

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

JOE N. BRADDY, JR.)	
Appellant,)	
)	
v.)	CAVC No. 20-6259
)	EAJA
DENIS MCDONOUGH,)	
SECRETARY OF)	
VETERANS AFFAIRS,)	
Appellee)	

APPELLANT'S APPLICATION FOR AN
AWARD OF 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 the Court's Rule 39, Appellant, through counsel, seeks a total fee in the amount of **\$50,609.55**.

The basis for the application is as follows:

Grounds for an Award

This Court has identified four elements as being necessary to warrant an award by the Court of attorneys' fees and expenses to an eligible party pursuant to the EAJA. These are: (1) a showing that the appellant is a prevailing party; (2) a showing that the appellant is eligible for an award; (3) an allegation that the government's position is not substantially justified; and (4) an itemized statement of the fees sought. *Owens v. Brown*, 10 Vet. App. 65, 66 (1997) (*quoting Bazalo*, 9 Vet. App. at 308). *See also* 28 U.S.C. §§ 2412(d)(1)(A),(B).

As will be demonstrated below, Appellant satisfies each of the above-enumerated requirements for EAJA.

1. THE APPELLANT SATISFIES EACH OF THE REQUIREMENTS FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES

A. *The Appellant Is a Prevailing Party*

In *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 121 S.Ct 1835 (2001) ("Buckhannon"), the Supreme Court explained that in order to be a prevailing party the applicant must receive "at least some relief on the merits" and the relief must materially alter the legal relationship of the parties. 532 U.S. at 603-605. The Federal Circuit adopted the *Buckhannon* test in *Brickwood Contractors, Inc. v. United States*, 288 F.3d 1371 (Fed. Cir. 2002) and applied it to an EAJA applicant. The Federal Circuit explained in *Rice Services, LTD. v. United States*, that "in order to demonstrate that it is a prevailing party, an EAJA applicant must show that it obtained an enforceable judgment on the merits or a court ordered consent decree that materially altered the legal relationship between the parties, or the equivalent of either of those." 405 F.3d 1017, 1025 (Fed. Cir. 2005).

In *Zuberi v. Nicholson*, 19 Vet. App. 541 (2006), this Court explained that the Federal Circuit case of *Akers v. Nicholson*, 409 F.3d 1356 (Fed. Cir. 2005) "did not change the focus for determining prevailing party status from a standard that looks to the basis for the remand to one that looks to the outcome of the remand.

Akers simply did not involve a remand that was predicated on an administrative error." 19 Vet. App. at 547. (internal quotations omitted). The Court held in *Zuberi* that *Motorola* provided the proper test for prevailing party. *Id.* Next in *Kelly v. Nicholson*, 463 F.3d 1349 (Fed. Cir. 2006), the Federal Circuit held that:

To be considered a prevailing party entitled to fees under EAJA, one must secure some relief on the merits. Securing a remand to an agency can constitute the requisite success on the merits. [W]here the plaintiff secures a remand requiring further agency proceedings because of alleged error by the agency, the plaintiff qualifies as a prevailing party ... without regard to the outcome of the agency proceedings where there has been no retention of jurisdiction by the court.

Id. at 1353 (internal citations and quotations omitted).

Most recently, this Court in *Blue v. Wilkie*, 30 Vet.App. 61 (2018), laid out the following three-part test relating to when an appellant is considered a prevailing party under the EAJA:

An appellant who secures a remand to an administrative agency is a prevailing party under the EAJA if (1) the remand was necessitated by or predicated upon administrative error, (2) the remanding court did not retain jurisdiction, and (3) the language in the remand order clearly called for further agency proceedings, which leaves the possibility of attaining a favorable merits determination.

Id. at 67, citing *Dover v. McDonald*, 818 F.3d 1316 (Fed. Cir. 2016).

After oral argument, the Court reversed that portion of the Board's July 21, 2020 decision that Appellant does not have current bilateral heel disabilities and vacated and remanded that portion of the decision that denied entitlement to an initial disability rating in excess of 10% for DJD of the left knee from July 21,

2009 to June 1, 2017 to benefits for bilateral heel disabilities and TDIU based upon the Board's error in relying on an inadequate examination pertaining to Appellant's heels disabilities and based upon the Board's failure to provide an adequate statement of reasons or bases. See pages 1-16 of the Memorandum Decision. The mandate was issued on November 16, 2022. Based upon the foregoing, and because the three-part test promulgated in *Blue* is satisfied, Appellant is a prevailing party.

B. Appellant Is Eligible For An EAJA Award

Appellant also satisfies the EAJA requirement that his net worth at the time his appeal was filed did not exceed \$2,000,000. 28 U.S.C. § 2412(d)(2)(B). Mr. Braddy had a net worth under \$2,000,000 on the date this action was commenced. See Paragraph 3 of the fee agreement filed with the Court. Therefore, Mr. Braddy is a person eligible to receive an award under the EAJA.

C. The Position of the Secretary Was Not Substantially Justified

In *White v. Nicholson*, 412 F.3d 1314 (Fed. Cir. 2004) the Federal Circuit applied the totality of the circumstances test and noted that "EAJA requires that the record must supply the evidence of the Government's substantial justification." 412 F.3d at 1316. The Secretary's position during proceedings before the Agency or the Court was not reasonable, either in law or in fact, and accordingly the Secretary's position was not substantially justified at either the administrative or

litigation stage in this case. There thus is nothing substantially justified in the Board's error in relying on an inadequate examination pertaining to Appellant's heels disabilities or in the Board's failure to provide an adequate statement of reasons or bases. Moreover, there is no evidence that special circumstances exist in Appellant's case that would make an award of reasonable fees and expenses unjust. 28 U.S.C. § 2412(d)(1)(A).

