

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

JUSTIN D. GRAY,)	
)	
Petitioner,)	
)	
v.)	Vet. App. No. 22-3933
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Respondent.)	

**THE SECRETARY’S RESPONSE TO THE
COURT ORDER DATED NOVEMBER 18, 2022**

Respondent, Denis McDonough, Secretary of Veterans Affairs (Secretary or Respondent), hereby provides the attached declaration of Christopher A. Santoro, in response to the order of this Court, dated November 18, 2022. (Attachment). The attached declaration is submitted in response to the Court’s questions contained in the November 18, 2022, order.

WHEREFORE, the Secretary respectfully responds to the Court’s November 18, 2022, Order.

Respectfully submitted,

CATHERINE C. MITRANO
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Megan C. Kral

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ATTACHMENT

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Secretary of Veterans Affairs,)	
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DECLARATION OF CHRISTOPHER A. SANTORO

I, Christopher A. Santoro, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury the following:

1. I am a Deputy Vice Chairman of the Board of Veterans' Appeals (Board), in the Department of Veterans Affairs (VA) and, as such, I am among those responsible for the control and supervision of the administrative appeals operations at the Board. The numerical information contained in this declaration is based on Board staff's review of the information available in the Veterans Appeals Control and Locator System (VACOLS) and Caseflow (the Board's computerized tracking systems) as it was reported to me.
2. This declaration is provided in response to a November 18, 2022, Order of the United States Court of Appeals for Veterans Claims (Court) directing the Secretary to obtain a declaration from Deputy Vice Chairman Christopher A. Santoro, or another appropriate Board official, addressing additional specific questions regarding the Board's distribution of cases.
3. There have been 16,760 non-priority legacy appeals with a VA Form 9 dated after December 24, 2018, distributed from December 1, 2018, through December 6, 2022. Priority appeals are cases that have been advanced on the docket (AOD) or remanded to the Board from the Court. Of those cases, 10,493 were distributed by the Board's automatic distribution system, and 6,267 were distributed manually.

4. Of the 10,493 distributed automatically, 5,681 were hearing cases. As previously noted in the October 31, 2022, Declaration, prior to the September and October 2022 case distribution simplification, the Board's case distribution system distributed legacy appeals where a hearing was held before some non-hearing cases with an earlier docket date. Of the remaining 4,812 appeals automatically distributed ahead of the Petitioner's, those appeals were distributed in accordance with the case distribution system parameters in place at the time. Some of these appeals were distributed prior to when the Petitioner's appeal was certified to, and received at the Board, which occurred on May 24, 2020.
5. Of the 6,267 appeals distributed manually, 696 were part of the One-Touch program, and 1,333 were Specialty Case Team appeals. To the extent it is even possible to determine why the remaining 4,238 appeals were manually distributed ahead of the Petitioner's, the Board would have to manually review each appeal. As the Board's systems do not track the reasons for distribution in a way that can automatically be searched beyond what was provided above, to the extent it is even possible, the Board does not have the resources required to determine the reason that the remaining 4,238 appeals were distributed ahead of the Petitioner's. If ordered to do so, the Board would have to divert personnel away from adjudicating appeals. Therefore, identifying the individual reasons for distribution of the 4,238 appeals would be impossible without adversely affecting other Veterans with pending appeals.
6. As of close of business on November 21, 2022, there were a total of 58,528 legacy appeals pending before the Board. As of close of business on December 2, 2022, there were a total of 57,921 legacy appeals pending before the Board. As of December 16, 2022,¹ there were a total of 57,519, legacy appeals pending before the Board.
7. As of November 21, 2022, the substantive appeal (i.e., the VA Form 9 receipt date) for the oldest case awaiting an original decision by the Board was received on September 3, 2004. As of December 2, 2022, the VA Form 9 receipt date for the oldest case awaiting an original decision by the Board was March 1, 2012. As of December 16, 2022, the VA Form 9 receipt date for the oldest case awaiting an original decision by the Board was August 21, 2012.
8. As of close of business on November 21, 2022, there were 7,364 legacy appeals "ahead" of Petitioner's appeal on the Board's docket. Of these appeals, 28 were AOD, 17 were post-Court remands, 3,205 were Board

¹ Number and dates for December 16th were as of approximately 12:00pm.

remands returned from the Agency of Original Jurisdiction (AOJ), and 4,120 were original appeals. Some of the appeals were both AOD and either a post-Court remand or a post-Board remand and therefore counted twice.

