IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

CATHIE J. TOLLIVER, Appellant,	)	
v.	)	Vet. App. No. 16-3465
ROBERT L. WILKIE, 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, 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.

For purposes of this litigation, the Secretary does not dispute that Appellant's EAJA application satisfies the jurisdictional requirements of the statute as set out by this court, *Bazalo v. Brown*, 9 Vet. App. 304, 308 (1996) (en banc), or that Appellant has met the three predicate findings for an EAJA award: that (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).

Further, and for the sole purpose of avoiding further litigation and the costs related thereto, the Secretary does not contest the reasonableness of the amount requested and is prepared to make payment to Appellant and his representative of record. The Secretary'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, Secretary of Veterans Affairs, 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 $25,234.59.

Respectfully submitted,

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