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Attorney for Appellant
Shadrona Shahid-Carter

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

Shadrona Shahid-Carter,)	
Appellant,)	Vet.App. No. 19- 1779
)	
v.)	
)	
Robert L. Wilkie,)	
Appellee.)	
_____)	

**APPELLANT’S APPLICATION FOR EAJA
FEES PURSUANT TO 28 U.S.C. § 2412(d)**

Pursuant to the Equal Access to Justice Act, (“EAJA”), Shadrona Shahid-Carter, through counsel, applies for an award of reasonable attorney fees and expenses in the amount of \$10879.00. The basis for the application is as follows:

Procedural History of Case

On February 14, 2019, the Board denied a rating in excess of 50% for service-connected PTSD prior May 11, 2018. On August 18, 2020, the Veterans

Court approved the parties' stipulated agreement to a rating of 70% effective January 15, 2010 and terminated the appeal.

Grounds for An Award

The Equal Access to Justice Act (EAJA) provides as follows:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses. . . incurred by that party in any civil action . . . including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). This provision expressly applies to this Court and to actions brought in this Court by appellant seeking judicial review of decisions of the Board of Veterans' Appeals (BVA). *Id.* at § 2412(d)(2)(F).

This Court has analyzed and provided guidance on how the EAJA applies to cases pending before it. See *Elczyn v. Brown*, 7 Vet.App. 170 (1994). In addition to the requirement that an appellant be financially eligible, the court has outlined three predicate findings that are necessary to warrant an award by the Court of attorney's fees and expenses to an eligible party pursuant to the EAJA. These are: "(1) the party opposing the United States must be a 'prevailing party'; (2) the government's position must not have been substantially justified; and (3) there must be no circumstances that make an award against the government unjust." *Id.* at 174, citing 28 U.S.C. § 2412(d)(1)(A).

As demonstrated below, appellant, Shadrone Shahid-Carter has presently satisfied these predicate requirements. Furthermore, she also satisfied the EAJA requirement that his net worth did not exceed \$2,000,000 at the time of his filing of the appeal before the U.S. Court of Appeals for Veterans Claims in order for him to be financially eligible for an award of attorney's fees and expenses. 28 U.S.C. § 2412(d)(2)(B). See Declaration of Net Worth of Ms. Shahid-Carter.

I. Appellant is Prevailing Party

To obtain "prevailing party" status, an appellant to this Court need only have had success "on any significant issue in litigation which achieves some of the benefit... sought in bringing suit." *Shalala v. Schaefer*, 113 S.Ct. 2625, 2632 (1993). This Court has held that "[u]nder *Schaefer*, the 'prevailing party' requirement is satisfied when a remand is obtained." *Stillwill v. Brown*, 6 Vet.App. 291, 300 (1994). Ms. Shahid-Carter thus is a prevailing party for having obtained a remand as a result of the decision of the Court of Appeals for Veterans Claims.

II. Position of Secretary Was Not Substantially Justified

Appellant maintains that the BVA erred by failing to assign an appropriate effective date for the 70% disability award.

III. Itemized List of Fee and Expenses

TIME RECORD AND NATURE OF WORK PERFORMED

Based upon the Bureau of Labor Statistic's Consumer Price Index for the San Diego, California metropolitan area, there was a fifty-two (52) percent increase in the cost of living between March 1996, when the statutory \$125.00 per hour rate was set, and¹ June 2018 (the date of the filing of the principal brief)², resulting in an inflation adjusted rate of \$215.00 per hour for the work performed by attorneys Mark R. Lippman, Amanda Mineer and Laura Pflugfelder. *See McDonald v. Nicholson*, 21 Vet.App. 257, 261-63 (2007).

<u>Date</u>	<u>Time</u>	<u>By</u>	<u>Service</u>	<u>Fee</u>
2/26/19	2.10	MRL	Review & Analysis of BVA Decision	\$451.50
2/26/19	1.00	MRL	Preparation of correspondence to appellant, including attorney/ fee agreement, declaration of net worth, client information sheet	\$215.00
3/15/19	.20	MRL	Preparation of Notice of Appearance	\$43.00
3/18/19	.20	MRL	Preparation of correspondence To appellant and Evidence Intake Center	\$43.00
3/18/19	.20	MRL	Review of 3 court entries	\$43.00
4/23/19	.10	MRL	Review of General Counsel Pleading	\$21.50

¹ *See attached* copy of U.S. Dept of Labor CPI Index.

² *Elcyzn v. Brown*, 7 Vet.App. 170, 181 (1994) (mid-point date is date of the filing of principal brief).

