

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

THOMAS I. LYLES, JR.,)
Appellant,)
)
v.) Vet. App. No. 16-0994
)
ROBERT L. WILKIE,)
Acting Secretary of Veterans Affairs,)
Appellee.)

**SECRETARY’S RESPONSE TO APPELLANT’S APPLICATION FOR
ATTORNEY FEES AND EXPENSES**

Pursuant to U.S. Vet. App. R. 39(a)(1), the Secretary states: Appellant’s application satisfies the requirements of 28 U.S.C. § 2412(d) (EAJA). Additionally, Appellant has met the three predicate findings for an award of attorney fees and expenses under EAJA: (1) Appellant is a “prevailing party”; (2) the Secretary’s position was not “substantially justified”; and (3) there are no “special circumstances” that would make an award unjust. See 28 U.S.C. § 2412(d).

The Secretary, for the sole purpose of avoiding further litigation and related costs, does not contest the reasonableness of Appellant’s fees or expenses, see 28 U.S.C. § 2412(d)(1)(C), and he is prepared to make payment to Appellant and the representative of record. The Secretary’s concession here, however, in no way denotes his position as to any issue or matter presented herein that 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 advises the Court that he does not contest an award in an amount deemed reasonable by the Court, up to \$24,231.27.¹

Respectfully submitted,

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General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Edward V. Cassidy, Jr.
EDWARD V. CASSIDY, JR.
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/s/ Megan C. Kral
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¹ The parties engaged in discussions and mutually agreed to this amount, which varies from Appellant's original request.