
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 19-2805

ANTHONY HUERTA,

Appellant,

v.

DENIS MCDONOUGH
SECRETARY OF VETERANS AFFAIRS,

Appellee.

APPENDICES TO APPELLANT'S APPLICATION FOR ATTORNEY FEES
AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Scott W. MacKay
The Law Offices of Scott W. MacKay,
LLC.
P.O. Box 295
Hebron, New Hampshire 03241
(603) 412-2598
swmackay76@gmail.com

APPENDIX A
DECLARATION OF ANTHONY HUERTA

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Anthony Huerta,)
)
 Appellant.)
)
 v.) No. 19-2805
)
 Denis McDonough,)
 Secretary of Veterans Affairs,)
)
 Appellee.)

DECLARATION OF ANTHONY HUERTA

Under penalty of perjury, I, Anthony Huerta, declare as follows:

1. I am currently domiciled in Clarksville in Montgomery County in the State of Tennessee.
2. I make this declaration in support of my application for attorney fees and expenses incurred in my successful representation before this Court in the above-captioned action, *Anthony Huerta v. Denis McDonough*, No. 19-2805.
3. I am a private individual. At no time, including at the time I initiated an appeal of the decision dated March 18, 2019, of the Board of Veterans Appeals in the United States Court of Appeals for Veterans Claims, *Anthony Huerta v. Denis McDonough*, No. 19-2805, on April 22, 2019, and

continuously up through and including the date of this declaration, has my individual net worth ever exceeded \$2,000,000.

4. On April 11, 2019 I executed an engagement letter by which the Law Offices of Scott W. MacKay, LLC, acting through its member, Scott W. MacKay, Esq., agreed to represent me *pro bono* in connection with the filing and litigation of an appeal to this Court of the decision of the Board of Veterans Appeals dated March 18, 2019. A copy of the engagement letter was an attachment to Mr. MacKay's Notice of Appearance filed with the Court on April 25, 2019. Under the engagement letter, I am obligated to pay to the Law Offices of Scott W. MacKay, LLC any attorney fees or expenses awarded to me pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, net of the Court's filing fee and the fee for Mr. MacKay's application for admission to the bar of the Court, which I agreed to pay at the outset of the representation.

I declare, under penalty of perjury, that the foregoing facts are true and correct to the best of my knowledge.

Date: July 25, 2021



Anthony Huerta

APPENDIX B
DECLARATION OF SCOTT W. MACKAY

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Anthony Huerta,)	
)	
Appellant.)	
)	
v.)	No. 19-2805
)	
Denis McDonough,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

DECLARATION OF SCOTT W. MACKAY

Under penalty of perjury, I, Scott W. MacKay, declare as follows:

1. I am an active member in good standing of the Bar of the District of Columbia and admitted and authorized to practice before the District of Columbia Court of Appeals and the United States Court of Appeals for Veterans Claims.

2. I am the sole member of the Law Offices of Scott W. MacKay, LLC, a domestic entity organized under the laws of the District of Columbia with a principal office located in Hebron, New Hampshire.

3. I make this declaration in support of the application of Appellant Anthony Huerta under the Equal Access to Justice Act, 28 U.S.C. § 2412 (EAJA), for attorney fees and expenses incurred in his successful

representation before this Court in the above-captioned action, *Anthony Huerta v. Denis McDonough*, No. 19-2805.

4. On April June 11, 2019, Mr. Huerta executed an engagement letter by which he agreed to be represented *pro bono* by the Law Offices of Scott W. MacKay, LLC, acting through me in connection with the filing and litigation of an appeal to this Court of the decision of the Board of Veterans Appeals dated March 18, 2019. A copy of the engagement letter was an attachment to my Notice of Appearance filed with the Court on April 25, 2019. Under the engagement letter, Mr. Huerta is obligated to pay to the Law Offices of Scott W. MacKay, LLC any attorney fees or expenses awarded to him pursuant to EAJA, net of the Court's filing fee and the fee for my application for admission to the bar of the Court, which Mr. Huerta agreed to pay at the outset of the representation.

5. During the course of the representation of Mr. Huerta in the appeal of the Board's decision before this Court, I maintained a spreadsheet reflecting the work I performed or the expenses incurred by me or Mr. Huerta, including the date, a description of the task or tasks performed or expense incurred, the actual time expended, the rates at which the fees were computed or the amounts of the expenses, and the total amount of fees or expenses incurred. I incorporated that information from the spreadsheet into

the itemized statement provided as an appendix in support of Mr. Huerta's application for attorney fees and expenses.

6. The hourly EAJA rate reflected on the itemized statement includes a cost of living allowance above the statutory rate of \$125, calculated by multiplying the statutory rate by the ratio of each month's consumer price index for urban consumers (CPI-U) for the Northeast Region and the baseline March 1996 CPI-U of 162.8 for the Northeast Region, as reported by the United States Department of Labor's Bureau of Labor Statistics at the website:

<https://www.bls.gov/regions/new->

[england/data/consumerpriceindex_northeast_table.htm](https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm). The hourly EAJA rate for work performed in July 2021 was calculated using the CPI-U data for June 2021, as the July 2021 data were not yet published. I used local CPI-U data for the Northeast Region, which includes New Hampshire, because the principal location for the Law Offices of Scott W. MacKay and for the legal work performed for Mr. Huerta in the appeal was in Hebron, New Hampshire.

