped training lectures are also available.

The Index of Veterans’ Benefits Law (Annotated) was created to facilitate legal research and assist with the preparation of Board decisions. It includes annotated references to precedent decisions and opinions of the U.S. Court of Veterans Appeals, U.S. Court of Appeals for the Federal Circuit, U.S. Supreme Court, and VA’s Office of the General Counsel. It is available not only to Board employees and veterans’ service organization representatives connected through the Board’s computer network, but has also been distributed by the Veterans Benefits Administration’s Compensation and Pension Service to adjudicators in all 58 VA regional offices. This asset allows staff counsel, Board members, and others to keep abreast of the burgeoning and dynamic body of veterans’ benefits law.

The Board’s *Text files* are useful sources of information and reference text that facilitate the preparation of draft decisions. Categories of files compiled in FOLIO infobases include: slip opinions of the U.S. Court of Veterans Appeals (1990 to the present); BVA decisions since 1993; and Title 38 of the Code of Federal Regulations (updated monthly). A commercial application that contains the Physicians’ Desk Reference (pharmaceutical product descriptions and information about drug interactions and side effects), the Merck Manual, (a quick reference manual for most common diseases), and Stedman’s Medical Dictionary is also available. Precedent opinions of VA’s Office of the General Counsel since 1993 and Chairman’s numbered memoranda since 1991 are available by citation number in a word processing format. Available in another highly searchable format are several VBA resource items, including VBA directives, training guides, and manuals.

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

In February 1994, traditional decision indexing was discontinued in favor of making a highly searchable CD-ROM (Compact Disc - Read Only Memory) available to the public. Board decisions issued in calendar years 1994 through 1996 are available for purchase from the Government Printing Office on CD-ROM (Stock # 051000-00213-0). Additionally, as discussed on page 12, all Board decisions issued in calendar years 1994 and 1995 are available in searchable text format on the Internet through VA's World-Wide Web pages.

Included on the Board's CD-ROM of decisions is a vocabulary list that facilitates searches for specific topics. The capability to display, copy, and print search results represents an enormous potential reduction of research time for attorneys preparing decision recommendations, appeal representatives preparing advocacy briefs, and others interested in the appeal process.



*More than 80,000 Board decisions issued in calendar years 1994 through 1996 are contained on a single CD-ROM.*

## PRODUCTIVITY AND TIMELINESS

FY 1997 was a landmark year for the Board in many ways. In terms of both the number of decisions issued and decisions per FTE, FY 1997 was the Board's most productive year since FY 1991. In issuing 43,347 decisions, the Board exceeded the previous year's total by 27.7 percent, nearly doubling the number of decisions (22,045) issued in FY 1994. The 88.1 decisions issued per FTE in FY 1997 was 21.5 percent more than the previous year and nearly 77 percent more than the low of 49.9 decisions per FTE in FY 1994.

BVA's cost per decision and timeliness were the Board's best since FY 1992. The cost per decision in FY 1997 was \$839, compared to \$939 in FY 1996 and \$1,126 in FY 1994, a reduction of 10.7 percent and 25.5 percent, respectively. Response time fell to 334 days by the end of FY 1997, down nearly 44 percent from the previous year and more than 57 percent from FY 1994. The Board's vast improvement in these areas was neither a statistical fluke nor the result of



chance. It was the product of innumerable initiatives, large and small, long-term and short-term, that have positioned the Board to operate more efficiently and to accommodate the unprecedented changes that accompanied judicial review.



Moreover, the Board is now positioned and prepared to move forward as a fully engaged participant in the Department's "One VA" approach to doing business. To fulfill BVA's charter and both the letter and spirit of the law, the Board must continue to function as an independent operating element within the Department. At the same time, the Board must continue to work closely with the Department's other operating elements, particularly VBA, to provide veterans and their families with the quality service they deserve and the timeliness they expect. By continuing to identify and pursue opportunities for cross-organizational approaches to processing and resolving veterans' benefit claims, BVA expects to demonstrate continued improvement in the years ahead, not only to the Board's productivity and timeliness, but to that of the Department overall.

