

# **U.S. Merit Systems Protection Board**

**A Report on Cases Decided in Fiscal Year 1999**

Submitted to the President and to the Congress of the United States



# U.S. MERIT SYSTEMS PROTECTION BOARD

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## Chairman of the Board

The President  
The President of the Senate  
The Speaker of the House of Representatives

Sirs:

I am pleased to submit the enclosed statistical report on the decisions issued by the U.S. Merit Systems Protection Board (MSPB) in FY 1999. The MSPB is an independent agency that decides Federal employee appeals of significant personnel actions taken by agencies. The Board also adjudicates retirement matters and actions brought by the Special Counsel--reprisals against whistleblowers, violations of the Hatch Act, and other abuses of the merit system.

The Board and its regional and field offices closed 9,806 cases during fiscal year 1999. The Board's administrative judges decided 7,669 appeals, stay requests, and addendum cases. The Administrative Law Judge at headquarters issued initial decisions in 12 cases brought by the Special Counsel and proposed agency actions against administrative law judges. The three-member Board decided 2,031 cases under its appellate jurisdiction, principally petitions for review (PFRs) of administrative judges' initial decisions. The Board also completed action on 94 cases arising under its original jurisdiction--cases brought by the Special Counsel, proposed actions against administrative law judges, and requests to review regulations of the Office of Personnel Management (OPM).

The average time to process appeals and addendum cases in the regional and field offices was 100 days. The average processing time at Board headquarters for PFRs of initial decisions by administrative judges was 222 days. This means that, on average, a case processed through both levels of the Board was completed in about 11 months. Timely processing is important because most cases that come to the Board are appeals of agency personnel actions. Early resolution of these disputes benefits all parties, as well as the taxpayers who fund Government activities.

One important measure of the Board's performance of its statutory mission is the extent to which its decisions are upheld by its principal reviewing court, the U.S. Court of Appeals for the Federal Circuit. Of the 403 final Board decisions reviewed by the court in fiscal year 1999, 93 percent were unchanged by the court's decisions.

Sincerely,

Ben L. Erdreich

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## FISCAL YEAR 1999 CASE PROCESSING - STATISTICAL HIGHLIGHTS

<b>CASES DECIDED BY MSPB IN FY 1999</b>	
<b>Regional/Field Office Decisions:</b>	
Appeals <sup>1</sup>	6,369
Addendum Cases <sup>2</sup>	1,176
Stay Requests <sup>3</sup>	124
<b>TOTAL Regional/Field Office Decisions</b>	<b>7,669</b>
<b>ALJ Decisions - Original Jurisdiction Cases<sup>4</sup></b>	<b>12</b>
<b>Board Decisions:</b>	
Appellate Jurisdiction:	
PFRs - Appeals	1,748
PFRs - Addendum Cases	191
Reviews of Stay Request Rulings	0
Requests for Stay of Board Order	0
Reopenings <sup>5</sup>	5
Court Remands	25
Compliance Referrals	58
EEOC Non-concurrence Cases	2
Arbitration Cases <sup>6</sup>	2
Subtotal	2,031
Original Jurisdiction <sup>7</sup>	94
<b>TOTAL Board Decisions<sup>8</sup></b>	<b>2,125</b>
<b>TOTAL Decisions (Board, ALJ, Regional/Field)</b>	<b>9,806</b>

<sup>1</sup> Includes 7 initial appeals transferred to Board headquarters and adjudicated by ALJ. These were appeals filed by administrative law judges challenging OPM employment practices.

<sup>2</sup> Includes 313 requests for attorney fees, 17 requests for compensatory damages (discrimination cases only), 7 requests for consequential damages (whistleblower cases only), 574 petitions for enforcement, 246 Board remand cases, and 19 court remand cases.

<sup>3</sup> Includes 82 stay requests in whistleblower cases and 42 in non-whistleblower cases.

<sup>4</sup> Covers initial decisions issued by ALJ. Cases type breakdown: 5 OSC corrective actions (3 initial cases plus 2 attorney fee cases), 4 OSC disciplinary actions (2 attorney fee cases and 1 remand related to non-Hatch Act disciplinary actions plus 1 initial Hatch Act case), and 3 actions against ALJs.

<sup>5</sup> Includes 4 cases reopened by the Board on its own motion and 1 case where OPM requested reconsideration.

<sup>6</sup> Includes 1 initial arbitration case and 1 attorney fee case.

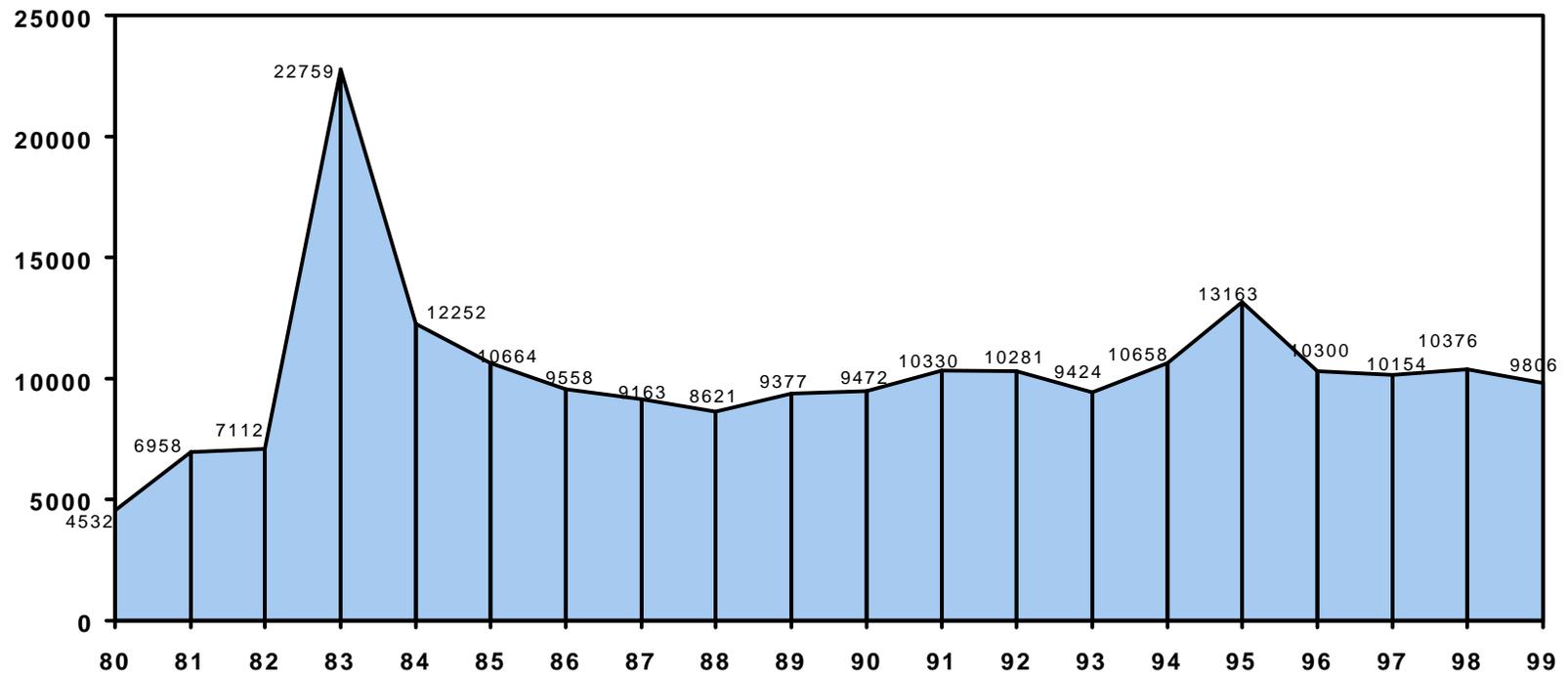
<sup>7</sup> Covers final board decisions. Case type breakdown: 10 OSC stays; 2 OSC corrective actions (1 initial case plus 1 compliance case), 4 OSC disciplinary actions (including 1 reopening), 1 action against ALJ, and 77 regulation review requests.

<sup>8</sup> In addition to the 2,125 cases closed by the Board with a final decision, there were 17 interlocutory appeals decided by the Board in FY 1999. Interlocutory appeals typically raise difficult issues or issues not previously addressed by the Board.



## INITIAL APPEALS AND ADDENDUM CASES

### TOTAL MSPB DECISIONS FY 1980 - 1999



## INTRODUCTION

### OVERVIEW OF APPEALS PROCESS

This report provides key case processing statistics on the decisions issued by the U.S. Merit Systems Protection Board (MSPB) during fiscal year (FY) 1999. The report concentrates on initial appeals and addendum cases decided by the Board's administrative judges and petitions for review by the 3-member Board of its judges' initial decisions. The report also includes information about other decisions issued by the 3-member Board, including decisions on actions brought by the Special Counsel, actions against administrative law judges, and other cases that come under the Board's original jurisdiction. The tables and charts in this report are intended to provide an overall picture of the cases decided during this period.

The Board was established by the Civil Service Reform Act of 1978 (CSRA), Public Law 95-454, as a successor agency to the Civil Service Commission. The Board is an independent, quasi-judicial agency in the Executive Branch, charged with ensuring compliance with the statutory merit system principles and protecting the integrity of Federal merit systems against prohibited personnel practices.

In carrying out this Congressional mandate, the Board and its judges issue decisions in a variety of cases arising from personnel actions that Federal employees are entitled to appeal. Appealable actions include adverse actions for misconduct, performance-based removals or reductions in grade or pay, denials of within-grade increases, certain reduction-in-force (RIF) actions, denials of restoration to duty or reemployment rights, and removals from the Senior Executive Service (SES) for failure to be recertified. Decisions of the Office of Personnel Management (OPM) involving retirement benefits or suitability for employment are also appealable to the Board.

Under the Whistleblower Protection Act of 1989 (WPA), a broader range of personnel actions may be appealed to the Board where an employee, former employee, or applicant for employment alleges that a Federal agency threatened, proposed, or took an action--or failed to do so--because the individual made a protected disclosure. Where the allegation is made in connection with a personnel action that is not directly appealable to the Board, the individual must first exhaust the procedures of the Office of Special Counsel (OSC).

In recent years, the Board's jurisdiction has been extended. Under the 1994 Uniformed Services Employment and Reemployment rights Act (USERRA), the Board has jurisdiction over complaints alleging a violation of chapter 43 of Title 38, relating to the employment and reemployment rights of persons who have served in the uniformed services. This Act also prohibits discrimination against individuals because of their service in a uniformed service. Early in fiscal year 1999, USERRA was amended (Public Law 105-368) to extend the Board's jurisdiction to claims that accrued under the predecessor veterans' reemployment rights (VRR) statute prior to the 1994 effective date of USERRA.

