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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Honorable Donald J. Pease House Of Representatives

Adjudication Of Black Lung Claims By Labor's Office Of Administrative Law Judges And Benefits Review Board

As of September 30, 1984, the Department of Labor's Office of Administrative Law Judges (OALJ) and Benefits Review Board had sizable inventories of pending black lung cases--20,450 and 5,234 cases, respectively. According to Labor, these inventories of appealed cases grew to their present levels following the 1978 enactment of black lung amendments that required Labor's Office of Workers' Compensation Programs to re-review previously denied and pending claims for black lung benefits.

Given fiscal year 1984 staffing levels, GAO estimated that OALJ could take over 35 years to reduce its backlog of black lung cases to levels considered reasonable (6,000) and decisions on cases could take, on the average, more than 3 years through the mid-1990's. Recently, OALJ implemented plans to reduce this backlog more quickly by contracting with additional judges, and GAO estimated that this could reduce the backlog to reasonable levels in about 9 years.

While the Board also had a sizable backlog of black lung cases at the end of fiscal year 1984, recent legislation increased the Board's size from three to nine members (five permanent and four temporary members). If OALJ's plan to reduce its backlog is successful, Labor expects that more cases will be appealed to the Board than previously anticipated. In this case, GAO estimated that the expanded Board could take about 12 years to reduce its backlog of black lung cases to levels considered reasonable (800). If the number of cases appealed to the Board does not increase as anticipated, GAO estimated that the Board's backlog could be reduced sooner.



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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-216900

The Honorable Donald J. Pease
House of Representatives

Dear Mr. Pease:

This report is in response to your May 14, 1984, letter, which expressed your concern that some individuals were required to wait up to 3 years for a determination of their eligibility for disability benefits under the black lung program administered by the Department of Labor. You asked that we review the current administration of the black lung program.

At a May 1984 briefing with you, we discussed the Department of Labor's Office of Workers' Compensation Programs' (OWCP's) administration of the black lung program with particular emphasis on the sizable number of black lung cases pending before Labor's Office of Administrative Law Judges (OALJ) and the Benefits Review Board. The Board adjudicates appeals of OALJ decisions.

At that time, we provided you with copies of Labor's reports¹ on the adjudication of claims filed under the Black Lung Benefits Act. These reports discussed reasons for the growth in the number of appealed black lung cases that were pending before OALJ and the Board and proposals to increase the number of cases that can be disposed of by these organizations.

As a result of two briefings in May and August 1984, we agreed to provide you with information on the following matters related to appealed black lung cases.

--The growth in the backlogs of cases.

--Labor's proposals to reduce these backlogs.

¹These reports, from the Under Secretary of Labor to the Chairman, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Senate Committee on Appropriations, were dated November 30, 1983, and February 15, 1984.

--The length of time it takes, particularly at the OALJ level, to dispose of appealed cases.

--OALJ and Board costs of adjudicating these cases.

--Estimates on the length of time to reduce these backlogs, considering the anticipated number of (1) new appeals that will be filed and (2) cases that will be disposed of by OALJ and the Board.

Appendix I provides a detailed discussion of the results of our review, including information on the rights of the various parties to appeal administrative decisions reached by OWCP and on OALJ and Board processes for adjudicating black lung appealed cases.

We obtained the information discussed in this report from OALJ, the Board, and OWCP officials as well as from such sources as black lung program manuals and federal regulations related to Labor's administration of the black lung program. The estimates that we developed on the length of time to reduce OALJ and Board backlogs of pending cases were, for the most part, computed from information obtained from Labor on the anticipated numbers of (1) black lung claims that will be appealed and (2) cases that will be disposed of by OALJ and the Board. We recognize that these estimates depend on the accuracy of Labor's forecast and that they will need to be revised as conditions change and new information becomes available.

In summary, our review disclosed that:

--As of September 30, 1984, OALJ and the Board had sizable inventories of pending black lung cases--20,450 and 5,234, respectively. For the most part, these inventories increased to current levels following the 1978 enactment of black lung amendments which required the rereview of all previously denied and pending black lung claims. As OWCP decided these claims, many dissatisfied parties--primarily denied claimants or coal mine employers (referred to as responsible operators)--exercised their rights to formally appeal these decisions first to OALJ and, if still dissatisfied, to the Board. Appendixes II and IV show the growth in the number of appeals pending before OALJ and the Board since fiscal year 1979.

- The Chief Administrative Law Judge believes that the average work-in-process time from when OALJ receives a case until it reaches a decision should be about 1 year. However, 78 percent of the 4,811 cases that OALJ disposed of between October 1, 1983, and August 21, 1984, took more than 2 years. In fiscal year 1983, 23 percent of the dispositions took more than 2 years. Based on (1) the current backlog (20,450 cases), (2) Labor's February 1984 estimate of cases that can be disposed by OALJ in 1 year (5,400), and (3) OALJ fiscal year 1984 staff levels, a new appeal filed with OALJ in October 1984 could take, on the average, over 3.5 years to decide.
- In its February 1984 report, Labor estimated that OALJ can dispose of 400 more black lung cases than the 5,000 it expects to receive annually. Based on 20,450 pending cases before OALJ on September 30, 1984, it could take over 35 years to reduce this inventory to 6,000 cases--a level that the Chief Administrative Law Judge believes is reasonable.
- The Chief Administrative Law Judge told us that in September 1984 he implemented a plan to contract with retired administrative law judges to assist in preparing OALJ decisions on black lung cases. According to this plan, he expects OALJ to dispose of 1,600 more black lung cases than the 5,000 cases it expects to receive annually. Using this figure, the inventory of pending black lung cases at the end of fiscal year 1984 could be reduced to about 6,000 cases in just over 9 years. Efforts to reduce OALJ's inventory of pending black lung claims at a much faster rate would, in our opinion, require either (1) more extensive use of "retired" judges, (2) an increase in the number of administrative law judges in OALJ, or (3) greater use of "borrowed" judges from other federal agencies.
- Legislation (Public Law 98-426) enacted on September 28, 1984, that amended the Longshoremen's and Harbor Workers' Compensation Act increased the size of the Board from three to five members and authorized the Secretary of Labor to designate up to four of Labor's administrative law judges as temporary Board members. Without these amendments, the Board's inventory of 5,234 pending cases as of September 30, 1984, could have increased by about 1,000 cases per year.

We estimated that in about 6 years an expanded nine-member Board with a full complement of support staff could reduce its backlog of black lung cases to about 800--a level that we considered reasonable based on the legislative history of Public Law 98-426. By the end of fiscal year 1987, parties appealing OALJ decisions could wait about 1 year for their case to be adjudicated by the Board.

Because about 45 percent of the OALJ dispositions are appealed to the Board, an increase in OALJ dispositions from 5,400 to 6,600 cases (as previously discussed) could increase the estimated length of time to reduce the Board's backlog by about 6 years.

