UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

LARRY SCOTT, Appellant,	)	
v.	)	Vet. App. No. 19-0606
ROBERT L. WILKIE, Secretary of Veterans Affairs, Appellee.	)	

APPELLANT'S APPLICATION FOR AN AWARD OF REASONABLE ATTORNEY FEES AND EXPENSES UNDER 28 U.S.C. § 2412(D)

Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), Appellant, Larry Scott, moves this Court for an award of reasonable attorney fees and expenses. Appellant seeks an award in the amount of $7,113.07 for litigating the merits of this appeal and drafting this petition. In support of this motion, Appellant submits that: (1) he is entitled to an award of attorney fees and expenses under EAJA, 28 U.S.C. § 2412(d); and, (2) an award of $7,113.07 is reasonable and appropriate.

PRELIMINARY STATEMENT

In 1980, Congress passed the EAJA in response to its concern that persons "may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights." Pub. L. No. 96-481, tit. II, §204(a), (c), 94 Stat. 2327, 2329 (1980); *Sullivan v. Hudson*, 109 S.Ct. 2248, 2253 (1989). As the Senate observed, in instances in which the cost of securing vindication exceeds the amount at stake, "it is more practical to endure an injustice than to contest it." S. Rep. No. 96-253, 96th Cong., 1st Sess. 5 (1979). The purpose of the EAJA's fee-shifting provisions is thus "to eliminate for the average person

the financial disincentive to challenge unreasonable government actions." *Commissioner, I.N.S. v. Jean,* 110 S.Ct. 2316, 2321 (1990).

It has since become clear that the EAJA applies to proceedings in this Court. In the Federal Courts Administration Act of 1992, Congress amended section 2412(d)(2)(F) to add the United States Court of Veterans Appeals (now Court of Appeals for Veterans Claims) to the definition of Courts authorized to make awards under the EAJA. Pub. L. No. 102-572, tit. V § 506(b), 106 Stat. 4506, 4513 (1993) (found at 28 U.S.C. § 2412 note); S. Rep. No. 342, 102d Cong., 2d Sess. 39 (1992), [hereinafter "S. Rep"]). *See Jones v. Principi,* 985 F.2d 582 (Fed. Cir. 1992) (vacating and remanding *Jones v. Derwinski,* in light of the Federal Courts Administration Act). In amending the EAJA to apply to appeals to this Court, Congress affirmed the Act's objective of eliminating financial deterrents to defend against unreasonable government action, observing that "[v]eterans are exactly the type of individuals the statute was intended to help." S. Rep. at 39.

It is also clear that the EAJA amendment applies in this case. The amendment applies, *inter alia*, "to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date in the United States Court of Appeals for the Federal Circuit." Pub. L. No. 102-572, tit. V, §506(b), 106 Stat. 4506, 4513 (1992) (found at 28 U.S.C. §2412 note). The instant case was pending in the United States Court of Appeals for Veterans Claims after October 29, 1992, when the EAJA amendment became effective.

SUMMARY OF PROCEEDINGS

This case involves the Board's decision dated June 21, 2019, to the extent it denied a petition to reopen a claim of entitlement to service connection for a left knee disability, and claims of entitlement to service connection for a right knee disability, a right elbow disability, and erectile dysfunction (ED).

In June 2020 the parties filed a joint motion to vacate and remand the above-noted Board decision. Therein the parties agreed that VA failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to properly address relevant evidence related to reopen the left knee disability claim, and to explain why it discounted the July 2016 private opinion regarding the ED claim. In addition, VA failed to satisfy its duty to assist where the Board relied on an inadequate VA medical opinion for the ED claim. The Board also erred by not providing Appellant with necessary notice and an opportunity to submit evidence for the right knee and right elbow claims.

ARGUMENT

I. APPELLANT IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND EXPENSES UNDER EAJA, 28 U.S.C. § 2412(D).

There are four statutory requirements that a party must satisfy to be eligible for an award of attorney's fees under EAJA, 28 U.S.C. § 2412(d). They are: (1) the party must have been a "prevailing party;" (2) the party must be eligible to receive an award under this subsection;" (3) the position of the United States must not have been "substantially justified;" and (4) there must be no special circumstances which would make an award unjust. If these requirements are met, the Court "shall award" reasonable fees and expenses. *Gavette v. Office of Personnel Management*, 808 F.2d 1456, 1466 (Fed. Cir. 1986) (en banc). As shown below, Appellant meets these requirements.

