UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

BOBBY E. BENSON, Appellant, v. ROBERT L. WILKIE, Secretary of Veterans Affairs, Appellee.	)))))))))	Vet. App. No. 19-2303

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, Bobby E. Benson, moves this Court for an award of reasonable attorney fees and expenses. Appellant seeks an award in the amount of $14,099.75 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 $14,099.75 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 January 31, 2019, to the extent it denied service connection for (1) right ankle arthritis; (2) a back disability; (3) pain/swelling of the bilateral lower extremities; (4) left foot drop; (5) a right foot disability associated with his left foot drop; (6) a cervical spine/neck disability; (7) residuals of a left tibia fracture; (8) right ear hearing loss; (9) an allergic condition; (10) asthma; (11) dermatitis; and (12) an acquired psychiatric disability, including PTSD.

In April 2020, the Court issued a memorandum decision that set aside and remanded the above-noted claims. Specifically, the Court determined that VA failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to: (1) properly discuss entitlement to VA medical examinations regarding the right ankle arthritis, back disability, bilateral lower extremity pain/swelling, and left foot drop claims; (2) address the evidence of 15 decibel shift in hearing; (3) discuss Appellant's separation examinations with regard to the left tibia fracture claim; (4) support its finding that presumption of soundness did not apply with respect to the allergic condition claim; and (5) consider a medical record pertinent to the acquired psychiatric disability claim. In addition, VA failed to satisfy its duty to assist where it did not obtain in-service hospitalization records. The Board also erred by failing to ensure that the Board member complied with the responsibilities to suggest the submission of relevant evidence.

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 Court of Appeals for Veterans Claims issued a memorandum decision that set aside and remanded the Board's decision. Specifically, the Court determined that VA failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to: (1) properly discuss entitlement to VA medical examinations regarding the right ankle arthritis, back disability, bilateral lower extremity pain/swelling, and left foot drop claims; (2) address the evidence of 15 decibel shift in hearing; (3) discuss Appellant's separation examinations with regard to the left tibia fracture claim; (4) support its finding that presumption of soundness did not apply with respect to the allergic condition claim; and (5) consider a medical record pertinent to the acquired psychiatric disability claim. In addition, VA failed to satisfy its duty to assist where it did not obtain in-service hospitalization records. The Board also erred by failing to ensure that the Board member complied with the responsibilities to suggest the submission of relevant evidence.

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" where the Court issued a memorandum decision that set aside and remanded the above-noted claim. Specifically, the Court determined that VA failed to satisfy its statutory mandate to supply an adequate statement of reasons or bases where the Board neglected to: (1) properly discuss entitlement to VA medical examinations regarding the right ankle arthritis, back disability, bilateral lower extremity pain/swelling, and left foot drop claims; (2) address the evidence of 15 decibel shift in hearing; (3) discuss Appellant's separation examinations with regard to the left tibia fracture claim; (4) support its finding that presumption of soundness did not apply with respect to the allergic condition claim; and (5) consider a medical record pertinent to the acquired psychiatric disability claim. In addition, VA failed to satisfy its duty to assist where it did not obtain in-service hospitalization records. The Board also erred by failing to ensure that the Board member complied with the responsibilities to suggest the submission of relevant evidence.

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 $14,099.75.

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 ***12.1 hours*** – ***totaling $2,381.09 --*** 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. The EAJA Statutory Cap of $125.00 Should be Adjusted Upward to Reflect the Increase in the Cost of Living.

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 Court issued a memorandum decision in May 2020. Appellant selects October 2019, 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

[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.

