

DOTCAB

GOLDEN WEST ENVIRONMENTAL SERVICES APPELLANT,
v.
DEPARTMENT OF HOMELAND SECURITY, UNITED STATES COAST GUARD, RESPONDENT.

Contract No. DTCG88-93-D-64B243

January 31, 2005

Steven D. Meacham Esq., Dann & Meacham, Seattle, Washington, counsel for Appellant

B. J. Braun, Esq., Department of Homeland Security, United States Coast Guard, Washington, D.C., counsel for Respondent

Fennessy, Deputy Chief Administrative Judge

Decision

Golden West Environmental Services (Golden West or applicant) has submitted a timely application for attorney fees and other expenses pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, in the amount of \$53,404.36. The application followed an appeal by Golden West from a decision of a contracting officer of the United States Coast Guard (Coast Guard or Government) denying Golden West's claim for \$105,282.67 in increased costs under a requirements-type contract.

Background

The claim arose because the Coast Guard unilaterally reduced both the contract period and the estimated price of the contract due to its later-than-expected award of the contract. Golden West submitted a claim for money allegedly due because of the Government's action. The contracting officer denied the claim and Golden West appealed to this Board.

The appeal was bifurcated into entitlement and quantum phases. Following a hearing on entitlement, the Board granted the appeal in part finding that appellant was entitled to an equitable adjustment pursuant to the Changes clause, dismissed it in part for lack of jurisdiction, and remanded the matter to the parties for negotiation of quantum. Golden West Environmental Services, 2000-02 BCA ¶ 30,990 (DOTBCA 2000).

When negotiations had continued unsuccessfully over several months, the parties requested a telephone conference with the presiding judge to discuss the quantum issues. During that conference the parties agreed to engage in alternative dispute resolution [ADR] proceedings to assist the resolution of the quantum issues. The parties submitted briefs setting forth their positions as to the correct method for computing quantum. Thereafter, the Board conducted telephone conferences to mediate a settlement. When several more months passed after the ADR conferences without settlement, the Board reinstated the case to the docket and set a date for hearing the quantum elements of the case. The Government then conducted discovery on the quantum issues. Approximately three months later the parties notified the Board that the case had been settled for approximately 50 % of the amount claimed. The Board then dismissed the case.

Discussion

I. Eligibility

A. Net Worth and Size Criteria

To be eligible for an award of attorney fees pursuant to EAJA, an applicant that is a corporation may not have a net worth in excess of \$7,000,000 or more than 500 employees at the time the adversary adjudication was initiated. 5 U.S.C. § 504(b)(1)(B). Relying upon Fields v. United States, 29 Fed. Cl. 376 (1993), in response to Golden West's application, the Government observed that Golden West had failed to provide any supporting documentation with the affidavit of Mr. Bailey Neff, applicant's president, in which he stated that, at the time the adversary action was commenced, appellant's net worth and number of employees met the eligibility requirements. According to the Government the affidavit by itself is not sufficient support for an EAJA application without supplementation. In reply, Golden West submitted another affidavit by Mr. Neff detailing the assets and liabilities as well as documentation supporting the values assigned to the assets and liabilities. These materials demonstrate that Golden West meets EAJA's eligibility requirements.

B. Prevailing Party

The EAJA provides in relevant part that:

An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

5 U.S.C. § 504(a)(1). A claimant is a prevailing party if it receives actual relief on the merits of the case that materially alters the legal relationship of the parties in a way that directly benefits the claimant. Neal & Company, Inc. v. United States, 121 F.3d 683, 685 (Fed. Cir. 1997). A party may prevail without achieving a complete victory or recovering all of the requested damages. *Id.* When a party obtains only a partial victory it is entitled to fees apportioned between the successful and unsuccessful claims and to receive a pro rata portion of its fees and expenses. *Id.*

The Government concedes that Golden West was the prevailing party in the entitlement phase of the Board proceedings. However, the Government contends that Golden West should not receive any fees or expenses for the quantum phase of the litigation because Golden West was not a prevailing party within the meaning of Buckhannon Board and Care Homes, Inc. v. West Virginia Department of Health and Human Resources, 532 U.S. 598 (2001). According to the Government, because the parties settled the quantum issue without obtaining an order in the nature of a consent decree from the Board, there was no judicially sanctioned change in the legal relationship between the parties. Golden West contends that the Board's decision on entitlement constituted the judicially sanctioned change required by Buckhannon.

