

Under 28 U.S.C. § 2412(d)(1)(B), the applicant also must show that he is a party entitled to receive an award. A party entitled to receive an award must not have a net worth in excess of \$2,000,000 at the time the suit was filed. As noted

in the Attorney-Client Fee Contract filed in this case, the Appellant's net worth was less than \$2,000,000 at the time he filed his Notice of Appeal with this Court.

In its April 17, 2015 decision, the Board of Veterans' Appeals (Board) denied the Appellant entitlement to service connection for residuals of a gunshot wound (GSW) to his neck with retained muscle, to include as secondary to his service-connected post-traumatic stress disorder (PTSD).

The Appellant is a prevailing party in this appeal. The Court's November 30, 2017 panel opinion set aside and remanded the Board's April 2015 decision based on the Board's errors. The Court concluded that Mr. Frost is not precluded from receiving an award of secondary service connection for his GSW residuals that were incurred approximately 20 years prior to the grant of service connection, and diagnosis of, PTSD (Court's decision, pp. 5-8). The Court concluded that the Board failed to provide adequate reasons or bases for its finding that Mr. Frost was not entitled to a VA examination or opinion and for its finding that Mr. Frost was not credible (*Id.*, pp. 9-11).

The government's positions in proceedings relating to this issue before the agency and before this Court were not substantially justified.

A statement itemizing each type of service rendered in this Court and noting the actual time expended and the rate at which fees are computed is attached for Appellant's attorneys Cameron and Carpenter. The hours expended by Attorney Cameron total 32.25; the hourly rate requested is \$191.38. The expenses incurred total \$125.67. The total Attorney fee and expenses requested for Attorney Cameron is \$6,297.68. (EAJA Exhibit E).

The hours expended by Attorney Carpenter total 34; the hourly rate requested is \$189.37. The expenses incurred total \$708.95. The total Attorney fee and expenses requested for Attorney Carpenter is \$7,147.53. (EAJA Exhibit F).

The undersigned have exercised billing judgment in reducing time incurred for reading the voluminous Record, for drafting the Appellant's briefs, for legal research on the issues in his briefs, and for preparation for oral argument.

WHEREFORE, Appellant respectfully requests the Court award his attorneys fees and reimbursement for expenses in the total amount of \$13,445.21.

This 21st day of March 2018.

Respectfully submitted,

/s/John F. Cameron
John F. Cameron
Attorney for Appellant
John L. Frost

250 Commerce Street, Suite 201
P. O. Box 240666
Montgomery, Alabama 36124-0666
(334) 356-4888

Respectfully submitted,

/s/Kenneth Carpenter
Kenneth Carpenter
Attorney for Appellant
John L. Frost

1525 S.W. Topeka Blvd.
P.O. Box 2099
Topeka, KS 66601
(785) 357-5251

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2018, I electronically filed the foregoing Petition with the Clerk of the Court using the CM/ECF system which will send electronic notification of this filing to the following:

Dustin P. Elias, Esq. (027C)
William Hornbeck (027)
Office of the General Counsel (027C)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

I declare and state under penalty of perjury under the laws of the United States of America that the information is true and correct.

I have also served a copy of the foregoing Petition on:

Mr. John L. Frost
43123 Old Selma Road
Montgomery, AL 36108

03/21/2018

/s/John F Cameron
John F. Cameron
Attorney for Appellant
John L. Frost

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EXHIBIT A

EXHIBIT A
TIMESHEET
John F. Cameron
RE: **John L. Frost**
Vet. App. No. **15-3102**

<u>DATE</u>	<u>TIME</u>	<u>DESCRIPTION</u>
04/24/15	.40	Read Board's April 17, 2015 cover letter and decision.
	.20	Telephone conference with the client re: Board decision; also requesting forms and any new records.
	.10	Draft letter to client with forms.
08/07/15	.10	Read letter from client with signed forms.
08/17/15	.20	Telephone conference with the client re: procedure for appeal to Court.
	.10	Draft cover letter to the Court, Notice of Appeal, Declaration of Financial Hardship, Notice of Appearance, and Attorney-Client Fee Agreement.
	.10	Draft cover letter to the GC (027) with copy of pleadings; request copy of veteran's claims file.
	.10	Draft cover letter to the client with copy of Notice of Appeal, and Declaration of Financial Hardship.
	.10	Draft cover letter to GC (022D) with copy of Attorney-Client Fee Agreement.

