

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

ALLAN K. POTTER,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 19-4105
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLANT’S APPLICATION FOR AWARD OF REASONABLE
ATTORNEYS’ FEES AND EXPENSES PURSUANT TO 28 U.S.C. § 2412(d)**

Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d) and U.S. Vet App. R. 39, the appellant, Allan K. Potter, applies for an award of reasonable attorneys’ fees and expenses in the amount of \$19,032.65. Mr. Potter has expressly authorized this application.

PROCEDURAL HISTORY

The appellant, Allan K. Potter, served on active duty in the United States Army from March 30, 1973 until March 29, 1976. Record Before the Agency (“R”) 921 (DD214). Mr. Potter was honorably discharged. *Id.*

Mr. Potter filed an application for a total disability rating based on individual unemployability (“TDIU”) on November 6, 2013. R. 652 (649-52) (2013 Application).

As of November 2013, Mr. Potter had the following service-connected disabilities and ratings: (1) “degenerative disk disease of the thoracolumbar spine with low back strain (previously shown to include psychophysiological reaction involvement)” at 30% from 11/27/2013; (2) “sciatica, right lower extremity associated with degenerative disk disease of the thoracolumbar spine with low back strain (previously shown to include psychophysiological reaction involvement)” at 20% from 06/22/2012; (3) Tinnitus at 10% from 11/27/2013; (4) “calicified lesions, left chest at 0% from 3/30/1976; and (5) “bilateral hearing loss” at 50% from 11/27/2013. R. 286-87 (286-87) (2015 Rating Code Sheet). Mr. Potter’s combined rating was 50% from November 27, 2013. *Id.*

VA provided a C&P exam on September 24, 2014 which found:

He last worked in May of 2013. His usual occupation was wiring emergency equipment. He had done that for 16 years. He stopped working in 2013 because of his back pain with sciatica. It hurt too much to work and he was taking too many pain pills. He would get home and be completely wiped out because of the pain. He says that prolonged sitting is ok but he can’t sit for more than an hour without needing to stretch and then lay on the floor with his feet up for 15 minutes. This is happening 3 times a day now whereas in the past it only happened occasionally.

R. 461 (442-68) (2014 C&P Exam--With Attached DBQs). In addition, the examiner found:

As arthritis has are been [sic] established and service-connected, no repeat imaging was performed. Given his symptoms and after seeing him today, it’s my opinion the veteran’s SC back condition with sciatica limits him to sedentary work as long as he was allowed frequent breaks as needed for pain. Of note, many employers are very hesitant

[sic] to hire anyone with significant back issues, though, and he would be unable to perform his usual occupation duties anymore because of his SC back.

R. 461-62 (442-68) (2014 C&P Exam--With Attached DBQs).

On January 29, 2015, Mr. Potter submitted an additional application specifically addressing his claim for TDIU. R. 405 (404-05) (2015 TDIU Application). Shortly before submitting the 2015 application, Mr. Potter also submitted a statement explaining that he was “requesting that [his] case be submitted to the director of the compensation and pension service center for extra-schedular consideration.” R. 406 (406) (2014 Statement in Support of Claim).

On March 16, 2015, the Milwaukee regional office (“RO”) submitted a memorandum recommending that the VA grant Mr. Potter’s claim for extraschedular TDIU reasoning:

A September 24, 2014, medical opinion from the Madison VA Medical Center notes that the veteran would be to sedentary work as long as he was allowed frequent breaks as needed for pain. However, it is also noted that the veteran cannot sit for more than an hour without needing to stretch and then lay down on the floor with his feet up for 15 minutes. The examiner also noted that many employers are very hesitant to hire anyone with significant back issues, and he would be unable to perform his usual occupational duties anymore because of his service connected back.

Private treatment records from Orthopaedic Sports Medicine Clinic of Monroe from May 2012 through August 2013 note that it was hard for veteran to continue working. Note multiple work restrictions and time off work. Doctor also noted restrictions from work due to medications prescribed during flare up.

. . .

This case has been submitted for extra-schedular consideration. The veteran is unemployable by reason of a service-connected disability, but fails to meet the percentage standards set forth in 38 CFR 4.16(a).