In Buckhannon, the plaintiffs sued for a declaratory judgment that requirements of certain state regulations violated the Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). While the suit was pending the state legislature eliminated the offensive requirements and the case was dismissed as moot. Thereafter, the plaintiffs moved for attorney fees as a "prevailing party" under the fee shifting provisions of the FHAA and the ADA. The Court affirmed the lower court's denial of the motion. It held that a prevailing party, as the term is used in various fee shifting statutes, is one who has been awarded some relief by a court such as a judgment on the merits or a judicially ordered consent decree. *Id.*,

at 603. There must be a judicially sanctioned change in the parties' legal relationship, such as a judgment on the merits or a court-ordered consent decree, in order to be a prevailing party. *Id.* at 604, 622. While a defendant's voluntary change in conduct may accomplish the results a plaintiff sought in a law suit, it lacks the necessary judicial imprimatur on the change. *Id.* at 605-06.

Unlike the parties in *Buckhannon*, the dispute between Golden West and the Government was not resolved by voluntary action. Rather, the Board's decision holding that Golden West was entitled to an equitable adjustment constituted the judicially sanctioned material alteration in the parties' legal relationship. That the parties were then able to settle the quantum aspect of the appeal without obtaining the Board's imprimatur does not diminish Golden West's status as a prevailing party in the adversary adjudication. Haselrig Construction Company, Inc. 03-2 BCA @ 32,325. Consequently, we find that Golden West was a prevailing party for all purposes in the adversary adjudication.

C. Substantial Justification

Pursuant to the EAJA, the Government is required to award attorney fees and expenses to an eligible prevailing party unless the Government's position was substantially justified. 5 U.S.C. § 504 (a) (1). The Government's position is considered to be substantially justified if the position had a reasonable basis in law and fact. Pierce v. Underwood, 487 U.S. 552, 565 (1988). Thus, the Government must be justified to a degree that would satisfy a reasonable person. *Id.* The Government bears the burden of proving that its position was substantially justified. Heifer v. West, 174 F.3d 1332, 1336 (Fed. Cir. 1999); Community Heating & Plumbing Co., Inc. v. Garrett, 2 F.3d 1143, 1145 (Fed. Cir. 1993). The Government's position encompasses both its prelitigation and litigation positions. Doty v. United States, 71 F.3d 384, 386 (Fed. Cir. 2000).

Here, the Government concedes that its position was not substantially justified as to entitlement but contends that it was substantially justified in defending against the quantum aspects of the claim because of Golden West's faulty legal theories and failure to adequately document and support the amount claimed. While the Government's position on different issues may be more or less justified, "the EAJA - like other fee shifting statutes - favors treating a case as an inclusive whole rather than as atomized line-items." Comm'r v. Jean, 496 U.S. 154, 161-62 (1990). Whether the Government's position is substantially justified requires a "single finding" that "operates as a one-time threshold for fee eligibility." *Id.* at 160. Therefore, although the adversary adjudication was bifurcated into entitlement and quantum phases, we make only one determination as to whether the Government's position was substantially justified. In light of the Government's concession that its position was not substantially justified as to the entitlement issue, Golden West satisfies this aspect of the eligibility test.

II. Quantum

Before considering whether apportionment of fees and expenses is appropriate in this case, we first examine the Government's specific objections to the fees and expenses claimed by Golden West. Golden West's application in the total amount of \$53,404.36 is broken down into three sections - the entitlement phase, the quantum phase and the preparation of the EAJA application as follows:

Entitlement Phase

Steven D. Meacham (Attorney of record) 187.7 hours @ \$125 per hour = \$22,837.50

Van C. Thompson (Paralegal) 116 hours @ \$85 per hour = 9,860.00
 Deborah Johnson (Position unknown) 1 hour @ \$40 per hour = 40.00
 Expenses (phone, mail, hotel, airfare) --1,884.91
 Total Fees & Expenses-Entitlement = \$34,662.41 Quantum Phase

Steven D. Meacham

84.6 hours @ \$125 per hour = \$10,575.00
 Gayle Hillman (Law Clerk) 32.1 hours @ \$90 per hour = 2,889.00
 Brad Grooms (Position unknown) 1 hour @ \$45 per hour = 45.00
 Expenses -- 1,547.50
 Total Fees & Expenses-Quantum = \$15,056.96

EAJA Application

Kevin P. Donnelly (Attorney) 23.3 hours @ \$125 per hour = \$2,912.50
 Steven D. Meacham 6.5 hours @ \$125 per hour = \$812.50
 Total Fees-EAJA Application = \$3,725.00