I declare, under penalty of perjury, that the foregoing facts are true and correct to the best of my knowledge.

Date: July 25, 2021



Scott W. MacKay
Law Offices of Scott W. MacKay, LLC

APPENDIX C

**ITEMIZED STATEMENT BY COUNSEL OF
ACTUAL TIME EXPENDED AND RATE AT WHICH
FEES AND OTHER EXPENSES WERE COMPUTED**

**Anthony Huerta v. Denis McDonough, No. 19-2805 - U.S. Court of Appeals for Veterans Claims
Itemized Statement by Counsel of Actual Time Expended and Rate at Which Fees and Other Expenses Were Computed**

Note: EAJA Rate calculated by multiplying EAJA statutory rate of \$125 by ratio of monthly CPI-U for Northeast Region (NE) and CPI-U (NE) of 162.8 for March 1996

Date	Activity	Hours	Expense	CPI-U (NE)	EAJA Rate	EAJA Fee
3/22/2019	Review BVA Decision (1.5); review CAVC appellate rules and procedural requirements (1); compose and send email to client discussing opinion and appeal options (.5)	3		268.025	\$ 205.79	\$ 617.38
3/26/2019	Review client emails and compose and send response addressing client questions and concerns	0.5		268.025	\$ 205.79	\$ 102.90
3/26/2019	Review CAVC rules for admission to practice (.5); apply for DC Court of Appeals Certificate of Good Standing for Application for Admission to Practice before CAVC (.25)	0.75	\$25.00	268.025	\$ 205.79	\$ 154.34
3/28/2019	Westlaw research - CAVC cases reviewing BVA decisions reconciling conflicting medical opinions	4.5		268.025	\$ 205.79	\$ 926.07
3/30/2019	Application for Admission to CAVC Bar		\$100.00			
4/22/2019	Prepare Notice of Appeal, Notice of Appearance, and Filing Fee; mail with retention agreement to CAVC and VA	1		269.070	\$ 206.60	\$ 206.60
4/22/2019	CAVC Filing Fee		\$50.00			
4/22/2019	Postage for Notice of Appeal etc. to CAVC and Service on VA		\$1.40			
6/11/2019	Begin drafting statement of facts for opening brief	2.5		270.133	\$ 207.41	\$ 518.53
6/13/2019	Draft statement of facts for opening brief	3		270.133	\$ 207.41	\$ 622.24
6/14/2019	Research CAVC cases on: BVA failure to consider favorable evidence; adequacy of examinations; and expertise of medical examiners (3.5); draft statement of facts for opening brief (1.5)	5		270.133	\$ 207.41	\$ 1,037.06
6/15/2019	Revise statement of facts and begin drafting section on failure to consider favorable evidence section of opening brief	3.5		270.133	\$ 207.41	\$ 725.94
6/16/2019	Revise statement of facts and draft failure to consider favorable evidence and interpretation of DC 5000 sections of opening brief	5.5		270.133	\$ 207.41	\$ 1,140.76

6/17/2019	Draft inadequate examination section of opening brief; revise facts and other sections; assemble sections into CAVC opening brief format	6.5	270.133	\$ 207.41	\$ 1,348.18
6/20/2019	Revise draft opening brief (1.5); review and respond to client email re appeal timeline (.5); telephone call with VA rep re RBA consent form and transmit consent form to client for signature	2.25	270.133	\$ 207.41	\$ 466.68
6/29/2019	Revise draft opening brief - DC 5000 interpretation argument	2.5	270.133	\$ 207.41	\$ 518.53
7/2/2019	Revise draft of opening brief in its entirety	3.5	270.381	\$ 207.60	\$ 726.61
7/8/2019	Review RBA for completeness (3); prepare index of key documents in RBA for appeal (3.5); prepare and send email to client to discuss RBA (.25)	6.75	270.381	\$ 207.60	\$ 1,401.31
7/9/2019	Add RBA cites to draft of opening brief and revise draft.	3.5	270.381	\$ 207.60	\$ 726.61
7/10/2019	Add RBA cites to draft of opening brief and revise draft.	1	270.381	\$ 207.60	\$ 207.60
7/11/2019	Add RBA cites to draft of opening brief and revise draft.	3	270.381	\$ 207.60	\$ 622.81
7/12/2019	Complete adding RBA cites to draft of opening brief and revise draft.	4.5	270.381	\$ 207.60	\$ 934.21
7/14/2019	Finish draft brief by adding table of contents and table of authorities and revise draft	5	270.381	\$ 207.60	\$ 1,038.01
7/21/2019	Cite check and final review and edit of draft opening brief	3	270.381	\$ 207.60	\$ 622.81
7/23/2019	File opening brief (substantial time and effort involved in configuring computer to enable compatibility with less than user friendly CAVC efile system)	2	270.381	\$ 207.60	\$ 415.20
8/12/2019	Review Court's Order (.25); Prepare summary of issues (1.25); email summary of issues and file certificate of service per Court's order (.25)	1.75	270.548	\$ 207.73	\$ 363.53
9/9/2019	Participate in Rule 33 Conference via telephone (.25); Discuss Rule 33 Conference call and options going forward with client (.5)	0.75	270.563	\$ 207.74	\$ 155.81
11/25/2019	Read Appellee's Opposition Brief (.5); email brief to client with initial thoughts (.5)	1	270.643	\$ 207.80	\$ 207.80
11/26/2019	Read and analyze Appellee's Opposition Brief (1.5); read BVA opinion and SOC (1); research BVA authority to disregard favorable findings by RO (2.5)	5	270.643	\$ 207.80	\$ 1,039.02

