

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

JOHN S. PEARSON,)	
)	
Appellant,)	
)	
v.)	Docket No. 19-1907
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
Appellee.)	

Mr. Pearson's Application for an Award of Attorney's Fees and Expenses

Under the EAJA—28 U.S.C. § 2412(d)—Mr. Pearson applies for reasonable attorney's fees and expenses in the amount of **\$16,634.46**.

I. Procedural History

Mr. Pearson appealed a January 22, 2019, Board decision on March 20, 2019. Britney Sutton and Harold Hoffman entered their appearances for Mr. Pearson on March 20 and March 29, 2019, respectively. The Secretary mailed the RBA to Mr. Pearson on May 20, 2019. The Rule 33 memo was delivered to the Secretary on July 1, 2019. The parties held the Rule 33 conference on July 18, 2019. Mr. Pearson filed his brief on October 1, 2019. The Secretary filed his brief on January 16, 2020. Mr. Pearson filed his reply brief on March 30, 2020. On May 6, 2020, the Court issued its decision, vacating and remanding the Board decision on appeal. The Court issued its judgment on May 29, 2020, and its mandate effective July 28, 2020.

II. Prevailing Party

A party prevails when they obtain success "on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing the suit."¹ Mr. Pearson prevailed because the Court vacated and remanded the Board's decision that denied Mr. Pearson entitlement to a disability rating in excess of 50% for post-traumatic stress disorder (PTSD) and alcohol use disorder. On May 6, 2020, the Court vacated the January 2019 Board decision and remanded for action consistent with

¹ *Shala v. Schaefer*, 113 S. Ct. 2625, 2632 (1993).

its decision. This Court-ordered relief triggered a "material alteration of the legal relationships of the parties necessary to permit an award of attorney's fees."²

III. The Government's Position Was Not Substantially Justified

Courts grant EAJA fees when the government's position is not substantially justified. The government's position must have a "reasonable basis both in law and fact" to be substantially justified.³

The Court in this case vacated and remanded for the Board to provide an adequate statement of reasons or bases for its conclusion that the August 2017 medical examiner was competent.⁴ In its decision, the Board relied on that exam to deny Mr. Pearson a rating in excess of 50% for his PTSD.⁵ The Board erred by shifting the burden to Mr. Pearson to prove that the examiner was competent.⁶ The Board failed to identify the examiner's area of expertise or any specific training that she had.⁷ Ultimately, the Board did not make the necessary factual findings to address Mr. Pearson's challenge—and the Court may not find facts either—judicial review is frustrated and remand is necessary.⁸ The exam and its findings as a whole cannot be reviewed because of the potential inadequacy of the examiner.⁹

The government's errors had no basis in fact or law and were not substantially justified. And they became the basis on which the Court relied in vacating the Board's decision and remanding the matter for further adjudication.

IV. EAJA Fees Are Warranted

Mr. Pearson's net worth did not exceed \$2,000,000 at the time he filed his Notice of Appeal with this Court—nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization with a net worth exceeding \$7,000,000 and having greater than 500 employees.¹⁰

² *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Res.*, 121 S. Ct. 1835, 1840 (2001).

³ *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).

⁴ Decision at 3-4.

⁵ Decision at 4.

⁶ *Id.*

⁷ *Id.*

⁸ Decision at 4.

⁹ *Id.*

¹⁰ *See Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996).

Mr. Pearson’s counsel is eligible to receive an award under 28 U.S.C. § 2412(d)(2)(B).

The claimed hourly rate is reasonable. Mr. Pearson was forced to retain Counsel to appeal a BVA decision that failed to comply with required procedure. No special circumstances—as defined by 28 U.S.C. § 2412(d)(1)(A)—exist in this case that would make an attorney’s fee award unjust. This case was not one on first impression involving a good faith argument nor a new and more stringent requirement for adjudication.