In support of its claim Golden West submitted fee and expense transaction lists. The Government observes, however, that Golden West included fees beginning in June 1994 despite the fact that the contracting officer's final decision was not issued until March 8, 1995. Further, Golden West claimed fees at the rate of \$125 during the time when the EAJA-authorized rate prior to March 29, 1996, was only \$75.00. The Government also objects to the rate claimed for paralegals, to the lack of invoices and explanations for claimed expenses, and to certain specific transactions that do not appear to be related to the appeal. Moreover, the Government argues that Golden West failed to limit its applications to fees and expenses allocable to the portion of the appeal in which it was a prevailing party as required by the Board's Interim EAJA Rule 10. We address these issues below.

A. Fees for Services Performed Prior to the Adversary Adjudication

EAJA allows reimbursement of fees and expenses incurred in connection with an "adversary adjudication." In the context of Contract Disputes Act (CDA) cases, EAJA defines an adversary adjudication as "any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. § 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. § 607)." Thus, "at the earliest, EAJA coverage may begin after the decision of and in pursuit of an appeal from the decision of the contracting officer." Levernier Construction, Inc. v. United States, 947 F.2d 497, 502 (Fed. Cir. 1991); ROI Investments v. General Services Administration, GSBICA 15488-C(15037-C)-REIN, 01-1 BCA ¶ 31,352, at 154,827; Donahue Electric, Inc, 2003-2 BCA P 32,370 (VABCA 2003), Upwest Corp., 02-1 BCA ¶ 31,847 (PSBCA 2002).

The contracting officer's decision was issued on March 8, 1995. However, Golden West included in its EAJA application \$3,318 in attorney fees for work performed from May 25, 1994, through January 17, 1995. Because they were incurred before Golden West's receipt of the contracting officer's decision they are not

recoverable. Consequently, we deny recovery of the \$3,318 incurred prior to March 8, 1995.

B. Fees claimed at \$125 for work performed prior to March 29, 1996

Golden West's application included fees at the rate of \$125 for the period when the statutory cap on fees was \$75.00 per hour. The \$75.00 hourly rate authorized by EAJA remained in effect until March 29, 1996, when it was raised to \$125 by Public Law 104-121, § 231. Golden West seeks fees in the amount of \$3,687.50 at the rate of \$125 for the period after the contracting officer issued the final decision through March 7, 1996. According to the Government, any award of EAJA for fees incurred during that period should be reduced from the claimed \$125 per hour to \$75 per hour.

The EAJA is a waiver of sovereign immunity and must be strictly construed. Chiu v. U.S., 948 F.2d 711, 720 (Fed. Cir. 1991), quoting Library of Congress v. Shaw, 478 U.S. 310, 318 (1986). We may not apply the Act beyond what its language requires. *Id.* Consequently, Golden West's fee award must be limited to the statutory cap of \$75 for the fees incurred prior to March 29, 1996.

Golden West expended 29.5 hours during the period when the rate authorized by EAJA was \$75. Because Golden West's application was calculated at the rate of \$125 for that period we reduce the amount that Golden West may recover by the \$50 per hour difference. Therefore, we deny \$1,475 of Golden West's claimed fees because they were calculated at a rate in excess of the \$75 statutory limit.

Paralegal Expenses

The Government objects to Golden West's claim for paralegal expenses at the rate billed to the client rather than at the cost to the firm. Golden West has acknowledged in its reply brief that its two paralegals were independent contractors paid at the rates of \$31 per hour and \$30 per hour respectively. Nevertheless, Golden West urges that we allow the rate billed to Golden West of \$85 per hour. There is a split among the Boards which have squarely addressed this issue. Some boards limit the amount recoverable for paralegal fees to the cost to the firm. Walsky Construction, 95-2 BCA ¶ 27,889 (ASBCA 1995) at 139,135-36; Haselrig Construction Company, Inc., 03-2 BCA ¶ 32,325 (PSBCA 2003); Akcon, Inc., 91-3 BCA ¶ 24,147 (ENGBCA 1991); Gracon Corp., 90-1 BCA ¶ 22,550 (IBCA 1990), Francis Paine Logging, 92-3 BCA ¶ 25,043 (AGBCA 1992). Other boards permit recovery at the rate billed to the client. Adams Construction Company, 98-1 BCA ¶ 29,479 (VABCA 1997); Kumin Associates, Inc., 1998 WL 633970 (L.B.C.A.), 98-2 BCA ¶ 30,008, (LBCA 1998); Spectrum Leasing Corp., 93-1 BCA ¶ 25,317 (GSBCA 1992). Lamb Engineering & Construction Company 98-2 BCA ¶ 30,075, (EBCA 1998).

