UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Michael "Mike" Schuetrum
Appellant,

v. **No. 18-3233**

Robert L. Wilkie,
Secretary of Veterans Affairs,
Appellee.

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

Mr. Schuetrum asks the Court to award reasonable attorney fees and expenses under the Equal Access to Justice Act ("EAJA") in the amount of $10,455.79.

Throughout this petition, Mr. Schuetrum cites to and discusses Court memorandum decisions, for their persuasive value, not for their precedential value. Because EAJA reasonableness determinations are made on a case-by-case basis, there are few clear precedents addressing many of the relevant factors.

1. Mr. Schuetrum meets the basic criteria for an EAJA award.

To receive an award of attorney fees and expenses, Mr. Schuetrum must establish "prevailing party" status in the underlying suit, unless the Secretary's position was substantially justified or special circumstances

make an award unjust.[1] Mr. Schuetrum achieves prevailing party status by "succeed[ing] on any significant issue in litigation which achieves some of the benefit the parties sought" on appeal.[2] Mr. Schuetrum establishes prevailing party status when a remand is "predicated upon administrative error."[3]

Mr. Schuetrum must prove 4 elements to successfully plead entitlement to EAJA fees: (1) An assertion of prevailing party status as defined by EAJA; (2) An assertion that Mr. Schuetrum's net worth is not more than $2 million; (3) An allegation the Secretary's position at the administrative or litigation levels was not substantially justified; and, (4) inclusion of an itemized statement of the fees and expenses in an affidavit of Mr. Schuetrum's counsel.[4] The third element requires only a mere allegation that the Secretary's position at the administrative or litigation stage(s) was not substantially justified – the burden then shifts to the Secretary to prove his position at both stages was substantially justified.[5] Neither the correctness of the parties' positions, nor the success of specific arguments (or even whether arguments were reached) are the focus of evaluating

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[1] 28 U.S.C. § 2412(d)(1)(A).
[2] *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (internal quotations omitted).
[3] *Zuberi v. Nicholson*, 19 Vet. App. 541, 544 (2006).
[4] 28 U.S.C. §2412(d); *Cullens v. Gober,* 14. Vet. App. 234 (2001) (en banc).
[5] *Swiney v. Gober*, 14 Vet. App. 65, 70 (2000).

substantial justification; instead, the Court assesses whether the Secretary's position at both stages has a "reasonable basis both in law and fact."[6]

1.1 Mr. Schuetrum is a prevailing party under EAJA.

Mr. Schuetrum is a prevailing party because, after filing his opening brief, the Secretary agreed that the BVA committed administrative error and joined in a motion to vacate and remand the BVA decision.[7]

1.2 Mr. Schuetrum's net worth does not exceed $ 2 million.

Mr. Schuetrum's net worth was less than $2 million at the time the appeal was filed.[8]

1.3 The Secretary's position, at the agency or the BVA, did not have a reasonable basis in law or fact.

Mr. Schuetrum alleges that the Secretary's position, at the agency or the BVA, was not substantially justified, and that there are no special circumstances that would render an award of fees unjust.

1.4 Mr. Schuetrum's itemized billing is supported by his attorney's affidavit.

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[6] *Pierce v. Underwood*, 487 U.S. 552, 566 (1988); *Cullens,*14 Vet. App at 240; *citing, Stillwell v. Brown,* 6 Vet. App. 291, 302 (1994).
[7] *Joint Motion to Remand,* page 1 – 11 (July 30, 2020).
[8] *Appendix ("App")* at 1. Throughout this petition, references to "App. at ¶#" refer to the paragraph number where supporting evidence appears in the attorney's declaration from pages 2 – 18. All other "App." citations are references to the page number of the supporting evidence.