Counsel for Mr. Pearson in determining the equitable regular hourly rate used the fixed starting rate under the EAJA—\$125.00—plus the cost of living calculated under the CPI-U for:

- 1) Washington-Arlington-Alexandria-DC-VA-MD-WV—as published by the Bureau of Labor Statistics—for October 2019—the date in which Mr. Pearson filed his brief in this appeal. The CPI-U was 158.4 as of March 29, 1996; for October 2019, it was 265.500.¹¹ It increased by ~68%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Harold Hoffman, Britney Sutton¹² is \$210.00.
- 2) Baltimore-Columbia-Towson, MD—as published by the Bureau of Labor Statistics—for October 2019—the date in which Mr. Pearson filed his brief in this appeal. The CPI-U was 153.0 as of March 29, 1996; for October 2019, it was 257.616.¹³ It increased by ~68%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Britney Sutton¹⁴ is \$210.00.
- 3) South Urban Consumers—as published by the Bureau of Labor Statistics—for October 2019—the date in which Mr. Pearson filed his brief in this appeal. The CPI-U was 152.4 as of March 29, 1996; for

¹¹https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUR35ASA0,CU35ASA0

¹² Britney Sutton worked in Alexandria, VA from February 2018 through June 2019.

¹³https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUR35ESA0,CU35ESA0

¹⁴ Britney Sutton worked in Columbia, MD starting July 1, 2019.

October 2019, it was 247.423.¹⁵ It increased by ~62%. After applying this increase to the \$125.00 hourly rate provided by EAJA, the current hourly rate for Meghan Gentile is \$203.00.

4) The *Laffey* Matrix rate for paralegals working for attorneys in the USA for 2019-2020 is \$173.¹⁶ Courts have found the DC *Laffey* rates reasonable.¹⁷ The DoJ's policy is to not oppose the *Laffey* rates: " . . . although the USAO will no longer issue an updated *Laffey* Matrix computed using the prior methodology, it will not oppose using the prior methodology (if properly applied) to calculate reasonable attorney's fees under applicable fee-shifting statutes for periods after May 2015, provided that methodology is used consistently to calculate the entire fee amount."¹⁸ The hourly rate for Parker Low is \$173.00.

Britney Sutton graduated from Georgetown Law School in 2007. She started practicing veterans' law in early 2018 after working nearly a decade at Jones Day. She has been a registered VA claims attorney since 2018 and was admitted to practice at the Veterans Court in 2018 and the Federal Circuit in 2019.

After his enlistment in the Marine Corps, Harold Hoffman earned his undergraduate degree and graduated from Georgetown Law School in 2008. He clerked during law school at a veterans' law firm, the Court of Appeals for the Armed Forces, and at the House Committee on Veterans Affairs. He has practiced exclusively at the VA, this Court, and the Federal Circuit since 2009. He has served as lead counsel in over 300 appeals at this Court and the Federal Circuit.

Meghan Gentile graduated from Georgetown Law in 2008. She worked as a project manager at a veterans' law firm before joining VetLAG. She has practiced exclusively at this Court and the Federal Circuit and has represented over 100 clients since 2015.

¹⁵https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0300SA0,CUUS0300SA0

¹⁶ <http://laffeymatrix.com/see.html>; *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

¹⁷ *Smith v. District of Columbia*, 466 F. Supp. 2d 151, 156 (D.D.C. 2006).

¹⁸ <https://www.justice.gov/usao-dc/file/796471/download>, fn 5.

Parker Low graduated from the University of Virginia in 2011. She served for a Member of the House of Representatives as a Staff Assistant and Acting Press Secretary for nearly five years—managing all communications and office administration. She then worked for a political campaign and a political action committee where she managed logistics and budgets. She has been working as a paralegal since 2018.

