



**Fiscal Year 2023 Annual Report  
October 1, 2022, to September 30, 2023  
United States Court of Appeals for Veterans Claims**

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| <b>1. <i>The number of appeals filed with the Court:</i><sup>1</sup></b>   | <b>7,528 appeals</b> (15% pro se at the time of filing)  |
| <b>2. <i>The number of petitions filed with the Court:</i></b>   | <b>216 petitions</b> (56% pro se at the time of filing)  |
| <b>3. <i>The number of applications filed with the Court under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412:</i></b> | <b>6,319 EAJA applications</b>   |
| <b>4. <i>The total number of dispositions<sup>2</sup> by each of the following for FY 2023:</i></b>                              | <b>(A) The Court as a whole</b><br>7,605 appeals (7% pro se at time of disposition)<br>234 petitions (54% pro se at time of disposition)<br>6,410 EAJA applications<br>257 requests for reconsideration/panel decision <sup>3</sup><br><i>183 appeals</i><br><i>74 petitions</i><br><b>14,506 total dispositions</b> |

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<sup>1</sup> Under 38 U.S.C. § 7288, the United States Court of Appeals for Veterans Claims (Court) is required to submit an annual report to the U.S. Senate Committee on Veterans' Affairs and the U.S. House of Representatives Committee on Veterans' Affairs that includes the elements enumerated in this report.

<sup>2</sup> "Dispositions" include each resolution of a matter, including decisions on appeals, petitions, EAJA applications, and requests for reconsideration/panel decision.

<sup>3</sup> The number of requests for reconsideration by the Court as a whole, including a single judge of the Court, a multi-judge panel of the Court, and the full Court.

4. *The total number of dispositions by each of the following for FY 2023 (continued):*

**(B) The Clerk of the Court (Clerk)<sup>4</sup>**

5,932 appeals

6 petitions

6,366 EAJA applications

*There were no requests for reconsideration of the Clerk's orders*

**12,304 total dispositions<sup>5</sup>**

**(C) A single judge of the Court**

1,637 appeals

224 petitions

43 EAJA applications

146 requests for reconsideration

*104 appeals*

*42 petitions*

**2,050 total dispositions**

**(D) A multi-judge panel of the Court**

36 appeals

4 petitions

1 EAJA application

92 requests for panel decision following a single-judge decision/panel reconsideration

*69 appeals*

*23 petitions*

**133 total dispositions**

**(E) The full Court**

0 appeals

0 petitions

0 EAJA applications

19 requests for a full court decision following a panel decision

*10 appeals*

*9 petitions*

**19 total dispositions**

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<sup>4</sup> The Clerk is the Executive Officer of the Court and is authorized, pursuant to Rule 45 of the Court's Rules of Practice and Procedure, to act on certain matters pending before the Court.

<sup>5</sup> This number primarily includes matters resolved through agreement of VA and the appellant, often with the aid of staff mediation conferencing.

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

## APPEALS

TYPE OF DISPOSITION	CLERK <sup>6</sup>	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Affirmed</i>	0	427	5	0	<b>432</b>
<i>Affirmed or dismissed in part, reversed or vacated and remanded in part</i>	2,883	100	1	0	<b>2,984</b>
<i>Reversed or vacated and remanded in whole or in part</i>	2	882	19	0	<b>903</b>
<i>Remanded</i>	2,464	5	2	0	<b>2,471</b>
<i>Dismissed for lack of jurisdiction or timeliness</i>	7	218	3	0	<b>228</b>
<i>Dismissed for default</i>	196	0	0	0	<b>196</b>
<i>Dismissed voluntarily</i>	380	5	6	0	<b>391</b>
<b>TOTAL</b>	<b>5,932</b>	<b>1,637</b>	<b>36</b>	<b>0</b>	<b>7,605</b>

## PETITIONS

TYPE OF DISPOSITION	CLERK	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Extraordinary relief granted</i>	0	4	1	0	<b>5</b>
<i>Extraordinary relief denied</i>	0	104	1	0	<b>105</b>
<i>Extraordinary relief dismissed</i>	0	65	2	0	<b>67</b>
<i>Dismissed for default</i>	3	5	0	0	<b>8</b>
<i>Dismissed voluntarily</i>	3	46	0	0	<b>49</b>
<b>TOTAL</b>	<b>6</b>	<b>224</b>	<b>4</b>	<b>0</b>	<b>234</b>

<sup>6</sup> Please see footnote 5.