6/5/19	.10	MRL	Review of court notice	\$21.50
6/17/19	.10	MRL	Review of court order	\$21.50
6/24/19	3.50	MRL	Review of RBA in preparation of memorandum of issues (pages 1-951)	\$752.50
6/25/19	2.90	MRL	“ “ “ (pages 952-1950)	\$623.50
6/26/19	3.70	MRL	Preparation of memorandum of issues, including issues on <i>McGrath v. Gober</i> and duty-to-assist	\$795.50
6/27/19	.10	MRL	Preparation of correspondence to appellant	\$21.50
6/30/19	.10	MRL	Review of General Counsel Pleading	\$21.50
7/8/19	.10	MRL	Review of court order	\$21.50
8/6/19	.40	LP	Prepare for and attend telephone Briefing conference	\$86.00
8/6/19	.10	MRL	Review of court entry	\$21.50
8/23/19	3.20	MRL	Reviewing relevant portions of RBA in preparation of Appellant's Opening Brief	\$688.00
8/24/19	2.10	MRL	Preparation of Appellant's Opening brief, including Statement of the Relevant Procedure and of the Facts	\$451.50
8/25/19	2.20	MRL	Legal Research on cases Following <i>Colvin</i>	\$473.00

8/25/19	3.00	MRL	Time spent organizing and preparing legal argument	\$645.00
8/25/19	2.60	MRL	“ “ “	\$559.00
8/26/19	1.20	MRL	Proofing and final revision of opening brief	\$258.00
8/27/19	.10	MRL	Preparation of correspondence to appellant	\$21.50
10/24/19	.20	MRL	Review of General Counsel e-mail and preparation of response	\$43.00
10/24/19	.10	MRL	Review of court notice	\$21.50
12/12/19	.10	MRL	Review of court notice	\$21.50
12/16/19	2.20	MRL	Review of Appellee's Brief	\$473.00
12/17/19	3.30	MRL	Preparation of Reply Brief	\$709.50
12/18/19	.70	MRL	Proofing of brief	\$150.50
12/19/19	.10	MRL	Preparation of correspondence to appellant	\$21.50
12/19/19	.30	MRL	Review of General Counsel 2 e-mails and preparation of response	\$64.50
12/19/19	.10	MRL	Review of court entry	\$21.50
12/19/19	.70	MRL	Preparation of motion to Consolidate and motion for Oral argument	\$150.50
12/26/19	.10	MRL	Review of court entry	\$21.50

1/2/20	.20	MRL	Review of General Counsel's Pleading	\$43.00
5/29/20	.10	MRL	Review of court order	\$21.50
6/9/20	.10	MRL	Review of court order	\$21.50
6/19/20	.10	MRL	Review of Court order	\$21.50
8/6/20	4.10	MRL	Preparation for Oral Argument	\$881.50
8/6/20	.30	MRL	Review of General Counsel e-mail	\$64.50
8/7/20	3.30	MRL	Preparation for Oral Argument	\$709.50
8/7/20	.50	MRL	Telephone conference with Client	\$107.50
8/7/20	.10	MRL	Preparation of e-mail to General Counsel	\$21.50
8/7/20	.10	MRL	Review of General Counsel e-mail	\$21.50
8/7/20	.30	MRL	Telephone conference with General Counsel	\$64.50
8/7/20	.50	MRL	Review of several General Counsel e-mails and preparation of responses	\$107.50
8/7/20	.30	MRL	Telephone conference with Client	\$64.50
8/9/20	.10	MRL	Preparation of e-mail to General Counsel	\$21.50

8/10/20	.10	MRL	Review of court notices	\$21.50
8/18/20	.10	MRL	Review of court order	\$21.50
8/23/20	3.10	MRL	Preparation of EAJA Application	\$666.50
TOTAL HOURS: 50.6			TOTAL FEES	\$10879.00
EXPENSES				

TOTAL FEES & EXPENSES \$10879.00

Accordingly, the total amount of attorney's fees and expense for which appellant seeks reimbursement for legal representation services before the Court of Veterans Appeals on his behalf is \$10879.00

Dated: August 28, 2020

Respectfully submitted,
/s/Mark R. Lippman
 Mark R. Lippman, Esq.
 8070 La Jolla Shores Drive, #437
 La Jolla, CA 92037
 (858) 456-5840

IV. Certification of Combined Billing

The undersigned has reviewed the combined billing statement and is satisfied that it accurately reflects the work performed by all representatives and that is has considered and eliminated all time that is excessive or redundant.

/s/Mark R. Lippman
 Mark R. Lippman

Mark R. Lippman
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Secretary of Vet. Affairs,)
Appellee.)
)

DECLARATION OF NET WORTH

I, Shadrone Shahid-Carter, resident of Amarillo, TX, declare that at the time of my appeal or petition to the U.S. Court of Veterans Appeals, my estate, including all properties, monies, and possession, combined to a net worth of less than Two Million Dollars (\$2,000,000).

I certify under penalty of perjury that the foregoing is true and correct.

Dated: 4 March 2019

Shadrone Shahid-Carter

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CPI-All Urban Consumers (Current Series)

Series Id: CUUSA424SA0
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Series Title: All items in San Diego, CA, all urban consumers, not seasonally adjusted
Area: San Diego, CA
Item: All items
Base Period: 1982-84=100

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Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1996													160.9	159.8	161.9
1997													163.7	163.7	163.7
1998													166.9	166.0	167.8
1999													172.8	171.7	173.9
2000													182.8	179.8	185.8
2001													191.2	190.1	192.4
2002													197.9	195.7	200.0
2003													205.3	203.8	206.7
2004													212.8	211.4	214.3
2005													220.6	218.3	222.9
2006													228.1	226.7	229.6
2007													233.321	231.870	234.772
2008													242.313	242.440	242.185
2009													242.270	240.885	243.655
2010													245.464	244.242	246.686
2011													252.910	252.451	253.368
2012													256.961	256.637	257.285
2013													260.317	258.955	261.679
2014													265.145	265.251	265.039
2015													269.436	267.346	271.526
2016													274.732	272.628	276.837

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