

)	
VICKY SEBEATH QUINN,)	Docket No. 17-4555
Appellant)	
)	
v.)	
)	
)	APPLICATION FOR
ROBERT L. WILKIE,)	EAJA FEES AND EXPENSES
Secretary of Veterans' Affairs,)	
Appellee)	
)	

The Appellant has prevailed by virtue of the remand to the Board of Veterans Appeals ordered by the court. There was no substantial justification for the government's administrative position in this case. That position was that the Appellant could be denied

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service connection for bilateral shoulder disability, right groin disability, asthma and entitlement to a disability rating in excess of 40 percent for a urinary tract disorder and cystitis without BVA compliance with the statutory requirement that it provide an opportunity for a further hearing.

After full briefing (including a supplemental brief, oral argument) the court has ordered a remand, determining that there were errors in the Board's handling of the case and that the statement of reasons and bases in the decision was insufficient to justify the Board's failure to comply with its statutory duty to provide a hearing. A remand under these circumstances makes the Appellant a prevailing party eligible for EAJA fees.

Shalala v. Schaefer, 509 U.S. 292 (1993).

Attached hereto, as Exhibit A, and made a part hereof is the itemized statement of the Appellant's counsel showing the work performed, the time expended, and the costs incurred. In this context the Appellant's counsel would note that the hourly rate sought here of \$214.00, is in excess of \$125.00 per hour because the original \$125.00 per hour limitation in the statute must be increased consistent with increases in the CPI since the enactment of the legislation setting the figure at \$125.00 per hour in March 1996.

WHEREFORE, the Appellant, through counsel, respectfully prays that the court award fees and expenses pursuant to the Equal Access to Justice Act in the amount of \$19,739.20, as set forth on the attached itemization and direct that such amounts shall be sent directly to the Appellant's undersigned attorney as per the fee agreement filed with the Court.

Dated: December 6, 2019

/s/ Penelope E. Gronbeck
Penelope E. Gronbeck, Me. Bar # 004411
Attorney for Appellant

/s/Francis M. Jackson
Francis M. Jackson, Me. Bar No. 000045
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2019, I electronically filed this application for EAJA fees with supporting documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following attorney(s):

Drew A. Silow, Esq.
Office of General Counsel (027)
Dept. of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

Dated: December 6, 2019

/s/Francis M. Jackson
Francis M. Jackson, Me. Bar No. 00045
Attorney for Appellant

JACKSON & MacNICHOL
238 Western Avenue
South Portland, ME 04106
(207) 772-9000

EXHIBIT A

VICKY SEBEATH QUINN v. SECRETARY OF VETERANS' AFFAIRS

Docket No: 17-4555

11/28/17	Review of BVA denial, review of file, draft and file notice of appeal and appearance of counsel and co-counsel.	FMJ	.90
11/28/17	Receipt and review of email re: receipt of appeal at CAVC	paralegal	.10
11/30/17	Receipt and review of notice of docketing.	FMJ	.10
12/14/17	Receipt and review of correspondence and forms from OGC	FMJ	.10
12/28/17	Receipt and review of certified copy of BVA decision.	FMJ	.10
01/18/18	Receipt and review of notice of appearance for Attorney Yung-Ping Wong.	FMJ	.10
01/25/18	Letter to client sending consent form.	FMJ	.10
01/29/18	Receipt and review of email re: extension. Receipt and review of filed motion and order.	FMJ	.10
02/15/18	Receipt and review of notice of appearance for Attorney Silow.	FMJ	.10
02/15/18	Receipt and initial review of record.	FMJ	.10
03/07/18	Receipt and review of notice to file brief.	FMJ	.10
03/28/18	Receipt and review of briefing conference notice.	FMJ	.10
03/29/18	Draft and file notice of appearance for Attorney O'Brien.	FMJ	.10
04/04/18	Review case file to develop facts and issues for Rule 33 memo.	paralegal	3.00
04/04/18	Continued review of case file.	paralegal	2.60
04/04/18	Bookmark key documents for Rule 33 memo.	paralegal	1.00
04/05/18	Continued to bookmark documents	paralegal	.80
04/05/18	Draft statement of facts sections.	paralegal	3.00
04/05/18	Research re: R&B errors by Board; VA refusal to allow additional hearing; Board ignoring RO misinterpretation of Section 20.1507	paralegal	3.00
04/05/18	Continued research as above	paralegal	1.00
04/05/18	Research re: possible VA examination error.	paralegal	2.30
04/06/18	Draft argument sections of Rule 33 memo.	paralegal	3.00

