

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

**CURTIS J. WASHINGTON,** )

Appellant, )

v. )

**Vet. App. No. 16-3193-EAJA**

**ROBERT L. WILKIE,** )

Secretary of Veterans Affairs, )

Appellee. )

**APPELLANT’S APPLICATION FOR ATTORNEY FEES  
UNDER THE EQUAL ACCESS TO JUSTICE ACT (EAJA)**

Appellant, pursuant to U.S. Vet. App. R. 39 and 28 U.S.C. § 2412, applies for an award of attorney’s fees and expenses in the amount of \$10,098.29.

Appellant is the prevailing party in this matter as that term was defined in *Shalala v. Shaefer*, 113 S. Ct. 2625 (1993). Under *Shaefer*, a remand such as occurred in this case on July 23, 2018, confers prevailing party status on the Appellant at the time the remand was ordered by the Court.

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 May 19, 2016 decision, the Board of Veterans' Appeals (Board) denied entitlement to an extraschedular evaluation for the Appellant's service-connected knee and spine claims despite evidence that those service-connected disabilities caused him to develop or aggravate an acquired psychiatric disorder.

The Appellant is a prevailing party in this appeal. The Court's July 23, 2018 Memorandum Decision withdrew the Court's March 14, 2018 Memorandum Decision and vacated and remanded the Board's May 2016 decision denying his entitlement to an extraschedular evaluation for his service-connected knee and spine disabilities. The Court concluded that "in declining to refer the matters on appeal for extraschedular consideration, the Board failed to address whether the appellant's depression is a symptom of his right knee or lumbar spine disabilities ... [and] the Board's failure to make a finding as to whether the appellant's depression is a symptom of his service-connected disabilities frustrates judicial review." (Court's Memorandum Decision, p. 4).

The government's positions in proceedings relating to these issues 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. The hours expended total 51.65; the hourly rate requested is \$194.62. The expenses incurred total \$46.17. The undersigned has exercised billing judgment in reducing time incurred for reading the voluminous Record and for legal research on the issues in his briefs.

WHEREFORE, Appellant respectfully requests the Court award his attorney's fees and reimbursement for expenses in the amount of \$10,098.29.

This 13th day of November 2018.

Respectfully submitted,

/s/John F. Cameron  
John F. Cameron  
Attorney for Appellant  
Curtis J. Washington

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

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 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:

Margaret E. Sorrenti, Esq. (027I)  
Office of the General Counsel  
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. Curtis J. Washington  
12265 Hwy 17 S  
York, AL 36925

11/13/2018

/s/John F Cameron  
John F. Cameron  
Attorney for Appellant  
Curtis J. Washington

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EXHIBIT A

EXHIBIT A  
TIMESHEET

John F. Cameron

RE: **Curtis J. Washington**

Vet. App. No. **16-3193**

<u>DATE</u>	<u>TIME</u>	<u>DESCRIPTION</u>
05/27/16	.30	Read Board's May 19, 2016 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.
09/01/16	.10	Read letter from client with signed forms.
09/15/16	.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.
09/19/16	.10	Read Court's September 19, 2016 Notice of Docketing; diary due date for Secretary's RBA.
09/23/16	.10	Read September 20, 2016 letter from OGC enclosing Consent Forms and acknowledging receipt of our 9/15/2016 letter requesting a copy of the claims file.
09/26/16	.10	Read September 20, 2016 transmittal of BVA decision. Check Board decision.
11/04/16	.10	Read November 3, 2016 Notice of Appearance of Megan C. Kral, Esq., for Appellee.
11/18/16	.10	Read the November 17, 2016 Record Before the Agency (RBA) Certificate of Service.
01/03/17	.10	Read General Counsel's November 17, 2016 Cover letter and check Secretary's November 17, 2016 Record Before the Agency (RBA) (4,257 pages).
01/05/17	2.00	Read RBA.
01/06/17	2.00	Read RBA.
01/09/17	2.00	Read RBA.
01/11/17	1.75	Read RBA.
01/12/17	2.00	Read RBA.
01/13/17	2.00	Read RBA.
01/16/17	2.00	Read RBA.

01/17/17	2.00	Read RBA.
01/18/17	1.70	Read RBA.
01/19/17	1.75	Read RBA.
01/20/17	.40	Draft Appellant's Response to RBA (dispute; 22 pages total; 7 missing documents).
01/23/17	.10	Revise Appellant's Response to RBA.
01/30/17	.10	Read January 30, 2017 Notice of Appearance of Deborah A. Pride, Esq., for Appellee.
01/31/17	.10	Read Court's January 31, 2017 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.
02/15/17	.10	Read Appellee's February 15, 2017 Response to the Court's Order dated 1/31/2017 (dispute unresolved).
02/24/17	.10	Telephone conference with client re: status of his appeal.
02/28/17	.10	Draft Appellant's Response to the RBA (dispute resolved).
03/01/17	.10	Read Court's March 1, 2017 Order lifting the stay imposed on 1/31/2017; read Court's March 1, 2017 Notice to file brief.