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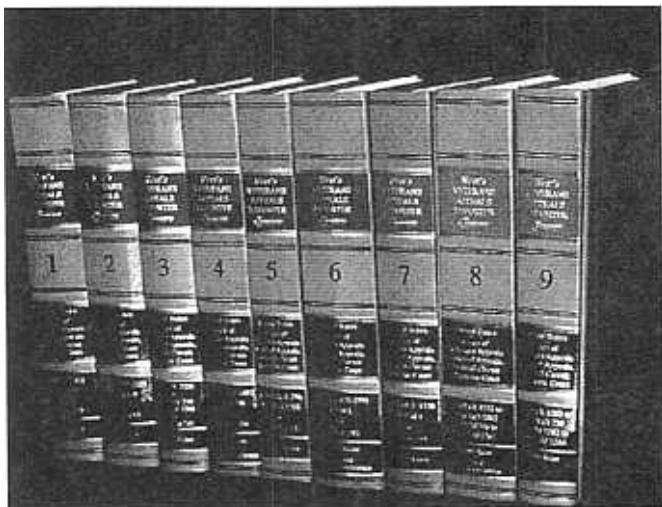
The history, organization, and operation of the Board of Veterans' Appeals discussed in this report share one common element: the effort of BVA's employees to put veterans first.



## MEMBERS OF THE BOARD OF VETERANS' APPEALS

At the close of FY 1997, the following 54 individuals, 30 of whom are veterans, were serving as members of the Board of Veterans' Appeals. At the close of FY 1997, no Board member appointments were awaiting Presidential approval. There are no physicians serving as Board members.

AGUAYO-PERELES, JOAQUIN (DEPUTY VICE CHAIRMAN)	KANNEE, BRUCE N.
BAUER, ROGER K. (ACTING CHAIRMAN)	KELLER, STEVEN L.
BLASINGAME, JACK W.	KENNEDY, SUSAN L.
BOHAN, BARRY F.	KRENZER, EILEEN M.
BOSCH, RONALD R.	LYON, MICHAEL D.
BRAEUFER, WAYNE M.	MARTIN, JEFFREY J.
BROWN, DEREK R.	MOEHLMANN, HOLLY E.
CALLAWAY, BETTINA S.	MONROE, JACQUELINE E.
CHEEK, MICHAEL D.	ORMOND, JOHN E.
COHN, STEVEN L.	PELLETIER, RENEE M.
COPELAND, BARBARA B.	PHILIPP, ROBERT D.
DANNAHER, THOMAS J.	PHILLIPS, NANCY I.
DAY, JONATHAN E.	POWELL, URSULA R.
DURKIN, SHANE A.	RICE, WARREN W., JR.
FLOWERS, FRANK J.	ROBIN, NANCY R.
FRANK, RICHARD B.	(DEPUTY VICE CHAIRMAN)
GALLAGHER, MARY	RUSSELL, CRAIG P.
GICK, GARY L.	SABULSKY, MARY M.
GOUGH, JEROME F.	(DEPUTY VICE CHAIRMAN)
GREENSTREET, MARK W.	SCHWARTZ, HOWARD N.
HOGEBOOM, CHARLES E. (DEPUTY VICE CHAIRMAN)	SENYK, GEORGE R.
HYMAN, BRUCE E.	SHARP, JANE E.
JORDAN, VICKY L.	SHERMAN, IRIS S.
	SHERMAN, JO
	SHUFELT, GORDON H.
	SPICKLER, DAVID C.
	STANDEFER, RICHARD B.
	(SENIOR DEPUTY VICE CHAIRMAN)
	SULLIVAN, LAWRENCE M.
	SULLIVAN, ROBERT E.
	SYMANSKI, CHARLES W.
	TOBIAS, CONSTANCE B.
	TOBIN, LEO W., III
	WILKINS, STEPHEN L.



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

## PART II

### FY 1996 STATISTICAL DATA

During FY 1997, BVA issued 43,347 decisions — the most decisions issued in any fiscal year since FY 1991. This total represents a 27.7 percent increase over FY 1996, when 33,944 decisions were issued, and was nearly double the 22,045 decisions produced in FY 1994. The increase is primarily a result of (1) the legislative change in the latter part of FY 1994 that authorized decisions to be made by individual Board members rather than by three-member panels and (2) the Board's organizational realignment that took effect at the beginning of FY 1996. The disposition of the Board's decisions by category of appeal is provided below.

