UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Everett W. Cook
Appellant,

v. **No. 20-6853**

Denis McDonough,
Secretary of Veterans Affairs,
Appellee.

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

Mr. Cook asks the Court to award reasonable attorney fees and expenses under the Equal Access to Justice Act ("EAJA") in the amount of $572.55 in expenses and $39,579.88 in fees, for a total award of $40,152.43.

Throughout this petition, Mr. Cook cites to and discusses Court memorandum decisions, for their persuasive value, not for their precedential value.[1] 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. Cook meets the basic criteria for an EAJA award.

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

[1] U.S. VET. APP. R. 30(a).

make an award unjust.[2] Mr. Cook achieves prevailing party status by "succeed[ing] on any significant issue in litigation which achieves some of the benefit the parties sought" on appeal.[3] Mr. Cook establishes prevailing party status when a remand is "predicated upon administrative error."[4]

Mr. Cook must establish 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. Cook'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. Cook's counsel.[5]

The third element requires only an allegation that the Secretary's position at the administrative and/or litigation stage was not substantially justified before the burden shifts to the Secretary to prove his position at both stages was substantially justified.[6] Neither the correctness of the parties' positions, nor the success of specific arguments (or even whether arguments were reached) are the focus of evaluating substantial

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

justification; instead, the Court assesses whether the Secretary's position at both stages has a "reasonable basis both in law and fact."[7]

1.1 Mr. Cook is a prevailing party under EAJA.

Mr. Cook is a prevailing party because, after the issued were fully briefed, the Court found that the BVA committed administrative error and remanded the decision to the BVA to correct its errors.[8]

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

Mr. Cook's net worth was less than $2 million at the time the appeal was filed.[9]

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

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

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[7] *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).
[8] *Opinion,* (May 17, 2023)
[9] *Appendix ("App")* at 57. Throughout this petition, references to "App. at ¶#" refer to the paragraph number where supporting evidence appears in the attorney's declaration from pages 58-77. All other "App." citations are references to the page number of the supporting evidence.

Mr. Cook attached an itemized invoice of the hours counsel billed in this matter, supported by an affidavit from Mr. Cook's counsel, with the following abbreviations for the attorneys who billed time in this appeal:[10]

"CA"	Attorney Chris Attig, licensed in Maryland (since 2003) and Texas (since 2006).[11]
"JS"	Attorney Jennifer Steel, licensed in Arkansas (since 1995) and Texas (since 1998).[12]
"AC"	Attorney Alexandra Curran, licensed in Rhode Island (since 2011) and Massachusetts (since 2011).[13]
"HS"	Attorney Haley Smith, licensed in North Carolina (since 2020).[14]

In the attached itemization, time entries may include the initials "AW", "CT", "DM", and/or "RJ". These initials refer to employees who performed work that was paralegal in nature; their qualifications and experience, as well as the locations where their work was performed, are detailed in attorney Attig's affidavit.[15] The actual names of these individuals are withheld not only for privacy, security, and safety reasons, but also because the names of individuals performing paralegal work is not relevant to the

[10] *App.* at 58-77; *App.* at 78-98.
[11] *App.* at ¶2.1.
[12] *App.* at ¶2.2.
[13] *App.* at ¶2.3.
[14] *App.* at ¶2.4.
[15] *App.* at ¶4; *see Stepp* v. *Wilkie,* No. 17-3594(E), 2020 U.S. App. Vet. Claims LEXIS 1581, at *3 – 6 (Vet. App. Aug. 21, 2020).

establishment of a reasonable hourly rate for those individuals.[16] Mr. Cook 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. He argues that because paralegal work requires no certification or licensure, the name of the individual who performed paralegal work is not relevant to a request for EAJA fees for their work.[17] Because paralegal work requires no certification or licensure by any state or federal government, and because "paralegal" work is defined by the nature of the work performed and not qualifications of the person who performed it, work that is paralegal in nature is billed at paralegal rates when the affidavit explains the experience and education of the individual, a description of the work performed, and the standard billing rate for such staff.[18]

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

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[16] *See App.* at ¶5.15 – ¶5.16.
[17] *App.* at ¶5.11 – ¶5.14; *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] *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); *accord Stepp* v. *Wilkie,* 2020 U.S. App. Vet. Claims LEXIS 1581, at *3 – 6.

