

ARMED SERVICES BOARD SUSTAIN RATE INCREASES SLIGHTLY IN 2017

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In Fiscal Year 2017, the number of appeals docketed at the Armed Services Board of Contract Appeals (“ASBCA”) declined slightly, however, there was a slight increase in the percentage of appealed sustained. *Report of Transactions and Proceedings of the ASBCA for the Fiscal Year Ending 30 September 2017*, Oct. 10, 2017. As shown on the table below, there were 571 appeals docketed and 678 appeals considered (sustained, denied or dismissed) in 2017.

ASBCA Results in FY 2015-17

	FY2015	FY2016	FY2017
Appeals Docketed	668	644	571
Appeals Disposed-total	647	654	678
Dismissed	526	521	539
Total “Merit” Cases	121	133	139
Sustained-number	64	76	80
(Sustained-percent)	(52.9%)	(57.1%)	(57.6%)
Denied	57	57	59

In 2017, there was a slight decline in cases docketed from 2016 (from 644 to 571). The Board disposed of 139 appeals that were decided on the merits in 2017, shown as “Merit Cases” in the table. Of these cases, 57.6 percent of the decisions were sustained (found to have “merit”) in whole or in part. This figure is about a half percent above the sustain rate in 2016.

The dismissals at the Board are often important. In its report, the Board states that in “the majority of cases, a dismissal reflects that the parties have reached a settlement.” This is significant since a settlement indicates that the appellant has accepted the outcome in the agreement with the government.

Under the expedited and accelerated Board procedures, there were 64 cases in 2017, compared to 31 cases in 2016.

Finally, in 2017 the U.S. Court of Appeals for the Federal Circuit docketed 8 appeals from the Board, and 7 appeals were pending at the end of the year. During 2017, the Court disposed of 10 appeals involving ASBCA decisions, of which 5 were affirmed; 2 were dismissed; 1 was affirmed in part/dismissed in part; 1 was affirmed in part/vacated in part and remanded; and 1 was reversed in 2016 and remanded to the Board in 2017.

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