

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT NOSKA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

ORDER

12-cv-370-bbc

Plaintiff Robert Noska prevailed against the United States in his action for judicial review of defendant Carolyn W. Colvin's denial of his application for social security disability benefits and now seeks an award of attorney fees. In his amended motion for fees, dkt. #40, he has asked for an award in the amount of \$8,862.61 (42.9 hours at a rate of \$177.45 plus 25 hours at a rate of \$50 an hour for administrative time) plus \$1,739.01 for time expended on his motion for fees.

Commissioner Colvin does not contend that plaintiff is not entitled to fees because the position of the government was "substantially justified" or that plaintiff is not the prevailing party or that any special circumstances make an award of fees unjust. However, she does oppose plaintiff's request for fees in excess of the statutory rate of \$125 an hour on the ground that plaintiff has failed to meet the requirements for such fees. She contends that plaintiff has not shown that an increase in the cost of living requires an upward

adjustment or that lawyers capable to handling the action cannot be found in the relevant geographic area. I disagree with this contention for the reasons expressed in previous opinions, e.g., Weronke v. Astrue, 11-cv-353-bbc (attached) and will grant plaintiff's motion for fees at the hourly rate of \$177.45 for the 52.7 hours of non-administrative time.

ORDER

IT IS ORDERED that plaintiff Robert Noska's motion for an award of attorney fees is GRANTED in the total amount of \$10,601.61.

Entered this 20th day of September, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DALE WERONKE,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

11-cv-353-bbc

Plaintiff Dale Weronke filed an appeal from defendant Commissioner of Social Security's denial of his application for Social Security disability benefits. He sought disability benefits or a remand to the commissioner for a new hearing in compliance with the law and he asked for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, on the ground that the commissioner's action in this case was not substantially justified.

After defendant filed an answer and a copy of the administrative record, plaintiff's counsel moved for summary judgment and filed a brief in support of the motion. Dkts. ##8 & 9. He moved a month later to amend his complaint; defendant filed an answer to the amended complaint. A day later, the parties filed a joint stipulation for remand, which was granted on October 28, 2011.

On November 25, 2011, plaintiff filed a motion and supporting brief, asking for

attorney fees in the amount of \$6727.50 under the EAJA, representing 37.90 hours at an hourly rate of \$177.50. Defendant raised no objection to an award of fees, but disputed the amount sought on two grounds: the hourly rate sought by plaintiff was above the ceiling set in the Act, 28 U.S.C. § 2412(d)(2)(A), and the hours expended were more than necessary for the work done.

Congress set a ceiling of \$125.00 an hour for legal work eligible for EAJA reimbursement, but it left some leeway in the statute to award fees above this statutory ceiling. The court could set a higher rate if it determined that doing so was justified by increases in the cost of living or by the limited availability of qualified attorneys for the proceedings involved. Mathews-Sheets v. Astrue, 653 F.3d 560, 562 (7th Cir. 2011). In this case, an increase in the statutory rate is justified on both grounds.

In affidavits attached to his briefs, plaintiff's counsel has made a compelling showing that increases in the cost of living over the past 16 years, modest as they have been in recent years, warrant a hourly rate of \$177.50. Dkt. #20-2. As for available lawyers experienced in social security appeals, counsel has submitted an affidavit signed by plaintiff to the effect that he shopped for the best available attorney for the most reasonable fee before choosing his counsel. Dkt. #20-3. Although this affidavit might be boilerplate, there is no reason to think that it overstates the situation. I can take note from the experience in this court that, in the last year in particular, social security claimants have had difficulty finding counsel who are able to take their cases. In part, this is attributable to a major effort by the Social Security Administration to resolve the backlog of cases in this district that have been

awaiting administrative hearings for many years. (The Social Security Administration has enlisted the help of administrative law judges from other areas of the country; many of them have held hearings by video conference.) The result of this effort is that an unusually large number of claimants want to bring appeals at the same time.

Defendant has objected to the number of hours that plaintiff's counsel expended in this case, but that objection borders on the frivolous. Thirty-eight hours expended to meet with a new client, file a complaint, file and brief a motion for summary judgment, file an amended complaint along with a motion to amend and negotiate with defendant about remand is by no means excessive. Only an experienced lawyer could accomplish so much for his client in such a short time.

Defendant says that some of counsel's work could have been done by a secretary or paralegal, but counsel has explained that he does not have any legal assistants. In any event, after careful analysis of the fee request, defendant was able to show only 1.8 hours that might have been done by someone else. My own review of the work done in those 1.8 hours does not suggest that the work was of such a routine nature that it should not be compensated.

Defendant's unfounded objections to the fee request necessitated an extensive response from plaintiff's counsel for which plaintiff seeks a supplemental fee award in the amount of \$372.75. This request will be granted, along with the initial request.

ORDER

IT IS ORDERED that plaintiff Dale Weronke's request under the Equal Access to Justice Act for a fee award of \$6727.75 for the work done on his case, dkt. #19, and \$372.75 for briefing the fee award request, dkt. #24, for a total award of \$7,100.00, is GRANTED.

Entered this 7th day of March, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge