

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

**DANIEL R. WHITTAKER,**

Appellant,

v.

**DENIS MCDONOUGH,**  
Secretary of Veterans Affairs,

Appellee.

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Vet. App. No. 20-4406 EAJA

**SECRETARY'S RESPONSE TO APPELLANT'S  
APPLICATION FOR ATTORNEY FEES AND EXPENSES**

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, 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 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 in the amount of \$20,115.00.

The Secretary notes that this amount is the result of negotiation among the parties, resulting in an agreement to reduce the original amount of attorney fees

and expenses from \$21,925.35 to \$20,115.00. The Secretary's concession here, however, in no way denotes the Secretary'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.

**WHEREFORE**, Appellee 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 amount agreed to at \$20,115.00.

Respectfully submitted,

**RICHARD J. HIPOLIT**  
Deputy General Counsel for  
Veterans Programs

**MARY ANN FLYNN**  
Chief Counsel

/s/ Megan C. Kral  
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/s/ Anita U. Koepcke  
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