9. As of close of business on December 2, 2022, there were 6,538 legacy appeals “ahead” of Petitioner’s appeal on the Board’s docket. Of these appeals, 17 were AOD, 15 were post-Court remands, 2,909 were Board remands returned from the AOJ, and 3,604 were original appeals. Some of the appeals were both AOD and either a post-Court remand or a post-Board remand and therefore counted twice.
10. As of December 16, 2022, there were 4,858 legacy appeals “ahead” of Petitioner’s appeal on the Board’s docket. Of these appeals, 29 were AOD, 16 were post-Court remands, 2,210 were Board remands returned from the AOJ, and 2,627 were original appeals. Some of the appeals were both AOD and either a post-Court remand or a post-Board remand and therefore counted twice.
11. For the month of October 2022, there were 696 original legacy appeals distributed to a Board member. Of these distributed original legacy appeals, the date received for the oldest VA Form 9 was April 30, 2007. The date received for the most recent VA Form 9 was August 8, 2022, which was a priority appeal.
12. For the month of November 2022, there were 1,183 original legacy appeals distributed to a Board member. Of these distributed original legacy appeals, the date received for the oldest VA Form 9 was July 30, 2004. The date received for the most recent VA Form 9 was October 18, 2022, which was a priority appeal.
13. For non-priority original legacy appeals distributed to a Board member during the month of October 2022, the date received for the oldest VA Form 9 was April 30, 2007. The date received for the most recent VA Form was April 16, 2020. As noted above, in October 2022 some non-priority original appeals where a hearing had been held were distributed before non-hearing appeals. The date received for the oldest VA Form 9 for non-priority original legacy appeals distributed to a Board member during the month of October 2022 was April 30, 2007. The date received for the most recent VA Form 9 was January 11, 2018 (excluding appeals where a hearing had been held).
14. For non-priority original legacy appeals distributed to a Board member during the month of November 2022, the date received for the oldest VA

Form 9 was July 30, 2004. The date received for the most recent VA Form 9 was March 20, 2018.

15. In November 2022, the most recent non-priority original legacy appeal distributed to a Board member had a VA Form 9 receipt date of March 20, 2018. This is the docket date the Board worked up to in November 2022 for non-priority original legacy appeals, as the law requires that priority appeals and returned remands from the AOJ with earlier docket dates be worked prior to non-priority original legacy appeals. This best represents where the Board is in distributing non-priority original legacy appeals. The term “working docket range” was used to describe the range of cases that were considered distributable due to the impracticality of locating the file for the literal oldest case every time distribution occurred, and therefore is not applicable under the current simplified distribution system. The current system allows the Board to sort all available cases and automatically distributes the oldest after priority appeals have been distributed; therefore, “working docket range” does not accurately describe the current distribution system.
16. For November 2022, 76 percent of all cases distributed to Board members were legacy appeals, and 23 percent were Appeals Modernization Act (AMA) appeals. Of the distributed legacy appeals, 36 percent were priority, meaning an AOD or post-Court remand appeal, and 63 percent were non-priority, meaning, a non-AOD or non-post-Court remand appeal. Of the distributed AMA appeals, 100 percent were priority, and zero percent were non-priority.
17. In Fiscal Year 2022, the Board issued 67,256 legacy decisions (excluding dismissals). Of the legacy decisions issued, 17,501 were AOD; 7,268 were Court remands; 22,623 were post-Board remands; and 19,504 were original appeals. Accordingly, 36.8 percent of legacy decisions issued in Fiscal Year 2022 involved priority appeals, 33.6 percent were non-priority post-Board remands, and 29 percent were non-priority original legacy appeals. Non-priority legacy appeals will not be perpetually prevented from having a decision issued because the Board issued 138,145 decisions in non-priority legacy appeals in Fiscal Years 2020 through 2022, with 45.4 percent of those in original legacy appeals.

I certify under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on the 21st day of December 2022.

A handwritten signature in black ink, appearing to read "Christopher A. Santoro". The signature is stylized with a large initial "C" and a long horizontal stroke at the end.

CHRISTOPHER A. SANTORO