

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

<b>CLIFTON ARLINE,</b>	)	
	)	
Appellant,	)	
	)	
v.	)	Vet. App. 18-0765
	)	
<b>DENIS MCDONOUGH,</b>	)	
Secretary of Veterans Affairs,	)	
	)	
Appellee.	)	

**SECRETARY’S RESPONSE UNDER U.S. VET. APP. R. 39(a)(1)  
TO APPELLANT’S APPLICATION FOR ATTORNEY FEES AND EXPENSES**

Under U.S. Vet. App. Rule 39(a)(1), the Secretary does not contest Appellant’s application’s satisfaction of the requirements of the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). Additionally, the Secretary waives any defense regarding whether Appellant has met the three predicate findings for an award of attorney fees and expenses under the EAJA: whether (1) Appellant is a “prevailing party”; (2) the Secretary’s position was not “substantially justified”; and (3) there are any “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 he is prepared to make payment to Appellant and the representative of record. The Secretary’s position 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 advises the Court that he does not contest an EAJA award, up to \$18,000.00. This represents an amount agreed to by the parties and differs from what was initially sought.

Respectfully submitted,

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