

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nikole Denise Burt v. SSA Commissioner

Burt · No. 22-cv-00441-TSH · Decided January 9, 2026

OPINION

Burt

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 NIKOLE DENISE BURT, Case No. 22-cv-00441-TSH 8 Plaintiff,

ORDER GRANTING MOTION FOR

9 v. ATTORNEY’S FEES

10 SSA COMMISSIONER,

11 Defendant. 12

13 I. INTRODUCTION

14 After Plaintiff Nikole Denise Burt brought this action for review of the Commissioner of 15
Social Security’s decision to deny benefits, the Court remanded the case, and the Commissioner
16 subsequently issued a decision in her favor. Plaintiff’s attorney, Francesco Benavides, now
seeks 17 \$15,000 in attorney’s fees under section 206(b) of the Social Security Act, 42 U.S.C. §
406(b). 18 ECF No. 24. For the following reasons, the Court GRANTS the motion.

19 II. BACKGROUND

20 Plaintiff brought this action for judicial review under the Social Security Act, 42 U.S.C. § 21
405(g). On June 2, 2022, the Court granted the parties’ stipulation to remand for further 22
proceedings. ECF No. 20. The Court subsequently granted the parties’ stipulation for attorney’s 23
fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of \$6,900. 24
ECF No. 23. 25 On remand, the Commissioner granted Plaintiff’s application and awarded
retroactive 26 benefits. Mot., Ex. 1 (Notice of Award), ECF No. 24-1. The notice did not specify
the total 27 amount of Plaintiff’s back-due award of disability benefits but advised Plaintiff that
25% of her 1 past-due benefits being withheld to pay attorney fees, equating to 25% of the back-
due award, was 2 \$24,772. Id. 3 Under a contingent-fee agreement, Plaintiff agreed to pay counsel
up to 25% of any past- 4 due benefits award. Mot., Ex. 3 (Fee Agreement), ECF No. 24-3.
Benavides requests a fee of 5 \$15,000. Mot. at 3. The government filed a statement of non-
opposition, disclaiming any direct 6 financial stake in the outcome of this motion and affirming its
role in fee determination as akin to 7 a “trustee for the claimants.” ECF No. 26 at 2 (quoting

Gisbrecht v. Barnhart, 535 U.S. 789, 798 8 n.6 (2002)). Plaintiff has not filed an objection to the motion for fees and the deadline for doing so has passed.

10 III. LEGAL STANDARD

11 Attorneys handling social security proceedings may seek fees for their work under both the 12 EAJA and the Social Security Act. While the government pays an award pursuant to the EAJA, 13 an award pursuant to § 406 of the Social Security Act is paid out of a successful claimant's past- 14 due benefits. See 42 U.S.C. § 406(b)(1)(A); Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 15 1991), abrogated on other grounds by Sorensen v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).

16 Section 406(b)(1) provides that a federal court that "renders a judgment favorable to a claimant . . .

17 who was represented before the court by an attorney" may grant the attorney "a reasonable fee for 18 such representation, not in excess of 25 percent of the total of the past-due benefits to which the 19 claimant is entitled by reason of such judgment." In passing § 406, Congress sought to protect 20 attorneys from the nonpayment of fees, while also shielding clients from unfairly large fees. 21 Gisbrecht, 535 U.S. at 805. 22 The Supreme Court in Gisbrecht explained that § 406(b) is meant "to control, not to 23 displace, [contingency] fee agreements between Social Security benefits claimants and their 24 counsel." 535 U.S. at 793. Even if a fee request under § 406(b) is within the 25 percent statutory 25 limit, the attorney bears the burden of showing that the fee sought is reasonable, and the court is 26 responsible for serving as an "independent check" to ensure the reasonableness of the fee. Id. at 27 807. Following Gisbrecht, the Ninth Circuit has instructed that a § 406(b) fee request should be 1 Crawford v. Astrue, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc) (quoting Gisbrecht, 535 U.S. at 2 808). The court should consider "the character of the representation and the results the 3 representative achieved," and determine "whether the amount [of fees specified in the contingency 4 fee agreement] need be reduced," for such reasons as "substandard performance, delay, or benefits 5 that are not in proportion to the time spent on the case." Id. at 1151. The reasonableness 6 determination is not governed by the lodestar method, because "[t]he lodestar method under- 7 compensates attorneys for the risk they assume in representing [social security] claimants and 8 ordinarily produces remarkably smaller fees than would be produced by starting with the 9 contingent-fee agreement." Id. at 1150. However, "the court may require counsel to submit a 10 record of hours spent and a statement of normal hourly billing charges[,] . . . but only as an aid in 11 assessing the reasonableness of the fee." Id. (emphasis in original). 12 Additionally, a § 406(b) fee award is offset by any award of EAJA fees. Thus, if the court 13 awards fees under both the EAJA and § 406(b), "the claimant's attorney must refun[d] to the 14 claimant the amount of the smaller fee." Gisbrecht, 535 U.S. at 796 (citation omitted).

