



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: March 24, 2025

CBCA 8268-C(7213, 7393)

ADAPT CONSULTING, LLC,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Joseph A. Whitcomb of Whitcomb, Selinsky, P.C., Lakewood, CO, counsel for Applicant.

Justin Hawkins and David C. Charin, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **LESTER**, **ZISCHKAU**, and **SULLIVAN**.

ZISCHKAU, Board Judge.

Applicant, Adapt Consulting, LLC, timely filed an application to recover attorney fees and related expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2018), after the Board granted its appeals in part. *Adapt Consulting, LLC v. General Services Administration*, CBCA 7213, et al., 24-1 BCA ¶ 38,625. Respondent, the General Services Administration (GSA or agency), opposes the application, arguing that its actions were reasonable and substantially justified. GSA additionally argues that the amount of fees Adapt seeks to recover is unreasonable. We grant Adapt's application in part.

Background

The Initial Appeal and the Board's Decision

The Board presumes familiarity with the facts stated in our merits decision which we briefly summarize here. On September 14, 2021, Adapt appealed a partial termination for default in a contract to update approximately 110 physical access control systems in a building occupied by the Environmental Protection Agency (EPA). GSA issued a partial termination for default due to thirteen doors repeatedly receiving “fault/fault clear” (F/FC) messages in the enterprise security software maintained by EPA. Once EPA informed Adapt of the issue, Adapt made repeated efforts to investigate and remedy the situation. After almost seven months investigating and troubleshooting the issue, Adapt and its team determined that the F/FC messages were the result of environmental conditions outside of Adapt’s control and that operation of Adapt’s systems were functioning as designed. GSA was not satisfied with Adapt’s response and ultimately issued a partial termination for default of Adapt’s contract due to the F/FC issue being unresolved in thirteen doors. Adapt appealed the termination, and the case was docketed as CBCA 7213. On May 5, 2022, Adapt additionally appealed GSA’s denial of several affirmative monetary claims stemming from the same contract, docketed as CBCA 7393. Both appeals were consolidated.

On July 22, 2024, we sustained Adapt’s challenge of the partial termination for default, concluding that GSA had failed to show that the termination for default was justified. Of the \$220,870.85 sought by Adapt in its affirmative monetary claims, we granted recovery totaling \$97,907.41 (claim A—\$2,048.10, claim B—\$17,460.31, claim C—\$22,243.09 (in addition to the \$46,484 GSA had already paid under claim C), and claim I—\$56,155.91). We denied recovery for claims D, F, G, and H, primarily because Adapt had failed to provide sufficient records to support those claims. Adapt sought reconsideration of our denial of recovery for claim F, which we denied on August 23, 2024. *Adapt Consulting, LLC v. General Services Administration*, CBCA 7213-R, et al., 24-1 BCA ¶ 38,645, at 187,869. The decision became final on November 19, 2024. 41 U.S.C. § 7107 (2018).

Adapt’s EAJA Application and GSA’s Opposition

On November 25, 2024, Adapt submitted its petition under EAJA, seeking to recover \$135,291.23, consisting of \$128,237.50 in attorney fees and \$7,053.73 in expenses. Adapt calculated its attorney fees by multiplying its counsels’ total hours, 1025.9 hours, by the EAJA statutory hourly rate limit of \$125 per hour. 5 U.S.C. § 504(b)(1)(A). The expenses Adapt identified were incurred in the litigation of its appeals after the partial default termination. Adapt submitted three exhibits with its EAJA petition: (1) an affidavit confirming that the company employed less than 500 employees and its total assets were less

than \$7,000,000; (2) attorney time billing records beginning on October 7, 2021, with brief descriptions of the purpose for the charges and the billed amount; and (3) a list of expenses related to the litigation. Applicant's Brief, Exhibits A-C.

GSA responded that Adapt should not recover because the contracting officer's decision to issue a partial termination for default of Adapt's contract, the denial of the monetary claims, and the legal positions the agency took before the Board were substantially justified. GSA also argued that the fees requested were unduly excessive because the amount sought exceeds the amount Adapt recovered on its monetary claims. GSA highlighted that Adapt had eight attorneys working on its appeals at one time or another, which likely led to overlap and redundancy in work. GSA noted that, because the descriptions provided in Adapt's attorney time logs are not very descriptive, it is difficult to determine how much of the fees were excessive.

