

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

ANTHONY W. SEDA,)	
)	
Appellant,)	
)	
v.)	Docket No. 20-2227
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLANT’S APPLICATION FOR AN AWARD
OF REASONABLE ATTORNEY FEES AND EXPENSES**

Appellant hereby seeks an award of reasonable attorney fees and expenses under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), in the total amount of \$8,634.58. In support of this application, Appellant asserts (1) he was a prevailing party, (2) his net worth when he filed this appeal was less than \$2 million, and (3) the Secretary’s position in this case was not substantially justified. An itemized statement detailing the time spent and fees sought is attached.

ARGUMENT

In order to be granted EAJA fees, an appellant must establish that he is a prevailing party and eligible for the award, and must allege that the government’s position was not substantially justified. *Bazalo v. Brown*, 9 Vet.App. 304 (1996). Appellant meets these requirements; the Court should grant his application.

“Prevailing party” status is achieved when an appellant’s claim is remanded due to

administrative error. *Zuberi v. Nicholson*, 19 Vet. App. 541, 544 (2006). The Secretary conceded that the Board of Veterans' Appeals (Board) had committed administrative error: "the Board erred when it made contradictory findings and relied on facts and reasons that were not described within the October 2012 proposal to reduce that the Regional Office (RO) issued." (Joint Motion at 2). The Court granted the Joint Motion for Partial Remand on July 19, 2021, and entered mandate the same day. Accordingly, Appellant satisfies the first requirement for an EAJA fee award.

Appellant's net worth was less than \$2 million at the time he filed the appeal in this matter, as evidenced by his Declaration of Financial Hardship. This satisfies the second criterion for an EAJA fee award.

The government's position in this case was not substantially justified. The Board's errors, as set forth above and detailed more fully in the Joint Motion for Partial Remand, preclude a finding of substantial justification. Appellant thus satisfies the third criterion for an EAJA fee award.

Based upon the pleadings herein and the above discussion, an award of EAJA fees is appropriate herein. Attached to this application is counsel's affidavit, setting forth the time expended on this case, the hourly rate, and the expenses incurred. The hourly rate is determined by increasing the \$125/hour base rate for increases in the Consumer Price Index for the Washington, D.C. metropolitan area. July 2021, the date of filing the Joint

Motion, is the midpoint, yielding an hourly rate of \$220.25¹. *Elczyn v. Brown*, 7 Vet.App. 170, 179-181 (1994). Work in this case was performed by two attorneys - Kathy Lieberman and Ethan Maron. Any work performed by attorney Maron is so designated with his initials (EM) after the entry. Any item not so designated is attributable to attorney Lieberman. Some work was performed by both attorneys. In that case, only the time for one attorney is included in the itemization. The total amount sought is \$8,634.58, which includes \$8,611.78 in legal fees and \$22.80 in expenses.

Respectfully submitted,

/s/ Kathy A. Lieberman

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¹ CPI data was obtained from the Bureau of Labor Statistics:
https://www.bls.gov/regions/mid-atlantic/news-release/consumerpriceindex_washingtondc.htm,
which identifies July 2021 as 279.099 and March 1996 (when the EAJA rate was raised to
\$125/hour) as 158.4.

AFFIDAVIT

I hereby certify under penalty of perjury under the laws of the United States of America that the following itemization is true and accurate.

Legal Services:		Hours
3/30/20	review Board decision for possible appeal	0.50
	email to client re recommended appeal	0.10
3/31/20	read/respond to email from client	0.10
	prepare appeal paperwork for client	0.30
	prepare notices of appeal/appearance	0.20
	review notice of docketing	0.10
	letter to client w/copy of signed agreement	0.30
	enter appearance (EM)	0.10
4/22/20	review transmittal of BVA decision	0.10
5/21/20	review VA's notice of appearance - Jonathan Scruggs	0.10
6/1/20	review RBA notice	0.10
6/17/20	Rule 10 RBA review	1.40
6/22/20	Rule 10 RBA response (EM)	0.10
6/23/20	review notice to file brief	0.10
	letter to client w/copy of notice	0.30
6/24/20	review VA's notice of appearance - Mary.Jones7@va.gov	0.10
7/29/20	review briefing conference order	0.10
	letter to client re conference	0.30
8/3/20	review Board decision and take notes (R. 1-16) (EM)	1.00
	review RBA and take notes (R. 17-1016)(EM)	2.00
8/4/20	review RBA and take notes (R. 1017-2020)(EM)	2.00