Mr. Schuetrum attached an itemized invoice of the hours counsel billed in this matter, supported by an affidavit from Mr. Schuetrum's counsel.[9]

Shorthand references are used in that invoice. Time entries which have "CA" in the "Role" column indicate the work was performed by attorney of record Chris Attig who has been licensed to practice law in Maryland (since 2003) and Texas (since 2006).[10] Time entries which have "JS" in the "Role" column indicate the work was performed by attorney Jennifer Steel who has been licensed to practice law in Arkansas (since 1995) and Texas (since 1998).[11] Time entries which have "AC" in the "Role" column indicate the work was performed by attorney Alexandra Curran who has been licensed to practice law in Rhode Island (since 2011) and Massachusetts (since 2011).[12]

In the attached itemization, time entries may have the following initials in the "attorney" column and are individuals who performed work that was paralegal in nature: "DM," "JT," "SH1," and/or "SW". All paralegal work in this appeal was performed in the law firm's Little Rock, Arkansas, office. The qualifications and experience of each person performing work that is paralegal in nature is listed in attorney Attig's affidavit.[13] Each individual's

[9] *App.* at 2 – 18; *App. at* 19 – 30.
[10] *App.* at ¶2.1.
[11] *App.* at ¶2.2.
[12] *App.* at ¶2.3.
[13] *App.* at ¶4.

experience is listed with the initials used to record their billing time in the affidavit.[14] Their actual names are with-held not only for privacy, security, and safety reasons, but also because the names of individuals performing paralegal work is not relevant to the establishment of a reasonable hourly rate for those individuals.[15]

Mr. Schuetrum alleges paralegal work requires no certification or licensure by any state or federal government, and that there is no license for becoming a "paralegal" and that it is defined not by the qualifications of the person who performs the work but by the nature of the work performed. The work of staff may be billed at paralegal rates if the affidavit explains the experience and education of the individual, a description of the work performed, and the standard billing rate for such staff.[16]

Mr. Schuetrum is aware of no federal court decision which has ever required individuals performing work that is paralegal in nature be identified by name for purposes of an EAJA application; indeed, he argues that because paralegal work requires no certification or licensure, the name

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[14] *Id.*

[15] *See App.* at ¶5.9 – ¶5.11.

[16] *Teixeira v. Nicholson*, 21 Vet. App. 77 (2006), *citing*, *Baldridge*, 19 Vet. App. at 236, *quoting Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 970 (D.C. Cir. 2004).

of the individual who performed paralegal work is not relevant to a request for EAJA fees for their work.[17]

2. This application seeks reasonable fees and costs under EAJA because the hourly rate and hours billed are both reasonable.

Mr. Schuetrum bears the burden of demonstrating reasonableness of the EAJA application.[18] A reasonable fee is generally the product of reasonably billed hours and a reasonable hourly rate.[19] Reasonable fees are those "that would normally be charged to and paid by a private client", and the Court's focus is on whether each billing entry may be reasonably billed to the government.[20] Reasonableness is demonstrated by such factors as: (1) whether particular hours billed are unreasonable on their face, (2) whether the fee sought is contraindicated by factors itemized in *Hensley* or *Ussery;* or, (3) whether the fee is persuasively opposed by the Secretary.[21]

In *Hensley*, the Supreme Court said it will assess the reasonableness of an EAJA application on a case-by-case basis.[22] The Court noted in *Vidal* that

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[17] *App.* at ¶5.11; *see, Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 974 (D.C. Cir. 2004); *Hyatt v. Barnhart*, 315 F.3d 239 (4th Cir. 2002); *Miller v. Alamo*, 983 F.2d 856 (8th Cir. 1993).
[18] *See, Andrews v. Principi*, 17 Vet. App. 319, 321 (2003); *Baldridge v. Nicholson*, 19 Vet. App. 227 (2005).
[19] *Blum v. Stenson*, 465 U.S. 886, 897 (1984), *quoting Hensley*, 461 U.S. at 434.
[20] *Baldridge v. Nicholson*, 19 Vet. App. 227, 234 (2005).
[21] *McCormick v. Principi*, 16 Vet. App. 407, 413 (2002). *Hensley,* 461 U.S. at 430 (1983); *Ussery,* 10 Vet. App. at 53.
[22] *See Hensley*, 461 U.S. at 429.

