

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

JUAN PENA MEDINA,

Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Appellee.

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Vet.App. No. 19-1083

**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), the Appellant, Juan Pena Medina, moves the Court for an award of reasonable attorney fees in the amount of \$5,924.97.

In order to be eligible for an award of attorney's fees under EAJA, a claimant must demonstrate (1) that he or she is a prevailing party; (2) that he or she is eligible to receive an award; and (3) that the position of the United States was not substantially justified. *Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996). Additionally, the claimant must provide an itemized statement from the claimant's attorney as to the services provided. *Id.*

Here, the Appellant satisfies all the requirements. First, the Appellant is a prevailing party. A prevailing party includes one who obtains relief in the form of a remand predicated on administrative error. *Zuberi v. Nicholson*, 19 Vet.App. 541, 546 (2006). In this case, the appellant is a prevailing party because the Court, in its April 29, 2020, decision, found that the Board failed to provide an adequate statement of reasons or bases to support its February 5, 2019, decision. Specifically, the Court determined that the Board's statement of reasons or bases for relying on a November 2018 VA examination to deny the Appellant entitlement to service connection for his back disability was inadequate. The Court also found that the Appellant's TDIU claim was

inextricably intertwined with his claim for his back disability. Accordingly, the Court remanded the Appellant's back and TDIU claims to the Board for readjudication.

Second, the Appellant is eligible to receive an EAJA award. A showing of eligibility may be made by stating in the application that the Appellant's net worth at the time the appeal was filed did not exceed \$2 million. *Bazalo*, 9 Vet.App. at 309. The undersigned counsel hereby states that the Appellant's net worth did not exceed \$2 million at the time this action was filed. Furthermore, the Appellant is not a business entity.

Third, the government's position in this case was not substantially justified. There was not a reasonable basis in law supporting the Board's decision. *See Stillwell v. Brown*, 6 Vet.App. 291, 302 (1994) ("[A] position can be justified even though it is not correct, and . . . it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact.") (internal quotations omitted).

Lastly, the undersigned counsel has attached the billing statement describing the request for \$5,924.97 in fees. *See* Exhibit A. It is based on 29.2 hours of work the undersigned counsel completed for the Appellant, which was performed at a rate of \$202.91 per hour (\$125 per hour plus a cost of living adjustment from March 1996, using the CPI-U for the South urban region and November 2019, the date closest to the date the Appellant drafted his brief, as the midpoint).

Respectfully submitted,

FOR THE APPELLANT:

May 15, 2020
Date

/s/Javier Centonzio
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EXHIBIT A
Juan Pena Medina
Docket **19-1083**

5/27/19 – .9

RBA review (legibility & completeness)

5/27/19 - .4

Reviewed Board's decision

8/14/19 – .8

Researched and identified case law and statutes relevant to matter based on issues identified in BVA decision

8/14/19 – 2.8

Reviewed RBA (content), 1-492

8/16/19 - 2.2

Reviewed RBA (content), 493-end

8/22/19 - 2.9

Drafted Summary of Issues for Rule 33 Conference

8/26/19 - 2.4

Continued drafting Summary of Issues

8/28/19 - .2

Prepared supplemental materials

8/28/19 - .4

Final edits to Summary of Issues, filed

8/28/19 - .2

Prepared and filed certification of service

9/13/19 - .4

Prepared for staff conference

9/13/19 - .3

Staff conference held

11/19/19 – 3.1

Began drafting Appellant's brief, table of contents, course of proceedings, relevant facts, statement of issues, and conducted additional research

11/20/19 – 3

Continued drafting Appellant's brief

11/24/19 – 2.6

Continued drafting Appellant's brief

11/27/19 – 2.4

Continued drafting Appellant's brief

11/29/19 – 1.3

Final edits to Appellant's brief, filed

3/16/20 – 1.2

Reviewed Appellee's brief

4/3/20 - .6

Reviewed Record of Proceedings for completeness

4/29/20 - .2

Read Decision

5/15/20 – .9

Drafted EAJA application

TOTAL FEES: \$5,924.97 (29.2 hours of work at \$202.91 per hour)

There were no costs associated with this representation.

Total amount of bill: \$5,924.97

I, Javier Centonzio, under penalty of perjury, affirm that the above is a true and accurate accounting of the time I spent on the case of Juan Pena Medina, Docket No. 19-1083. In the exercise of billing judgment, I omitted time spent on administrative tasks, and time that appeared duplicative.