

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

**JIMMY C. BONDS,** :

Appellant, :

vs. : Docket No. 20-4899

**DENIS McDONOUGH,** :

Secretary of Veterans Affairs, :

Appellee. :

**APPELLANT’S APPLICATION FOR ATTORNEY FEES PURSUANT**  
**TO THE EQUAL ACCESS TO JUSTICE ACT AND**  
**MEMORANDUM IN SUPPORT**

Appellant moves for \$13,035.83 (\$14,484.26 less \$1,448.43 for billing judgment) in attorney’s fees plus costs of \$2,74.23, for a total award of \$15,610.06 U.S.C. §2412(d)(1)(A).

Appellant was a prevailing party, appellee’s position in this case was not substantially justified, and the appellant’s net worth at the time the appeal was filed did not exceed \$2 million. An itemized statement detailing the time and expenses for which reimbursement is sought is attached. Appellant meets all the criteria under the statute, and the Court should award fees and costs as requested.

**MEMORANDUM IN SUPPORT**

To obtain an award of fees under the Equal Access to Justice Act, appellant must be a prevailing party, appellant must show he is eligible for the award, and appellant must allege that the position of the government was not substantially justified, *Bazalo v. Brown*, 9 Vet. App. 304 (1996). Appellant meets all three criteria, and therefore the

Court should award fees.

A “prevailing party” is one who obtains some relief on the merits, *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Resources*, 532 U.S. 598, 603 (2001). Relief on the merits for EAJA purposes includes the securing of a remand to an agency where the remand requires further agency proceedings because of alleged agency error. *Former Employees of Motorola Ceramic Products v. U.S.*, 336 F.3d 1360, 1366 (Fed. Cir. 2003). The EAJA statute directs the prevailing party inquiry to fees/expenses incurred “in any civil action . . . , including proceedings for judicial review of an agency action . . .”. Therefore, the party “prevails” by obtaining the remand which meets the requirements of *Motorola*, and whether or not the party ultimately prevails on remand on the merits of his benefits claim is wholly irrelevant. *Kelly v. Nicholson*, 463 F.3d 1349, 1354 (Fed. Cir. 2006).

The CAVC’s October 5, 2022 decision was reduced to judgment on October 27, 2022. The decision vacated and remanded the Board’s June 9, 2020 decision. The relief granted is premised on agency error on the grounds stated in the Court’s decision.

Therefore, the appellant meets the first requirement for a fee award.

Second, appellant must establish that his net worth at the time of filing the appeal did not exceed \$2 million. Attached to this motion is the affidavit of the appellant, certifying that she meets this criteria.

Third, appellee’s position on this claim was not substantially justified as stated in the Court’s decision. See, also, *Kelly, supra*, 463 F.3d at 1355.

Based on the above, and on the pleadings in this case, an award of fees is proper.  
Attached is counsel's statement itemizing the services and expenses for which  
reimbursement is sought.

Respectfully submitted,

/s/ Sandra E. Booth

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Sandra E. Booth  
Counsel for Appellant  
3620 North High Street, Suite 310  
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**IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

<b>JIMMY C. BONDS,</b>	:	
Appellant,	:	
vs.	:	Docket No. 20-4899
DENIS McDONOUGH,	:	
Secretary of Veterans Affairs,	:	
Appellee.	:	

**DECLARATION OF SANDRA E. BOOTH, ESQ.**

I, Sandra E. Booth, make the following declaration in support of appellant's application for an award of attorney fees, costs, and other expenses in connection with the above-captioned appeal filed with the U.S. Court of Appeals for Veterans Claims.

1. I was the attorney of record for the appellant in the proceedings before the U.S. Court of Appeals for Veterans Claims. Exhibit A contains an itemization of services for which reimbursement is sought.

2. According to data provided by the U.S. Department of Labor, Bureau of Labor Statistics, as of February 2021, the date the principal brief was filed and therefore the approximate mid-point of the case according to VAGC policy as represented by VAGC counsel in recent EAJA cases, the Midwest CPI-U was 244.477; the base year Midwest CPI (March, 1996) was 151.7; for an increase of 61.2%. Applying this increase to the \$125.00 hourly rate provided by the Equal Access to Justice Act, applicable to appeals filed after March 29, 1996, the current hourly rate would be \$201.45.

3. Applying the rate computed to the time expended by counsel for Appellant for

which reimbursement is sought (71.9 hours), less 10% for billing judgment, Appellant seeks a total fee of \$13,035.83.

4. For costs and expenses expended by counsel for appellant, appellant seeks a total reimbursement of \$2,574.23. The total of fees and expenses is \$15,610.06.

5. The undersigned states that the information set forth above is true and correct.

Respectfully submitted,

/s/ Sandra E. Booth

Sandra E. Booth

Counsel for Appellant

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**SANDRA E. BOOTH, ESQ.****INVOICE**

3620 N. HIGH STREET #310  
COLUMBUS, OH 43214  
(614) 784-9451

**DATE:** January 25, 2023

**BILL TO:**  
JIMMY BONDS

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
6/20/2020	Extended review of June 9, 2020 Board decision; makes notes of case citations which appear questionable for the principle cited; analysis re Board's stated reasons for rejection of earlier effective date claim because brought under Section 1151; notes for follow up research; review Board's reliance on preponderance of evidence standard; analysis re further appeal	1.20	\$201.45	\$241.74
6/22/2020	Telephone conference with client; instructions re preparation of NOA documents	0.20	\$201.45	\$40.29
7/14/2020	Review, sign off on Notice of Appeal, related documents; review, calendar for follow up re notice of docketing	0.10	\$201.45	\$20.15
9/9/2020	Review, note to file re Mr. Yousaf's entry of appearance (Combined with 9/16/20 entry)	0.00	\$201.45	\$0.00
9/16/2020	Review, calendar re RBA notice (Combined with 9/9/20 entry)	0.10	\$201.45	\$20.15
	Attention to search for pertinent administrative documents; review RBA 36 - 105; 1151 - 1334; 1335-1355; 3113 - 3510	2.10	\$201.45	\$423.05
	Search, review administrative documents, RBA 3705 - 6000; RBA 6001 - 6270; Search RBA for original claim	1.20	\$201.45	\$241.74
9/19/2020	Attention to search of RBA for pertinent C&P examinations; review same; review 1/21/15 VARO hearing transcript	1.90	\$201.45	\$382.76
	Review, skim VA treatment records, 10/29/09 - 12/10/10 (RBA 1367 - 3082); review VA treatment records 2010 - 2019 (RBA 106 - 1107); search file for Duke Health records re initial DMII diagnosis	2.10	\$201.45	\$423.05
	Review medical records, RBA 3741 - 6186 (skim)	1.00	\$201.45	\$201.45
	Review medical records, RBA 6214 - 12176 (skim)	1.90	\$201.45	\$382.76
	Review medical records, RBA 12177 - 13277 (Skim)	0.60	\$201.45	\$120.87
	Review RBA 13278 - 13475	0.40	\$201.45	\$80.58
10/1/2020	Review, calendar re notice to file brief; review file re status of work to be completed; calendar for follow up	0.10	\$201.45	\$20.15
10/5/2020	Legal research, analysis, re <i>Harris v. Shinseki</i> , 704 F.3d 946; <i>Anderson v. Principi</i> ; analysis re why it is distinguishable from Mr. Bonds' case; attention to Judge Hagel's concurrence; shepherdize <i>Anderson</i>	1.00	\$201.45	\$201.45
10/27/2020	Review, calendar re 11/24/20 Rule 33 conference ; review file re work to be completed; calendar for follow up	0.20	\$201.45	\$40.29
10/29/2020	Attention to partial review of case law which cites <i>Anderson</i> ; research re differences between claims for compensation under Section s 1110 and 1154; review <i>Kilpatrick</i> , 16 Vet. App.; <i>Carpenter</i> , 11 Vet. App; <i>Green</i> , 10 Vet. App.; <i>Bartsch v. McDonald</i> , 2015 WL 1262910	1.10	\$201.45	\$221.60
11/2/2020	Legal research re sympathetic reading doctrine, duty to liberally read pro se filings; review <i>Robinson</i> , <i>Ingram</i> and <i>Dilisio</i> ; analysis re how to integrate that case law into Mr. Bonds' arguments; notation re additional case law applicable to sympathetic reading for further review	1.30	\$201.45	\$261.89

