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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Brian Halstead,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin, Acting Commissioner
of Social Security,

13 Defendant.
14

No. CV12-01706-PHX-DGC

ORDER

15 Plaintiff brought this action for judicial review pursuant to 42 U.S.C. § 405(g)
16 after his application for disability benefits was denied. Doc. 1. The Court reversed
17 Defendant's decision and remanded the case for further proceedings. Doc. 24.

18 Plaintiff has filed a motion for attorney's fees pursuant to the Equal Access to
19 Justice Act, 28 U.S.C. § 2412 ("EAJA"). Doc. 29. The motion is fully briefed and no
20 party has requested oral argument. For reasons stated below, the Court will grant the
21 motion and award Plaintiff attorney's fees in the amount of \$7,041.77.

22 "The EAJA creates a presumption that fees will be awarded to prevailing parties."
23 *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Plaintiff is a prevailing party
24 because this matter was remanded pursuant to sentence four of the Social Security Act,
25 42 U.S.C. § 405(g). Doc. 24; *see Shalala v. Schaefer*, 509 U.S. 292, 301 (1993);
26 *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). The Court should award
27 reasonable attorney's fees under the EAJA unless Defendant shows that his position in
28 this case was "substantially justified or that special circumstances make an award unjust."

1 28 U.S.C. § 2412(d)(1)(A); *see Gutierrez*, 274 F.3d at 1258.

2 Defendant does not contend that an award of fees in this case would be unjust.
3 Nor has she shown that the positions taken in defense of the ALJ's erroneous decision
4 were substantially justified. Defendant argues that her position was reasonable and is
5 therefore substantially justified. Doc. 30 at 4; *see also Pierce v. Underwood*, 487 U.S.
6 552, 565 (1988) (holding that substantially justified means "justified to a degree that
7 could satisfy a reasonable person"). The Supreme Court has held that a position can be
8 substantially justified "if it has a reasonable basis in fact and law." *Pierce*, 487 U.S. at
9 566 n.2.

10 Here, the ALJ did not explain why he rejected a treating physician's opinion that
11 Plaintiff had limitations in his ability to complete a normal workday. This constituted
12 legal error. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Defendant's
13 arguments to the contrary amounted to *post hoc* rationalization, something not permitted
14 in Social Security appeals. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1225
15 (9th Cir. 2009). Accordingly, the Commissioner's position cannot be said to have a
16 "reasonable basis in law" and is therefore not substantially justified.

17 Plaintiff's counsel, Eric Slepian, has filed an affidavit (Doc. 29-1 at 9-10) and an
18 itemized statement of fees (*Id.* at 6-7) showing that he worked 37.8 hours on this case.¹
19 Having reviewed the affidavit and the statement of fees, and having considered the
20 relevant fee award factors, *see Hensley v. Eckerhart*, 461 U.S. 424, 429-30 & n.3 (1983),
21 the Court finds that the amount of the requested fee award is reasonable.

22 **IT IS ORDERED:**

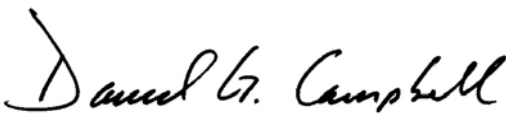
- 23 1. Plaintiff's motion for attorney's fees (Doc. 29) is **granted**.
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28 ¹ In his reply, Plaintiff's attorney requests \$93.27 for his time spent drafting the
reply brief. Doc. 31 at 5. No additional affidavit or documentation was submitted.
Accordingly, the Court will not consider this request.

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2. Plaintiff is awarded **\$7,041.77** pursuant to the Equal Access to Justice Act,
28 U.S.C. § 2412.

Dated this 21st day of October, 2013.



David G. Campbell
United States District Judge