"[E]ach case stands on its own evaluation and is not easily comparable with any other case," and that the Court would not engage in an "exercise of hypothetical comparability of seemingly endless possibilities" to compare fees across multiple appeals.[23] The facts of a case determine the reasonableness of the fee in that case.[24] Even though reasonableness is defined within the four corners of a given case, the Court's memorandum decisions offer insight into the reasoning used to evaluate reasonableness. In *Jones v. Shulkin*, for example, the Court declined the Secretary's request to compare the fee sought in that appeal to other "single-issue cases with similar sized records."[25] Instead, it applied *Vidal* to conclude that the Secretary's comparison to other appeals did not render the 50.2 hours claimed to be facially excessive or unreasonable.[26]

Since Mr. Schuetrum was ultimately successful on appeal, recovery of attorney fees encompasses compensation for all "time reasonably spent on an unsuccessful argument in support of a successful claim," in part because denying fees for "zealous advocacy that was appropriately provided …would

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[23] *Vidal*, 8 Vet. App. at 493.
[24] *Hensley*, at 429; *Baldridge*, 19 Vet. App. at 233.
[25] *Jones v. Shulkin*, No. 16-0838(E), 2018 U.S. App. Vet. Claims LEXIS 260, at *7 (March 1, 2018).
[26] *Jones*, 2018 U.S. App. Vet. Claims LEXIS 260, at *7 – 8, *citing Vidal*, 8 Vet. App. at 493.

be at odds with the norms of professional responsibility."[27] So long as an unsuccessful argument is "made in good faith," it constitutes "effort reasonably expended in advancing" an appeal.[28]

2.1 Mr. Schuetrum's proposed hourly rate is reasonable.

Mr. Schuetrum is entitled to recover the EAJA base hourly rate of $125 per hour for attorneys, adjusted to compensate for cost-of-living changes since that base rate was established. To calculate the hourly rates for the attorneys in this case, Mr. Schuetrum chose the month in which the parties filed the joint motion to remand (July 2020) as the litigation mid-point upon which to adjust base this adjustment.[29]

Mr. Schuetrum asserts attorneys Attig and Steel are entitled to the regional rate for the South Region, using the new 2018 BLS regional divisions as attorney work was exclusively performed in the law firm's office in Little Rock, Arkansas.[30] Mr. Schuetrum therefore seeks a $125 hourly rate for attorneys Attig and Steel, increased to adjust for the cost of living in the Southern Region, based on the cost-of-living adjustment for the stated region at the aforementioned midpoint, yielding an hourly attorney rate of

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[27] *See Chesser*, 11 Vet. App. at 503-04, *quoting Jaffee v. Redmond*, 142 F.3d 409, 414 (7th Cir. 1998).
[28] *Hensley v. Principi*, 16 Vet. App. 491, 499 (2002).
[29] *Elcyzyn v. Brown*, 7 Vet. App. 170, 179-181 (1994).
[30] *See App.* at ¶¶2 – 3.

$$203.92 per hour for attorneys Attig and Steel.[31] Mr. Schuetrum asserts Ms Curran is entitled to the regional rate for the Northeast Region, using the new 2018 BLS regional divisions as attorney work she performed was exclusively performed in her remote office in Providence, Rhode Island.[32] Mr. Schuetrum therefore seeks a $125 hourly rate for attorney Curran, increased to adjust for the cost of living in the Northeast Region, based on the cost-of-living adjustment for the stated region at the aforementioned midpoint, yielding an hourly attorney rate of $209.88 per hour. Where an attorney performed work that was paralegal in nature, their time was reduced, in the exercise of billing discretion, to the applicable paralegal rate.

