IN THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

FRED W. FOSTER, Appellant,	)	
v.	)	Vet. App. No. 19-7442 EAJA
DENIS MCDONOUGH, Secretary of Veterans Affairs, Appellee.	)	

APPELLEE'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. Rule 39(a)(1), Appellee respectfully 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 as set out by this Court. *See Bazalo v. Brown*, 9 Vet.App. 304, 308 (1996) (en banc). Additionally, Appellee 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).

Appellee, 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 under the current case law and is prepared to make payment to Appellant and the representative of record. Appellee's concession here, however, in no way denotes Appellee'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 expenses filed with this Court pursuant to 28 U.S.C. § 2412.

CONCLUSION

WHEREFORE, Appellee respectfully responds to Appellant's application for the award of attorney fees and other expenses, and advises the Court that Appellee does not contest an award in an amount deemed reasonable by the Court, up to $7,157.48.

Respectfully submitted,

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