In fiscal year 1999, Congress extended the Board's jurisdiction through the enactment of the Veterans Employment Opportunities Act of 1998 (Public Law 105-339). Under this Act, a preference eligible employee may file an appeal with MSPB based on a violation of any law or regulation relating to veterans' preference. (The employee must first file a complaint with the Department of Labor (DOL) and allow DOL 60 days to try to resolve the matter.) In addition, a violation of veterans' preference is now a prohibited personnel practice, allowing the Special Counsel to petition the Board to order disciplinary action against an employee who commits such a violation.

The 1996 Presidential and Executive Office Accountability Act authorizes appeals to MSPB by employees in the Executive Office of the President based on violations of a number of workplace laws, including the Family and Medical Leave Act, Fair Labor Standards Act, Employee Polygraph Protection Act, and Worker Adjustment and Retraining Notification Act, as well as USERRA.

For the Board to have jurisdiction over an appeal, it must possess jurisdiction over both the action and the individual filing the appeal. The employees and others (e.g., applicants for employment, annuitants in retirement cases) who may appeal specific actions vary in accordance with the law and regulations governing the specific action. For some actions, classes of employees, such as political appointees and employees of specific agencies, are excluded.

For most actions, an appeal must be filed in writing within thirty (30) days of the effective date, if any, of the agency action or within thirty (30) days of the date of receipt of the agency's decision, whichever is later. Appeals are filed with the MSPB regional or field office having geographic jurisdiction. All appeals are closed with a written *initial decision*. Initial decisions are issued by administrative judges and become final 35 days after issuance, unless a party files a petition for review (PFR) by the 3-member Board at MSPB headquarters or the Board reopens the case on its own motion.

It is the Board's established policy that its judges issue an initial decision within 120 days from the date an initial appeal is received. The judge normally will hold one or more prehearing conferences to facilitate an exchange between the parties, to suggest possible solutions, and to help the parties reach a voluntary settlement.

The regional and field offices also issue decisions on: requests for an award of attorney fees to a prevailing appellant; requests for payment of compensatory damages to an appellant who prevails on a finding of discrimination; requests for payment of consequential damages in whistleblower appeals; petitions for enforcement of a Board final decision or order; and, cases remanded to the administrative judge by the Board or a court. These cases, which involve issues related to an initial appeal, are termed addendum cases by the Board.

An appellant who wins at the initial appeal stage will be granted

interim relief, unless the judge deems it not appropriate. This relief is provided in the initial decision and remains in effect pending a final Board decision on a PFR, absent special circumstances.

After the issuance of an initial decision by a regional or field office, either party or an intervenor may file a petition for review requesting that the 3-member Board review the judge's decision. The Board encourages settlement and the parties can request settlement at any time prior to the date the decision becomes final.

In most cases, the Board's decision on a PFR is the final administrative action on appeals. However, if an appeal involves an allegation of discrimination, the appellant may request administrative review by the U.S. Equal Employment Opportunity Commission. Such cases are termed mixed cases. An appellant adversely affected by a final order or decision of the Board may also obtain judicial review in the United States Court of Appeals for the Federal Circuit, or, in the case of discrimination issues, in an appropriate United States district court. The Director of OPM may also request the U.S. Court of Appeals for the Federal Circuit to review a final Board decision that the Director believes will have a substantial impact on a civil service law, rule, regulation, or policy directive.

The Board has original jurisdiction over certain cases that do not involve the appeal of an action taken by agency, such as those brought to the Board by the Office of Special Counsel involving prohibited personnel practices and Hatch Act violations. The Board's original jurisdiction also includes proposed actions against administrative law judges, requests to review OPM regulations, and informal hearings in proposed performance-based removals from the Senior Executive Service.

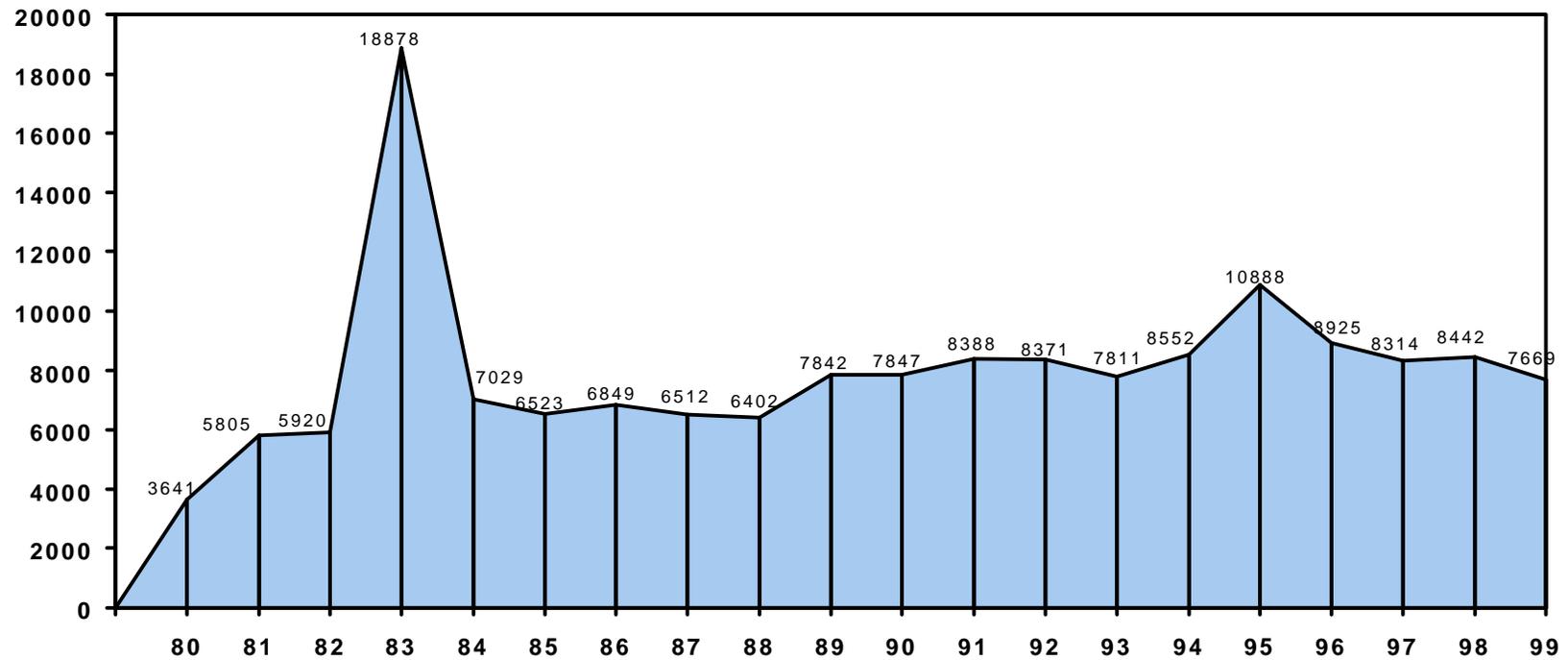
In this report, "cases decided" refers to cases that have been completed. For initial appeals, it includes dismissals and settlements, as well as cases that have been adjudicated on the merits. For PFRs, it includes petitions that are dismissed, settled, denied, denied but simultaneously reopened by the Board, and granted. Cases decided in FY 1999 should not be equated with the workload for FY 1999, because that workload includes cases received but not completed by the end of the fiscal year.

**FIGURE 1. MAP OF MSPB REGIONAL AND FIELD OFFICES**



INITIAL APPEALS AND ADDENDUM CASES

TOTAL DECISIONS, REGIONAL & FIELD OFFICES, FY 1980 - 1999



## INITIAL APPEALS AND ADDENDUM CASES

### DISPOSITION OF INITIAL APPEALS AND ADDENDUM CASES

In FY 1999, MSPB administrative judges decided a total of 7,669 cases. Of this number, 6,369 were initial appeals, 1,176 were addendum cases, and 124 were stay requests.

Of the initial appeals decided, 49 percent were dismissed. (See Table 1.) The majority of dismissals occur because an appeal is not within the Board's jurisdiction or is not filed within the time limit required by regulation.

MSPB judges may assist the parties in reaching a voluntary settlement of an appeal. The Board has operated a successful settlement program for more than a decade, generally achieving a settlement rate of about half of all appeals that are not dismissed. In FY 1999, 52.5 percent of non-dismissed cases were settled. (See Table 1.)

Initial appeals that are not dismissed or settled are adjudicated on the merits. Most adjudicated appeals result in the agency action being affirmed or reversed. In certain appeals, the agency's choice of penalty may be mitigated or its action may be modified. A few appeals are closed as "Other," which usually refers to a retirement case that is remanded to OPM. (See Table 2.)

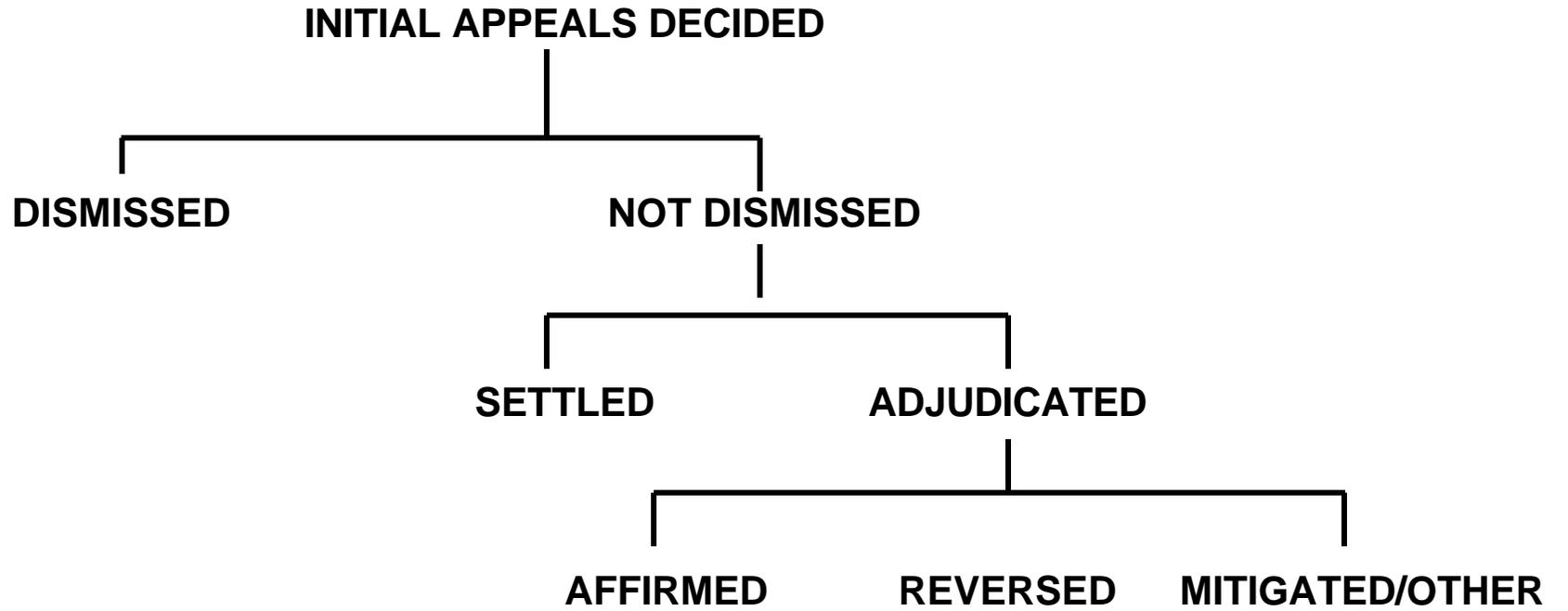
Half of all initial appeals decided in FY 1999 were adverse action appeals. RIF cases accounted for 4 percent of the initial appeals decided, and retirement appeals--both CSRS and FERS--accounted for 24 percent. (See Table 1.)