11/27/2019	Analyze Appellee's Opposition Brief and note language and argument subject to reply and rough out reply organization (2.5); research statutory/regulatory interpretation cases relevant to reply (3); review RBA for all medical record references to chronic osteomyelitis (1.5)	7	270.643	\$ 207.80	\$ 1,454.62
11/28/2019	Draft DC 5000 interpretation section of reply brief	5.5	270.643	\$ 207.80	\$ 1,142.92
11/29/2019	Draft part of no conflict in record section of reply brief	5	270.643	\$ 207.80	\$ 1,039.02
11/30/2019	Complete draft of reply brief and send copy to client with comments	4	270.643	\$ 207.80	\$ 831.21
12/1/2019	Finalize draft reply brief including TOC/TOA	3.5	270.429	\$ 207.64	\$ 726.74
12/6/2019	Final review, edit, and cite check of reply brief (2.5); finalize brief and file with CAVC and provide copy to client with comments (1.5) (E-filing required renewed research into and action to configure computer to allow access to less than user friendly CAVC e-filing site)	4	270.429	\$ 207.64	\$ 830.56
12/18/2019	Review Record of Proceedings filed today by VA (.25); send ROP to client with comments (.25)	0.5	270.429	\$ 207.64	\$ 103.82
12/19/2019	Review ROP for accuracy and completeness and for potential objections	2.5	270.429	\$ 207.64	\$ 519.10
8/10/2020	Begin preparation for oral argument - read opening brief, response brief, reply brief and rough out notes on issues to cover in argument and possible questions from court (2.25); research issue of Dr. Beauchamp's opinions as adequate development of medical questions on chronic and recurrent issues in light of Secretary's concessions regarding infirmities of VA medical opinions below thereby warranting reversal not remand (1.5)	3.75	273.597	\$ 210.07	\$ 787.77
8/12/2020	Draft opening argument	2.5	273.597	\$ 210.07	\$ 525.18
8/13/2020	Draft responses to potential questions by Court	2.5	273.597	\$ 210.07	\$ 525.18
8/14/2020	Conference call with Clerk of Court re Argument Logistics	0.25	273.597	\$ 210.07	\$ 52.52
8/15/2020	Rough out rebuttal argument including considering Deloach v. Shinseki Fed Circuit decision on reversal vs. remand when BVA fact finding is clearly erroneous based on controverted evidence	1.5	273.597	\$ 210.07	\$ 315.11
8/16/2020	Draft rebuttal argument	2.5	273.597	\$ 210.07	\$ 525.18

8/17/2020	Revise opening and rebuttal arguments (.75); review cases cited in reply brief (1.5)	2.25	273.597	\$ 210.07	\$ 472.66	
8/19/2020	Final revisions to arguments and print out key documents	2.5	273.597	\$ 210.07	\$ 525.18	
8/20/2020	Prepare for argument (3.5); telephonic oral argument (1.5)	5	273.597	\$ 210.07	\$ 1,050.36	
4/27/2021	Read CAVC decision (.5); telephone call with client (.5); email to client with more detailed discussion of CAVC and potential path forward (.5)	1.5	280.234	\$ 215.17	\$ 322.75	
7/24/2021	Research CAVC EAJA cases and procedures and start draft EAJA application - facts, introduction, prevailing party, and part of substantial justification	5	284.781	\$ 218.66	\$ 1,093.29	Note 1
7/25/2021	Finish draft EAJA application - substantial justification, reasonable fees, introduction, and conclusion; draft declarations of client and counsel; forward client declaration to client for review and signature	3.5	284.781	\$ 218.66	\$ 765.31	Note 1
7/26/2021	Add record cites and CAVC <i>Huerta</i> decision cites to text; review, edit and revise application; cite checks; prepare appendix and application for filing	2.75	284.781	\$ 218.66	\$ 601.31	Note 1
Totals		149	\$176.40		\$ 31,056.28	

Note 1: June 2021 CPI-U data used for July 2021 rate as July data not published