--According to Board officials, the Board currently takes, on the average, about 27 months to dispose of an appealed black lung case. They believed that the average work-in-process time from when the Board receives an appeal until it reaches a decision should be about 6 months.

--OALJ and Board costs for adjudicating black lung cases in fiscal year 1984 are expected to total about \$7.2 million and \$2.9 million, respectively. These costs as well as the costs of paying black lung benefits to selected eligible claimants (over \$631 million in fiscal year 1983) are charged to the black lung disability trust fund. This fund was established in 1978 to transfer the costs of Labor's black lung program from the federal government to the coal industry. Since establishment, the trust fund has operated at a deficit and, as of September 30, 1983, owed the U.S. Treasury over \$2.1 billion.

To the extent that OALJ and the Board increase the size of their staffs to adjudicate a greater number of black lung cases, the increased costs of adjudicating these cases would also be charged to the trust fund. We, however, did not determine the net effect of more OALJ and Board dispositions on the trust fund's financial position because OALJ and Board decisions may be different than those reached by OWCP's claims examiners (upon appeal, approved claims may be denied and denied claims approved).

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We discussed the matters in this report with officials from OWCP, OALJ, the Board, and the Office of the Under Secretary of Labor, and their comments have been considered in preparing this report. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days after its issue date. At that time we will send copies to interested parties and make copies available to others on request.

Sincerely yours,



Richard L. Fogel
Director

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ABBREVIATIONS

OALJ	Office of Administrative Law Judges
OWCP	Office of Workers' Compensation Programs

ADJUDICATION OF BLACK LUNG CLAIMS BY
LABOR'S OFFICE OF ADMINISTRATIVE LAW
JUDGES AND BENEFITS REVIEW BOARD

In May 1984, Congressman Donald J. Pease requested that we review the current administration of the black lung program. In subsequent discussions with Mr. Pease it was agreed that we would provide information on the following matters relating to appealed black lung cases.

- The growth in the backlogs of cases.
- Labor's proposals to reduce these backlogs.
- The length of time it takes, particularly in the Office of Administrative Law Judges (OALJ), to dispose of appealed cases.
- OALJ's and Benefits Review Board's costs of adjudicating these cases.
- Estimates on the length of time to reduce these backlogs, considering the anticipated number of (1) new appeals that will be filed and (2) cases that will be disposed of by OALJ and the Board.

BACKGROUND

In 1969, title IV of the Federal Coal Mine Health and Safety Act¹ established a black lung benefits program for coal miners totally disabled by coal workers' pneumoconiosis (commonly referred to as black lung) and for surviving dependents of miners whose deaths were due to such disease. Since 1973, when this program was transferred from the Social Security Administration to the Department of Labor, Labor has been responsible for adjudicating miners' or their survivors' claims for black lung benefits.

Claims for black lung benefits are initially processed in Labor's Office of Workers' Compensation Programs (OWCP), Division of Coal Mine Workers' Compensation. Subsequently, parties adversely affected by an OWCP decision may request a hearing

¹Title IV of the Federal Coal Mine Health and Safety Act was retitled as the "Black Lung Benefits Act" by the black lung amendments enacted in 1978.

before an administrative law judge in Labor's OALJ and, if still not satisfied, may further appeal the OALJ decision to the Board. The costs of OALJ and Board black lung activities are financed from the black lung disability trust fund.

Initial claims processing by OWCP

Within Labor, OWCP claims examiners review, develop, and process claims for black lung benefits. These examiners also make initial findings on such matters as entitlements to benefits and identification of mine operators who may be responsible (responsible operators) for paying black lung benefits to eligible claimants.

After OWCP notifies the parties (claimants and, where appropriate, responsible operators) of its initial claims' findings, these parties, if not satisfied, have specific rights to request further consideration of the findings reached by OWCP. Applicants whose claims are denied may either (1) submit additional evidence that OWCP's claims examiners will review to determine if the evidence justifies a change in the initial finding or (2) request a formal hearing conducted by OALJ. Denied claimants have 1 year from the date the claim is denied by either OWCP, OALJ, or the Board to request a modification of the decision, but only if they submit evidence that their condition has changed or if a mistake was made when the claim was denied.

Responsible mine operators, who are dissatisfied with the initial finding, have essentially the same rights as denied claimants in that they may (1) submit additional evidence that claims examiners will review or (2) contest the decision to award benefits and request a hearing before OALJ. Responsible operators may also request a modification of the decision to award benefits if the miner's condition changes or if a mistake was made in determining the facts upon which the claim was approved.

In addition to the rights of claimants and responsible operators, OWCP district office deputy commissioners have a discretionary right to hold an "informal conference" with the affected parties. These conferences are held when it appears that they will assist in the voluntary resolution of a disputed claim or of any issues related to such a claim. If after such a conference issues remain disputed, the claim should be forwarded to OALJ for a formal hearing.

Claimants, whose applications are approved by OWCP, subsequently begin receiving monthly black lung benefits. For cases in which responsible operators are not liable, benefit payments are made from the black lung disability trust fund (see p. 6). In other cases OWCP identifies responsible operators; however, these operators may fail to initiate benefit payments, contest the claim's approval, and request an OALJ hearing. In this situation, eligible claimants would receive "interim benefits" from the trust fund. If OALJ subsequently approves the claim, the responsible operator to avoid paying penalties must reimburse the fund the full amount (with interest) of all benefit payments made by the fund and begin making benefit payments to the eligible claimant. If the claim is denied, interim benefits would be terminated.

Hearings before administrative law judges

Following a determination by OWCP, any party in interest (generally denied claimants or responsible operators) may request an impartial evidentiary hearing² before an administrative law judge from Labor's OALJ. Before the hearing is held, OWCP forwards pertinent information in the claim file to OALJ. At these hearings, which are governed by the rules set forth in the Administrative Procedure Act (5 U.S.C. 554 *et seq.*), a judge considers all relevant evidence and testimony submitted by the parties in arriving at an impartial decision. A verbatim transcript is prepared for use by the judge and for any subsequent appeals.

At the OALJ level, parties are permitted to raise new issues, if timely notice is provided, and to present new evidence. Where possible, hearings are required by regulations to be held within 75 miles of the claimant's residence and witnesses at the hearing are required to testify under oath or affirmation.

According to the Chief Administrative Law Judge, hearings for black lung cases generally take from a few hours to 2 or 3 days depending on the complexity of the issues and the number of witnesses that present testimony. This official also told us that these appeals are generally heard in the order in which they are received by OALJ. However, exceptions are occasionally

²These hearings are considered de novo proceedings, which means that the findings of OWCP's deputy commissioners regarding contested issues are not considered.

granted in cases where claimants would suffer an extreme hardship if their cases were not heard in an expeditious manner. Administrative law judges may also add more recently appealed cases to their itineraries in order to make their out-of-town trips to locations within 75 miles of claimants' residences more productive.