04/06/18	Drafting of argument sections.	paralegal	2.80
04/10/18	Review of draft briefing conference memo.	FMJ	.30
04/10/18	Email briefing conference memo to OGC and file certificate of service.	paralegal	.20
04/25/18	Review briefing conference memo	MHO	.30
04/26/18	Additional review of briefing conference memo and file to prepare for briefing conference. Participate in conference. Memo to file.	MHO	.30
04/30/18	Drafting of CAVC brief from memo.	paralegal	1.30
05/29/18	Review of draft brief, editing and drafting.	FMJ	.50
07/30/18	Receipt and review of emails re: extension and filed motion.	FMJ	.10
07/31/18	Receipt and review of order.	FMJ	.10
09/13/18	Receipt and initial review of Appellee's brief.	FMJ	.10
09/19/18	Review of briefs, draft reply brief.	paralegal	2.90
09/20/18	Drafting of reply brief	paralegal	2.00
09/20/18	Additional drafting and proofreading.	paralegal	.50
09/21/18	Review and drafting.	paralegal	2.70
09/21/18	Drafting of reply.	paralegal	1.00
09/27/18	Email correspondence and draft and file motion for extension.	FMJ	N/C
09/28/18	Receipt and review of order.	FMJ	N/C
10/09/18	Telephone call from client re: appellee's brief.	paralegal	.30
11/13/18	Review and edit draft reply brief.	FMJ	.30
11/27/18	Receipt and initial review of record of proceedings.	FMJ	.10
12/20/18	Receipt and review of case assignment notice.	FMJ	.10
01/08/19	Receipt and review of order re: Panel Judges.	FMJ	.10
01/22/19	Receipt and review of order re: supplemental brief.	FMJ	.10
01/24/19	Emails with opposing counsel re: possible remand.	FMJ	.20
02/06/19	Contact Attorney Carpenter re: supplemental briefing order.	FMJ	N/C
03/27/19	Review of the Secretary's memo.	FMJ	.60
04/05/19	Review of Mr. Carpenter's draft, review of file, suggested revisions.	FMJ	1.70
05/08/19	Travel to Washington, DC.	FMJ	3.70

05/09/19	Meet with Mr. Carpenter, await argument, attend argument and travel back.	FMJ	6.80
07/11/19	Receipt and review of email from Ken Carpenter	FMJ	.10
07/11/19	Receipt and review of decision.	FMJ	.20
08/02/19	Receipt and review of Judgment.	FMJ	.10
10/01/19	Receipt and review of notice of appeal.	FMJ	.10
10/29/19	Receipt and review of notice of docketing from federal circuit.	FMJ	.10
11/07/19	Receipt and review of dismissal order from federal circuit.	FMJ	.10
11/08/19	Receipt and review of email re: mandate. Receipt and review of order and judgment.	FMJ	.10
12/06/19	Review of file, draft EAJA application, itemization and affidavit.	paralegal	1.00
12/06/19	qReview of application and attachments. Review of file to make sure no redundant or excessive entries are listed.	FMJ	.20
	Total Hours		52.90

Francis Jackson, Esq.	18.40	x \$214.00 =	\$ 3,937.60
Kenneth Carpenter, Esq.*	59.50	x \$195.12 =	\$ 11,609.64
Paralegal	34.50	x \$110.00=	<u>\$ 3,795.00</u>

Total EAJA Fee	\$ 19,342.24
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Travel Expenses	<u>\$ 396.96</u>
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Total Due	\$ 19,739.20
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The file has been reviewed, including the combined billing statement and I am satisfied that it accurately reflects the work performed by all representatives and that we have considered and eliminated all time that is excessive or redundant.

