

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

KATIE DEMERY,)
Appellant,)
)
v.) Vet. App. No. 17-3469-EAJA
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
)
Appellee.)

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

Pursuant to U.S. Vet. App. Rule 39(b), Appellee, the Secretary of Veterans Affairs (Secretary), respectfully 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.

Appellant's EAJA application satisfies the jurisdictional requirements of the statute as set out by this Court. *See Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996) (en banc). Additionally, 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" that would make an award unjust. 28 U.S.C. § 2412(d).

The Secretary, 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 and is prepared to make payment to Appellant and the representative of record. The Secretary's

concession here, however, in no way denotes the Secretary's position as to any issue or matter presented herein which may potentially affect the litigation or settlement of future applications for attorney fees and expenses filed with this Court pursuant to 28 U.S.C. § 2412.

Counsels for the parties have negotiated a reduction in the total award. The amount has been reduced from to \$24,043.06 to \$19,738.11.

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 **\$19,738.11**.

Respectfully submitted,

JAMES M. BYRNE
General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Kenneth A. Walsh
KENNETH A. WALSH
Deputy Chief Counsel

/s/ Sarah C. Blackadar _____

SARAH C. BLACKADAR

Appellate Attorney

Office of the General Counsel

U.S. Department of Veterans Affairs

810 Vermont Avenue, NW

Washington, DC 20420

(202) 632-6795

Attorneys for Appellee

Secretary of Veterans Affairs