

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ANTHONY BALL,)
)
 Plaintiff,)
)
 v.)
)
 MICHAEL J. ASTRUE,)
 Commissioner of Social)
 Security,)
)
 Defendant.)
 _____)

No. CV-09-764-HU

OPINION & ORDER

Tim Wilborn
WILBORN LAW OFFICE, P.C.
P.O. Box 2768
Oregon City, Oregon 97045

Attorney for Plaintiff

Dwight C. Holton
ACTING UNITED STATES ATTORNEY
District of Oregon
Adrian L. Brown
ASSISTANT UNITED STATES ATTORNEY
1000 S.W. Third Avenue, Suite 600
Portland, Oregon 97204-2902

/ / /
/ / /
/ / /
/ / /

1 - OPINION & ORDER

1 Kathryn A. Miller
SPECIAL ASSISTANT UNITED STATES ATTORNEY
2 Office of the General Counsel
Social Security Administration
3 701 5th Avenue, Suite 2900, M/S 901
Seattle, Washington 98104-7075

4 Attorneys for Defendant

5 HUBEL, Magistrate Judge:

6 Plaintiff Anthony Ball brought an action for judicial review
7 of the Commissioner's final decision to deny disability insurance
8 benefits (DIB). All parties have consented to entry of final
9 judgment by a Magistrate Judge in accordance with Federal Rule of
10 Civil Procedure 73 and 28 U.S.C. § 636(c). On August 27, 2010,
11 this Court issued a Judgment reversing the Commissioner and
12 remanding the case for additional proceedings.

13 Plaintiff now seeks attorney's fees pursuant to the Equal
14 Access to Judgment Act, 28 U.S.C. § 2412 (EAJA). The parties have
15 stipulated to an EAJA fee award of \$7,499.99, compensating
16 plaintiff's counsel for some, but not all, of the time spent on the
17 case. The parties also stipulate to an award of \$350 in costs,
18 representing the court filing fee. I grant the motion and award
19 EAJA fees in the amount stipulated to by the parties.

20 EAJA requires an award of attorney's fees to prevailing
21 parties in civil actions against the United States unless the
22 position of the United States was substantially justified. 28
23 U.S.C. § 2412(d)(1)(A). Plaintiff was the prevailing party. I
24 construe defendant's stipulation to the fee motion as a concession
25 that the government's position was not substantially justified.

26 The court exercises discretion in awarding fees under EAJA.
27 See Rodriguez v. United States, 542 F.3d 704, 709 (9th Cir. 2008)

1 (court of appeals reviews district court award of fees under EAJA
2 for abuse of discretion); see also Webb v. Ada County, 195 F.3d
3 524, 527 (9th Cir. 1999) (district court possesses "considerable
4 discretion" in determining the reasonableness of a fee award). The
5 fee award is a combination of the number of hours reasonably
6 worked, multiplied by a reasonable hourly rate.

7 Plaintiff's counsel spent 73 hours on this case. As Judge
8 Mosman noted in a 2007 opinion, "[t]here is some consensus among
9 the district courts that 20-40 hours is a reasonable amount of time
10 to spend on a social security case that does not present particular
11 difficulty." Harden v. Commissioner, 497 F. Supp. 2d 1214, 1215
12 (D. Or. 2007) (citing cases). Judge Mosman agreed that absent
13 unusual circumstances or complexity, "this range provides an
14 accurate framework for measuring whether the amount of time counsel
15 spent is reasonable." Id. at 1216.

16 At more than 1500 pages, the Administrative Record in this
17 case was exceptionally long. Plaintiff's counsel filed a thirty-
18 five page opening memorandum, and a twenty-nine page reply
19 memorandum. The case involved the issue of whether certain
20 determinations previously made by Judge Marsh, precluded
21 reexamination of the issues again, either under a "law of the case"
22 theory or under the doctrine of issue preclusion. Additionally,
23 although, aside from the reexamination issue, no other single issue
24 was legally or factually complex, plaintiff raised several,
25 discrete arguments regarding the Administrative Law Judge's (ALJ)
26 decision in the case. Plaintiff challenged findings at step three,
27 challenged the ALJ's treatment of, or failure to treat, four
28 separate lay witnesses, challenged the treatment of two different

1 medical practitioners, and raised several independent arguments
2 regarding the vocational expert's testimony.

3 While the hours spent are well above the range identified by
4 Judge Mosman as reasonable, this case presented the unusual
5 combined circumstances of a very long record, a somewhat unique
6 legal issue, and several discrete alleged errors. Importantly,
7 based on the current EAJA rate, explained below, the stipulated fee
8 award of \$7,499.99 equals compensation for approximately 43 hours,
9 just above the reasonable range suggested by Judge Mosman. The
10 award is reasonable.

11 EAJA sets a ceiling of \$125 per hour "unless the court
12 determines that an increase in the cost of living . . . justifies
13 a higher fee." 28 U.S.C. § 2412(d)(2)(A). To adjust for the cost
14 of living, the Ninth Circuit applies the consumer price index for
15 all urban consumers (CPI-U). Jones v. Espy, 10 F.3d 690, 692-93
16 (9th Cir. 1993) (CPI-U for all items, not just legal services,
17 applies). The CPI-U for October 2010 (the most recent month for
18 which information is available) is 218.711 (table available at:
19 <http://www.bls.gov/news.release/cpi.t03.htm>). The adjusted hourly
20 rate is \$175.58. See Ramon-Sepulveda v. INS, 863 F.2d 1458, 1463
21 n.4 (9th Cir. 1988) (explaining formula as EAJA ceiling (presently
22 \$125/hour), x the CPI-U for current month/CPI-U for month Congress
23 adopted current ceiling. 155.7 is the CPI-U for March 1996, the
24 month Congress adopted the \$125/hour rate).

25 If all 73 hours were to be compensated, the EAJA fee award
26 would be \$12,817.34 at the adjusted hourly rate of \$175.58. Here,
27 with the stipulated amount of \$7,499.99, the number of compensated
28 hours is 42.71.

1 Plaintiff also seeks \$350 for the court filing fee. Under
2 EAJA, a prevailing party is entitled to recover costs as enumerated
3 in 28 U.S.C. § 1920. 28 U.S.C. § 2412(a)(1). Section 1920 allows
4 recovery for the filing fee. 28 U.S.C. § 1920(1).

5 CONCLUSION

6 Plaintiff's motion for EAJA fees [17] is granted. Plaintiff
7 is awarded \$7,499.99 in fees, and \$350 in costs for a total award
8 of \$7,849.99.

9 IT IS SO ORDERED.

10 Dated this 18th day of January, 2011.

11
12 /s/ Dennis J. Hubel

13 _____
14 Dennis James Hubel
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28