A. Appellant is a Prevailing Party

Generally, to be a prevailing party, a party must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. *Higher Taste v. City of Tacoma*, 717 F.3d 712 (Fed. Cir. 2013) citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.*, 532 U.S. 598 (2001). More specifically, a party prevails with respect to the EAJA if they "succeed on any significant issue in the litigation which achieves some of the benefit the parties sought in bringing the suit." *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983) (citations omitted); *see also Sullivan v. Hudson*, 109 S. Ct. 2248, 255 (1989); *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 109 S. Ct. 1486, 1491-92 (1989). In making this inquiry "substance should prevail over form." *Devine v. Sutermeister*, 733 F.2d 892 (Fed. Cir. 1984). In *Lematta v. Brown*, 8 Vet. App. 504 (1996), this Court held "[I]t is enough for the Court to make some 'substantive determination in [the] appeal, based upon the record, the parties' pleadings, and the Court's precedent, that is favorable to the appellant." *Id.* at 508 (quoting *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994)).

The Federal Circuit has issued several decisions relating to the attainment of prevailing party status under the EAJA. In *Vaughn v. Principi*, 336 F. 3d 1360 (Fed. Cir. 2003), the court held that a remand to an administrative agency, to consider the effects of legislation enacted while the case is on appeal does not constitute securing relief on the merits for prevailing party purposes. *Id.*, at 1366. There, the Court affirmed the CAVC's findings that prevailing party status did not attach based on, *inter alia*, the catalyst theory. *Id.*, citing *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Res.* 532 U.S. 598 (2001)(Rejecting the catalyst theory as a basis for fee awards and holding that enforceable judgments on the merits and court-ordered consent decrees create the "material alteration of the legal relationship of the parties). Notably, that case involved a remand for re-adjudication solely in light of the enactment of the VCAA – as opposed to based on VA error. *See Vaughn v. Principi*, 15 Vet. App. at 280;

see also *Akers v. Sec'y of Veterans Affairs* 04-7132 (Fed. Cir. May 26, 2005) (affirming the CAVC determination that Appellant was not a prevailing party inasmuch as the Board decision on appeal was vacated and remanded as a result of a change in law subsequent to the Board's decision and did not involve a direct finding by the Court on the merits or an order to do anything as a result of an error found either by the Court or the parties.)

In *Former Employees of Motorola Ceramic Products v. United States,* 336 F. 3d 1360 (Fed. Cir. 2003), the Federal Circuit addressed the meaning of "prevailing party" and appeared to clarify its decision in *Vaughn*. There, the court made clear, *inter alia,* that "where a plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party [] without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court. . ." *Id.,* at 1360; *see also Rice Services, Ltd., v. United States,* 405 F.3d 1017 (Fed. Cir. 2005) (Acknowledging *Motorola* for the principle that a remand order to an administrative agency from a court proceeding constitutes the securing of relief on the merits sufficient to attain prevailing party status); *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006).

Most recently, the Federal Circuit in *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016), set out a three-part test "to determine a prevailing party status under the EAJA on administrative agency remands." Under this three-part test, a party is a prevailing party if (1) the remand was granted based upon or triggered by administrative error, (2) the remanding court did not retain jurisdiction, and (3) the remand clearly orders further agency proceedings, which allows the party "the possibility of attaining a favorable merits determination." *Blue v. Wilkie*, 30 Vet. App. 61 (2018), *citing Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016). Therefore, by applying the three-part test from *Dover*, the court here should find that Appellant is a prevailing party.

In this case, unlike the facts in either *Vaughn* or *Akers, supra,* the parties moved the Court to vacate and remand the Board's decision based on their agreement that VA

failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to properly address relevant evidence related to reopen the left knee disability claim, and to explain why it discounted the July 2016 private opinion regarding the ED claim. In addition, VA failed to satisfy its duty to assist where the Board relied on an inadequate VA medical opinion for the ED claim. The Board also erred by not providing Appellant with necessary notice and an opportunity to submit evidence for the right knee and right elbow claims.