I recommend approval of entitlement to individual unemployability based on an extra-schedular evaluation.

R. 375-76 (375-76) (2015 Recommendation to Award TDIU).

On June 9, 2015, disregarding the RO's recommendation, VA issued a rating decision denying his claim for extraschedular TDIU. R. 288 (288-91) (2015 Rating Decision). After this rating decision, VA provided another examination on June 15, 2017. R. 71-85 (71-85) (2017 C&P Exam). Here, the examiner found, consistent with the previous examination, that:

The veteran would have difficulty doing any heavy labor type job. His back and leg pain would only allow him to do sedentary work with the option for frequent breaks to change position [sic].

R. 78 (71-85) (2017 C&P Exam). In addition, in the "remarks, if any" section, the examiner wrote, "Increase Only." *Id.* Furthermore, the examiner went on to explain:

Veteran has a long history low back pain. Over the last 6 months it has increased on the right side and is painful when he walks. Pain is worse with increased activity. He manages with rest. Veteran uses tylenol and a muscle relaxer. Uses heat and ice. Veteran was on oxycodone and diazepam for several years but weaned off. Pain and paresthesias radiate down right leg in and L5-S1 pattern. No numbness. No LLE symptoms. Has had nerve root blocks with diminishing effectiveness. Has been evaluated by a surgeon and was

recommended to hold off of surgery. Stopped working 4 years ago because of back pain. No saddle anesthesia or bowel/bladder symptoms.

R. 79 (71-85) (2017 C&P Exam). After this exam, Mr. Potter appealed the June 9, 2015 rating decision to the Board of Veterans' Appeals ("BVA" or "Board") and the Board issued a decision on April 19, 2019, affirming the denial of extraschedular TDIU. R. 5 (5-12) (2019 BVA Decision).

After the parties briefed Mr. Potter's appeal, Mr. Potter filed a stay pending this Court's decision in *Arline v. McDonough* (18-0765). The Court granted the stay on August 10, 2020. Thereafter, on July 1, 2021, the Court issued a decision in *Arline v. McDonough*. On September 3, 2021, the Court on its own motion submitted Mr. Potter's appeal for a panel decision and subsequently scheduled an oral argument for December 2, 2021. Later on while in discussions concerning supplemental briefing, the Secretary offered a joint motion for remand ("JMR") that Mr. Potter accepted after the parties negotiated the terms. On November 16, 2021, the parties filed the JMR which the Court granted on November 29, 2021.

FACTUAL AVERMENTS

Mr. Potter avers as follows:

- (1) This matter is a civil action;
- (2) This action is against an agency of the United States, namely the U.S. Department of Veterans Affairs;

- (3) This matter is not in the nature of tort;
- (4) This matter sought judicial review of an agency action, namely the prior disposition of Mr. Potter's appeal to the Board of Veterans' Appeals;
- (5) This Court has jurisdiction over the underlying appeal under 38 U.S.C. § 7252;
- (6) Mr. Potter is a "party" to this action within the meaning of 28 U.S.C. § 2412(d)(2)(B);
- (7) Mr. Potter is a "prevailing party" in this matter within the meaning of 28 U.S.C. § 2412(d)(1)(a);
- (8) Mr. Potter is not the United States;
- (9) Mr. Potter is eligible to receive the reward of fees sought;
- (10) The position of the Secretary as to Mr. Potter's claim was not substantially justified;
- (11) There are no special circumstances in this case which make such an award unjust;
- (12) At the time this civil action was filed, Mr. Potter's personal net worth did not exceed \$2,000,000; nor did he own any unincorporated business, partnership, corporation, association, unit of local government, or organization, the net worth of which exceeded \$7,000,000 and which had more than 500 employees; and,

(13) Mr. Potter submits an itemized statement of the fees and expenses for which he applies. The itemization shows the rates at which the fees and, where applicable, the expenses were calculated. Accordingly, Mr. Potter contends that he is entitled to an award of attorneys' fees and expenses in this matter in the total amount itemized below.