Upon hearing a case, administrative law judges may (1) refer the case back to OWCP for further action if the documented evidence is incomplete or if new issues are raised; (2) dismiss the case for such reasons as the claimant's failure to attend the hearing or the claimant's failure to comply with a lawful order of an administrative law judge; or (3) issue a decision either to award benefits, reject the claim, suspend benefits, or modify the award. Any party, including OWCP, dissatisfied with a judge's decision may, before it becomes final, appeal the decision to the Board.

In fiscal year 1984, Labor expects OALJ to spend about \$7.2 million (48 percent of its total budget of \$15,031,000) for hearing and deciding black lung cases. In addition, OALJ's 80 administrative law judges are expected to spend about 37 staff years of effort on these cases. According to the Chief Administrative Law Judge, because many of the applicants claiming black lung benefits reside in Pennsylvania, West Virginia, and Kentucky, 23 judges located in OALJ district offices in Pittsburgh and Cincinnati spend almost full time on hearing and deciding black lung cases. The remaining 14 staff years of effort are spent by judges who hear and decide black lung cases as well as other cases that OALJ has responsibility for deciding under laws, such as the Longshore and Harbor Workers' Compensation Act, the Fair Labor Standards Act, and the Service Contract Act. In addition to the judges who hear and decide black lung cases, OALJ estimated that in fiscal year 1984, it will spend about 100 staff years of effort for legal clerks, staff attorneys, and others who handle black lung appeals.

The costs of OALJ's black lung activities are financed from the black lung disability trust fund.

Appeals to the Board

For black lung cases, any party adversely affected by a decision of an administrative law judge may appeal the decision to the Board. A three-member Board was established in 1972 by amendments to the Longshoremen's and Harbor Workers' Compensation Act. The Board adjudicates appeals of claims for workers' compensation benefits filed by injured employees covered under

the act. By reference, black lung legislation provides that the Board shall adjudicate appeals of black lung claims.

Appeals to the Board must involve a substantial question of law or fact, and the finding of fact in the OALJ decision being reviewed by the Board shall be conclusive, if supported by substantial evidence in the record considered as a whole. In making its decision, the Board generally relies on the case record. While the affected parties (including OWCP) may submit briefs and memoranda to the Board in support of their position, no additional evidence can be submitted and generally no testimony is heard.

Similar to an administrative law judge's decision, the Board may (1) refer the case for further proceedings to either OALJ or OWCP; (2) act on a motion to dismiss the case; (3) issue a summary decision disposing of an appeal in cases where the issues raised on appeal have been thoroughly discussed and previously disposed of by the Board or by the courts in other black lung cases; (4) issue final orders in cases where the parties agree that the appeal should be withdrawn or that the claim should be paid before the Board finally decides the case; and (5) uphold, modify, or reverse the administrative law judge's decision. According to the Chairman of the Board, appealed black lung cases are rarely considered out of the order in which they are received.

A party adversely affected by a Board decision may request a further review of that decision in the appropriate U.S. court of appeals.³

In fiscal year 1984, the Board expects to spend about \$2.9 million (83 percent of its total budget of \$3,468,000) on black lung activities. In addition to the three-member Board, the Board expects to spend about 100 staff years of effort in fiscal year 1984 on all of the matters for which it has responsibility. The costs of the Board's black lung activities are also financed from the black lung disability trust fund.

³Cases appealed beyond the Board are not discussed elsewhere in this report. For the 20-month period ended May 1984, 158 Board decisions were appealed to the court of appeals.

Costs for adjudicating appeals
charged to the black lung
disability trust fund

As previously stated, OALJ's and the Board's costs for adjudicating black lung appealed cases are charged to the black lung disability trust fund. The fund was established in 1978 to transfer the cost of Labor's black lung program from the federal government to the coal mine industry. The fund is financed by a tax on coal produced of \$1 per ton for underground mined coal and \$0.50 per ton for surface mined coal; the tax is limited to 4 percent of the coal's sales price. In fiscal year 1983, revenues from these taxes amounted to over \$493 million.

In fiscal year 1984, OALJ and the Board are expected to spend an estimated \$7.2 million and \$2.9 million, respectively, for adjudicating black lung appealed cases. In addition to these and other Labor expenses for administering the black lung program, the trust fund is required to pay black lung benefits to eligible claimants whose benefits are not being paid by responsible operators. In fiscal year 1983, benefit payments from the trust fund totaled \$631 million.

Since the fund was established in 1978, it has operated at a deficit. This deficit has been financed from the general revenues of the U.S. Treasury which must be repaid with interest from future trust fund revenues. As of September 30, 1983, the trust fund owed the Treasury over \$2.1 billion.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review objectives were to (1) obtain information on the way Labor processes appealed cases, (2) identify the number of appealed black lung cases that were pending before OALJ and the Board, (3) develop estimates on the length of time these organizations may take to reduce the number of pending cases to reasonable levels, and (4) identify OALJ and Board costs of adjudicating appealed black lung cases.

In meeting these objectives, we relied on Labor's February 1984 report to the Chairman, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Senate Committee on Appropriations, on the adjudication of claims under the Black Lung Benefits Act; historical data obtained from OWCP, OALJ, and the Board; interviews with officials from these organizations; and legislative history information on the recently enacted Longshore and Harbor Workers' Compensation Act Amendments of 1984 (Public Law 98-426).

We also obtained information on the adjudication of black lung claims from annual reports submitted to the Congress by the Secretary of Labor, black lung program manuals, previously issued GAO reports on the black lung program, and federal regulations relating to Labor's administration of this program. We did not review individual cases decided by OALJ or the Board, nor did we verify the statistical data obtained from OWCP, OALJ, and the Board.

In developing estimates for the length of time to reduce OALJ's and the Board's backlogs of pending cases, we considered existing information on the anticipated numbers of (1) black lung claims that will be appealed and (2) cases that will be disposed of by OALJ and the Board. In developing these estimates we recognize that the future size of OALJ's and the Board's black lung backlogs depend on the validity of Labor's forecasts and that the estimates will need to be revised as new information becomes available.

We discussed the matters in a draft of this report with officials from OWCP, OALJ, and the Board as well as the Office of the Under Secretary of Labor and have incorporated their comments where appropriate. We performed our review in accordance with current standards for audit of governmental organizations, programs, activities, and functions.

OALJ'S BACKLOG OF PENDING BLACK LUNG CASES

The inventory of pending black lung cases appealed to OALJ increased from 484 cases at the end of fiscal year 1979 to 20,450 cases on September 30, 1984. According to the Chief Administrative Law Judge and OWCP's Associate Director, Division of Coal Mine Workers Compensation, this increase occurred primarily as a result of the 1978 enactment of amendments to the Federal Coal Mine Health and Safety Act. These amendments, which liberalized criteria for determining coal miners' or their survivors' eligibility for black lung benefits, required OWCP (and, in some cases, the Social Security Administration) to rereview previously denied and pending claims using new criteria. As a result of these amendments, OWCP had to rereview about 200,000 claims.

