

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

**EARL F. GOODEN,**

Appellant,

v.

**ROBERT L. WILKIE,**  
Secretary of Veterans Affairs

Appellee.

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Vet.App. No. 19-2822

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

Pursuant to U.S. Vet.App. R. 39(a), Appellee, Robert L. Wilkie, 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.

Appellant's EAJA application satisfies the jurisdictional requirements of the statute. 28 U.S.C. § 2412(d)(1)(B). 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 \$11,609.99<sup>1</sup> as 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, Robert L. Wilkie, 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 \$11,609.99.

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

/s/ Alexander W. You  
**ALEXANDER W. YOU**  
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<sup>1</sup> Appellant originally requested a total fee of \$13,560.39, but subsequently agreed to a reduced fee of \$11,609.99.

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