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# Benefits Review Board Service—Longshore Reporter

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Publication 135    Release 842    September 2020

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## HIGHLIGHTS

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#### Longshore Desk Book

- Vol. B has been updated.

#### Commentary

- “Department of Labor Launches Initiatives to Make Government More Effective,” by John E. Kawczynski, Field & Kawczynski, LLC, South Amboy, New Jersey.

#### Currency of Decisions

- There are no BRB decisions in this release.
- Unpublished BRB decisions are current through May 8, 2020.

- Federal court opinions are current through February 14, 2020.

#### eBook and DVD

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#### Reader Submissions

- If you have an ALJ case, unpublished federal court opinion, or unpublished Benefits Review Board opinion that discusses a significant issue under the LHWCA, we encourage you to submit a copy via email to Robin.E.

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PRESUMPTION OF COMPEN-

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# Benefits Review Board Service Longshore Reporter

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Publication 135 Release 842

September 2020

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# BRBS Commentary September 2020

## Department of Labor Launches Initiatives to Make Government More Effective

By John E. Kawczynski, Field & Kawczynski, LLC, South Amboy, New Jersey

On June 24, 2020, Government Executive Daily published an op-ed by Deputy Secretary of Labor Patrick Pizzalla in which he set forth three initiatives recently undertaken by the Department of Labor to make the Department of Labor more effective in carrying out its mission.<sup>1</sup> The first two initiatives relate to reforming how the Department of Labor collects outstanding debts and oversees the decisions issued by the Administrative Review Board. Those two initiatives will have no direct impact on how the Department of Labor adjudicates Longshore cases. However, the third initiative may be of interest to Longshore practitioners. Specifically, this third initiative seeks to introduce more transparency for how long it takes the Office of Administrative Law Judges (“OALJ”) to adjudicate cases across all program areas including the Longshore Act and its extensions. In his op-ed, Deputy Secretary Pizzalla wrote that by making information about the length of time cases and dispositive motions have been pending, it will allow the public a greater understanding of the amount of time they should expect it will take to have their case decided.

The OALJ initiative was launched in a May 27, 2020 Memorandum sent to Chief Judge Stephen Henley by Deputy Secretary Pizzalla in which he instructed OALJ to compile the following information of a quarterly basis:<sup>2</sup>

1. Number of dispositive motions that have been pending more than six months;
2. Number of cases that have been pending for more than two years;
3. The number of cases where the record has been closed more than six months but decision has been issued; and
4. Average number of months it took to complete a case decided over the last six months broken down by case type.

The memo further instructs that this data should be broken down by District Office and include the case name and docket numbers of the cases that exceed the age targets. In addition to submitting this information to the Secretary of Labor for review, the memo states that this information should be posted on the OALJ website for the public to see.

According to the memo, there are currently over 7,000 cases pending before OALJ, some of which are over three years old. The memo also states that according to the American Bar Association “a properly functioning state trial court system should resolve 90% of civil cases within 12 months of when they are filed. . . .” However, the memo does not say whether such a “properly functioning” state court system exists.

Long-time Longshore practitioners may hear echoes of Congress’ earlier efforts to make the Benefits Review Board decide its cases more quickly. Beginning in FY 1996, Congress included a provision in the Department of Labor Appropriations Act (Public Law No. 104-134, 110 Stat. 1321-211, 1321-219) which prohibited the Benefits Review Board from using appropriated funds after September 12, 1996 to review cases which had been pending for more than a year. The cases not decided by that date were automatically affirmed and the cases could then be appealed to the courts of appeals. This provision eliminated the Board’s considerable backlog and remained in the Department of Labor’s annual appropriations through FY 2005. Although the current initiative directed at OALJ does not contain a similar prohibition against deciding older cases, it is clear that by identifying the oldest cases, the Secretary of Labor is hoping that the entire adjudication process moves more efficiently.

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<sup>1</sup> See <https://www.govexec.com/management/2020/06/three-steps-labor-department-taking-make-government-more-effective/166394/>.

<sup>2</sup> See [https://www.dol.gov/sites/dolgov/files/OALJ/PUBLIC/FOIA/Frequently\\_Requested\\_Records/Reporting\\_Memorandum\\_for\\_Chief\\_ALJ\\_OALJ\\_Reporting\\_on\\_Case\\_Inventory\\_\(May\\_27\\_2020\).pdf](https://www.dol.gov/sites/dolgov/files/OALJ/PUBLIC/FOIA/Frequently_Requested_Records/Reporting_Memorandum_for_Chief_ALJ_OALJ_Reporting_on_Case_Inventory_(May_27_2020).pdf).