According to the OWCP official, after OWCP decided these claims, many of the denied claimants and most of the responsible operators who were found liable for paying eligible claimants' benefits exercised their rights to (1) submit additional evidence for review by OWCP's claims examiners or (2) request a

formal hearing before an administrative law judge from OALJ. Some adversely affected parties did both.

In efforts to respond to the large volume of black lung appeals, the number of staff years for administrative law judges to hear and decide black lung cases increased in fiscal year 1981 from 18 to 37 staff years. Corresponding to this increase an even greater expansion of OALJ support personnel (legal clerks, staff attorneys, and others) occurred--from 14 to 81 staff years. In addition to expanding the size of its staff to handle black lung appeals, OALJ has from time to time "borrowed" administrative law judges from other federal agencies with lower than anticipated workloads to hear and decide appealed black lung cases. In June 1984, OALJ "borrowed" 11 judges (9 from the Social Security Administration and 2 from the Interstate Commerce Commission) to serve 120-day details that ended on September 30, 1984. Each of these judges was expected to hear and decide at least 45 cases.

Although the number of black lung cases that OALJ disposed of in 1981 increased significantly (from 1,988 in fiscal year 1980 to 4,633 in fiscal year 1981), the number of cases that OWCP referred to OALJ for a hearing continued to exceed the capability of the administrative law judges to dispose of these cases. The information in the following table, provided by OALJ, shows the number of cases referred to, disposed of, and pending before OALJ.

OALJ Workload Statistics (1979-84)

<u>Fiscal year</u>	<u>Referrals</u>	<u>Dispositions</u>	<u>Pending</u>
1979	560	1,032	484
1980	10,003	1,908	8,579
1981	10,827	4,633	14,773
1982	6,394	4,456 ^a	13,411
1983	7,925	5,427	15,909
1984	10,322	5,781	20,450

^aIn fiscal year 1982, OALJ disposed of an additional 3,300 cases for which liability for paying black lung benefits was transferred from responsible operators to the black lung disability trust fund. This transfer was made pursuant to provisions in the 1981 black lung amendments which, in effect, stated that responsible operators were not liable for claims that were denied before the 1978 enactment of black lung amendments and subsequently approved on rereview after these amendments. OALJ referred claims affected or potentially affected by the transfer provisions to OWCP.

Although the number of dispositions per judge increased from 106 in fiscal year 1980 to about 156 in fiscal year 1984, the Chief Administrative Law Judge told us that he did not foresee further substantial increases in the number of cases that a judge could adjudicate with the existing staff that handles black lung cases.

OALJ time frames for disposing
of appealed black lung cases

According to information obtained from OALJ, from the time OALJ logged in (docketed) a black lung case received from OWCP until the time OALJ disposed of the case took an average of 16 months. For cases tried by an administrative law judge, the average was 19 months; for cases where the parties reached an agreement before the hearing or where judges referred or dismissed these cases, the average was 13 months. The Chief Administrative Law Judge believes that the average disposition time for an appealed black lung case should be about 12 months; however, complex cases could take longer.

At our request, OALJ prepared information for those cases disposed of between October 1, 1983, and August 21, 1984. The table below shows the length of time that OALJ took to dispose of appealed black lung cases. As shown, OALJ took more than 24 months to dispose of 78 percent of these cases.

Time from docketing to disposition ^a (months)	Number of cases	Percent of cases
13 or less	515	11
14 to 24	547	11
25 to 30	2,015	42
31 to 35	1,635	34
36 or more	99	2
Total dispositions	4,811	100

^aCase disposition time includes a work-in-process period of about 12 months. During this period, (1) interrogatories and depositions related to the claimant's previous medical history and work experiences are taken; (2) additional evidence, if submitted, is provided to all interested parties; (3) the case is scheduled and heard; and (4) the decision is prepared, reviewed, and finalized.

Of the cases disposed of in fiscal year 1983, about 23 percent took more than 24 months. Moreover, of the more than 18,600 cases that were pending before OALJ on June 30, 1984, the following table shows that over 5,000 of them had been logged in before October 1, 1982.

Year of Receipt for Cases
Pending Before OALJ on June 30, 1984

<u>Fiscal year</u>	<u>Number of pending cases</u>
1980	68
1981	1,326
1982	3,649
1983	7,199
1984	6,525

According to the Chief Administrative Law Judge, because adversely affected parties may appeal OALJ decisions to the Board and the Board may subsequently refer cases back to OALJ for additional review, some cases take longer to dispose of than others. Time frames for disposing of cases in OALJ are computed from the date it initially logs in a case, irrespective of the number of hearings that OALJ holds. This official also told us that a small number of cases involving railroad companies took longer because the courts required OALJ and OWCP to temporarily

suspend action on these cases until the issue of whether railroads could be considered responsible operators was resolved.

Estimated time frames for
reducing the OALJ backlog

For the most part, estimates of the time needed to reduce OALJ's backlog of 20,450 pending black lung cases to about 6,000 cases depend on such factors as (1) the number of claims adversely affected parties will appeal to OALJ each year and (2) the number of appealed cases that OALJ can dispose of annually. According to the Chief Administrative Law Judge, a work-in-process inventory of 5,500 to 6,000 cases would represent a reasonable backlog of black lung cases awaiting disposition. This inventory equals the approximate number of cases that OALJ could dispose of in 1 year at fiscal year 1984 staffing levels.

Using Labor's estimates for the expected number of new appeals and for the number of cases that OALJ can dispose of annually, we developed two estimates on the length of time it will take OALJ to reduce the number of pending black lung cases to what it considers reasonable levels. Our first estimate is based on fiscal year 1984 OALJ staffing levels, and the second, on the Chief Administrative Law Judge's implementation of a plan to contract with retired administrative law judges to assist in preparing OALJ decisions.

Request for hearings

According to the Associate Director, Division of Coal Mine Workers' Compensation, estimates of the number of appeals that will be filed are closely related to the number of claims received by OWCP. Based on OWCP's experience since the enactment of the 1981 black lung amendments, OWCP has received an average of about 1,000 claims per month or 12,000 per year. He also told us that previously denied claimants have "refiled" about 30 percent of these claims. As such, the total number of claims filed with OWCP seems to have stabilized at a higher rate than anticipated when the 1981 amendments were enacted. In November 1981, Labor had estimated that 9,000 new claims would be filed with OWCP each year through the year 2000--the last year for which estimates were provided. All claims, whether new or refiled, require the same adjudication process.

Of the claims filed, this official estimated that OWCP would approve about 5 percent of them (about 600 per year) and that, in these cases, responsible operators would request an OALJ hearing more than 90 percent of the time. Of the denied

claims, he estimated that about 40 percent of the applicants (about 4,500 denied claimants) would eventually appeal their denials to OALJ.