ARGUMENT

Pursuant to 28 U.S.C. § 2412(d) "a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in a civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought . . . 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." As supported by the factual averments above, Mr. Potter meets the criteria established under EAJA; therefore, the Court must award the fees and other expenses incurred in connection with this matter.

I. MR. POTTER IS A PREVAILING PARTY AND ELIGIBLE TO RECEIVE AN AWARD.

To obtain "prevailing party" status, a party need only have obtained success "on any significant issue in litigation which achieve[d] some of the benefit . . . sought in bringing suit." *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993). Mr. Potter is a prevailing party entitled to an award of fees and costs because the

Court vacated the Board's decision based on a material error and remanded the case for further adjudication in accordance with its decision. *See Zuberi v. Nicholson*, 19 Vet. App. 541, 544-45 (2006); *Sumner v. Principi*, 15 Vet. App. 256, 261-62 (2001) (*en banc*). The Court-ordered relief in this matter creates the “material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep’t of Health and Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989)).

Further, to be eligible, an appellant’s net worth must not exceed \$2,000,000 (two million dollars) at the time the action was filed, nor may the Appellant have owned any unincorporated business, partnership, corporation, association, unit of local government, or organization, of which the net worth exceeded \$7,000,000 (seven million dollars), and which had more than 500 (five hundred) employees. 28 U.S.C. § 2412(d)(2)(B). Mr. Potter meets these requirements. *See Bazalo v. Brown*, 9 Vet. App. 304, 309, 311 (1996) (Appellant’s counsel, as an officer of the court, may assert facts necessary to establish eligibility pursuant to 28 U.S.C. § 2412(d)(2)(B) (*overruled on other grounds by Bazalo v. West*, 150 F.3d 1380)); *see also Owens v. Brown*, 10 Vet App. 65, 66 (1997) (eligibility may be inferred from the court’s waiver of its filing fee).

II. THE POSITION OF THE SECRETARY OF VETERANS AFFAIRS AS TO MR. POTTER'S CLAIMS WAS NOT SUBSTANTIALLY JUSTIFIED.

The Secretary of Veterans Affairs can defeat the Appellant's application for fees and costs only by demonstrating that the government's position was substantially justified. See *Brewer v. Am. Battle Monuments Comm'n*, 814 F.2d 1564, 1566-67 (Fed. Cir. 1987); *Stillwell v. Brown*, 6 Vet. App. 291, 301 (1994). The Supreme Court has held that for the position of the government to be substantially justified, it must have a "reasonable basis both in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); accord, *Beta Sys. Inc. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989). Substantial justification is in the nature of an affirmative defense: If the Secretary wishes to have this benefit, he must carry the burden of proof on the issue. *Clemmons v. West*, 12 Vet. App. 245, 246 (1999) *appeal dismissed*, 206 F.3d 1401 (Fed. Cir. 2000), *rehearing and rehearing en banc denied* (May 2, 2000). However, in cases where the Appellant achieves mixed success, the "court should award only that amount of fees that is reasonable in relation to the results obtained." *Smith v. Brown*, 8 Vet. App. 327 (1995) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983)).

FEES AND EXPENSES

I. ITEMIZATION OF PROFESSIONAL SERVICES AND EXPENSES

The Appellant is required to submit an itemized statement from his attorney of the services rendered and the reasonable fees and expenses for which

compensation is sought. 28 U.S.C. § 2412(d)(1)(B). Accordingly, Mr. Potter submits Exhibit A hereto, which is an itemized statement of services provided and expenses incurred in connection with this matter. The undersigned counsel has (1) reviewed the itemized statement and is satisfied that it accurately reflects the work performed by all counsel; and, (2) as noted therein, considered and eliminated all time that is excessive or redundant. *Id.*; see also *Baldrige v. Nicholson*, 19 Vet. App. 227, 240 (2005).

II. CALCULATION OF FEES

Pursuant to 28 U.S.C. § 2412(d)(2)(A), the Appellant may recover the lesser of (1) the prevailing market rate for the kind and quality of the services furnished or (2) \$125.00 per hour plus an adjustment for cost of living increase since March 1996.

A. Market Rates for Attorney and Paralegal Assistance in Wisconsin

Mr. Potter's lead counsel, Jonathan C. Heiden, has been admitted to practice law in the State of Wisconsin since May 30, 2018. Mr. Heiden is an associate attorney at the firm of West & Dunn, where for the 2020 calendar year his billable rate was \$220.00 per hour for the kind and quality of similar services. Mr. Heiden was additionally assisted by Travis James West, who has been admitted to practice law in the State of Wisconsin since February 12, 2007. He is currently a partner at the firm of West & Dunn, practicing nationally but based in

southern Wisconsin, where for the 2020 calendar year his billable rate was \$350.00 per hour for the kind and quality of similar services. *See Willis v. U.S. Postal Serv.*, 245 F.3d 1333, 1340-1341 (Fed. Cir. 2001) (attorneys “should be presumed to be knowledgeable and truthful” regarding market rate for the kind and quality of similar services).

B. Statutory Attorneys’ Fees

Attorneys’ fees are set at \$125.00 per hour by the Equal Access to Justice Act; however, a rate in excess of \$125.00 per hour is justified based on the increase in the cost of living since the EAJA was amended in March 1996. *See* 28 U.S.C. §2412(d)(2)(A)(ii). The \$125.00 attorney fee rate, adjusted for inflation for the Midwest Region, is \$199.31 in September 2020, a midpoint in the litigation of the above-captioned matter. *See* Bureau of Labor Statistics Data, CPI-U at http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0200SA0,CUUS0200SA0. This rate was calculated by multiplying the statutory rate for attorneys’ fees under the EAJA by the quotient of the CPI-U for the Midwest Region in September 2020, by the CPI-U for the Midwest Region for March 1996, as required by the Federal Circuit. *Mannino v. West*, 12 Vet. App. 242, 243-44 (1999).

$$\begin{array}{r} \$125 \times \frac{\$241.88}{\$151.70} = \$199.31 \end{array}$$

C. Fees for Paralegal Services

An appellant may also recover fees for work performed by paralegals that assist attorneys with a case before the court. *See Wilson v. Principi*, 16 Vet. App. 509, 514 (2002) *rev'd on other grounds*, 391 F.3d 1203 (Fed. Cir. 2004). Here, Mr. Heiden and Mr. West were assisted by three non-attorney paralegals. Historically, the Court has relied upon the Laffey Matrix, published by the Office for the U.S. Attorney in the District of Columbia, as a guide for determining the market rates for paralegals. *See Wilson*, 16 Vet. App. at 513. *See also Sandoval v. Brown*, 9 Vet. App. 177, 181 (1996). Pursuant to the Laffey Matrix the paralegal rate for the years 2019-2020 is \$173.00 per hour. *See <https://www.justice.gov/usao-dc/page/file/1189846/download>*. Work performed by Emily Walker, Samantha Cunningham, and Anthony Sparks occurred primarily during 2020; accordingly, the rate for this work is \$173.00 per hour.

D. Calculation of Fees and Costs to be Awarded

Because the \$220.00 per hour market rate for Mr. Heiden and the \$350.00 per hour market rate for Mr. West exceeded \$199.31 during the relevant time period, the fees to be awarded must be based upon the statutory calculation. *See Covington v. District of Columbia*, 839 F. Supp. 894, 904-05 (D.D.C. 1993), *aff'd*, 58 F.3d 1101 (D.C. Cir. 1995). Accordingly, in this petition, Mr. Potter seeks payment of attorneys' fees for Mr. Heiden's and Mr. West's time at \$199.31 per hour, and

paralegal fees at \$173.00 per hour.

As reflected in Exhibit A, counsel eliminated \$5,256.42 in attorney time and \$301.02 in paraprofessional time from this petition in the exercise of professional judgment or because such time was unrelated to the claims upon which the Appellant prevailed.

Accordingly, Mr. Potter seeks attorney's fees at the following rates for representation in the Court of Appeals for Veterans Claims, which amounts are supported by the itemized statement and calculations set forth above:

WHEREFORE, Mr. Potter respectfully requests that the Court award attorney's fees and expenses in the total amount of \$19,032.65.

