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5 Takeaways From Armed Services Board's Annual Report

By **Elizabeth Witwer** (November 19, 2026, 5:22 PM EST)


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Each fall, the Armed Services Board of Contract Appeals issues its annual report to the U.S. Department of Defense's senior acquisition officials and general counsel.[1] In just a few pages, the report provides a valuable year-end snapshot of the board's docket.

It covers appeals involving the U.S. Army, Navy, Air Force and Corps of Engineers, as well as the Defense Logistics Agency, Defense Contract Management Agency and other defense agencies, NASA, the CIA, and the Washington Metropolitan Area Transit Authority.

It shows how many appeals were filed and by which agencies, how cases were resolved, how often contractors prevailed, what is pending and at what stage, and how the board's alternative dispute resolution program performed.

For practitioners, those numbers inform forum selection, set realistic expectations about timing and outcomes, and reveal shifts in the board's docket. Having served as an administrative judge on the board, I read these reports with an eye toward what the numbers mean for contractors and agencies that appear there.

At first glance, the fiscal year 2026 annual report, issued Oct. 29, describes a stable year. New filings were essentially flat, but almost everything underneath them moved. Five takeaways stand out.

First, only 69 pending appeals, fewer than one in 10, are ready for a judge to write a decision, which raises the question of who really controls the clock.

Second, motions to dismiss have become the new battleground. Pending motions to dismiss for failure to state a claim rose to 138, up from just 18 two years ago.[2]

Third, the board issued 147 merits decisions, the most since FY 2019, and 63% found merit in whole or in part.

Fourth, the docket stopped shrinking, growing by seven cases to 755, its first increase since FY 2022.

Finally, settlement still rules: Suspended cases reached a seven-year high of 244, and 47 of the 48 cases that completed ADR sessions were resolved.

1. Who controls the clock?

Only 69 of the board's pending appeals are "ready to write," meaning they have been fully tried or briefed and are waiting on a decision. Spread across the board's 22 currently active judges, that is roughly three cases per judge. Moreover, that line is short relative to the board's output.

The board issued 147 merits decisions this year, so at that pace the entire ready-to-write queue represents less than six months of work. The queue has also stayed small for years. Since FY 2020, the ready-to-write count has stayed between 58 and 92, even when the total docket topped 950.

The rest of the docket moves on the parties' timelines. Far more cases are suspended (244), in discovery (109), or awaiting transcripts or briefs (72) than are waiting on a judge. The judges also handled a good deal more than writing this year: 17 hearings (60 hearing days), 18 ADR sessions, 23 small-claims proceedings on 120-day and 180-day clocks, and hundreds of pending motions.

In my experience, when an appeal feels slow, the delay usually happens before the case ever reaches the judge's desk for adjudication: in pleadings, discovery, briefings or a suspension the parties requested. That gives contractors real control over timing.

Those that want faster decisions can elect small-claims procedures under ASBCA Rule 12, resist open-ended suspensions and keep discovery narrow. And once a case is ready to write, the biggest variable is the record the parties hand to the judge. Focused post-hearing briefs that cite the record precisely make for faster, better decisions.

2. The motion to dismiss is the new battleground.

Pending motions to dismiss for failure to state a claim reached 138, up from 83 last year and 18 in FY 2024, nearly an eightfold increase in two years. Motions to dismiss for lack of jurisdiction (109) and on multiple grounds (117) also climbed. Meanwhile, pending summary judgment motions fell to 72, down from 554 in FY 2023.

Dismissal-type motions now make up about 64% of all pending motions.

A motion is often the judge's first real look at a case, and that first look is now coming earlier. Expect the government to test claim fundamentals up front: whether the claim states a sum certain, whether it was properly certified and whether the appeal stays within the operative facts presented to the contracting officer.

The best defense is a claim written as if it will be litigated. A claim that clearly states what happened, what the contractor wants and why also makes the best first impression on the judge.

3. There were more decisions, and contractors still won most often.

The board decided 147 appeals on the merits (93 sustained, 54 denied), the most since FY 2019. Merits decisions made up 42% of all dispositions, the highest share since at least FY 2016. Of those decisions, 63% found merit in whole or in part, in line with a seven-year average of about 60%. Small-claims proceedings under Rule 12 more than doubled, from nine to 23.

I would read the 63% carefully. The board counts an appeal as sustained even when the contractor wins

only part of its claim, so the figure shows how often contractors recover something, not how often they recover everything. The more interesting number may be the 23 Rule 12 cases.