Estimates of the number of cases expected to be referred to OALJ in fiscal years 1985 and 1986 are also contained in July 1984 OALJ summary workload tables. These tables show that OALJ expects to receive 6,000 referrals in fiscal year 1985 and 5,000 in fiscal year 1986.

The actual number of claims that applicants will file and that the parties in interest will appeal in the future is unknown. However, considering that the number of claims filed (new and refiled) since 1981 seems to have stabilized at about 12,000 claims per year, we believe it is not unreasonable for OALJ to expect to continue receiving about 5,000 new black lung appeals in the fiscal years subsequent to 1986.

Dispositions (fiscal year 1984 staffing)

In its February 1984 report on the adjudication of black lung claims, Labor estimated that OALJ will dispose of 5,400 appealed black lung cases in fiscal years 1984 and 1985. Based on a backlog of 20,450 cases at the end of fiscal year 1984 and estimates of 5,400 dispositions per year, parties who file appeals in October 1984 would appear to have to wait, on the average, over 3.5 years for OALJ to issue a decision.

Because Labor estimated that dispositions will exceed new appeals by 400 per year, the OALJ backlog of pending cases should gradually be reduced. With this gradual reduction OALJ would have about 11,050 pending black lung appeals 26 years from now (in the year 2010), and the average time to dispose of an appealed black lung case would be about 2 years (see app. III). Based on OALJ disposing of 400 more cases than it receives each year, it could take over 35 years for the number of pending cases to reach what OALJ officials consider to be a reasonable level of about 6,000 cases. Appendix II (estimate A) illustrates our estimate for reducing the backlog of pending cases based on (1) fiscal year 1984 staffing levels, (2) 6,000 referrals in fiscal year 1985 and 5,000 referrals each fiscal year thereafter, and (3) 5,400 dispositions per year.

Dispositions (contracting out)

The Chief Administrative Law Judge recognizes that the number of dispositions must increase if OALJ is to reduce the backlog of appealed black lung cases and to hear and decide

cases in a more timely manner. In addition to continuing to borrow administrative law judges from other federal agencies, the Chief Administrative Law Judge told us that in September 1984 he implemented a plan to contract with retired law judges to assist in preparing decisions for appealed black lung cases. He believed that because Labor's administrative law judges would spend less time in preparing decisions and more time hearing cases, OALJ could dispose of an additional 1,200 cases annually by contracting with these judges.

If the implementation of the plan to contract with retired administrative law judges results in an additional 1,200 dispositions in fiscal year 1985, we estimated that OALJ should be able to reduce the backlog of pending cases to about 6,000 cases in just over 9 years. By 1989, OALJ would have about 13,450 pending black lung cases, and parties requesting an OALJ hearing would have to wait, on the average, about 2 years from the time their case was docketed to the time the OALJ decision was issued (see app. III). Appendix II (estimate B) shows our estimate for reducing the backlog based on (1) use of retired administrative law judges to assist in preparing decisions, (2) 6,000 referrals in fiscal year 1985 and 5,000 referrals each fiscal year thereafter, and (3) 6,600 dispositions per year (5,400 planned and 1,200 additional dispositions).

While contracting with retired administrative law judges should result in a reduction in the number of pending black lung cases, faster reductions in the OALJ backlog would appear to require either (1) more extensive use of "borrowed" or "retired" judges or (2) the hiring of additional judges by OALJ.

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We recognize that the estimates shown in appendix II are based on anticipated conditions, such as the number of appeals that will be filed and the number of cases that can be disposed of by OALJ. To the extent that conditions change in the future, the estimates that we developed would need to be revised. Factors that could affect the ability of OALJ to reduce the backlog of pending black lung cases include (1) more or fewer requests for hearings by adversely affected parties, (2) substantial changes in productivity, or (3) new legislation or amendments to existing legislation that would affect OALJ's workload.

BOARD'S BACKLOG OF PENDING
BLACK LUNG CASES

The inventory of pending black lung cases appealed to the Board increased from 102 cases at the end of fiscal year 1979 to 5,234 cases on September 30, 1984. According to the Chairman of the Board, as the number of cases that OALJ decided increased, the number of cases subsequently appealed to the Board also increased. As more parties in interest were adversely affected by OALJ decisions, many of them exercised their rights to further appeal their cases. According to Labor's February 1984 report on the adjudication of black lung claims, based on past experience, about 45 percent of the OALJ black lung dispositions will be appealed to the Board.

In June 1983, Labor replaced two of the three Board members in an effort to increase the number of Board dispositions. According to the Board's administrative officer, the increase in 1984 black lung dispositions--from 1,070 in fiscal year 1983 to 1,862 in fiscal year 1984--was, to a large extent, attributed to these personnel changes. However, because legislation limited the Board to three members who could decide appeals and because new appeals continued to exceed dispositions, the number of black lung cases pending before the Board still increased in 1984. Moreover, the Chairman of the Board believed that the number of dispositions in fiscal year 1984 was somewhat higher than can normally be expected because Board members had taken relatively little annual or sick leave during this period.

Information on the number of cases appealed to, disposed of, and pending before the Board is shown in the following table.

Board Workload Statistics (1979-84)

<u>Fiscal year</u>	<u>Appeals</u>	<u>Dispositions</u>	<u>Pending</u>
1979	149	269	102
1980	791	155	738
1981	2,127	637	2,228
1982	2,015	751 ^a	3,494
1983	2,363	1,070 ^a	4,785
1984	2,311	1,862 ^a	5,234

^aFrom January 1982 to May 1984, Board dispositions included 468 "transfer of liability" cases that were referred to OWCP (see note a on p. 9).

Of the almost 5,000 black lung cases that were pending before the Board as of May 31, 1984, the Board had initially received about 40 percent of them (as shown below) before October 1, 1982.

Year of Receipt for Cases Pending
Before the Board on May 31, 1984

1976	1
1977	-
1978	-
1979	1
1980	102
1981	663
1982	1,225
1983	2,017
1984	946

According to the Board's administrative officer, the Board had previously decided a few of the pending cases. In these cases, adversely affected parties had further appealed the Board's decision to the U.S. court of appeals, and the court had subsequently referred some of these cases back to the Board for further action.

Board time frames for disposing
of appealed black lung cases

The Chairman of the Board told us that for recently disposed of black lung cases where the parties had not agreed to withdraw the appeal or to pay the claim before the Board decided the case, it was taking about 27 months from the time the Board initially received the case to the time the Board finalized its decision. As implied in Labor's February 1984 report on the adjudication of black lung cases, this time frame was expected to increase if the Board was limited to three members who could adjudicate black lung appeals. This report stated that by the end of fiscal year 1985, a three-member Board would have an estimated backlog of over 7,000 black lung cases representing about 5 years of work. In effect, the Board would take about 5 years to adjudicate an appeal filed in September 1985. According to the Board's administrative officer, the average work-in-process time for an appealed black lung case should be about 6 months.