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
11/6/2020	Review <i>Ingram</i> , 21 Vet App.; review <i>Adams v. Shinseki</i> , 568 F.3d 956; review <i>Mansfield</i>	0.80	\$201.45	\$161.16
	Attention to drafting statement of relevant facts; word search re VA medical records to identify when VA medical records first report the veteran's DMII diagnosis and temporal relationship of the diagnosis to the veteran's date of discharge from active duty; pull documents relevant to multiple VA amputations of the veteran's right lower extremity due to diabetic infections; pull records re the veteran's initial claim; drafting re the 2013 Section 1151 theory and the 2017 direct service connection request which asserted a presumptive theory	1.10	\$201.45	\$221.60
	Attention to drafting re administrative proceedings which granted service connection, the earlier effective date appeal, and the Board's decision	0.40	\$201.45	\$80.58
	Draft outline re legal argument, issues to present	0.60	\$201.45	\$120.87
11/7/2020	Draft legal arguments in support of earlier effective date	2.40	\$201.45	\$483.48
11/10/2020	Review R. 33 memo; redraft re <i>DiLisio</i> ; draft re instances other than Section 1110 where sympathetic reading doctrine is applicable; Edit and finalize R. 33 memo; pull documents	2.10	\$201.45	\$423.05
1/11/2020	Service of all on CLS and OGC	0.00	\$201.45	\$0.00
1/17/2020	Review email from Mr. Yousaf; re-send R. 33 memo to him	0.00	\$201.45	\$0.00
1/24/2020	Review Board decision; review R. 33 memo, in preparation for R. 33 conference; participate in same; notes to file re comments of the Secretary and CLS; recalendar for briefing	1.00	\$201.45	\$201.45
12/19/2020	Review Board decision, review notes to file, review Rule 33 memo and notes; restructure the statement of the issue; attention to drafting the jurisdictional statement	2.10	\$201.45	\$423.05
	Attention to drafting statement of facts	1.90	\$201.45	\$382.76
	Preliminary draft of conclusion, the relief sought	0.60	\$201.45	\$120.87
	Draft outline of the legal argument	0.50	\$201.45	\$100.73
12/28/20	Draft, file motion for extension of time until 2/11	0.00	\$201.45	\$0.00
1/15/21	Draft re standard of review; review case law previously noted re sympathetic reading doctrine	1.00	\$201.45	\$201.45
	Attention to drafting sympathetic reading argument	2.00	\$201.45	\$402.90
2/4/21	Draft re distinction between <i>Anderson</i> and Mr. Bonds' case; review, review sympathetic reading argument	0.90	\$201.45	\$181.31
	Review <i>DeLisio</i> ; attention to drafting legal argument in reliance on <i>DeLisio</i>	2.20	\$201.45	\$443.19
2/11/21	Review, revise legal argument; check legal citations for accuracy; final editing of principal brief; instructions re preparation of tables; instructions re filing	0.90	\$201.45	\$181.31
	Letter to client, enclose copy of brief, with explanation	0.20	\$201.45	\$40.29
4/9/2021	Review, reply to Mr. Yousaf's email re extension of time to file the Secretary's responsive brief (Combined with 4/12/21 entry)	0.00	\$201.45	\$0.00
4/12/2021	Review Secretary's motion for extension of time, and clerk's stamp order; recalendar for follow up (Combined with 4/9/21 entry)	0.10	\$201.45	\$20.15
5/28/2021	Cursory preliminary review of Secretary's responsive brief; calendar for follow up	0.20	\$201.45	\$40.29
6/8/2021	Extended review of the Secretary's arguments; notes re matters for follow up research	1.30	\$201.45	\$261.89