2. ITEMIZED STATEMENT OF SERVICES RENDERED AND AMOUNTS OF REASONABLE FEES AND EXPENSES

Appellant has claimed a reasonable amount of attorneys' fees, predicated upon "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ussery v. Brown*, 10 Vet. App. 51, 53 (1997) (quoting *Elczyn*, 7 Vet. App. at 176-177).

Eleven attorneys from the law firm of Chisholm Chisholm & Kilpatrick worked on this case: Megan Ellis, Shawn Wright, Amy Odom, Barbara Cook, Danielle M. Gorini, David Remillard, Brittani Howell, April Donahower, Kevin Medeiros, David Giza, and Zachary Stolz.¹ Attorney Megan Ellis graduated from

¹"There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer." *Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1988); *see also Baldridge v. Nicholson*, 19 Vet.App. 227, 237-38 (2005)("the fees sought must be 'based on the distinct contribution of each individual counsel.'"). "The use in involved litigation of a team of attorneys who

Boston College Law School in 2014 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with her experience.² Shawn Wright graduated from University of Miami Law School in 2019 and the *Laffey* Matrix establishes that \$369.00 is the prevailing market rate for an attorney with his experience. Amy Odom graduated from University of Florida Law School in 2006 and the *Laffey* Matrix establishes that \$532.00 is the prevailing market rate for an attorney with her experience. Barbara Cook graduated from University of

divide up work is common today for both plaintiff and defense work.” *Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) *holding modified by* *Gaines v. Dougherty Cty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). Careful preparation often requires collaboration and rehearsal [.]” *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1998). As demonstrated in Exhibit A, each attorney involved in the present case provided a distinct, and non-duplicative contribution to the success of the appeal. *See Baldridge*, 19 Vet.App. at 237 (“An application for fees under EAJA where multiple attorneys are involved must also explain the role of each lawyer in the litigation and the tasks assigned to each, thereby describing the distinct contribution of each counsel.”).

² The US Attorney’s Office maintains a matrix, known as the Laffey Matrix, of prevailing market rates for attorneys by the years of practice, taking into account annual price increases, pursuant to *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff’d in part by* 746 F.2d. 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). This Court has approved the use of the Laffey Matrix for determining the prevailing market rate for EAJA fees. *See, e.g., Wilson v. Principi*, 16 Vet.App. 509, 213 (2002) (finding the Laffey Matrix a “reliable indicator of fees...particularly as to cases involving fees to be paid by government entities or determined under fee-shifting statutes”), *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *see also Sandoval*, 9 Vet. App. at 181 (using the Laffey Matrix an indicator of prevailing market rate and holding that once a prevailing market rate is established, the government has the burden of producing evidence to show that the rate is erroneous.) *See* Exhibit B (Laffey Matrix).

Michigan Law School in 1977 and the *Laffey* Matrix establishes that \$665.00 is the prevailing market rate for an attorney with her experience. Danielle Gorini graduated from Roger Williams University Law School in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with her experience. David Remillard graduated from Roger Williams University Law School in 2018 and the *Laffey* Matrix establishes that \$369.00 is the prevailing market rate for an attorney with his experience. Brittani Howell graduated from Syracuse University School of Law in 2017 and the *Laffey* Matrix establishes that \$380.00 is the prevailing market rate for an attorney with her experience. April Donahower graduated from Temple University School of Law in 2013 and the *Laffey* Matrix establishes that \$452.00 is the prevailing market rate for an attorney with her experience. Kevin Medeiros graduated from Suffolk University School of Law in 2015 and the *Laffey* Matrix establishes that \$388.00 is the prevailing market rate for an attorney with his experience. David Giza graduated from Boston University School of Law in 2018 and the *Laffey* Matrix establishes that \$369.00 is the prevailing market rate for an attorney with his experience. Zachary Stolz graduated from the University of Kansas School of Law in 2005 and the *Laffey* Matrix establishes that \$591.00 is the prevailing market rate for an attorney with his experience.

Cassie Scott is a paralegal for the law firm of Chisholm Chisholm & Kilpatrick who worked on this case. The Court has found that "the Laffey Matrix . . . is a reliable indicator of fees and is far more indicative of the prevailing market rate in the jurisdiction, particularly as to cases involving fees to be paid by government entities" *Wilson v. Principi*, 16 Vet.App. 509, 513 (2002). The U.S. Supreme Court in *Richlin Sec. Service Co. v. Chertoff*, 553 U.S. 571, 590 (2008), held "...that a prevailing party that satisfies EAJA other requirements may recover its paralegal fees from the Government at prevailing market rates." According to the Laffey Matrix, the prevailing market rate for paralegals from June 1, 2016 and after is \$180.00 per hour. Therefore, Appellant seeks fees at the rate of \$180.00 per hour for representation services before the Court for Ms. Scott's time as a paralegal.

Attached as Exhibit A to this fee petition are the hours worked for all attorneys. Appellant seeks attorneys' fees at the rate of \$216.41 per hour for Ms. Ellis, Mr. Wright, Ms. Gorini, Mr. Remillard, Ms. Howell, Ms. Donahower, Mr. Medeiros, Mr. Giza, and Mr. Stolz for representation services before the Court.³

³ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Northeast. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date of the EAJA rate), to May 2021 the chosen mid-point date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181.