Mr. Pearson's attorneys worked together in reviewing strategy and arguments and editing each other's work to ensure a good work product. The time for conversations between Mr. Pearson's attorneys is properly billed because both attorneys' efforts were distinct and required to generate a well-argued and well-written product. Attorneys in all practices should confer and it is proper to bill for discussions involving strategy and argument. All attorneys should also have filings edited before submission. Improving another attorney's work product through conferring and editing is a billable event. No time is billed in this application for training or any other labor not specific to this appeal or unnecessary to producing the best product for Mr. Pearson.

The total hours expended were 80.10 (61.80 by Britney Sutton, 11.10 by Harold Hoffman; 1.35 by Meghan Gentile, and 5.85 by Parker Low). The regular hourly rate is \$210, \$210, \$203, and \$173, respectively. Expenses totaled \$39.36. The total amount of fees, costs, and expenses is **\$16,634.46**.

I certify that I have (1) reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives; and (2) considered and eliminated all excessive or redundant time. Attached is an itemized statement broken down into detailed case tasks that are inextricably intertwined to preparing the entire case.

V. Conclusion

Mr. Pearson respectfully requests that the U.S. Court of Appeals for Veterans Claims award his attorney fees, costs, and other expenses in the total amount of **\$16,634.46**.

August 25, 2020.

Submitted,

/s/ Britney Sutton

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Exhibit 1**Itemized Veterans Legal Advocacy Group Staff Hours
For 19-1907**

Date	By	Description of Work	Time Spent	Time Billed
21-Feb-2019	HHH	Review Board decision re: legal errors for appeal. Take notes.	1.00	1.00
21-Feb-2019	HHH	Phone call with client re: case and representation.	0.25	0.25
25-Feb-2019	BSVA	Draft and send engagement agreement paperwork to client.	0.25	0.25
20-Mar-2019	BSVA	Review executed engagement agreement, sign, scan, enter Notice of Appearance.	0.25	0.25
22-Mar-2019	BSVA	Review docketing of appeal.	0.10	0.10
22-Mar-2019	BSVA	Added to logs, created files, notes, draft and send letter to client re: appearance entered, what to expect.	0.10	0.10
29-Mar-2019	BSVA	Send CTR to OGC.	0.10	0.10
29-Mar-2019	HHH	Enter Appearance.	0.10	0.10
16-Apr-2019	BSVA	Review BVA decision transmittal.	0.10	0.10
22-Apr-2019	BSVA	Resend CTR per OGC request.	0.10	0.10
15-May-2020	BSVA	Review OGC app; add to logs.	0.10	0.10
20-May-2019	BSVA	Review RBA notice.	0.10	0.10
28-May-2019	BSVA	Receive RBA and add to logs.	0.10	0.10
30-May-2019	BSVA	RBA Review for Rule 10 purposes; ensure completeness and legibility.	3.75	3.75

11-Jun-2019	BSVA	Review briefing order; calculate deadline; add to logs.	0.10	0.10
19-Jun-2019	BSVA	Review scheduling order for R33 conf; calculate deadlines, add to logs.	0.10	0.10
19-Jun-2019	HHH	Review BVA decision notes and summarize issues to present for brief.	0.50	0.50
19-Jun-2019	BSVA	Communicate with HHH re: summary of potential legal errors based on agency rep of client.	0.25	0.25
19-Jun-2019	HHH	Communicate with BS re: summary of potential legal errors based on agency rep of client.	0.25	0.25
19-Jun-2019	BSVA	Analyze Board decision.	0.50	0.50
19-Jun-2019	BSVA	RBA Review on merits (pgs. 21-812); take notes.	3.00	3.00
19-Jun-2019	BSVA	RBA Review on merits (pgs. 813-1504); take notes.	3.00	3.00
19-Jun-2019	BSVA	RBA Review on merits (pgs. 1505-2352); take notes.	3.00	3.00
20-Jun-2019	BSVA	RBA Review on merits (pgs. 2353-3019); take notes.	2.75	2.75
20-Jun-2019	BSVA	RBA Review on merits (pgs. 3020-3502); take notes.	2.50	2.50
20-Jun-2019	BSVA	RBA Review on merits (pgs. 3503-4227); take notes.	2.50	2.50
26-Jun-2019	BSVA	Draft SOI: Issues on Appeal and Facts section.	2.25	2.25
26-Jun-2019	BSVA	Draft SOI: Arg I - medical exam.	1.75	1.75
26-Jun-2019	BSVA	Draft SOI: Arg II - qualifications of med examiner.	2.00	2.00
27-Jun-2019	BSVA	Draft SOI Arg III: Clearly erroneous finding and Arg IV - 90 Day letter.	1.25	1.25
1-Jul-2019	BSMD	Edit SOI memo.	1.00	1.00
1-Jul-2019	BSMD	Final read through after revisions; submit SOI memo; Draft and Submit	0.50	0.50

