

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

| | | |
|--------------------------------|---|-----------------------|
| CHARLES R. BARWICK, |) | |
| Appellant, |) | |
| |) | |
| v. |) | Vet. App. No. 19-0697 |
| |) | |
| 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. R. 39(b), the Secretary responds to Appellant’s application for an award of attorney fees and expenses under 28 U.S.C. § 2412 (EAJA). Appellant’s EAJA application satisfies the jurisdictional requirements of the statute as set out by this Court in *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. See 28 U.S.C. § 2412(d).

The Secretary, for the sole purpose of avoiding further litigation and related costs, does not contest the reasonableness of Appellant’s fees or expenses, see 28 U.S.C. § 2412(d)(1)(C), and is prepared to make payment to Appellant and the representative of record. The Secretary’s concession here, however, in no way denotes his position as to any issue or matter presented herein that 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, the Secretary respectfully advises the Court that he does not contest an award in an amount deemed reasonable by the Court, up to \$ 9,066.40.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Sarah W. Fusina
SARAH W. FUSINA
Deputy Chief Counsel

/s/ Monique A. S. Allen
MONIQUE A. S. ALLEN

Appellate Attorney
Office of the General Counsel (027H)
U.S. Dept. of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 632-6900
monique.allen@va.gov

Attorneys for Appellee,
Secretary of Veterans Affairs