Hearings were held in 1,157 of the 6,369 initial appeals decided in FY 1999--or 18 percent. (See Table 7.)

Addendum cases are also dismissed, settled, or adjudicated on the merits. Outcomes of addendum cases adjudicated on the merits vary by the type of case. Requests for attorney fees, compensatory damages, or consequential damages, may be granted or denied. Petitions to enforce a final Board decision or order may result in a finding of compliance or non-compliance. The possible outcomes for remanded cases are the same as for the original case.

The average time for the regional and field offices to process initial appeals and addendum cases in FY 1999 was 100 days. (The average processing time--for initial appeals only--was 101 days. See Table 5.)

FIGURE 2. DISPOSITION OF INITIAL APPEALS



**INITIAL APPEALS AND ADDENDUM CASES - TABLES**

**TABLE 1: DISPOSITION AND TYPE OF INITIAL APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF CASE	On Hand #	Number Received #	Available Workload #	Number Processed #	Cases Dismissed		Cases Not Dismissed		Cases Settled		Cases Adjudicated		Number Pending #
					#	%	#	%	#	%	#	%	
Adverse Actions	917	3015	3932	3202	1369	42.75	1833	57.25	1228	66.99	605	33.01	730
Termination of Prob. Reduction in Force	45	249	294	246	222	90.24	24	9.76	20	83.33	4	16.67	48
	92	251	343	264	142	53.79	122	46.21	41	33.61	81	66.39	79
Performance	43	123	166	127	24	18.90	103	81.10	73	70.87	30	29.13	39
Accept Lev of Comp. Suitability	13	45	58	45	21	46.67	24	53.33	16	66.67	8	33.33	13
	30	88	118	98	22	22.45	76	77.55	52	68.42	24	31.58	20
CSRS Retirement-Legal	151	605	756	620	248	40.00	372	60.00	22	5.91	350	94.09	136
CSRS Retirement-Disability	61	174	235	199	73	36.68	126	63.32	23	18.25	103	81.75	36
CSRS Retirement-Overpayment	34	122	156	134	43	32.09	91	67.91	46	50.55	45	49.45	22
FERS Retirement	162	572	734	598	282	47.16	316	52.84	103	32.59	213	67.41	136
Individual Right of Action	92	234	326	241	155	64.32	86	35.68	40	46.51	46	53.49	85
OTHER	115	616	731	595	525	88.24	70	11.76	40	57.14	30	42.86	136
TOTAL	1755	6094	7849	6369	3126	49.08	3243	50.92	1704	52.54	1539	47.46	1480

\*Percentages in columns headed "Cases Dismissed" and "Cases Not Dismissed" are of "Number Processed."

Percentages in columns headed "Cases Settled" and "Cases Adjudicated" are of "Cases Not Dismissed."

"Cases Adjudicated" means cases adjudicated on the merits.

**TABLE 2: DISPOSITION AND TYPE OF INITIAL APPEALS ADJUDICATED  
FROM 01-OCT-1998 TO 30-SEP-1999**

DISPOSITION OF ADJUDICATED CASES																
TYPE OF CASE	Adjudicated		Affirmed		Reversed on Procedural Grounds		Reversed on the Merits		Reversed on Finding of Discrimination		Reversed on Finding Prohibited Personnel Practice		Mitigated or Modified		OTHER	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Adverse Actions	605		448	74.05	22	3.64	73	12.07	4	.66	0	.00	58	9.59	0	.00
Termination of Probationer	4		1	25.00	2	50.00	1	25.00	0	.00	0	.00	0	.00	0	.00
Reduction in Force	81		76	93.83	4	4.94	1	1.23	0	.00	0	.00	0	.00	0	.00
Performance	30		21	70.00	0	.00	7	23.33	1	3.33	0	.00	0	.00	1	3.33
Acceptable Level of Competence	8		5	62.50	0	.00	3	37.50	0	.00	0	.00	0	.00	0	.00
Suitability	24		19	79.17	0	.00	5	20.83	0	.00	0	.00	0	.00	0	.00
CSRS Retirement-Legal	350		274	78.29	4	1.14	65	18.57	0	.00	0	.00	0	.00	7	2.00
CSRS Retirement-Disability	103		66	64.08	0	.00	37	35.92	0	.00	0	.00	0	.00	0	.00
CSRS Retirement-Overpayment	45		22	48.89	0	.00	18	40.00	0	.00	0	.00	1	2.22	4	8.89
FERS Retirement	243		140	65.73	3	1.41	57	26.76	0	.00	0	.00	3	4.41	10	4.69
Individual Right of Action	46		41	89.13	0	.00	5	10.87	0	.00	0	.00	0	.00	0	.00
OTHER	30		22	73.33	3	10.00	5	16.67	0	.00	0	.00	0	.00	0	.00
<b>TOTAL</b>	<b>1539</b>		<b>1135</b>	<b>73.75</b>	<b>38</b>	<b>2.47</b>	<b>277</b>	<b>18.00</b>	<b>5</b>	<b>.32</b>	<b>0</b>	<b>.00</b>	<b>62</b>	<b>4.03</b>	<b>22</b>	<b>1.43</b>

"Adjudicated." means cases adjudicated on the merits (i.e., not dismissed or settled.)

**TABLE 3: DISPOSITION AND TYPE OF ADDENDUM CASES**

## FROM 01-OCT-1998 TO 30-SEP-1999

## DISPOSITIONS\*

TYPE OF CASE	On Hand #	Number Received #	Available Workload #	Number Processed #	Cases Dismissed		Cases Not Dismissed		Cases Settled		Cases Adjudicated		Number Pending #
					#	%	#	%	#	%	#	%	
Attorney Fee Cases	55	323	378	313	35	11.18	278	88.82	157	56.47	121	43.53	65
Compliance Cases	117	569	686	574	140	24.39	434	75.61	83	19.12	351	80.88	112
Board Remand Cases	65	243	308	246	109	44.31	137	55.69	58	42.34	79	57.66	62
Court Remand Cases	5	23	28	19	14	73.68	5	26.32	5	100.00	0	.00	9
Compensatory Damages	4	18	22	17	8	47.06	9	52.94	8	88.89	1	11.11	5
Consequential Damages	3	6	9	7	3	42.86	4	57.14	2	50.00	2	50.00	2
<b>TOTAL</b>	<b>249</b>	<b>1182</b>	<b>1431</b>	<b>1176</b>	<b>309</b>	<b>26.28</b>	<b>867</b>	<b>73.72</b>	<b>313</b>	<b>36.10</b>	<b>554</b>	<b>63.90</b>	<b>255</b>

Percentages in columns headed "Cases Dismissed" and "Cases Not Dismissed" are of "Number Processed."  
Percentages in columns headed "Cases Settled" and "Cases Adjudicated" are of "Cases Not Dismissed."  
"Cases Adjudicated" means cases adjudicated on the merits.

**TABLE 4: DISPOSITION AND TYPE OF ADDENDUM CASES ADJUDICATED  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF CASE	Adjudicated	Granted		Denied		Compliance Referred		Compliance Found		Affirmed		Reversed		Mitigated/Modified Other	
		#	%	#	%	#	%	#	%	#	%	#	%	#	%
Attorney Fee	121	98	80.99	23	19.01	0	.00	0	.00	0	.00	0	.00	0	.00
Compliance	351	0	.00	0	.00	61	17.38	290	82.62	0	.00	0	.00	0	.00
Compensatory Damages	1	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
Consequential Damage	2	1	50.00	1	50.00	0	.00	0	.00	0	.00	0	.00	0	.00
Board Remand Cases	79	7	8.86	1	1.27	2	2.53	2	2.53	36	45.57	22	27.85	9	11.39
<b>TOTAL</b>	<b>554</b>	<b>107</b>	<b>19.31</b>	<b>25</b>	<b>4.51</b>	<b>63</b>	<b>11.37</b>	<b>292</b>	<b>52.71</b>	<b>36</b>	<b>6.50</b>	<b>22</b>	<b>3.97</b>	<b>9</b>	<b>1.62</b>

"Adjudicated" are cases adjudicated on the merits, i.e., not dismissed or settled. "Granted" and "Denied" apply to requests for Attorney Fees and Damages for all case types. "Compliance Referred" and "Compliance Found" apply to petitions for enforcement of any Board order. "Compliance Referred" means that compliance was NOT found and the case was referred to the Board to enforce compliance. All column headings apply to "Remand" cases. The closing of Remands relate to the case that was remanded from the Board. "Mitigated/Modified/Other" heading pertains to cases where the agency penalty is mitigated or action is modified and any other miscellaneous outcome.

**TABLE 5: TIMELINESS OF PROCESSING INITIAL APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF DISPOSITION	Number Processed	Processed In 120 Days Or Less		Average No. Days To Process 120 or Less	Processed In 121 Days Or More		Average Number of Days To Process 121 or More	Average Number of Days To Process All Cases
		#	%		#	%		
DISMISSED	3126	2885	92.29	68	241	7.71	211	79
SETTLED	1704	1560	91.55	71	144	8.45	167	80
ADJUDICATED	1539	863	56.08	99	676	43.92	263	171
AFFIRMED	1135	649	57.18	98	486	42.82	269	171
REVERSED	320	179	55.94	101	141	44.06	252	168
MITIGATED/MODIFIED	62	18	29.03	102	44	70.97	252	209
OTHER	22	17	77.27	90	5	22.73	167	107
TOTAL	6369	5308	83.34	74	1061	16.66	239	101