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
6/10/2021	Draft, file motion for extension of time until 7/25	0.00	\$201.45	\$0.00
7/9/2021	Review <i>Trafter v. Shinseki</i> , 26 Vet. App; analysis re how Trafter harmonizes 1151 compensation with Section 5110 re effective date of compensation with Section 5110; review re <i>Bartlett</i> , 24 Vet App.; review <i>Minnis v. Shinseki</i> , citing <i>Anderson</i>	1.20	\$201.45	\$241.74
	Legal research re claims vs benefits vs elements of a claim; review CFR and case law re construction that veterans file claims for benefits, not claims for service connection; attention to drafting re the same	1.30	\$201.45	\$261.89
	Review, update re research on <i>Ingram</i> and Secretary's argument that Mr. Bonds' 2013 benefits claim which asserted a Section 1151 theory cannot be sympathetically read to include a Section 1110 direct service connection theory; draft argument re same	1.70	\$201.45	\$342.47
7/22/2021	Legal research, review re FC <i>Sellers</i> cases; review Judge Pietsch's unreported decision in <i>Cavner v. Wilkie</i> as pertinent to "service connection claims"	0.50	\$201.45	\$100.73
7/25/2021	Legal research, review re cases cited in the Secretary's brief; analysis re why those cases are not controlling	1.20	\$201.45	\$241.74
	Draft reply re Secretary's argument which limits application of the sympathetic reading doctrine; draft re why the cases cited by the Secretary are distinguishable	1.40	\$201.45	\$282.03
7/26/2021	Complete review of cases cited in the Secretary's brief; shepherdize the same; attention to drafting argument that the cases cited by the Secretary do not support his argument	1.50	\$201.45	\$302.18
	Review, edit reply brief; edit the conclusion; instructions re preparation of tables and filing	0.90	\$201.45	\$181.31
8/5/2021	Review RBA filing (Combined with 8/20/21 entry)	0.00	\$201.45	\$0.00
8/20/2021	Review notice of assignment to Judge Toth (Combined with 8/5/21 entry)	0.10	\$201.45	\$20.15
3/26/2022	Review notice of submission to a panel; letter to client re status	0.20	\$201.45	\$40.29
3/25/2022	Review Court's order of submission to a panel consisting of Judges Toth, Allen and Meredith, to be scheduled for oral argument (Combined with 3/29/22 entry)	0.00	\$201.45	\$0.00
3/29/2022	Review court's order for oral argument on 5/25/22 (Combined with 3/25/22 entry)	0.10	\$201.45	\$20.15
4/18/2022	Review data re increase in Covid transmission rates; email to Mr. Yousaf re his position on a motion to schedule our oral argument via Zoom; review his response	0.10	\$201.45	\$20.15
4/19/2022	Draft, file motion to appear for oral argument remotely due to Covid	0.10	\$201.45	\$20.15
4/27/2022	Attention to legal research re sympathetic doctrine	0.40	\$201.45	\$80.58
	Attention to oral argument preparation; research re substantial compliance with prior BVA remand orders; review <i>McCray v. Wilkie</i> re impermissible post hac rationale, effect of, where offered to shore up the Board's decision	0.50	\$201.45	\$100.73
	Further legal research re what "service connection" means, Court's recognition of different elements of claims, service connection is only one of five elements, analysis of how that tracks with Mr. Bonds' claim; research re reported and unreported case law	0.60	\$201.45	\$120.87
4/29/2022	Review Court order granting leave to appear remotely (Combined with 5/2/21 entry)	0.00	\$201.45	\$0.00
5/2/2022	Review, reply to Dawn Braquet's email re oral argument (Combined with 4/29/22, 5/3/21 and 5/4/21 entries)	0.00	\$201.45	\$0.00
5/3/2022	Review Ms. Braquet's email re pre-oral argument scheduled for 5/19/22 (Combined with 4/29/22, 5/2/21, 5/4/21 entries)	0.00	\$201.45	\$0.00