B. Appellant is a Person Eligible to Receive an Award Under 28 U.S.C. § 2412(2).

In order to be eligible to file a petition for fees under 28 U.S.C. § 2412(d), a prevailing party must not be: (i) an individual whose net worth exceeded $2,000,000.00 at the time the litigation began, nor (ii) a business entity whose net worth exceeded $7,000,000.00 and which had more than 500 employees at the time the litigation began. 28 U.S.C. § 2412(d)(2)(B)(i), (ii).

Appellant had a net worth *under* $2,000,000.00 on the date this action was commenced. (*See* Exhibit A, Certification of Net Worth). Moreover, Appellant was not a business entity. Therefore, Appellant is a person eligible to receive an award under the EAJA.

C. The Position of the Government was not Substantially Justified.

In order to be considered "substantially justified" under the EAJA, the government must show that its position was "justified to a degree that could satisfy a reasonable person," i.e., has a reasonable basis in both law and fact. *Pierce v. Underwood*, 108 S. Ct. 2541, 2549-50 (1988); *Beta Systems v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989). The burden is on the Secretary to demonstrate that his position was substantially justified. *Brewer v. American Battle Monument Comm'n*, 814 F.2d 1964, 1569 (Fed. Cir. 1987); *Gavette*, 808 F.2d at 1465-66; *Essex Electro Eng'rs v. United States*, 757 F.2d 247, 252 (Fed. Cir. 1985).

To determine whether the government's position was substantially justified, the Court is "instructed to look at the entirety of the government's conduct and make a judgment call whether the government's overall position has a reasonable basis both in law and fact." *Chiu v. United States*, 948 F.2d 711, 715 (Fed. Cir. 1991). The "overall" position is that taken by the government "both prior to and during litigation." *Id*. Thus, to prevail on "substantial justification" in this case, the government must demonstrate that the agency action leading to litigation, i.e. the denial of Appellant's claim, as well as its litigation position in this Court, were "overall reasonable."

This Court further explained substantial justification in *Moore v. Gober*, 10 Vet. App. 436 (1997). In *Moore*, the Court held that in order "[t]o determine whether the Secretary's position was 'reasonable' during the administrative proceedings, the Court looks to the relevant determinative circumstances, including the state of the law at the time of the BVA decision." *Id*. at 440 (citing *Bowyer v. Brown*, 7 Vet. App. 549, 552 (1995)).

In this case, the government's position leading up to, and throughout this litigation was not "substantially justified" because the parties filed a joint motion for remand based on their agreement that VA failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to properly address relevant evidence related to reopen the left knee disability claim, and to explain why it discounted the July 2016 private opinion regarding the ED claim. In addition, VA failed to satisfy its duty to assist where the Board relied on an inadequate VA medical opinion for the ED claim. The Board also erred by not providing Appellant with necessary notice and an opportunity to submit evidence for the right knee and right elbow claims.

D. No Special Circumstances Make an Award Unjust on this Appeal.

The Secretary does not meet the heavy burden of proving that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). *See Devine v.*

Sutermeister, 733 F.2d 892, 895 (Fed. Cir. 1984); *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991). Courts narrowly construe the "special circumstances" exception so as not to interfere with the Congressional purpose for passing the EAJA, i.e., to insure that litigants have access to the courts when suing the Government. *See Martin v. Heckler*, 772 F.2d 1145, 1150 (11th Cir. 1985); *Taylor v. United States*, 815 F.2d 249, 253 (3d Cir. 1987). "[T]hat few courts apparently have relied upon this exception to EAJA awards in denying fee applications is evidence that the circumstances of a case will infrequently justify a denial of an award." There is no reason or special circumstance to deny this Fee Petition.

II. THE COURT SHOULD AWARD APPELLANT REASONABLE FEES AND EXPENSES OF $7,113.07.

The EAJA provides that a court "shall" award "fees and other expenses" when the other prerequisites of the statute have been met. 28 U.S.C. § 2412(d)(1)(A). The statute defines "fees and other expenses" to include reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A).