Individuals performing work that is paralegal in nature are compensated under EAJA at prevailing market rates, not the cost to the firm.[33] In *Garrison,* the Court upheld its practice of awarding paralegal fees based on the prevailing market rate.[34] U.S. Attorney's "Laffey Matrix" identifies prevailing market rates for paralegals, and is a "reliable indicator of fees").[35] The Department of Justice's paralegal rate in the "Laffey Matrix"

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[31] *See id*.
[32] *See App.* at ¶2.3; *accord Speigner v. Shinseki,* 2019 U.S. App. Vet. Claims LEXIS 309 (February 28, 2019).
[33] *Richlin Sec. Serv. Co., v. Chertoff*, 553 US 571 (2008).
[34] *Garrison v. Peake,*22 Vet. App. 192, 194 (2010); *accord Sandoval,* 9 Vet. App. at 181.
[35] *App.* at ¶5; *Wilson v. Principi*, 16 Vet. App. 509, 213 (2002) *vacated on other grounds by* 391 F.3d 1203 (Fed. Cir. 2004); *Laffey v. Northwest Airlines,*

is a reasonable indicator of the prevailing market rate for individuals performing work that is paralegal in nature under EAJA and this Court has used the U.S. Attorney's Office's "Laffey Matrix" as an indicator of prevailing market rate.[36]

To corroborate the reasonableness of the Laffey Matrix rate, Mr. Schuetrum included a private study finding the *average* market rate for a non-lawyer in an Arkansas law firm was $150 per hour in 2018.[37] Relevant pages in the 2018 National Utilization and Compensation Survey Report prepared by "NALA – The Paralegal Association" show prevailing market rates for paralegals in various spectrums.[38] That report indicates that average ranges of $129 to $150 per hour are the prevailing market paralegal rates for firms with 2 to 5 attorneys, paralegals with various years of experience, paralegals with various training backgrounds, and paralegals in the Southeast geographic region.[39]

The rate Mr. Schuetrum seeks for paralegals is slightly higher than the average prevailing market rates from those various sources because there is

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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 (1985).

[36] *Kiddey v. Shinseki,* 22 Vet. App. 367, 373 (2009), *citing Baldridge and Sandoval v. Brown,* 9 Vet. App. 177, 181 (1996).

[37] *App.* at ¶5.1; *see also App.* at 31

[38] *App.* at ¶5.2; *App.* at pages 34 – 44.

[39] *Id.*

a shortage of paralegals, and heavy competition for paralegals, in the Little Rock, Arkansas, market.[40]

Further, the Secretary has routinely approved the *Laffey* rate for and "ascertain[ed] the reasonableness" of the Laffey Matrix paralegal rate, even when knowing nothing but the name of the paralegal, and absent any discussion of their experience or location, for attorneys performing work in Rhode Island, Colorado, New Jersey, South Carolina, Virginia, Wisconsin, and the District of Columbia.[41] The Court can "take judicial notice of the Secretary's contrary positions."[42]

Fifth, in two memorandum decisions involving Mr. Foster's counsel, the Court relied on the same evidence submitted in this appeal to find the prevailing market rate of $164 – 173 per hour was reasonable as it was consistent with the undersigned firm's prevailing market rate for paralegals.[43]

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[40] *App.* ¶5.3 and ¶5.4.
[41] Uncontested Applications for EAJA Fees, *Jamison v. Wilkie*, #17-1231 (Rhode Island); *Simpson v. McDonald*, No. 15-2661 (Washington, D.C.); *Hooks v. Wilkie*, #18-1546 (Colorado); *Hamilton v. McDonald*, #16-0939 (New Jersey); *McPherson v. Wilkie*, #17-2908 (South Carolina); *Lewis v. Shulkin*, #15-3021 (Virginia); *Rawson v. Wilkie*, #17-0681 (Wisconsin).
[42] *Correia v. McDonald,* 28 Vet. App. 158, 163 n.3 (2016).
[43] *Haggins v. Wilkie*, No. 17-3262(E), 2019 U.S. App. Vet. Claims LEXIS 795, at *8-9 (Vet. App. May 20, 2019), *citing to Role Models*, 353 F.3d at 970; quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1107, 313 U.S. App. D.C. 16 (D.C. Cir. 1995); *Stepp v. Wilkie*, No. 17-3594(E), 2020 U.S. App. Vet. Claims LEXIS 1581, at *6 – 8 (Aug. 21, 2020).