Date: December 6, 2019

/s/ Penelope E. Gronbeck
Penelope E. Gronbeck

*See Attached Itemization

Attorney Time, Costs and Other Expenses
For Quinn v. Wilkie , For work Performed
in Vet App No. 17-4555

<u>Date</u>	<u>Activity</u>	<u>Hours</u>	<u>Expenses</u>
2/6/19	Contacted by counsel concerning possible Co-counsel role to respond to supplemental Briefing order and presentation of oral argument; discussed issues in this matter.	1.00	
2/7/19	Reviewed and made notes on CAVC Order dated 1/22/19 for Supplemental briefing.	1.50	
2/8/19	Prepared and filed entry of appearance.	.50	
2/11/19	Received and reviewed order for oral argument	n/c	
2/12/19	Reviewed pleadings in case.	4.00	
2/13/19	Review relevant case law in preparation for supplemental brief.	4.00	
2/19/19	Drafted response questions I and II	4.00	
2/19/19	Drafted response questions III and IV	4.00	
2/20/19	Drafted response questions V and VI	4.00	
2/21/19	Filed Appellant's supplemental brief	n/c	
2/28/19	Received and reviewed Amicus from NONA	2.00	
3/27/19	Received and reviewed Appellee's response to questions in supplemental briefing order	3.00	
3/30/19	Drafted reply to Appellee's response to Questions I, II and III	3.00	
3/31/19	Drafted reply to Appellee's response to Questions IV, V and VI	3.00	
4/8/19	Filed Appellant's Reply to Appellee's response to questions in supplemental briefing order	n/c	
5/7/19	Traveled to D.C. for oral argument	8.00	
5/8/19	Prepared final outline for notes for oral argument.	4.00	
5/9/19	Oral argument	4.00	
5/10/19	Returned to Kansas.	8.00	
7/11/19	Rec'd and reviewed Opinion, in which reversed and remanded.	1.00	
11/16/19	Prepared time sheet for EAJA application.	<u>.50</u>	

Total Hours 59.5

59.5 hours x \$ 195.12 per hour (Using CPI-U (Midwest Region, for March 2019) = \$ 11,609.64

Attorney Fee Requested: \$ 11,609.64

Expenses

Travel Expenses \$ 369.96

Total Expenses: \$ 369.96

Total attorney fee & expenses: \$ 11,979.60

UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

VICKY SEBEATH QUINN, Appellant)	Docket No. 17-4555
)	
)	
)	AFFIDAVIT IN SUPPORT
)	OF APPLICATION FOR
v.)	EAJA FEES AND EXPENSES
)	
)	
ROBERT L. WILKIE,)	
Secretary of Veterans' Affairs)	
Appellee)	
)	
)	
)	

I, Francis Jackson, counsel for the appellant herein, being first duly sworn, do
hereby depose and say:

1. I am a duly admitted member of the bar of the State of Maine in good standing.
I was admitted in 1977 (Maine Bar No. 00045). I am also admitted to the bar of this court
and to the bars of the United States Court of Appeals for the First Circuit (Bar No.
19347), and the Third, Fourth, and Federal Circuits.

2. I have represented the Appellant in this proceeding; have personal knowledge of
the facts set forth herein; and am otherwise competent to testify thereto;

3. My client, Vicky Sebeath M. Quinn is a person who is eligible to receive
reimbursement for the attorneys fees she incurred in this proceeding pursuant to the terms
of the Equal Access to Justice Act;

4. I have had an attorney client relationship with Ms. Quinn throughout this proceeding (along with Penelope Gronbeck, Murrough O'Brien, Esq. and Kenneth Carpenter, Esq.) and attorneys fees are warranted under the EAJA since she is the prevailing party, having prevailed by virtue of the remand to the Board of Veterans Appeals ordered by this court;

5. The hours charged here (as set forth in the attached itemization) are reasonable. In all cases I try hard to ensure that we only expend the time necessary for an effective presentation of the case.