When Congress has authorized the award of "reasonable" attorney fees, the amount to be awarded is based upon "the number of hours expended on the litigation multiplied by a reasonable hourly rate." *See Hensley*, 461 U.S. at 433; *National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1325 (D.C. Cir. 1982).

A. Hours Reasonably Expended

As the Declaration of Glenn R. Bergmann, Esq. (attached hereto as Exhibit B) documents, in the exercise of sound billing judgment, Appellant's counsel is not asking for payment for time spent on administrative matters such as copying or filing, nor for communications (either written or oral) among co-counsel. Moreover, being mindful of the reasonableness requirement, Appellant is not requesting compensation for ***14.3 hours*** – ***totaling $2,958.10*** **--** of billable attorney time. (*See* Exhibit B). Appellant's counsel

submits that a reasonable attorney, exercising sound billing judgment, would charge for time spent on all matters included in Exhibit B – this may have included limited time expended for "peer review" where necessary to ensure that any briefs filed contained comprehensive and complete arguments pertinent to the underlying appeal. To the extent "peer review" time was expended, such would have involved senior attorneys and would have taken the place of "supervisory review" of a substantive pleading.

B. Reasonable Hourly Rate

Under the EAJA, the amount of fees awarded "shall be based upon the prevailing market rates for the kind and quality of services furnished" but "shall not be awarded in excess of $125.00 per hour unless the Court determines that an increase in the cost of living" is necessary. Appellant's counsel, Glenn R. Bergmann, avers that the usual and customary fee for working on similar matters is between $175.00 and $250.00 per hour.

1. <u>The EAJA Statutory Cap of $125.00 Should be Adjusted Upward to Reflect the Increase in the Cost of Living.</u>

Under 28 U.S.C. § 2412(d)(2)(A)(ii), attorneys may demonstrate that an increase in the cost of living justifies an increase in the $125.00 per hour statutory cap. *See Pierce v. Underwood*, 108 S. Ct. 2541, 2553 (1988) (referring to a cap of $75.00 per hour "adjusted for inflation."); *Philips v. General Serv. Admin.*, 924 F.2d 1577, 1583 (Fed. Cir. 1991). An increase for cost of living is generally allowed. *Johnston v. Sullivan*, 919 F.2d 503, 508-10 (8th Cir. 1990); *Animal Lovers Volunteer Ass'n, inc. v. Carlucci*, 867 F.2d 1224, 1227 (9th Cir. 1989); *Coup v. Heckler*, 839 F.2d 313, 320 (3d Cir. 1987); *Baker v. Brown*, 839 F.2d 1075 (5th Cir. 1988) (allowed except in unusual circumstances).

This Court in *Elcyzyn v. Brown*, 7 Vet. App. 170 (1994), decided for the first time that an Appellant's attorney can petition for a fee in excess of the then statutory cap based upon the Consumer Price Index as published by the Bureau of Labor Statistics. *Id*. at 179-181. This Court further directed attorneys filing for an increased fee based upon the

CPI to choose a mid-point in the litigation to establish the appropriate date for calculating the cost of living increase. *Id*. at 181. In this case the parties filed their joint motion to remand the underlying Board decision in June 2020. Appellant selects May 2020, as the date for calculating the CPI increase. *See Elcyzyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Appellant submits that the Court should increase the $125.00 per hour cap by the general inflationary index in the cost of living since March of 1996, as reflected by the CPI-U for the South Region.[1] According to the most recent report from the Bureau of Labor Statistics, the CPI-U for the South Region – Size Class A – rose 65.48% between March 1996, and May 2020. Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of $206.86 per hour. This rate was calculated by subtracting the CPI-U for May 2020 (250.717) from that of March 1996 (151.5), and dividing the result (99.21) by the CPI-U for March 1996. The result (.6548), representing the increase between March 1996 and May 2020 was then multiplied by the statutory rate ($125.00), demonstrating an increase of $81.86, which was added to the $125.00 statutory rate to arrive at the inflation-adjusted rate of $206.86 per hour.