In its reply, Adapt explained that different attorneys worked on different issues and different parts of the litigation. Adapt also argued that, unlike its monetary claims, its success in overturning the default termination did not have a direct monetary value.

Discussion

For an EAJA applicant to be successful, the applicant must meet five requirements: (1) be a prevailing party in a United States proceeding; (2) if a corporation, it cannot have more than \$7,000,000 in net worth and 500 employees at the time the adversary adjudication was initiated; (3) submit a timely application within thirty days of the final adjudication; (4) include a list of attorney fees and related costs with the total amount sought; and (5) allege that the position of the agency was not substantially justified. *Vet4U, LLC v. Department of Veterans Affairs*, CBCA 6612-C(5387), 20-1 BCA ¶ 37,504, at 182,187 (citing 5 U.S.C. § 504(a)(1), (2), (b)(1)(B)); *Paradise Pillow, Inc. v. General Services Administration*, CBCA 5237-C(3562), 17-1 BCA ¶ 36,628, at 178,366; see also *Hughes Group LLC v. Department of Veterans Affairs*, CBCA 7857-C(5964), 24-1 BCA ¶ 38,552, at 187,376.

We find that Adapt has met all five prima facie elements for an EAJA application. GSA only contests the fifth element, arguing that the agency's actions, both in contract administration and during litigation, were substantially justified.

Substantial Justification

“Once an applicant has fulfilled the statutory requirements under EAJA, the burden shifts to the agency to show that its position was substantially ‘justified to a degree that could

satisfy a reasonable person.” *Hughes Group LLC*, 24-1 BCA at 187,376 (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). We will find a position substantially justified “if it had a reasonable basis in law and fact.” *Silver Enterprises v. Department of Transportation*, CBCA 63-C(DOT BCA 4459, et al.), 07-1 BCA ¶ 33,496, at 166,016 (citing *Pierce*, 487 U.S. at 565). The Court of Appeals for the Federal Circuit, in *In re Secretary of the Army*, notes that whether the position of the agency was substantially justified is to be determined based on the tribunal’s consideration of the record as a whole, rather than on particular issues or claims within the adjudication. 124 F.4th 922, 929-30 (Fed. Cir. 2024); see 5 U.S.C. § 504(a)(1). We consider several factors in determining substantial justification, including each party’s success in the litigation, the extent to which the agency forced the contractor into litigation to obtain relief, and whether the agency’s conduct overall was justified in the administration of the contract. See *Michael Johnson Logging v. Department of Agriculture*, CBCA 7187-C(5089, et al.), 23-1 BCA ¶ 38,460, at 186,938 (citing *DRC Corp. v. Department of Commerce*, GSBCE 15172-C(14919-COM), 00-1 BCA ¶ 30,841, at 152,227-28; *Dream Management, Inc. v. Department of Homeland Security*, CBCA 5739-C(5517), 17-1 BCA ¶ 36,916, at 179,861; *Vet4U, LLC*, 20-1 BCA at 182,187-88); see also *Hughes Group LLC*, 24-1 BCA at 187,376-77.

Similarly, in *Chiu v. United States*, the Federal Circuit instructed tribunals “to look at the entirety of the government’s conduct and make a judgment call whether the government’s overall position had a reasonable basis in both law and fact.” 948 F.2d 711, 714-15 (Fed. Cir. 1991). Thus, we must review whether the agency’s actions, both for the termination for default and in its denial of the claims, were substantially justified.

We conclude that the agency’s actions relating to the default termination and the monetary claims, under the totality of the circumstances, were not substantially justified. GSA did not have a reasonable basis in fact or law for the termination decision, and, after its own investigation and discovery in the litigation, GSA should not have forced Adapt to litigate the termination through a merits hearing. GSA was unable to point to any evidence that the F/FC messages were caused by defective work by Adapt or its subcontractors. We further conclude that Adapt’s only option to receive relief from the partial termination was to appeal the determination and litigate. We have previously recognized that when a contractor faces a termination for default, it faces “the severest of sanctions asserted against it, . . . [and is] forced to appeal the termination to obtain [any] relief.” *Hughes Group LLC*, 24-1 BCA at 187,377.

