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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LUIS CHAVEZ,)	Case No. EDCV 09-1591-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	GRANTING IN PART PLAINTIFF'S
v.)	MOTION FOR EAJA ATTORNEY FEES
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
_____)	

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On April 27, 2010, the Court entered an Opinion and Order reversing the Commissioner's decision denying Plaintiff's applications for Social Security Disability Insurance and Supplemental Security Income benefits and remanding the case for further administrative proceedings. On June 15, 2010, Plaintiff filed a motion for award of attorney fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 *et. seq.*

Plaintiff seeks an award in a total amount of \$6,440.65, which consists of the following: (1) \$5,479.14 for work on the merits of the case, representing 29.08 hours of attorney time at \$172.24 per hour and 3.91 hours of paralegal time at \$120 per hour; (2) \$961.51 for counsel's work on the fee litigation, which represents 4.83 hours of attorney time

1 and 1.08 hours of paralegal time; and (3) \$1,274.96 for preparation of
2 the reply memorandum, representing 7.17 hours of attorney time and .3
3 hours of paralegal time. The total number of hours for which Plaintiff
4 is seeking attorney fees is 46.37 (41.08 attorney hours and 5.29
5 paralegal hours).

6 Defendant opposes Plaintiff's application for attorney fees,
7 arguing that the government's position was "substantially justified,"
8 pursuant to 28 U.S.C. § 2412(d)(1)(A), precluding any award of fees, and
9 alternatively, that the hours incurred are excessive. (Def.'s Opp. at 1-
10 2.)

11 Having considered the motion for attorney fees, Defendant's
12 opposition, and the reply, as well as the records and pleadings, the
13 Court finds that the remand of Plaintiff's claim for a new
14 administrative hearing constitutes a favorable decision and that the
15 Commissioner's position was not "substantially justified." Accordingly,
16 Plaintiff is entitled to an award of reasonable attorney fees. However,
17 the Court concludes that the number of hours for which counsel seeks
18 reimbursement is excessive, and shall therefore be reduced.

19 20 **II. Discussion**

21 **A. Plaintiff Is Entitled to Attorney Fees As the Prevailing Party** 22 **Because the Government's Position Was Not Substantially** 23 **Justified**

24 The EAJA provides that a court may award reasonable attorney fees,
25 court costs and other expenses to the prevailing party "unless the court
26 finds that the position of the United States was substantially justified
27 or that special circumstances make an award unjust." 28 U.S.C. §
28 2412(d)(1)(A); *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Lewis v.*

1 *Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002). The term “position of
2 the United States’ means, in addition to the position taken by the
3 United States in the civil action, the action or failure to act by the
4 agency upon which the civil action is based.” 28 U.S.C. § 2412(d)(2)(D).
5 A position is “substantially justified” if it has a “reasonable basis in
6 law and fact.” *Pierce*, 487 U.S. at 565. The government has the burden of
7 proving its positions were substantially justified. *Flores v. Shalala*,
8 49 F.3d 562, 569 (9th Cir. 1995). However, the mere fact that a court
9 reversed and remanded a case for further proceedings “does not raise a
10 presumption that [the government’s] position was not substantially
11 justified.” *Kali v. Bowen*, 854 F.2d 329, 335 (9th Cir. 1988.)

12 Here, judgment was entered in favor of Plaintiff, remanding the
13 case for further administrative proceedings because the Administrative
14 Law Judge (“ALJ”) failed to provide legally sufficient reasons for
15 finding Plaintiff not fully credible. The Court found that the ALJ’s
16 reasons for rejecting Plaintiff’s subjective pain and symptom testimony,
17 a single notation in Plaintiff’s medical records that he had worked in
18 maintenance the previous week and the fact that Plaintiff had postponed
19 surgery in order to go to school, were not supported by substantial
20 evidence in the record. Defendant argued that these were sufficient
21 reasons to discredit Plaintiff’s subjective testimony, a position which
22 was not “substantially justified,” *Flores*, 49 F.3d at 570. Accordingly,
23 Plaintiff is entitled to an award of EAJA fees.

24 **B. The Hours Claimed by Plaintiff Are Excessive**

25 Defendant contends that the amount of time Plaintiff’s counsel
26 claims that she spent on the case is excessive and requests that the
27 fees be reduced accordingly. This Court has the discretion to evaluate
28 the reasonableness of the number of hours claimed by a prevailing party.

1 *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001); *Gates v.*
2 *Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). The court should
3 exclude hours that were not reasonably expended. *Hensley v. Eckerhart*,
4 461 U.S. 424, 434 (1983). In determining reasonableness, the court must
5 consider, among other factors, the complexity of the case or the novelty
6 of the issues, the skill required to perform the service adequately, the
7 customary time expended in similar cases, as well as the attorney's
8 expertise and experience.¹ *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th Cir.
9 1998); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir.
10 1975). In reducing a fee award, the court must provide a reasonable
11 explanation of how it arrived at the number of compensable hours in
12 determining the appropriate fee. *Sorenson*, 239 F.3d at 1145; *Hensley*,
13 461 U.S. at 437.