As such, based on the current edition of the Laffey Matrix, Mr. Schuetrum seeks paralegal fees at the rate of $164 per hour for their work on this appeal in FY 2018, $166 per hour for their work on this appeal in FY 2019, and $173 per hour for their work on this appeal in FY 2020.[44] There is no windfall to Mr. Schuetrum by seeking application of the above rates in this case.

2.2 Hours claimed by Mr. Schuetrum's counsel are reasonable, as counsel thoroughly exercised and explained his billing discretion.

Mr. Schuetrum contends the hours billed in this appeal was time reasonably expended and productive of the outcome achieved. As explained below, attorney Attig exercised his billing discretion, for the time billed for himself, attorney Steel, and attorney Curran, and individuals performing work that is paralegal in nature as follows. First, attorney Attig reviewed individual line item entries and daily billing totals.[45] Second, he reviewed the total hours expended on the case in distinct phases of this appeal.[46] Third, he considered the relation of the total amount billed to the outcome achieved for Mr. Schuetrum.[47] Notation of any reductions to time entries are found in the individual time entry in which the reduction occurred.

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[44] *App.* at 32 – 33.
[45] *App.* ¶6.
[46] *Id.*
[47] *Id.*

Mr. Schuetrum asserts that there is no educational requirement for an individual to perform work that is paralegal in nature (i.e., work as a paralegal). The state of Arkansas, where counsel's law firm has its primary place of business, has no certification or educational requirement for one to be a paralegal or to perform work that is paralegal in nature. Mr. Schuetrum's attorney has practiced law with a government agency, a solo practice and a small law firm at various times since 2003.[48] In that time, he has never known of any industry practice or requirement of particular educational credentials as a predicate for working as a paralegal.[49] Most paralegals – one study fixed the number at 55-percent – learn how to perform their work through on the job training.[50] This is no universal set of tasks that a paralegal may perform. A private client would be billed at the paralegal rate when the work performed was work that is traditionally performed by an attorney.[51]

Mr. Schuetrum considered time spent by individuals performing paralegal work on tasks related to the filing and receipt of motions, orders and pleadings in this case; he considers these to be legal tasks necessary to obtain the results achieved, properly delegated to an individual performing

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[48] *App.* at ¶2.1; *accord App.* at ¶5.5 – ¶5.11.
[49] *Id; accord, App.at* ¶6.14 and *App.* at 45 – 76.
[50] *App.* at ¶5.7.
[51] *App.at* ¶6.14

work that is paralegal in nature and properly billed to a private client and the government under EAJA.[52] When a portion of paralegal time was spent on purely clerical work, a clerical act not necessary to the completion of a legal task, or would otherwise not be billed to a private client, Mr. Schuetrum's attorney reduced time spent on these tasks.[53] Additionally, where time was spent conferring on, drafting and filing motions for extension, that time was eliminated only where the extension would have been unnecessary "had the appellant's counsel more efficiently managed his workload[.]"[54] As the Court in *Hensley* noted, there is no *per-se* bar to EAJA compensation for hours spent preparing motions for extension of time, recognizing "that on occasion, circumstances beyond the appellant's control make timely performance difficult, if not impossible."[55]

Mr. Schuetrum contends the total amounts billed for each employee in each phase of this litigation are reasonable on their face. Specifically, paralegal work in the "Record Review Phase" in this appeal was reasonably expended. The task of record review and comparison is necessary and reasonable because a Court rule requires the record on appeal consist of

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[52] *Id*.
[53] *Id*.
[54] *Hensley v. Principi,* 16 Vet. App. 491, 499 (2002).
[55] *Id*, at 498.