**TABLE 6: DISPOSITION OF INITIAL APPEALS BY AGENCY  
FROM 01-OCT-1998 TO 30-SEP-1999**

AGENCY	DISPOSITIONS																	
	Appeals Processed		Cases Dismissed		Cases Not Dismissed		Cases Settled		Adjudicated		Affirmed		Reversed		Mitigated Modified		Other	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
UNITED STATES POSTAL SERVICE	1453	759	52.2	694	47.8	504	72.6	190	27.4	125	65.8	40	21.1	25	13.2	0	.0	
OFFICE OF PERSONNEL MANAGEMENT	1299	401	30.9	898	69.1	222	24.7	676	75.3	487	72.0	171	25.3	4	.6	14	2.1	
DEPARTMENT OF VETERANS AFFAIRS	625	389	62.2	236	37.8	141	59.7	95	40.3	69	72.6	17	17.9	2	2.1	7	7.4	
DEPARTMENT OF THE NAVY	487	233	47.8	254	52.2	151	59.4	103	40.6	68	66.0	32	31.1	3	2.9	0	.0	
DEPARTMENT OF THE ARMY	428	224	52.3	204	47.7	118	57.8	86	42.2	76	88.4	9	10.5	1	1.2	0	.0	
DEPARTMENT OF DEFENSE	322	171	53.1	151	46.9	94	62.3	57	37.7	46	80.7	6	10.5	5	8.8	0	.0	
DEPARTMENT OF THE TREASURY	313	180	57.5	133	42.5	84	63.2	49	36.8	37	75.5	8	16.3	4	8.2	0	.0	
DEPARTMENT OF JUSTICE	293	151	51.5	142	48.5	80	56.3	62	43.7	40	64.5	16	25.8	6	9.7	0	.0	
DEPARTMENT OF THE AIR FORCE	258	119	46.1	139	53.9	64	46.0	75	54.0	62	82.7	7	9.3	5	6.7	1	1.3	
DEPARTMENT OF THE INTERIOR	128	58	45.3	70	54.7	45	64.3	25	35.7	23	92.0	1	4.0	1	4.0	0	.0	
DEPARTMENT OF AGRICULTURE	125	72	57.6	53	42.4	36	67.9	17	32.1	15	88.2	0	.0	2	11.8	0	.0	
GENERAL SERVICES ADMINISTRATION	124	90	72.6	34	27.4	9	26.5	25	73.5	19	76.0	6	24.0	0	.0	0	.0	
DEPARTMENT OF HEALTH & HUMAN SERVICES	76	36	47.4	40	52.6	28	70.0	12	30.0	8	66.7	3	25.0	1	8.3	0	.0	
SOCIAL SECURITY ADMINISTRATION	63	37	58.7	26	41.3	20	76.9	6	23.1	5	83.3	0	.0	1	16.7	0	.0	
DEPARTMENT OF LABOR	44	23	52.3	21	47.7	11	52.4	10	47.6	8	80.0	1	10.0	1	10.0	0	.0	
DEPARTMENT OF TRANSPORTATION	42	30	71.4	12	28.6	10	83.3	2	16.7	2	100.0	0	.0	0	.0	0	.0	
DEPARTMENT OF COMMERCE	41	25	61.0	16	39.0	16	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	
TENNESSEE VALLEY AUTHORITY	27	15	55.6	12	44.4	3	25.0	9	75.0	9	100.0	0	.0	0	.0	0	.0	
SMITHSONIAN INSTITUTION	23	8	34.8	15	65.2	10	66.7	5	33.3	4	80.0	0	.0	1	20.0	0	.0	
DEPARTMENT OF HOUSING AND URBAN DEV	20	12	60.0	8	40.0	4	50.0	4	50.0	4	100.0	0	.0	0	.0	0	.0	
DEPARTMENT OF ENERGY	18	7	38.9	11	61.1	6	54.5	5	45.5	3	60.0	2	40.0	0	.0	0	.0	
GOVERNMENT PRINTING OFFICE	18	8	44.4	10	55.6	7	70.0	3	30.0	3	100.0	0	.0	0	.0	0	.0	
ENVIRONMENTAL PROTECTION AGENCY	14	7	50.0	7	50.0	6	85.7	1	14.3	1	100.0	0	.0	0	.0	0	.0	
SMALL BUSINESS ADMINISTRATION	14	8	57.1	6	42.9	4	66.7	2	33.3	2	100.0	0	.0	0	.0	0	.0	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	11	5	45.5	6	54.5	2	33.3	4	66.7	4	100.0	0	.0	0	.0	0	.0	
NATIONAL AERONAUTICS AND SPACE ADMIN	8	4	50.0	4	50.0	2	50.0	2	50.0	2	100.0	0	.0	0	.0	0	.0	
NATIONAL CREDIT UNION ADMINISTRATION	8	3	37.5	5	62.5	3	60.0	2	40.0	1	50.0	1	50.0	0	.0	0	.0	
OTHER	8	5	62.5	3	37.5	2	66.7	1	33.3	1	100.0	0	.0	0	.0	0	.0	
DEPARTMENT OF EDUCATION	7	5	71.4	2	28.6	1	50.0	1	50.0	1	100.0	0	.0	0	.0	0	.0	
FEDERAL DEPOSIT INSURANCE CORPORATION	7	5	71.4	2	28.6	2	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	
FEDRL MEDIATION AND CONCILIATION SERVICE	7	7	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	
FEDERAL EMERGENCY MANAGEMENT AGENCY	6	5	83.3	1	16.7	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	
NATIONAL ARCHIVES AND RECORDS ADMIN	6	3	50.0	3	50.0	1	33.3	2	66.7	2	100.0	0	.0	0	.0	0	.0	
SECURITIES AND EXCHANGE COMMISSION	6	5	83.3	1	16.7	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	

CONTINUED ON NEXT PAGE

**TABLE 6: DISPOSITION OF INITIAL APPEALS BY AGENCY (continued)  
FROM 01-OCT-1998 TO 30-SEP-1999**

AGENCY	DISPOSITIONS																
	Appeals Processed	Cases Dismissed		Cases Not Dismissed		Cases Settled		Adjudicated		Affirmed		Reversed		Mitigated Modified		Other	
		#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
DEPARTMENT OF STATE	5	2	40.0	3	60.0	1	33.3	2	66.7	2	100.0	0	.0	0	.0	0	.0
UNITED STATES INFORMATION AGENCY	5	3	60.0	2	40.0	1	50.0	1	50.0	1	100.0	0	.0	0	.0	0	.0
EXPORT-IMPORT BANK OF THE UNITED STATES	3	1	33.3	2	66.7	1	50.0	1	50.0	1	100.0	0	.0	0	.0	0	.0
NUCLEAR REGULATORY COMMISSION	3	2	66.7	1	33.3	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
SELECTIVE SERVICE SYSTEM	3	1	33.3	2	66.7	1	50.0	1	50.0	1	100.0	0	.0	0	.0	0	.0
CONSUMER PRODUCT SAFETY COMMISSION	2	0	.0	2	100.0	2	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
FEDERAL HOUSING FINANCE BOARD	2	0	.0	2	100.0	2	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
PANAMA CANAL COMMISSION	2	1	50.0	1	50.0	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
SOLDIERS' AND AIRMEN'S HOME	2	0	.0	2	100.0	2	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
U.S. INTERNATIONAL DEVELOPMENT AGENCY	2	2	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
BOUNDARY and WATER COMM: U.S. AND MEXICO	1	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
COMMODITY FUTURES TRADING COMMISSION	1	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
DISTRICT OF COLUMBIA	1	0	.0	1	100.0	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0
HOLOCAUST MEMORIAL COUNCIL	1	0	.0	1	100.0	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0
LIBRARY OF CONGRESS	1	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
NATIONAL TRANSPORTATION SAFETY BOARD	1	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
NATL FOUND FOR THE ARTS AND HUMANITIES	1	0	.0	1	100.0	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0
OFFICE OF GOVERNMENT ETHICS	1	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
OFFICE OF POLICY DEVELOPMENT	1	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
OFFICE OF SPECIAL COUNSEL	1	0	.0	1	100.0	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0
UNITED STATES COMMISSION ON CIVIL RIGHTS	1	1	100.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0	0	.0
<b>TOTAL</b>	<b>6369</b>	<b>3126</b>	<b>49.1</b>	<b>3243</b>	<b>50.9</b>	<b>1704</b>	<b>52.5</b>	<b>1539</b>	<b>47.5</b>	<b>1135</b>	<b>73.7</b>	<b>320</b>	<b>20.8</b>	<b>62</b>	<b>4.0</b>	<b>22</b>	<b>1.4</b>

Percentages in columns headed "Cases Dismissed" and "Cases Not Dismissed" are of "Appeals Processed". Percentages in columns headed "Cases Settled" and "Adjudicated" are of "Cases Not Dismissed". Percentages in remaining columns are of "Adjudicated", which means cases adjudicated on the merits. Headings of the Last four columns describe the effect of the Initial Decision on the agency action. "Mitigated/Modified" means the agency penalty was mitigated or the action was modified.

**TABLE 7: HEARINGS IN INITIAL APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

	Number Processed	DISPOSITION														Average Number of Days to Process
		APPEALS ADJUDICATED														
		Dismissed		Not Dismissed		Appeals Settled		Affirmed		Reversed		Mitigated Modified		Other		
#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
HEARING HELD																
YES	1157	137	11.84	1020	88.16	153	15.00	634	62.16	177	17.35	52	5.10	4	.39	172
NO	5212	2989	57.35	2223	42.65	1551	69.77	501	22.54	143	6.43	10	.45	18	.81	86
TOTAL CASES	6369	3126	49.08	3243	50.92	1704	52.54	1135	35.00	320	9.87	62	1.91	22	.68	101

Columns under "Appeals Adjudicated" plus column "Appeals Settled" equals the total in column "Not Dismissed."  
Percentages for these same columns reflect what distribution they are to "Not Dismissed."

**TABLE 8: REPRESENTATION IN INITIAL APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

	DISPOSITION															
	Number Processed	Dismissed		Not Dismissed		Appeals Settled		APPEALS ADJUDICATED								Average Number of Days to Process
		#	%	#	%	#	%	Affirmed		Reversed		Mitigated Modified		Other		
							#	%	#	%	#	%	#	%		
OTHER	807	399	49.44	408	50.56	222	54.41	143	35.05	33	8.09	6	1.47	4	.98	100
PRIVATE ATTORNEY	2039	866	42.47	1173	57.53	691	58.91	316	26.94	125	10.66	39	3.32	2	.17	116
SELF	3025	1624	53.69	1401	46.31	638	45.54	600	42.83	141	10.06	12	.86	10	.71	92
UNION	476	225	47.27	251	52.73	146	58.17	74	29.48	20	7.97	5	1.99	6	2.39	100
UNION + ATTORNEY	22	12	54.55	10	45.45	7	70.00	2	20.00	1	10.00	0	.00	0	.00	85
TOTAL CASES	6369	3126	49.08	3243	50.92	1704	52.54	1135	35.00	320	9.87	62	1.91	22	.68	101

Columns under "Appeals Adjudicated" plus column "Appeals Settled" equals the total in column "Not Dismissed."  
Percentages for these same columns reflect what distribution they are to "Not Dismissed."