Respectfully submitted this 29th day of December, 2021.

/s/ Jonathan C. Heiden

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Counsel for the Appellant, Allan K.
Potter

EXHIBIT A to Appellant's EAJA Petition

Mr. Allan K. Potter
8765 State Hwy 78
Gratiot, WI 53541

CAVC Appeal 19-4105

Date	Attorney	Quantity	Rate	Discount	Total
06/17/2019	Emily Walker	0.20	\$173.00	100.0% (-\$34.60)	\$0.00
Draft Notice of Appeal, Notice of Appearance for JCH, and Notice of Appearance for TJW.					
06/18/2019	Emily Walker	0.10	\$173.00	100.0% (-\$17.30)	\$0.00
Update Notice of Appeal, Notice of Appearance for JCH, and Notice of Appearance for TJW.					
06/19/2019	Jonathan C. Heiden	0.10	\$199.31	100.0% (-\$19.93)	\$0.00
Review Notices of Appearance and Notice of Appeal.					
06/19/2019	Emily Walker	0.10	\$173.00	100.0% (-\$17.30)	\$0.00
E-file Notice of Appeal, Notice of Appearances for JCH and TJW, and Fee Agreement.					
08/20/2019	Anthony Sparks	1.90	\$173.00	-	\$328.70
Review RBA for completeness and draft summary of the same (R.1 - R.402).					
08/21/2019	Anthony Sparks	2.00	\$173.00	-	\$346.00
Review RBA for completeness and draft summary of the same (R.403 - R.923).					
11/11/2019	Jonathan C. Heiden	6.80	\$199.31	33.0% (-\$447.25)	\$908.06
Review BVA decision and outline issues on appeal (1.7). Review STRs, medical opinions, and SSA records concerning back disability and TDIU finding (2.0). Draft fact section for SOI (3.1)					
11/12/2019	Jonathan C. Heiden	6.70	\$199.31	-	\$1,335.38
Review and analyze Cantrell v. Shulkin, Ray v. Wilkie, and related case law (1.2). Draft argument section I (2.7). Draft argument section II (0.4). Draft argument section III (0.8). Review and analyze Geib v. Shinseki and 38 C.F.R. 4.15 (0.7). Draft argument section IV (0.1). Review and revise SOI (0.8).					
11/26/2019	Jonathan C. Heiden	0.50	\$199.31	-	\$99.66
Prepare for Mr. Potter's rule 33 conference (0.3). Represent Mr. Potter at the same (0.2).					

11/26/2019	Jonathan C. Heiden	0.20	\$199.31	-	\$39.86
Phone call with Mr. Potter to discuss result of rule 33 conference.					
12/18/2019	Samanatha Cunningham	0.20	\$173.00	100.0% (-\$34.60)	\$0.00
Draft motion for extension of time to file Appellant's brief.					
01/23/2020	Samanatha Cunningham	0.20	\$173.00	100.0% (-\$34.60)	\$0.00
Draft motion for extension of time to file Appellant's brief.					
02/06/2020	Jonathan C. Heiden	7.30	\$199.31	25.0% (-\$363.74)	\$1,091.22
Review SOI and Secretary's position on the same in preparation for Appellant's brief (1.4). Review and draft fact section (1.8). Draft legal standard (0.3). Research and analyze case law concerning what constitutes a protected work environment (3.0). Review and analyze M21-1 provisions and possible impact on appeal (0.8).					
02/07/2020	Jonathan C. Heiden	4.70	\$199.31	-	\$936.76
Research and analyze SSA standards concerning disability findings (3.4). Outline arguments concerning Board's failure to define and apply 38 C.F.R. 4.16(a) (1.3).					
02/09/2020	Jonathan C. Heiden	2.10	\$199.31	40.0% (-\$167.42)	\$251.13
Conduct additional research and analysis of case law concerning Board's reliance on concurrence from Cantrell v. Shulkin (1.3). Draft and send correspondence to opposing counsel seeking resolution of appeal without need for briefing (0.8).					
02/10/2020	Jonathan C. Heiden	8.70	\$199.31	25.0% (-\$433.50)	\$1,300.50
Complete research and analysis of case law concerning Board's reliance on concurrence from Cantrell (2.5). Draft argument section III(A) (2.4). Draft argument section III(B) (1.9). Draft argument section III(C) (1.7). Draft introduction to argument section III(A) (0.2).					
02/11/2020	Samanatha Cunningham	1.20	\$173.00	20.0% (-\$41.52)	\$166.08
Cite check Appellant's brief.					
02/11/2020	Jonathan C. Heiden	5.80	\$199.31	-	\$1,156.00
Draft argument section IV (1.8). Draft argument section V (1.9). Draft argument section VI (1.2). Review and revise Appellant's brief for filing (0.9).					
06/26/2020	Jonathan C. Heiden	2.00	\$199.31	-	\$398.62
Start review and analysis of Secretary's response brief.					
06/27/2020	Jonathan C. Heiden	3.50	\$199.31	25.0% (-\$174.40)	\$523.19

Complete review and analysis of Secretary's response brief (1.1). Review and analyze Builter v. Wilkie, SSA regulations, and Mr. Potter's SSA decision of record based on Secretary's response (2.4).

07/08/2020	Jonathan C. Heiden	2.50	\$199.31	-	\$498.28
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Review and analyze briefs in Arline v. Wilkie to determine impact upon case and analyze whether stay is appropriate.

07/10/2020	Jonathan C. Heiden	3.60	\$199.31	10.0% (-\$71.75)	\$645.77
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Listen to oral arguments in Arline v. Wilkie (18-0765) (1.6). Draft notes concerning the same (0.7). Contact opposing counsel concerning stay (0.2). Start outline for reply brief (1.1).

07/13/2020	Samanatha Cunningham	0.30	\$173.00	100.0% (-\$51.90)	\$0.00
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Draft motion for extension of time to file Appellant's reply brief.

07/13/2020	Jonathan C. Heiden	0.10	\$199.31	100.0% (-\$19.93)	\$0.00
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Review extension motion.

07/27/2020	Jonathan C. Heiden	8.60	\$199.31	-	\$1,714.07
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Complete outline for Appellant's reply brief (0.5). Draft argument section I(A) (4.2). Draft argument section I(B) (2.8). Draft introduction to argument I (0.3). Review private and VA treatment records in preparation for drafting argument section II (0.8).

07/28/2020	Jonathan C. Heiden	6.50	\$199.31	25.0% (-\$323.88)	\$971.64
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Draft argument section II (2.7). Draft argument section III (1.6). Draft introduction for reply (0.2). Draft tables (0.6). Review and revise for filing (1.4).

07/28/2020	Anthony Sparks	0.80	\$173.00	50.0% (-\$69.20)	\$69.20
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Perform record and case citation check on Appellant's reply brief

07/28/2020	Travis James West	0.90	\$199.31	100.0% (-\$179.38)	\$0.00
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Review and revise reply brief.

07/30/2020	Jonathan C. Heiden	0.10	\$199.31	-	\$19.93
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Respond to question from opposing counsel concerning stay of appeal.

08/04/2020	Jonathan C. Heiden	1.00	\$199.31	-	\$199.31
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Draft stay of appeal.

08/04/2020	Jonathan C. Heiden	0.20	\$199.31	-	\$39.86
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Phone call with Mr. Potter concerning stay of appeal.

