UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-40582
Summary Calendar

PATRICK BREAUX,

Plaintiff-Appellant,

VERSUS

UNITED STATES SECRETARY OF
DEPARTMENT HEALTH AND HUMAN SERVICES

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana

(91-CV-184)

(January 11, 1995)

Before REYNALDO G. GARZA, DUHÉ, AND EMILIO M. GARZA, Circuit Judges.

PER CURIAM*

I.

Patrick Breaux (the "appellant") filed a complaint in the district court for review of a final decision by the Secretary of Health and Human Services (the "Secretary") that denied his

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

application for disability benefits. After its initial review, the district court ordered that the case be remanded to the Secretary. Appellant then filed an application for attorney fees under the Equal Access to Justice Act ("EAJA").[1] That application was denied by the lower court, and this Court affirmed the order. However, the Supreme Court remanded the case to this Court for reconsideration in light of Shalala v. Schaefer, 509 U.S.---, 113 S.Ct. 2625 (1993).

On remand from the Supreme Court, this Court issued an opinion on January 5, 1994, that appellant's EAJA application should be considered timely. See Breaux v. Shalala, 20 F.3d 1324 (5th Cir. 1994). Breaux then filed an amended EAJA application on behalf of his paralegal, requesting an hourly rate of $60 per hour for work performed in the district court, $75 per hour for work performed in this Court and $90 per hour for work performed in the Supreme Court. In turn, the Secretary asserted that Breaux should receive $40 per hour for work in the district court and that this Court and the Supreme Court should be presented the fee request for the services performed in those venues.

A magistrate judge responded by recommending that Breaux be awarded fees at an hourly rate of $40 for the paralegal's service at *all* three court levels. After a de novo review of the law and the issues, the recommendation was adopted by the district court and a corresponding judgment was entered on April 21, 1994. The appellant appeals this judgment.

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[1]28 U.S.C. § 2412 (1994).

II.

A district court's EAJA award is reviewed for abuse of discretion. Pierce v. Underwood, 487 U.S. 552, 571 (1988). The EAJA authorizes awards of attorney's fees and expenses to a prevailing party in certain civil actions brought by or against the government. See Dole v. Phoenix Roofing, Inc., 922 F.2d 1202, 1205 (5th Cir. 1991). Even though an appellate court may have jurisdiction to decide an EAJA application, "rarely will the district court not be the appropriate tribunal" to make the initial determination on the EAJA application. Jackson v. Sullivan, No. 92-4721, slip op. at 3 (5th Cir. March 4, 1993) (quoting U.S. v. 329.73 Acres of Land, 704 F.2d 800, 811-12 (5th Cir. 1983) (en banc)); see Rose v. United States Postal Service, 774 F.2d 1355, 1363-64 (9th Cir. 1984) (EAJA application requires a ruling from the district court in the first instance); see also Ashton v. Pierce, 580 F.Supp. 440, 441 (D.D.C. 1984) (EAJA application for costs and expenses incurred in both district court and court of appeals decided by district court). The rationale behind these decisions is that the district court, as a fact finder, is in a better position to evaluate a request for attorney's fees than an appellate court. Dole, 922 F.2d at 1209.

Section 2412(d)(2)(A) of the EAJA provides that the attorney's fees recovered by a prevailing party "shall be based upon prevailing market rates for the kind and quality of the services furnished," but "shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living

or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." The magistrate has shown that $40 per hour is the appropriate market rate for work done by a paralegal before the district courts in the Western District of Louisiana.[2] There is no reason for this court to believe that this award will not properly compensate the paralegal for his work. The district court did not abuse its discretion in awarding fees. Therefore, these fees will be upheld.

As for the money awarded for work done before this Court and the Supreme Court, we find those fees proper as well. This Court has yet to mandate a specific rate which paralegals must earn for work done in conjunction with an EAJA fee application and we decline to establish one today. In addition, though we have said in the past that "different hourly rates *may* be rationally justified at the appellate and district court levels,"[3] we have not required them to so differ. Whether they should differ depends solely on the facts of each case.

In this case, the record is devoid of issues requiring

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[2]The magistrate has also shown that $40 is an appropriate hourly rate for the same paralegal work done before the Fifth Circuit. See Richard v. Secretary of Health & Human Services, No. 86-1898-LC (W.D. La. 1993); cf. Jackson v. Sullivan, No. 92-4721, slip op. at 5 (5th Cir. March 4, 1993) (Fifth Court awarded an hourly rate of over $77 for paralegal). Other courts have allowed fees that are even less than $40. See e.g., Stockton v. Shalala, 36 F.3d 49 (8th Cir. 1994) (paralegal's rate of compensation at $30 was proper rather than the $50 per hour requested); Hirschey v. F.E.R.C., 777 F.2d 1, 6 (D.C. Cir. 1985) (uncontested rate of $30 per hour for paralegal's work proper).

[3]Jackson v. Sullivan, No. 92-4721, slip op. at 5 (5th Cir. March 4, 1993).

distinctive knowledge or a specialized skill which would entail the fee structure demanded by Breaux. See Pierce v. Underwood, 487 U.S. 552, 572 (1988) (the phrase "limited availability of qualified attorneys for the proceedings" refers to attorneys having some distinctive knowledge or specialized skill needful for the litigation in question). This was a straightforward social security disability case that did not involve particularly difficult or complex issues,[4] so there is no basis for departing from the fees recommended below. Moreover, the fact that the paralegal is experienced in these type of cases does not by itself justify a fee in excess of the statutory limit nor diverging hourly rates. This is not to say that no case ever warrants fees exceeding the $75 statutory limit, we merely believe that this is not one of them.[5] For these reasons, the courts below are affirmed.

AFFIRMED.

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[4]Stockton v. Shalala, 36 F.3d 49, 50 (8th Cir. 1994) (citing Pierce v. Underwood, 487 U.S. 552, 572 (1988)).

[5]Breaux does not argue any tangible facts in his brief to substantiate the towering rates demanded except to say that "[he] doubts, as a general matter, that the value of his senior paralegal's services in this case...should have been fixed at $40.00 per hour." Furthermore, he justifies the $90 hourly rate cited in his brief by stating that the rate does not exceed the $100 hourly fee traditionally awarded to attorneys in the Louisiana courts. The problem with this statement is that the ceiling Breaux cites deals with the traditional rate awarded to *attorneys*, not *paralegals*. If paralegals were commonly awarded the same fees as attorneys without any substantial justification, it would defeat a major purpose for using paralegals, i.e., to minimize the costs of legal representation.