



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: October 18, 2011

CBCA 2472-C(1576)

TST TALLAHASSEE, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Cecil H. Macoy, Jr. and Michael J. Brandt of Wallace, Jordan, Ratliff & Brandt, LLC, Birmingham, AL, counsel for Appellant.

Joylyn Winters, Office of the General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **BORWICK**, **McCANN**, and **DRUMMOND**.

DRUMMOND, Board Judge.

TST Tallahassee, LLC (TST) has submitted an application for reimbursement of fees and costs under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006), incurred in connection with its successful prosecution of the captioned appeal. Initially, TST sought \$56,018.75 in attorneys' and paralegal fees and \$519.34 in other expenses, for a total of \$56,538.09. The Department of Veterans Affairs (VA) has expressed no objection to the award.

During a conference call held in September 2011, TST, through its counsel, withdrew the request for \$175 (0.5 attorney hours on June 11, 2010) for “Letter from T. Hydlar re janitorial services.” This work is unrelated to this appeal. As amended, TST’s application seeks a total of \$56,363.09 in attorneys’ and paralegal fees and expenses. The VA has no objection to the application as amended.

TST’s amended application seeks reimbursement for 191.4 attorney hours (6.5 of which predate issuance of the contracting officer’s February 6, 2009, final decision) at rates ranging from \$185 to \$350 per hour.

The starting point for an EAJA claim is receipt of the contracting officer’s final decision. *Levernier Construction, Inc. v. United States*, 947 F.2d 497, 499-501 (Fed. Cir. 1991); *Trailboss Enterprises, Inc.*, 5454E, et al., 00-1 BCA ¶ 30,800. Accordingly, the attorney fees incurred before February 6, 2009, are not recoverable. We reduce the hours claimed by 6.5 hours to a total of 184.9 hours.

TST states the requested attorneys’ fees are justified because:

The hourly rates charged are within market norms for the geographical location and relevant legal market of counsel, the attorneys’ skill and experience levels and professional standing and reputations, and the scope, nature, complexity, and significance of the representation.

The EAJA provision regarding the recovery of fees and other expenses associated with an agency’s conduct of an adversary adjudication is clear. It reads:

[A]ttorney or agent fees shall not be awarded in excess of \$125 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or agents for the proceedings involved justifies a higher fee.

5 U.S.C. § 504(b)(1)(A)(ii).

While a judicial tribunal is free to make the determination that a fee in excess of the statutory rate of \$125 per hour is justified by an increase in the cost of living or a special factor, an administrative tribunal, such as ours, cannot do so in the absence of an agency regulation addressing that issue. *NVT Technologies, Inc. v. General Services Administration*, GSBCA 16195-C(16047), 03-2 BCA ¶ 32,401. TST has referred us to no agency regulation, nor are we aware of any VA regulation, which determines that an increase in the cost of living or some special factor justifies award of a fee based upon an hourly rate greater than

\$125. In the absence of such a regulation, we decline to make an award at a rate greater than the statutory rate. Accordingly, TST is entitled to recover 184.9 attorney hours at \$125 per hour for a total of \$23,112.50.

Fees for paralegals are recoverable under the EAJA. *Richlin Security Service Company v. Chertoff*, 553 U. S. 571 (2008); *Spectrum Leasing Corp. v. General Services Administration*, GSBICA 10902-C(7347), et al., 93-1 BCA ¶ 25,317, at 126,153. TST seeks to recover for 1.3 hours expended by paralegals at an hourly rate of \$115. Accordingly, TST is entitled to recover 1.3 paralegal hours at \$115 per hour for a total of \$149.50.

Finally, TST is entitled to reimbursement of its expenses in the amount of \$519.34.

Decision

The cost application is **GRANTED IN PART**, as revised. TST is awarded fees and expenses totaling \$23,781.34.

JEROME M. DRUMMOND
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

R. ANTHONY McCANN
Board Judge