

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

2008 DEC 22 PM 4: 20

OFFICE OF THE CLERK

8:07CV432

GILBERT RAEL,)
)
 Plaintiff,)
)
 v.)
)
 SOCIAL SECURITY ADMINISTRATION,)
 Michael J. Astrue, Commissioner Of Social)
 Security Administration,)
)
 Defendant.)
)
 _____)

MEMORANDUM AND ORDER ON
PLAINTIFF'S APPLICATION FOR
ATTORNEY FEES UNDER THE EQUAL
ACCESS TO JUSTICE ACT

Now before me is Plaintiff Gilbert Rael's application for attorney fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (See filing 22.) The plaintiff requests a fee award in the amount of \$5531.38. (See, e.g., filing 23 at 1.) The "[d]efendant has no objection to Plaintiff's request for fees under the EAJA in the amount of \$5531.38." (Filing 27 at 1.)

The EAJA authorizes an award of "fees and other expenses" to a "prevailing party" in a case against the United States, "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). I find that the plaintiff is a "prevailing party" within the meaning of the EAJA; that the defendant's position was not "substantially justified"; that there are no special circumstances that make an award unjust; that the plaintiff's counsel's devotion of 32.3 hours of work to this case was reasonable; and that counsel's request for an hourly rate of \$171.25, which is supported by uncontested proof of "an increase in the cost of living," is reasonable. See 28 U.S.C. § 2412(d)(2)(A)(ii); see also Johnson v. Sullivan, 919 F.2d 503, 505 (8th Cir. 1990) ("We hold that where, as here, an EAJA petitioner presents uncontested proof of an increase in the cost of living sufficient to justify hourly attorney's fees of more than [the amount specified in the EAJA], enhanced fees should be awarded."). Therefore, the plaintiff's request for attorney's fees in the amount of \$5531.38 is granted.

IT IS ORDERED that the plaintiff's application for attorney fees under the Equal Access to Justice Act, filing 22, is granted, and the plaintiff is awarded attorney fees in the amount of \$5531.38.

Dated December 17, 2008.

BY THE COURT

A handwritten signature in cursive script, reading "Warren K. Urbom", is written over a horizontal line.

Warren K. Urbom
United States Senior District Judge