5. *The number of each type of disposition by the Court, including settlement, affirmance, remand, vacation, dismissal, reversal, grant, and denial (continued):*

**E A J A**

TYPE OF DISPOSITION	CLERK	SINGLE JUDGE	THREE-JUDGE PANEL	FULL COURT	TOTAL
<i>Applications after decisions in appeals</i>	6,365	41	1	0	<b>6,407</b>
<i>Granted</i>	6,365	23	0	0	<b>6,388</b>
<i>Denied</i>	0	10	0	0	<b>10</b>
<i>Dismissed</i>	0	8	1	0	<b>9</b>
<i>Applications after decisions in petitions</i>	1	2	0	0	<b>3</b>
<i>Granted</i>	1	0	0	0	<b>1</b>
<i>Denied</i>	0	2	0	0	<b>2</b>
<i>Dismissed</i>	0	0	0	0	<b>0</b>
<b>TOTAL</b>	<b>6,366</b>	<b>43</b>	<b>1</b>	<b>0</b>	<b>6,410</b>

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 **229 days (7.6 months)**. This involves pre-chambers procedural activity (including record dispute resolution, staff mediation conferencing,<sup>7</sup> briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties) and then disposition by a judge or a panel of judges (including consideration of any requests for class certification and class action) or by the Clerk of the Court.
- (B) **The Clerk of the Court:** The median time from filing an appeal to disposition of the case by the Clerk is **212 days (7.1 months)**. This involves pre-chambers procedural activity (including record dispute resolution, staff mediation conferencing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties) and then disposition by the Clerk.

<sup>7</sup> Staff mediation conferencing is required for all represented parties. In May 2021, the Court initiated a 2-year pilot program that makes counsel available to otherwise unrepresented parties for the limited purpose of participating in mediation. Approximately one third of the unrepresented parties have opted to participate in this program. The Court has extended the program for an additional two years.

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 (continued):*
- (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 **57 days (1.9 months)**. Activity once a matter is assigned to chambers includes judges and law clerks collaborating to draft a decision and circulating all draft decisions to all judges for a 1-week comment period. The median time from filing an appeal to disposition by a single judge, which includes pre-chambers procedural activity, is **443 days (14.8 months)**. Pre-chambers procedural activity includes record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.
- (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 a panel is **171 days (5.7 months)**. Activity once a matter is assigned to a panel includes judges collaborating with each other to determine the disposition and assign writing responsibilities; considering any requests for class certification and class action; possible orders for additional briefing; drafting the decision; circulating it to the panel for concurrence or the opportunity to write separately; and circulating all draft decisions to all judges for a 1-week comment period. If oral argument is held, scheduling the argument adds a minimum of 45 days to the case-processing time. The median time from filing an appeal to disposition by a multi-judge panel, which includes pre-chambers procedural activity, is **749 days (25 months)**. Pre-chambers procedural activity includes record dispute resolution, staff mediation conferencing, briefing, screening, time for pro se appellants to seek counsel, and requests for additional time from the parties.
7. *The median time from filing a petition to disposition by the Court:* **62 days** (2.0 months)
8. *The median time from filing an EAJA application under 28 U.S.C. § 2412 to disposition by the Court:* **35 days** (1.2 months)
9. *The median time from the completion of briefing requirements by the parties to disposition by the Court:* **101 days** (3.4 months)  
*Note: This time includes approximately 2 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.*
10. *The number of oral arguments before the Court:* **23 held** (39 scheduled, 11 settled, 5 canceled)

**11. The number of cases appealed to the United States Court of Appeals for the Federal Circuit:**

**145 total cases**  
 109 appeals  
 30 petitions  
 6 EAJA applications

**12. The approximate number and status of appeals and petitions and EAJA applications pending with the Court as of the end of the fiscal year:**

	APPEALS & PETITIONS	EAJA APPLICATIONS	TOTAL
<i>Pre-chambers procedural activity</i> <sup>8</sup>	5,333	843	<b>6,176</b>
<i>Pending decision by a judge or panel</i>	283	6	<b>289</b>
<i>Post decision</i>	676	5	<b>681</b>
<i>Pending a motion for reconsideration or panel</i>	46	0	<b>46</b>
<i>Pending entry of judgment</i>	151	3	<b>154</b>
<i>Pending entry of mandate</i>	305	2	<b>307</b>
<i>On appeal before the Federal Circuit</i> <sup>9</sup>	174	0	<b>174</b>
<b>TOTAL</b>	<b>6,292</b>	<b>854</b>	<b>7,146</b>