Labor Statistics, the CPI-U for the South Region – Size Class A – rose 66.69% between March 1996, and October 2019. Applying the increase in the CPI to the statutory rate, Appellant's counsel should be compensated at the rate of $208.36 per hour. This rate was calculated by subtracting the CPI-U for October 2019 (252.536) from that of March 1996 (151.5), and dividing the result (101.03) by the CPI-U for March 1996. The result (.6669), representing the increase between March 1996 and October 2019 was then multiplied by the statutory rate ($125.00), demonstrating an increase of $83.36, which was added to the $125.00 statutory rate to arrive at the inflation-adjusted rate of $208.36 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]

Considering the foregoing, Appellant's counsel requests a fee of $14,068.45 based upon 66.8 hours of attorney work and 1.0 hours of paralegal work; and $31.30 in expenses (See exhibit B) for a total of $14,099.75.

[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, 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).

Respectfully submitted,

/s/ Glenn R. Bergmann

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Counsel for Appellant

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, Bobby E. Benson, 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 Bobby E. Benson in Benson v. Wilkie, Vet. App. No. 19-2303 without charge.
3. In August 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 101.03 between March 1996, when the EAJA was amended, and October 2019.
4. In August 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).

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Timesheet: Bobby E. Benson (19-2303) **August 3, 2020**

Legal Services

Date	Description of Services	Total Hours	(N/C)	Billed
3/2/19	BVA decision case screen (KLS/DSA)	1.0		1.0
3/21	T/C to client sign up (LML)	.2	(.2)	.0
	Correspondence to veteran w/ attachments	.1		.1
4/5	Review documents from veteran including POA docs	.2		.2
	Prepared Financial Hardship	.1		.1
	Prepare/file appearance/POA	.1		.1
4/8	Review notice of docketing	.1		.1
6/12	Prepare notice of appearance as co-counsel (DSA)	.1		.1
	Prepare new client correspondence outlining appellate process w/ attachments (NMS/GRB)	.2		.2
6/18	T/c from client re: current status with VA and questions about issues (DSA)	.4		.4
6/19	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, 1-1987 (JLM)	3.5	(1.5)	2.0
	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, 1988-3249 (JLM)	2.1	(.8)	1.3
	Prepare report re: RBA completeness/legibility; e-corres re: RBA review (JLM)	.5		.5
6/20	Review Rule 10 memo & pertinent portions of RBA in contemplation of RBA dispute (DSA)	.2	(.2)	.0
	Prepare statement accepting RBA (DSA)	.1		.1

Date	Description of Services	Total Hours	(N/C)	Billed
	Review notice to file brief (DSA)	.1		.1
6/25	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, 3249-2913 (DSA)	.9		.9
6/26	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, 2912-1682 (DSA)	3.3	(.5)	2.8
7/5	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, 1682-376 (DSA)	3.5	(.5)	3.0
	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, 376-1 (DSA)	1.0		1.0
7/7	Draft Rule 33 memo; identifying errors for alternative resolution consideration; service records, McLendon, and Bryant arguments (DSA)	3.5		3.5
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Bryant and Left Tibia fracture arguments (DSA)	2.1		2.1
7/8	Draft Rule 33 memo; identifying errors for alternative resolution consideration; Allergies, R HL, acquires psych, asthma and dermatitis arguments; proofreading (DSA)	3.5	(.5)	3.0
	Draft Rule 33 memo; identifying errors for alternative resolution consideration; continued (DSA)	.4		.4
7/12	Review order scheduling CLS conference (DSA)	.1		.1
	Create abstract RBA for CLS review (DSA)	.2	(.2)	.0
	E-corres to VA with R.33 memo (DSA)	.1		.1
7/29	T/c from client re: case status and CAVC process (DSA)	.3		.3
8/8	Review litigation file inc. Rule 33 memo in preparation for CLS conference (DSA)	.3		.3