Mr. Cook bears the burden of demonstrating reasonableness of the EAJA application.[19] A reasonable fee is generally the product of reasonably billed hours and a reasonable hourly rate.[20] 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.[21] 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.[22]

In *Hensley*, the Supreme Court said it will assess the reasonableness of an EAJA application on a case-by-case basis.[23] The Court noted in *Vidal* that "[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.[24] The facts of a case determine the

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[19] *See, Andrews v. Principi*, 17 Vet. App. 319, 321 (2003); *Baldridge v. Nicholson*, 19 Vet. App. 227 (2005).
[20] *Blum v. Stenson*, 465 U.S. 886, 897 (1984), *quoting Hensley*, 461 U.S. at 434.
[21] *Baldridge v. Nicholson*, 19 Vet. App. 227, 234 (2005).
[22] *McCormick v. Principi*, 16 Vet. App. 407, 413 (2002). *Hensley,* 461 U.S. at 430 (1983); *Ussery,* 10 Vet. App. at 53.
[23] *See Hensley*, 461 U.S. at 429.
[24] *Vidal*, 8 Vet. App. at 493.

reasonableness of the fee in that case.[25] 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."[26] 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.[27]

Since Mr. Cook 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 be at odds with the norms of professional responsibility."[28] So long as an unsuccessful argument is "made in good faith," it constitutes "effort reasonably expended in advancing" an appeal.[29]

2.1 Mr. Cook's proposed hourly rates are reasonable.

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[25] *Hensley*, at 429; *Baldridge*, 19 Vet. App. at 233.
[26] *Jones v. Shulkin*, No. 16-0838(E), 2018 U.S. App. Vet. Claims LEXIS 260, at *7 (March 1, 2018).
[27] *Jones*, 2018 U.S. App. Vet. Claims LEXIS 260, at *7 – 8, *citing Vidal*, 8 Vet. App. at 493.
[28] *See Chesser*, 11 Vet. App. at 503-04, *quoting Jaffee v. Redmond*, 142 F.3d 409, 414 (7th Cir. 1998).
[29] *Hensley v. Principi*, 16 Vet. App. 491, 499 (2002).

2.1.1 Mr. Cook's proposed hourly attorney rates are reasonable.

Mr. Cook is entitled to recover the EAJA base hourly rate of $125 per hour for attorneys, adjusted to compensate for cost-of-living changes. To calculate the hourly rates for the attorneys in this case, Mr. Cook chose the month in which appellant filed their opening brief (i.e., June 2021) as the litigation mid-point upon which to adjust base this adjustment.[30]

Using data from the 2018 BLS regional divisions based on the region where each attorney's work was performed[31], Mr. Cook asserts that the following rates are reasonable:

Attorney Chris Attig	Little Rock, AR	$214.62
Attorney Jennifer Steel	Little Rock, AR	$214.62
Attorney Alexandra Curran	Providence, RI	$218.63
Attorney Haley Smith	Raleigh, NC	$214.62

1.1.1 Mr. Cook's proposed hourly paralegal rates are reasonable.

The Court has long followed Supreme Court directives that individuals performing work that is paralegal in nature are compensated under EAJA at prevailing market rates, not the cost to the firm.[32] One "reliable indicator"

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[30] *Elcyzyn v. Brown*, 7 Vet. App. 170, 179-181 (1994).
[31] *App.* at ¶3.
[32] *Richlin Sec. Serv. Co., v. Chertoff*, 553 US 571 (2008); *Garrison v. Peake,*22 Vet. App. 192, 194 (2010); *accord Sandoval,* 9 Vet. App. at 181.