This rate per hour, multiplied by the number of hours billed for these nine attorneys (165.30) results in a total attorney's fee amount of \$35,772.57.

Appellant seeks attorney's fees at the rate of \$210.67 per hour for Ms. Cook's representation services before the Court.⁴ This rate per hour, multiplied by the number of hours billed for Ms. Cook (13.60) results in a total attorney's fee amount of \$2,865.11.

Appellant seeks attorney's fees at the rate of \$211.78 per hour for Ms. Odom's representation services before the Court.⁵ This rate per hour, multiplied by the number of hours billed for Ms. Odom (53.30) results in a total attorney's fee amount of \$11,287.87.

⁴ Per the agreement in *Bradley v. Wilkie*, 17-3797, this rate was determined using the formula proposed by the National Veterans Legal Services Program, Veterans Benefit Manual, [1683] (Barton Stichman et al. eds. 2017-18 ed.). Specifically, the hourly rate is determined using the \$193.83 hourly rate from the last month the Cincinnati Consumer Price Index-U was available in the second half of 2017, multiplying that number using the Midwest Consumer Price Index-U for the midpoint in the case, May 2021, divided by the data from the Midwest Consumer Price Index-U for December 2017 or 230.548.

⁵ This rate was determined by adjusting the \$125 per hour statutory EAJA rate by the increase in the cost of living as determined by the Consumer Price Index-U for Washington-Arlington-Alexandria, DC-MD-VA-WV. See *Mannino v. West*, 12 Vet. App. 242, 243 (1999). The increase was calculated for the period from March 29, 1996 (the start date for the EAJA rate), to May 2021 the chosen midpoint date for the litigation in this case, using the method described in *Elczyn v. Brown*, 7 Vet. App. 170, 181 (1994).

Appellant seeks fees at the rate of \$180.00 per hour for Ms. Scott's representation services before the Court. This rate per hour, multiplied by the number of hours billed (3.80) results in a total fee amount of \$684.00.

Based upon the foregoing, the total fee sought is **\$50,609.55**.

I, Zachary M. Stolz, am the lead counsel in this case. I certify that I have reviewed the combined billing statement and am satisfied that it accurately reflects the work performed by all representatives. I have considered and eliminated all time that I believe, based upon my over ten years of practicing before this Court, is either excessive or redundant.

Respectfully submitted,
Joe N. Braddy, Jr.
By His Attorneys,
CHISHOLM CHISHOLM & KILPATRICK
/s/Zachary M. Stolz
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(401) 331-6300
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Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
8/14/2020	MEGAN	Reviewed Board decision, researched caselaw, recommended an appeal to CAVC, and proposed legal arguments.	0.60
9/7/2020	SWRIGHT	Reviewed documents for CAVC appeal. Ensured consistency and accuracy. Submitted documents for CAVC appeal.	0.10
9/8/2020	SWRIGHT	Reviewed docket to ensure appeal had been processed. Updated client file.	0.10
9/24/2020	DREMILLA	Prepared and e-filed notice of appearance, reviewed docket, received and reviewed confirmation e-mail for accuracy, and updated file.	0.20
9/30/2020	DREMILLA	Received and reviewed e-mails from VA serving BVA decision and transmittal for accuracy; reviewed docket; updated file.	0.10
10/22/2020	DREMILLA	Received and reviewed Appellee's Notice of Appearance for attorney Panio and updated file.	0.10
11/5/2020	DREMILLA	Received and reviewed notice of uploaded RBA, reviewed RBA certificate of service, calculated case deadlines for motion to dispute record, and updated file.	0.10
11/10/2020	CSCOTT	Reviewed RBA pgs 1-1540 for dispute purposes. Began to flag records cited in BVA decision, remand, rating decisions, statement of the case, and supplemental statements of the case.	1.60
11/12/2020	CSCOTT	Reviewed RBA pgs 1541-2913 for dispute purposes. Flagged records cited in BVA decision, remand, rating decisions, statements of the case, and supplemental statements of the case.	2.20
11/17/2020	DREMILLA	Drafted RBA status letter to client.	0.10
11/30/2020	DREMILLA	Received and reviewed Court's notice to file opening brief for accuracy and content, calculated brief deadline, updated file.	0.10
12/30/2020	DREMILLA	Received and reviewed Court's PBC order for accuracy, calculated PBC and opening brief deadlines, reviewed docket, and updated file.	0.10
1/22/2021	DREMILLA	Review of RBA for briefing purposes pp. 1 to 464.	2.40
1/28/2021	DREMILLA	Review of RBA for briefing purposes pp. 465 - 654.	1.00
1/29/2021	DREMILLA	Review of RBA for briefing purposes pp. 1187 to 1421.	1.40
1/29/2021	DREMILLA	Review of RBA for briefing purposes pp. 655 to 1186	2.40
1/29/2021	DREMILLA	Review of RBA for briefing purposes pp. 1422 to 1565.	0.70
1/29/2021	DREMILLA	Review of RBA for Briefing purposes pp. 1566 to 2108.	1.40
1/30/2021	DREMILLA	Review of RBA for briefing purposes pp. 2109 to 2183.	0.40
1/31/2021	DREMILLA	Review of RBA for briefing purposes pp. 2184 to 2913.	2.30
2/3/2021	DREMILLA	Began drafting PBC memo.	0.60
2/5/2021	DREMILLA	Continued drafting PBC memo; finished section on TDIU; continued drafting section relating to heel disability.	3.00
2/5/2021	DREMILLA	Finished drafting section regarding heel disability for PBC memo.	0.50
2/8/2021	DREMILLA	Finished draft of PBC memo	1.10
2/10/2021	BHOWELL	Reviewing draft memo, discussed case w/ David, researched severance issue	1.70
2/11/2021	APRIL	Evaluated argument re: severance for possible inclusion in PBC memo	0.20
2/11/2021	BHOWELL	Made additional comments to draft memo	0.10
2/11/2021	BHOWELL	Reviewed revised draft of memo, made revisions to heel argument, and revisions to TDIU argument, left comments and suggestions	1.70
2/11/2021	DREMILLA	Completed PBC memo; served to VA and CLS counsels; prepared and e-filed Rule 33 certificate; received and reviewed confirmation e-mail for accuracy; updated file. Drafted letter to client regarding PBC	0.90

