

## ARMED SERVICES BOARD REPORT FOR FISCAL 2023 SHOWS INCREASES IN MERITS FOUND IN MORE THAN 50% OF THE CASES REPORTED

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The most recent report of the Armed Services Board of Contract Appeals (“ASBCA” or the “Board”), issued on November 21, 2023, indicated a decline in the number of cases docketed in FY 2023, but an increase in the number of cases disposed. Pending cases at the end of the year remained relatively stable.

The number of cases docketed in 2023 declined from 400 in FY 2022 to 342 in FY 2023. In all previous years, reported (FY 2019-2022), the ASBCA had docketed 400 or more cases.

Probably the most interesting aspect of the report was the “Disposition of Disposed Cases” which is shown on the table below:

	Disposition of Disposed Cases (by fiscal year)				
	<u>FY 19</u>	<u>FY 20</u>	<u>F 21</u>	<u>FY 22</u>	<u>FY 23</u>
Sustained	73	65	768	101	88
Denied	81	58	61	41	44
Dismissed	<u>352</u>	<u>240</u>	<u>262</u>	<u>255</u>	<u>243</u>
Total	506	363	391	297	375

The Board noted in its report that in FY 2023, the Board disposed of 132 cases on the merits (the sum of “Sustained” and “Denied”). Of those 132 cases disposed on the merits, 67 percent had merit in whole or in part. (Derived by dividing 88 cases by 132—the sum of sustained and denied. Cases dismissed are not included in the calculation). The Board noted that in the majority of the cases, a dismissal (243 cases) indicates that the parties have reached settlement. The merit in cases in FY 2023 is comparable with the ASBCA’s actions in FY 2022. During FY 2022, the Board disposed of 397 cases. Of these, 101 were sustained on the merits, 41 were denied on the merits and 255 were dismissed. These statistics indicate that of the 142 cases disposed on the merits 71 percent had merit in whole or in part-or very close to the 67 percent in FY 2023.

The Board also noted that it had held 23 hearings, for a total of 110 days in FY 2023. In addition, the U.S. Court of Appeals for the Federal Circuit docketed 14 cases from 13 board decision, and had 16 cases pending at the close of the fiscal year. In FY 2023, the Court disposed of 11 cases involving 11 ASBCA decisions, 4 of which were affirmed, 3 of which were reversed and remanded and 4 of which were dismissed.

Finally, 83 cases were voluntarily diverted from the regular trial docket to the Boards Alternative Dispute (“ADR”) Program. Two cases were settled and three were withdrawn. The remaining 78 were addressed resulting in 67 cases being successfully resolved, 4 were unsuccessful and 7 were pending at the close of the fiscal year.

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