for prevailing market rates for paralegals is the "U.S. Attorney's "Laffey Matrix."[33] Both this Court and the Department of Justice have relied on the U.S. Attorney's Office's "Laffey Matrix" as an indicator of prevailing market rate for paralegals.[34]

To corroborate the reasonableness of the Laffey Matrix rate in this case, Mr. Cook has included several private studies that identify the average prevailing market rate for paralegals ($131 - $158 per hour in Arkansas, $144 - $148 per hour in Florida).[35] These ranges are based on prevailing market rates for paralegals in various spectrums: size of firm, years of paralegal experience, training backgrounds, region where work performed, etc.[36]

The rate Mr. Cook seeks for paralegals in Arkansas and Florida are higher than the average prevailing market rates. In Arkansas, that is because a low supply of paralegals drives up the prevailing market rate in the face of heavy demand for paralegal work in Little Rock's unique

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[33] *App.* at ¶5; *accord,* "Laffey Matrix," found online at http://laffeymatrix.com/see.html (last visited August 22, 2022); *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, 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).

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

[35] *App.* at ¶5.1 - ¶5.6 (summarizing and citing to studies).

[36] *See id.*

market.[37] Because of that short supply, the firm must compete with higher prevailing market rates in other state's labor markets.[38] In both states, the prevailing market rates are also driven substantially higher by inflation that has affected the nation since 2021.[39]

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.[40] The Court can "take judicial notice of the Secretary's contrary positions."[41]

Fifth, in two memorandum decisions involving Mr. Cook's counsel, the Court relied on the same evidence submitted in this appeal to find the then-prevailing market rate of $164 – 173 per hour was reasonable, as it was

[37] *App.* ¶5.7, ¶5.8, ¶5.10.
[38] *App.* at ¶5.9, ¶5.10.
[39] *App.* at ¶5.10.
[40] 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).
[41] *Correia v. McDonald,* 28 Vet. App. 158, 163 n.3 (2016).

consistent with the undersigned firm's prevailing market rate for paralegals.[42]

As such, Mr. Cook seeks paralegal fees at the following rates:[43]

June 1, 2020, – May 31, 2021:	$173
June 1, 2021 – present:	$180

There is no windfall to Mr. Cook by seeking application of the above rates in this case.

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

Mr. Cook 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 all attorneys and those performing work that is paralegal in nature as follows. First, attorney Attig reviewed individual line-item entries and daily billing totals.[44] Second, he reviewed the total hours expended on the case in distinct phases of this appeal.[45] Third, he considered the relation of the total amount

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[42] *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).
[43] *App.* at 7 – 8.
[44] *App.* ¶6.
[45] *Id.*

billed to the outcome achieved for Mr. Cook.[46] Notation of any reductions to time entries are found in the individual time entry in which the reduction occurred.

Mr. Cook 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 work that is paralegal in nature and properly billed to a private client and the government under EAJA.[47] 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. Cook's attorney reduced or eliminated the time spent on these tasks.[48]

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[.]"[49] As the Court in *Hensley* noted, there is no *per-se* bar to EAJA compensation for hours spent preparing motions for extension of time,

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[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Hensley v. Principi,* 16 Vet. App. 491, 499 (2002).

recognizing "that on occasion, circumstances beyond the appellant's control make timely performance difficult, if not impossible."[50]

Mr. Cook 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 everything in the claims file at the time of the BVA decision.[51] 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."[52] Before any statement of facts can be written in a brief or statement of issues, "the record must be mastered."[53] "[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

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[50] *Id*, at 498.
[51] U.S. Vet. App. R. 10.
[52] SENIOR CIRCUIT COURT JUDGE RUGGIERO ALDISERT, Winning on Appeal: Better Briefs and Oral Advocacy 167 (2d ed. 2003).
[53] *Id.*