	.10	Draft letter to VARO with copy of Attorney-Client Fee Agreement.
08/19/15	.10	Read Court's August 18, 2015 Notice of Docketing; diary due date for Secretary's RBA.
08/28/15	.10	Read August 20, 2015 letter from OGC enclosing Consent Forms and acknowledging receipt of our 8/17/2015 letter requesting a copy of the claims file.
09/08/15	.10	Read September 4, 2015 transmittal of BVA decision. Check Board decision.
10/16/15	.10	Read October 15, 2015 Notice of Appearance of Dustin P. Elias, Esq., for Appellee.
10/26/15	.10	Check Secretary's October 16, 2015 Record Before the Agency (RBA) (4,990 pages).
12/10/15	2.00	Read RBA.
12/11/15	2.00	Read RBA
12/15/15	2.00	Read RBA
12/16/15	1.50	Read RBA
12/17/15	1.70	Read RBA.
12/18/15	.25	Draft Appellant's Response to RBA.
12/21/15	.10	Revise Appellant's Response to RBA (28 pages; dispute; 6 missing documents).

01/12/16	.10	Read Court's January 12, 2016 Order holding the motion in abeyance. The Secretary shall advise the Court, every 15 days, what action has been taken to resolve this dispute; proceedings are stayed until further order.
01/28/16	.10	Read Appellee's January 27, 2016 Response to the Court's order dated 1/12/2016 (dispute).
02/12/16	.10	Read Appellee's February 11, 2016 Response to the Court's order dated 1/12/2016 (dispute).
02/29/16	.10	Read Appellee's February 26, 2016 Response to the Court's order dated 1/12/2016 (dispute).
03/15/16	.10	Read Appellee's March 14, 2016 Response to the Court's order dated 1/12/2016 (dispute).
03/30/16	.10	Read Appellee's March 29, 2016 Response to the Court's order dated 1/12/2016 (dispute).
04/12/16	.10	Read Appellee's April 11, 2016 Response to the Court's order dated 1/12/2016 (dispute is resolved).
04/29/16	.10	Draft Appellant's Response to Court's Order.
05/02/16	.10	Read Court's April 29, 2016 Order lifting stay; read Court's April 29, 2016 notice to file brief within 60 days.
05/03/16	.10	Read Court's May 3, 2016 Order setting the briefing conference for May 31, 2016; it is further ordered that, not later than 14 days prior to the conference, the Appellant submit a summary of the issues the Appellant intends to raise in the appeal.

05/17/16	.40	Revise Summary of the Issues; draft Certificate of Service. (10 pages; 2 issues)
	.10	Draft cover letter to client with copy of Summary of Issues.
05/30/16	.20	Prepare for briefing Conference.
05/31/16	.20	Briefing Conference.
	.10	Telephone conference with client re: status of appeal.
07/28/16	.30	Legal Research (Actual Time - .75).
08/03/16	2.00	Draft Appellant's Brief – Statement of the Facts, Statement of the Case, and Statement of the Issues.
08/05/16	1.70	Draft Appellant's Brief – Reasons and Bases argument.
08/08/16	2.00	Draft Appellant's Brief – Reasons and Bases argument.
08/09/16	2.00	Draft Appellant's Brief – VA's Failure to Provide a C&P Examination argument.
08/11/16	1.80	Draft Appellant's Brief – VA's Failure to Provide a C&P Examination argument.
08/15/16	.60	Revise Appellant's Brief.
	.10	Draft letter to client with his copy of the brief.
10/13/16	.10	Read Secretary's October 13, 2016 motion for extension.

10/14/16	.10	Read Court order granting Secretary's motion for extension.
11/29/16	.60	Read and outline Secretary's November 22, 2016 Brief.
01/17/17	1.30	Draft Reply Brief – Reasons and Bases argument.
01/18/17	.60	Draft Reply Brief – VA Medical Examinations argument.
01/20/17	.20	Legal Research (Actual Time - .75).
01/23/17	.30	Revise Appellant's Reply Brief.
	.10	Draft cover letter to the client with his copy of the Reply Brief.
02/07/17	.10	Check Secretary's February 6, 2017 Record of Proceedings for all cited pages.
02/08/17	.10	Draft Appellant's response to the ROP.
02/15/17	.10	Read Court's February 14, 2017 Notice assigning case to Judge Bartley.
05/16/17	.10	Read Court's May 16, 2017 Order submitting the case to a panel for decision.
06/06/17	.10	Read Court's June 6, 2017 Order setting oral argument for 7/20/17 in Washington, DC, pursuant to Rule 34 of the Court's Rules of Practice.
06/19/17	.10	Telephone conference with client re: status of appeal.

	.20	Telephone conference with Attorney Kenneth Carpenter re: his representation of the client in Washington, DC on 7/20/2017.
06/22/17	.10	Read Court's June 21, 2017 Notice of appearance of William Hornbeck for Appellee.
06/23/17	.10	Read Court's June 22, 2017 Notice of appearance of Kenneth Carpenter for Appellant.
06/28/17	.10	Draft letter to Kenneth Carpenter with ROP and other documents.
07/20/17	.10	Telephone conference with Attorney Carpenter re: oral argument in Washington, DC.
12/01/17	.20	Read Court's November 30, 2017 Panel Opinion.
	.10	Draft letter to client with his copy of the Panel Opinion.
12/27/17	.10	Read Court's December 26, 2017 Judgment
12/29/17	.10	Telephone conference with client re: status of appeal.
02/28/18	.10	Read Court's February 27, 2018 Mandate.
03/19/18	1.80	Draft Appellant's Application for Attorney's Fees under EAJA.
03/21/18	<u>1.30</u>	Revise Appellant's EAJA Petition.

