

**IN THE UNITED STATES COURT OF
APPEALS FOR VETERANS CLAIMS**

NATHAN YANCY,)	
)	
Appellant,)	
)	
v.)	Vet. App. 14-3390
)	
ROBERT A. MCDONALD,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**SECRETARY’S RESPONSE UNDER U.S. VET. APP. R. 39(a)(1) TO
APPELLANT’S APPLICATION FOR ATTORNEY FEES AND EXPENSES**

Pursuant to U.S. Vet. App. Rule 39(a)(1), Appellee, Robert A. McDonald, Secretary of Veterans Affairs (Secretary), responds to Appellant’s application for an award of attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

Appellant’s EAJA application satisfies the jurisdictional requirements of the statute as set out by this Court in *Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996) (*en banc*). Additionally, the Secretary concedes Appellant has met the three predicate findings for an EAJA award: (1) Appellant is a “prevailing party”; (2) the Secretary’s position was not “substantially justified”; and (3) there are no “special circumstances” which would make an award unjust. 28 U.S.C. § 2412(d).

The parties have discussed the EAJA application in this case and have agreed to reduce the amount requested by \$3,000. The Secretary, for the sole

purpose of avoiding further litigation and the costs related thereto, does not contest the reasonableness of Appellant's attorney fees or expenses, in the instant case, under the current case law, see 28 U.S.C. § 2412(d)(1)(C), and is prepared to make payment to Appellant and his representative of record. The Secretary's concession here, however, in no way denotes the Secretary's position as to any issue or matter presented herein which may potentially affect the litigation or settlement of future applications for attorney fees and costs filed with this Court pursuant to 28 U.S.C. § 2412.

CONCLUSION

WHEREFORE, the Secretary respectfully responds to Appellant's application for the award of attorney fees and other expenses, and advises the Court he does not contest an award in an amount deemed reasonable by the Court, up to the reduced amount of **\$22,245.76**, agreed to by the parties.

Respectfully submitted,

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