6. I no longer do litigation. I now specialize in disability cases, primarily social security cases in Maine, New Hampshire, Vermont, and Massachusetts, and in veterans disability matters. Although I do a large percentage of those cases on a contingent fee or other structured fee basis, when I have applied for fees on an hourly basis I have routinely been approved for fees at rates of \$350.00 or more per hour based upon my age and over 30 years of experience. In the most recent case where I was awarded fees by a judge on an hourly rate not limited by the EAJA, I was awarded \$395.00 per hour. My associates, Ms. Gronbeck and Mr. O'Brien, as well as Kenneth Carpenter, Esq. would command fees in this market in excess of \$250.00 per hour. A reasonable paralegal fee in this market would be \$110.00 per hour or more.

7. In the exercise of billing discretion and consistent with Aponte v. Nicholson I have chosen to bill the work done on this case by Brad Enna as paralegal work at a rate of

\$110.00 per hour. Mr. Enna is a graduate of the University of Pennsylvania School of Law who was admitted to the bar and practiced for several years, most recently at Skadden, Arps, Meagher & Flomm, LLP. While working as an associate at Skadden Mr. Enna was stuck by a car and seriously injured and became disabled. As a result Mr. Enna had not worked for some five years before he came to work at my office in July of 2007. Because he is not a member of the Maine bar, his work for me has been limited to work as a paralegal doing analysis, drafting and writing.

8. The rate charged here for our work of \$214.00 per hour, is not reflective of normal market fees for me nor is the fee for paralegal time reflective of normal market rates.¹ Rather these attorney fee rates reflect the limit or “cap” placed on EAJA fees by Congress, limiting attorney fees to \$125.00 plus adjustments based upon increases in the Consumer Price Index (“CPI”). As a result, these “capped” rates are extremely reasonable for attorneys of our ages and experience or that of my paralegal for doing this type of work, especially in northern New England where virtually all of the clients are unable to pay if they do not prevail.

¹ The Laffey matrix can be found at http://www.justice.gov/usao/dc/divisions/civil_Laffey_Matrix_2014-2015.pdf. As can be seen, a current rate of \$150 per hour would be allowed for this work if done by a paralegal in Washington, D.C. Counsel does not argue that a paralegal in the Portland, Maine area must necessarily be paid the market rate for paralegal work in Washington. However, paralegal fees in Portland have frequently been determined to be at a rate of \$110 per hour a rate consistent with Aponte and that is the rate used here. Nationwide Payment Solutions, LLC v. Plunkett, Docket No. 09-cv-600-GZS (Rec. Dec. on attorney fees, Jan. 24, 2012), *aff'd*, Feb. 15, 2012 (approving paralegal fees at a rate of \$112 per hour for April, 2011). (Rec. Dec. at 4-5).

9. Attached hereto, as Exhibit B, is a chart from the Bureau of Labor Statistics showing the increase in the CPI - All Urban Consumers, from March 1996 (when the EAJA fee cap was last amended) to September, 2018. That chart shows an increase (on the 1982 base of 100) from 162.80 to 278.66 or over Seventy-One percent (71.18%) between March, 1996 and September, 2018. A 71.18% increase in the \$125.00 per hour EAJA “cap” brings it to \$213.98 per hour by September, 2018, which I have rounded up to \$214.00. (Use of the general CPI-U index at all seriously, and unfairly, penalizes attorneys by grossly understating the actual increase in the market cost for legal services which is part of the BLS other goods and services series. That cost has actually risen much faster, over 90% from March, 1996, to the present, so that a fair adjusted rate would be over \$237.00 per hour rather than \$214.00.)

10. Pursuant to the fee agreement filed with the Court, Appellant has agreed that any EAJA fees are to be sent directly to Francis M. Jackson, not to the Appellant.