Legislation should enable
the Board to reduce backlog

On September 28, 1984, legislation entitled "The Longshore and Harbor Workers' Compensation Act Amendments of 1984" (Public Law 98-426) was enacted. These amendments increased the size of the Board from three to five members who can adjudicate appeals of black lung cases as well as workers' compensation cases appealed under this act. These amendments also authorized the Secretary of Labor to designate up to four of Labor's administrative law judges to serve on the Board temporarily for not more than 1 year. According to the Conference Report (H. Rept. 98-1027), the committees expect the Secretary of Labor to expeditiously appoint four temporary and two permanent judges to the Board and to provide the expanded Board with the necessary support staff. According to the Board's administrative officer, a fully supported 9-member Board will require 148 support staff; the estimated cost of this expansion--6 judges and 47 support staff--is \$1.6 million.

The expanded Board will review cases in much the same way as the three-member Board. The exception will be that within 30 days after a Board panel decides a case, an adversely affected party may petition the entire permanent Board for review of the panel's decision. Board panels will consist of three members (but no more than one temporary member), two panel members constitute a quorum, and adjudicative action may be taken only on the affirmative vote of at least two members of a panel.

While the actions provided for in the Longshore amendments of 1984 should, in our opinion, result in reductions in the Board's backlog of pending black lung cases, these amendments do not address the previously discussed OALJ backlog problem, but may contribute to it if Labor appoints four administrative law judges from OALJ to the Board. According to the Special Assistant to the Under Secretary of Labor, as of October 18, 1984, Labor plans to appoint two new members to the Board (one permanent and one temporary) in the near future. Other Board members will be appointed in 1985 as the Board makes arrangements for additional office space and increases its support staff. This official also told us that he believes that OALJ will be able to hire, borrow, or contract for additional administrative law judges to take the places of law judges temporarily appointed to the Board.

Estimates on Board's backlog
of black lung cases

Similar to the OALJ backlog problem, efforts to reduce the Board's inventory of pending black lung cases depend on how many new appeals are received by the Board in the future and how many cases can be disposed of each year.

New appeals

In the past, parties in interest in black lung cases have appealed about 45 percent of the OALJ dispositions. In its February 1984 report on the adjudication of black lung claims, Labor estimated that the Board would receive 2,440 new black lung appeals in fiscal years 1984 and 1985. The Chief Administrative Law Judge told us that because the amounts of money involved in a black lung claim are sizable (\$150,000 to \$200,000 over the life of an approved claim), it is not unreasonable to expect that the number of cases appealed to the Board will continue to remain at these same high levels in the future. As such, we estimated that parties in interest will also file 2,440 new appeals with the Board in fiscal years subsequent to 1985.

Dispositions (expanded Board)

The 1984 Longshore amendments expanded the size of the Board from three to five members and authorized the Secretary of Labor to designate four temporary Board members. Once the Board members are selected and support staff provided, the Board should be able to significantly increase its black lung case dispositions.

Labor had estimated that a three-member Board could dispose of 1,440 black lung cases per year. According to the Board's administrative officer, a fully supported nine-member Board is expected to dispose of 2,320 black lung cases in fiscal year 1985 (the first year of expansion) and 3,360 black lung cases

each year thereafter until the backlog is reduced to reasonable levels (about 800 cases).⁴

Appendix IV (estimate A) illustrates our estimate for reducing the Board's backlog of pending black lung cases based on (1) a fully supported nine-member Board, (2) 2,440 new appeals per year, and (3) 2,320 dispositions in fiscal year 1985 and 3,360 dispositions each year thereafter. By disposing of almost 1,000 cases more than it receives, we estimated that the Board could reduce the number of pending cases to a reasonable level of about 800 cases in about 6 years. We also estimated that by October 1987, the Board backlog would be reduced to about 3,500 cases; therefore, the average length of time from initial receipt by the Board to final decision would be about 1 year. (See app. V.)

Dispositions (expanded Board-additional
OALJ dispositions)

As discussed on page 12, OALJ has implemented a plan, using retired law judges, to assist in preparing OALJ decisions. If this plan results in a total of 6,600 OALJ dispositions per year, the Board will in all likelihood receive about 530 more new appeals per year than currently estimated. Because about 45 percent of the OALJ dispositions are appealed to the Board, the Board could receive about 2,970 new black lung appeals per year instead of the 2,440 appeals anticipated. With 2,970 new appeals per year, we estimated that it could take the Board about 12 years to reduce the number of pending black lung cases to about 800 cases and that by October 1987 the average length of time for the Board to dispose of a black lung case would be about 1.5 years. (See app. IV (estimate B) and app. V.)

Dispositions (three-member Board)

Before enactment of the 1984 Longshore amendments, Labor had estimated that the Board's backlog of pending cases would continue to increase. Appendix IV (estimate C) illustrates this

⁴The House report (Rept. No. 98-570) on the House version of S. 38 (which became Public Law 98-426) to amend the Longshoremen's and Harbor Workers' Compensation Act provided for a temporary increase in the number of Board members when the backlog of pending cases exceeded 1,000. Because about 80 percent of the Board's workload relates to appealed black lung cases, we considered 800 black lung cases to be a reasonable backlog of pending cases.

anticipated increase based on (1) a three-member Board, (2) 2,440 new appeals per year, and (3) 1,440 dispositions per year.

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We recognize the above estimates may need to be revised as conditions change and new information becomes available. For example, adversely affected parties may, after a Board panel adjudicates a case, petition the entire permanent Board for review of the panel's decision. We did not attempt to estimate the effect that these petitions would have on the Board's ability to review cases. In addition, because temporary judges can only serve on the Board for up to a 1-year period, it would appear that the Secretary would have to appoint new temporary judges in the future to reduce the current backlog of pending black lung cases to 800.

OALJ'S AND THE BOARD'S COSTS FOR ADJUDICATING
BLACK LUNG CASES FINANCED FROM THE BLACK LUNG
DISABILITY TRUST FUND

In fiscal year 1984, OALJ's and the Board's estimated costs for adjudicating black lung appealed cases totaled over \$10 million. While these costs are relatively small when compared to revenues generated by the tax on coal produced (over \$493 million in fiscal year 1983), they contribute to the black lung disability trust fund's deficit. Since the trust fund was established in 1978, trust fund expenditures have always exceeded trust fund revenues. As of September 30, 1983, the fund owed the U.S. Treasury over \$2.1 billion.

