

\$341.59 in costs for herself. These amounts were less than the amount requested. Decision, 2009 WL 1456437 (Fed. Cl. Spec. Mstr. Apr. 30, 2009).

Ms. Valdes filed a motion for review of this decision, which was assigned to the Honorable Susan G. Braden. Judge Braden granted in part and denied in part Ms. Valdes's motion for review. The order remanded the case to the undersigned "for the issuance of an award consistent with this Memorandum Opinion and Final Order." Valdes v. Sec'y of Health & Human Servs., ___ Fed. Cl. ___, 2009 WL 3347106 (Sept. 30, 2009).

This decision implements Judge Braden's order. Judge Braden specifically found that (1) the undersigned should have awarded half of the cost requested by Ms. Valdes for work performed by Dr. Geier, (2) the undersigned should have awarded half of the cost requested by Ms. Valdes for work performed by Dr. Greenspan, (3) the undersigned should have compensated one of Ms. Valdes's attorneys, Ms. Knickelbein, at a paralegal rate for work in collecting medical records, and (4) the undersigned should have reimbursed Ms. Valdes for the cost of a blood test. Id. These points are discussed below. Also discussed are two points that Judge Braden did not address directly.

1. Dr. Geier

Ms. Valdes requested \$8,600 for Dr. Geier. In accord with Judge Braden's order, Ms. Valdes is awarded \$4,300.

2. Dr. Greenspan

Ms. Valdes requested \$5,118.75 for Dr. Geier. In accord with Judge Braden's order, Ms. Valdes is awarded \$2,559.38.

3. Ms. Knickelbein

The undersigned deducted, entirely, 4.9 hours of work performed by Ms. Knickelbein. Judge Braden found that these tasks should have been compensated at a paralegal rate.

Based upon the undersigned's experience in other cases, a reasonable hourly rate for paralegal work is \$100. Thus, Ms. Valdes will be compensated \$490.

4. Other Costs

The undersigned declined to reimburse Ms. Valdes for the cost (\$400) of a blood test. Judge Braden found this cost reasonable. Thus, Ms. Valdes, who bore this cost personally, will be compensated this amount.

5. Items Not Directly Resolved by Judge Braden

Ms. Valdes's motion for review could be construed as raising two items that were not resolved by Judge Braden. These are (1) whether Ms. Valdes's attorneys should be compensated for work associated with Dr. Geier and Dr. Greenspan, and (2) whether Ms. Valdes's attorneys' should be compensated for their work in filing a motion for review.

a. Attorneys' Fees for Work Associated with Dr. Geier and Dr. Greenspan

When the undersigned found that retaining Dr. Geier and Dr. Greenspan was not adequately explained, the undersigned declined to compensate Ms. Valdes for costs incurred in retaining these experts. The undersigned also declined to compensate Ms. Valdes's attorneys for tasks associated with these experts. Judge Braden noted that the undersigned rejected \$1,025.00 in attorneys' time spent with Dr. Geier and the undersigned rejected an attorneys' fees request totaling \$2,748.35 for work associated with Dr. Greenspan.

Judge Braden did not order the undersigned to readdress this issue. A simple reason explains Judge Braden's action. Ms. Valdes did not seek a review of the undersigned's decision not to award attorneys' fees for work associated with Dr. Geier and Dr. Greenspan.

In compliance with Vaccine Rule 24, Ms. Valdes's motion for review begins with numbered objections. These objections define the scope of review, so they are quoted in full:

- 1) The Special Master abused his discretion by arbitrarily and capriciously reducing petitioner's attorneys' costs, specifically the billing by the experts and consultants used by petitioner, and that he further misapplied the law with respect to his determination of allowable petitioner's costs, and finally, that his determinations with respect to allowable petitioner's costs is contrary to law, arbitrary and capricious and an abuse of his discretion
- 2) The Special Master, after determining that certain work performed by Ms. Knickelbein was more properly billed as paralegal time, arbitrarily and capriciously denied the billing in total, rather than adjusting the hourly rates to reflect his determination.

Pet'r Mot. for Review, filed June 1, 2009, at 1-2 (emphasis added).

The second objection is restricted to whether Ms. Knickelbein should have been compensated at a paralegal. It does not relate to whether the attorneys' work with Dr. Geier and Dr. Greenspan was reasonable.

In the first objection, Ms. Valdes challenges the undersigned's determination with respect to petitioner's costs. Ms. Valdes's first objection does not discuss attorneys' fees. Therefore, it appears that Ms. Valdes has failed to seek review of the undersigned's decision with respect to denying compensation for tasks performed by attorneys in working with Dr. Geier and Dr. Greenspan.

The Federal Circuit has defined the extent that trial courts may act after receiving a case from an appellate tribunal on remand. "[T]he mandate rule precludes reconsideration of any issue within the scope of the judgment appealed from—not merely those issues actually raised" Amado v. Microsoft Corp., 517 F.3d 1353, 1360 (Fed. Cir. 2008). "An issue that falls within the scope of the judgment appealed from but is not raised by the appellant in its opening brief on appeal is necessarily waived. Unless remanded by this court, all issues within the scope of the appealed judgment are deemed incorporated within the mandate and thus are precluded from further adjudication." Engel Industries, Inc. v. Lockformer Co., 166 F.3d 1379, 1383 (Fed. Cir. 1999).