everything in the claims file at the time of the BVA decision.[56] The record on appeal is the most critical document in any appeal, and its review and comparison to the record in the lower court or tribunal is the type of work traditionally performed by an appellate attorney. An attorney's priority in an appeal is to "organize the thousands of disjointed bits and pieces of evidence from the trial record into a coherent unit that fosters favorable resolution of the legal issues on appeal."[57] Before any statement of facts can be written in a brief or statement of issues, "the record must be mastered."[58] "[M]astery of the record," is critical, so that the attorney's knowledge of the proceedings below is "utterly complete and meticulously organized," because the record is, quite literally, the playing field (or battlefield) upon which the appeal will be fought, and its boundaries are, by and large, those of the appeal itself."[59] This Court has found that "judicial efficiency is not increased when counsel enters into a joint motion for remand before reviewing a client's claims file or record and fails to provide guidance to the Board concerning its responsibilities on remand."[60]

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[56] U.S. Vet. App. R. 10.
[57] SENIOR CIRCUIT COURT JUDGE RUGGIERO ALDISERT, Winning on Appeal: Better Briefs and Oral Advocacy 167 (2d ed. 2003).
[58] *Id.*
[59] MAYER BROWN, Federal Appellate Practice 204 (2d ed. 2013); JUSTICE ANTONIN SCALIA & BRYAN A. GARNER, Making Your Case: The Art of Persuading Judges 151 – 152 (2008).
[60] *Carter v. Shinseki*, 26 Vet. App. 534, 546 (2014).

The task of record review is not duplicative, because the work involves reviewing both the RBA and C-File and comparing the former to the latter. The RBA and C-File are distinct and separate files. Though it is true that some pages appear in both files, this does not make the task of record review duplicative. The Court has, in *Parrott* and in *Thompson,* rejected arguments that review of the RBA and comparison to the C-file is duplicative.[61] In *Parrott*, the Court did not reduce record review time, reasoning that even where review of the files was "necessarily duplicative," a reduction would penalize an attorney's diligence in ensuring the accuracy and completeness of the record.[62] The appellant in *Thompson* argued that review of the RBA and C-File were distinct tasks reflecting review of two distinct documents, and he Court was "satisfied that a reduction [was] not warranted" and that appellant did not bill for "the exact same task."[63]

Nor is Mr. Schuetrum's billing for time spent on record review and comparison "block-billing." The practice of "block-billing" is characterized by descriptions of large blocks of time.[64] Block-billed time is not *per se* unreasonable and is subject to reduction only when the descriptions are

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[61] *Parrott*, 2015 U.S. App. Vet. Claims LEXIS 1386, at *13-14. *Thompson*, 2017 U.S. App. Vet. Claims LEXIS 723, at *10.
[62] *Parrott*, 2015 U.S. App. Vet. Claims LEXIS 1386, at *14.
[63] *Thompson*, 2017 U.S. App. Vet. Claims LEXIS 723, at *10.
[64] *See Baldridge*, 19 Vet. App. at 235.

vague and prevent judicial review of the billed time.[65] The critical factor in reviewing "block-billed" time is the "level of detail" in the billing statement.[66] For example, the Court accepted "block-billed" time entries of 3.75 – 6.75 hours because the entry provided "sufficient detail" of the various tasks performed.[67] The Court accepted a "block-billed" 7.2 hours of record review because the task itself was straightforward.[68] And when an attorney did not bill more than 3 hours of uninterrupted time on a particular task, and indicated the precise work performed, a reduction of "block-billed" time was not warranted.[69] Even in *Andrews*, where the Court rejected "block-billed" time because "it was not clear what work the appellant's counsel was undertaking," and because counsel had "not indicated whether any hours spent on these activities were excluded based on the exercise of billing judgment," the Court did not rule that any entry greater than 3 hours is presumptively excessive.[70] *Andrews* cautions attorneys to heed "clear guidance [from the Court] regarding the appropriate level of specificity,"