Category	Total	Allowed	Remanded	Denied	Other
Disability compensation	36,761	6,511	17,250	12,496	504
Disability pension	1,175	116	533	503	23
Medical	484	40	155	264	25
Insurance	74	0	16	52	6
Death	2,592	195	826	1,532	39
Training	340	21	104	208	7
Waivers	849	152	356	324	17
Loan guaranty	326	56	159	108	3
Reconsiderations	64	29	20	15	0
Character of discharge	92	6	41	45	0
Miscellaneous	590	100	132	325	33
<b>Totals</b>	<b>43,347</b>	<b>7,226</b>	<b>19,592</b>	<b>15,872</b>	<b>657</b>

<u>Appellate Processing Categories</u>	<b>FY 1996</b> (days)	<b>FY 1997</b> (days)
Notice of Disagreement to Statement of the Case Issuance	76	83
Statement of the Case Issuance to Substantive Appeal Receipt	66	65
Substantive Appeal Receipt to Certification of Appeal to BVA	615	683
Receipt of Certified Appeal to Issuance of BVA Decision	261	120
Average Remand Time Factor	128	76
<b>Total Processing Time (All Categories)</b>	<b>1,146</b>	<b>1,027</b>

**BOARD OF VETERANS' APPEALS**  
**BVA DISPOSITIONS BY REPRESENTATION**  
**FY 1997**

REPRESENTATION	Total Decisions		Allowed		Remanded		Denied		Other	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
The American Legion	10,084	23.3%	1567	15.5%	4593	45.5%	3769	37.4%	155	1.5%
AMVETS	1,643	3.8%	301	18.3%	799	48.6%	518	31.5%	25	1.5%
Disabled American Veterans	14,538	33.5%	2648	18.2%	6866	47.2%	4829	33.2%	195	1.3%
Paralyzed Veterans of America	1,203	2.8%	237	19.7%	588	48.9%	352	29.3%	26	2.2%
Veterans of Foreign Wars	4,220	9.7%	677	16.0%	1843	43.7%	1649	39.1%	51	.2%
American Red Cross	189	0.4%	31	16.4%	77	40.7%	78	41.3%	3	1.6%
Military Order of the Purple Heart	550	1.3%	81	14.7%	284	51.6%	178	32.4%	7	1.3%
Vietnam Veterans of America	197	0.5%	44	22.3%	111	56.3%	34	17.3%	8	4.1%
State Service Organizations	4,399	10.1%	703	16.0%	1908	43.4%	1738	39.5%	50	1.1%
Attorneys	1,366	3.2%	245	17.9%	680	49.8%	401	29.4%	40	2.9%
Agents	32	0.1%	3	9.4%	15	46.9%	13	40.6%	1	3.1%
Other Representation	363	0.8%	78	21.5%	152	41.9%	125	34.4%	8	2.2%
No Representation	4,563	10.5%	611	13.4%	1676	36.7%	2188	48.0%	88	1.9%
<b>TOTALS</b>	<b>43,347</b>	<b>100.0%</b>	<b>7,226</b>	<b>16.7%</b>	<b>19,592</b>	<b>45.2%</b>	<b>15,872</b>	<b>36.6%</b>	<b>657</b>	<b>1.5%</b>

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# BVA Decisions

	<b>Decisions</b>	<b>Allowed</b>	<b>Remanded</b>	<b>Denied</b>	<b>Other</b>
<b>1994</b>	<b>22,045</b>	<b>17.5%</b>	<b>48.3%</b>	<b>28.1%</b>	<b>6.1%</b>
	<b>28,195</b>	<b>19.5%</b>	<b>47.5%</b>	<b>22.7%</b>	<b>10.3%</b>
<b>1996</b>	<b>33,944</b>	<b>19.9%</b>	<b>43.7%</b>	<b>30.8%</b>	<b>5.7%</b>
	<b>43,347</b>	<b>16.7%</b>	<b>45.2%</b>	<b>36.6%</b>	<b>1.5%</b>