**TABLE 9: INITIAL APPEALS ALLEGING DISCRIMINATION  
FROM 01-OCT-1998 TO 30-SEP-1999**

Total Initial Decisions	6369	
Number Alleging Discrimination	1093	17.16% of Total

Type of Allegation:	Number	Percent of Total
Sex	324	18.23
Religion	35	1.97
Disability	563	31.68
National origin	92	5.18
Color	105	5.91
Race	408	22.96
Age	250	14.07

Total Allegations	1777
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Cases with more than one allegation	440	or 40.26% of Alleged Cases
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Number of Cases Alleging Discrimination That Were:	Number	Percent of Alleged Cases
Dismissed	550	50.32
Settled	297	27.17
Withdrawn	5	.46

Discrimination Issue Decided	241	22.05
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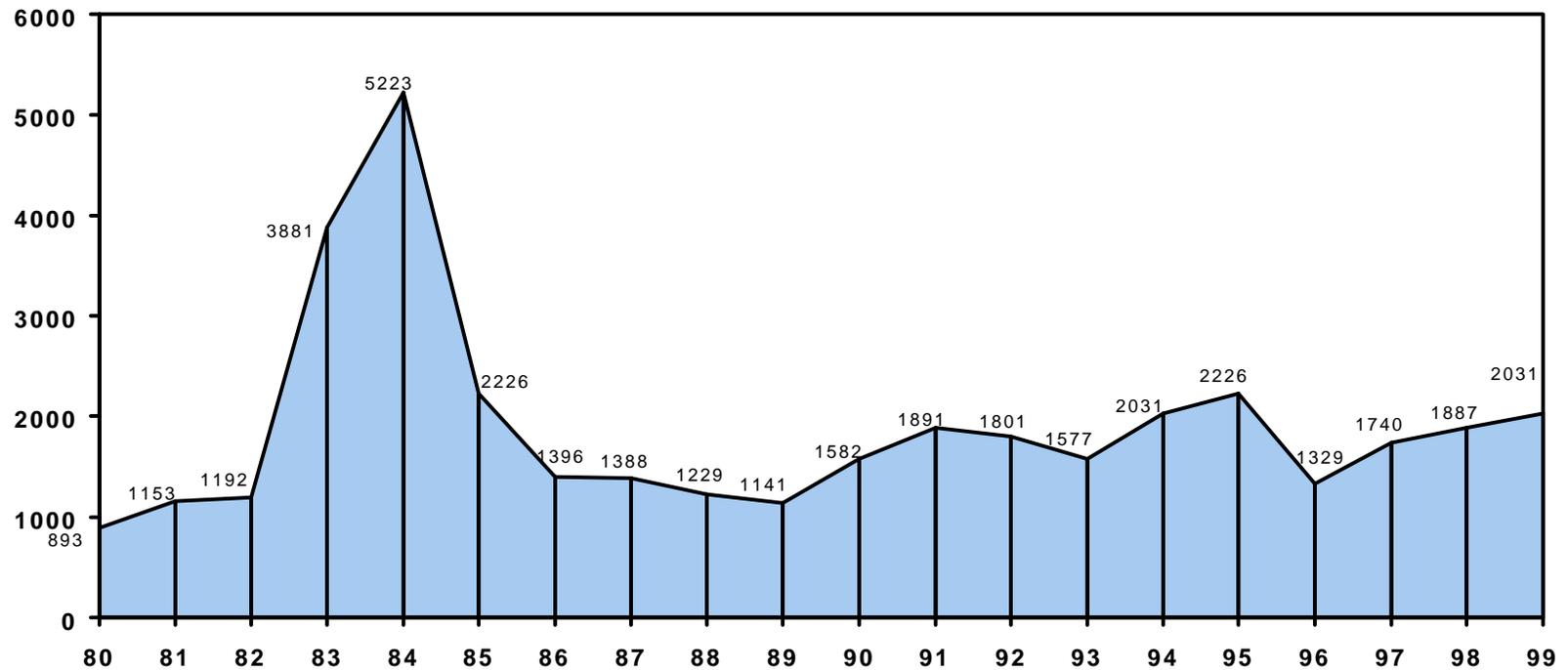
Affirmed	182	
Reversed	43	
Mitigated	14	
Other	2	

Of all Mixed Cases Adjudicated on the Merits:

Discrimination was Found for	7	2.90
Discrimination was <b>not Found for</b>	<b>234</b>	<b>97.10</b>

PETITIONS FOR REVIEW (PFRs)

**MSPB HEADQUARTERS DECISIONS, FY 1980 - 1999**



## PETITIONS FOR REVIEW (PFRs)

### DISPOSITION OF PFRs

Petitions for review (PFRs) of initial decisions issued by administrative judges are filed with the Office of the Clerk of the Board at MSPB headquarters. A PFR may be filed by any party, or, under certain circumstances, by the Director of the Office of Personnel Management or the Special Counsel as an intervenor. The Board will grant a PFR when it is established that the initial decision of the administrative judge was based on an erroneous interpretation of statute or regulation, or that new and material evidence is available that, despite due diligence, was not available when the record closed.

In FY 1999, the Board decided 1,748 PFRs of initial decisions on appeals. (See Table 10.) In addition, the Board decided 191 PFRs of initial decisions in addendum cases. (See Table 13.)

The Board averaged 222 days to decide PFRs of initial

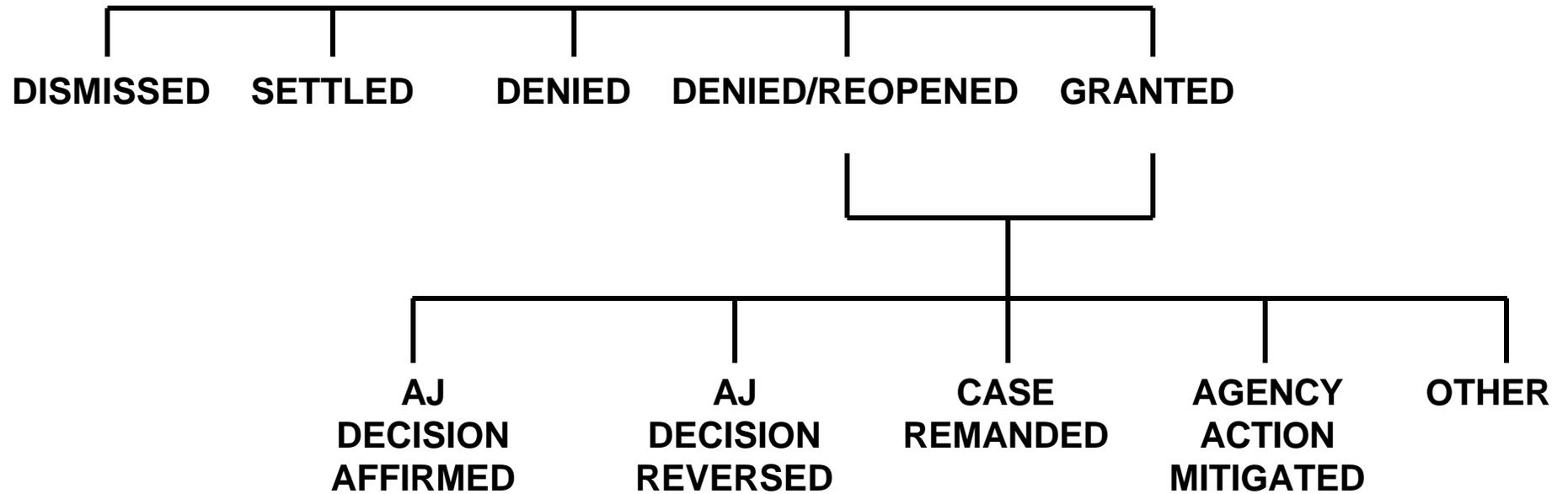
decisions on both appeals and addendum cases. (The average processing time for PFRs of initial decisions on appeals only was 224 days; see Table 16.)

When an agency files a PFR of an initial decision that provided interim relief to the appellant, the agency must comply with the interim relief order. The Board may dismiss a PFR if it is untimely, withdrawn by the parties, or the issues raised are moot.

PFRs may be dismissed, settled, denied, denied but simultaneously reopened by the Board, or granted. If granted or denied/reopened, the final decision may affirm the judge's initial decision, reverse the judge's initial decision, remand the case to the judge, or mitigate the agency's penalty. A few PFRs are closed as "Other," which usually means that the initial decision was vacated or there was a split vote.

**FIGURE 3. DISPOSITION OF PFRs**

**PFRs OF INITIAL APPEALS**



**PFRs - TABLES**

**TABLE 10: DISPOSITION AND TYPE OF PFRs ON APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

Type of Case	DISPOSITIONS														
	On Hand	Number Received	Available Workload	Number Processed	PFR Dismissed		PFR Settled		PFR Denied		PFR Denied/Reopened		PFR Granted		Number Pending
					#	%	#	%	#	%	#	%	#	%	
Adverse Actions	391	582	973	695	31	4.46	25	3.60	501	72.09	54	7.77	84	12.09	278
Termination of Prob.	22	32	54	43	2	4.65	4	9.30	36	83.72	0	.00	1	2.33	11
Reduction in Force	117	206	323	300	209	69.67	2	.67	73	24.33	5	1.67	11	3.67	23
Performance	12	35	47	40	3	7.50	1	2.50	31	77.50	0	.00	5	12.50	7
Accept Lev of Comp.	4	8	12	8	0	.00	0	.00	7	87.50	1	12.50	0	.00	4
Suitability	8	17	25	19	1	5.26	0	.00	15	78.95	1	5.26	2	10.53	6
CSRS Retirement-Legal	117	136	253	188	4	2.13	6	3.19	92	48.94	46	24.47	40	21.28	65
CSRS Retirement-Disability	21	49	70	39	2	5.13	0	.00	29	74.36	3	7.69	5	12.82	31
CSRS Retirement-Overpayment	13	17	30	18	1	5.56	5	27.78	8	44.44	1	5.56	3	16.67	12
FERS Retirement	86	103	189	135	6	4.44	3	2.22	51	37.78	15	11.11	60	44.44	54
Individual Right of Action	80	85	165	124	4	3.23	2	1.61	87	70.16	9	7.26	22	17.74	41
OTHER	58	154	212	139	7	5.04	2	1.44	105	75.54	8	5.76	17	12.23	73
<b>TOTAL</b>	<b>929</b>	<b>1424</b>	<b>2353</b>	<b>1748</b>	<b>270</b>	<b>15.45</b>	<b>50</b>	<b>2.86</b>	<b>1035</b>	<b>59.21</b>	<b>143</b>	<b>8.18</b>	<b>250</b>	<b>14.30</b>	<b>605</b>

"PFR" means Petition for Review, by the Board, of an administrative judge's Initial Decision.

"PFR Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion.

