

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

SHAWN P. LACEY,)	
)	
Appellant,)	
)	
v.)	Vet.App. No. <u>17-3296E</u>
)	
ROBERT L. WILKIE,)	
Secretary of)	
Veterans Affairs,)	
)	
Appellee.)	
_____)	

**APPELLANT’S SUPPLEMENTAL APPLICATION FOR AN AWARD OF
ATTORNEY FEES, COSTS AND OTHER EXPENSES UNDER THE
EQUAL ACCESS TO JUSTICE ACT**

Pursuant to U.S. Vet.App. R. 39 and 28 U.S.C.A. § 2412 (West 2014), Appellant Shawn P. Lacey, by and through his counsel, Jennifer A. Zajac and Linda E. Blauhut, hereby submits his supplemental application for an award of attorney fees, costs, and other expenses (“EAJA”) in the amount of \$3,307.92. This submission is timely, as it is within 20 days after the Court’s August 18, 2020, panel decision, granting Mr. Lacey’s initial application for EAJA fees. U.S. VET.APP. R. 39(b).

The Supreme Court has held that a prevailing party is entitled to supplemental fees for the time taken to litigate a disputed fee application, without needing to establish that the Government’s position in the fee dispute itself was

unjustified. *Comm'r, I.N.S. v Jean*, 496 U.S. 154, 160-61 (1990); *see Wagner v. Shinseki*, 640 F.3d 1255, 1259-60 (Fed. Cir. 2011); *McNeely v. West*, 12 Vet.App. 162, 164 (1999). Instead, the “sole consideration in determining a fees-for-fees supplemental application is one of reasonableness.” *McNeely*, 12 Vet.App. at 164.

To aid the Court in this determination, a statement from counsel for Appellant is attached. It itemizes services rendered in the fee litigation, the time expended, and the rate at which fees were computed. The time expended for litigating the EAJA fee is 15.25 hours. The hourly rate for Ms. Zajac is \$218.12 and the hourly rate for Ms. Blauhut is \$209.56. The total amount claimed is \$3,307.92.

WHEREFORE, based on the foregoing, Appellant respectfully requests that the U.S. Court of Appeals for Veterans Claims award supplemental attorney fees in the amount of \$3,307.92, ***jointly to Appellant and Paralyzed Veterans of America.***

Respectfully submitted,

/s/ Jennifer A. Zajac
JENNIFER A. ZAJAC
Attorney for Appellant
Paralyzed Veterans of America
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August 25, 2020
Date

ATTACHMENT

**IN THE UNITED STATES COURT OF APPEALS
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SHAWN P. LACEY,)	
)	
Appellant,)	
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v.)	Vet.App. No. <u>17-3296E</u>
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ROBERT L. WILKIE,)	
Secretary of)	
Veterans Affairs,)	
)	
Appellee.)	
_____)	

DECLARATION OF JENNIFER A. ZAJAC, ESQ.

I, Jennifer A. Zajac, make the following declaration in support of Appellant Shawn P. Lacey's supplemental application for an award of attorney fees, costs, and other expenses, in connection with the above-captioned appeal.

1. I was the lead attorney of record for Appellant in the proceedings before the U.S. Court of Appeals for Veterans Claims.
2. Linda E. Blauhut, Deputy General Counsel, provided supervisory review.
3. I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives.
4. The following list itemizes certain services rendered and time expended leading to the August 18, 2020, decision, granting Appellant's EAJA application:

<u>DATE</u>	<u>TASK</u>	<u>HOURS</u>	<u>JAZ/LEB</u>
3/23/20	Review email from VA re: negotiating EAJA fee. Discuss with L. Blauhut.	0.4	JAZ
3/24/20	Respond to VA with counter for fee reduction.	0.2	JAZ
3/30/20	Review email from VA that supervisor rejected efforts to negotiate. Review VA's response to EAJA application.	0.5	JAZ
4/17/20	Begin to draft Reply to Secretary's Response to Appellant's EAJA application. -Review Board decision (.75) -Review Secretary's arguments (.75) -Review Court decision and compare (1.25) -Draft initial arguments (1.5)	4.25	JAZ
4/22/20	Send draft Reply to L. Blauhut for supervisory review.	0.1	JAZ
4/27/20	Review, edit, research for Reply.	1.25	LEB
4/27/20	Review L. Blauhut's comments and edit accordingly. Research importance of oral argument and prep work. Research case law regarding number of moots. Draft additional arguments regarding importance of prep.	3	JAZ
4/28/20	Perform final supervisory review. Email with J. Zajac.	0.9	LEB

