

UNITED STATES COURT OF VETERANS APPEALS

No. 97-701

PETER J. WISNER,

APPELLANT,

AND

No. 97-1454

HERBERT G. ABBS,

APPELLANT,

V.

TOGO D. WEST, JR.,

SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before IVERS, STEINBERG, and GREENE, *Judges*.

ORDER

On May 5, 1997, appellant Peter J. Wisner, then pro se, filed a Notice of Appeal as to an April 8, 1997, decision of the Board of Veterans' Appeals (Board or BVA) finding that new and material evidence had not been presented to reopen a previously and finally disallowed claim for Department of Veterans Affairs (VA) service connection for a psychiatric disorder. On October 2, 1998, the parties (the appellant then represented) filed a joint motion to remand to the Board, pursuant to *Hodge v. West*, 155 F.3d 1356 (Fed. Cir. 1998), the issue on appeal. On October 7, 1998, the Court granted that motion, vacating the BVA decision and remanding the matter. On October 30, 1998, the appellant timely filed an application for an award of reasonable attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), seeking \$4,627.76 in fees. On December 9, 1998, the Secretary filed a response, arguing that his position was substantially justified. On December 18, 1998, the appellant filed a reply.

On August 15, 1997, appellant Herbert B. Abbs filed through counsel a Notice of Appeal as to a May 20, 1997, BVA decision finding that new and material evidence had not been presented to reopen a previously and finally disallowed claim for VA service connection for a chronic nervous disorder. On October 2, 1998, the Secretary filed an unopposed motion to remand to the Board, pursuant to *Hodge, supra*, the issue on appeal. On October 8, 1998, the Court granted that motion, vacating the BVA decision and remanding the matter. On November 5, 1998, the appellant timely filed an application for an award of reasonable attorney fees under the EAJA, seeking \$3,839.50 in fees. On November 25, 1998, the Secretary filed a response, arguing that his position was substantially justified. On December 14, 1998, the appellant filed a reply.

On December 29, 1998, the Court ordered that the two cases be consolidated for consideration of the appellants' applications for attorney fees and expenses and submitted the issue to a panel for decision without oral argument.

On consideration of the foregoing, it is

ORDERED that, not later than 30 days after the date of this order, the Secretary file a response, in a single pleading, to the appellants' December 14 and December 18, 1998, reply in each case, regarding the issue of substantial justification.

DATED: January 22, 1999

PER CURIAM.