14 The amount of time required to litigate any case can be highly
15 variable and is the subject of much debate. In similar cases decided in
16 this district, courts generally approve time expenditures of between
17 approximately 18 to 27 hours, although of course some courts have
18 approved a fewer or greater number of hours. See, e.g., *Rodelo v.*
19 *Astrue*, 2009 WL 1774279 (C.D.Cal. 2009) (18.5 hours); *Montellano v.*
20 *Astrue*, 2009 WL 3074402 (C.D.Cal. 2009) (17.6 hours); *Barrera v. Astrue*,
21 2009 WL 1916488 (C.D.Cal. 2009) (17 hours); *Rickel v. Astrue*, 2009 WL
22 1774305 (C.D.Cal. 2009) (24.7 hours); *Smith v. Astrue*, 2009 WL 649192
23 (26.5 hours).

24 After reviewing the time records Plaintiff's counsel submitted and
25 the pleadings in this matter, the Court finds that the requested time,
26 _____

27 ¹ Of the 12 factors used to evaluate attorney-fee claims, the
28 articulated factors relate to the reasonableness of the time expended.

1 46.7 hours total, is excessive. The case presented five routine issues
2 that are commonly raised in social security cases, which, although well
3 written and presented, should not have required the amount of time
4 sought. Counsel spent 29 hours and 5 minutes and the paralegal spent
5 three hours and 55 minutes on the settlement statement and joint
6 stipulation, both of which argued common issues. Counsel's request is
7 simply unreasonable.

8 Further, Plaintiff is not entitled to an award of attorney fees for
9 positions he challenged but which the Court did not decide when
10 reversing the decision of the Commissioner. *Hardisty v. Astrue*, 592 F.3d
11 1072, 1079 (9th Cir. January 25, 2010). Plaintiff argues that *Hardisty*
12 does not bar recovery for EAJA fees on the four issues that the Court
13 did not address because *Hardisty* "is not valid precedent." Pl.'s Reply
14 at 7. Rather, Plaintiff argues that *Hensley* controls, and that *Hensley*
15 holds that a plaintiff is entitled to recover fees for time expended on
16 issues not reached. The Court rejects this argument because *Hensley*
17 involved the availability of attorney fees for civil rights litigants
18 under 28 U.S.C. § 1988, not a request for attorney fees under the EAJA.
19 461 U.S. at 429. Accordingly, *Hardisty* is binding precedent which
20 prohibits awarding attorney fees for issues not considered by the court.

21 Based upon the Court's review of the record, taking into account
22 the length of the briefs, the Court concludes that 20 hours of attorney
23 time and two hours of paralegal time, for a total of 22 hours, is a
24 reasonable time on the merits of the case. Indeed, this is generous in
25 light of the one issue decided by the Court. Plaintiff is therefore
26 entitled to 20 hours of attorney time (20 hours x \$172.24 = \$3444.80)
27 and two hours of paralegal time (2 hours x \$120 = \$240.00), for a total
28 of \$3684.80. In addition, the Court will award fees for the fee

1 litigation and the reply in the amount of three hours of attorney time
2 (3 hours x \$172.24 = 516.72) and one hour of paralegal time (1 hour x
3 \$120.00 = \$120.00), for a total of \$636.72. This award is more than fair
4 given the routine nature of the issues raised in this case, and it falls
5 in line with time expenditures approved by this and other courts for
6 this type of work.² The Court further finds that the hourly rate
7 requested by counsel, \$172.24, is authorized. Plaintiff is therefore
8 entitled to a total amount of \$4,321.52 (\$3684.80 for merits litigation
9 + \$636.72 for fee litigation) in EAJA fees.

10 Further, because it appears that Plaintiff has validly assigned his
11 EAJA fees to counsel, see Pl.'s Pet., Ex. 3, the fees should be paid to
12 Plaintiff's attorney, as Plaintiff's assignee.

13
14 **III. Conclusion**

15 Plaintiff's motion for EAJA fees is GRANTED IN PART. It is ordered
16 that Plaintiff's counsel be awarded fees in the amount of \$4,321.52.

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19 DATED: July 20, 2010



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22 _____
Marc L. Goldman
United States Magistrate Judge

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25 ² The Court notes that it is not rejecting counsel's assertions
26 that she spent the amount of time alleged. Rather, the Court is simply
27 concluding that the amount of time spent was unreasonable under the
28 circumstances. Lawyers work at different paces and speeds. A non-
prevailing party should not be penalized in a fee-shifting context
because a lawyer's style of working results in greater than reasonable
time being spent on preparing a pleading.