In addition, Appellant avers that paralegals should be compensated at a rate of $150.00 per hour, where the prevailing market rate for the work done by paralegals was at least $166.00 from June 1, 2018, to May 31, 2019, and at least $173.00 from June 1, 2019, to the present according to the most recent paralegals fees matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO).[2]

---

[1] This Court determined that the local CPI-U should be used to calculate the cost-of-living increase, when available, and that when not available, the regional CPI-U should be used. *Mannino v. West*, 12 Vet. App. 242 (1999). Based upon the size/population density in the Baltimore/Washington area, Appellant's counsel has selected "Size Class A" for the South Region. "Size Class A" refers to an area population of >1.5 mil., which is consistent with the local area population.

[2] *See* USAO Attorney's Fees Matrix, 2015-2020 ("The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds,

Considering the foregoing, Appellant's counsel requests a fee of $7,096.87 based upon 33.8 hours of attorney work and 0.7 hours of paralegal work; and $16.20 in expenses (See exhibit B) for a total of $7,113.07.

Respectfully submitted,

/s/ Glenn R. Bergmann

GLENN R. BERGMANN, ESQ.
Bergmann & Moore, LLC
7920 Norfolk Ave. Suite 700
Bethesda, Maryland 20814
(301) 986-0841

Counsel for Appellant

746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985), and then adjusted those rates based on the CPI-U for the Washington-Baltimore … area."); *see also Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996); *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008).

Exhibit A

CERTIFICATE OF NET WORTH

I, Glenn R. Bergmann, of Bethesda, Maryland, hereby declare that at no time during the course of this appeal to the Court of Appeals for Veterans Claims, did Appellant, Larry Scott, have a net worth of, or in excess of, $2,000,000.00.

/s/_Glenn R. Bergmann
Glenn R. Bergmann

Exhibit B

DECLARATION OF APPELLANT'S COUNSEL, GLENN R. BERGMANN

In support of Appellant's application for attorney's fees under 28 U.S.C. § 2412(d), I Glenn R. Bergmann hereby declare as follows:

1. I am an attorney licensed to practice in the State of Maryland, and am admitted to practice before the United States Court of Appeals for Veterans Claims.
2. I have represented Larry Scott in Scott v. Wilkie, Vet. App. No. 19-6232 without charge.
3. In June 2020 I visited the website maintained by the U.S. Dept. of Labor, Bureau of Labor Statistics and ascertained the CPI for the South Region rose by 99.21 between March 1996, when the EAJA was amended, and May 2020.
4. In June 2020 I visited the website maintained by USAO and determined that market rate for paralegals was $166.00 from June 1, 2018, to May 31, 2019, and $173.00 from June 1, 2019, to the present.

The following is a statement of the exact service rendered and expenses incurred in the representation of the Appellant. In addition to Glenn Bergmann, Esq. (GRB), attorneys who may have worked on this appeal include: Joseph Moore (JRM); Tom Polseno (TMP); Daniel Wedemeyer (DDW); Sun H. Choi (SHC); Bryan Anderson (BBA); Greta Allardyce (GRA); David Ames (DSA); Anthony Ayres (AJA); Kelsey Binder (KLB); Brian Blake (BJB); Jonathan Brenner (JDB); Chanel Chasanov (CGC); Andrew Cho (AHC); Ken Ciardiello (KMC); Alan Coleman (ARC); Steven Cook (SJC); Simone Coyle (SKC); Corey Creek (JCC); Ceyla Esendemir (CEE); Michael Garza (MAG); Caroline Greene (CJG); Tiffany Guglielmetti (TMG); H. Ritter Haaga (HRH); Christopher Harner (CMH); Melissa Hendricks (MAH); Jordan Hensley (JLH); Rachel Jiang (RBJ); John Juergensen (JLJ); Lila Kanovsky (MLK); Sharon Kim (SRK); Joshua Leach (JDL); Ziadanne Lewis (ZPL); Andrea MacDonald (AMM); Nathaniel Maranwe

(NGM); Robert Molson (RJM); Jonathan Murphy (JCM); Joseph Murphy (JLM); Kristin Parker-Fahey (KPF); Ryan Pau (RSP); Homer Richards (HRR); James Ridgway (JDR); Samuel Rouleau (SJR); Kim Sheffield (KLS); Ronan Slater (RRS); Steven Spitzer (SMS); Nicole Steers (NMS); Jenny Tang (JJT); Alex Tway (ACT); Max Yarus (MWY); Hannah Youh (HCY); and Nicola Zahara (NDZ). All are members of the Court's bar. Additionally, (P)aralegals who may have worked on this appeal include Elizabeth Green (P) (ERG) and Taciana Melanson (P) (TSM).