		Certificate of Service; update litigation notes.		
18-Jul-2019	BSMD	Prepare for and attend R.33 conf; notes to file.	0.50	0.50
14-Aug-2019	BSMD	Draft and file extension for Appellant Brief.	0.25	0.00
24-Sep-2019	BSMD	Draft Brief: Statement of the Case and Issues Presented.	0.75	0.75
24-Sep-2020	BSMD	Draft Brief: Facts.	3.00	3.00
24-Sep-2020	BSMD	Draft Brief: Jan 2019 Board decision.	1.50	1.50
25-Sep-2020	BSMD	Draft Brief: Arg I - clearly erroneous finding.	2.00	2.00
25-Sep-2020	BSMD	Draft Brief: Arg II - Inadequate med. opinion.	3.00	3.00
25-Sep-2020	BSMD	Draft Brief: Arg III - Challenge to examiners qualifications.	2.50	2.50
25-Sep-2020	BSMD	Draft Brief: Prejudice and Conclusion.	0.50	0.50
25-Sep-2020	BSMD	Draft: Summary of Argument.	0.50	0.50
26-Sep-2020	HHH	Read brief for substance for any immediate big changes.	0.50	0.00
26-Sep-2020	BSMD	Edit Brief.	1.00	1.00
30-Sep-2020	HHH	Edit Brief.	1.75	1.75
30-Sep-2020	HHH	Edit Brief.	2.75	2.75
1-Oct-2019	BSMD	Review and incorporate HHH edits.	0.75	0.75
1-Oct-2019	MG	Edit Brief.	1.25	1.25
1-Oct-2019	BSMD	Review and incorporate MG edits; check citations.	0.50	0.50
1-Oct-2019	PL	Draft tables.	1.75	1.75

1-Oct-2019	BSMD	Finalize and file brief.	0.25	0.25
26-Nov-2019	BSMD	Communicate with OGC re: position for extension.	0.10	0.10
26-Nov-2019	BSMD	Review Secretary's extension filing.	0.10	0.10
27-Nov-2019	BSMD	Review Court order granting extension; add to logs.	0.10	0.10
16-Jan-2020	BSMD	Review filing of Secretary brief; add to logs.	0.10	0.10
22-Jan-2020	BSMD	Communicate with OGC re: position for extension.	0.10	0.00
30-Jan-2020	BSMD	Draft and file extension for reply brief.	0.25	0.00
31-Jan-2020	BSMD	Review court order granting extension.	0.10	0.00
2-Feb-2020	BSMD	Analyze Sec Brief; take notes; compare with Appellant Brief.	1.00	1.00
2-Feb-2020	BSMD	Research <i>Francway</i> ; analyze case.	0.50	0.50
4-Feb-2020	BSMD	Communicate with HHH re: issues for reply brief.	0.50	0.50
4-Feb-2020	HHH	Review Sec Br. Take notes. Communicate with BS re: issues for reply brief.	1.50	1.50
9-Mar-2020	BSMD	Outline reply brief.	0.75	0.75
9-Mar-2020	BSMD	Draft Reply Brief: Arg I 7261(a)(4).	1.25	1.25
9-Mar-2020	BSMD	Draft Reply Brief: Arg II misapplied medical evidence.	1.00	1.00
12-Mar-2020	BSMD	Communicate with OGC re: position for extension due to illness.	0.10	0.00
16-Mar-2020	BSMD	Draft and file motion for extension.	0.25	0.00
27-Mar-2020	BSMD	Reply Brief: Arg III - Medical examiner.	1.00	1.00