Rule 12 delivers a decision within 120 days under expedited procedures or 180 days under accelerated procedures. The trade-off is that it will not produce a lengthy rationale for the decision, and an expedited decision cannot be appealed, absent fraud, and sets no precedent.

But a lengthy opinion is not always what contractors want. Often, they simply want a judge to call balls and strikes, and Rule 12 does exactly that.

The obstacle is eligibility. The statutory dollar limits — $50,000, or $150,000 for small businesses, for expedited procedures and $100,000 for accelerated procedures — have not kept pace with the size of today's disputes. With only 23 of 353 dispositions going through Rule 12, it may be time for Congress to raise those thresholds so that more appeals can proceed on a faster track.

4. The docket stopped shrinking.

The board disposed of 353 appeals in FY 2026, down from 399 last year. With 360 new and reinstated appeals docketed, the docket grew by seven cases to 755, ending a three-year run in which it shrank by roughly 22%.

Nearly all the decline traces to the U.S. Army Corps of Engineers. Corps dispositions fell from 139 to 60, a drop of 79 cases, which is more than the board's entire net decline of 46. Dispositions for all other agencies combined actually rose, from 260 to 293.

Nor is this simply a function of the Corps having the largest docket. The board resolved 28% of the Corps appeals pending at the start of the year, down from 54% the year before, while the rate for all other agencies combined rose from 49% to 55%.

With fewer Corps cases closing, pending Corps appeals grew from 218 to 244 and now make up nearly one-third of the docket.

The report does not explain the Corps numbers, and one year of data can mislead. Several things could be at work.

The Corps docket was unusually young heading into FY 2026, with many appeals filed only the year before. A handful of large, consolidated matters can swing the count in either direction.

Or the Corps may simply be settling fewer cases. The report does not break down settlements by agency, but the numbers are consistent with that explanation. Most dispositions are dismissals, which typically reflect settlements, and dismissals fell board-wide from 259 to 206, even as merits decisions rose. Because the Corps decline is larger than the entire drop in dismissals, fewer Corps settlements is a plausible part of the story.

Whatever the explanation, the size of the docket reflects choices by everyone involved, not just the board. The board's most direct lever is the ready-to-write queue, which stood at 69 this year. Much of the rest moves at a pace the parties largely set: the pleading and discovery schedules they negotiate, the suspensions they request while they talk settlement, and their decisions about whether to resolve a case or take it to hearing.

For contractors, that is good news. Many of the levers that determine how quickly an appeal moves are in their own hands.

5. Settlement still rules.

At year-end, 244 cases (32% of the docket) were suspended, generally while the parties negotiate. That is a seven-year-high. The board diverted 94 cases to ADR. Of the 48 that completed ADR sessions, 47 were resolved. But the board held fewer sessions (18, down from 24 last year), and 35 ADR cases remained pending at year-end, more than double last year's 17.

These numbers confirm what I saw on the bench: When the parties commit to ADR, it almost always works. The rise in pending ADR cases suggests that some settlements are simply taking longer to reach the table. Contractors who want ADR should ask for it early, and they should remember that off-docket ADR is available even before an appeal is filed.

Parting Thoughts

FY 2026 also brought change to the board itself. Owen C. Wilson succeeded John J. Thrasher as ASBCA chairperson, and the board has moved to new offices at 4825 Mark Center Drive in Alexandria, Virginia.

Fewer parties are taking board decisions to the U.S. Court of Appeals for the Federal Circuit: Only two decisions were appealed this year, down from 10. More parties are asking the board to take a second look, with requests for reconsideration doubling from 10 to 21.

Through those changes, the ASBCA remains a productive, settlement-oriented forum. For contractors, the lessons from FY 2026 are practical ones: Build claims as if they will be litigated, expect the government to test them early, and take advantage of Rule 12 and ADR when appropriate. Whether this year's shifts become lasting trends is something to watch in FY 2027.

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[1] Armed Services board of Contract Appeals, Report of the Transactions and Proceedings of the Armed Services board of Contract Appeals for the Fiscal Year Ending September 20, 2026 (October 29, 2026), available at: https://www.asbca.mil/Portals/143/Reports/FY26%20ASBCA%20Annual%20Report.pdf?ver=FRInnkt735TAtBCYVOFGLg%3d%3d.

[2] The ASBCA's annual reports for FYs 2008 through 2025, along with archived reports for FY 2007 and earlier, are available on the board's website at https://www.asbca.mil/Charter/Annual-Reports/.