

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

GENERAL WEBB,)
Appellant,)
)
v.) Vet. App. No. 18-0966
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
Appellee.)

**SECRETARY'S RESPONSE UNDER U.S. VET. APP. R. 39(a) TO
APPELLANT'S APPLICATION FOR ATTORNEY FEES AND EXPENSES**

Pursuant to VET.APP. R. 39(a)(1), Appellee, 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, the Secretary concedes that 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" which 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 in an amount up to \$25,949.10¹ as

¹ Appellant originally requested a total fee of \$27,996.90, but subsequently agreed to a reduced fee of \$25,949.10.

agreed to by the parties under the current case law. See 28 U.S.C. § 2412(d)(1)(C). 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 costs filed with this Court pursuant to 28 U.S.C. § 2412.

CONCLUSION

WHEREFORE, Appellee 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 \$25,949.10.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Drew A. Silow
DREW A. SILOW
Deputy Chief Counsel
Office of General Counsel (027M)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 632-6992

Attorneys for Appellee,
Secretary of Veterans Affairs