BERGMANN & MOORE, LLC

7920 NORFOLK AVE. SUITE 700
BETHESDA, MD 20814
TEL. 301-986-0841
FAX: 301-986-0845
bergmannlaw@msn.com

Timesheet: Larry Scott (19-6232) **June 30, 2020**

Legal Services Rendered:

Date	Description of Services	Total Hours		Billed
7/30/19	BVA decision case screen (JJT/DSA)	.4		.4
8/21	T/C to client sign up (LML)	.2	(.2)	.0
	Correspondence to veteran w/ attachments	.1		.1
9/12	Review documents from veteran including POA docs	.2		.2
	Prepare/file appearance/POA	.1		.1
	Correspondence to court w/ filing fee check	.1		.1
	Review notice of docketing	.1		.1
9/17	Reviewed CAVC Fee	.1		.1
9/26	Prepare notice of appearance as co-counsel (RRS)	.1		.1
9/27	Prepare new client correspondence outlining appellate process w/ attachments (HCY/GB)	.2		.2
11/4	Review VA notice of appearance (RRS)	.1		.1
11/7	Review RBA filing notice (RRS)	.1		.1
11/11	Receive RBA CD (2391 pages) (LML)	.2	(.2)	.0
11/18	E-corres to and from VA to check if unopposed to RBA resp. extension (RRS)	.1	(.1)	.0
	Prepare motion for extension RBA resp. 45 days (RRS)	.1	(.1)	.0
12/12	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 1-839 (ARC)	3.3	(1.5)	1.8
12/13	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 840-1729 (ARC)	3.5	(1.5)	2.0

Date	Description of Services	Total Hours		Billed
	RBA page-by-page review for legibility/completeness pursuant to R. 10; confirmed accuracy of all evidence/documents relied upon in BVA decision; determined relevance of incomplete/illegible documents identified in review, 1730-2391 (ARC)	2.6	(1.5)	1.1
	Prepare report re: RBA completeness/legibility; e-corres re: RBA review (ARC)	.2		.2
12/20	Review Rule 10 memo & pertinent portions of RBA in contemplation of RBA dispute (RRS)	.4	(.4)	.0
12/23	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 1-415 (RRS)	3.0	(.5)	2.5
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 416-700 (RRS)	2.0	(.5)	1.5
12/26	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 701-1125 (RRS)	3.0	(.5)	2.5
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 1126-1405 (RRS)	2.0	(.5)	1.5
12/27	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 1406-1840 (RRS)	3.0	(.5)	2.5
12/30	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 1841-2150 (RRS)	2.0	(.5)	1.5

Date	Description of Services	Total Hours		Billed
	RBA merits review (ignoring illegible / incomplete documents previously deemed not relevant at R. 10) in preparation for drafting Rule 33 memo identifying potential bases for alternative resolution, taking notes, Pages 2151-2391 (RRS)	1.2	(.5)	.7
12/31	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Lexis research and argument re: Bernard v. Brown, implicit reopening, adequate notice, prejudice (RRS)	3.0	(.9)	2.1
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Lexis research and argument re: newly received STRs, new and material VATRs (RRS)	2.5	(.6)	1.9
1/2/20	Prepare statement accepting RBA (RRS)	.1		.1
	Review notice to file brief (RRS)	.1		.1
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Lexis research and argument re: adequacy of VA exams, weighing Va and private medical opinions (RRS)	3.0	(.9)	2.1
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Lexis research and argument re: Gulf War presumption, negative evidence, reasons or bases (RRS)	1.5	(.6)	.9
	Draft assessment re: case goals/merits (RRS)	.2		.2
1/6	T/c from client Providing updated address and telephone number (RRS)	.1		.1
1/21	Supervisory review of conference memo; review related materials & identify add'l memo content (JCC)	1.8	(1.8)	.0
2/20	Review order scheduling CLS conference (RRS)	.1		.1
	E-corres from VA Needing to reschedule CLS conference due to conflict (RRS)	.1		.1
	E-corres to VA Providing availability for rescheduled conference (RRS)	.1		.1
2/26	E-corres from CLS stating unavailable until April (RRS)	.1		.1
	E-corres to VA and CLS confirming new 4/20 date for BC (RRS)	.1		.1
2/27	Review Court order Granting motion to reschedule CLS conference (RRS)	.1		.1