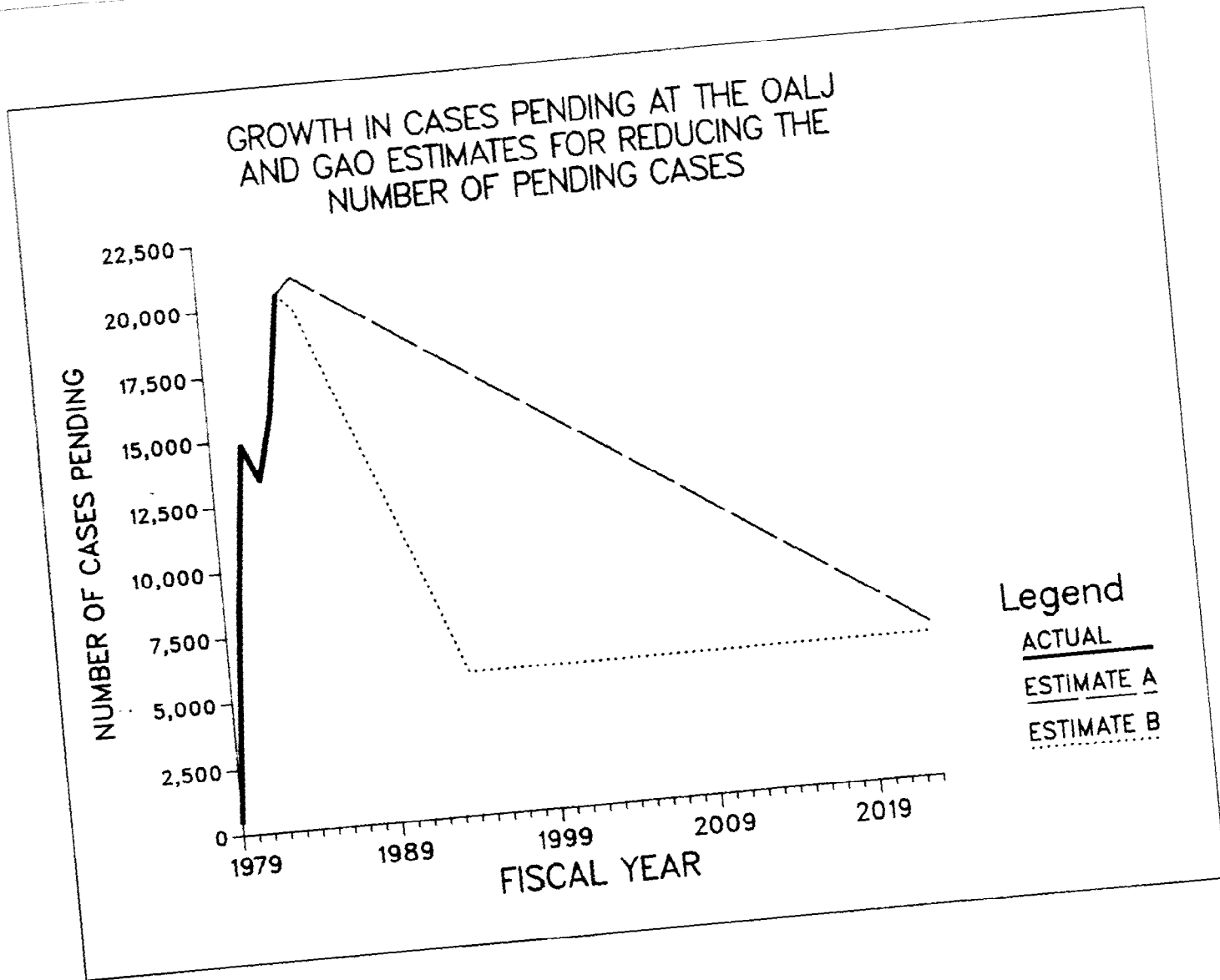
To the extent that the previously discussed estimates for reducing the sizes of OALJ's and the Board's backlogs require increases in these organizations' staffs, the additional costs associated with these increases would also be financed from the trust fund. According to Labor's February 1984 report on the adjudication of black lung claims, each additional 100 dispositions at the OALJ level require 4.4 positions⁵ at a cost of \$178,000. For the Board, the expanded Board will require an additional 53 full-time positions (6 Board members and 47 support staff) at an estimated cost of \$1.6 million.

⁵Staff years of support include staffing increases in Labor's Office of the Solicitor. The Solicitor's staff represents the interest of the department and the trust fund in black lung cases heard by OALJ.

Increases in staff to adjudicate more cases would result in more administrative costs being charged to the trust fund. However, the net effect of more dispositions on the trust fund's financial position is unknown. According to the Associate Director, Division of Coal Mine Workers' Compensation, increases in the number of dispositions would also affect the fund's financial position; the following are examples of how different dispositions could affect the fund's financial position:

- In some cases, OALJ could award benefits to individuals whose claims had already been approved by OWCP and who were receiving "interim benefits" from the trust fund. In many of these cases, responsible operators would begin paying the benefits for which they were liable in order to avoid paying penalties. These operators would also have to reimburse the trust fund (with interest) for the benefits previously paid from the fund.
- In other cases, OALJ could deny benefits to claimants who were being paid from the trust fund. In these cases, trust fund payments would terminate and amounts previously paid to claimants would be considered an overpayment.
- In still other cases, OALJ could award benefits to individuals whose cases had previously been denied by OWCP. In this situation, benefits would be paid from the trust fund when responsible operators were not involved.

Information obtained from OALJ and the Board confirms that in the past these organizations have reached different decisions than those reached by OWCP. The additional costs of increasing OALJ's and the Board's staffing levels to adjudicate more black lung cases would increase administrative costs charged to the fund. However, we did not attempt to determine the net effect that different dispositions would have on the trust fund's financial position.