Similarly, we conclude that the agency’s decision to deny entitlement on virtually all of the monetary claims was not justified. The record before us shows that the contracting officer advanced erroneous bases in the final decision for denying entitlement to Adapt’s claims. As noted in our merits decision, there was no justification for denying entitlement,

and some of the monetary claims were tied to the unsupported default termination. The agency's overall conduct cannot be justified. Adapt was forced to appeal the contracting officer's denials and litigate the monetary claims before us.

EAJA Fee Calculations

The United States Supreme Court and the Federal Circuit have held that tribunals have the "discretion to adjust the amount of fees for various portions of the litigation, guided by reason and the statutory criteria." *Immigration & Naturalization Service v. Jean*, 496 U.S. 154, 165-66 (1990).

GSA argues that even if we find for Adapt, we should conclude that the attorney fees sought are unreasonable. GSA does not identify specific billings that are unreasonable and seems to leave it to this Board to go line-by-line to assess the billings. We see no reason to reduce an award when "we find a reasonable division of the work and no overlapping fees or costs." *Hughes Group LLC*, 24-1 BCA at 187,379. Even if multiple attorneys worked on a single matter, such as discovery, we see no reason to reduce the award on this basis alone, since the case had some level of complexity and there were instances of GSA's lack of cooperation, which required more work on the part of Adapt's counsel.

"[T]he amount of fees and expenses awarded must be commensurate with the degree of success obtained." *Michael Johnson Logging*, 23-1 BCA at 186,938 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 435-36 (1983)). No single formula exists to determine an EAJA award where fees for some claims are recoverable and others are not. In this case, it is difficult to ascertain the scope of legal work by claim based on the brief descriptions for each line item in the attorney time logs. In instances like this, we may assign a percentage reduction based on the overall work put in for each issue through estimation. *See, e.g., Golden West Environmental Services v. Department of Homeland Security*, DOT BCA 2895A, 05-1 BCA ¶ 32,869, at 162,897-98 (reducing fees by 30% based on approximately 30% of the applicant's briefs being dedicated to losing claims); *Baldi Brothers Constructors v. United States*, 52 Fed. Cl. 78, 83 (2002) ("Because plaintiff's records do not permit the court to determine with a reasonable degree of confidence how much time was spent on these issues, the court finds that a *pro rata* reduction in plaintiff's total recovery of 33.3% is warranted."); *WECC, Inc.*, ASBCA 60949, 22 1 BCA ¶ 38,115, at 185,141-42 (assigning a 20% reduction based on work put in on losing claims).

Adapt was largely successful in its appeals. Invalidation of the termination for default was the most important relief that it sought and obtained. Adapt also successfully established entitlement to nearly all of its monetary claims and recovered slightly less than half of the quantum sought. Adapt was not successful in proving quantum on some of the claims where

entitlement was established, primarily because it failed to provide adequate documentation of its costs. Based on our review of the billing records for the attorneys, paralegals, and law clerk, we have found no time entries that strike us as unreasonable, considered individually and as a whole. We find that a value of 75% of Adapt's total billings is reasonable in light of Adapt's degree of success and that a 25% reduction is appropriate for its lack of success in establishing quantum on several of the claims. We further find that Adapt is entitled to recover its related expenses totaling \$7,053.73. These expenses are adequately supported in the record.

Consistent with the above determinations, we make the following calculations to award Adapt appropriate fees. Adapt claims 1025.9 hours, incurred among eight attorneys, several paralegals, and a law clerk. Paralegals and law clerks are recoverable at the market rate for which they were billed, subject to the \$125 statutory cap that the EAJA applies to attorney fees. *See Michael Johnson Logging*, 23-1 BCA at 186,940 (permitting EAJA recover for paralegal fees subject to the statutory cap); *see also Asia Commerce Network*, ASBCA 58623, 19-1 BCA ¶ 37,352, at 181,625 (permitting recovery of paralegal and law clerk fees at market rate because they were below the statutory cap threshold). Since all fees sought by Adapt exceed the statutory cap, we multiply recoverable hours by \$125. The recoverable fees at the statutory cap are \$128,237.50. Applying the 25% reduction, Adapt is entitled to \$96,178.12. We add related expenses of \$7053 for a total EAJA award of \$103,231.12.

Decision

We **GRANT IN PART** Adapt's EAJA application in the amount of \$103,231.12.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

We concur:

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge