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# U.S. Court of Appeals for Veterans Claims: A Brief Introduction

The U.S. Court of Appeals for Veterans Claims (CAVC) provides the exclusive forum for veterans and other claimants, such as veterans' surviving spouses, to appeal U.S. Department of Veterans Affairs (VA) decisions denying various veterans' benefits. This In Focus describes the CAVC's creation, jurisdiction, authority, and procedures before identifying several issues that may interest the 117th Congress.

## Creation

Using its authority under Article I of the U.S. Constitution, Congress established the CAVC (then called the U.S. Court of Veterans Appeals) in 1988 through the Veterans' Judicial Review Act (Pub. L. No. 100-687). (For more information on Article I courts, see CRS Report R43746, *Congressional Power to Create Federal Courts: A Legal Overview*.) The Veterans Programs Enhancement Act of 1998 (Pub. L. No. 105-368) gave the CAVC its current name. The statutes governing the CAVC are in chapter 72 of title 38 of the U.S. Code.

## Jurisdiction and Authority

The CAVC has exclusive jurisdiction to hear appeals of decisions from the Board of Veterans' Appeals (BVA), VA's top-level administrative tribunal. These decisions concern entitlement to various types of VA benefits, including disability compensation, pensions, education benefits, and survivor benefits. The CAVC also has the authority under the All Writs Act, 28 U.S.C. § 1651, to issue writs—special types of court orders—in aid of its jurisdiction. Under this authority, the CAVC can compel VA to take any action (such as issuing a decision or providing a medical examination) "unlawfully withheld or unreasonably delayed" if that action relates to a claim that could ultimately be appealed to the CAVC. In addition, the CAVC can award attorney fees under the Equal Access to Justice Act (EAJA) (Pub. L. No. 96-481) for successfully challenging BVA decisions.

In *Monk v. Shulkin*, 855 F.3d 1312 (Fed. Cir. 2017), the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that the CAVC has authority to hear class action cases because of authority granted by the All Writs Act and the CAVC's ability to establish its own rules and procedures. Since *Monk*, the CAVC has certified several classes and has amended its Rules of Practice and Procedure to specify class-action procedures in future cases. For more information about the CAVC's class action jurisdiction, see CRS Legal Sidebar LSB10376, *An Army of Many: Veterans' Benefits Class Actions in the U.S. Court of Appeals for Veterans Claims*.

## Judges

The CAVC consists of nine judges, including a chief judge who serves on a rotating basis. Seven judgeships are permanently authorized; two additional seats are authorized under a temporary expansion that will expire in 2026. Judges are nominated by the President and confirmed by the Senate for a fixed term of 15 years, though judges may be reappointed. Of the nine current active judges, six are veterans. Before the expiration of his or her term, a judge can be removed by the President only for misconduct, neglect of duty, engaging in the practice of law, or residing more than 50 miles outside the Washington, DC, area.

In addition to the nine active judges, the CAVC uses retired judges in recall status to hear cases. The chief judge may recall a retired judge for service when necessary to meet the CAVC's needs. There are now 10 recall-eligible retired judges; 4 are serving in recall status.

## Court Proceedings

Proceedings before the CAVC are adversarial. Appellants and petitioners may represent themselves or be represented. Both attorneys and nonattorneys who meet certain requirements may be admitted to practice before the CAVC. The appellee or respondent in all cases is the Secretary of Veterans Affairs, who is represented by attorneys from the VA Office of General Counsel.

The CAVC generally sits in Washington, DC, but has authority to sit anywhere in the United States. Several times per year, the CAVC holds oral arguments at law schools and federal courthouses throughout the country.

### Appeals

Only individuals adversely affected by a BVA decision may file an appeal to the CAVC—the government may not do so. The CAVC reviews the BVA's legal conclusions de novo (without deference to the BVA's determinations) but reviews the BVA's findings of fact for clear error.

According to the CAVC's annual report for FY2020, more than two-thirds of appeals were resolved through a mediation process run by the CAVC's central legal staff without being assigned to a judge. In such cases, the parties agree to end the appeal or remand the case to VA for further proceedings.

If an appeal is assigned to a judge, the judge may decide the case on the briefs or refer the case to a panel of three active judges for a precedential decision, with or without oral argument. Once a single judge or panel writes a decision, it is circulated to all other active judges for review. At this point, a single-judge decision may be sent to a three-judge

panel if two judges vote to do so, or a single-judge or panel decision may be reheard en banc (i.e., by all active judges) if a majority of judges vote to do so. After the CAVC issues a decision, a party can move for reconsideration, panel review, or en banc review.

### Petitions for Extraordinary Writs

Individuals who have claims pending before VA and assert that the agency has unlawfully withheld or unreasonably delayed an action (such as failing to issue a timely decision or help a claimant obtain evidence) may petition the CAVC for an extraordinary writ compelling VA to act. Petitions do not go through the CAVC's mediation process and are instead assigned directly to an active judge. Once assigned to a judge, a petition follows the same process as an appeal.

### Applications for EAJA Fees

An appellant may receive a payment from the government for reasonable attorney fees and litigation expenses if the appellant (1) is a prevailing party, (2) can show that VA's position was not "substantially justified," and (3) meets certain other requirements. (For more information on EAJA fees, see CRS In Focus IF11246, *Attorney's Fees and the Equal Access to Justice Act: Legal Framework*.) Almost all attorneys appearing before the CAVC represent their clients pro bono with a stipulation that the attorney will receive any EAJA fees awarded.

### Use of Technology

The CAVC requires all represented parties to file case materials electronically through the court's case management and electronic case files (CM/ECF) system. Unrepresented parties may submit materials through CM/ECF, by email, or by mail. The CAVC does not charge the public to access materials on its docket.

In April 2019, the CAVC began livestreaming its oral arguments on YouTube. Links to videos and audio files of past arguments are available on the CAVC's website: http://www.uscourts.cavc.gov/oral_arguments.php.

## Types of Decisions

The CAVC resolves cases through decisions issued by the clerk of the court, an individual judge, or a panel of judges. When the parties file a joint motion to remand a case or end an appeal, the clerk will issue a *clerk's order* granting the motion and resolving the case. The clerk also grants unopposed motions for EAJA fees. According to the CAVC's annual report, nearly 80% of the CAVC's cases were resolved by clerk's orders in 2020.

CAVC judges have statutory authority under 38 U.S.C. § 7267(b) to issue *single-judge decisions*. These decisions take two forms: orders that resolve petitions and motions to dismiss an appeal; and memorandum decisions that decide appeals on the merits. Single-judge decisions are not precedential (i.e., not binding in future CAVC or VA cases) and, according to the CAVC's annual report, accounted for roughly 20% of the CAVC's decisions.

Cases that present a new issue of law or require the CAVC to modify an existing rule are generally decided by a *panel decision* issued by three judges. Cases of exceptional importance or that require the CAVC to overturn a previous decision are decided by the en banc court. Panel and en banc decisions are generally precedential and bind both the CAVC and VA in all future cases. According to the CAVC's annual report, less than 1% of the CAVC's cases led to panel or en banc decisions.

## Appeals

The Federal Circuit has exclusive jurisdiction to review CAVC decisions. Any party, including the government, may appeal a CAVC decision to the Federal Circuit. The Federal Circuit's review is generally limited to legal questions, and it cannot review the CAVC's factual findings or application of a law to the facts of a particular case unless the case presents a constitutional issue.

## Recent Caseload Statistics

According to its annual report, in FY2020, the CAVC received 8,954 appeals—a 5.7% increase from FY2019—along with 297 petitions and 6,512 EAJA applications. This increase was likely due to a larger number of decisions issued by the BVA (per the BVA's FY2020 annual report, the BVA issued 102,663 in FY2020, up from 95,098 in FY2019).

During FY2020, the CAVC issued 15,483 decisions addressing 8,430 appeals, 309 petitions, and 6,744 EAJA applications. The court affirmed the BVA's decision in around 7% of appeals, reversed or remanded in 39% of appeals, and dismissed 13% of appeals. The remaining 41% of appeals led to mixed outcomes. The CAVC issued 2 en banc decisions and 49 panel decisions in FY2019.

## Issues for Congress

The House and Senate Veterans' Affairs Committees have authorizing jurisdiction over the CAVC, while the Military Construction, Veterans Affairs, and Related Agencies Subcommittees of the House and Senate Appropriations Committees have appropriations jurisdiction.

### Class Action Jurisdiction

Because the CAVC is still developing its class action authority, Congress may wish to address the scope of that authority. This could include setting specific procedures or expressly allowing or prohibiting class actions arising out of certain types of cases (e.g., petitions or appeals).

### Temporary CAVC Expansion

To keep pace with its increasing case load, the CAVC will likely need to maintain, if not expand, the number of judges in active service. The CAVC's temporary authorization for nine judges expires in 2026. Although the expiration will not affect any judges appointed before that date, it would prevent the appointment of more than seven judges when new vacancies arise. If Congress wishes to address this issue, it could consider extending the authorization, making it permanent, or authorizing more than nine judges.

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