

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

MICHAEL MANGNANTI,

Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Appellee.

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Vet. App. No. 15-4045

**JOINT MOTION TO WITHDRAW APPELLANT'S APPLICATION
FOR AN AWARD OF ATTORNEY FEES AND EXPENSES
AND TO ENTER MANDATE IN THIS ACTION**

Pursuant to U.S. Vet. App. R. 27(a), the parties respectfully move to withdraw the September 21, 2018, application for attorney fees and expenses under the Equal Access to Justice Act (EAJA) in the amount of \$15,568.49 (the "Application"). The parties have agreed to settlement with respect to the attorney fees issue and have entered into a stipulated agreement (the "Agreement").

The Agreement provides that Appellant shall release the Secretary from all claims to attorney fees and expenses accrued to date in connection with his appeal of the June 24, 2015, decision of the Board of Veterans' Appeals (Board) at issue in this case in exchange for a total payment of \$15,568.49. The Agreement provides further that the obligation to make such payments is conditioned on the successful withdrawal of the Application and entry of mandate in this action.

The parties have agreed that the amount reflected in the Agreement represents full and complete compensation for all fees and expenses incurred to date by Appellant in connection with his appeal of the June 24, 2015, Board decision, inclusive of any and all fees and expenses incurred to date by him in connection with his attempt to obtain attorney fees and expenses for his successful litigation of the same. The parties believe the Agreement is fair, reasonable, and adequate under the circumstances, and that their interests are better served if the claims against the Secretary are resolved through settlement rather than litigation.

The parties acknowledge that the Agreement is entered into solely for the purpose of avoiding further litigation and shall not be construed to be an admission of liability or a concession by either party. The parties further agree that the Agreement shall have no effect upon the parties' rights or obligations arising out of the Court's May 31, 2018, memorandum decision issued in this case.

The authority of the Department of Veterans Affairs (VA) to settle cases through its General Counsel is clear from its governing statutes and from this Court's decisions. The General Counsel represents the Secretary before the U.S. Court of Appeals for Veteran's Claims (Court). 38 U.S.C. § 7263(a). In entering into this settlement agreement, the General Counsel is following well-established principles regarding the Government attorney's authority to terminate lawsuits by settlement or compromise, which principles date back well over a century. *Compare Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) ("[G]overnment attorneys [should] settle cases whenever possible.") (*citing*

Executive Order on Civil Justice Reform, [Exec. Order No. 12,778, 3 C.F.R. § 359 (1991), *reprinted in* 28 U.S.C.S. § 519 (1992)]] *with* 2 Op. A.G. 482, 486 (1831). See *also* Executive Order on Civil Justice Reform, Exec. Order 12,988, 61 Fed. Reg. 4729 (Feb. 7, 1996); *Stone v. Bank of Commerce*, 174 U.S. 412 (1899); *Campbell v. United States*, 19 Ct. Cl. 426, 429 (1884).

The parties have resolved, to their mutual satisfaction, the issues raised by this matter and aver that: (1) this is not a confession of error by the Secretary; and (2) this agreement disposes of the Application now before the Court. In view of the foregoing, the parties respectfully move the Court to issue an order withdrawing Appellant's September 21, 2018, application for attorney fees and expenses under the Equal Access to Justice Act (EAJA) in the amount of \$15,568.49 and entering mandate in the EAJA phase of this litigation.

Respectfully submitted,

COUNSEL FOR APPELLANT:

/s/ Chris Attig
Chris Attig, Attorney
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FOR APPELLEE:

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN

Chief Counsel

/s/ James B. Cowden

JAMES B. COWDEN

Deputy Chief Counsel

/s/ Ronen Morris

RONEN MORRIS

Acting Deputy Chief Counsel

Office of General Counsel

U.S. Department of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, D.C. 20420

(202) 632-7113

STIPULATED AGREEMENT

This settlement agreement (Agreement) is entered into by and on behalf of Michael Mangnanti ("Appellant") and Robert L. Wilkie, Secretary of Veterans Affairs (the "Secretary" or "Appellee," and together with Appellant the "Parties") for the purpose of settling Appellant's claims for attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

WHEREAS, on May 31, 2018, the Court issued a decision that vacated that part of a June 24, 2015, decision of the Board of Veterans' Appeals (the "Board") that denied an effective date earlier than June 3, 2009, for the grant of service connection for diabetes mellitus, and remanded the matter for readjudication.

WHEREAS, on September 21, 2018, Appellant submitted an application for attorney fees and expenses under the EAJA in the amount of \$15,568.49 for work performed in connection with his successful appeal of the June 24, 2015, Board decision (the "Application").

WHEREAS, the Secretary challenged the propriety of the requested award of fees and expenses.

WHEREAS, parties have reached an amicable resolution of the outstanding issues and desire to avoid further litigation of the Application

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound by the terms herein, the Parties stipulate and agree as follows:

1. Appellant agrees to withdraw his September 21, 2018, application for attorney fees and expenses under the Equal Access to Justice Act in the amount of \$15,568.49, and agrees further to waive any additional fees and expenses incurred to date in connection with the present appeal;
2. Appellant agrees to release the Secretary from all claims to attorney fees and expenses accrued to date in connection with his appeal of the June 24, 2015, Board decision, inclusive of any and all claims for attorney fees and expenses incurred in connection with the litigation of the Application, upon receipt of the payment specified in Paragraph 3 of this Agreement.
3. The Secretary agrees to pay, and Appellant agrees to accept, a total sum of **fifteen thousand five-hundred sixty-eight dollars and forty-nine cents (\$15,568.49)**, payment to be made to Michael Mangnanti and Chris Attig.

4. This Agreement shall not affect the rights or obligations of either party arising out of the Court's May 31, 2018, memorandum decision with respect to Appellant's appeal of the June 24, 2015, Board decision.
5. The parties make no representations concerning the issues of "prevailing party," "substantial justification," or "special factors" as defined in 28 U.S.C. § 2412, or as to the reasonableness of the requested fees and expenses.
6. This Agreement constitutes the entire understanding between the parties and any other representations, in writing or otherwise, concerning the contents of the Agreement are void and ineffective;
7. The parties agree that this Agreement is entered into for the sole purpose of avoiding further litigation and the costs related thereto. The parties agree that this settlement is based on the unique facts of this case and in no way should be interpreted as binding precedent for the disposition of future cases.
8. The parties agree to cooperate with each other and the Court in effecting the provisions of this Agreement.

Respectfully submitted,

COUNSEL FOR APPELLANT:

Date: 6/10/19

/s/ Chris Attig
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FOR APPELLEE:

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN
Chief Counsel

Date: 6/10/19

/s/ James B. Cowden
JAMES B. COWDEN
Deputy Chief Counsel

/s/ Ronen Morris

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