The EAJA is silent concerning how paralegal services are to be treated. The Act states:

(A) "Fees and expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees.

5 U.S.C. § 504 (b) (1) (emphasis added).

The foregoing provision characterizes fees and expenses differently. Expenses include expert witness fees and the costs of other activities necessary for the preparation of a party's case. Fees, on the other hand, are identified as attorney

fees or agent fees. [FN1] The amount billed to Golden West for the services of paralegals is neither an attorney fee nor agent fee; rather it is among the "other expenses" which may be reasonably necessary for the preparation of the party's case. This view is supported by the legislative history of the Act. As stated in *Walsky supra*,

... the United States Senate found it necessary to clarify the meaning of "fees and expenses" because of inconsistent judicial interpretation. Insofar as pertinent, the Senate report provided as follows: 'Examples of the types of expenses that should ordinarily be compensable include paralegal time (billed at cost)... .Senate Report No. 98-586, 98th Congress, 2d Session, at 14 (August 8, 1984).

Walsky Construction, 95-2 BCA ¶ 27,889 (ASBCA 1995) at 139,135-36.

In *Adams Construction Company, supra*, where the board allowed recovery of paralegal fees at the rate billed to the client, the board relied upon Missouri v. Jenkens, 491 U. S. 274 (1989), Levernier Construction Inc. v. United States, 947 F.2d 497 (Fed. Cir. 1991) and Kunz Construction Co., Inc. v. United States, 16 Cl. Ct 431 (1989) aff'd 899 F.2d 1227 (Fed. Cir. 1990) (Table). However, those cases are inapposite. *Missouri v. Jenkins* involved a civil rights fee shifting statute which did not include the legislative history applicable to this EAJA case. In *Levernier* and *Kunz Construction Co.*, the issue of whether the cost to the law firm was the appropriate measure of recovery for paralegal services was not litigated. In *Levernier*, the only issue involving paralegal expenses was whether they were eligible for a cost of living adjustment (COLA). In *Kunz Construction Co.*, the Government did not object to the hourly rate claimed for paralegals, which appears to have been the amount billed. Consequently, we do not find *Adams Construction* to be persuasive.

Given the absence of guidance in the Act itself as to the manner in which paralegal expenses are to be treated and in light of the legislative history, we conclude that paralegal expenses may be recovered in the amount of the cost to the firm.

In this case, the cost to the firm during the entitlement phase of the litigation was the \$31 per hour rate charged by the independent contractor who provided paralegal services. During the quantum phase the paralegal charged \$30 per hour. Golden West argues that there were associated overhead costs so the Board should award paralegal expenses at the rate of \$50 per hour. However, Golden West did not offer any evidence or explanation of the amount of alleged overhead costs. Therefore, we allow paralegal expenses at the cost of \$31 for the entitlement phase and \$30 per hour for the quantum phase of the appeal. Thus, the amount that may be recoverable for the 116 hours of paralegal services incurred during the entitlement phase is \$3,596. The amount that may be recoverable for the 32.1 hours incurred during the quantum phase is \$963.

Other Claimed Fees

Golden West included a fee of \$40 for 1 hour of work by Deborah Johnson during the entitlement phase and \$45 for Brad Grooms during the quantum phase. The positions of Ms. Johnson and Mr. Grooms are not identified in the application. However, the description of the work they performed reflects secretarial and clerical work. Those types of overhead costs are not separately recoverable. Bennett v. Department of Navy, 699 F.2d 1140, fn. 5 (Fed. Cir. 1983). We deny the amount claimed for these two individuals.

Other Objections [FN2]

The Government has objected to expenses for messenger services incurred during the entitlement phase of the litigation in the total amount of \$512.72, because of Golden West's failure to provide invoices and to explain the reason such fees were necessary. The Government also contests \$110 in messenger fees for serving subpoenas on two persons who did not testify at the hearing. Golden West did not address these issues in its reply to the Government's answer to the EAJA application.

From the record, it appears that Golden West used messengers rather than regular mail as a matter of course. Due to Golden West's scant documentation, we are not able to conclude that it reasonably incurred all of the messenger fees claimed. Consequently, we deny \$100 of the amount claimed. We also deny the \$110 in messenger fees associated with the subpoenas to persons who did not testify at the hearing, leaving \$302.72 as a reasonable allowance for messenger fees.