07/01/2021	Jonathan C. Heiden	3.50	\$199.31	-	\$697.59
Review and analyze decision in Arline v. McDonough (2.1). Review pleadings and analyze impact on appeal (1.4).					
09/14/2021	Jonathan C. Heiden	6.80	\$199.31	50.0% (-\$677.66)	\$677.65
Detailed review and analysis of Appellant's briefs in Arline v. McDonough (4.3). Start detailed review and analysis of of Secretary's briefs in Arline v. McDonough (2.5).					
10/08/2021	Jonathan C. Heiden	6.30	\$199.31	33.0% (-\$414.36)	\$841.29
Complete detailed review of Secretary's briefs in Arline v. McDonough (2.0). Detailed review of Appellant's briefs in Cantrell (1.9). Detailed review of Secretary's briefs in Cantrell (2.4).					
10/12/2021	Jonathan C. Heiden	2.70	\$199.31	33.0% (-\$177.59)	\$360.55
Research and review how ADA and corresponding case law that defines protected work environments.					
10/13/2021	Jonathan C. Heiden	2.30	\$199.31	33.0% (-\$151.28)	\$307.13
Research and review how the EEOC interprets and applies the ADA as it relates to protected work environments.					
10/21/2021	Jonathan C. Heiden	5.20	\$199.31	-	\$1,036.41
Start preparation for oral argument (3.4). Start outline supplemental brief (1.8).					
10/26/2021	Travis James West	0.20	\$199.31	-	\$39.86
Review and edit motion for supplemental briefing.					
10/26/2021	Jonathan C. Heiden	3.20	\$199.31	50.0% (-\$318.90)	\$318.89
Draft motion for supplemental briefing (2.8). Correspondence with opposing counsel concerning the same (0.4).					
10/27/2021	Jonathan C. Heiden	3.30	\$199.31	50.0% (-\$328.86)	\$328.86
Review remand offer and analyze next steps for appeal.					
10/28/2021	Jonathan C. Heiden	0.10	\$199.31	100.0% (-\$19.93)	\$0.00
Phone call leaving VM for Mr. Potter to discuss remand offer.					
10/29/2021	Jonathan C. Heiden	0.20	\$199.31	-	\$39.86
Phone call with Mr. Potter to discuss status of appeal and remand offer.					
11/02/2021	Jonathan C. Heiden	0.50	\$199.31	-	\$99.66

Phone call with Mr. Potter's VSO from Green County concerning JMR offer from OGC and answer questions concerning the same (0.3). Phone call to Mr. Potter concerning the same (0.2).

11/05/2021	Jonathan C. Heiden	1.10	\$199.31	-	\$219.24
Review JMR from opposing counsel and respond to the same.					

11/10/2021	Jonathan C. Heiden	5.50	\$199.31	50.0% (-\$548.11)	\$548.10
Review hypothetical nature of appeal and possible impact on 38 CFR 4.16 (3.5). Email to opposing counsel concerning JMR (0.7). Review motions to reschedule and request supplemental briefing (1.3)					

11/11/2021	Jonathan C. Heiden	0.70	\$199.31	-	\$139.52
Review new version of JMR.					

11/16/2021	Jonathan C. Heiden	0.30	\$199.31	100.0% (-\$59.79)	\$0.00
Complete final review of JMR and send the same to opposing counsel.					

11/18/2021	Jonathan C. Heiden	0.10	\$199.31	-	\$19.93
Phone call with Mr. Potter on status of JMR and answer questions concerning the same.					

12/14/2021	Jonathan C. Heiden	0.20	\$199.31	-	\$39.86
Phone call with Potter to explain next steps for his appeal. Mr. Potter confirmed he will be using his VSO for representation at the Board. He is aware that a 90-day letter will be sent from VA.					

12/29/2021	Jonathan C. Heiden	2.80	\$199.31	50.0% (-\$279.04)	\$279.03
Draft EAJA application.					

12/29/2021	Travis James West	0.40	\$199.31	100.0% (-\$79.72)	\$0.00
Review and revise EAJA petition.					

Quantity Subtotal					124.3
Line Item Discount Subtotal					-\$5,557.44

Time Keeper	Position	Quantity	Rate	Discount	Total
Jonathan C. Heiden	Associate	115.8	\$199.31	-\$4,997.32	\$18,082.81
Anthony Sparks	Paralegal	4.7	\$173.00	-\$69.20	\$743.90
Travis James West	Partner	1.5	\$199.31	-\$259.10	\$39.86
Samanatha Cunningham	Paralegal	1.9	\$173.00	-\$162.62	\$166.08

Emily Walker	Paralegal	0.4	\$173.00	-\$69.20	\$0.00
Quantity Total					124.3
Subtotal					\$19,032.65
Total					\$19,032.65