

DOROTHY C. FOGG,)
)
 Appellant,)
)
 v.) Vet. App. No. 18-6976
)
 ROBERT L. WILKIE,)
)
 Secretary of Veterans Affairs,)
)
 Appellee.)

On November 3, 2020, Appellee, Robert L. Wilkie, Secretary of Veterans Affairs, filed his response 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. In that response, Appellee contested portions of Appellant's EAJA application. The parties participated in a Court-ordered conference on December 4, 2020, for the purpose of attempting to resolve the dispute; they were unable to reach an agreement. The Court issued an Order on December 9, 2020, directing Appellant to file a reply to the Secretary's response. Since that time, the parties have engaged in further discussions and have reached an agreement.

The Secretary does not contest that Appellant's EAJA application satisfies the jurisdictional requirements of the statute. 38 U.S.C. § 2412(d). 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 related costs, does not contest the reasonableness of Appellant’s attorney fees or expenses up to \$16,476.62,¹ and is prepared to make payment to Appellant and the representative of record. See 28 U.S.C. § 2412(d)(1)(C). The Secretary’s concession here, however, in no way denotes his 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.

WHEREFORE, the Secretary advises the Court that he does not contest an award up to \$16,476.62.

Respectfully submitted,

WILLIAM A. HUDSON, JR.
Principal Deputy General Counsel

MARY ANN FLYNN
Chief Counsel

/s/ Christopher W. Wallace
CHRISTOPHER W. WALLACE
Deputy Chief Counsel

/s/ Sarah E. Wolf
SARAH E. WOLF

¹ This represents the amount agreed to by the parties and differs from the \$18,287.72 originally sought by Appellant.

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