## BVA Operating Statistics

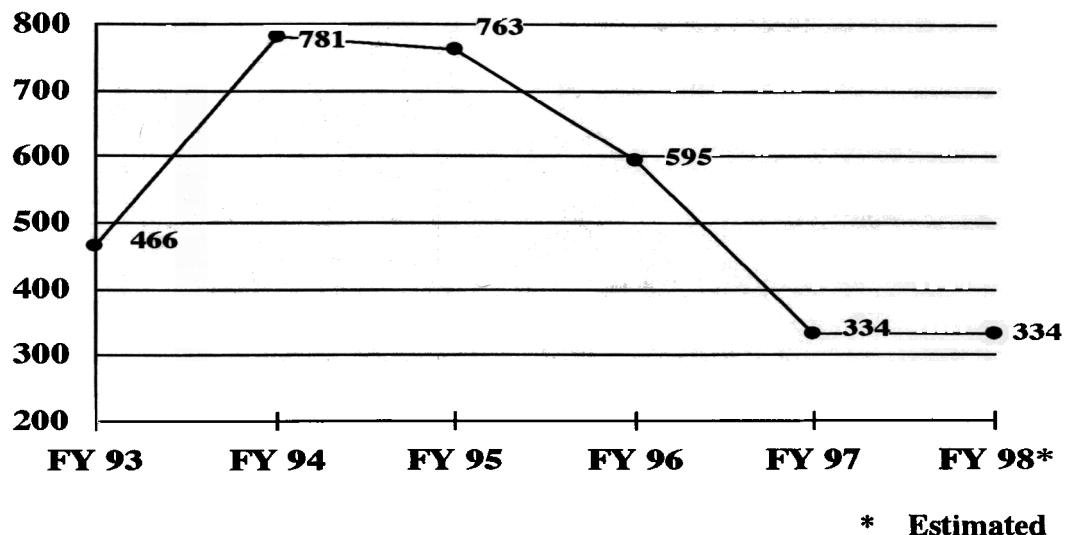
	<b>FY 1995</b>	<b>FY 1996</b>	<b>FY 1997</b>	<b>Estimated FY 1998</b>
Decisions	<b>28,195</b>	<b>33,944</b>	<b>43,347</b>	<b>41,600</b>
Case Receipts <sup>1</sup>				
Added to Docket	<b>43,537</b>	<b>38,447</b>	<b>32,916</b>	<b>32,500</b>
Received at BVA	<b>12,919</b>	<b>32,405</b>	<b>44,110</b>	<b>40,000</b>
Cases Pending <sup>2</sup>	<b>58,943</b>	<b>60,120</b>	<b>39,657</b>	<b>34,557</b>
Response Time	<b>763</b>	<b>595</b>	<b>334</b>	<b>334</b>
FTE	<b>433</b>	<b>468</b>	<b>492</b>	<b>491</b>
Decisions per FTE	<b>65.1</b>	<b>72.5</b>	<b>88.1</b>	<b>84.7</b>
Cost per Case	<b>\$1,030</b>	<b>\$942</b>	<b>\$839</b>	<b>\$905</b>
Hearings - VACO	<b>154<sup>3</sup></b>	<b>431</b>	<b>1,297</b>	<b>2,000</b>
Hearings - Field	<b>553<sup>3</sup></b>	<b>2,445</b>	<b>4,564</b>	<b>4,400</b>
Hearings - Video	<b>41</b>	<b>48</b>	<b>233</b>	<b>1,000</b>

<sup>1</sup> Case Receipts: Combined total of (1) new cases added to BVA's docket, which consist of appeals of original or reopened claims; and (2) cases received at BVA, which consist of all cases physically received at the Board, including original appeals received pursuant to case callup procedures, as well as all cases returned to the Board's docket. (I.e., cases returned following remand development, cases remanded by the Court, and cases received for reconsideration or vacate actions).

<sup>2</sup> Pending figures include appeals pending in the field but certified as ready for Board review.

<sup>3</sup> Hearings were suspended for part of FY 1995 in order to allow the conduct of hearings at a time proximate to when an appeal was actually considered by the Board.