4/28/20	-Phone call with client (0.5) -Continue to draft arguments for Reply for EAJA (0.3) -Send to L. Blauhut for final supervisory review (0.1) -Edit accordingly (1.0). -Finalize and file (.2)	2.1	JAZ
8/18/20	Review decision from Court. Email with L. Blauhut.	0.3	JAZ
8/20/20	Phone call with client.	0.75	JAZ
8/24/20	Draft supplemental application.	1.5	JAZ

Total Hours Billed: 15.25

Total hours for JAZ: 13.1

Total hours for LEB: 2.15

Rate:

Rate for JAZ: \$218.12

Rate for LEB: \$209.56

Total Hourly Billable Fees: \$3,307.92 (see Paragraph 8, below)

Billable fees for JAZ: \$2,857.37

Billable fees for LEB: \$450.55

**TOTAL SUPPLEMENTAL
AMOUNT REQUESTED: \$3,307.92**

5. Under 28 U.S.C.A. § 2412(d)(1)(D)(2), the applicable rate is \$125.00 per hour for appeals filed after March 29, 1996. Mr. Lacey filed his appeal with the Court in September 2017. An attorney may seek a rate in excess of \$125.00 per hour based on the increase in the cost of living since the EAJA was amended in March 1996. *See* 28 U.S.C.A. § 2412(d)(2)(A)(ii); *Mannino v. West*, 12 Vet.App. 242 (1999).

6. For Ms. Zajac: The \$125.00 attorney rate, adjusted for inflation for the West Region, was \$218.12 in April 2020, the month undersigned counsel researched and filed Appellant's Reply to the Secretary's Response. *See* Bureau of Labor Statistics Data, CPI-U, at <http://www.bls.gov/cpi/home.htm> (last visited August 24, 2020); *Elczyn v. Brown*, 7 Vet.App. 170, 181 (1994) (suggesting the date Appellant's Brief is filed as an appropriate "mid-point"). This rate was calculated by creating a ratio using the CPI-U for the West Region between March 1996 (\$156.4) and April 2020 (\$272.913), for the rate of \$100, and then applying that ratio for calculating the change for \$125. *See id.* The "**billable fees**" amount was calculated, then, by multiplying the \$218.12 rate by the total number of hours Ms. Zajac spent working on the Reply (13.1), to equal \$2,857.37.

7. For Ms. Blauhut: The \$125.00 attorney rate, adjusted for inflation for the Washington Region, was \$206.57 in April 2020, the month co-counsel provided supervisory review. *See* Bureau of Labor Statistics Data, CPI-U, at

http://www.bls.gov/cpi/home.htm (last visited August 24, 2020); *see Elczyn, 7 Vet.App.* at 181. This rate was calculated by first calculating what the CPI-U rate was for the Washington Region for April 2020. To do that, an average was taken for March 2020 (\$265.385) and May 2020 (\$265.733), to equal \$265.559. This number was then used to create a ratio for the CPI-U for the Washington Region between March 1996 (\$158.4) and April 2020 (\$265.559), for the rate of \$100, and then applying that ratio for calculating the change for \$125. *See id.* The “**billable fees**” amount was calculated, then, by multiplying the \$209.56 rate by the total number of hours spent working on the Reply (2.15), to equal \$450.55.

8. The two “**billable fees**” amounts were then added together to obtain the “**total hourly billable fees**” amount of \$3,307.92.

9. The “**TOTAL SUPPLEMENTAL AMOUNT REQUESTED**” is \$3,307.92.

10. I declare and state under penalty of perjury under U.S. laws that the information set forth in this declaration is true and correct.

Dated this 25th day of August, 2020.

Respectfully submitted,

/s/ Jennifer A. Zajac

Jennifer A. Zajac
Counsel for Appellant