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

				<u>Hours</u>
2/11/2021	DREMILLA	Edited PBC memo		2.00
2/18/2021	DREMILLA	Spoke with client regarding status of case; memo to file.		0.20
2/25/2021	DREMILLA	Prepared for and participated in PBC with VA and CLS counsels; drafted memo to file summarizing outcome; updated file.		0.50
3/2/2021	AODOM	Participated in litigation strategy meeting; prepared memo to file regarding same.		0.20
3/2/2021	AODOM	Reviewed case notes, PBC memo, and pertinent portions of RBA; prepared notes in advance of litigation strategy meeting.		0.80
3/2/2021	ZACH	Participated in conversation about litigation strategy for opening brief and offered joint motion and counter proposal.		0.20
3/22/2021	DREMILLA	Reviewed RBA and researched relevant caselaw to prepare for meeting regarding issues in appeal.		0.90
3/24/2021	AODOM	Participated in briefing strategy meeting regarding severance argument.		0.60
3/24/2021	BARBARA	Review legal theories, research severance being part of appeal pre 7104 and prior BVA finding of intertwined		0.70
3/24/2021	DREMILLA	Drafted follow-up email to OGC regarding requested relief in appeal.		0.80
3/24/2021	DREMILLA	Participated in strategy meeting to discuss issues on appeal; drafted memo to file summarizing results		1.30
3/25/2021	DREMILLA	Reviewed and sent follow-up email to OGC.		0.20
4/6/2021	DREMILLA	Began creating outline of law and facts for opening brief.		0.70
4/7/2021	DREMILLA	Continued researching relevant caselaw and preparing outline for opening brief.		0.90
4/7/2021	DREMILLA	Finished researching and preparing outline of severance issue for opening brief.		0.90
4/21/2021	DREMILLA	Began drafting statement of the case.		2.60
4/22/2021	DREMILLA	Finished statement of the case for opening brief.		0.50
4/22/2021	DREMILLA	Completed arguments I and III of opening brief; began drafting argument II.		2.60
4/22/2021	DREMILLA	Finished drafting argument section of opening brief.		2.70
4/22/2021	DREMILLA	Continued drafting statement of the case for opening brief.		3.00
4/26/2021	DREMILLA	Finished draft of opening brief.		1.70
4/28/2021	DREMILLA	Edited opening brief		1.50
4/28/2021	KEVIN	Substantive review of DR's draft opening brief for accuracy of legal arguments, organization, and flow; made necessary edits and revisions; memo to file re: edits/suggestions.		2.60
5/4/2021	DREMILLA	Received and reviewed reply from OGC to PBC follow-up email; updated file.		0.10
5/6/2021	AODOM	Initial review of opening brief; prepared edits.		1.60
5/7/2021	AODOM	Conference with and legal advice to D. Remillard regarding reframing TDIU and severance arguments; memo to file regarding same.		1.40
5/7/2021	BARBARA	Review meds, Rouse and Ray, check SSA rules, suggest adding arguments		2.40
5/7/2021	DREMILLA	Began editing TDIU section of opening brief.		3.00
5/7/2021	DREMILLA	Finished editing draft argument for TDIU in opening brief.		0.40
5/8/2021	AODOM	Conducted legal research regarding 7104(a) in preparation for editing severance argument.		1.10
5/8/2021	AODOM	Edited severance argument, including adding new arguments and significantly revising others.		2.70
5/8/2021	BARBARA	Review and comment on draft TDIU section		0.40

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

				<u>Hours</u>
5/8/2021	DREMILLA	Edited draft Brief; research of relevant caselaw.		1.10
5/10/2021	AODOM	Prepared and filed notice of appearance; updated file.		0.20
5/10/2021	AODOM	Reviewed and edited final draft of brief; provided legal advice to Dave regarding same.		2.40
5/10/2021	DREMILLA	Implemented edits and comments into draft opening brief		0.80
5/10/2021	DREMILLA	Completed and filed Opening Brief with Court		2.80
6/25/2021	DGIZA	Prepared and e-filed notice of appearance. Reviewed client docket and file to assess status of appeal. Updated client file.		0.20
7/7/2021	DGIZA	Received, reviewed, and responded to OGC's request for an extension on their brief. Updated client file.		0.10
7/8/2021	DGIZA	Received and reviewed notice of OGC's motion to extend time to file their brief. Updated client file.		0.10
7/8/2021	DGIZA	Received and reviewed notice of clerk's order granting OGC's motion to extend time to file their brief. Updated client file.		0.10
8/24/2021	DGIZA	Received and reviewed notice of OGC e-filing their reply brief. Updated client file.		0.10
8/31/2021	DGIZA	Reviewed Board decision, DREMILLA's opening brief, and Secretary's brief to assess arguments on appeal and begin outlining initial thoughts for reply brief arguments. Updated client file.		1.70
9/1/2021	DGIZA	Drafted memo to file breaking down OGC's arguments and outlining initial thoughts for reply arguments. Updated client file.		1.10
9/7/2021	AODOM	Participated in litigation strategy meeting; prepared memo to file regarding same.		0.20
9/7/2021	AODOM	Reviewed parties' briefs and prepared notes in advance of litigation strategy meeting.		0.60
9/7/2021	DGIZA	Reviewed litigation strategy notes.		0.10
9/13/2021	AODOM	Prepared for and participated in reply brief strategy meeting regarding severance argument; prepared memo to file regarding same.		0.60
9/13/2021	APRIL	Reviewed pleadings to date and BVA decision to prepare for reply brief strategy meeting		1.20
9/13/2021	DGIZA	Reviewed case notes and notes on OGC's brief to prepare for reply brief strategy meeting. Discussed severance arguments, jurisdiction of Board, and TDIU arguments. Updated client file.		0.90
9/16/2021	DGIZA	Reviewed case file notes, notes on reply brief strategy, and subsequent case notes. Began outlining TDIU reply brief arguments.		2.10
9/23/2021	DGIZA	Finished drafting TDIU reply brief argument outline. Reviewed outline, added additional caselaw and regulatory citations as appropriate for clarification. Sent outline to ALEC and BARBARA for review.		0.90
9/24/2021	BARBARA	Review briefs and start to analyze outline		0.70
10/4/2021	DGIZA	Reviewed case notes and BARBARA's initial notes on reply brief outline. Drafted TDIU inextricably intertwined argument.		0.70
10/5/2021	BARBARA	Develop outline and start to comment on reply		1.00
10/5/2021	BARBARA	Complete review of outline, suggest revision		0.50
10/5/2021	DGIZA	Received and reviewed BARBARA's comments on reply brief outline.		0.30
10/7/2021	AODOM	Conducted legal research in preparation for drafting reply argument regarding severance.		0.60
10/7/2021	AODOM	Drafted severance argument for reply brief.		1.90
10/7/2021	DGIZA	Continued drafting reply brief		3.00
10/8/2021	AODOM	Edited reply brief to include Lang argument.		0.30
10/8/2021	APRIL	Reviewed comments on TDIU outline; began review of draft severance reply argument		1.70

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
10/8/2021	DGIZA	Finished drafting TDIU section of reply brief, proofread accordingly. Drafted section regarding bilateral heel disability and conclusion. sent to APRIL for review.	3.00
10/13/2021	APRIL	Began review of reply brief TDIU arguments	2.90
10/13/2021	APRIL	Completed review of reply brief severance argument	2.60
10/14/2021	AODOM	Reviewed April's notes regarding draft severance argument, conference with her regarding same, and implemented edits per her advice.	3.00
10/14/2021	APRIL	Completed review of TDIU arguments for reply brief	1.20
10/14/2021	DGIZA	Reviewed suggested edits on TDIU reply brief arguments. Began incorporating edits	1.60
10/15/2021	AODOM	Prepared additional edits to severance argument to improve persuasiveness.	0.60
10/15/2021	DGIZA	Continued editing draft of reply brief, reviewed for grammar and argument flow.	2.80
10/16/2021	BARBARA	Review and edit draft reply, add more facts after checking RBA, add argument on Beaty and non use of SSA, check Harris and change argument based on actual holding, add argument about concession as to intertwined	2.30
10/18/2021	AODOM	Incorporate severance argument into brief, inextricably intertwined argument, and conclusion.	0.70
10/18/2021	APRIL	Reviewed final draft of TDIU arguments and suggested revisions	1.40
10/18/2021	DGIZA	Reviewed and incorporated suggested edits into revised draft of reply brief. Included all arguments on appeal. Revised conclusion section to incorporate severance argument.	1.70
10/18/2021	DGIZA	Made final revisions to reply brief. Checked citations to record and authorities. E-filed.	0.80
10/18/2021	DGIZA	Reviewed and incorporated additional edits and comments on further draft of reply brief.	0.60
10/27/2021	DGIZA	Received notice of record of proceedings being e-filed. Reviewed record of proceedings for completeness. Prepared and e-filed response to record of proceedings. Updated client file.	0.50
10/28/2021	DGIZA	Received and reviewed notice of case assigned to Judge Meredith at Court. Updated client file.	0.10
11/18/2021	DGIZA	Received and reviewed order to panel, reviewed pleadings, and memo to the file regarding same.	0.50
11/19/2021	DGIZA	Received and reviewed order to schedule an oral argument, memo to the file regarding same and updated client file.	0.10
11/19/2021	DGIZA	Received notice of recent precedential opinion in Patricia K. Snider regarding TDIU referral standard, added memo to file about potential implications and need to include as supplemental authority.	0.10
12/6/2021	BARBARA	Review pleadings to assess oral argument options	0.10
12/8/2021	JENNA	Discussed preliminary oral argument strategy	0.40
12/16/2021	DGIZA	Called client with status update. Informed him of oral arguments set for February 3 at 10am, explained what this means for his case and likely timeline moving forward. Updated client file.	0.20
1/4/2022	APRIL	Began research and review of parties' pleadings to prepare for oral argument strategy meeting	1.00
1/4/2022	BARBARA	Prepare for walk through. Skim briefs and notes, skim major cases cited, reviewed Bernard and Jackson in depth, take notes on possible approaches as to jurisdiction issue, skim arguments on TDIU, look for cases authored by panel members.	0.90
1/5/2022	AODOM	Participated in oral argument walk-through.	0.70
1/5/2022	APRIL	Outlined oral argument approach in advance of meeting to discuss oral argument strategy; attended oral argument strategy meeting	2.10
1/5/2022	BARBARA	Read Hedgepeth for possible use, review notes, meet with team to walk through oral argument approach	0.70

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
1/5/2022	ZACH	Reviewed pleadings and notes on case. Reviewed 2-3 most relevant cases. Participated in first walk through of case to discuss oral argument strategy.	2.60
1/6/2022	ZACH	Email exchange with Dawn Braquet concerning oral argument.	0.10
1/16/2022	APRIL	Familiarized self with facts pertinent to oral argument and created timeline of facts re: severance of service connection for knee disability	1.30
1/17/2022	APRIL	Researched caselaw concerning mootness and jurisdiction; researched regulations re: Board jurisdictional determinations; reviewed 1-50 of 144 BVA decisions re: severance and mootness	2.00
1/19/2022	APRIL	Researched regulations and case law re: Board determination of its jurisdiction	1.40
1/20/2022	APRIL	Reviewed factual history of severance of service connection for left knee; created reference guide for use in oral argument	2.50
1/20/2022	APRIL	Assembled and tabbed relevant documents for use in oral argument; created first draft of opening statement	1.90
1/23/2022	APRIL	Researched regulatory history and statutory authority for 3.400(o)(1); revised opening statement	1.80
1/24/2022	AODOM	Prepared for and participated in first moot; debrief with April.	1.50
1/24/2022	APRIL	Prepared for and held first moot oral argument and follow-up discussion	2.90
1/24/2022	ZACH	Reviewed all pleadings and relevant record citations. Brief review of relevant case law. Participated in first moot of oral argument as "judge." Contributed questions and oral argument strategy.	3.00
1/26/2022	AODOM	Participated in pre-oral argument conference with Court.	0.30
1/26/2022	APRIL	Reviewed American Academy of Appellate Lawyers guide to remote oral argument and attended pre-oral argument briefing	0.80
1/26/2022	APRIL	Reviewed case law regarding relationship between service connection and disability level elements of benefits claim. Reviewed BVA decisions containing cite to 3.400 and dealing with severance during pending appeal of rating (1-43 of 152). Discussed refinement of oral argument with Barb.	3.00
1/27/2022	APRIL	Reviewed cases concerning BVA direct and collateral review of favorable agency determinations; discussed practical implications of argument with Brad	1.10
1/28/2022	DGIZA	Phone call to client to discuss upcoming oral arguments, confirm a few biographical facts and discuss preferred name and pronunciation. Updated client file.	0.20
1/29/2022	APRIL	Reviewed and created outline of veteran-VA correspondence re: rating and severance questions for reference at oral argument. Reviewed Harper v. Wilkie decision and pleadings. Reviewed Ledfor and Collaro decisions and citing references re: scope of NOD	2.80
1/30/2022	APRIL	Reviewed citing references to Jackson v. Principi; reviewed Grimes; organized research to prepare for second moot; reviewed March 2017 SSOC limiting scope of appeal to pre-severance period; drafted assessment of implications of SSOC; revised opening statement	2.10
1/31/2022	AODOM	Oral argument strategy discussion with April.	1.00
1/31/2022	AODOM	Prepared for and participated in second moot.	1.00
1/31/2022	APRIL	Reviewed notes and edited opening statement; discussed oral argument strategy with Amy; held second moot oral argument and ensuing discussion	3.00
1/31/2022	BARBARA	Prepare for moot by reviewing notes and assessing weak spots in argument, considering possible answers	0.60
1/31/2022	BARBARA	Participate in moot and discuss issues	1.10
1/31/2022	ZACH	Prepared for and participated in second full moot of case for oral argument. Preparation included review of relevant case law, pleadings, and record. Participation was as a "judge" asking question and then contributing to oral argument strategy discussion.	2.90