TOTAL HOURS: 32.25

EXHIBIT B

EXHIBIT B
SCHEDULE OF COSTS AND EXPENSES

John F. Cameron
RE: **John L Frost**
Vet. App. No. **15-3102-EAJA**

<u>Date</u>	<u>Description of Expense</u>	<u>Amount</u>
04/24/15	Photocopies	\$2.70
	Postage	\$1.33
08/17/15	Photocopies	\$2.70
	Postage	\$2.59
12/21/15	Photocopies	\$4.20
05/17/16	Photocopies	\$1.65
	Photocopies	\$1.65
	Postage	\$0.89
07/28/16	Photocopies	\$1.65
	Legal Research	\$35.00
	(Actual bill = \$179.91)	
08/15/16	Photocopies	\$4.05
	Photocopies	\$4.05
	Postage	\$1.73
01/20/17	Photocopies	\$1.80
	Legal Research	\$45.00
	(Actual bill = \$196.24)	
01/23/17	Photocopies	\$1.95

	Photocopies	\$1.95
	Postage	\$1.12
06/28/17	Photocopies	\$0.30
	Postage	\$0.49
12/01/17	Photocopies	\$1.95
	Postage	\$0.91
03/21/18	Photocopies	\$3.00
	Postage	<u>\$3.01</u>
	TOTAL	\$125.67

EXHIBIT C

EAJA EXHIBIT C

METHOD FOR COMPUTING COST OF LIVING INCREASES APPLICABLE TO EAJA AWARDS

The Consumer Price Index (CPI) – South Urban for October 1981, the month during which the Equal Access to Justice Act became effective, was 93.0 (1982-84=100). The CPI for March 1996, when the cap was raised to \$125.00, was 152.4. The annual average “All items” CPI-U index for July 2016, which represents the mid-point of this appeal, was 233.292.

The increase in the cost of living from March 1996 to July 2016 is thus computed as $233.292/152.4$. The result is 1.531 or a 153.1% increase. Multiply 1.531 by the EAJA cap of \$125 per hour, and the product is \$191.38 per hour.

EXHIBIT D

EAJA EXHIBIT D

JOHN F. CAMERON

Office Address: 250 Commerce Street, Suite 201
P. O. Box 240666
Montgomery, Alabama 36124-0666
(334) 356-4888

Education: June, 1981, J.D. Northwestern University
School of Law, Chicago, Illinois.

May, 1978, B.A., *magna cum laude*
Vanderbilt University
Nashville, Tennessee
Major: Economics.

Professional Work Experience:

September, 1981 - Present

Attorney At Law
Law Office of John F. Cameron
Montgomery, Alabama.

Practice includes: Veterans Disability
Claims

Professional Associations:

Alabama State Bar Association
National Organization of Veterans'
Advocates (NOVA)

EXHIBIT E

EAJA EXHIBIT E

Summary of Requests – **John L. Frost**

Attorney – John F. Cameron

EAJA Application: March 21, 2018

Total Hours: 32.25

Rate Requested: \$ 191.38

TOTAL FEES \$ 6,172.01

TOTAL EXPENSES: \$ 125.67

TOTAL FEES
AND EXPENSES \$ 6,297.68

EXHIBIT F

Attorney Time, Costs and Other Expenses
For *Frost v. Shulkin*, No. 2015-3102

6/19/17	Contacted by counsel concerning possible presentation of oral argument; discussed issues in this matter.	1.00
6/22/17	Prepared and filed entry of appearance.	.50
6/26/17	Reviewed pleadings from Veterans Court.	2.00
7/10/17	Review relevant case law.	2.00
7/13/17	Prepared and filed submission of supplemental authority.	1.00
7/21/17	Preparation for oral argument.	4.00
7/22/17	Preparation for oral argument.	2.00
7/23/17	Travel to Washington D.C. for oral argument.	8.00
7/24/17	Oral Argument at U.S. CAVC.	4.00
7/25/17	Return from Washington D.C.	8.00
12/5/17	Rcv'd. and reviewed Opinion & Judgment dated 11/30/17.	1.00
2/13/17	Prepared EAJA Application.	.50

34 hours x \$ 189.37 per hour (Using CPI-U (Midwest Region, for July 2017) = \$ 6,438.58

Attorney Fee Requested: \$ 6,438.58

Expenses

Travel Expenses \$ 400.00

Air Fare \$ 308.95

Total Expenses: \$ 708.95

Total attorney fee & expenses: \$ 7,147.53