**TABLE 11: DISPOSITION AND TYPE OF PFRs ON APPEALS GRANTED  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF CASE	PFRs Granted	DISPOSITIONS									
		Initial Decision Affirmed		Initial Decision Reversed		Case Remanded		Agency Action Mitigated		Other	
		#	%	#	%	#	%	#	%	#	%
Adverse Actions	84	10	11.90	21	25.00	53	63.10	0	.00	0	.00
Termination of Prob. Reduction in Force	1	0	.00	0	.00	1	100.00	0	.00	0	.00
	11	1	9.09	1	9.09	9	81.82	0	.00	0	.00
Performance	5	1	20.00	1	20.00	3	60.00	0	.00	0	.00
Suitability	2	0	.00	0	.00	2	100.00	0	.00	0	.00
CSRS Retirement-Legal	40	0	.00	30	75.00	9	22.50	0	.00	1	2.50
CSRS Retirement-Disability	5	0	.00	4	80.00	1	20.00	0	.00	0	.00
CSRS Retirement-Overpayment	3	0	.00	2	66.67	1	33.33	0	.00	0	.00
FERS Retirement	60	6	10.00	4	6.67	48	80.00	0	.00	2	3.33
Individual Right of Action	22	4	18.18	1	4.55	16	72.73	0	.00	1	4.55
OTHER	17	3	17.65	0	.00	14	82.35	0	.00	0	.00
TOTAL	250	25	10.00	64	25.60	157	62.80	0	.00	4	1.60

"PFR" means Petition for Review of an administrative judge's Initial Decision.

**TABLE 12: DISPOSITION AND TYPE OF PFRs ON APPEALS DENIED/REOPENED  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF CASE	DISPOSITIONS										
	PFRs Denied/Reopened	Initial Decision Affirmed		Initial Decision Reversed		Case Remanded		Agency Action Mitigated		Other	
		#	%	#	%	#	%	#	%	#	%
Adverse Actions	54	25	46.30	2	3.70	20	37.04	0	.00	7	12.96
Reduction in Force	5	3	60.00	0	.00	2	40.00	0	.00	0	.00
Accept Level of Competence	1	1	100.00	0	.00	0	.00	0	.00	0	.00
Suitability	1	0	.00	0	.00	1	100.00	0	.00	0	.00
CSRS Retirement-Legal	46	32	69.57	1	2.17	12	26.09	0	.00	1	2.17
CSRS Retirement-Disability	3	0	.00	0	.00	1	33.33	0	.00	2	66.67
CSRS Retirement-Overpayment	1	0	.00	0	.00	1	100.00	0	.00	0	.00
FERS Retirement	15	10	66.67	0	.00	4	26.67	0	.00	1	6.67
Individual Right of Action	9	5	55.56	0	.00	3	33.33	0	.00	1	11.11
OTHER	8	5	62.50	0	.00	2	25.00	0	.00	1	12.50
<b>TOTAL</b>	<b>143</b>	<b>81</b>	<b>56.64</b>	<b>3</b>	<b>2.10</b>	<b>46</b>	<b>32.17</b>	<b>0</b>	<b>.00</b>	<b>13</b>	<b>9.09</b>

"PFR" means Petition for Review of an administrative judge's Initial Decision.

"PFR Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion.

**TABLE 13: DISPOSITION AND TYPE OF PFRs IN ADDENDUM CASES  
FROM 01-OCT-1998 TO 30-SEP-1999**

	On Hand	Number Received	Available Workload	Number Processed	DISPOSITIONS										
					PFR Dismissed		PFR Settled		PFR Denied		PFR Denied/ Reopened		PFR Granted		Number Pending
					#	%	#	%	#	%	#	%	#	%	
Attorney Fee Cases	18	19	37	26	0	.00	3	11.54	12	46.15	2	7.69	9	34.62	11
Compliance Cases	40	145	185	95	1	1.05	4	4.21	79	83.16	2	2.11	9	9.47	90
Board Remand Cases	28	64	92	63	3	4.76	2	3.17	49	77.78	2	3.17	7	11.11	29
Court Remand Cases	1	5	6	2	0	.00	0	.00	2	100.00	0	.00	0	.00	4
Compensatory Damages	3	1	4	4	1	25.00	0	.00	2	50.00	1	25.00	0	.00	0
Consequential Damages	0	1	1	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0
<b>TOTAL</b>	<b>90</b>	<b>235</b>	<b>325</b>	<b>191</b>	<b>5</b>	<b>2.62</b>	<b>9</b>	<b>4.71</b>	<b>145</b>	<b>75.92</b>	<b>7</b>	<b>3.66</b>	<b>25</b>	<b>13.09</b>	<b>134</b>

"PFR" means Petition for Review of an administrative judge's Initial Decision.

\*PFR Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion.

**TABLE 14: DISPOSITION AND TYPE OF PFRs IN ADDENDUM CASES GRANTED  
FROM 01-OCT-1998 TO 30-SEP-1999**

	PFRs Granted	Initial Decision Affirmed		DISPOSITIONS				Agency Action Mitigated		Other	
		#	%	Initial Decision Reversed #	%	Case Remanded #	%	#	%	#	%
Attorney Fee Cases	9	2	22.22	1	11.11	4	44.44	0	.00	2	22.22
Compliance Cases	9	1	11.11	2	22.22	6	66.67	0	.00	0	.00
Board Remand Cases	7	1	14.29	2	28.57	4	57.14	0	.00	0	.00
<b>TOTAL</b>	<b>25</b>	<b>4</b>	<b>16.00</b>	<b>5</b>	<b>20.00</b>	<b>14</b>	<b>56.00</b>	<b>0</b>	<b>.00</b>	<b>2</b>	<b>8.00</b>

"PFR" means Petition for Review, by the Board, of an administrative judge's initial Decision.  
The column heading "Agency Action Mitigated" means that the Board decision of the PFR mitigated the agency penalty.  
Mitigated applies only to Board and Court Remand cases for this report.

**TABLE 15: DISPOSITION AND TYPE OF PFRs IN ADDENDUM CASES DENIED/REOPENED  
FROM 01-OCT-1998 TO 30-SEP-1999**

	DISPOSITIONS										
	PFRs Denied/Reopened	Initial Decision Affirmed		Initial Decision Reversed		Case Remanded		Agency Action Mitigated		Other	
		#	%	#	%	#	%	#	%	#	%
Attorney Fee Cases	2	1	50.00	1	50.00	0	.00	0	.00	0	.00
Compliance Cases	2	0	.00	0	.00	1	50.00	0	.00	1	50.00
Board Remand Cases	2	1	50.00	0	.00	1	50.00	0	.00	0	.00
Compensatory Damage	1	1	100.00	0	.00	0	.00	0	.00	0	.00
<b>TOTAL</b>	<b>7</b>	<b>3</b>	<b>42.86</b>	<b>1</b>	<b>14.29</b>	<b>2</b>	<b>28.57</b>	<b>0</b>	<b>.00</b>	<b>1</b>	<b>14.29</b>

"PFR" means Petition for Review of an administrative judge's Initial Decision.

PFR Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion.

The column heading "Agency Action Mitigated" means that the Board decision on the PFR mitigated the agency penalty.

Mitigated applies only to Board and Court Remand cases for this report.

**TABLE 16: TIMELINESS OF PROCESSING PFRs ON APPEALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF DISPOSITION	Number Processed	Processed In 110 Days Or Less		Average Number Days To Process	Processed In 111 Days Or More		Average Number Days To Process	All Cases Average Number Days
		#	%		#	%		
DISMISSED	270	13	4.81	62	257	95.19	172	167
SETTLED	50	15	30.00	63	35	70.00	214	169
DENIED	1035	115	11.11	84	920	88.89	196	183
DENIED/REOPENED	143	3	2.10	67	140	97.90	360	354
AFFIRMED	81	1	1.23	64	80	98.77	390	385
REVERSED	3	0	.00	0	3	100.00	347	347
REMANDED	46	1	2.17	88	45	97.83	333	328
OTHER	13	1	7.69	49	12	92.31	264	247
GRANTED	250	3	1.20	103	247	98.80	396	392
AFFIRMED	25	0	.00	0	25	100.00	363	363
REVERSED	64	1	1.56	108	63	98.44	400	395
REMANDED	157	2	1.27	100	155	98.73	400	396
OTHER	4	0	.00	0	4	100.00	386	386
<b>TOTAL</b>	<b>1748</b>	<b>149</b>	<b>8.52</b>	<b>80</b>	<b>1599</b>	<b>91.48</b>	<b>238</b>	<b>224</b>

“PFR” means Petition for Review of an administrative judge's Initial Decision. “PFR DEN/REOP” are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion.

**TABLE 17: DISPOSITION OF PFRs ON APPEALS BY AGENCY  
FROM 01-OCT-1998 TO 30-SEP-1999**

AGENCY	DISPOSITIONS																					
	PFR's Processed		PFR Dismissed		PFR Settled		PFR Denied		PFR Denied/ Reopened		PFR Granted		Initial Decision Affirmed		Initial Decision Reversed		Case Remanded		Agency Action Mitigated		Other	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
UNITED STATES POSTAL SERVICE	306	17	5.56	9	2.94	221	72.22	20	6.54	39	12.75	16	27.12	3	5.08	39	66.10	0	.00	1	1.69	
OFFICE OF PERSONNEL MGNT	263	7	2.66	13	4.94	186	70.72	19	7.22	38	14.45	14	24.56	17	29.82	22	38.60	0	.00	4	7.02	
TENNESSEE VALLEY AUTHORITY	208	199	95.67	0	.00	9	4.33	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
DEPT OF THE NAVY	156	6	3.85	4	2.56	78	50.00	57	36.54	11	7.05	36	52.94	4	5.88	27	39.71	0	.00	1	1.47	
DEPT OF VETERANS AFFAIRS	139	11	7.91	3	2.16	91	65.47	6	4.32	28	20.14	4	11.76	4	11.76	23	67.65	0	.00	3	8.82	
DEPT OF THE ARMY	134	11	8.21	4	2.99	86	64.18	9	6.72	24	17.91	9	27.27	3	9.09	20	60.61	0	.00	1	3.03	
DEPT OF DEFENSE	118	3	2.54	3	2.54	61	51.69	3	2.54	48	40.68	2	3.92	17	33.33	32	62.75	0	.00	0	.00	
DEPT OF THE TREASURY	76	1	1.32	6	7.89	60	78.95	4	5.26	5	6.58	3	33.33	0	.00	5	55.56	0	.00	1	11.11	
DEPT OF THE AIR FORCE	73	1	1.37	1	1.37	57	78.08	4	5.48	10	13.70	3	21.43	0	.00	11	78.57	0	.00	0	.00	
DEPT OF JUSTICE	53	3	5.66	0	.00	37	69.81	3	5.66	10	18.87	4	30.77	3	23.08	6	46.15	0	.00	0	.00	
GENERAL SERVICES ADM	32	1	3.13	0	.00	13	40.63	4	12.50	14	43.75	5	27.78	12	66.67	0	.00	0	.00	1	5.56	
DEPT OF AGRICULTURE	27	0	.00	1	3.70	18	66.67	3	11.11	5	18.52	2	25.00	1	12.50	4	50.00	0	.00	1	12.50	
DEPT OF THE INTERIOR	25	1	4.00	1	4.00	19	76.00	2	8.00	2	8.00	3	75.00	0	.00	1	25.00	0	.00	0	.00	
DEPT OF HEALTH & HUMAN SERVICES	18	1	5.56	1	5.56	11	61.11	2	11.11	3	16.67	1	20.00	1	20.00	2	40.00	0	.00	1	20.00	
DEPT OF TRANSPORTATION	18	0	.00	0	.00	18	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
DEPT OF LABOR	15	0	.00	2	13.33	11	73.33	0	.00	2	13.33	1	50.00	0	.00	1	50.00	0	.00	0	.00	
SOCIAL SECURITY ADMINISTRATION	13	0	.00	0	.00	12	92.31	0	.00	1	7.69	0	.00	1	100.00	0	.00	0	.00	0	.00	
DEPT OF COMMERCE	9	0	.00	0	.00	6	66.67	1	11.11	2	22.22	1	33.33	0	.00	2	66.67	0	.00	0	.00	
DEPT OF ENERGY	8	2	25.00	0	.00	4	50.00	1	12.50	1	12.50	0	.00	1	50.00	1	50.00	0	.00	0	.00	
DEPT OF HOUSING & URBAN DEV	8	0	.00	0	.00	6	75.00	2	25.00	0	.00	0	.00	0	.00	0	.00	0	.00	2	100.00	
DEPT OF STATE	6	1	16.67	1	16.67	3	50.00	1	16.67	0	.00	0	.00	0	.00	0	.00	0	.00	1	100.00	
US INTERNAT'L DEVELOPMENT AGN	5	0	.00	0	.00	2	40.00	0	.00	3	60.00	0	.00	0	.00	3	100.00	0	.00	0	.00	
ENVIRONMENTAL PROTECTION AGN	4	0	.00	0	.00	1	25.00	0	.00	3	75.00	0	.00	0	.00	3	100.00	0	.00	0	.00	
EQUAL EMPLOYMENT OPPORT'Y COMM	4	0	.00	0	.00	4	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
DEPARTMENT OF EDUCATION	3	0	.00	0	.00	3	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
INTERSTATE COMMERCE COMM (DOT)	3	2	66.67	0	.00	1	33.33	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
NAT'L AERONAUTICS & SPACE ADMIN	3	0	.00	0	.00	3	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
SMITHSONIAN INSTITUTION	3	0	.00	0	.00	3	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
FEDERAL DEPOSIT INSURANCE CORP	2	0	.00	1	50.00	1	50.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
NAT'L TRANSPORTATION SAFETY BD	2	0	.00	0	.00	2	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	
SMALL BUSINESS ADMINISTRATION	2	1	50.00	0	.00	1	50.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	