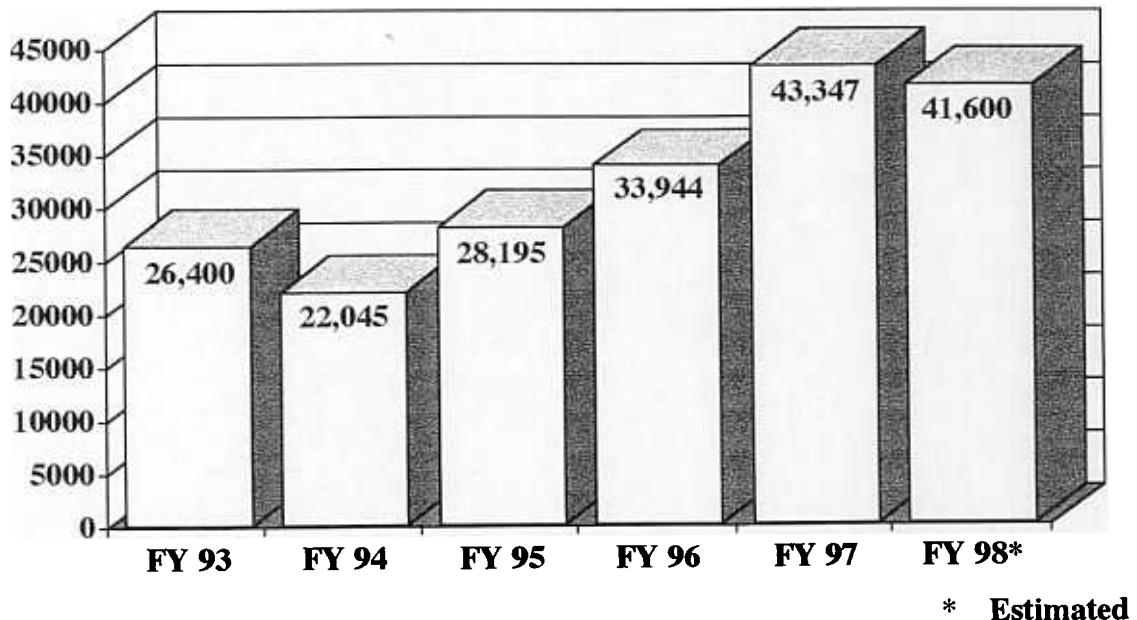
## BVA Response Time, FY 93 - 97



\* Estimated

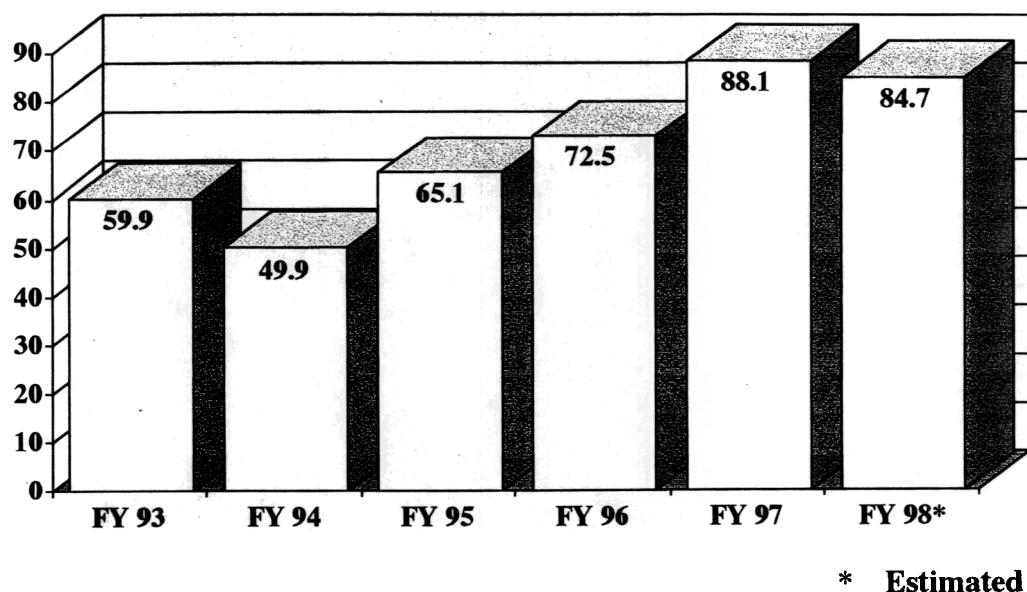
Response time is defined as the number of days it would take BVA to render decisions on all pending certified appeals at the processing rate of the immediately preceding one-year time frame.