Date	Description of Services	Total Hours		Billed
3/3	Revise Rule 33 memo, adding citations to RBA & authorities where necessary; prepare R33 Certificate of Service; Revised memo; added additional arguments/cites; prepared and filed certificate of service (RRS)	.6		.6
	Create abstract RBA for CLS review (RRS)	.1	(.1)	.0
	E-corres to VA with R.33 memo (RRS)	.1		.1
3/31	Review VA notice of appearance (RRS)	.1		.1
4/20	Review litigation file inc. Rule 33 memo in preparation for CLS conference (RRS)	.5		.5
	Participate in CLS conference (RRS)	.2		.2
	Prepare CLS conference notes for file; JMR offer, all four claims (RRS)	.3		.3
	Review CLS conference update re: brief (RRS)	.1	(.1)	.0
	Supervisory review of conference notes & memo to assess JMR offer (BBA)	.3	(.3)	.0
4/21	E-corres to VA Confirming terms of JMR offer (RRS)	.1		.1
	E-corres from VA Confirming JMR terms, OGC will draft (RRS)	.1		.1
5/18	E-corres to VA re: status of JMR/stay seeing if stay is necessary with upcoming JMR deadline (RRS)	.1		.1
	E-corres from VA indicating stay is necessary (RRS)	.1		.1
5/19	Review Court order granting stay (RRS)	.1		.1
6/16	E-corres to VA re: status of JMR/stay seeing if continuation of stay is necessary to complete JMR (RRS)	.1		.1
	E-corres from VA with draft of JMR (RRS)	.1		.1
	Review/revise JMR (RRS)	.4		.4
6/17	Supervisory review of draft JMR; approve language/edits (BBA)	.4		.4
6/18	Review/revise JMR additional edits and review before sending back to OGC (RRS)	.1		.1
	E-corres to VA with edits to JMR (RRS)	.1		.1
	E-corres from VA accepting latest JMR edits (RRS)	.1		.1
	Review/revise JMR reviewing/signing final draft (RRS)	.1		.1
	E-corres to VA with signed copy of JMR (RRS)	.1		.1
	Review JMR filed by OGC with Court (RRS)	.1		.1

Date	Description of Services	Total Hours	Billed
6/22	Review Mandate	.1	.1
6/25	Commence client correspondence re: case disposition and next steps (HCY)	1.6	1.6
6/26	T/c to client re: case disposition and next steps; left voice mail (HCY)	.1	.1
6/29	T/c to client re: case disposition and next steps; talked to Veteran's wife (HCY)	.2	.2
6/30	Complete client correspondence re: case disposition and next steps (NMS)	.3	.3
	Compile time sheet (P) (TSM)	.3	.3
	Prepare EAJA application (P) (TSM)	.4	.4
	Review/revise EAJA application (SRK)	.1	.1
	n/c = no charge - reduction based on counsel's express consideration of billing judgment, avoidance of redundant time, and reasonableness, totaling (14.3 hours)	**(2,958.10)**	

Total Attorney Services Rendered	**33.8 hrs**	**6,991.87**
Total Paralegal Services Rendered	**0.7 hrs**	**105.00**

Expenses

Priority Mail	7.35	08/21/19	
Standard Mail	0.55	09/12/19	
Standard Mail Rate	0.55	09/27/19	
Priority Mail	7.75	06/30/20	
Total Expenses	16.20		16.20

Total current services rendered plus expenses **$7,113.07**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/Glenn R. Bergmann June 30, 2020
Glenn R. Bergmann Date