03/02/17	.10	Read Court's March 1, 2017 Order setting the briefing conference for 4/05/2017; 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.
03/22/17	.50	Revise Summary of the Issues; draft Certificate of Service. (11 pages).
	.10	Draft cover letter to client with copy of Summary of Issues.
04/03/17	.10	Telephone conference with client re: status of appeal.
04/04/17	.20	Prepare for briefing Conference.
04/05/17	.20	Briefing Conference.
	.10	Telephone conference with client re: status of appeal.
06/02/17	2.00	Draft Appellant's Brief – Statement of the Facts, Statement of the Case.
06/05/17	2.00	Draft Appellant's Brief – Statement of the Case.
06/07/17	1.70	Draft Appellant's Brief – Statement of the Case.
06/09/17	.25	Legal Research (Actual Time - .60).
06/12/17	2.00	Draft Appellant's Brief – Extraschedular argument.
06/13/17	2.00	Draft Appellant's Brief – Extraschedular argument.
06/14/17	1.80	Draft Appellant's Brief – Extraschedular argument.

06/19/17	.90	Revise Appellant's Brief and draft Summary of the Argument.
	.10	Draft letter to client with his copy of the brief.
06/22/17	.10	Telephone conference with client re: status of appeal.
08/15/17	.10	Read Secretary's August 15, 2017 motion for extension; read Court's August 15, 2018 Order granting Secretary's motion.
08/31/17	.10	Read August 30, 2017 Notice of Appearance of Margaret E. Sorrenti, Esq., for Appellee
11/23/17	1.10	Read and outline Secretary's October 2, 2017 Brief.
11/24/17	2.00	Draft Appellant's Reply Brief.
11/27/17	1.70	Draft Appellant's Reply Brief.
11/30/17	.40	Revise Appellant's Reply Brief.
	.10	Draft cover letter to the client with his copy of the Reply Brief.
12/19/17	.10	Check Secretary's December 12, 2017 Record of Proceedings for all cited pages.
12/20/17	.10	Draft Appellant's response to the ROP.
12/21/17	.10	Read Court's December 20, 2017 Notice assigning case to Judge Greenberg.
	.10	Telephone conference with client re: status of appeal.

03/15/18	.20	Read Court's March 14, 2018 Memorandum Decision affirming the Board's May 19, 2016 decision.
	.10	Draft letter to client with copy of Court's Memorandum Decision.
03/29/18	.10	Telephone conference with client re: status of appeal and possible motion for reconsideration.
03/30/18	2.00	Draft Appellant's Motion for Reconsideration/ Panel Review of Court's March 14, 2018 Memorandum Decision.
04/02/18	2.00	Draft Appellant's Motion for Reconsideration.
04/04/18	1.30	Revise Appellant's Motion for Reconsideration.
06/14/18	.10	Read Court's June 14, 2018 Order submitting appeal to a Panel Review.
7/23/18	.10	Read Court's July 23, 2018 Memorandum Decision withdrawing the Court's 3/14/18 Memorandum Decision, vacating the 5/19/16 Board decision; and remanding the appeal for readjudication.
08/06/18	.10	Read Court's August 6, 2018 Order dissolving the panel review; returning the case to Judge Greenberg as a single judge.
08/14/18	.10	Read Court's August 14, 2018 Judgment.
10/16/18	.10	Read Court's October 16, 2018 Mandate.
11/08/18	1.80	Draft Appellant's Application for Attorney's Fees under EAJA.

11/13/18      1.30      Revise Appellant's EAJA Petition.

TOTAL HOURS: 51.65

EXHIBIT B

EXHIBIT B  
SCHEDULE OF COSTS AND EXPENSES

John F. Cameron  
 RE: Curtis J. Washington  
 Vet. App. No. 16-3193-EAJA

<u>Date</u>	<u>Description of Expense</u>	<u>Amount</u>
05/27/16	Photocopies	\$2.70
	Postage	\$1.10
09/15/16	Photocopies	\$2.70
	Postage	\$2.87
01/23/17	Photocopies	\$3.30
02/28/17	Photocopies	\$0.30
03/22/17	Photocopies	\$1.65
	Photocopies	\$1.95
	Postage	\$0.91
06/09/17	Photocopies (14 pages Research @ \$0.15)	\$2.10
06/19/17	Photocopies	\$5.85
	Photocopies	\$6.15
	Postage	\$2.17
11/30/17	Photocopies	\$1.65
	Photocopies	\$1.90
	Postage	\$0.91

03/15/18	Photocopies	\$1.05
	Postage	\$0.71
11/13/18	Photocopies	\$3.00
	Postage	<u>\$3.20</u>
	<b>TOTAL</b>	<b>\$46.17</b>

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 June 2017, which represents the mid-point of this appeal, was 237.346.

The increase in the cost of living from March 1996 to June 2017 is thus computed as  $237.346/152.4$ . The result is 1.557 or a 155.7 % increase. Multiply 1.557 by the EAJA cap of \$125 per hour, and the product is \$194.62 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 – **Curtis J. Washington**

Attorney – John F. Cameron

EAJA Application: November 13, 2018

Total Hours: 51.65

Rate Requested: \$ 194.62

TOTAL FEES \$ 10,052.12

TOTAL EXPENSES: \$ 46.17

TOTAL FEES  
AND EXPENSES \$ 10,098.29