

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

KEVIN G. WALLEMAN,
Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

)
)
)
)
)
)
)
)
)
)

Vet. App. No. 20-7299

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

Pursuant to U.S. Vet. App. Rule 39(a)(1), Appellee, 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.

For purposes of this litigation, the Secretary does not dispute that Appellant's EAJA application satisfies the jurisdictional requirements of the statute as set out by this court, *Bazalo v. Brown*, 9 Vet. App. 304, 308 (1996) (en banc), or that Appellant has met the three predicate findings for an EAJA award: that (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).

Appellant's application seeks a total award of \$40,551.91. However, Appellant has agreed to reduce that amount by 3.0 attorney hours (or \$649.23), and thus accept an award to \$39,902.68. For the sole purpose of avoiding further litigation and the costs related thereto, the Secretary does not contest the reasonableness of the reduced amount requested and is prepared to make payment to Appellant and his representative of record. 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.

CONCLUSION

WHEREFORE, Appellee, Secretary of Veterans Affairs, 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 the reduced amount of \$39,902.68.

Respectfully submitted,

CATHERINE C. MITRANO
Acting General Counsel

MARY ANN FLYNN
Chief Counsel

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

/s/ Ronen Morris
RONEN MORRIS
Senior Appellate Counsel
Office of General Counsel
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 632-4011

Attorneys for Appellee
Secretary of Veterans Affairs