

In the United States Court of Federal Claims

Case No. 95-396C
Filed: July 14, 2005

BILL HUBBARD, individually and doing
business as BILL HUBBARD & ASSOCIATES,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Stephen McNichols, Jr., Pleasanton, California, for the plaintiff.

John N. Kane, with whom were *Harold D. Lester, Jr.*, Assistant Director, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, and *Peter D. Keisler*, Assistant Attorney General, United States Department of Justice, Washington, D.C., for the defendant.

ORDER

SMITH, Senior Judge

On August 26, 2003 this Court entered an Order granting Plaintiff's motion for the recovery of attorney's fees, costs, and expenses under the Equal Access to Justice Act (EAJA). 28 U.S.C. § 2412(b) (2002). Defendant filed a timely motion for reconsideration of this Order under CFR 59. The Government contends that the Court's EAJA award double-counts some of the attorney fees that Mr. Hubbard incurred. *Defendant's Motion for Reconsideration* at 2. Plaintiff concedes this point. *Plaintiff's Response* at 2. The Government also contends that the calculation of attorney's fees is incorrect because the Court applied the Consumer Price Index (CPI) for 2003, rather than for 1996 when most costs were incurred. *Defendant's Motion for Reconsideration* at 4. Defendant asserts that using the 2003 calculation amounted to the payment of interest to the Plaintiff in violation of the "no-interest" rule. *Id.* at 1. Plaintiff counters that the additional compensation from the use of the CPI for 2003 reflected permissible cost of living adjustments and were not interest payments.

Plaintiff's Reply at 4 - 5.

Standard of Review

Motions for reconsideration or alteration of a court's decision are not routinely granted. *E.g.*, *Harvey v. District of Columbia*, 949 F. Supp. 878, 879 (D.D.C. 1996). In order for a party to prevail upon such a motion, the party must demonstrate: (1) a clearly apparent or obvious error of law or mistake of fact in the Court's ruling that renders the decision manifestly unjust; or (2) a change in controlling law that might alter the Court's decision; or (3) new evidence that was not available at the time of trial. *Fraconia Associates v. United States*, 44 Fed. Cl. 315, 316 (1999).

Use of 2003 CPI Does Not Violate "No Interest" Rule

In its August 2003 Order this Court based the calculation of its award for attorney's fees on the CPI for April 2003 following *National Ass'n of Manufacturers v. United States Dep't of Labor*, 962 F.Supp. 191 (D.D.C. 1997).¹ *August 26, 2003 Order* at 5. In its motion Defendant asks the Court to apply a CPI from 1996 because that is when most of the litigation costs were incurred. *Defendant's Motion to Reconsider* at 5. Defendant argues that by using the CPI for April 2003 instead, the Court awarded additional compensation to Plaintiff in the form of interest in violation of 28 U.S.C. § 2412(f)² and *Library of Congress v. Shaw*, 478 U.S. 310 (1996).³ *Id.* at 5. The EAJA is silent as to applying cost of living adjustments when awarding litigation costs and fees. In light of this, the Court acted within its discretion in applying the CPI for April 2003. The Court therefore denies Defendant's motion to reconsider with regard to Defendant's CPI argument. The applicable attorney's fees per hour remains \$153.18.⁴

Parties Agree that Number of Hours Should be Amended

1. The District Court for the District of Columbia, in increasing the award of attorney's fees under 28 U.S.C. § 2412(d)(2)(A) applied the CPI for the "approximate date in which legal services were rendered." *Nat'l Ass'n of Mfrs.*, 962 F. Supp. at 198.

2. Under 28 U.S.C. § 2412(f) interest may be paid on the amount of an award only, "[i]f the United states appeals an award of costs or fees and other expenses made against the United States . . . and the award is affirmed in whole or in part"

3. "The no-interest rule is to the effect that interest cannot be recovered in a suit against the Government in the absence of an express waiver of sovereign immunity from an award of interest." *Shaw*, 478 at 311.

4. In arriving at the adjusted hourly wage the court divided 197.3 by 96.6. *August 26, 2003 Order* at 5. "The numerator, 197.3, is the CPI for all urban consumers in the region in which this claim arose for April 2003" *Id.* (citation omitted). "The denominator, 96.6 is the CPI for all urban consumers for the same region in October 1981." *Id.* The sum, 2.04, was multiplied by the \$75, the statutorily provided wage, to achieve at an adjusted wage of \$153.18 per hour. *Id.*

Defendant filed its motion to reconsider contending that, “. . . no more than 793.70 (709.05 + 84.65) attorney hours have been incurred by the plaintiff in this litigation” *Defendant’s Motion for Reconsideration* at 7. Likewise, “Plaintiff concedes defendant’s point,” that the correct calculation of attorney hours is 793.70 as of April 2003. *Plaintiff’s Reply* at 2-3. The Court accepts the revision as provided by the parties. However, the Court notes that in Plaintiff’s response to Defendant’s reply, Plaintiff asserts that some attorney fee time was actually paralegal time. In its response Plaintiff also asserts that the “Total Hours: 814.90 total hours for work performed by McNichols Randick O’Dea & Tooliatos.” *Plaintiff Response to Defendant’s Reply* at 2. Plaintiff then states that the “paralegal time was not separated out as a component of the 819.40 hours worked on the case....” *Id.* Plaintiff states that of this time 168.75 were for paralegal hours billed. *Id.* Plaintiff has already agreed to the 793.70 hours billed in its response. *Plaintiff’s Reply* at 3. The Court will rely on this number as actual hours billed by Plaintiff. The Court will therefore, subtract the paralegal time from 793.70 to arrive at 624.75 attorney hours billed and 168.75 paralegal hours billed. The Court will apply the same adjusted hourly wage as it used in its award of costs. Therefore, multiplying 624.75 hours by \$153.18 the Court awards \$95,729.84 in attorney fees. The Court further awards \$15,190.75, the actual dollar value of time billed for paralegal time worked. The Court hereby awards Plaintiffs the total amount of attorney and paralegal fees in the amount of \$110,920.59.

Amount of Awarded Costs as Amended

The parties agree to the amount of costs to be awarded to Plaintiff. The costs are: (1) \$120 filing fee; (2) \$227.50 in witness fees; (3) \$58.75 for duplication and copying; (4) \$1,847.47 in costs incident to taking depositions; (5) \$6,188.60 for Westlaw research costs; (6) \$4,344.83 in expert witness fees for the services of John O’Keefe; (7) \$253.25 in document production costs; (8) \$531.66 in UPS service fees; (9) \$694.27 in additional copying, research, and UPS service costs incurred in filing the motion for fees, expenses and costs. Therefore, the total award of costs is \$14,266.33.

CONCLUSION

For the foregoing reasons the Court **AMENDS** its prior order dated August 26, 2003 granting Plaintiff’s motion for attorney’s fees, costs and expenses. In accordance with this order, the Clerk is directed to award payment in the amount of \$110,920.59 reflecting reasonable attorney and paralegal fees, and \$14,266.33 of reasonable costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2814 (1996). Plaintiff’s total award is \$125,186.92. Parties to bear their own costs with regard to Motion for Reconsideration and pleadings thereto.

IT IS SO ORDERED.

Loren A. Smith
Senior Judge