

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

ROBERT W. JENSEN)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 15-4788
)	
DAVID J. SHULKIN, M.D.,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLEE’S RESPONSE TO APPELLANT’S APPLICATION
FOR ATTORNEY FEES**

Pursuant to U.S. Vet. App. Rule 39(a), Appellee, David J. Shulkin, M.D., Secretary of Veterans Affairs, responds to Appellant’s application for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

Appellant’s EAJA application satisfies the jurisdictional requirements of the statute. See 28 U.S.C. § 2412(d)(1)(B). Additionally, the Secretary concedes that 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. See 28 U.S.C. § 2412(d).

Appellee, 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). Appellee’s concession here, however, in no way denotes his 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, Appellee responds to Appellant's application for attorney fees, and advises this Court that he does not contest an award in an amount deemed reasonable by the Court, but not to exceed \$ 21,500.00¹.

Respectfully submitted,

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Selket N. Cottle
SELKET N. COTTLE
Deputy Chief Counsel

Date: February 22, 2018

/s/ Sarah W. Fusina
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¹ By email on February 21, 2018, the parties agreed to the reduced amount of \$21,500.00.