27-Mar-2020	BSMD	Draft Reply Brief: Reply Summary.	0.50	0.50
27-Mar-2020	BSMD	Edit reply brief.	0.75	0.75
28-Mar-2020	HHH	Edit reply brief.	2.75	2.75
29-Mar-2020	BSMD	Incorporate HHH edits; Add to <i>Francway</i> argument.	1.50	1.50
29-Mar-2020	BSMD	Check citations; complete tables.	0.75	0.75
30-Mar-2020	PL	Reply Brief edits.	1.50	1.50
30-Mar-2020	BSMD	Edit, finalize and file Reply Brief.	1.00	1.00
2-Apr-2020	BSMD	Review ROP filing; add to logs; calculate deadline.	0.10	0.10
6-Apr-2020	PL	ROP Review.	1.00	1.00
7-Apr-2020	BSMD	Draft and file ROP response.	0.25	0.25
14-Apr-2020	BSMD	Review judge assignment; add to logs.	0.10	0.10
6-May-2020	BSMD	Review Memorandum Decision; add to logs.	0.25	0.25
6-May-2020	HHH	Review decision.	0.25	0.00
29-May-2020	BSMD	Review judgment filing; add to logs.	0.10	0.10
30-Jul-2020	BSMD	Review mandate issue; calculate eaja deadline; add to logs.	0.10	0.10
12-Aug-2020	BSMD	Call with client re: case status update.	0.25	0.25
14-Aug-2020	PL	Add hours to Exhibit 1.	0.10	0.10
14-Aug-2020	MG	Add hours to Exhibit 1.	0.10	0.10
13-Aug-2020	HHH	Add hours to Exhibit 1.	0.25	0.25

13-Aug-2020	BSMD	Add hours to Exhibit 1.	1.00	1.00
24-Aug-2020	PL	Draft EAJA Application.	1.25	1.25
24-Aug-2020	PL	Look up and calculate EAJA rate.	0.25	0.25
25-Aug-2020	BSMD	Edit EAJA Application and exhibit 1. Proof. Convert. Submit EAJA Application.	0.50	0.50

Total Hours

BY	RATE	RATE	TIME SPENT	TIME BILLED	TOTAL
Britney Sutton	Attorney, Columbia, MD	\$210.00	30.00	30.00	\$6,300.00
	Attorney, Alexandria, VA	\$210.00	32.85	31.80	\$6,678.00
Harold Hoffman	Attorney, Washington, DC	\$210.00	11.85	11.10	\$2,331.00
Meghan Gentile	Attorney, Albany, GA	\$203.00	1.35	1.35	\$274.05
Parker Low	Paralegal, Washington, DC	\$173.00	5.85	5.85	\$1,012.05
Total					\$16,595.10

Expense	Amount	TOTAL
Postage, Copies ¹⁹	1	\$3.90
Westlaw ²⁰	1	\$35.46
Total		\$39.36

¹⁹ This figure is based on the postage and copying expense for the minimum number of documents we send to each client.

²⁰ This figure is derived from total Westlaw expense prorated per client, charged only in cases where Westlaw research is necessary and listed in Itemized Hours.

I certify that I have (1) reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives; and (2) considered and eliminated all excessive or redundant time. Attached is an itemized statement broken down into detailed case tasks that are inextricably intertwined to the preparation of the entire case.

August 25, 2020.

Submitted,

/s/ Britney Sutton

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