## Number of Decisions, FY 93 - 97



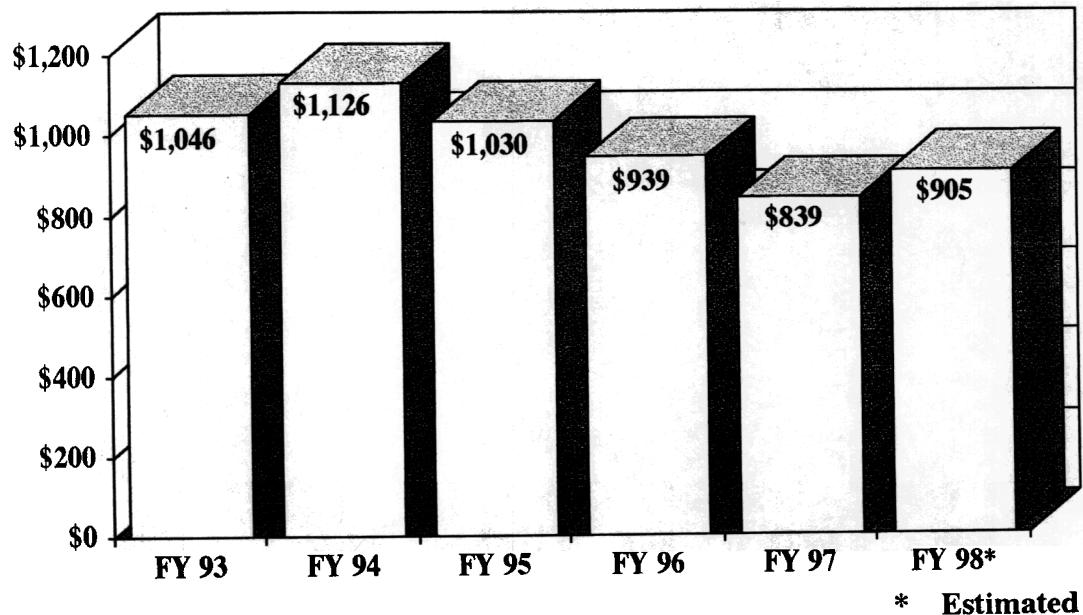
\* Estimated

## **Decisions Per FTE, FY 93 - 97**



\* Estimated

## **Cost Per Decision, FY 93 - 97**



\* Estimated

## PART III

### ADDITIONAL INFORMATION PROVIDED PURSUANT TO STATUTORY REQUIREMENTS

#### I. 38 U.S.C. § 7101(d)(2)

In February 1994, at the joint initiative of the Board and the Veterans Benefits Administration, VA instituted the practice of adding appeals to BVA's docket upon receipt of Substantive Appeals (VA Form 9) by the Board, while retaining associated case folders at regional offices until a time proximate to when the Board would begin its active review of the cases. This "advance docketing" system is a benefit to appellants because it allows them access to their case folders for the filing of new claims or other actions not under the Board's purview, while ensuring timely placement of their appeals on the Board's docket.

The following estimates of new Notices of Disagreement received in the field are provided to BVA by the Veterans Benefits Administration. Many of the cases for which a Notice of Disagreement is filed are resolved at the regional offices and, therefore, never reach the Board.

#### Estimated Number of New Notices of Disagreement Received in the Field

<u>Month</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
October	5,073	6,626	6,213
November	5,461	5,001	5,332
December	4,766	3,904	5,025
January	5,158	5,979	4,978
February	4,969	6,310	5,329
March	6,419	7,185	5,648
April	5,639	6,819	6,087
May	5,182	7,164	5,992
June	5,954	6,375	5,198
July	5,382	6,306	5,574
August	6,329	6,864	5,466
September	<u>5,772</u>	<u>6,224</u>	<u>5,724</u>
<b>FY Total</b>	<b>66,104</b>	<b>74,757</b>	<b>66,566</b>

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

Cases received at the Board include original appeals forwarded to BVA pursuant to case callup procedures, as well as cases returned to the Board's docket (i.e., cases returned following completion of remand development actions by the originating VA field activity, cases remanded by the U. S. Court of Veterans Appeals, and cases received for reconsideration or vacate actions). Appeals added to the Board's docket consist of new appeals of original or reopened claims. Appellants file new appeals with the VA field offices that adjudicated their original claims, typically a VA regional office. New appeals received in the field are then added to the Board's docket by the receiving VA regional office using the shared information system technology described earlier on pages 10 and 11.

