

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

CHRISTIAN P. BUTLER,
Plaintiff,
v.
CAROLYN W. COLVIN,
Defendant.

Case No. 3:14-cv-02050-LB

**ORDER GRANTING THE PLAINTIFF'S
COUNSEL'S MOTION FOR
ATTORNEY'S FEES**

Re: ECF No. 26

INTRODUCTION & BACKGROUND

In this Social Security appeal, the parties stipulated to remand the case to the Commissioner for further administrative action.¹ On remand, the plaintiff was awarded past-due benefits in the amount of \$131,510.00.² The Commissioner withheld 25% of the retroactive benefits, or \$32,877.50.³

The plaintiff's counsel now seeks \$22,877.50 of those benefits under 42 U.S.C. § 406(b) and the parties' attorney-client fee agreement, which provides for a 25% § 406(b) contingency fee.⁴ Counsel

¹ See Order – ECF No. 20. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

² ECF No. 26-4 at 5.

³ Id.

⁴ Motion for Attorney's Fees – ECF No. 26; Amended Motion for Attorney's Fees – ECF No. 32; Fee Agreement – ECF No. 26-7.

1 already received \$4,789.51 in fees under the Equal Access to Justice Act (“EAJA”), which results in a
2 net fee of \$18,087.99.⁵ Counsel also informs the court that the National Security Disability Advocates,
3 “the legal entity that represented Mr. Butler in the proceedings before the Administration[,] intends to
4 separately move the Administration for the \$10,000 that would remain from Mr. Butler’s past-due
5 benefits.”⁶ The Commissioner submitted an analysis of counsel’s request.⁷

6 The court can decide this matter without oral argument. See Civil L.R. 7-1(b). The court grants the
7 motion because the amount of fees requested is reasonable.

8 9 ANALYSIS

10 Under 42 U.S.C. § 406(b), “[w]henver a court renders a judgment favorable to a [social security]
11 claimant . . . , the court may determine and allow as part of its judgment a reasonable fee” for the
12 claimant’s counsel, which can be no more than 25% of the total of past-due benefits awarded to the
13 claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee even if the court’s judgment did not
14 immediately result in an award of past-due benefits; where the court has rendered a judgment
15 favorable to a claimant by reversing an earlier determination by an ALJ and remanding for further
16 consideration, the court may calculate the 25% fee based upon any past-due benefits awarded on
17 remand. See, e.g., *Crawford v. Astrue*, 586 F.3d 1142 (9th Cir. 2009) (en banc).

18 In considering a motion for attorney’s fees under section 406(b), the court must review counsel’s
19 request “as an independent check” to ensure that the contingency fee agreement “yield[s] reasonable
20 results.” See *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) “does not displace
21 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review for
22 reasonableness fees yielded by those agreements.” *Id.* at 808–09. To evaluate the reasonableness of a
23 fee request under section 406(b), the court should consider the character of the representation and the
24 results achieved. *Id.* at 808; see also *Crawford*, 586 F.3d at 1151. This includes analyzing whether

25
26 _____
27 ⁵ Ortega Decl. – ECF No. 26-3 ¶ 7.

28 ⁶ Motion for Attorney’s Fees at 1; Amended Motion for Attorney’s Fees at 1–2.

⁷ Statement of Defendant’s Non-Party Analysis – ECF No. 29.

1 substandard representation justifies awarding less than 25% in fees; any delay in the proceedings
2 attributable to the attorney requesting the fee; whether the benefits of the representation are out of
3 proportion to time spent on the case; and the risk counsel assumed by accepting the case. See
4 Crawford, 586 F.3d at 1151–52 (citing *Gisbrecht*, 535 U.S. at 808).

5 The court must offset an award of section 406(b) attorney’s fees by any award of fees granted
6 under the EAJA. *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm’r of Soc. Sec.*, 698 F.3d 1215, 1218 (9th
7 Cir. 2012).

8 The court finds that the fee request is reasonable. The 25% contingency fee agreement is within
9 section 406(b)(1)(A)’s statutory ceiling. The work was reasonable given the favorable outcome and the
10 time spent is not out of proportion to the fee award.

11
12 **CONCLUSION**

13 The court finds that fees of \$22,877.50 are reasonable under § 406(b), reduces the award by the
14 \$4,789.51 in EAJA fees, and authorizes a net fee award of \$18,087.99.

15
16 **IT IS SO ORDERED.**

17 Dated: February 2, 2017

18 

19 LAUREL BEELER
20 United States Magistrate Judge
21
22
23
24
25
26
27
28