At best, Ms. Valdes's brief makes two passing references to the denial of attorneys' fees. Pet'r Mot. for Review, at 8 n.6 (Dr. Geier) & at 10 (Dr. Greenspan). Apparently, Judge Braden determined that these remarks did not expand the scope of Ms. Valdes's first objection. See SmithKline Beecham, Corp. v. Apotex Corp., 439 F.3d 1312, 1320 (Fed. Cir. 2006) (explaining that a valid argument on appeal needs to be developed, not just mentioned). Consistent with Vaccine Rule 24, Judge Braden did not order anything with respect to the denial of attorneys' fees for these tasks.

Consequently, Ms. Valdes will not be awarded additional compensation for these items. Ms. Valdes failed to request them in her motion for review. Judge Braden has not ordered a review of them. Thus, the undersigned's decision remains unmodified.

b. Attorneys' Fees for Motion for Review

At the end of Ms. Valdes's motion for review, Ms. Valdes sought compensation for preparing a motion for review. Ms. Valdes sought \$1,500, representing 6.25 hours of work at an hourly rate of \$240.00 per hour. This request raises two issues: first, may the undersigned consider this question; and second, assuming that the answer to the first question is affirmative, whether the amount requested is reasonable.

The undersigned possesses the authority to consider Ms. Valdes's request for attorneys' fees for filing a motion for review. Although Judge Braden's remand order does not instruct the undersigned to determine the amount of attorneys' fees, Vaccine Rule 34(b) provides the appropriate authorization.

The judges of the Court of Federal Claims recently amended Vaccine Rule 34 to add subdivision (b). In its current form, Vaccine Rule 34(b) states:

Following review by an assigned judge of a special master's decision on attorney's fees and costs under Vaccine Rule 13, a request for any additional fees and costs relating to such review may be decided either by the assigned judge or by the special master on remand.

Ms. Valdes's case fits what Vaccine Rule 34(b) describes. In such a circumstance, special masters "may" decide a request for attorneys' fees and costs relating to review of a decision about attorneys' fees.

Action by the undersigned is appropriate. Ms. Valdes's motion for review gained her some relief. Therefore, the filing of a motion for review must have had a reasonable basis. Therefore, Ms. Valdes's attorneys are entitled to some amount of compensation.

If the undersigned declined to award attorneys' fees for the motion for review, Ms. Valdes almost certainly would appeal to return the case to Judge Braden, who is also authorized to award attorneys' fees. Such a process would require additional work by Ms. Valdes's attorneys, which, in turn, would prompt a request for additional fees. Additionally, a hypothetical appeal would increase Judge Braden's docket needlessly.

For these reasons, the undersigned will consider Ms. Valdes's request for attorneys' fees relating to her motion for review. The remaining question is whether the amount requested by Ms. Valdes is reasonable.

Ms. Valdes has requested a reasonable amount. The respondent has not challenged the quantum of relief requested.¹ Consequently, Ms. Valdes is awarded \$1,500.00 in attorneys' fees for the motion for review.

6. Summary

The undersigned's April 30, 2009 decision awarded Ms. Valdes some amount of attorneys' fees and costs. Judge Braden ordered additional compensation, the amount of which has been calculated in this decision. The total amount of compensation for attorneys' fees and costs is presented in the following tables.

¹ In respondent's response to Ms. Valdes's motion for review, she objected to an award for filing a motion for review on the ground that Ms. Valdes's attorney previously pursued these objections unsuccessfully. Resp't Resp. to Mot. for Review, filed July 1, 2009, at 3 n.3. Although not couched in these terms, respondent is apparently arguing that Ms. Valdes's motion for review lacked a reasonable basis. Judge Braden, obviously, has rejected respondent's argument.

Summary of Determinations for Attorneys' Fees	
Attorneys' fees awarded in original decision	\$28,190.42
Addition for Ms. Knickelbein's Paralegal Work	\$490.00
Addition for Motion for Review	\$1,500.00
TOTAL ATTORNEYS' FEES	\$30,180.42

Summary of Determinations for Attorneys' Costs	
Attorneys' costs awarded in original decision	\$10,823.49
Addition for Dr. Geier	\$4,300.00
Addition for Dr. Greenspan	\$2,559.38.
TOTAL ATTORNEYS' COSTS	\$17,682.87

Summary of Determinations for Ms. Valdes's Costs	
Ms. Valdes's costs awarded in original decision	\$341.59
Addition for blood work	\$400.00
TOTAL COSTS FOR MS. VALDES	\$741.59

Ms. Valdes is awarded \$30,180.42 in attorneys' fees, \$17,682.87 in attorneys' costs, and \$741.59 in costs for herself. The Clerk's Office is ordered to enter judgment in accord with this decision unless a motion for review is filed. In addition, the Clerk's Office is ordered to transmit this decision to Judge Braden promptly. Vaccine Rule 28.1(a).

IT IS SO ORDERED.

S/ Christian J. Moran
Christian J. Moran
Special Master