15 IV. DISCUSSION

16 The Court finds counsel has met his burden to demonstrate the requested fees are 17 reasonable. First, counsel has presented a valid contingent fee agreement. Mot., Ex. 3. Benavides

18 states he has been practicing Social Security law for approximately 15.5 years and, outside of
19 contingency fee related representation, his hourly rate ranges from \$350 to \$550 per hour. 20
Benavides Decl. ¶¶ 6-7, ECF No. 24. Second, he has supplied timesheets documenting hours 21
worked. Mot., Ex. 4 (timesheet), ECF No. 24-4. Benavides states he spent 35.7 hours working on
22 this case, leading to an effective hourly rate of \$420.17 per hour. Id.; Benavides Decl. ¶ 9.
Third, 23 there is no evidence that counsel's work was substandard or that the fee award is
disproportionate 24 to the amount of work on the case, and the effective hourly rate is within the
range of what courts 25 have approved under § 406(b). See, e.g., *E.P. v. Bisignano*, 2025 WL
3771618, at *2 (N.D. Cal.

26 Dec. 31, 2025) (awarding Mr. Benavides's fee request that provides an hourly rate of
\$1,017.34);

27 *Guttig v. SSA Comm'r*, 2025 WL 3539155, at *2 (N.D. Cal. Dec. 10, 2025) (awarding Mr. 1
6149710, at *2 (N.D. Cal. Oct. 20, 2020) (awarding fee request that provides an hourly rate of 2
\$1,325.34); *Villa v. Astrue*, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7, 2010) (approving § 406(b)
3 fees exceeding \$1,000 per hour and noting: "Reducing § 406(b) fees after *Crawford* is a dicey 4
business"). Moreover, counsel obtained an excellent result for his client and took on the risk of 5
contingent representation. The Court is mindful of the Ninth Circuit's instruction that "lawyers 6
are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their 7
fees" because "[t]he payoff is too uncertain." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
8 (9th Cir. 2008). "As a result, courts should generally defer to the 'winning lawyer's professional
9 judgment as to how much time he was required to spend on the case.'" *Costa v. Comm'r of Soc.*
10 *Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (quoting *Moreno*, 534 F.3d at 1112); see also
11 *Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003) ("The courts recognize that 12
basing a reasonableness determination on a simple hourly rate basis is inappropriate when an 13
attorney is working pursuant to a reasonable contingency contract for which there runs a 14
substantial risk of loss."). As such, the requested fee is also reasonable because of the substantial
15 risk of loss inherently involved in representing Social Security disability claimants. 16 Once
the Court determines the fee sought under § 406(b) is reasonable, it must account for 17 the
attorney's fees paid by the Commissioner under the EAJA. *Gisbrecht*, 535 U.S. at 796. 18
"Congress harmonized fees payable by the Government under EAJA with fees payable under § 19
406(b) out of the claimant's past-due Social Security benefits" by requiring the claimant's attorney
20 to refund to the claimant the amount of the smaller fee up to the point where the claimant
receives 21 100% of the past-due benefits. Id. Here, the Court finds counsel's § 406(b) request
reasonable, 22 and therefore counsel shall refund to Plaintiff the \$6,900 in EAJA fees previously
awarded. See 23 *Crooks v. Kijakazi*, 2022 WL 1469519, at *2 (N.D. Cal. May 10, 2022) (finding
§ 406(b) request 24 reasonable and directing counsel to refund to client fees previously awarded
under the EAJA).

25 V. CONCLUSION

26 For the reasons stated above, the Court GRANTS counsel's motion for attorney's fees. 27 The
Commissioner is directed to certify fees under 42 U.S.C. § 406(b) in the amount of \$15,000, 1
Plaintiff. 2 IT IS SO ORDERED. 3 4 || Dated: January 9, 2026

THOMAS S. HIXSON

6 United States Magistrate Judge 4 8 9 10 11 12 13 15 QO 16 17 Z 18 19 20 21 22 23 24 25 26 27
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