The Government also took issue with Golden West's claim for \$389.70 in photocopying charges and \$15.48 for telephone charges incurred during the entitlement phase for lack of adequate substantiation. Appellant replied to this issue in a footnote, stating "given the location of the parties [Livermore and Oakland, California] and attorneys [Seattle, Washington, and Washington, D.C.] in this case and the substantial amount of paperwork, correspondence, and pleadings, it is self-evident that substantial photo copies and long distance charges would be incurred." Golden West's Reply Brief, pp 8-9, fn. 1. A review of the record reveals that Golden West's explanation is reasonable. Therefore, we allow the amounts claimed for photocopying and telephone charges.

The Government specifically objects to \$1,275.00 claimed for the expense of an expert report by Procam, Inc.. As the Government has observed, there is no identification of the nature and purpose of the report nor did Golden West provide any invoice for the report. Given the lack of information in the record concerning this report, we deny recovery of it as an EAJA expense.

Apportionment

An award of fees and expenses where the threshold EAJA conditions are met is not automatic upon an applicant surmounting the size, prevailing party, and substantial justification thresholds. The Supreme Court has instructed that the amount of fees to be awarded is a matter for the Board's discretion. *Hensley v. Eckerhart*, 461 U.S. at 437; accord *Chiu v. United States*, 948 F.2d at 713.

The starting point for determining the amount of a reasonable EAJA award is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. However, other considerations may warrant the upward or downward adjustment of the award depending upon the degree of success achieved. *Hensley v. Eckerhart*, 461 U.S. at 434; *Comm'r v. Jean*, 496 U.S. 154, 163 n. 10 (1990).

When a prevailing party has achieved only partial success, the result obtained is a crucial factor in making a fee award. *Hensley v. Eckerhart*, 461 U.S. at 434; *Comm'r v. Jean*, 496 U.S. at 163 n. 10. For example, when an appeal presents distinctly different claims for relief that are based upon different facts and legal theories, fees may be awarded only for services on successful claims. However, some cases present only one claim while others may involve multiple claims based upon a core set of facts or related legal theories. In these latter cases, we must look to the significance of the overall relief obtained in relation to the hours reasonably expended. *Hensley v. Eckhart*, 461 U.S. at 435.

A review of the record reveals that, although Golden West meets the threshold

requirements for receiving an award of fees and expenses, it did not prevail on certain claims in the entitlement phase and it unnecessarily prolonged the quantum phase by repeatedly seeking lost profits and by failing to adequately document its claim.

Specifically, in the entitlement phase, the issues raised were: 1) whether the contract was void ab initio; 2) whether Golden West was entitled to an equitable adjustment pursuant to the Changes clause; 3) whether the contract estimates were negligently prepared; 4) whether the Government breached its duty of good faith and fair dealing; and 5) whether the Government breached the contract by placing orders with other contractors for work covered by Golden West's contract. Golden West prevailed on only the equitable adjustment issue. Therefore, the Government contends that Golden West's EAJA award should be limited to only the fees incurred in prosecuting that issue.

However, the question of whether the contract was void ab initio (Issue No. 1) was based upon the same facts and circumstances as the equitable adjustment claim (Issue No. 2). Issue No. 1 was not a separate claim but merely represented an alternate theory of recovery. Consequently it is not appropriate to apportion fees between those two issues as they reflected the same claim.

On the other hand, we found that a portion of issue 3 and issues 4 and 5 were not within the Board's jurisdiction because they presented separate and distinct claims that had not been submitted to the contracting officer for a decision as required by the Contract Disputes Act, 41 U.S.C. § 601 et seq., or because they had been expressly excluded from the claim that had been submitted to the contracting officer. [FN3] Thus, Golden West is not entitled to fees for work performed on those claims.

With very minor exception, it is impossible to determine from the entries on Golden West's fee transaction lists whether the fees and expenses claimed are attributable to the claim on which Golden West prevailed or to the other unsuccessful claims. Having nothing else to guide us, we resort to Golden West's post-hearing brief to make an approximation of the fees attributable to these unsuccessful claims. See Goss Fire Protection, 98-1 BCA ¶ 29,713 (DOTBCA 1998).