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
2/1/2022	APRIL	Researched cases citing "trap for the unwary" language from Comer; began redrafting opening statement; organized research	2.50
2/2/2022	AODOM	Work through hypotheticals with April in advance of oral argument.	0.20
2/2/2022	APRIL	Edited opening statement; reviewed and annotated key cases	2.00
2/2/2022	APRIL	Reviewed and began making reference sheet of contents of parties' pleadings; formulated possible hypos for oral argument	2.40
2/2/2022	APRIL	Reviewed Warren, Grimes; compiled and annotated excerpts; implemented suggested revisions to opening statement and made additional revisions. Completed compilation of quick-reference sheets for briefs, facts, and law. Rehearsed opening statement	3.00
2/2/2022	BARBARA	Review and suggest changes to draft opening, incorporating words from Jackson and statute, focusing on antecedent nature of severance	2.20
2/3/2022	AODOM	Prepared for and participated in pre-oral argument conference, participated in oral argument as second chair, participated in oral argument debriefing.	2.00
2/3/2022	APRIL	Conducted final preparation for oral argument; attended oral argument; held oral argument post-mortem with team	3.00
3/8/2022	DGIZA	Received and reviewed Court order requesting supplemental briefing from both parties. Memo to the file.	0.30
3/11/2022	DGIZA	Received, reviewed, and responded to OGC's request for an extension on their supplemental briefing in this matter. Updated client file.	0.10
3/14/2022	DGIZA	Received and reviewed notice of OGC e-filing motion to extend time to file their supplemental briefing. Updated client file.	0.10
3/14/2022	DGIZA	Received and reviewed notice of Court's order granting OGC's motion to extend time to file their supplemental brief. Updated client file.	0.10
4/27/2022	DGIZA	Called client to update him on status of pending appeal post-oral arguments. Explained supplemental briefing process, likely timeline moving forward. Client had no further questions. Updated client file.	0.20
5/13/2022	APRIL	Reviewed Secretary's supplemental brief on fair process issue	0.40
5/13/2022	DGIZA	Received and reviewed notice of OGC e-filing their supplemental brief.	0.10
5/13/2022	ZACH	Reviewed supplemental brief and discussed initial strategy	0.80
5/18/2022	AODOM	Reviewed Secretary's supplemental brief; conducted legal research.	0.60
5/19/2022	APRIL	Initial discussion re: approach to supplemental pleading	0.20
5/23/2022	DGIZA	Began reviewing OGC's supplemental brief in order to discuss reply strategy	0.80
5/24/2022	APRIL	Reviewed VA's supplemental pleading and cited authorities to prepare for meeting to discuss response; outlined thoughts on approach to response; met to discuss response	2.00
5/24/2022	DGIZA	Discussed issues for supplemental reply brief with litigation strategy team. Updated client file.	0.20
5/24/2022	DGIZA	Finished review of OGC's supplemental brief. Drafted notes regarding thoughts for response in anticipation of litigation strategy meeting later this afternoon.	0.40
5/31/2022	AODOM	Prepared for and participated in supplemental briefing strategy meeting.	1.20
5/31/2022	APRIL	Prepared for and attended meeting to discuss supplemental brief strategy	1.20
6/9/2022	AODOM	Began drafting outline of supplemental brief arguments.	0.90
6/9/2022	AODOM	Listened to oral argument and prepared notes regarding same; began reviewing and analyzing documents identified in Court's order and during oral argument in preparation for drafting supplemental pleading.	1.70
6/10/2022	AODOM	Finished outline; began drafting supplemental reply argument.	2.30
6/17/2022	AODOM	Continued drafting fair process violation argument.	1.20

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
6/19/2022	AODOM	Finished drafting fair process argument.	1.50
6/19/2022	AODOM	Continued drafting fair process argument.	2.30
6/21/2022	AODOM	Began drafting remedy argument.	1.30
6/21/2022	APRIL	Reviewed draft of response to court order for supplemental briefing	2.80
6/22/2022	AODOM	Reviewed and analyzed decision and dissent in Frantzis v. McDonough.	0.60
6/22/2022	AODOM	Finished drafting argument regarding remedy.	1.60
6/22/2022	AODOM	Conducted legal research regarding distinction between waiver and forfeiture and claims processing rules.	3.00
6/22/2022	AODOM	Conference with April regarding reorganizing/adding arguments; reorganized argument I per April's advice.	3.00
6/23/2022	AODOM	Edited revised draft of supplemental brief to add clarity and persuasiveness.	1.00
6/23/2022	APRIL	Researched "party presentation" rule and memo to the file re: fair process issue	0.60
6/24/2022	AODOM	Reviewed Frantzis dissent, reviewed and analyzed Roberts v. McDonald, prepared notes regarding same.	0.60
6/24/2022	AODOM	Conferences with April regarding revisions to be made to brief; prepared revisions, to include Roberts v. McDonald arguments.	2.90
6/24/2022	APRIL	Reviewed revised draft of supplemental pleading; discussed with Amy	2.40
6/27/2022	AODOM	Prepared brief for filing; filed brief; updated file.	1.00
6/27/2022	ZACH	Reviewed notes on case, pleadings, and supplemental pleading.	3.00
8/25/2022	AODOM	Reviewed and analyzed CAVC decision and compared against arguments raised in briefing.	0.40
8/25/2022	DGIZA	Received and reviewed notice of CAVC order dissolving panel and returning matter to Judge Meredith for single-judge decision.	0.10
8/25/2022	DGIZA	Received and reviewed notice of CAVC issuing favorable memorandum decision. Updated client file.	0.10
8/26/2022	DGIZA	Reviewed favorable memorandum decision from Judge Meredith. Reviewed to ensure all arguments on appeal were addressed. Drafted memo to Court Team recapping arguments on appeal and holdings of mem-dec. Updated client file.	0.80
8/29/2022	DGIZA	Received and reviewed notice of appearance for OGC as lead counsel. Updated client file.	0.10
8/30/2022	ZACH	Reviewed Court decision, pleadings, and notes in case. Prepared letter to client concerning Court's decision. Ensured case file was updated with necessary letters, pleadings, and correspondence so that client could be properly informed of case progress, disposition, and next steps.	0.70
9/1/2022	DGIZA	Called client to discuss recent favorable memorandum decision, answered client's questions about same, discussed remaining timeline at CAVC. Drafted memo to file recapping issues, arguments, and outcomes on appeal. Updated client file.	0.90
9/16/2022	DGIZA	Received and reviewed notice of CAVC entering judgment on recent memorandum decision. Updated client file.	0.10
9/30/2022	ZACH	Prepared letter to client concerning entry of Court's judgment.	0.30
11/14/2022	DGIZA	Called client to discuss upcoming mandate process, no answer, left voicemail. Updated client file.	0.10
11/16/2022	DGIZA	Received and reviewed notice of CAVC order entering mandate on recent favorable memorandum decision. Updated client file.	0.10
11/22/2022	DANIELLE	Prepared and e filed Notice of Appearance. Received, reviewed, and saved Court confirmation email. Checked docket sheet to ensure proper filing. Updated case file.	0.20
11/22/2022	DANIELLE	Reviewed file. Prepared EAJA Petition and Exhibit A. Submitted completed EAJA Application for proofreading and billing accuracy review.	2.00

Exhibit A

Time from 10/1/2018 to 11/22/2022

Case No. 290777

Client: Braddy, Jr., Mr. Joe N.