Many new appeals for which a VA Form 9 is received and added to the Board's docket are resolved in the field, and therefore withdrawn, without reaching BVA. Upon completion of all case development actions, those appeals not resolved in the field are certified by the regional offices as being ready for the Board's review. Certified appeals are retained at the regional offices awaiting callup by BVA, at which time 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 1997: Cases received at BVA: 44,110  
Cases added to BVA Docket: 32,916

(B) Number of cases pending before BVA at the start of FY 1997: 60,120\*  
Number of cases pending before BVA at the end of FY 1997: 39,657\*

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

(C) Number of cases filed during each of the 36 months preceding FY 1998:

<u>Month</u>	<b>Cases Received at BVA</b>			<b>New Appeals (VA Form 9) Filed</b>		
	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
October	357	2,020	4,184	5,238	3,824	2,862
November	944	1,967	3,782	5,410	2,824	3,098
December	610	55*	4,029	3,247	1,824	2,812
January	728	3,963	3,143	2,743	3,824	2,859
February	758	3,427	3,558	3,122	2,824	2,430
March	1,640	2,501	3,639	3,331	3,824	2,846
April	614	2,892	3,173	3,022	3,824	2,631
May	1,263	3,194	3,393	3,338	3,824	3,154
June	658	2,960	3,778	3,461	3,824	2,618
July	1,356	2,926	4,359	3,092	3,824	2,810
August	1,217	3,676	3,490	3,871	3,824	2,531
September	2,774	2,824	3,582	3,662	3,824	2,265
<b>FY Total</b>	<b>12,919</b>	<b>32,405</b>	<b>44,110</b>	<b>43,537</b>	<b>38,477</b>	<b>32,916</b>

\* Reflects impact of Government shutdown

- (D) Average length of time a case was before the BVA between the time of the filing of an appeal and the disposition during the preceding fiscal year:

<u>Time Interval</u>	<u>Responsible Party</u>	<u>Average Elapsed Processing Time</u>
Notice of Disagreement Receipt to Statement of the Case Issuance	Field Station	83 days
Statement of the Case Issuance to Substantive Appeal Receipt	Appellant	65 days
Substantive Appeal Receipt to Certification of Appeal to BVA	Field Station	683 days
Receipt of Certified Appeal to Issuance of BVA Decision	BVA	120 days
Average Remand Time Factor	Field Station	76 days
(E) Number of members of the Board at the end of FY 1996: Number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of FY 1997: TOTAL:		54 members  435 employees 491.9 FTE
(F) Number of acting members of the Board during FY 1997: Number of cases in which such members participated:		50 acting members 7,679 cases

## II. 38 U.S.C. § 7101(d)(3)

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

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

Fiscal year 1998:      Cases received at BVA:      40,000  
                            Cases added to BVA Docket: 32,000

Fiscal year 1998:      Cases received at BVA:      39,700  
                            Cases added to BVA Docket: 32,000

- (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 1998 is computed as follows:

$$\text{Estimated 41,600 Decisions in FY 1998} \div 365 \text{ Days} = 113.97 \text{ Decisions per Day}$$

$$38,057 \text{ Appeals Pending before the BVA (end of FY 1998)} \div 113.97 \text{ Decisions per Day} = 334 \text{ Day Response Time on Appeals (end of FY 1998)}$$

(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 1999 budget submission, is 334 days for FY 1998. These response time projections are contingent upon BVA's original appeal receipts estimates for FY 1998 and FY 1999 shown in paragraph II(A), above.

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

Timeliness and productivity estimates are contained in Parts I and II of this report. However, certain factors could arise to affect those estimates. For example, precedent decisions of the United States Court of Veterans Appeals may impose additional requirements for case analysis and development. Because decisions of the Court are effective immediately upon issuance, precedential decisions may require that the Board readjudicate a large number of cases already adjudicated, but not yet dispatched from the Board.

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

In recent years, the Board's decision productivity and timeliness have been retarded by numerous factors, including: (1) directives of the Court that require additional time, effort, and resources to produce appellate decisions; (2) the necessity to stay the adjudication of certain classes of cases pending resolution of appeals as a result of decisions of the Court of Veterans Appeals; and (3) receipt of cases remanded for readjudication from the Court of Veterans Appeals. It is likely that all or some of these factors will influence the Board's productivity in FY 1998, but it is not possible to quantify their possible effects. Additional unanticipated factors could also arise to affect decision production.