ESTIMATES FOR OALJ BACKLOGSEstimate A - Fiscal year 1984 staffing

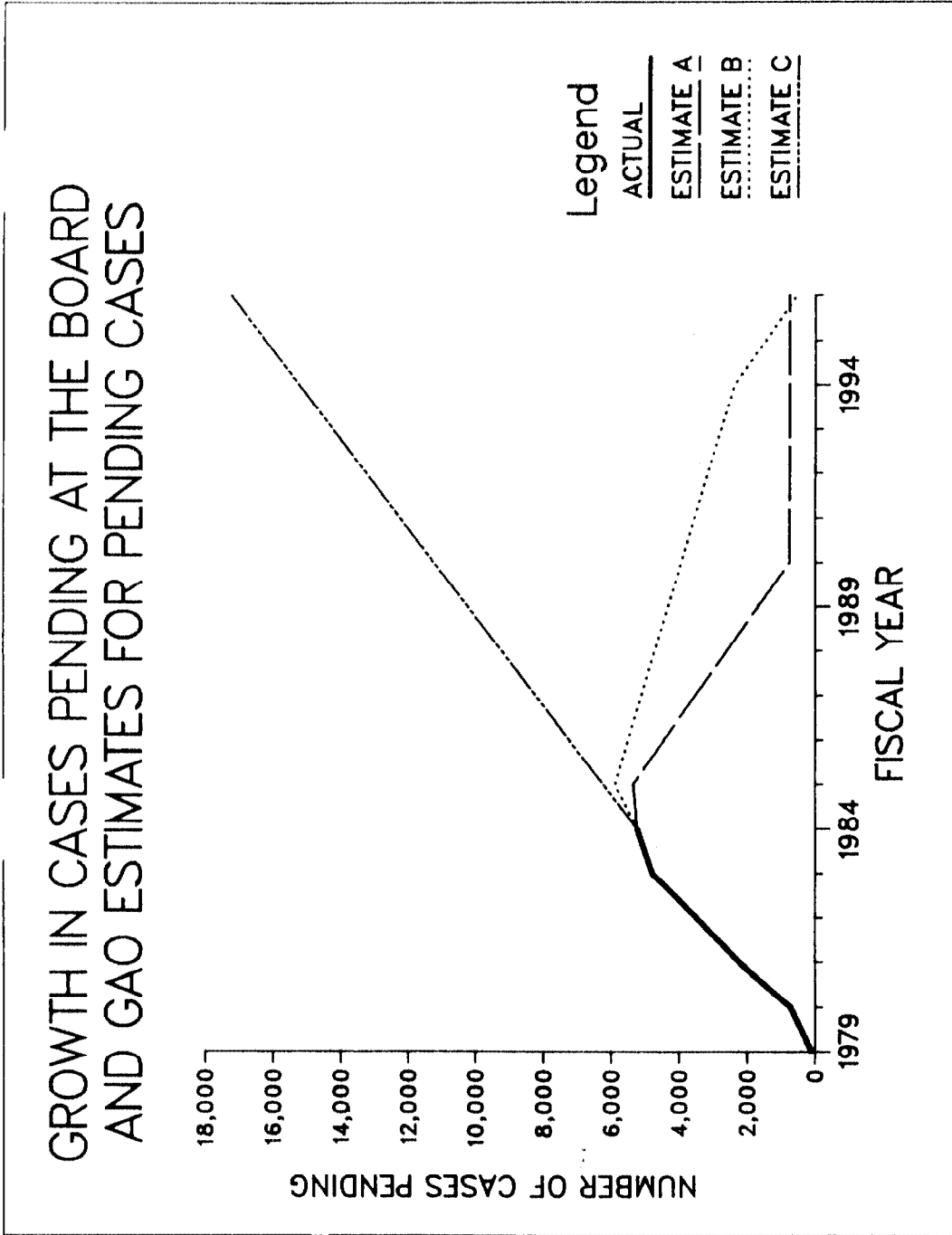
<u>Fiscal year</u>	<u>Cases pending October 1</u> (1)	<u>Referrals</u> (2)	<u>Total cases</u> (3) (1+2)	<u>OALJ dispositions</u> (4)	<u>Cases pending September 30</u> (5) (3-4)	<u>Average disposition time (years)</u> (6) (5÷4)
1984	15,909	10,322	26,231	5,781	20,450	3.5
1985	20,450	6,000	26,450	5,400	21,050	3.9
1986	21,050	5,000	26,050	5,400	20,650	3.8
1987	20,650	5,000	25,650	5,400	20,250	3.8
1988 to 1997	20,250	50,000	70,250	54,000	16,250 ^a	3.0
1998 to 2007	16,250	50,000	66,250	54,000	12,250 ^a	2.3
2008	12,250	5,000	17,250	5,400	11,850	2.2
2009	11,850	5,000	16,850	5,400	11,450	2.1
2010	11,450	5,000	16,450	5,400	11,050	2.0
2011 to 2020	11,050	50,000	61,050	54,000	7,050 ^a	1.3
2021	7,050	5,000	12,050	5,400	6,650	1.2
2022	6,650	5,000	11,650	5,400	6,250	1.2
2023	6,250	5,000	11,250	5,400	5,850	1.1

Estimate B - Contracting out

1984	15,909	10,322	26,231	5,781	20,450	3.5
1985	20,450	6,000	26,450	6,600	19,850	3.0
1986	19,850	5,000	24,850	6,600	18,250	2.8
1987	18,250	5,000	23,250	6,600	16,650	2.5
1988	16,650	5,000	21,650	6,600	15,050	2.3
1989	15,050	5,000	20,050	6,600	13,450	2.0
1990	13,450	5,000	18,450	6,600	11,850	1.8
1991	11,850	5,000	16,850	6,600	10,250	1.6
1992	10,250	5,000	15,250	6,600	8,650	1.3
1993	8,650	5,000	13,650	6,600	7,050	1.1
1994	7,050	5,000	12,050	6,600	5,450	b

^aTotal number of pending cases remaining at the end of the 10-year period.

^bAccording to the Chief Administrative Law Judge, the average work-in-process time to dispose of a black lung case would remain about 1 year.



ESTIMATES FOR BOARD BACKLOGEstimate A - Expanded Board

Fiscal year	Cases pending	New appeals	Total cases	Board dispositions	Cases pending		Average disposi- tion time (years)
	October 1				September 30	(3-4)	
	(1)	(2)	(3) (1+2)	(4)	(5)	(6)	(5+4)
1984	4,785	2,311	7,096	1,862	5,234		2.8
1985	5,234	2,440	7,674	2,320	5,354		2.3
1986	5,354	2,440	7,794	3,360	4,434		1.3
1987	4,434	2,440	6,874	3,360	3,514		1.0
1988	3,514	2,440	5,954	3,360	2,594		.8
1989	2,594	2,440	5,034	3,360	1,674		.5 ^a
1990	1,674	2,440	4,114	3,360	754		b

Estimate B - Expanded Board--additional OALJ dispositions

1984	4,785	2,311	7,096	1,862	5,234		2.8
1985	5,234	2,970	8,204	2,320	5,884		2.5
1986	5,884	2,970	8,854	3,360	5,494		1.6
1987	5,494	2,970	8,464	3,360	5,104		1.5
1988 to							
1992	5,104	14,850	19,954	16,800	3,154 ^c		.9
1993	3,154	2,970	6,124	3,360	2,764		.8
1994	2,764	2,970	5,734	3,360	2,374		.7
1995	2,374	2,440	4,814	3,360	1,454		b
1996	1,454	2,440	3,894	3,360	534		b

Estimate C - Three-member Board

1984	4,785	2,311	7,096	1,862	5,234		2.8
1985	5,234	2,440	7,674	1,440	6,234		4.3
1986	6,234	2,440	8,674	1,440	7,234		5.0

^aBecause the average appeal would be disposed of in about 0.5 years, Labor could reduce the number of temporary Board members.

^bThe average work-in-process time to dispose of a black lung case will remain about 0.5 years.

^cTotal number of pending cases remaining at the end of the 5-year period.

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