



U.S. COURT OF APPEALS FOR VETERANS CLAIMS

U.S. Court of Appeals
for the Armed Forces
CLE & Conference
March 11, 2020

Introduction

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About the USCAVC



About USCAVC

History: 30 years old

Jurisdiction: Broad Categories

- Review final decisions of the Board of Veterans' Appeals (Board)
- Petitions for writs of mandamus
- Applications for attorney fees under the Equal Access to Justice Act (EAJA)
- Class Actions



About the Court

Active USCAVC Judges

- Chief Judge Margaret Bartley
- Judge Coral W. Pietsch
- Judge William S. Greenberg
- Judge Michael P. Allen
- Judge Amanda L. Meredith
- Judge Joseph L. Toth
- Judge Joseph L. Falvey, Jr.



Typical USCAVC Appeal



Typical USCAVC Appeal

Most Frequent Types of Claims

- Disability compensation
 - Entitlement to service connection
 - increased evaluation for service-connected disability
 - Total disability based on individual unemployability (TDIU)
 - Earlier effective date for benefits



Typical USCAVC Appeal

Common Arguments that Board Erred:

- Reasons or Bases (Board didn't explain how it reached a factual/legal conclusion)
- Compliance with the duty to assist
- Adequacy of medical examinations



USCAVC Statistics



USCAVC FY2019 Filings

- **8,470 appeals** (*6,802 filed in FY 2018*)
- **27% pro se** at time of filing (*27% in FY 2018*)
 - Usually reduced to 12-18% by time of briefing
- **280 petitions** (*265 filed in FY 2018*)
- **5,948 EAJA applications** (*3,663 filed in FY 2018*)



USCAVC FY2019 Dispositions

7,261 Appeals (*Up from 4,856 in FY 2018*)

- **12% pro se** at time of disposition
- **5,411** via mediation conferencing
- **1,802** by a single judge of the Court
- **47** by a three-judge panel of the Court
(*Up from 42 in FY 2018*)



USCAVC FY2019 Dispositions

- **304 Petitions** (*224 in FY 2018*)
 - **37% pro se** at time of disposition
 - **2** by the Clerk of the Court
 - **298** by a single judge of the Court
 - **4** by a multi-judge panel of the Court