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."[54] 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."[55]

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*, *Thompson,* and *Stepp,* rejected arguments that review of the RBA and comparison to the C-file is duplicative.[56] 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.[57] The appellant in *Thompson* argued that

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[54] 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).
[55] *Carter v. Shinseki*, 26 Vet. App. 534, 546 (2014).
[56] *Parrott*, 2015 U.S. App. Vet. Claims LEXIS 1386, at *13-14. *Thompson*, 2017 U.S. App. Vet. Claims LEXIS 723, at *10.
[57] *Parrott*, 2015 U.S. App. Vet. Claims LEXIS 1386, at *14.

review of the RBA and C-File were distinct tasks reflecting review of two distinct documents, and the Court was "satisfied that a reduction [was] not warranted" and that appellant did not bill for "the exact same task."[58] And in *Stepp,* the Court held that where "there was a page discrepancy between the RBA and the c-file, which could reasonably prompt a review and comparison of the two documents, the Court declines to reduce the EAJA fee on the basis that the RBA and c-file review was duplicative."[59]

Mr. Cook's billing for time spent on this appeal is not improper "block-billing." The practice of "block-billing" is characterized by descriptions of large blocks of time.[60] Block-billed time is not *per se* unreasonable and is subject to reduction only when the descriptions are vague and prevent judicial review of the billed time.[61] The critical factor in reviewing "block-billed" time is the "level of detail" in the billing statement.[62] 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.[63] The Court accepted a "block-billed" 7.2 hours of record review because the task itself

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[58] *Thompson*, 2017 U.S. App. Vet. Claims LEXIS 723, at *10.
[59] *Stepp v. Wilkie*, No. 17-3594(E), 2020 U.S. App. Vet. Claims LEXIS 1581, at *10-11 (Aug. 21, 2020)
[60] *See Baldridge*, 19 Vet. App. at 235.
[61] *Id.*
[62] *Teixeira v. Nicholson*, 21 Vet. App. 77 (2006).
[63] *Sohl v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 462 at *5 – 8 (June 7, 2006).

was straightforward.[64] 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.[65] 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.[66] *Andrews* cautions attorneys to heed "clear guidance [from the Court] regarding the appropriate level of specificity," 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.[67]

Mr. Cook'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

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[64] *Bailey v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 469 at *9 – 11 (May 25, 2006)
[65] *Kratzer v. Shinseki*, Nos. 06-0400, 08-11468(E), 2009 U.S. App. Vet. Claims LEXIS 1575, at *12-13 (Sep. 8, 2009).
[66] *Andrews v. Principi*, 17 Vet. App. 319, 322 (2003).
[67] *Andrews*, 17 Vet. App. at 322; *Rockefeller v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 461, *4 – 5 (May 17, 2006).

straightforward, and the time entries sufficiently detailed that the Court can assess how the time billed compares to the task performed.

Mr. Cook 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.[68] Accordingly, Mr. Cook contends the full amount of attorney and paralegal time billed for record review is reasonable and necessary, and requests the

[68] *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 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.").

Court not penalize Mr. Cook for counsel's diligence in ensuring the record before the agency was accurate and complete.

2. Mr. Cook asks the Court to award $572.55 in expenses and $39,579.88 in fees, for a total award of $40,152.43 in fees.

When Mr. Cook meets all the eligibility requirements for EAJA fees and expenses, the Court "shall award" them.[69] A table of hours by attorney or paralegal, and their rate, appears in the billing invoice.[70] Mr. Cook respectfully asks the Court to award attorney fees in the total amount of $572.55 in expenses and $39,579.88 in fees, for a total award of $40,152.43.

Respectfully Submitted,
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[69] *Gavette v. OPM*, 808 F.2d 1456, 1466 (Fed. Cir. 1986) (en banc).
[70] *App.* at 97-98.