			<u>Hours</u>
11/22/2022	ZACH	Reviewed EAJA Application for proofreading purposes and to ensure billing accuracy.	0.50

Timekeeper Summary

<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
AODOM	53.3	\$ 211.78	\$ 11,287.87
APRIL	63.4	\$ 216.41	\$ 13,720.39
BARBARA	13.6	\$ 210.67	\$ 2,865.11
BHOWELL	3.5	\$ 216.41	\$ 757.44
CSCOTT	3.8	\$ 180.00	\$ 684.00
DANIELLE	2.2	\$ 216.41	\$ 476.10
DGIZA	28.2	\$ 216.41	\$ 6,102.76
DREMILLA	50.1	\$ 216.41	\$ 10,842.14
JENNA	0.4	\$ 216.41	\$ 86.56
KEVIN	2.6	\$ 216.41	\$ 562.67
MEGAN	0.6	\$ 216.41	\$ 129.85
SWRIGHT	0.2	\$ 216.41	\$ 43.28
ZACH	14.1	\$ 216.41	\$ 3,051.38
	236.0		\$ 50,609.55

USAO ATTORNEY'S FEES MATRIX — 2015-2021

Revised Methodology starting with 2015-2016 Year

Years (Hourly Rate for June 1 – May 31, based on change in PPI-OL since January 2011)

Experience	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
31+ years	568	581	602	613	637	665
21-30 years	530	543	563	572	595	621
16-20 years	504	516	536	544	566	591
11-15 years	455	465	483	491	510	532
8-10 years	386	395	410	417	433	452
6-7 years	332	339	352	358	372	388
4-5 years	325	332	346	351	365	380
2-3 years	315	322	334	340	353	369
Less than 2 years	284	291	302	307	319	333
Paralegals & Law Clerks	154	157	164	166	173	180

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, or by other Department of Justice components, or in other kinds of cases. The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
3. The PPI-OL index has been adopted as the inflator for hourly rates because it better reflects the mix of legal services that law firms collectively offer, as opposed to the legal services that typical consumers use, which is what the CPI-

Legal Services index measures. Although it is a national index, and not a local one, *cf. Eley v. District of Columbia*, 793 F.3d 97, 102 (D.C. Cir. 2015) (noting criticism of national inflation index), the PPI-OL index has historically been generous relative to other possibly applicable inflation indexes, and so its use should minimize disputes about whether the inflator is sufficient.

4. The methodology used to compute the rates in this matrix replaces that used prior to 2015, which started with the matrix of hourly rates developed in *Laffey v. Northwest Airlines, Inc.* 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985), and then adjusted those rates based on the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Baltimore (DC-MD-VA-WV) area. The USAO rates for years prior to and including 2014-15 remains the same as previously published on the USAO's public website.
5. The various "brackets" in the column headed "Experience" refer to the attorney's years of experience practicing law. Normally, an attorney's experience will be calculated starting from the attorney's graduation from law school. Thus, the "Less than 2 years" bracket is generally applicable to attorneys in their first and second years after graduation from law school, and the "2-3 years" bracket generally becomes applicable on the second anniversary of the attorney's graduation (*i.e.*, at the beginning of the third year following law school). See *Laffey*, 572 F. Supp. at 371. An adjustment may be necessary, however, if the attorney's admission to the bar was significantly delayed or the attorney did not otherwise follow a typical career progression. See, *e.g.*, *EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp. 2d 56, 60-61 (D.D.C. 2013) (same). The various experience levels were selected by relying on the levels in the ALM Legal Intelligence 2011 survey data. Although finer gradations in experience level might yield different estimates of market rates, it is important to have statistically sufficient sample sizes for each experience level. The experience categories in the current USAO Matrix are based on statistically significant sample sizes for each experience level.
6. ALM Legal Intelligence's 2011 survey data does not include rates for paralegals and law clerks. Unless and until reliable survey data about actual paralegal/law clerk rates in the D.C. metropolitan area become available, the USAO will compute the hourly rate for Paralegals & Law Clerks using the most recent historical rate from the USAO's former *Laffey* Matrix (*i.e.*, \$150 for 2014-15) updated with the PPI-OL index. The formula is \$150 multiplied by the PPI-OL index for May in the year of the update, divided by 194.3 (the PPI-OL index for May 2014), and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).
7. The attorney's fees matrices issued by the United States Attorney's Office are intended to facilitate the settlement of attorney's fees claims in actions in which the United States may be liable to pay attorney's fees to the prevailing party and the United States Attorney's Office is handling the matter. The United States Attorney's Office is presently working to develop a revised rate schedule, based upon current, realized rates paid to attorneys handling complex federal litigation in the District of Columbia federal courts. This effort is motivated in part by the D.C. Circuit's urging the development of "a reliable assessment of fees charged for complex federal litigation in the District." *D.L. v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). This new matrix should address the issues identified by the majority in *D.L.*, but it is expected that it will be some time before a new matrix can be prepared. In the interim, for matters in which a prevailing party agrees to payment pursuant to the matrices issued by the United States Attorney's Office, the United States Attorney's Office will not demand that a prevailing party offer the additional evidence that the law otherwise requires. See *Eley*, 793 F.3d at 104 (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'").