Date: December 6, 2019

/s/Francis M. Jackson
Francis M. Jackson
Maine Bar No. 00045

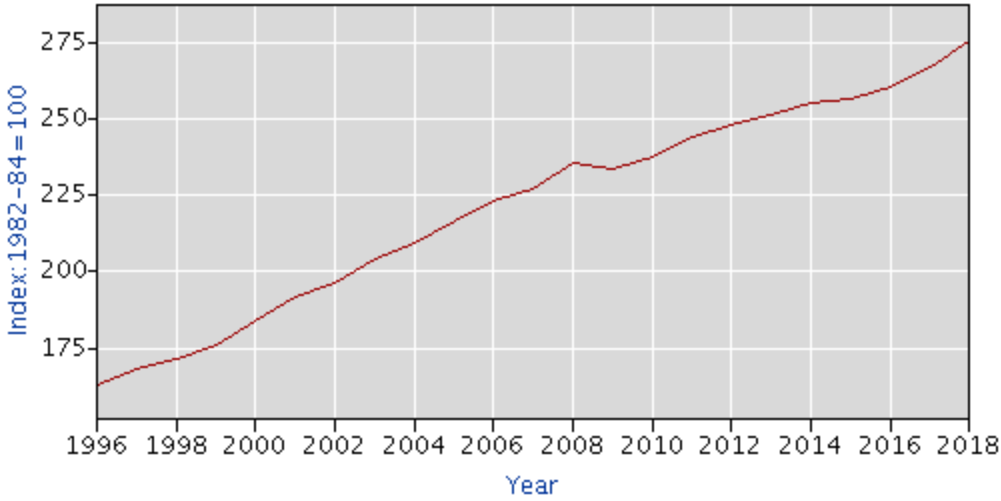
STATE OF MAINE
CUMBERLAND, SS.

Personally appeared before me the above named Francis M. Jackson and swore to the truth of the foregoing affidavit.

/s/Renee Stephens
Renee Stephens
Notary Public, Maine

My Commission Expires: 08/01/26

Series Id: CUURS11ASA0, CUUSS11ASA0
Not Seasonally Adjusted
Series Title: All items in Boston-Cambridge-Newton, MA-NH, all urban consumers, not seasonally adjusted
Area: Boston-Cambridge-Newton, MA-NH
Item: All items
Base Period: 1982-84=100



Download: [x](#) [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996	162.2		162.8		161.8		162.0		163.5		166.3		163.3	162.3	164.4
1997	167.7		168.1		166.7		167.1		167.8		169.4		167.9	167.5	168.4
1998	171.2		171.3		170.9		170.7		172.1		173.3		171.7	171.1	172.3
1999	174.1		174.8		174.2		175.3		176.8		179.2		176.0	174.5	177.5
2000	180.2		182.8		181.7		183.2		184.3		187.4		183.6	181.8	185.4
2001	189.0		190.9		190.9		192.1		192.7		192.7		191.5	190.5	192.6
2002	192.9		194.7		194.8		195.7		199.1		200.4		196.5	194.4	198.7
2003	199.8		202.8		202.3		203.0		206.8		206.5		203.9	201.9	205.9
2004	208.4		208.7		208.7		208.9		209.8		211.7		209.5	208.6	210.3
2005	211.3		214.2		214.6		217.2		220.1		218.6		216.4	213.9	218.9
2006	220.5		221.3		222.9		225.1		224.5		223.1		223.1	222.0	224.2
2007	224.432		226.427		226.247		226.929		227.850		230.689		227.409	225.910	228.909
2008	231.980		233.084		235.344		241.258		238.519		232.354		235.370	234.239	236.502
2009	230.806		232.155		231.891		233.018		236.596		236.589		233.778	231.802	235.754
2010	237.266		237.986		238.083		236.132		236.474		238.103		237.446	237.683	237.209
2011	239.814		242.787		244.574		244.256		245.310		245.030		243.881	242.761	245.001
2012	245.891		247.166		246.582		246.326		249.488		249.929		247.733	246.583	248.883
2013	249.957		250.835		250.036		251.067		251.918		252.230		251.139	250.368	251.909
2014	253.123		254.982		255.209		255.296		255.878		256.262		255.184	254.619	255.750
2015	254.556		257.013		256.839		256.999		256.643		258.407		256.715	256.376	257.055
2016	257.215		258.587		260.809		260.800		262.606		261.675		260.496	259.188	261.803
2017	264.865		265.070		266.256		266.429		269.757		269.149		267.033	265.594	268.472
2018	272.229		274.591		274.668		275.402		278.663		277.632		275.815	274.148	277.483