DATE	DESCRIPTION	HOURS	RATE	AMOUNT
5/4/222	Review instructional email from Ms. Braquet; email to Ms. Braquet re clarification; review her reply (Combined with 4/29 - 5/3/21 entries)	0.10	\$201.45	\$20.15
5/4/2022	Review briefs; analysis re potential issues which may be of interest to the Court in legal argument; notes for follow up research	1.50	\$201.45	\$302.18
5/17/2022	Review Mr. Yousaf's email re the Secretary's request to appear remotely; review Mr. Yousaf's email requesting the appellant's position on his motion to appear remotely, reply to same (Combined with 5/18/22 entry)	0.00	\$201.45	\$0.00
5/18/2022	Legal research re scope of claim	0.40	\$201.45	\$80.58
	Review Secretary's motion to appear remotely, and Court's order (Combined with 5/17/22 entry)	0.10	\$201.45	\$20.15
5/19/2022	Update legal research re <i>Anderson</i> ; <i>DiLisio</i>	0.20	\$201.45	\$40.29
	Attention to preparation for oral argument	2.00	\$201.45	\$402.90
	Attention to preparation for oral argument; identify matters for follow up review	1.80	\$201.45	\$362.61
5/20/2022	Review <i>Murphy</i> , 983 F.3d 1313; review <i>Boggs</i> , 520 F.3d 1330, cited by <i>Murphy</i> ; analysis re distinguishing factual circumstances; review <i>Clemons</i> , analysis re finality when scope of claim is at issue; search case law re significance of different legal "theories", notes re cases which require further review	1.40	\$201.45	\$282.03
	Review of, analysis re cases noted pertaining to scope of the claim	1.50	\$201.45	\$302.18
5/22/2022	Legal research re when secondary claims are reasonably raised by the record ; analysis re the same under Mr. Bonds' facts	0.60	\$201.45	\$120.87
5/23/2022	Update legal research re cases which cite <i>Anderson</i>	0.80	\$201.45	\$161.16
	Review briefs; attention to preparation of outline of issues which are important to presentation of the appellant's case at OA	1.30	\$201.45	\$261.89
5/24/2022	Update legal research regarding case law cited by the Secretary's responsive brief ; analysis re potential inquiries about the same;	1.90	\$201.45	\$382.76
5/25/2022	Review notes; review briefs	2.30	\$201.45	\$463.34
	Participate in oral argument	1.00	\$201.45	\$201.45
	Telephone conference with veteran	0.20	\$201.45	\$40.29
10/5/2022	Review per curium opinion ; review arguments presented in briefing; tc to client (incomplete)	1.00	\$201.45	\$201.45
10/10/2022	Telephone call from client's wife	0.20	\$201.45	\$40.29
10/27/2022	Review judgment; calendar for follow up	0.00	\$201.45	\$0.00
1/24/2023	Attention to preparation of EAJA application	2.00	\$201.45	\$402.90
1/25/2023	Attention to completion of EAJA application	1.00	\$201.45	\$201.45
Total Hours		71.90	SUBTOTAL	\$ 14,484.26
In the exercise of billing judgment, appellant's counsel has reduced the fee by 10%				\$ (1,448.43)
WESTLAW CHARGES (reduced by 75%)				\$2,567.25
Postage				\$6.98
Total Expense				\$2,574.23
			<b>TOTAL</b>	<b>\$ 15,610.06</b>

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

JIMMY C. BONDS,

Appellant,

v.

ROBERT L. WILKIE,  
Secretary of Veterans Affairs,

Appellee.

**DECLARATION OF NET WORTH**

I, Jimmy C. Bonds a resident of the City of Dublin, Ohio, declare that in

July, 2020, at the time my appeal to the U.S. Court of Appeals for Veterans  
Claims was filed, my estate, including all properties, monies, and possessions, combined to a net  
worth of less than Two Million Dollars (\$2,000,000.00).

I certify under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

Jimmy Bonds  
Name

6/23/2020  
DATE