

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 01-501

DANIEL E. ABBEY,

APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before KRAMER, *Chief Judge*, and IVERS and STEINBERG, *Judges*.

ORDER

On January 17, 2002, the appellant filed, through counsel, an application for an award of attorney fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (EAJA). On April 25, 2002, the Court issued an order in this case staying proceedings pending disposition of *Wilson v. Principi*, No. 01-691. *Abbey v. Principi*, No. 01-501, 2002 WL 745958 (Vet. App. Apr. 25, 2002). *Wilson* was decided on December 12, 2002. *Wilson*, __ Vet.App. __, No. 01-691, 2002 WL 31770890 (Dec. 12, 2002). In *Wilson*, the Court determined, based on the evidence presented there, that \$90 per hour was the prevailing market rate for the work of the appellant's non-attorney practitioner in that case and awarded attorney fees based on that rate for his work. *Id.* at __, slip op. at 4, 7-9, 2002 WL 31770890, at *3, 5-6. The sole matter in dispute in the instant case is what constitutes a reasonable hourly rate, based on the evidence presented here, for an EAJA attorney fee for the work of the same non-attorney practitioner who represented the appellant in *Wilson*.

Upon consideration of the foregoing, it is

ORDERED that the April 25, 2002, stay is lifted. It is further

ORDERED that, not later than 30 days after the date of this order, the appellant file, and serve on the Secretary, a memorandum (which may present additional evidence) that explains why the prevailing market rate in this case should not be \$90 per hour. *See Wilson*, __ Vet.App. at __, slip op. at 7-8, 2002 WL 31770890, at *5; *id.* at __, slip op. at 10-13, 2002 WL 31770890, at *7-10 (Kramer, C.J., dissenting). It is further

ORDERED that, not later than 20 days after service of the appellant's memorandum, the Secretary file, and serve on the appellant, a response. Not later than 15 days after service of the Secretary's response, the appellant may file a reply.

DATED: December 20, 2002

PER CURIAM.