

Annual Report
United States Court of Appeals for Veterans Claims
October 1, 2011 to September 2012 (Fiscal Year 2012)

Pursuant to 38 U.S.C. § 7288, the United States Court of Appeals for Veterans Claims (Court) submits the following report summarizing the workload of the Court for Fiscal Year (FY) 2012.

- 1. The number of appeals filed with the Court:** 3,649 (44% pro se at the time of filing)
- 2. The number of petitions filed with the Court:** 154 (61% pro se at time of filing)
- 3. The number of applications filed with the Court under the Equal Access to Justice Act (EAJA) section 2412 of title 28:** 2,355
- 4. The total number of dispositions by each of the following for FY 2012:¹**
 - (A) The Court as a whole:** 6,992²
 - Appeals: 4,355 (27% pro se at time of disposition)
 - Petitions: 144 (62% pro se at time of disposition)
 - EAJA: 2,298
 - Requests for Reconsideration/Panel Decision:³ 164 appeals, 31 petitions
 - (B) The Clerk of the Court:⁴ 4,402**
 - Appeals: 2,153
 - Petitions: 6
 - EAJA: 2,243
 - There were no Requests for Reconsideration of the Clerk's orders.
 - (C) A single judge of the Court: 2,444**
 - Appeals: 2,179
 - Petitions: 136
 - EAJA: 53
 - Requests for Reconsideration of a Single Judge Decision: 58 appeals, 18 petitions

¹ "Dispositions" include each resolution of a matter, including decisions on appeals, petitions, EAJA applications, and requests for reconsideration/panel decision.

² This number, which was first reported in this Court's FY 2010 report, reflects additional workload associated with requests for reconsideration and panel decision.

³ The number of requests for reconsideration by the Court as a whole, a single judge of the Court, a multi-judge panel of the Court, and the full Court do not include reconsideration of EAJA decisions by the Court.

⁴ These actions generally include matters resolved through agreement of the parties, often with the aid of staff conferencing.

(D) A multi-judge panel of the Court: 129

Appeals: 22

Petitions: 2

EAJA: 1

Requests for Panel Decision following a Single Judge Decision/Reconsideration:
94 appeals; 10 petitions

(E) The full Court: 17

Appeals: 1

Petitions: 0

EAJA: 1

Requests for Full Court Decision following a Panel Decision/Reconsideration:
12 appeals, 3 petitions

5. The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial:

	Total	Clerk ⁵	Single Judge	3 Judge Panel	En Banc
APPEALS					
Affirmed	1061	0	1,051	9	1
Affirmed or dismissed in part, reversed/vacated and remanded in part	925	692	231	2	0
Reversed or vacated and remanded in whole or in part	616	0	610	6	0
Remanded	1008	996	9	3	0
Dismissed for lack of jurisdiction	281	4	275	2	0
Dismissed for default	241	240	1	0	0
Dismissed voluntarily	223	221	2	0	0
	<hr/> 4,355	<hr/> 2,153	<hr/> 2,179	<hr/> 22	<hr/> 1
PETITIONS					
Extraordinary relief granted	0	0	0	0	0
Extraordinary relief denied	70	0	70	0	0
Extraordinary relief dismissed	57	1	54	2	0
Dismissed for default	10	2	8	0	0
Dismissed voluntarily	7	3	4	0	0
	<hr/> 144	<hr/> 6	<hr/> 136	<hr/> 2	<hr/> 0

⁵ Please see footnote 4.

	Total	Clerk⁶	Single Judge	3 Judge Panel	En Banc
EAJA on Appeals					
Grant	2,267	2,233	33	1	0
Denied	13	0	13	0	0
Dismissed	17	10	6	0	1
EAJA on Petitions					
Grant	0	0	0	0	0
Denied	1	0	1	0	0
Dismissed	0	0	0	0	0
	<u>2,298</u>	<u>2,243</u>	<u>53</u>	<u>1</u>	<u>1</u>

6. The median time from filing an appeal to disposition (i.e., time from the veteran filing an appeal until initial dispositive action of the Court) by each of the following:

(A) The Court as a whole: The median time from filing an appeal to disposition of the case by the Court, as a whole, is 321 days (10.7 months). This involves pre-chambers procedural activity which includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

(B) The Clerk of the Court: The median time from filing an appeal to disposition of the case by the Clerk is 183 days (6.1 months). This involves pre-chambers procedural activity which includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

(C) A single judge of the Court: The median time for disposition of a single judge decision once it has been assigned to chambers is 49 days (1.6 months). The median time from filing an appeal to disposition by a single judge, which includes pre-chambers procedural activity, is 470 days (15.7 months). Pre-chambers procedural activity includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

(D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court): The median time for disposition of a multi-judge panel decision once it has been assigned to panel is 155 days (5.2 months). The median time from filing an appeal to disposition by a multi-judge panel, which includes pre-chambers procedural activity, is 812 days (27.1 months). Pre-chambers procedural activity includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel. In addition, scheduling a case for oral argument, which adds a minimum of 45 days, and additional time for supplemental briefing contribute to the time for case disposition.

