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September 18, 2018

Mr. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Ave., N. W. - Suite 900
Washington, D.C. 20004-2950

RE: Ravin, Sean A.
No. 16-2057
Citation to Supplemental Authority by the Appellant

Dear Clerk:

Pursuant to U.S. Vet.App. R. 30(b), this is to bring to the Court's attention supplemental authority that is relevant to the above-referenced case now pending before the Court. The supplemental authority is as follows:

38 C.F.R. § 14.636(h)(3).

This authority pertains to Mr. Ravin's argument, at page 11, of Mr. Ravin's Supplemental Memorandum of Law in Support of Overruling of This Court's Decision in *Carpenter v. Principi* that the same work is not performed under § 5904(d) and an award of fees under EAJA. However, VA has interpreted the phrase "past-due benefits" as used by Congress in 38 U.S.C. § 5904(d) to mean for the purposes of calculating the fee payable to an attorney includes an award which results from a determination made by "an appellate court" in 38 C.F.R. § 14.636(h)(3). As a result of this interpretation by VA only when the work performed before this Court results in a reversal of the Board's denial of benefits and an order that the veteran be paid the benefits denied and also awards fees under EAJA is the same work performed before the agency and this Court requiring an offset of the fees awarded.

The more likely circumstance is that the work performed before this Court results in a remand to the Board based on an administrative error made by the Board requiring readjudication of the claim or claims. Although an award of fees under EAJA may be awarded and later award of fees under § 5904(d) will not be based on the “same work” performed before this Court.

Thank you for your attention to this matter.

Sincerely,

/s/Kenneth M. Carpenter

Kenneth M. Carpenter

Counsel for Appellant,

Sean A. Ravin

Electronically filed September 18, 2018