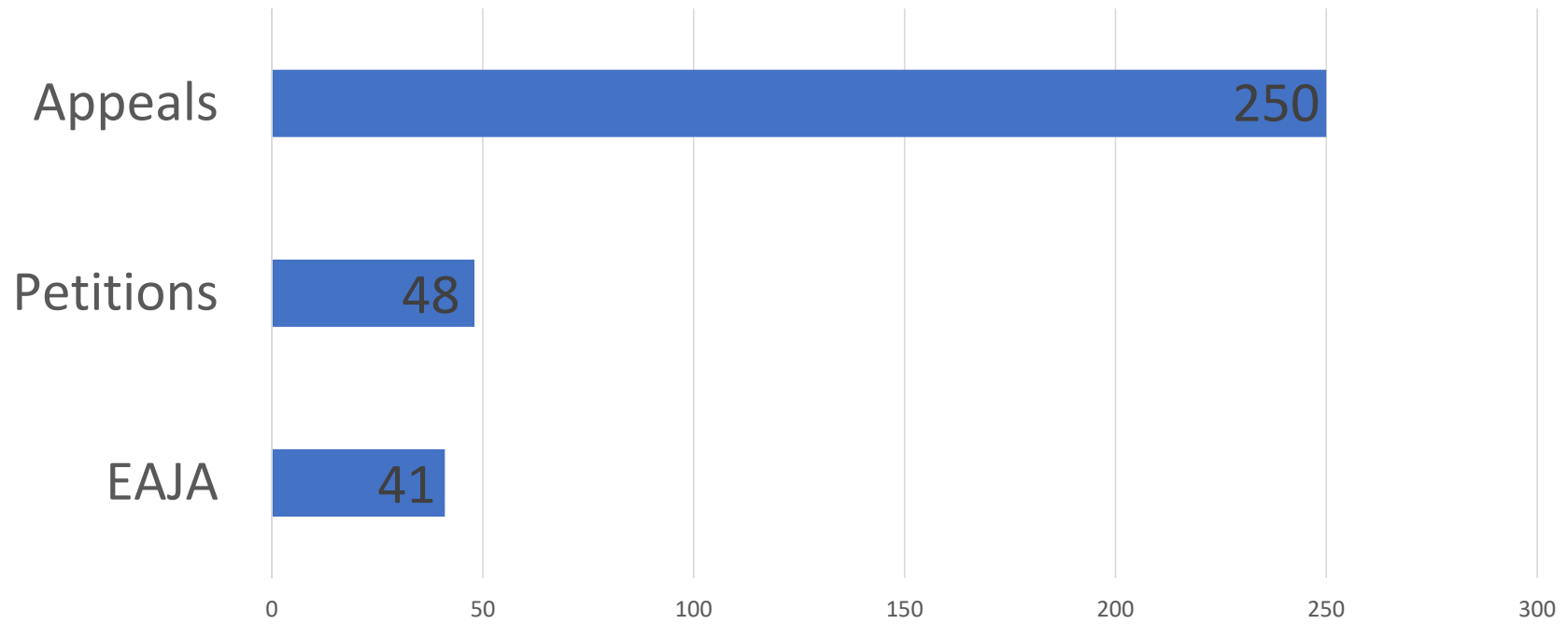


Fiscal Year 2019 Dispositions

- **5,332 EAJA Applications** (*3,297 in FY 2018*)
 - **5,304** via mediation w Court'
 - **24** by a single judge of the Court
 - **4** by a multi-judge panel of the Court



Average Days to Disposition



USCAVC Class Actions & Cases of Interest



Monk v. Wilkie

30 Vet.App. 167 (2018) (en banc)

- Petition for a writ of mandamus to compel Board to decide all appeals within 1 year of filing initial appeal document (NOD)
- Court denied class certification for lack of commonality
- Court concluded—will entertain class actions in appropriate petitions--use FRCP Rule 23 as guide



Godsey v. Wilkie

31 Vet.App. 207 (2019)

- Class Action Petition: to compel VA to certify appeals to VA's Board
- Requested class: all VA claimants waiting at least 2 years for appeal document to be reviewed
- CAVC modified class: all VA claimants waiting at least 18 months for VA to begin review
- CAVC: granted Petition, found delays unreasonable, ordered VA to start review or certify all class members' appeals within 120 days



Skaar v. Wilkie

32 Vet.App. 156 (2019) (en banc)

Veteran exposed to radiation in Palomares, Spain appealed Board decision denying SC

- Seeking class certification for: Palomares veterans
- Seeking to invalidate USAF method for calculating radiation exposure levels (that VA uses to decide ionizing radiation claims)
- USCAVC held: can certify a class in the context of an individual appeal
- USCAVC: modified class to all veterans with future claims or claims currently pending before VA or USCAVC (excluded vets who previously filed claims but failed to timely appeal)
- Merits not yet decided



USCAVC Cases of Interest



Myore v. Brown

9 Vet.App. 498 (1996)

- Veteran died in service: self-inflicted GSW playing Russian Roulette
- Spouse sought benefits: Board denied b/c death due to willful misconduct
- Court vacated and remanded: Board failed to address vet's level of alcohol consumption & whether he was of unsound mind, such that the act should be considered suicide instead of willful misconduct



Molitor v. Shulkin

28 Vet.App. 297 (2017)

- Vet appealed decision denying SC for PTSD based on in-service sexual assault
- Vet asked VA to obtain other servicemembers' service records, including records of alleged assailant, to corroborate claim
- USCAVC vacated and remanded: VA did not comply w/its own directive to make reasonable efforts to obtain another servicemember's records if adequately identified, relevant to the claim, and subject to disclosure



Bowling v. Wilkie

No. 18-5263

- Background: generally, if willful misconduct in service, not eligible for VA benefits unless “insane” at time of offense
- Definition of insanity in 38 C.F.R. § 3.354(a):
 - “[O]ne who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.”
- Mr. Bowling wants class certified & and argues: insanity definition outdated, applied arbitrarily, unconstitutionally vague