Continued on next page

**TABLE 17: DISPOSITION OF PFRs ON APPEALS BY AGENCY (continued)  
FROM 01-OCT-1998 TO 30-SEP-1999**

AGENCY	DISPOSITIONS												Initial Decision Affirmed		Initial Decision Reversed		Case Remanded		Agency Action Mitigated		Other		
	PFR's Processed		PFR Dismissed		PFR Settled		PFR Denied		PFR Denied/ Reopened		PFR Granted		#	%	#	%	#	%	#	%	#	%	
	#	%	#	%	#	%	#	%	#	%	#	%											
SOLDIERS' AND AIRMEN'S HOME	2	1	50.00	0	.00	0	.00	1	50.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00
UNITED STATES INFORMATION AGN	2	0	.00	0	.00	1	50.00	0	.00	1	50.00	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00
ADM OFFICE OF THE U.S. COURTS	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
EXPORT-IMPORT BANK OF THE US	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
FED RETIREMENT THRIFT INVESTMT BD	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
NATIONAL CREDIT UNION ADM	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
OTHER	1	0	.00	0	.00	0	.00	1	100.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00
SECURITIES AND EXCHANGE COMM	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
US ARMS CONTROL & DISARMAMENT AGN	1	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
US INTERNATIONAL TRADE COMM.	1	1	100.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00	0	.00
<b>TOTAL</b>	<b>1748</b>	<b>270</b>	<b>15.45</b>	<b>50</b>	<b>2.86</b>	<b>1035</b>	<b>59.21</b>	<b>143</b>	<b>8.18</b>	<b>250</b>	<b>14.30</b>	<b>106</b>	<b>26.97</b>	<b>67</b>	<b>17.05</b>	<b>203</b>	<b>51.65</b>	<b>0</b>	<b>.00</b>	<b>17</b>	<b>4.33</b>		

"PFR" means Petition for Review, by the Board of an administrative judge's Initial Decision. "PFRs Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion. Percentages in columns headed "PFRs DISMISSED", "PFRs SETTLED", "PFRs DENIED", "PFRs DENIED/REOP", and "PFRs GRANTED" are breakouts of "PFRs PROCESSED". The number of cases in columns "INITIAL DECISIONS AFFIRMED" through "OTHER" are further breakouts of "PFRs Denied/Reopened" and "PFRs GRANTED". The percentages in these columns are of the combined totals of columns "PFRs Denied/Reopened" plus "PFRs GRANTED".

**TABLE 18: DISPOSITION OF PFRs ON APPEALS BY PFR FILER  
FROM 01-OCT-1998 TO 30-SEP-1999**

PFR Filer	DISPOSITION OF PFR												Initial Decisions Affirmed		Initial Decisions Reversed		Cases Remanded		Agency Action Mitigated		Other	
	PFRs Processed	PFRs Dismissed		PFRs Settled		PFRs Denied		PFRs Denied/ Reopened		PFRs Granted		Average Days To Process	#	%	#	%	#	%	#	%	#	%
		#	%	#	%	#	%	#	%	#	%											
APPELLANT ONLY	1540	268	17.40	33	2.14	973	63.18	87	5.65	179	11.62	209	61	22.93	13	4.89	179	67.29	0	.00	13	4.89
AGENCY ONLY	175	2	1.14	12	6.86	43	24.57	54	30.86	64	36.57	345	43	36.44	50	42.37	21	17.80	0	.00	4	3.39
OPM ONLY	0	0	.00	0	.00	0	.00	0	.00	0	.00	0	0	.00	0	.00	0	.00	0	.00	0	.00
OTHER	2	0	.00	1	50.00	1	50.00	0	.00	0	.00	94	0	0.00	0	0.00	0	.00	0	.00	0	.00
MULTI-PARTY FILING	31	0	.00	4	12.90	18	58.06	2	6.45	7	22.58	292	2	22.22	4	44.44	3	33.33	0	.00	0	.00
<b>TOTAL CASES</b>	<b>1748</b>	<b>270</b>	<b>15.45</b>	<b>50</b>	<b>2.86</b>	<b>1035</b>	<b>59.21</b>	<b>143</b>	<b>8.18</b>	<b>250</b>	<b>14.30</b>	<b>224</b>	<b>106</b>	<b>26.97</b>	<b>67</b>	<b>17.05</b>	<b>203</b>	<b>51.65</b>	<b>0</b>	<b>.00</b>	<b>17</b>	<b>4.33</b>

"PFR" means Petition for Review of an administrative judge's Initial Decision. "PFRs Denied/Reopened" are cases where the petition was denied for failure to meet the criteria for review, but was simultaneously reopened by the Board on its own motion. Percentages in columns headed "PFRs DISMISSED," "PFRs SETTLED," "PFRs DENIED," "PFRs Denied/Reopened," and "PFRs GRANTED" are breakouts of "PFRs PROCESSED." The number of cases in columns "INITIAL DECISIONS AFFIRMED" through "OTHER" are further breakouts of "PFRs Denied/Reopened" and "PFRs GRANTED." The percentages in these columns are of the combined totals of columns "PFRs Denied/Reopened" plus "PFRs GRANTED."

**EFFECT OF BOARD REVIEW ON AGENCY ACTION**

As a general rule, a final Board decision on a PFR leaves the agency action *unchanged* when the following combinations of initial and Board decisions occur:

- (1) The Board affirms the administrative judge's initial decision where the judge dismissed the appeal or affirmed the agency action.
- (2) The Board reverses the administrative judge's initial decision where the judge reversed the agency action.

(3) The Board denies or dismisses the PFR where the judge dismissed the initial appeal or affirmed the agency action.

Based on the preceding combinations, the Board left the agency decision unchanged in 1290 out of 1748 PFRs of initial decisions on appeals in FY 1999, or approximately 74 percent.

## OTHER BOARD DECISIONS

### OTHER APPELLATE JURISDICTION CASES

#### Reopenings and Court Remands

The Board may reopen cases on its own motion and must reconsider its decisions in cases that are remanded by the courts. In addition, the Board must respond to requests by the Director of OPM for reconsideration of a final Board decision.

The OPM Director has a statutory right to petition the Board for reconsideration of any final decision that, in the opinion of the Director, will have a substantial impact on civil service law, rule, or regulation. These petitions to reconsider final Board decisions should not be confused with PFRs filed by OPM after the issuance of an administrative judge's initial decision in an appeal involving OPM as the agency party.

The Board responded to one petition for reconsideration from the Director of OPM in FY 1999 and issued decisions in four cases reopened on the Board's own motion. The Board also issued decisions in 25 cases that were remanded by the courts. (See Table 19.)

#### Compliance Referrals

The Board has statutory authority to enforce compliance with its final decisions and orders. In appellate jurisdiction cases, petitions to enforce a Board decision or order are filed with the regional or field office that issued the initial decision. The administrative judge in the regional or field office may issue an initial decision where he or she finds compliance, and that decision is subject to a PFR to the Board. Where the judge finds non-compliance, however, he or she issues a recommendation and refers the case to the Board for enforcement. These referrals constitute a separate type of Board case and should not be confused with PFRs of judges' initial decisions finding compliance.

In FY 1999, the Board decided 58 cases referred for enforcement. In 56 of these cases, the Board found compliance after the case reached the Board for enforcement. Two cases were remanded to the administrative judge for further processing. (See Table 20.)

## EEOC Review of MSPB Decisions

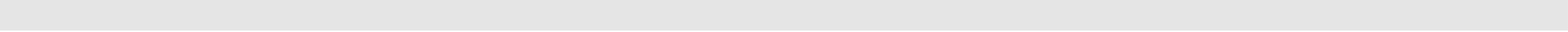
In an appeal involving both an action appealable to the Board and an allegation of discrimination (a mixed case), an appellant may ask the EEOC to review the final Board decision concerning the allegation of discrimination. That final decision may be either an administrative judge's initial decision that has become final or a final decision issued by the Board. The EEOC issues a decision on the request and may concur or non-concur in the Board's decision. If the EEOC does not concur, the case is returned to the Board. If the Board concurs with EEOC at this point, a final decision is issued. If the Board does not concur with EEOC, the case is referred to the Special Panel for final disposition.

The Special Panel is a separate statutory entity whose sole

purpose is to resolve disagreeing decisions between the Board and the EEOC in mixed cases. It consists of one Board member designated by the MSPB Chairman, one EEOC Commissioner designated by the EEOC Chairman, and a third individual appointed by the President (with the advice and consent of the Senate) to serve as Chairman of the Special Panel.

During FY 1999, the EEOC issued 86 decisions on review of final Board decisions in mixed cases. The EEOC dismissed 44 of those cases, non-concurred on one case, and concurred with the Board in 41 (See Table 21.) The Board issued two decisions concurring with the EEOC decisions.

