

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

|                                |   |                            |
|--------------------------------|---|----------------------------|
| <b>DAVID P. HILL,</b>          | ) |                            |
|                                | ) |                            |
| Appellant,                     | ) |                            |
|                                | ) |                            |
| v.                             | ) | Vet. App. No. 14-1811 EAJA |
|                                | ) |                            |
| <b>DAVID J. SHULKIN, M.D.,</b> | ) |                            |
| Secretary of Veterans Affairs, | ) |                            |
|                                | ) |                            |
| Appellee.                      | ) |                            |

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

Pursuant to U.S. Vet. App. Rule 39(b), Appellee, Secretary of Veterans Affairs, 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. See *Bazalo v. Brown*, 9 Vet. App. 304, 308 (1996) (*en banc*). The Secretary further concedes that Appellant meets 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 Secretary submits that Appellant’s Counsel has agreed to a reduction of fees in the amount of \$32, 935.01.

For purposes of avoiding further litigation, the Secretary is not contesting the reasonableness of Appellant's attorney fees or expenses under the current case law. See 28 U.S.C. § 2412(d)(1)(C).

### **CONCLUSION**

**WHEREFORE**, Appellee, respectfully responds to Appellant's application for the award of attorney fees and other expenses, and advises the Court that he does not contest an award in an amount deemed reasonable by the Court, up to \$32,935.01.

Respectfully submitted,

**MEGAN FLANZ**  
Interim General Counsel

**MARY ANN FLYNN**  
Chief Counsel

/s/ Kenneth A. Walsh  
**KENNETH A. WALSH**  
Deputy Chief Counsel

/s/ Bobbiretta E. Jordan  
**BOBBIRETTA E. JORDAN**  
Appellate Attorney  
Office of the General Counsel (027J)  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
(202) 632-6955

Attorneys for the Secretary  
of Veterans Affairs