Of 50 proposed findings of fact, Golden West devoted approximately 15 to the unsuccessful claims. Of 17 pages of legal argument, Golden West devoted 7 pages to the unsuccessful claims. Based upon this limited information and using a jury verdict approach we find that the claims for fees should be reduced by 30% to account for services performed on the unsuccessful claims. Therefore, we find that \$12,631.15 in fees attorney fees and \$2,517.20 in paralegal expenses were reasonably spent in prosecuting the claims on which Golden West was successful during the entitlement phase.

It is also appropriate to apportion the fees and expenses claimed for the quantum phase of the adversary adjudication if the applicant unreasonably prolonged the litigation.

In our entitlement decision and in several subsequent attempts to mediate the quantum issue, the Board stated that the Government's actions in this case were a change to the contract and that the remedy was an equitable adjustment pursuant to the "Changes" clause. Nevertheless, Golden West repeatedly argued that it was entitled to anticipatory profits, an element not recoverable in an equitable adjustment. William Green Const. Co., Inc. v. U. S., 477 F.2d 930, 936 (Ct. Cl. 1973). The exclusion of unearned profits from an equitable adjustment is a well-settled principle of Federal Government contract law. General Builders Supply Co. v. United States, 409 F.2d 246, 251 (Ct. Cl. 1969).

Further, it was only after the Board scheduled the quantum issue for a hearing and the Government undertook discovery on quantum that Golden West provided sufficient information to permit the Government to make a meaningful evaluation of the amount claimed. Previously, Golden West had simply presented lists of its job costs with some identified as constituting unrecovered start-up costs. Golden West provided little or no explanation of the costs. Under these circumstances we again use the jury verdict approach and find that only 50% of the fees and paralegal expenses claimed for the quantum phase were reasonably incurred. Therefore, we award \$5,287.50 for attorney fees and \$481.50 for paralegal expenses for the quantum phase of the case.

Finally, the Government argues that the fees claimed for preparation of the EAJA application should be apportioned to reflect the fact that Golden West prevailed on only one of the litigated issues. The Government offered no legal authority for that position and we are not aware of any. However, it is appropriate to apportion the fees charged to prepare and defend the EAJA application where "exorbitant, unfounded, or procedurally defective" fee applications are presented. Comm'r v. Jean, 496 U. S. at 163, fn. 10; Fritz v. Principi, 264 F.3d 1372, 1377, fn. 1 (Fed. Cir. 2001); Chiu v. U.S., 948 F.2d at 722.

We recognize that in *Commissioner v. Jean*, the example given for an appropriate reduction of an award for fees incurred to prepare the EAJA application was that an EAJA applicant should not receive fees for defending a higher paralegal rate than ultimately awarded. In this case, however, although we are awarding paralegal services at a rate lower than that claimed, we find that a reduction in fees is not warranted given the split of authority on the proper measure of paralegal expenses.

Golden West claims attorney fees for 23.3 hours of work by an associate of the firm and 6.5 hours by the attorney of record for the preparation of the EAJA application. We find that the fees claimed for that work are not so exorbitant, unfounded, or procedurally defective as to require a reduction of the EAJA award. Therefore, Golden West may recover \$3,725 in attorney fees for preparing the EAJA application.

Summary

Golden West is entitled to attorney fees and expenses as follows:

Attorney Fees - Entitlement	\$12,631.15
Attorney Fees - Quantum	5,287.50
Paralegal Expenses - Entitlement	2,517.20
Paralegal Expenses - Quantum	481.50
Other Expenses - Entitlement	707.90
Other Expenses - Quantum	252.50
Attorney Fees - EAJA Application	3,725.50
Total Fees and Expenses	\$25,603.25

DECISION

The EAJA application is granted. We award to Golden West \$25,603.25 in attorney fees and expenses.

Eileen P. Fennessy

Deputy Chief Administrative Judge

Vice Chairman

Concur:

James L. Stern

Chief Administrative Judge

Chairman

Jeri Kaylene Somers

Administrative Judge

FN1. Congress understood the term "agents" to be persons who are not trained in the law and generally not authorized to practice law, and who are not authorized to represent clients without special permission of a given tribunal. See Cook v. Brown, 68 F.3d 447, 451 (Fed.Cir. 1995)

FN2. The Government objected to specific entries for attorney fees on August 8, 1994, and September 9, 1994, because they do not relate to the matter. We have already eliminated these fees by disallowing fees claimed for services performed before the contracting officer's decision was received by Golden West.

FN3. We found that the claim of negligently prepared estimates was within the Board's jurisdiction only to the extent that the Government's unilateral change to the price and performance period of the contract was undertaken without regard to the contract estimates.

DOTCAB No. 2895A