Date	Description of Services	Total Hours	(N/C)	Billed
	Participate in CLS conference (DSA)	.3		.3
	Prepare CLS conference notes for file (DSA)	.2		.2
8/13	T/c to client re: JMPR offer (left VM) (DSA)	.1	(.1)	.0
	T/c from client re: nature of JMPR offer and benefits/risks of accepting and rejecting; client agreed to reject offer (DSA)	.4		.4
	E-corres to VA re: rejecting JMPR offer (DSA)	.1		.1
	Draft client correspondence re: rejection of JMPR offer (DSA)	.2		.2
9/10	E-corres to and from VA re: opposition to extension to brief and leave to file (DSA)	.3	(.3)	.0
	Prepare motion for extension to file brief (DSA)	.1	(.1)	.0
	Prepare motion for leave to file extension to file brief (DSA)	.1	(.1)	.0
9/11	Review Court order granting our extension (DSA)	.1	(.1)	.0
10/2	T/c from client re: case status and reason for recent VAX scheduling (DSA)	.3		.3
	Draft principal brief; w/ nature of the case (DSA)	.5		.5
10/4	Draft principal brief; STR DtA argument, Bryant argument, McLendon argument, inadequate VAX argument (DSA)	3.3	(.5)	2.8
10/5	Draft principal brief; R&B DtA argument, R&B tibia argument, R&B psych argument (DSA)	2.3		2.3
	Draft principal brief; presumption of soundess arguments, intertwinedness arguments (DSA)	1.4		1.4
10/8	Draft principal brief; summary of issues, statement of relevant facts & procedural history (DSA)	1.3		1.3
10/9	Draft principal brief; proofreading and editing (DSA)	2.4		2.4
10/17	Supervisory review of draft principal brief; review related materials & identify add'l brief content (DDW)	2.6	(.6)	2.0
10/21	Revise principal brief; splitting out Bryant and tibia fracture arguments into stand-alone arguments, proofreading and editing (DSA)	2.1		2.1
10/22	Revise principal brief; proofreading and editing (DSA)	.3		.3
	Prepare table of authorities and table of contents for principal brief (P) (ERG)	1.7	(1.7)	.0
10/23	Review table of authorities and table of contents for principal brief (P) (ERG)	.7	(.7)	.0
10/24	Revise principal brief; final review before filing (DSA)	.2		.2

Date	Description of Services	Total Hours	(N/C)	Billed
	Correspondence to client with attached principal brief	.1		.1
10/28	T/c from client regarding brief and separate documents received from VA (DSA)	.6		.6
11/4	T/c from client w/ questions about case and recent VAX he was ordered to attend (DSA)	.4	(.4)	.0
11/18	T/c from client via VM (DSA)	.1		.1
12/2	T/c from client via VM (DSA)	.1	(.1)	.0
	T/c to client left VM (DSA)	.1		.1
12/4	T/c from client re: recent VA actions on claims on whether/how those impact current appeal at CAVC (DSA)	.4		.4
12/17	E-corres from VA re: brief extension (DSA)	.1		.1
	E-corres to VA re: brief extension (DSA)	.1		.1
12/19	Review VA motion for brief extension (DSA)	.1		.1
	Review Court order granting VA motion for brief extension (DSA)	.1		.1
1/27/20	T/c from client re: case status (DSA)	.2		.2
2/12	T/c from client via VM (DSA)	.1		.1
	T/c to client re: case update & change in VA defense re: right foot issue in VA brief (DSA)	.3		.3
2/19	E-corres to and from VA re: position on reply brief extension (DSA)	.2	(.2)	.0
2/20	Prepare motion for extension of reply brief (DSA)	.1	(.1)	.0
	Review Court order granting reply brief extension (DSA)	.1	(.1)	.0
	Review Court order granting our extension (DSA)	.1	(.1)	.0
3/10	Review litigation file inc. briefs outlining arguments for reply brief (DSA)	2.2		2.2
	Draft reply brief; DtA clinical records reversal arguments; DtA medical opinion reversal argument; Bryant arguments (DSA)	3.2	(.5)	2.7
	Draft reply brief; right ear hearing loss arguments (DSA)	1.8		1.8
3/11	Draft reply brief; R&B psychiatric disorder arguments; R&B left tibia arguments; presumption of soundness for allergic condition reversal arguments (DSA)	3.1	(.5)	2.6
	Draft reply brief; intertwinedness and concession arguments (DSA)	1.2		1.2
3/15	Revise reply brief (DSA)	.9		.9

