

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

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|--------------------------------|---|-------------------|
| GEORGE ROSEBERRY, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 20-945 |
| |) | |
| DENIS MCDONOUGH, |) | |
| Secretary of Veterans Affairs, |) | |
| Respondent. |) | |

RESPONSE TO COURT ORDER

On July 20, 2021, the Court issued an Order setting aside the January 28, 2020, Board decision and remanded the claim for further development and readjudication. On August 12, 2021, the Court issued Judgment and October 15, 2021, the Court entered mandate, effective October 12, 2021. On November 13, 2021, Appellant's counsel filed her application for attorney fees under EAJA. On January 19, 2022, the Secretary filed a motion to dismiss the application for award of attorney fees on the basis that the application was untimely. The Court issue an Order on February 9, 2022, asking Appellant's counsel to show cause why the EAJA application should not be dismissed as untimely.

Counsel for Appellant does not dispute that the attorney fee application was filed on November 13, 2021, which was more than 30 days after mandate. Unfortunately, a calendaring error occurred and mandate was recorded as October 15, 2021, the date that mandate was entered by the Court, and not October 12, 2021, when mandate was actually effective. While it is devastating to not be compensated for the work that was performed on behalf of the Veteran (especially in a case like this that took an immense amount of work) at this Court due to a technicality of the filing date of the attorney fee application, counsel for Appellant cannot dispute the current legal landscape that affords the Secretary the avenue to move to dismiss on this basis.

February 11, 2022

Submitted,
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