No cases were referred to the Special Panel in FY 1999.



**OTHER APPELLATE JURISDICTION CASES - TABLES**

**TABLE 19: REOPENINGS AND COURT REMANDS - APPELLATE JURISDICTION  
FROM 01-OCT-1998 TO 30-SEP-1999**

Type of Case	Number Processed #	Dismissed		Denied		Previous Decision Affirmed		Previous Decision Reversed		Case Remanded		Agency Action Mitigated		Other	
		#	%	#	%	#	%	#	%	#	%	#	%	#	%
Board Reopening - OWN Motion:	4	0	.00	0	.00	0	.00	0	.00	1	25.00	2	50.00	1	25.00
Board Reopening - OPM Request:	1	0	.00	0	.00	0	.00	1	100.00	0	.00	0	.00	0	.00
Court Remand:	25	2	8.00	4	16.00	0	.00	3	12.00	0	.00	0	.00	16	64.00
<b>TOTALS:</b>	<b>30</b>	<b>2</b>	<b>6.67</b>	<b>4</b>	<b>13.33</b>	<b>0</b>	<b>.00</b>	<b>4</b>	<b>13.33</b>	<b>1</b>	<b>3.33</b>	<b>2</b>	<b>6.67</b>	<b>17</b>	<b>56.67</b>

"Board Reopenings" and "Court Remands" can arise from either an administrative judge's Initial Decision or a final decision of the Board. These case types can arise from decisions on initial appeals, in addendum cases, or in any other type of appellate jurisdiction case. A "denied" with respect to a "Court Remand" generally means that the Board denied the Petition for Review. "Previous Decision Affirmed" and "Previous Decision Reversed" indicate the effect of the Board decision in the reopened or remanded case on the previous decision, either an Initial Decision or final Board Decision. "Case Remanded" means the Board remanded the reopened or remanded case to an administrative judge for a new decision. "Agency Action Mitigated" means that the Board decision, on the reopened or remanded case, mitigated the penalty imposed by the agency.

**TABLE 20: COMPLIANCE REFERRALS  
FROM 01-OCT-1998 TO 30-SEP-1999**

TYPE OF CASE	Processed	Compliance Found/ Dismissed		Reinstated/ Remanded		Certified To Comptroller General		Compliance Ordered
	----- #	----- #	----- %	----- #	----- %	----- #	----- %	----- #
Compliance Referral	58	56	96.55	2	3.45		.00	38

"Compliance Referral" cases arise when an administrative judge issues an Initial Decision on a petition for enforcement where one of the case participants is NOT in compliance with the Board's order. This case is then referred to the Board to enforce compliance.

"Compliance Found/Dismissed" means the Board found the participant in compliance and dismissed the case.

"Reinstated/Remanded" means the Board remanded the case to the administrative judge for further processing or reinstated a prior appeal.

"Certified to Comptroller General." means that the Board found the participant NOT in compliance and certified to the Comptroller General of the U. S. that no salary is to be paid to the non-complying participant.

Percentages in the 2nd, 3rd, and 4th columns are of the first column "Processed."

"Compliance Ordered" means that the Board has ordered a non-complying participant to comply. This action does NOT close the case. The number in this column shows the number of cases in which the Board ordered compliance during the report period. These are not necessarily the same cases the Board closed during the report period.

**TABLE 21: EEOC REVIEW  
FROM 01-OCT-1998 TO 30-SEP-1999**

Reviewed	EEOC Decision			BOARD Decision			SPECIAL PANEL
	Concur	Non-Concur	Dismissed	Concur	Non-Concur	Other	
Mixed Cases Reviewed by EEOC	41	1	44	2	0	0	0

EEOC may review final Board decisions (either an Initial Decision that has become final or a final decision issued by the Board) in mixed cases. The column headings under "EEOC Decision" indicate the EEOC action with respect to Board decisions reviewed during the report period. If EEOC does not concur with the Board decision, the case is returned to the Board. EEOC can dismiss their case because the case before the Board is still pending or EEOC is denying the request for review. If the case is dismissed because MSPB's case is still pending, EEOC can come back at a later date concurring or non-concurring with the Board's decision.

The column headings under "Board Decisions" indicate Board action during the report period with respect to cases returned by the EEOC. (Because of the time lag, cases decided by the Board during the report period are not necessarily the same cases in which EEOC issued a "Non-Concur" decision during that period.) If the Board does not concur in the EEOC decision, the case is referred to the Special Panel. Decisions of the Special Panel are shown in the final column.

## ORIGINAL JURISDICTION CASES

In addition to cases arising under its appellate jurisdiction, the Board has original jurisdiction over the following types of cases:

- Corrective and disciplinary actions brought by the Special Counsel against Federal employees or agencies who are alleged to have committed prohibited personnel practices, or to have violated certain civil service laws, rules, or regulations.
- Special Counsel requests for stays of personnel actions that are alleged to be the result of prohibited personnel practices.
- Disciplinary actions brought by the Special Counsel alleging violations of the Hatch Act.
- Certain actions proposed by agencies against their administrative law judges.
- Requests for review of regulations issued by OPM or of the implementation of an OPM regulation by an agency.
- Informal hearings in SES performance-based removals.

The Administrative Law Judge adjudicates Special Counsel disciplinary action complaints and agencies' proposed actions against administrative law judges. Special Counsel corrective action complaints may be decided by the Administrative Law Judge or another MSPB judge. The judge issues an initial decision in these cases, which is subject to a PFR to the Board.

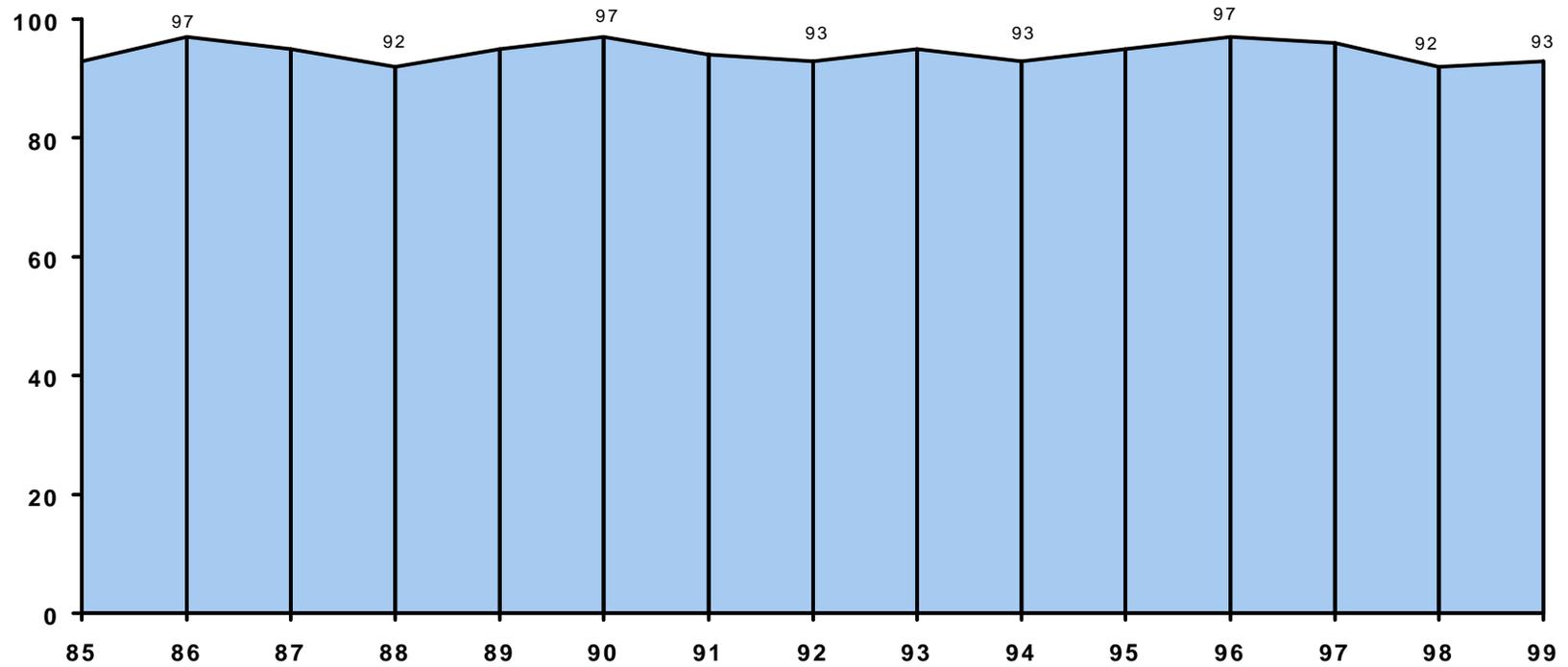
An initial stay may be granted the Special Counsel by a single Board member, (or by the Administrative Law Judge under authority delegated by individual Board members). Requests for extension or termination of a stay are decided by the Board (or by a single Board member acting under authority delegated by the Board). The 3-member Board also decides requests for review of OPM regulations.

Informal hearings in SES performance-based removal actions may be conducted by any MSPB judge, but there is no decision by either the judge or the Board; rather, a report is issued to the parties and OPM.

The ALJ issued initial decisions in 12 original jurisdiction cases. The Board issued final decisions in 94 cases. (See page ii.)

LITIGATION

**MSPB DECISIONS ARE UPHELD ON APPEAL**  
**Percent of MSPB Cases Unchanged in Federal Court, FY 1985-1999**



## LITIGATION

An appellant may obtain judicial review of a final Board decision issued under its appellate jurisdiction in the United States Court of Appeals for the Federal Circuit or, in cases involving discrimination, may seek a trial de novo in the appropriate United States district court.

The Director of OPM may petition the U.S. Court of Appeals for the Federal Circuit to review a final Board decision that the Director believes will have a substantial impact on a civil service law, rule, regulation, or policy directive. No other agency may obtain judicial review of a Board decision.

Judicial review of final Board decisions issued under its original jurisdiction also lies in the U.S. Court of Appeals for the Federal Circuit--except for decisions in Hatch Act cases against State or local government employees. Review of a final Board decision in a State/local Hatch Act case may be obtained in the appropriate United States district court and then in the regional U.S. courts of appeals.

The U.S. Court of Appeals for the Federal Circuit issued decisions on review of 403 MSPB decisions in FY 1999. The Board decision was unchanged by the court in 93 percent. (See Table 22.)

**TABLE 22: DISPOSITION OF LITIGATION CASES IN THE FEDERAL CIRCUIT  
FROM 01-OCT-1998 TO 30-SEP-1999**

<u>DISPOSITION OF CASES</u>	<u>NUMBER OF CASES</u>
Dismissed	136
Affirmed	237
Board Initiated Remand	1
Court Initiated Remand	16
Reversed	13
Total	403

In 93% of the above cases, the court left the Board's decision unchanged (either dismissed or affirmed)

Of the 267 cases (Total number of cases minus Dismissed cases) that were adjudicated, the court affirmed 89% of the Board's decisions.

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