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[65] *Id.*
[66] *Teixeira v. Nicholson*, 21 Vet. App. 77 (2006).
[67] *Sohl v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 462 at *5 – 8 (June 7, 2006).
[68] *Bailey v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 469 at *9 – 11 (May 25, 2006)
[69] *Kratzer v. Shinseki*, Nos. 06-0400, 08-11468(E), 2009 U.S. App. Vet. Claims LEXIS 1575, at *12-13 (Sep. 8, 2009).
[70] *Andrews v. Principi*, 17 Vet. App. 319, 322 (2003).

warning them that block-billing may evidence unreasonableness if an attorney repeatedly fails "to provide sufficient detail" of a task, or relies on block-billing as his predominant billing practice.[71]

Mr. Schuetrum's billing invoice identifies the precise task paralegals performed during record review, which paralegal performed the task, and sufficiently describes the work performed. The task of record review is straightforward, and the time entries sufficiently detailed that the Court can assess how the time billed compares to the task performed.

Mr. Schuetrum contends the time spent on record review and comparison was reasonable, necessary and productive of the results obtained. The Court has found record review rates of 43 – 120 pph to be reasonable or plausible.[72] Accordingly, Mr. Schuetrum contends the full

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[71] *Andrews*, 17 Vet. App. at 322; *Rockefeller v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 461, *4 – 5 (May 17, 2006).

[72] *See Thompson v. Shulkin*, No. 14-2356E, 2017 U.S. App. Vet. Claims LEXIS 723 (May 19, 2017) (in case involving Mr. Attig as counsel, comparing 810 page RBA to 353 page file provided by prior attorney at 105 pages per hour (hereinafter, "pph") is not duplicative or unreasonable); *Parrott v. McDonald*, No. 14-3209E, 2015 U.S. App. Vet Claims LEXIS 1386 (October 14, 2015) (in case involving Mr. Attig as counsel, record review and comparison is not clerical, and Court will not reduce billing and penalize claimant for attorney's diligence in ensuring record on appeal was accurate and complete by comparing 918 page C-file to 1,102 page RBA at rate of 120 pph); *Gordon*, 22 Vet. App. 265 (2008) (43 pph for record review is "plausibly reasonably"); *Canada v. Shinseki*, No. 09-2203E, 2012 U.S. App. Vet. Claims LEXIS 1566 at *9 (July 24, 2012) (rate of review of 2 pages per minute to review 6,000 page record is "eminently reasonable on its face"); *Strazzella v. Shinseki*, No. 07-2864E, 2011 U.S. App. Vt. Claims LEXIS 257, *8 (February

amount of attorney and paralegal time billed for record review is reasonable and necessary, and requests the Court not penalize his counsel's diligence in ensuring the record before the agency was accurate and complete.

3. Mr. Schuetrum asks the Court to award $10,455.79 in fees.

When Mr. Schuetrum meets all the eligibility requirements for EAJA fees and expenses, the Court "shall award" them.[73] A table of hours by attorney or paralegal, and their rate appears in the billing invoice.[74] Mr. Schuetrum respectfully asks the Court to award attorney fees in the total amount of $10,455.79.

Respectfully Submitted,
ATTIG | CURRAN | STEEL, PLLC

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8, 2011) (73 pph rate by attorney to review and compare claims file and RBA totaling more than 4,000 pages is not unreasonable); *Sperry v. Shinseki*, 24 Vet. App. 1, 7 (2010) (102 pph is not unreasonable rate to review 844 page record); *Mynes v. Shinseki*, 09-4438E, 2011 U.S. App. Vet. Claims LEXIS 905 (111 pph for record review is "plausibly reasonable" amount of time to review the record: the task is "time consuming, but it is necessary"); *Lawson v. Peake*, 05-2313E, 2008 U.S. App. Vet. Claims LEXIS 1524 (December 19, 2008) (74 pph for record review is reasonable because "with a record nearing 2,000 pages, such review can be complicated by the inherent tedium of simply matching and identifying documents.").

[73] *Gavette v. OPM*, 808 F.2d 1456, 1466 (Fed. Cir. 1986) (en banc).

[74] *App.* at 29 – 30.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on September 4, 2020, I caused this motion to be served on the Secretary by and through the Court's E-Filing system:

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