Date	Description of Services	Total Hours	(N/C)	Billed
3/19	T/c from client re: case status (DSA)	.1		.1
3/31	Supervisory review of draft reply brief; review related materials & identify add'l brief content (DDW)	2.1	(.6)	1.5
	Revise reply brief; incorporating supervisory edits (DSA)	1.1		1.1
4/5	Revise reply brief; incorporating supervisory edits, continued (DSA)	1.3		1.3
	Prepare table of authorities and table of contents for reply brief (DSA)	.8	(.8)	.0
4/7	Correspondence to client with attached reply brief	.1		.1
4/10	T/c from client via VM, asking to call back (DSA)	.1		.1
	T/c to client left VM (DSA)	.1		.1
	T/c from client re: reply brief and status of case (DSA)	.2		.2
4/13	Review VA notice of appearance (DSA)	.1		.1
4/14	Review ROP filing notice (DSA)	.1		.1
4/16	Review ROP for compliance with Rule 28 and note findings (KPF)	1.2		1.2
	Prepare statement accepting ROP (DSA)	.1		.1
4/17	Review Judge assignment (DSA)	.1	(.1)	.0
5/6	T/c to client re: MemDec, left VM (DSA)	.1		.1
	T/c from client returning call, explained generally favorable outcome without specifics, told more information will be provided later (DSA)	.2		.2
	Draft assessment re: case goals/merits (DSA)	.3		.3
	Review mem. dec.; prepare memo summarizing outcome and consideration of R.35 (DSA)	.6		.6
5/11	T/c from client re: MemDec, R. 35, VA actions on remand, impact of COVID on remand actions and claims (DSA)	.5		.5
5/15	T/c from client via VM, request call back (DSA)	.1		.1
	T/c from client re: recent communications from VA and whether they are related to CAVC appeal (DSA)	.4		.4
5/22	Commence client correspondence re: case disposition and next steps (KPF)	2.1		2.1
5/27	T/c to client no answer, left vm (KPF)	.1		.1
5/28	T/c to client no answer, left vm (KPF)	.1		.1
	Complete client correspondence re: case disposition and next steps (NMS)	.2		.2

Date	Description of Services	Total Hours (N/C)	Billed
5/28	T/c from client re: began discussing case disposition (KPF)	.1	.1
	T/c from client re: continue discussing case disposition, discussed next steps (KPF)	.4	.4
6/3	T/c from client via VM (DSA)	.1	.1
	T/c to client left VM (DSA)	.1	.1
	T/c from client answering numerous questions regarding process on remand and best actions to take to support claims (DSA)	.8	.8
7/30	Review Mandate	.1	.1
8/3	Compile time sheet (P) (TSM)	.3	.3
	Prepare EAJA application (P) (TSM)	.7	.7
	Review/revise EAJA application (SRK)	.2	.2

Total Services Rendered	**79.9 hrs**	**16,449.54**
Total Services Not Charged	**(-12.1) hrs**	**(-2,381.09)**
Total Charged Attorney Services	66.8 hrs	13,918.45
Total Charged Paralegal Services	1.0 hrs	150.00
Total Services Charged	**67.8 hrs**	**14,068.45**

Expenses

Priority Mail	7.35	03/21/19
Standard Mail Rate	0.55	06/12/19
Standard Mail	0.55	08/13/19
Priority Mail	7.35	10/24/19
Priority Mail	7.75	04/07/20
Priority Mail	7.75	05/28/20
Total Expenses	31.30	31.30

Total current services rendered plus expenses **$14,099.75**

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

/s/Glenn R. Bergmann August 3, 2020
Glenn R. Bergmann Date