8/5/20	review RBA and take notes (R. 2021-3579)(EM)	2.50
8/6/20	legal research: rating reduction procedures (EM)	2.00
8/7/20	draft pre-briefing memorandum (Part I) (EM)	0.60
	draft pre-briefing memorandum (Part II) (EM)	0.40
	draft pre-briefing memorandum (Part III) (EM)	0.50
8/12/20	draft certificate of service (EM)	0.10
8/26/20	review notes/memo/RBA for briefing conference (EM)	0.50
	briefing conference (EM)	0.30
	letter to client re status	0.30
10/29/20	draft brief (Part I) (EM)	1.50
	draft brief (Part II) (EM)	1.00
10/30/20	draft brief (statement of facts/summary of case) (EM)	2.00
10/31/20	edit brief (EM)	0.50
11/3/20	finalize brief (EM)	0.20
11/6/20	letter to client w/copy of brief	0.30
11/16/20	read/respond to email from client re status	0.10
1/4/21	review VA's motion for extension	0.10
1/5/21	review grant of VA's extension	0.10
3/23/21	review Secretary's brief and take notes (EM)	2.00
3/24/21	legal research: regulatory interpretation (EM)	1.50
	legal research: <i>Dofflemeyer v. Derwinski, Gates v West</i> (EM)	1.50
3/25/21	draft reply brief: Part I (EM)	1.60
	draft reply brief: Part II (EM)	0.70
3/30/21	letter to client w/copy of reply brief	0.30

4/21/21	review ROP (EM)	0.30
	ROP response (EM)	0.10
4/23/21	review email from CAVC - assigned to J. Allen	0.10
	telephone call to client re status update	0.10
5/10/21	review order assigning case to panel	0.10
	email to client re status	0.10
5/13/21	review 5/13 order scheduling oral argument	0.10
	letter to client w/copy of order	0.20
6/9/21	meeting with supervising partner (oral argument strategy)(EM)	0.50
6/15/21	review OGC JMR offer (EM)	0.20
	email opposing counsel (negotiating JMR) (EM)	0.10
	review/respond to email from opposing counsel (EM)	0.10
6/16/21	review revised offer from opposing counsel (EM)	0.10
6/17/21	meet with supervising partner (discussing JMR offer) (EM)	0.50
	email opposing counsel (EM)	0.10
7/1/21	review OGC JMR offer (EM)	0.20
	email opposing counsel (EM)	0.10
	meet with partner (JMR discussion) (EM)	0.50
7/2/21	client phone call (JMR consent) (EM)	0.30
	email opposing counsel (EM)	0.10
	draft motion for stay (EM)	0.10
7/6/21	email Court to notify of pending JMR (EM)	0.10
7/7/21	review draft JMR (EM)	0.50
	review email from CAVC- JMR filed	0.10
7/9/21	letter to client w/copy of JMR	0.30
7/19/21	review order granting JMR	0.10

	letter to client w/copy of order	0.30
8/13/21	finalize EAJA timesheet (EM)	1.00
8/18/21	prepare EAJA application	2.50
	letter to client w/copy of application	0.20
Total: 39.1 hours @ \$220.25/hour = \$8,611.78		

Expenses:

Copies:	\$11.25 (45 @ \$0.25 each)
Fax/scan:	\$ 4.00 (4 @ \$1 each)
Postage:	\$ 7.55
Total:	\$22.80

/s/ Kathy A. Lieberman
Kathy A. Lieberman