⁶ The Clerk generally takes action on uncontested applications for attorney fees and expenses (EAJA).

7. **The median time from filing a petition to disposition by the Court:** 44 days (1.5 months)
8. **The median time from filing an application under section 2412 of title 28 to disposition by the Court:** 29 days (1 month)
9. **The median time from the completion of briefing requirements by the parties to disposition by the Court:** 175 days (5.8 months) Note: This time includes approximately two weeks to raise issues relating to finalizing the Record of Proceedings (a compilation of all documents relevant to the appeal) in every case. If an objection to the Record of Proceedings is filed, resolution can take several more weeks. Also, it takes 30 to 60 days for cases to be screened by the Court's Central Legal Staff.
10. **The number of oral arguments before the Court:** 18 (40 scheduled, 22 settled)
11. **The number of cases appealed to the United States Court of Appeals for the Federal Circuit:** 188
 - Appeals: 161
 - Petitions: 23
 - EAJA: 4
12. **The approximate number and status of appeals and petitions and EAJA applications pending with the Court as of the end of such fiscal year:**
 - Appeals and Petitions: 4,107
 - Pre-chambers procedural activity: 2,591⁷
 - Pending decision by a Judge or Panel: 398
 - Post decision: 1,118⁸
 - EAJA procedural activity: 329
 - EAJA pending decision by a Judge or Panel: 15
 - On appeal before the Federal Circuit: 135
13. **The number of cases pending with the Court more than 18 months as of the end of such fiscal year:** 530 appeals
 - Pre-chambers procedural activity: 59⁹
 - Pending decision by a Judge or Panel: 67
 - Post decision: 404

⁷ Pre-chambers procedural activity, which occurs during the period of time from filing an appeal to assignment of the appeal to chambers, generally includes staff conferencing, record dispute resolution, briefing, screening, and extensions of time for pro se appellants to seek counsel.

⁸ This number reflects cases pending during the time required for judgment, mandate, and EAJA (if applicable) as well as cases on appeal to the Federal Circuit and the Supreme Court.

⁹ Delays associated with pre-chambers procedural activity are due primarily to parties' requests for stays or extensions of time.

- 14. A summary of any service performed for the Court by a recalled retired judge of the Court:** Our recall retired (Senior) judges decided 600 appeals. In addition, our Senior judges decided hundreds of motions, permitting the regular active judges to devote their time to appeals, including those that raise more complex issues.
- 15. An assessment of the workload of each judge of the Court, including consideration of the following:**
- (A) The time required of each judge for disposition of each type of case.**
 - (B) The number of cases reviewed by the Court.**
 - (C) The average workload of other Federal appellate judges.**

As reflected in the responses to questions 1-14 above, each judge on the Court, regular active and Senior judge, carries a substantial workload. In addition to rendering decisions on appeals, petitions and related motions (e.g., procedural motions and motions for reconsideration or for panel review), and applications filed pursuant to 28 U.S.C. § 2412 (EAJA), the Judges, through the Board of Judges, provide general direction and oversight of the operations of the Court, and work on the judicial conference and outreach and education issues.

In FY 2012, the Court averaged 244 appeals decided on the merits per active judge. For purposes of comparison using currently available data, from September 30, 2011, through September 30, 2012, for the 12 circuit courts of appeals,¹⁰ this was the second highest number of merits decisions per active judge. The number of merits decisions per active judge for those courts ranged from 51 (DC Circuit) to 282 (11th Circuit). As to the number of filings, the Court had 634 filings per active judge, based on the 3,803 appeals and petitions filed in FY 2012. The number of filings per active judge for the circuit courts of appeals ranged from 149 (DC Circuit) to 700 (11th Circuit).

Further, two judicial rulings in 2011 had significant bearing on the FY 2012 workload of the judges of this Court: the U.S. Supreme Court decision in *Henderson v. Shinseki*, 131 S. Ct. 1197 (2011), which held that the 120-day time limit to file a Notice of Appeal is not a jurisdictional prerequisite to an appeal at this Court, though it is an important procedural rule; and the subsequent decision of this Court in *Bove v. Shinseki*, 25 Vet. App. 136 (2011), which clarified that the 120-day filing period is subject to the equitable tolling parameters of the precedential decisions on equitable tolling that preceded this Court's now-overruled decision in *Henderson v. Peake*, 22 Vet. App. 217 (2008).

In the interests of justice, the judges of the Court determined that the Court should consider motions to recall mandate premised on equitable tolling arguments in those appeals that were dismissed for untimely filing and lack of jurisdiction based on *Henderson v. Peake*. A carefully planned outreach to approximately 420 appellants whose appeals had been dismissed between July 24, 2008, and December 20, 2011, was put into effect. See Misc. No. 4-12, per curiam, February 7, 2012. As a result, approximately 138 motions to recall mandate were submitted to the Court. By the close of FY 2012, the Court, through the effort of its 6 active judges, had addressed almost all of the motions to recall mandate that had been submitted, with motions being granted (i.e., appeals being reopened) in about 23 percent of the cases.

¹⁰ The Federal Circuit issued 90 decisions per active judge and had 126 filings per active judge during FY 2012, according to statistics from its website.