**13. The number of cases pending with the Court more than 18 months as of the end of the fiscal year:**

**502 total cases**  
 488 appeals  
 14 petitions

<i>Pre-chambers procedural activity</i> <sup>10</sup>	76
<i>Pending decision by a judge or panel</i>	42
<i>Post decision</i>	384

**14. A summary of any service performed for the Court by a recalled retired judge of the Court:**

Three retired judges were recalled to service as Senior Judges in FY 2023. Senior Judges issued 126 single-judge decisions in total. Senior Judges also participated in 1 three-judge panel. In addition, recall judges participated in decisions on motions for reconsideration – 6 as a single judge and 4 as part of three-judge panels. Two Senior Judges were also involved in committee work for the Court.

<sup>8</sup> See element 6 for details on pre-chambers procedural activity.

<sup>9</sup> This represents the number of cases pending on appeal to the Federal Circuit at the end of FY 2023, which is different than the number of notices of appeal filed during FY 2023 reported in element 11.

<sup>10</sup> Delays associated with these cases are due primarily to parties' requests for stays, parties' requests for additional time, or the complexity of the case.

- 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 elements 1-13 above, each active judge<sup>11</sup> on the Court carries a substantial workload. The judges' primary responsibilities are rendering decisions on appeals, petitions, related motions (e.g., procedural motions and motions for reconsideration or for panel review), applications filed pursuant to 28 U.S.C. § 2412 (EAJA), and a developing class action caseload. The judges are also responsible for the general direction and oversight of the operations of the Court and serve on various committees in furtherance of those obligations.

The number of new cases filed at the Court in FY 2023 increased by 1.5%. This correlates with an increase of final decisions issued by the Board of Veterans' Appeals (Board). In FY 2023, the Board increased production of final decisions from 95,294 in FY 2022 to 103,245.

Over the course of FY 2023, the Court averaged 628 appeals filed per month, with a monthly high of 700 appeals filed in March 2023. The Court received four new requests for class certification in FY 2023 and has seven active class action cases in progress. The Court continues to keep pace with its substantial caseload, in large part, due to the significant percentage of cases that are resolved through the mandatory pre-briefing mediation conferences. Court staff attorneys bring VA Secretary's counsel and appellant's counsel together in the conference, and often the result is the parties' agreement as to the case disposition. In 76% of the conferenced cases in FY 2023, VA agreed with the appellant that the Board's decision contained error necessitating remand of the matter to the agency for readjudication. Because both parties agree on the outcome in such appeals, the Clerk is authorized to act on those matters and they do not require resolution by a judge.

In FY 2023, the Court averaged 158 cases (appeals and petitions) decided on the merits per active judge. For that same time period, the average number of merits decisions decided per active judge in the 13 Circuit Courts of Appeals ranged from 32 to 175. The Court received 836 filings per active judge, based on 7,528 appeals filed in FY 2023. The number of filings per active judge for the Circuit Courts of Appeals ranged from 80 to 353.

By statute, the Court is permanently authorized seven active judges. Based on workload increase, Congress authorized and temporarily added two additional judges, bringing the number of active judges currently authorized and in service to nine. Seven permanent active judges are not adequate, and the Court's sustained workload justifies making the nine-judge authorization permanent.

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<sup>11</sup> Consistent with calculations of data performed by the Administrative Office of the United States Courts, "active judge" refers only to a judge who has been active for the entire fiscal year. In FY 2023 the Court had nine active judges.

***15. An assessment of the workload of each judge of the Court, including consideration of the following (continued):***

- (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.***

The Court has been able to keep pace with the sustained growth in appeals over the past several years because a higher percentage of appeals are resolving via mediation, thus keeping the number reaching chambers fairly steady. But even if this higher pre-chamber resolution rate is maintained going forward, the Board's significant hiring and productivity projections portend an increase in appeals to the Court. Appropriations necessary to expand the Court to eleven judges have been provided by Congress, but authorizations have not yet followed suit.